

Memorandum



DATE July 28, 2011

TO The Honorable Mayor and Members of the City Council

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

On Wednesday, August 3, 2011, Assistant City Attorney Larry Casto will provide you with a briefing on the outcomes of the 82nd Regular and Special Session of the Texas Legislature. Mr. Casto will provide an overview of the Session and discuss how the City of Dallas' legislative initiatives fared. 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: Rosa A. Rios, Interim City Secretary
Thomas P. Perkins, Jr., City Attorney
Craig Kinton, City Auditor
Judge C. Victor Lander, Administrative Judge
A.C. Gonzalez, First Assistant City Manager
Ryan S. Evans, Assistant City Manager
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Forest Turner, Assistant City Manager
Joey Zapata, Interim Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
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Helena Stevens-Thompson, Assistant to the City Manager

Summary of Legislation with Municipal Impact

82nd Texas Legislative Session

On May 30, 2011, the 82nd Legislature for the State of Texas concluded their 140 day regularly scheduled session. Governor Perry immediately called a special session to finish work on the fiscal matters bills, sanctuary cities and Texas Wind Insurance Agency (TWIA). During the 82nd Regular Session, over 5700 bills were introduced and just over 1300 bills passed both chambers, 25 were vetoed. 1600 of the bills introduced directly affected municipalities. 160 were signed into law.

The City of Dallas successfully worked for the passage of 15 City Council-approved legislative initiatives. Among these were several public safety-related measures, additional funding for 3 bridges in Dallas: IH-30, IH-345, and IH-35E, CDA authority for 3 North Texas toll projects, economic development assistance for the construction of a street car trolley system and film studios, preservation of convention center hotel funding, and the restoration of some state funds to assist with homelessness.

As always, the vast majority of time and effort was spent opposing bills that were harmful to local control and home-rule authority. Several bills were defeated that would have weakened the city's ability to rent its public right-of-way, regulate land use, maintain control over its water resources, and preserve local fees for local use.

STATE FY 2012-2013 BUDGET

The 82nd Legislature faced a huge budget deficit of \$27 billion. Of great concern to cities was the fear that the state would balance its budget by passing down new fees or unfunded mandates to the local governments or that the state would keep even more of the revenue generated at the local level.

H.B. 1 General Appropriations

The total \$172 billion two-year budget is \$15 billion less, 8 percent, than the 2010-11 budget. The final budget still did not fund Medicaid enrollment growth, did not fund education at the amount previously established by law, and did not access the Rainy Day Fund (RDF).

This bill impacts state transfers to cities in the following major ways:

- Allocations of the city share of the mixed beverage tax will be reduced by roughly 25 percent which will result in a \$1.7 million annual loss to City of Dallas.
- Statewide library assistance will be cut from \$54.3 million to \$24.25 million for the biennium, a reduction of 55 percent, and a loss of over \$300,000 to City of Dallas for 2012-2013.
- \$20 million in homeless money secured in 2009 by Texas' 8 largest cities was eliminated in 2011. However, the cities successfully advocated for \$10 million in the Governor's Enterprise Fund that can be used for homeless services. If able to access these funds, the City of Dallas and the Bridge should receive 50 percent of the 2009 amount or \$1.7 million over the 2011-2013 biennium.
- Local parks grants will be cut from \$36.2 million to \$881,460, a reduction of more than 97 percent for the biennium, and eliminating capital grant funding for urban parks.
- \$12 million in Law Enforcement Officer Standards & Education (LEOSE) funds were eliminated resulting in a loss of \$233,000 for the City of Dallas.

- Commission on the Arts was cut approximately 50 percent resulting in a loss to the city of \$77,800 for grants to local art groups.

Despite the tough budget climate, the City of Dallas experienced a positive session and fought back passage of most legislation that would have negatively impacted the city's local budget authority or local control. Additionally, the City of Dallas was successful in passing several pieces of favorable legislation.

PUBLIC SAFETY

- Texas Fire Commission fee was increased from \$35 per firefighter to \$85 adding \$88,400 in cost to the city.

H.B. 1541 (McClendon) -- Auto Burglary & Theft Prevention Authority: a grant program that assists police departments in combating auto theft. Last year Dallas Police Department received over \$607,000 and will continue to seek funds through this program. The funding source is a \$1.00 fee to auto insurance premiums. This session the State will use the \$1.00 fee for other purposes. HB1541 includes an amendment to collect an additional \$1.00 for a total of \$2.00, and for 50% (\$1.00) of the collected fees be appropriated only for the cause of the grant. **(Effective September 1, 2011)**

S.B. 61 (Zaffirini) – Juvenile Case Managers: authorizes the city's judge or governing body to pay the salary and benefits of a juvenile case manager and costs of training, travel, office supplies, and other necessary expenses relating to the position from the juvenile case manager fund. **(Effective immediately)** **S.B. 209 (Zaffirini):** provides that a city, rather than solely a municipal court, may employ a juvenile case manager. **(Effective September 1, 2011)** **S.B. 1489 (Whitmire):** reaffirms the city's ability to create a juvenile case manager fund, allows the case manager to be an employee of the city, and expands the case manager's scope of work beyond truancy cases. **(Effective September 1, 2011)**

S.B. 694 (West) – Metal Recycling: this bill, among other things, creates an even playing field for recycling yards while protecting city ordinance authority by: (1) requiring a digital photo or video of the seller's face and regulated material; (2) allowing a municipality to require a seller's thumbprint; (3) requiring proof of rightful possession to sell any coil or condenser parts from a central heat and air condition system; (4) prohibiting the sale/purchase of burned wiring; (5) requiring electronic reporting of transactions to DPS for state database; (6) classifying catalytic converters as regulated metal; (7) creating a criminal offense of Class B Misdemeanor to operate w/out state registration. **(Effective September 1, 2011, except as otherwise provided in the bill)**

S.B. 887 (Carona) – Theft of an ATM: makes theft of an ATM machine a second degree felony. The variety of offense options based on the elements involved in the taking of an ATM often lead to the crimes being prosecuted in an inconsistent manner. SB887 will remedy the problem and provide consistent means of prosecution. **(Effective September 1, 2011)**

S.B. 1030 (Carona) - Sexually Oriented Businesses: requires every business that applies for a Sexually Oriented Business license to post intent for application unless the location currently has a permit. SB1030 provides transparency of the license application for the community. **(Effective immediately)**

S.B. 1103 (Carona) -- Cargo Theft Prosecution: changes will make prosecution easier in theft cases, including those that involve auto theft, in which people are in possession of the stolen property in a county other than the county in which the property was originally stolen. The change lessens the burden of law enforcement from proving the person in possession of the property is actually the one who stole the property. **(Effective September 1, 2011)**

ECONOMIC VIBRANCY

SB 1420 – Hinojosa/Harper-Brown - TxDOT Sunset

- Commission Structure – The Commission structure will remain largely unchanged, which means five members appointed by the Governor.
- CDA projects – CDA authority was provided for 11 projects mainly in the metropolitan areas of the state: four in Houston area, three in North Texas and two in Central Texas, and two in South Texas. The three in North Texas are Interstate Highway 35E managed lanes project from Interstate Highway 635 to U.S. highway 380; State Highway 183 managed lanes project from 161 to Interstate Highway 35E; and North Tarrant Express Project from State Highway 121/183 to State Highway 161. Except for the Grand Parkway, environmental clearance of a project must be achieved before August 31, 2013. And, except for the Grand Parkway, the CDA authority expires August 31, 2015.
- Certain toll projects – The distribution of a project's financial risk, the method of financing for a project, and the tolling structure and methodology must be determined by a committee consisting of various members including: a representative of each municipality or county that has provided revenue or right-of-way; a representative of the department; a representative of any local toll project entity for the area in which the project is located; and a representative of the applicable metropolitan planning organization.

Proposition 12 Bonds

HB 1 provides TxDOT virtually everything requested in their baseline plus \$3 Billion in Proposition 12 bond proceeds. The Proposition 12 bond proceeds will be distributed as follows:

- \$300 million -- development of future mobility projects in the four most congested regions.
- \$500 million - bridges specified in the bill. \$320 million will be used for the three bridges in Dallas.
- \$600 million - urban and metro mobility, split among the MPOs.
- \$200 million - connectivity, allocated by commission.
- \$1.4 billion - rehab and safety, distributed by Category 1 formula.

S.B. 19 (Nichols) -- Relating to the development, financing, construction, and operation of certain toll projects: S.B. 792, 80th Legislature, Regular Session, 2007, enacted a moratorium on most comprehensive development agreements and created a "market valuation" process by which the Texas Department of Transportation (TxDOT) could proceed with certain transportation projects. The market valuation process established under S.B. 792 is set to expire on August 31, 2011. S.B. 19 establishes a process for toll project development. It creates a first right of refusal guarantee (or primacy) for local toll entities to build future toll projects. S.B. 19 also allows tolling entities to complete environmental and other pre-project development work more quickly with the goal of expediting the primacy determination process. **(Effective immediately)**

S.B. 980 (Carona) – Telecommunications: provides, among other things, that: (1) a city may not by rule, order, or other means directly or indirectly regulate rates charged for, service or contract terms for, conditions for, or requirements for entry into the market for Voice over Internet Protocol services or other Internet Protocol enabled services; and (2) the limitation in section (1) does not: (a) affect payment of municipal right-of-way fees applicable to Voice over Internet Protocol services; (b) affect any person's obligation to provide video service as defined under

applicable state or federal law, the applicability of Utilities Code Chapter 66 (state-issued video and cable franchise), or a requirement to make a payment under Chapter 66; (c) require or prohibit assessment of enhanced 9-1-1, relay access service, or universal service fund fees on Voice Over Internet Protocol service. **(Effective September 1, 2011)**

S.B. 1048 (Jackson) – Public/Private Partnerships: encourages the use of public private partnerships to develop “qualifying projects,” which include various infrastructure projects as defined by the bill (essentially any improvements necessary or desirable to unimproved real estate owned by a governmental entity). The bill requires an opt-in by resolution of the governing body of a political subdivision, including a city, to elect to operate under its terms. It provides detailed procedures for the procurement and implementation of a qualifying project. **(Effective September 1, 2011)**

H.B. 3465 (Sheffield) – Reinvestment Zones: certain tax increment financing reinvestment zones may be created for a 40-year term and may subsequently be extended for another 40 years by city ordinance. Participating taxing entities in the zone may pass ordinances or authorizations to continue to participate in the zone but others, such as local school districts, may leave the request pending while requesting clarification on whether the district's continued participation in the zone would affect the amount the amount of state aid the district receives. Legislation is needed to provide clarity regarding the ability of a school district to deduct the value of the tax increment for purposes of determining the value of taxable property in the district. H.B. 3465 seeks to clarify the period for which a school district's participation in certain tax increment financing investment zones may be taken into account for that purpose. **(Effective September 1, 2011)**

S.B. 977 (Hinojosa) – Relating to the imposition, use, rebate, and refund of certain taxes related to certain hotel business revenue: provides that state funds rebated back to municipalities to fund the construction of eligible convention center hotel projects are not subject to biennial legislative appropriations. This legislation counters the argument of the Attorney General in the City of Irving lawsuit that such funds may only be released to cities if the legislature specifically releases those funds every two years. **(Effective immediately)**

S.B. 1234 (West) – Municipal Management Districts: In addition to amending board requirements, bond issuance, bidding, and other matters of operations of municipal management districts, the legislation also adds studios, theatres, and ancillary structures to list of eligible projects. **(Effective September 1, 2011)**

H.B. 1400 (Elkins) – Public Improvement Districts: among other things, provides that: (1) a public improvement project may include the payment of expenses relating to the operation and maintenance of mass transportation facilities; and (2) a city council may defer an assessment associated with a public improvement district until a date the governing body specifies by ordinance or order. **The legislation allows for a non-contiguous PID to be created in Dallas composed of hotels of more than 100 rooms. The deferred assessment financing mechanism is anticipated to be used in the creation of a PID to facilitate the construction of a street car system in Dallas. (Effective September 1, 2011)**

CLEAN, HEALTHY ENVIRONMENT

Under the Appropriations Act (HB 1), the **Texas Commission on Environmental Quality** will receive \$693.2 million for the 2012-2013 biennium, which is a reduction of \$305 million from the 2010-2011 biennium.

Several programs were impacted by this reduction:

- Texas Emission Reduction Program (TERP) received \$114 million for the biennium with a contingency appropriation of \$8 million per year if revenue exceeds the biennial revenue estimate (BRE), a potential reduction of 50%.

- Low Income Vehicle Repair and Assistance Program (LIRAP) is funded at \$12.5 million for the biennium, an 88% reduction from the 2010-2011 biennium.
- Petroleum Storage Tank (PST) program was appropriated \$43.9 million for the biennium. A decrease of \$8.3 million from the 2010-2011 biennium.
- Superfund was appropriated \$48.26 million for the biennium. A decrease of \$13.3 million from the 2010-2011 biennium.
- TCEQ grant programs received a 50% reduction from 2010-2011 levels. Air Quality Planning was appropriated \$3.57 million and Local Solid Waste Planning was appropriated \$10.89 million for the biennium.

H.B. 2694 (Smith, Wayne) – Emergency Orders During Water Shortage: The TCEQ sunset bill added section 11.053 to the Texas Water Code that authorizes the TCEQ to order temporary suspension of water rights and reallocation of diversions of water rights during a drought or other emergency water shortage. The City was able to add language that requires the Executive Director to take into consideration the development and implementation of water conservation and drought contingency plans in an order to temporarily suspend or reallocate water rights. **(Effective September 1, 2011)**

SB 20 (Williams) – Relating to grant programs for certain natural gas motor vehicles and alternative fuel facilities: establishes three new grant programs under the Texas Emissions Reduction Plan (TERP): the natural gas vehicle rebate program; a program to fund natural gas fueling stations; and an alternative fueling facilities program. Of the 87.5 percent funds in the General Revenue-Dedicated Texas Emissions Reduction Plan Account, money allocated to the emissions reduction incentive programs, not less than 16 percent would be allocated to the natural gas vehicle rebate program; not more than 4 percent would be allocated for the refueling station program; and up to 2 percent could be used for the alternative fueling facilities program. The bill establishes the Texas Natural Gas Vehicle Grant Program. Under this new chapter, the Texas Commission on Environmental Quality (TCEQ) is directed to establish two new grant programs for funding the purchase or lease of natural gas vehicles or engines and the establishment of natural gas refueling stations along the interstate highways between Houston, San Antonio, and Dallas-Fort Worth. The bill provides that the TCEQ shall reallocate funds in the new natural gas vehicle grants program to other purposes if, after consultation with the governor and the TERP advisory board, the TCEQ determines that the use of the money for that program would cause the state to be in noncompliance with the State Implementation Plan to the extent that federal action is likely. **(Effective September 1, 2011)**

S.B. 329 (Watson) - Recycling of Electronic Waste: amends current law relating to the sale, recovery, and recycling of certain television equipment and provides administrative penalties by adding Subchapter Z to Chapter 361 (Solid Waste Disposal Act), Health and Safety Code, to create the Television Equipment Recycling Program. It requires television manufacturers to take back and recycle a percentage of their Texas market-share. S.B. 329 would require manufacturers to provide consumers with convenient alternatives to the disposal of televisions in Texas landfills and incinerators. **(Effective September 1, 2011)**

S.B. 527 (Fraser) - Relating to projects funded through the Texas Emissions Reduction Plan: amends the Health and Safety Code that addresses the Texas Emissions Reduction Plan to expand the programs for which the Texas Commission on Environmental Quality (TCEQ) and the comptroller of public accounts must provide grants or other funding to include the air quality research support program, the regional air monitoring program established for certain regions, a health effects study, air quality planning activities, and a contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station for computation of creditable statewide emissions reductions. The bill removes the new technology research and development program as a program eligible for such funding. The city of Houston has established a network to monitor the overall air quality in the Houston-Galveston-

Brazoria area that measures regulated pollutants and provides data to the general public, industry, local governments, and the state. S.B. 527 establishes a similar network for the Dallas-Fort Worth area by revising the allocation of the Texas emissions reduction plan. (Effective September 1, 2011)

EDUCATIONAL ENHANCEMENTS

Along with the tough budget decisions, funding for education took center stage during the 82nd Legislative Session. Fortunately, the UNT Law School received \$2.94 million for the biennium above and beyond formula funding.

CULTURE, ARTS, & RECREATION

The Major Events Trust fund was expanded to include the Academy of Country Music Awards, the National Cutting Horse Triple Crown, and a national political convention of the Republican National Committee or the Democratic National Committee. H.B.1 included \$32M, a cut of 50%, for the biennium to market film, music, and other creative media locally and across the state.

E3 GOVERNMENT

The legislature passed "safety net" legislation, S.B. 652, which allows for the continuation of agencies whose sunset bill did not pass or were vetoed during the session. This includes **the Railroad Commission, the Public Utility Commission, and Texas Department of Housing and Community Affairs**. The bill allows the agencies to continue operating until September 2013.

Credit Service Organizations (CSOs) - Several bills related to regulation of credit service organizations were filed during the 82nd session and two were signed into law. H.B.2592 (Truitt et al.) will require a CSO to provide a disclosure that includes: Interest, fees, annual percentage rates, and late charge fees or other typical costs that a consumer considering a payday or title loan may otherwise incur; a comparison of the amount of accumulated fees a consumer would incur in obtaining and refinancing a payday or title loan; information regarding the typical pattern of repayment of payday and title loans. H.B.2594 (Truitt et al.) will provide for licensing and registration of pay day lenders. (Effective January 12, 2012)

H.B. 2313 (Coleman) - Public Meetings: provides that notices of public meetings may now be posted on electronic bulletin boards, providing the option for cities to replace physical bulletin boards with electronic screens. (Effective immediately)

Redistricting - According to the 2010 census, Texas' population grew by approximately 4.3 million people over the last decade. As such, the 82nd Texas Legislature took up Redistricting and passed new maps for the Texas Congressional Delegation (S.B. 4), the Texas Senate (S.B. 31), the Texas House of Representatives (H.B. 150) and the State Board of Education (H.B. 600) during the regular and first called special sessions. Next steps: The maps are now in the hands of the courts. More than a dozen redistricting cases have been filed around the state, in courts in Sherman, Austin, McAllen and San Antonio. Some cases may be consolidated and it is possible not all will be heard. It is also possible that candidates could be elected from interim maps that are changed again after elections. The March primary elections are eight months away. Candidates are already declaring and, under a new state law, have to file for office by early December to get on the ballot for the 2012 elections.

S.B. 100 (Van de Putte) – Elections: implements the federal Military and Overseas Voter Empowerment Act in Texas. Its primary purpose is to require an early voting clerk to make registration and absentee ballots available to military and overseas voters at least 45 days before an election involving a state or federal office. To facilitate what is required by this federal law, S.B. 100 keeps the first Tuesday in March as the primary election date, but changes the runoff primary election date from the second Tuesday in April to the fourth Tuesday in May.

Because the fourth Tuesday in May is only ten days after the May election date used by cities (the second Saturday in May), S.B. 100 also provides that “a county elections administrator is not required to enter into a contract to furnish election services for an election held on...” the second Saturday in May in even-numbered years (years during which primary elections are held). Because it will be difficult and prohibitively expensive for a city to conduct an election without the assistance and the voting machines of the county elections administrator, S.B. 100 also makes the following changes: (1) allows a home rule city to change its election date from the May date to the November date (the first Tuesday after the first Monday) simply by adopting a resolution, which will supersede the city charter; (2) allows a home rule city to provide for the election of all members of the governing body at the same election through the adoption of a resolution, which will supersede a charter provision that requires a different election date or that requires staggered terms; (This would allow the city to conduct all elections in odd-numbered years.) (3) a member of a municipal governing body who holds over so that a term of office may be conformed to a new election date chosen under (1) or (2) above does not create a vacancy under the Texas Constitution, so there will be no need for a special election; (4) provides that a political subdivision that has terms that consist of an odd number of years may adopt a resolution changing the length of the terms to an even number. **(Effective on September 1, 2011)**

GOVERNOR PERRY’S EMERGENCY ITEMS

S.B.18 (Estes/Duncan) - Eminent Domain: 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, requiring a record vote of the authorization, 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. **(Effective September 1, 2011)**

H.B. 274 (Creighton/Huffman) - Tort Reform: relates to attorney's fees, early dismissal, expedited trials, and the reform of certain remedies and procedures in civil actions. H.B. 274, also known as the “loser pays” bill, requires the Supreme Court of Texas to adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence, and requires that upon early dismissal of a case the prevailing party of a motion to dismiss to be awarded costs and necessary attorney's fees. Beyond the beginning stage of the trial, both parties pay their own fees. **(Effective September 1, 2011)**

S.B. 14 (Fraser/Harless) - Voter ID: relates to requirements to vote, including presenting proof of identification. The bill requires voters to show a valid form of photo identification and establishes the following as acceptable forms of documentation: a driver's license, Department of Public Safety (DPS) issued photo personal identification card, U.S. military ID card, U.S. citizenship certificate that contains a photograph, U.S. passport or Texas concealed handgun license. The bill also creates a free election identification certificate with a photograph administered by DPS for registered voters who need a photo ID and increases the penalties for illegal voting and attempted illegal voting. **(Effective January 1, 2012, with certain sections taking effect September 1, 2011)**

H.B. 12 (Solomons) - Sanctuary Cities: related to the enforcement of state and federal laws governing immigration by certain governmental entities. The bill sought to address public concern by prohibiting certain local government entities and cities from undertaking certain actions that would restrict the enforcement of state and federal immigration law and by allowing the filing of a related citizen complaint.

Sanctuary cities legislation was added to the jurisdiction of the 82nd First Called Special Session on June 7 and introduced in S.B. 9 (Williams) and HB 9 (Solomons). HB 9 did not make it out of committee, and SB 9 was held up in House State Affairs after passing the full Senate. An attempt to add sanctuary cities language to SB 1 during the special session failed. Sanctuary cities was the only emergency item that did not pass the 82nd Texas Legislature.

HCR 18 (Creighton/Shapiro) - Federal Balanced Budget Amendment: is a resolution that urges the Congress of the United States to propose and submit to the states an amendment to the United States Constitution providing for a federal balanced budget. The resolution was sent to the Governor on May 23 and signed on June 17. The resolution encourages the constitutional amendment to provide that, except during a war declared by the Congress of the United States pursuant to Article I, Section 8, Clause 11, United States Constitution, or other national emergency, the total of all federal appropriations for a fiscal year may not exceed the total of all estimated federal revenue for that fiscal year and providing for a spending limitation.

OTHER BILLS OF INTEREST

S.B. 1087 (Carona) - Cable: allow cable providers to terminate most municipal franchise agreements early. However, an exemption was granted to the City of Dallas, allowing it to maintain its current cable franchise and provisions relating to the I-NET system and customer service standards. The Dallas franchise agreement expires in 2015. (Effective September 1, 2011)

H.B. 1869 (Giddings) - Local Preference: current law allows certain small or medium-size cities or counties the option to accept bids from a bidder whose principal place of business is within the locality if the bid is within three percent of the lowest bid price. H.B. 1869 removes the population brackets in order to allow more populous cities and counties to have the same option. City staff is reviewing this legislation to determine the applicability to the City of Dallas and what actions would be needed to implement, if possible, the procedures in the City. Future legislative changes may be needed to allow for its use in the City of Dallas. (Effective immediately)

H.B. 3328 (Keffer et. al) - Fracking: instructs the Railroad Commission to write disclosure rules for chemicals deemed hazardous to on-site rig workers by July 1, 2012. The bill also requires rulemaking, for disclosure of all other chemicals not listed on the completed form used during fracking, to be completed no later than July 1, 2013. H.B. 3328 does allow for certain protections providing certain chemicals that may be deemed as proprietary trade secrets are exempted from the reporting requirements provided certain requirements are met. (Effective September 1, 2011)

H.B. 3328 – Key Components:

- Requires the Railroad Commission to adopt rules that require an operator to disclose chemicals used in hydraulic fracturing of an oil or gas well by completing the form on the Internet chemical disclosure registry developed and implemented by the Ground Water Protection Council (GWPC) and the Interstate Oil and Gas Compact Commission (IOGCC).
- Information includes each chemical ingredient regardless of whether it must be listed on a Material Safety Data Sheet under the federal Occupational Health and Safety Act (OSHA).
- Requires the Railroad Commission to adopt rules to prescribe a process by which an operator or a service company could designate certain information as a trade secret not subject to Texas open records law, and authorizes the entity claiming the trade secret to withhold information asserted to be a trade secret.

- Requires a trade secret claim be filed within 2 years of filing the completion report with the Commission and limits a person who could challenge such a claim to the landowner on whose property the well is located or who owns adjacent property, or a department or agency of Texas.
- Requires rules to include an efficient process for an entity for whom a trade secret claim has been claimed or approved to provide information to a health professional or an emergency responder in accordance with OSHA regulations.
- Requires that in the event of a trade secret challenge that the Railroad Commission notify the service company performing the hydraulic fracturing treatment on the relevant well, the supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other owner of the trade secret being challenged and provides the owner an opportunity to substantiate its trade secret claim.
- Requires the Railroad Commission to develop a process for making the legal determination as to whether information claimed to be a trade secret actually qualified as such under the Open Records Act as modified by the bill.

Next steps:

Texas Railroad Commissioners voted Monday, July 11, to expedite rulemaking requiring public disclosure of chemicals and other ingredients used during hydraulic fracturing for natural gas. Draft rules are expected by the end of August. The Commissioners hope to hold a special public hearing in September in Austin on the proposed rules.

Education: School Finance Facts from the 82nd Regular Session

Foundation School Program (FSP) Funding (Operations and Facilities): \$35.4 billion for 2012-13 (\$1.8 billion decrease compared to 2010-11 and \$4 billion below what is required to fund Current Law Formulas)

FSP Funding (General Revenue): \$29.2 billion for 2012-13 (\$1.6 billion increase compared to 2010-11)

State Fiscal Stabilization Fund Funding: \$0 for 2012-13 (3.2 billion decrease compared to 2010-11)

Special Programs and Grants: reduced by over \$1.3 billion for 2012-13 (Technology Allotment, New Instructional Facilities Allotment, Science Lab Grants, etc.)

Regional Service Centers: \$25 million for 2012-13 (\$15.7 million decrease compared to 2010-11)

Texas Education Agency: agency operations funding decreased by \$22 million or 17.2 percent. \$3.2 billion in federal ARRA funds were used to support education during this current biennium - those funds were not replaced in the upcoming biennium budget. While the GR funding increased in the FSP, there was an overall net reduction in public education funding, based on current law.

The Texas Education Agency (TEA) was given an FTE cap of 795 for 2012-12 (the cap was 1,038 last biennium) for the 2012-13 budget. As a result, TEA initiated a second round of layoffs in June.