

Update from the Texas Lobby Group, L.L.P

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Update - 81st Session of the Texas Legislature

March 20, 2009

Monday marks the half-way point of the 81st Legislative Session, with only 70 days left. As we reported last week, a record number of bills were filed this Session. In the past, the norm has hovered at around 5,000 bills filed. At our press time last week a record of over 6,000 bills had been filed. Once they were all in and counted – it now turns out that a record 7,136 bills were filed! That is a 15% increase overall. On the day of bill filing alone - 1,000 last minute bills and 24 proposed constitutional amendments were filed. On average (based on previous sessions), only 1 out of every four bills become law during the legislative session.

Total number of bills reported out of Senate Committees this week: 39

Total number of bills passed by the Senate this week: 72

Total number of bills passed on the Local and Uncontested Calendar: 59

Total number of bills reported out of House Committees this week: 20

Total number of bills passed by the House this week: 0

Voter ID

Voter ID and the state's budget are two issues every lawmaker is watching. The Senate passed its version of the Voter ID legislation this week along party lines. It's now on its way to the House of Representatives which is made up of 76 Republicans vs. 74 Democrats. If you assume a party line vote there, don't. Republican Representatives **Delwin Jones (R-Lubbock)** and **Tommy Merritt (R-Longview)** joined with Democrats in 2007 in opposing the voter ID legislation. Doing that math makes that a dead even bet...

For his part, **Speaker Straus** said, “There are a lot of members on both sides of the issue who are expressing concerns to me about it”. The bill is expected to be referred to the **House Committee on Elections** Chaired by **Representative Todd Smith (R-Bedford)**, where its total committee makeup consists of 5 Republicans and 4 Democrats. On the voter ID issue **Chairman Smith** said: “This is one of those issues that isn’t going away. Sometimes we have to address issues in order to get on to other things”.

The Budget

Getting onto other things includes the state budget. On the Senate side, they are getting close. In fact today they are scheduled to go over the 200 contingency riders before wrapping up their business.

On the other side of the rotunda, it turns out **Chairman Pitts** did file **House Bill 1** before the deadline. The introduced appropriations bill is about \$4 billion short of revenue. On Wednesday, **Representative Myra Crowover's** subcommittee on the stimulus dollars started looking to see how federal stimulus monies can free up General Revenue in other areas to close that gap.

The Stimulus

Trying to fill the budget hole.... On Thursday the **Legislative Budget Board (LBB)** testified that it estimates Texas has \$15.2 billion in stimulus funding available to it from the federal government. In **Chairman Crowover's** Subcommittee on the Stimulus package on the LBB testified to the following stimulus dollars for Texas:

- \$127.5 million grant for law enforcement.
- Boarder security can get around \$44.8 million for border security.
- Crime Victims Compensation - \$7.8 million.
- \$19.2 million in stimulus money was allocated to violence against women with a required 25% going to prosecution and enforcement, 30% to victim services, and 5% to in kind services. The LBB stated that \$3 million in stimulus money was allocated to Crimes against Children.
- \$3.2 billion in stimulus money can go to Energy Efficiency and Energy Block Programs to reduce fossil fuel emissions.
- \$2.7 billion in stimulus money can go to Texas to pay for surface transportation.
- For Workforce Investment Act - \$33.5 million was going to adults, \$82 million to youth, and \$52.5 million to disabled.
- \$8.6 million in stimulus can go to the Senior Service Employment Program.
- \$67.8 million in stimulus money was going to Texas to pay for community development, to which 70% was going to entitlement cities and 30% to non-entitlement cities.

Chair Crowover asked about Homeland Security funding, but LBB did not have those figures so it was put on the watch list.

The big question for the stimulus money is what comes with strings attached and what doesn't, what creates a new program and what is a one-time only expense. Some in the legislature want all of the money, some want some of the money, and some don't want any money if it has strings attached. All of this will need to be resolved – in the next 70 days.

THE GOVERNOR

The Governor – for his part – announced last week that Texas should reject the \$555 million in federal stimulus money for unemployment compensation from the Feds because of the strings attached and the long term effects it would have on small business. That decision was and is supported by the Texas business community.

As for the rest of the budget, this week **Governor Perry** vowed to hang tough on the state budget, promising to call a special session this summer, if necessary, to keep spending to his liking. "If it (the budget) grows unacceptably... I'll keep them (lawmakers) here all summer" he told a conservative group this week. The Governor has not hesitated to call special sessions in the past....

As **Chairman of the Senate Health & Human Services Committee, Senator Jane Nelson (R-Lewisville)** is also urging lawmakers to carefully consider the federal strings attached to the federal stimulus package, especially those dealing with entitlements.

Senator Nelson points out that Texas is one of few states with positive cash flow. "We will meet our responsibility this session to those who depend on state government for their health and well-being -- with or without the stimulus," she said. If we accept the entire stimulus, "Taxpayers will have to live with this decision for years to come. Make no mistake about it -- there is no such thing as a temporary entitlement."

In response to **Governor Rick Perry's** announcement last week that Texas should decline federal unemployment aid, several **Democratic Senators** blasted the governor's decision to reject \$555 million in aid to unemployed Texans offered by the **Economic Recovery Act**. The press release said, "While Texas does not yet face double digit unemployment—like Michigan, California, Rhode Island and South Carolina—the economic forecast is not rosy. According to the Texas Comptroller of Public Accounts and the U.S. Federal Reserve, the Texas economy will lose between 180,000 to 300,000 jobs in 2009, and the unemployment rate is expected to rise from 6% to 8.2%." **Senator Rodney Ellis** said, "Governor Perry's decision is simply deplorable. Texas families are hurting and are worried about how they are going to keep their homes and

pay their bills if the Governor won't do his job, we'll have to go around him, and I am prepared to do just that."

As you can see, the stimulus funding is certainly causing uncertainty in the Legislative Session and its appropriations process...

The Legislature

Some additional issues of interest are beginning to move through the legislature. Those include:

TORT REFORM

SB 555 would **prohibit indemnification clauses** in contracts between construction project owners, general contractors and subcontractors. The bill makes each party liable for its own negligence and bans transferring liability by contract for actions involving property damage, bodily injury or death. Exceptions are for the bodily injury or death of an employee of the indemnitor, its agent or subcontractor; a breach of contract or warranty; or a violation of a statute, ordinance, government regulation or rule. *It passed the Senate by a vote of 30 to 1 with Senator Robert Nichols (R-Jacksonville) casting the only "no" vote.*

HB 1657 by Helen Giddings (D-DeSoto) would change the definitions of "general contractor" and "subcontractor" under the workers' compensation statute. Under this bill, property owners could no longer be considered the general contractor and cover subcontractors under the property owner's workers' compensation coverage. This bill is commonly referred to as the "**Entergy bill**" after the Texas Supreme Court case where an injured Entergy employee who received benefits under the company's worker's compensation policy could not sue the company for further damages. In support were representatives of Texas Trial Lawyers Association, Texas AFL-CIO, Texans for Public Justice, TPLC-CWA Union, and four individuals. In opposition were representatives of Texas Civil Justice League, Texans for Lawsuit Reform, Texas Association of Manufacturers, AGC Texas Building Branch, Shell Oil, Texas Association of Business, Associated Builders and Contractors of Texas, Dow Chemical Company, American Insurance Association, Valero Energy Corporation, Huntsman Corporation, Texas Apartment Association, National Federation of Independent Business, Texas Chemical Council, and Texas Oil and Gas Association. *It was left pending.*

Representative Aaron Pena (D-Edinburg) has filed **HB 4237** which would allow bloggers and citizen journalists to be protected by what is known as the "**Privileged Matters Clause**" in the **Texas Civil Practices & Remedies Code**. Under the Privileged Matters Clause, newspapers and other periodicals are protected from being sued for libel when reporting on things that happen in a court of law, the proceedings of a government body, or meetings dealing with public issues. In addition to protecting bloggers and citizen journalists, the bill also adds "Privileged Matters" protections to bloggers who use technology such as Webcasting and Podcasting.

Vince Geibowitz, chair of the Texas Progressive Alliance said, “We are very pleased to see this bill be filed. Representative Pena was one of the first two legislators in the nation to become an early adopter of blogging. This is the first step toward a real victory for Internet activists in Texas. I’m very proud of how far our movement has come.”

On Wednesday, **Senator Dan Patrick (R-Houston)** announced that 16 Republicans and 7 Democrats have signed on to his bill that eliminates or reduces the tax on 385,000 small businesses. SB 19 would eliminate the tax on **businesses with less than \$1 million in revenues**. The only firms now exempt are ones with revenues of less than \$300,000. It also would reduce the tax rate from .575% to .4% for businesses between \$1 million and \$10 million in total revenues. **Senator Patrick** said, “Those businesses are the backbone of our economy in Texas. I will leave it up to Senate budget writers to figure out how to pay for the lost revenue.”

This week, **Governor Rick Perry** announced that **Texas has been ranked number one in online transparency** out of all 50 states, according to a study conducted as part of the annual **Sunshine Week** campaign. **Sunshine Week** is a national initiative by journalism organizations to focus on open government and access to information. The only state they found to provide information online in all 20 categories was Texas. Surveyors rated each section based on user experience and friendliness, considering factors such as whether information was clearly linked, if full reports or only summaries were available, whether the site offered free viewing and/or downloading, and if the data was current.

Additional information can be obtained via the Senate and House websites:

www.senate.state.tx.us

www.house.state.tx.us