Interim Report

to the 85th Texas Legislature

House Committee on State Affairs

January 2017

HOUSE COMMITTEE ON STATE AFFAIRS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2016

A REPORT TO THE HOUSE OF REPRESENTATIVES 85TH TEXAS LEGISLATURE

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Committee On
State Affairs

January 4, 2017

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The Honorable Joe Straus
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on State Affairs of the 84th Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the 85th Legislature.

Respectfully submitted,

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TABLE OF CONTENTS

STATE AFFAIRS

Under House Rule 3, Section 35, the House Committee on State Affairs (the Committee) shall have 13 members, with jurisdiction over all matters pertaining to:

1) questions and matters of state policy;
2) the administration of state government;
3) the organization, operation, powers, regulation, and management of state departments, agencies, and institutions;
4) the operation and regulation of public lands and state buildings;
5) the duties and conduct of officers and employees of the state government;
6) the operation of state government and its agencies and departments; all of above except where jurisdiction is specifically granted to some other standing committee;
7) access of the state agencies to scientific and technological information;
8) the regulation and deregulation of electric utilities and the electric industry;
9) the regulation and deregulation of telecommunications utilities and the telecommunications industry;
10) electric utility regulation as it relates to energy production and consumption;
11) pipelines, pipeline companies, and all others operating as common carriers in the state;
12) the regulation and deregulation of other industries jurisdiction of which is not specifically assigned to another committee under these rules; and
13) the following organizations and state agencies: the Council of State Governments, the National Conference of State Legislatures, the Office of the Governor, the Texas Facilities Commission, the Department of Information Resources, the Inaugural Endowment Fund Committee, the Sunset Advisory Commission, the Public Utility Commission of Texas, and the Office of Public Utility Counsel.[1]

On November 4, 2015, Texas House Speaker Joe Straus released interim charges, which list specific topics for the Committee to study prior to the start of the 85th Legislative Session. The Committee held three public hearings during the interim to give experts the opportunity to provide the Committee with information related to the charges.

The first interim hearing, on Charge #8, relating to immigration reform, was held on December 15, 2015. Eleven expert witnesses with experience related to immigration law offered the committee insight on the effects of current immigration laws on Texas communities.

On April 28, 2016, the Committee held an interim hearing to address the following interim charges: Charge #1 studying the State's ability to continue operation during an economic collapse, Charge #3 evaluating the preparedness of the State to respond to a disaster whether natural or manmade and Charge #4 focusing on the bioethics of using fetal tissue for research.

The Committee held a third interim hearing on August 15, 2016, to address the following three interim charges: Charge #2 examining the efficiency of state contracting procedures, Charge #6

evaluating the utility ratemaking process and Charge #7 regarding utility metering and billing.

The three interim hearings can be found at the following links:

December 15, 2015: http://tlchouse.granicus.com/MediaPlayer.php?view_id=37&clip_id=11657

April 28, 2016: http://tlchouse.granicus.com/MediaPlayer.php?view_id=37&clip_id=11932

August 15, 2016: http://tlchouse.granicus.com/MediaPlayer.php?view_id=37&clip_id=12085

Having completed its study on the interim charges assigned by Speaker Straus, the Committee has adopted the following report.

INTERIM CHARGES

Charge #1 Study if the state's infrastructure is adequately prepared for disasters, whether man-made or natural. Include preparedness assessments of the maintenance and recovery of vital infrastructure such as transportation and utility systems.

Charge #2 Examine procedures regarding contract monitoring, compliance, performance evaluation and notification requirements for state contracting procedures. Include recommendations to determine a "best value" for the state and prevent conflicts of interests. Evaluate guidelines regarding the state's participation in contracts funded by grants and suggest methods to ensure the best use of taxpayer funds.

Charge #3 Determine if the state has sufficient authority and the tools to ensure continued operation of the state's government and economy under existing budgetary and statutory authority. Make contingency recommendations to prevent collapse in the event of an economic disaster.

Charge #4 Study the policies used by research and medical entities to adhere to the highest ethical standards for acquiring human fetal tissue for medical and scientific purposes. Specifically, review compliance to ensure informed consent and that all state and federal laws sufficiently respect the dignity of the human body. Study criteria for which persons have standing when giving consent for the use of fetal remains and to investigate potential violations of state laws regulating organ/tissue donation. Determine whether additional disclosure and reporting requirements are necessary to ensure moral and ethical research practices. Review practices and statutes in other states regarding fetal tissue harvesting.

Charge #5 Study support mechanisms for the Small and Rural Incumbent Local Exchange Carrier - Universal Service Fund. Consider alternative funding mechanisms as well as necessary statutory changes to ensure reasonable cost of basic local phone service in high cost, rural areas without expanding the size of the Texas Universal Service Fund.

Charge #6 Evaluate the administrative process used to determine utility rates. Consider if sufficient opportunities exist to ensure customer representation. Also determine if additional legislative guidance is needed to ensure public notification and participation.

Charge #7 Examine how the Public Utility Commission of Texas, when applicable, and utility providers, whether vertically integrated, privately owned, or municipally owned, can ensure consumer protection regarding metering devices for water, gas, and electricity service. Review recent examples of inaccurate or confusing billings and offer recommendations on appropriate consumer recourse and appeal. In addition, assess utility procedures regarding meter installation.

Charge #8 Examine state and local laws applicable to undocumented immigrants throughout the State of Texas and analyze the effects of those laws in conjunction with federal immigration laws and the policies and practices followed by U.S. Immigration and Customs Enforcement.

Charge #9 Examine payroll deductions from state or political subdivision employees for the purpose of labor organization membership dues or fees as well as charitable organization and nonprofit contributions. Determine if this process is an appropriate use of public funds.

Charge #10 Monitor the impact of major State Affairs legislation passed by the 84th Legislature, including updates regarding recent contracting reforms. Conduct legislative oversight and monitoring of the agencies and programs under the committee's jurisdiction and the implementing of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should:

a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;
b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;
c. determine whether an agency is operating in a transparent and efficient manner; and
d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.

NATURAL DISASTER PREPAREDNESS

<u>Interim Charge #1:</u> Study if the state's infrastructure is adequately prepared for disasters, whether man-made or natural. Include preparedness assessments of the maintenance and recovery of vital infrastructure such as transportation and utility systems.

Public Hearing

The House Committee on State Affairs held a public hearing on April 28, 2016, at 10:00 a.m. in Austin, Texas in the extension, room E2.028, to address the above interim charge. The Committee heard testimony from invited witnesses with experience in disaster response. The following invited individuals testified:

<u>Witnesses are listed in alphabetical order</u>

- Nim Kidd, *Chief, Texas Division of Emergency Management*
- Brian Lloyd, *Executive Director, Public Utility Commission of Texas*
- Bill Magness, *President and Chief Executive Officer, Electric Reliability Council of Texas*
- Mark Marek, *Director of Engineering Operations, Texas Department of Transportation*
- Dale Richardson, *Chief Operations Officer, Department of Information Resources*
- Stephen Vollbrecht, *Executive Director, State Office of Risk Management*
- Ken Wisian, *Senior Director, Coastal Protection and Community Development, Texas General Land Office*

Introduction

Disasters require a well-organized, collaborative response from many different agencies to ensure the best protection for Texas citizens and infrastructure. It is the responsibility of the Texas Division of Emergency Management to orchestrate all necessary agencies to deliver the support and response needed by Texas mayors and county judges to aid their communities during times of disasters.

Background

The Texas Division of Emergency Management testified that Texas has more major disasters and more presidentially-declared disasters than any other state. Presidential declarations give states federal funds to assist with natural disasters and are issued based upon a state's population size and the amount of incurred loss of uninsured public property; therefore, Texas has to suffer substantially more loss than neighboring states before qualifying for one presidential declaration.

State	*Amount of Loss for Declaration*
Texas	**$34.5 mil.**
Louisiana	**$6.5 mil.**
Oklahoma	**$6 mil.**
Arkansas	**$5 mil.**
New Mexico	**$2.9 mil.**

Amount of uninsured public loss the state needs for federal assistance.[ii]

State Office of Risk Management (SORM)
SORM's Executive Director discussed the requirement for state agencies to have a Continuity of Operations Plan (COOP) for dealing with unexpected disasters, which allows the agency to continue its essential functions during a disaster.[iii] These COOPs must encompass actions to: prevent problems before they arise, prepare to respond to unexpected circumstances, respond to the situation in a way that continues the agencies essential functions and recover from any damages. Additionally, agencies should test, train and exercise their COOPs regularly to ensure their effectiveness and preparedness.

Texas Department of Transportation (TxDOT)
TxDOT maintains staff in every Texas County in order to respond to disasters statewide. The TxDOT Emergency Operations Center oversees TxDOT's response to disasters such as: hurricanes, wildfires, tornados, winter weather and flooding.[iv] A key element of TxDOT's COOP is the ability to communicate with Texans during a disaster, which they accomplish through their network of offices, equipment, personnel and partnerships with the state and local governments.

Due to the continuous flooding of certain Houston areas in 2016, TxDOT is looking into enhancing the warning systems by implementing a physical barrier where there are flood-prone areas.[v]

Public Utility Commission of Texas (PUC)
The PUC oversees electricity, telecommunication and water utilities functions and provides emergency management roles for electricity utilities in conjunction with the Energy Reliability Council of Texas (ERCOT), among other partners.[vi] In the event of a disaster, the PUC serves as the interface between state government and electric utilities to:

- convey outage and service restoration information;
- convey service restoration priorities, such as hospitals, water treatment facilities, etc.; and
- facilitate the clearance of downed power lines and the entry of electric utilities.

Under PUC rules, electricity utility providers are required to have, maintain, update and test emergency response plans.[vii] Additionally, in the event of a disaster, the providers must prioritize service for civil defense, emergency service entities and vulnerable customers.

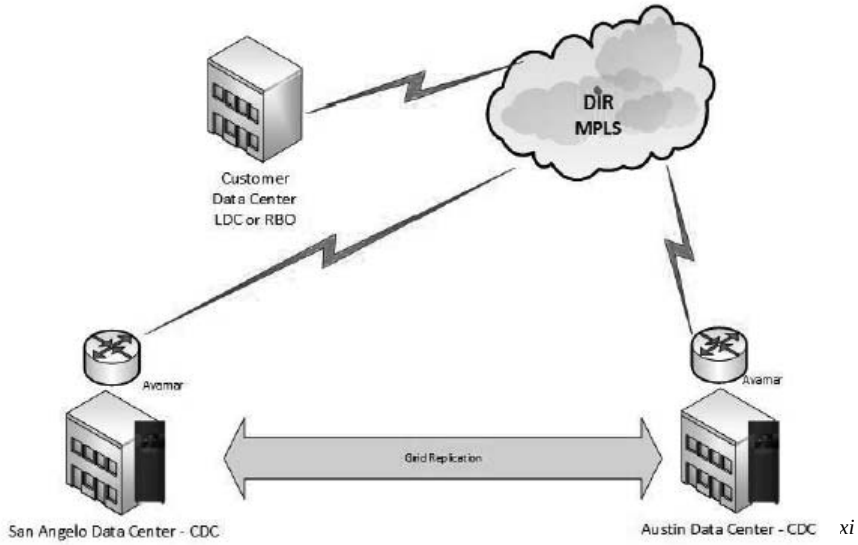
The electricity sector is the backbone of the state and the nation, as everything else is connected to and relies on electricity.[viii] Technology is rapidly changing and therefore it is crucial that the COOP is continuously tested and updated and that the electric industry and government collaborate on these efforts. Threats to the electric grid include: terrorism, cybersecurity, physical attacks, copper theft, weather and animals.

Energy Reliability Council of Texas (ERCOT)
ERCOT delivers 90% of the Texas electric load, supplying electric services to the vast majority of Texans. ERCOT operations rely on matching the supply to the demand of electricity at all times, as there is no way to store excess electricity. As the PUC requires an emergency plan for all electricity providers, ERCOT implements a plan that focuses heavily on prevention,

preparedness, response and recovery.

Texas has never experienced a system wide blackout, but to ensure full preparedness, ERCOT annually practices the "black start" procedure using operators with realistic simulators. Additionally, ERCOT implements a layered cyber and physical security defense system that is tested regularly and practiced frequently.[ix]

Department of Information Resources (DIR)
The Data Center Services (DCS) provides a statewide IT infrastructure overseen by DIR that increases the overall security and disaster recovery capability.[x] The program operates a self-insured disaster recovery model that utilizes two separate data centers: one center hosts production servers, while the other has test and development servers. Agencies that participate in DIR's Disaster Recovery Service can back up their data to a cloud shared with the two data centers daily.



xi

In the event of a disaster, DCS has the ability to lose a data center and quickly recover and restore information and services to the other data center. Annually, participating agencies are provided a disaster simulation to practice the recovery process and ensure effectiveness.

Texas General Land Office (GLO)
The Coastal Protection Division of the GLO is responsible for oil spill response, coastal protection and community development and revitalization.[xii] There are five field offices along the coast, which are prepared to assist with certain emergency response functions, including search and rescue and extra power back up using 600 generators. The main focus of the GLO disaster response is long-term resilience when rebuilding post-disaster. Currently, GLO is developing a Texas Coastal Master Plan to ensure durable ecologic and economic management of the Texas coast.[xiii] Additionally, GLO is working in a national effort to propose construction projects that provide robust protection to the weakest areas of the state.

Texas American Water Works Association (Texas AWWA)
Through submitted written testimony, Texas AWWA provided the Committee the following information: The mission of the Texas AWWA is to support and promote statewide emergency

preparedness, disaster response, and mutual aid assistance for public and private water and wastewater utilities through the TXWARN website.[xiv] The TXWARN website provides members with emergency planning, response and recovers information before, during and after a disaster; as well as an emergency equipment database that assists members with locating emergency equipment and trained personnel.[xv]

Conclusion

Each state agency is required to have an emergency response plan that delivers the necessary assistance to local authorities in the event of a disaster. State agencies disclosed that their emergency plans addressed: prevention, preparation, response and restoration. Moreover, many agencies provided frequent emergency simulations to test their disaster plans.

Recommendations

Lawmakers should continuously review and monitor agency plans through the Department of Public Safety's lead disaster preparedness division, the Texas Division of Emergency Management. All agencies involved should continue working collaboratively to ensure the state's safety.

STATE CONTRACT MONITORING

<u>Interim Charge #2:</u> Examine procedures regarding contract monitoring, compliance, performance evaluation and notification requirements for state contracting procedures. Include recommendations to determine a "best value" for the state and prevent conflicts of interests. Evaluate guidelines regarding the state's participation in contracts funded by grants and suggest methods to ensure the best use of taxpayer funds.

Public Hearing

The House Committee on State Affairs held a public hearing on August 15, 2016, at 1:00 p.m. in Austin, Texas in the John H. Reagan Building, room 140, to address the above interim charge. The Committee heard testimony from numerous state agencies, several which utilize state contracting procedures. The following invited individuals testified:

<u>Witnesses are listed in alphabetical order</u>

- Amanda Arriaga, *Chief Administrative Officer, Texas Department of Public Safety*
- Jim Clancy, *Commissioner, Texas Ethics Commission*
- Lisa Collier, *First Assistant State Auditor, State Auditor's Office*
- John Colyandro, *Executive Director, Texas Conservative Coalition Research Institute*
- Todd Kimbriel, *Deputy Executive Director and State Chief Information Officer, Department of Information Resources*
- Audrey O'Neill, *Audit Manager, State Auditor's Office*
- Ron Pigott, *Deputy Executive Commissioner for Procurement and Contracting Services, Health and Human Services Commission*
- Bobby Pounds, *Assistant Director, Statewide Procurement Division, Texas Comptroller of Public Accounts*
- Charles Smith, *Executive Commissioner, Health and Human Services Commission*

Introduction

In response to allegations of impropriety in the award of contracts at a state agency, and also as part of broader efforts to improve the process of state contract procurement, deliver the best value to procuring agencies and increase transparency of state government, the 84th Legislature passed Senate Bill (SB) 20, House Bill (HB) 1295 and certain provisions in Article IX of the General Appropriations Act. This series of reforms augmented processes and monitoring methods of state agency contracting.[xvi]

HB 1295 requires a disclosure of interested parties, or list of those benefitting financially from a contract, to be signed and filed with the TEC. This applies to agencies that vote on contracts, or contracts that are valued at $1 million or greater.

Background

Texas Ethics Commission (TEC)

According to the testimony of Texas Ethics Commissioner Jim Clancy, the TEC has effectively and efficiently implemented HB 1295 by forming an electronic filing application, which requires

agencies to submit the disclosure of party forms electronically. Sixty Thousand disclosure forms have already been published on the TEC website, and an additional 20,000 are predicted to be published by the end of the year.

Likely recommendations TEC will propose to the next legislature are: [xvii]

1. Changes to requirements of a signed contract
2. Changes to the time of submission to the Commission
3. Requiring a monetary threshold above $50,000 for contracts voted on by the governing body of a state agency or governmental body

Senate Bill 20

The 84th Legislature passed SB 20, a comprehensive bill that alters state agency contracting procedures to increase transparency, improve efficiency and ensure best practices are utilized in contract procurement. The Committee heard from a number of state agencies, which are highlighted below.

Health and Human Services Commission (HHSC)

According to the HHSC testimony, the Procurement and Contracting Services (PCS) makes administrative and client service purchases for all of the Health and Human Services agencies. As of October 1, 2015, HHSC had consolidated contracting services and PCS is working to find long-term, efficient contracting solutions that fully comply with the recent requirement changes by streamlining the procurement process and focusing on contract management. HHSC is developing a new contract management system that will have real time links to Centralized Accounting and Payroll/Personnel System (CAPPS) to increase oversight.[xviii]

SB 20 requires HHSC to consolidate five agencies into three and the agency's testimony stated that a large-scale data warehouse is needed for the entirety of HHSC and their long term data needs are being reevaluated to find the best value solution. This testimony was HHSC's explanation for the cancellation of the Request for Proposals (RFP) process with a particular vendor, even though $10 million had already been spent, mostly on consultants.

State Auditor's Office (SAO)

SAO issued reports between January 2015 and July 2016 examining state contracting for any issues and then rated the degree of risk for these issues. The findings revealed significant weaknesses in state agencies' monitoring and oversight of contractors.[xix] Auditors identified the following key issues:[xx]

- Incomplete Planning Documentation, including not assessing potential contract risks or developing a reasonable cost estimate
- Errors in Scoring or Contractor Selection
- Lack of Consideration of Conflicts of Interest
- Inadequate Contract Amendment Process, including not evaluating any price increases associate with the amendments
- Inadequate or Incomplete Performance Monitoring
- Inadequate Fiscal Monitoring or Payment Process

Texas Comptroller of Public Accounts
SB 20 required the Comptroller's Office to conduct a study that examines the feasibility and practicality of consolidating state purchasing functions.[xxi]

Preliminary findings for the statewide purchasing study include:[xxii]

- Smaller agencies purchase disproportionately little through TxSmartBuy
- Survey feedback from the vendor community indicates frustration amongst vendors and possible confusion amongst state agencies in the procurement process
  - Points to a need for better education and guidance for state agencies
- Study results indicate that purchasing and contract spend is somewhat consolidated.
  - 91.4% ($10.2B) of statewide spend is consolidated into 10 state agencies
  - 80% of TxSmartBuy expenditures come from 2 of those 10 (Texas Department of Transportation & Texas Department of Criminal Justice)
  - 99.2% of statewide spend is consolidated within 31 state agencies
- Improved training/guidance for agencies may do more to improve the process over time

Agencies are also required to use the best value standard when procuring contracts.[xxiii] The Comptroller of Public Accounts' Statewide Procurement Division procures common goods and services to be placed on contract for statewide purchase by Texas agencies. Best value for statewide contracts is more general due to the varying needs of individual agencies. To ensure best value is obtained, all purchasers are required to consider the information reported by agencies in the comptroller's Vendor Performance Tracking System.[xxiv]

Texas Conservative Coalition Research Institute
Overview of Recommendations:[xxv]

1) <u>The Legislature should take a long-term review of procurement, as Sunset advised in 2013, as the best course of action rather than pursuing another major legislative change in the 85th Session.</u>

2) <u>The state should attempt to incentivize agencies to pursue well-trained and compensated procurement and contract professionals.</u>
Allowing skilled procurement professionals to do their job and procure the best possible contracts for state government is a superior approach to a compliance-based model that emphasizes box-checking and arbitrary measures. This requires a comprehensive approach that includes offering competitive compensation to procurement professionals so that the state can attract the caliber of personnel that it needs, as opposed to larger numbers of employees whose jobs are more administrative and process oriented. Part of this incentive, of course, would need to be in the form of reducing process requirements on state agencies.

3) <u>Repeal the requirement that governing bodies or agency heads must sign any contract exceeding $1 million.</u>
This requirement is a tremendous bureaucratic burden on agency executives that distracts from their core duty of managing complex state agencies. Agency heads must be trusted to delegate contracting authority to the people they have hired for that purpose.

4) <u>Evaluate the impact of the $1 million cap on DIR Deliverables-Based Cooperative Contracts.</u>

This cap – established in SB 20 (84R) – has resulted in some agencies bidding individual contracts that could be obtained more easily and more reliably through DIR cooperative contracts, which exist to remove much of the burden of contracting away from state agencies and to deliver more value to the state.

5) End Legislative Budget Board Involvement in the Procurement Process
Contract monitoring is far removed from the core capabilities of the LBB and simply inserts another level of uncertainty into the procurement process. Adequate monitoring is already provided by the Comptroller, DIR, and the Office of the State Auditor. LBB should be permitted to focus on its core competencies related to state budget execution and fiscal monitoring.

6) Establish a New Framework for Collaboration between the Public and Private Sector
Recognizing that the vendor community provides great value to the state in terms of both provisions of services to constituents and innovative approaches to service delivery across a broad spectrum of government activities, the state should ensure that lines of communication with vendors and would-be vendors remain open. Fostering competition and openness between the state and its vendor community is an important to way to improve service delivery and find best value for the state.

Texas Department of Public Safety (DPS)
According to the testimony of the DPS, the Public Safety Commission established a Contract Review Board to analyze and ensure transparency of contracts exceeding $1 million. It is the policy of DPS that only the Director and Deputy Directors are authorized to sign contracts over $50,000.[xxvi]

In 2014, the Administration Division issued a series of contract related process guides, Standard Operating Procedures and trainings to DPS staff involved in the contract process including:[xxvii]

- Contract Monitoring
- Developing Statements of Work
- Internal Repair and Emergencies
- Invitation for Bid (IFB) Process
- Non-Compliant Purchases
- Price Request Process
- Proprietary Procurement Process
- Release Process Overview
- Request for Qualifications
- RFP-RFO Process
- IT Staff Augmentation Process
- Request for Information Process
- Vendor Performance Reporting

DPS has implemented all aspects of SB 20, including publishing their Procurement and Contract Management guide publicly.[xxviii]

Texas Department of Information Resources (DIR)
Testimony from the DIR outlined three challenges with the passage of SB 20 and their recommendations to the legislature.[xxix]

Challenge	*Recommendation*
1. The $1 million purchase cap. In 2014 DIR conducted bulk purchasing and achieved a savings of $5.4 million.	**Explore whether an exemption to the $1 million cap for bulk purchases would save tax payer money.**
2. The $1 million cap on commodity purchases presents an issue for larger agencies, particularly for technology purchases.	**Evaluate the impact of a high threshold for technology commodity purchases in larger agencies.**
3. The Contract Advisory Team (CAT) reviews contracts and solicitations before they are released to the market for contacts valued at $10 million or more. The current Cooperative Contracts limit is $1 million. This creates a gap for solicitations between $1 million and $10 million where limited third party contractual oversight exists.	**Consider the impact of a higher threshold for technology commodity purchases and aligning the threshold for CAT review.**

Information in chart taken from DIR testimony

The following companies submitted written testimony to the Committee, addressing this interim charge:

IT Alliance for Public Sector
Written testimony from IT Alliance for Public Sector addressed issues raised from the implementation of SB 20.

1. SB 20 has made the procurement process more expensive and complex. The low bidding threshold of $1 million and varying interpretations of the law has required the agencies to do more work and hire more staff while also delaying the procurement process.
2. Many agencies feel deterred from meeting with vendors, due to SB 20, making agencies more likely to continue using familiar vendors instead of exploring multiple options, which may offer better value.

It is the belief of IT Alliance for Public Sector that more flexibility should be afforded to agencies when procuring contracts to ensure a robust competitive process.[xxx]

CompTIA
CompTIA outlined the following seven recommendations regarding state contract procurement for the 85th Legislature: [xxxi]

1. Ensure a highly competitive contract procurement process.
2. Implement a best overall value approach.
3. Require full disclosure and encourage two way discussions between vendors and agencies.
4. Allow the agencies to exercise a certain amount of discretions.
5. Employ commercial best practices.
6. Avoid contracting with vendors solely on the basis of where the vendor is located.
7. Appoint IT executives in state and local government.

Conclusion

In order for agencies to operate efficiently and effectively, they need qualified employees with greater compensation, rather than numerous administrative employees. While SB 20 addresses many of the previous concerns regarding contracting procurement, current contracting laws need further change and clarification.

Recommendations

Although comprehensive changes were made through legislation in 2015 that enhanced transparency, accountability and fair competitive processes of state agency contracting, purchasing and accounting procedures; the 85th Legislature should continue to review contracting laws to increase consistency of operations and collaborations between state agencies.

ECONOMIC DISASTER PREPAREDNESS

<u>Interim Charge #3:</u> Determine if the state has sufficient authority and the tools to ensure continued operation of the state's government and economy under existing budgetary and statutory authority. Make contingency recommendations to prevent collapse in the event of an economic disaster.

Public Hearing

The House Committee on State Affairs held a public hearing on April 28, 2016, at 10:00 a.m. in Austin, Texas in the extension, room E2.028, to address the above interim charge. The Committee heard testimony from three invited witnesses with experience related to finance, banking and risk management. The following invited individuals testified:

<u>Witnesses are listed in alphabetical order</u>

- Charles Cooper, *Commissioner, Texas Department of Banking, and Executive Director, Finance Commission of Texas*
- Keith Phillips, *Assistant Vice President, Federal Reserve Bank of Dallas*
- Stephen Vollbrecht, *Executive Director, State Office of Risk Management*

Introduction

Since 2015, Texas has been experiencing a substantial drop in job growth due to the decline of oil and gas prices. According to testimony of expert witnesses, although Texas financial institutions are encountering the ramifications of the weakened energy sector, there has been moderate growth in both jobs and the economy because of the state's economic diversity. Experts are predicting this trend to continue if there is no further decline in the energy sector.

Cyber issues present an increasing and evolving threat to the economy and must be addressed on a long term basis. The strong Texas economy makes the state a target for cyber criminals, according to the testimony from the State Office of Risk Management (SORM). This is an extremely critical issue that if left unaddressed, could have disastrous consequences.

Background

Cybersecurity

As critical societal infrastructure systems rely increasingly on technology, the number and sophistication of cyber threats are also increasing, creating an essential need for robust cybersecurity. According to the SORM testimony, cyber issues are the number one threat to the U.S. and should be a priority concern. The Texas Department of Information Resources (DIR) and Homeland Security (Office of the Governor) have direct jurisdiction over cybersecurity. Current efforts are focusing on how to address the liability of cyber intrusions, especially if the intrusions cannot be prevented.[xxxii]

Cyber criminals target a number of institutions, including government agencies and banks,

compromising the economy and security of individuals. Texas Department of Banking Commissioner Charles Cooper's testimony noted that the Texas Department of Banking is an industry leader in cybersecurity, having hosted the first Executive Leadership on Cybersecurity event in the nation.[xxxiii] As of December 31, 2015, all Texas banks are required to assess their cyber risk and cybersecurity preparedness.[xxxiv]

The 84th Legislature passed a provision in the budget that allocated funds for research at The University of Texas at Austin Center for Identity (UT CID); however it was vetoed. This center is dedicated to researching current and future cyber threats and how to mitigate the risk, and partners with many government agencies, including: the Federal Bureau of Investigation, the U.S. Secret Service, Texas Department of Public Safety and DIR. Because identity has become a new method of currency, it is critical that protections are in place. Texas state agencies collect and store sensitive information for millions of citizens, which taxpayers expect to be handled responsibly and securely. The UT CID's overall mission is to 1) help people and organizations understand how to best manage and protect their identity information assets, 2) prevent and mitigate identity theft, fraud and abuse, and to 3) protect privacy.

Additionally, as a parallel to UT CID but focusing on different missions, The University of Texas at San Antonio has a cybersecurity facility and is at the forefront of cybersecurity research and innovation; providing innovative research, tools and education.

Banking

There are two types of bank charters, state and national, which determine how much a bank pays in assessment fees and the regulations a bank must abide by. State-chartered banks have low cost assessment fees, typically less than half a national bank fee; however, banks with a state charter are subject to both the state and federal regulations and are supervised by the state and the Federal Deposit Insurance Corporation (FDIC) or the Federal Reserve.[xxxv]

The Texas Banking System

As of December 31, 2015, there are 480 banks in Texas with almost $452 billion in total assets.[xxxvi] The Texas Department of Banking oversees 252 state-chartered banks, in addition to a number of financial entities, with almost $250 billion in total assets.

The Texas Department of Banking, in conjunction with the FDIC and the Federal Reserve Bank of Dallas, evaluates the state-chartered banks on a scale of 1 to 5, to determine their safety and compliance with state and federal laws.[xxxvii] A rating of 3, 4 or 5 by the Texas Department of Banking is considered to be a problem bank, or a bank with elevated levels of risk of non-compliance with state and federal standards for safety and soundness. In most cases, enforcement actions are taken at this point.[xxxviii]

Through a bank's formal enforcement actions, the commissioner has the authority to enact several orders, including placing a supervisor into a problem bank. This supervisor monitors the problem entity's operation to ensure that safe practices are being carried out.[xxxix] Under extreme circumstances, where the financial institution is threatening harm to depositors, creditors or shareholders, the commissioner may issue an Order of Conservatorship. Through the order, the appointed conservator takes charge of the entity and proceeds with operation under the direction

of the commissioner.[xl] According to the testimony of Commissioner Cooper, the Texas Department of Banking has the necessary power to monitor the state banks sufficiently during an economic disaster.

The number of problem banks in Texas has declined significantly since 2011. However, due to the strained oil and gas industry, problem banks are projected to increase to over 20 total; although, according to testimony, there are no bank failures predicted for 2017.

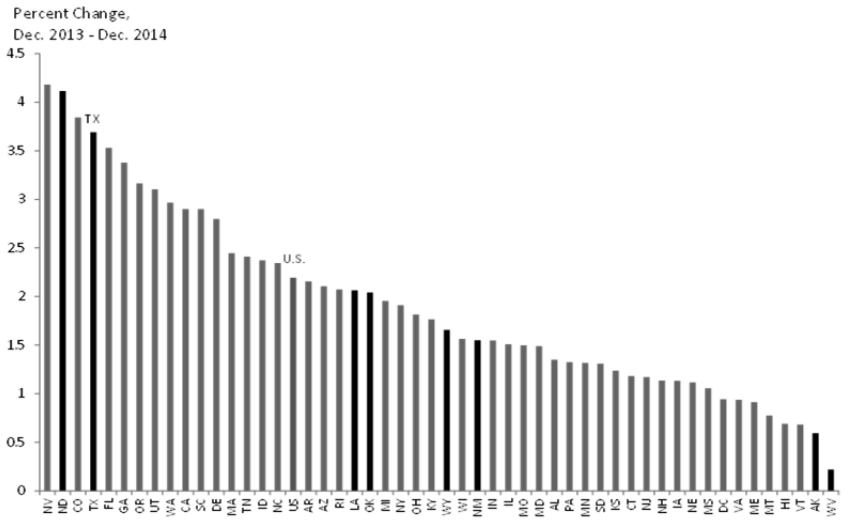
The main challenges facing Texas banks are:[xli]

- Increased federal regulatory burden
- Cybersecurity
- The economic impact of the oil and gas industry
- Narrowing net interest margin in a low rate environment
- Revenue diversification through noninterest income sources

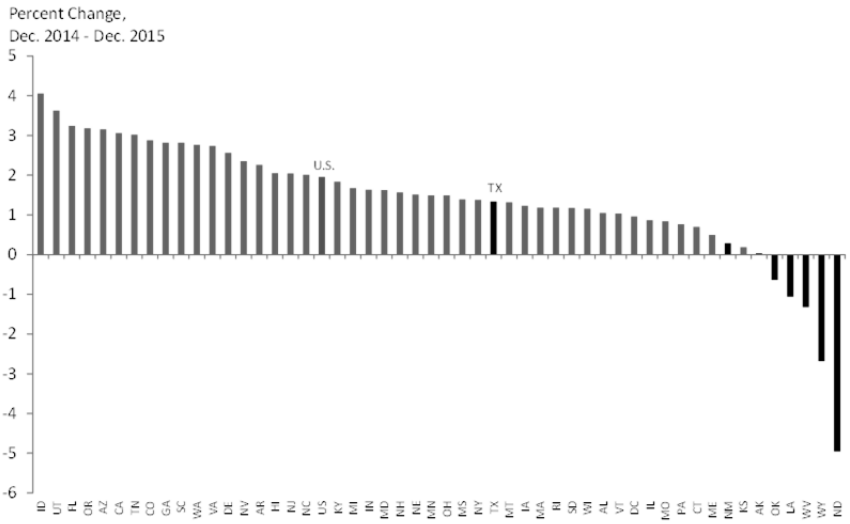
As a result, there has been an increase in bank mergers, decreasing the total number of banks. This has been a trend throughout the country, largely because the smaller community banks cannot afford the federal regulatory burden and are consolidating with other banks.

Effects of the Oil and Gas Industry

In 2015, major energy states experienced a considerable decline in job growth due to the drop in oil and gas prices, which five years prior had surged.



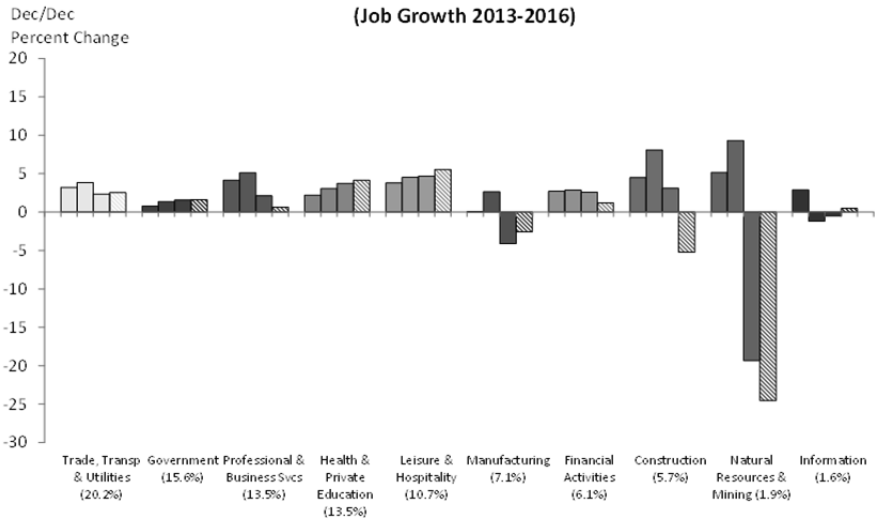
NOTE: Black bars represent major energy-producing states.
SOURCE: Bureau of Labor Statistics



NOTE: Black bars represent large energy-producing states.
SOURCE: Bureau of Labor Statistics

The above graphs, provided by the Federal Reserve Bank of Dallas, indicate the percentage of job growth in the U.S. and each state in 2014 and 2015, highlighting the energy states. Demonstrating the plummeting job growth in these states, the graph also shows that Texas, although declining, has remained positive in job growth and leading the other energy states.

According to the testimony by the Federal Reserve Bank of Dallas, in addition to low cost of living, low cost of doing business and low regulation burdens in Texas, the diversity in the Texas economy has cushioned the blow of the shaken oil and gas industry.



Note: Figures in parentheses represent shares of total nonfarm employment. Shaded bars indicate Mar. 2016/Dec. 2015 annualized growth.
Source: Bureau of Labor Statistics, adjustments by Federal Reserve Bank of Dallas.

From the figure above, jobs in industries other than oil and gas, manufacturing and construction, have mostly stayed positive in growth, with health care and leisure and hospitality even seeing an increase. This diversity in employment demand along with the tight real estate market have kept the Texas economy from sinking to negative percentages, like the majority of other energy states have experienced after the oil price collapse.

The Assistant Vice President of the Federal Reserve Bank of Dallas stated at the hearing that the greatest risk to job growth is further declining oil and gas prices. If the average barrel price remains above $30, as predicted, then Texas should experience a job increase rate of up to 1.5% in this next year, nearly 180,000 jobs[xlii], remaining above the national average.

Conclusion

Testimony from expert witnesses revealed the challenges facing the Texas economy include the oil and gas industry decline and cybersecurity. While the effects of lower oil and gas prices are still affecting the Texas economy, the state maintains moderate positive growth due to the diverse nature of the economy. The hearing revealed that identity management and identity security continuously pose significant challenges for the nation and the State of Texas.

Recommendations

As the risks of cyber intrusions are increasing, the state needs a dedicated and collaborative cybersecurity initiative to reduce vulnerability from what may be the biggest threat to the state's economy. As identity thefts soar and hackers continually become more sophisticated with the complexity of attacks, cybersecurity is an ongoing issue of concern that needs a clear legislative directive; and the 85th Legislature should bolster the state's cybersecurity initiatives. It is extremely imperative that policymakers direct agencies and

cybersecurity facilities to collaborate efforts. It is essential for Texas to have a central repository for its security program, and also to invest in cybersecurity defense to ensure that people and businesses are protected from identity theft.

BIOETHICS OF FETAL TISSUE RESEARCH

Interim Charge #4: Study the policies used by research and medical entities to adhere to the highest ethical standards for acquiring human fetal tissue for medical and scientific purposes. Specifically, review compliance to ensure informed consent and that all state and federal laws sufficiently respect the dignity of the human body. Study criteria for which persons have standing when giving consent for the use of fetal remains and to investigate potential violations of state laws regulating organ/tissue donation. Determine whether additional disclosure and reporting requirements are necessary to ensure moral and ethical research practices. Review practices and statutes in other states regarding fetal tissue harvesting.

Public Hearing

The House Committee on State Affairs held a public hearing on April 28, 2016, at 10:00 a.m. in Austin, Texas in the extension, room E2.028, to address the above interim charge. The Committee heard testimony from the following invited witnesses:

Witnesses are listed in alphabetical order

- Jennifer Carr Allmon, *Associate Director, Texas Catholic Conference, and Bioethicist*
- Catherine Glenn Foster, *CEO and General Counsel, Sound Legal, and Associate Scholar, Charlotte Lozier Institute*
- Raymond Greenberg, *Executive Vice Chancellor for Health Affairs, The University of Texas System*
- John Hellerstedt, *Commissioner, Texas Department of State Health Services*
- Kathy Perkins, *Assistant Commissioner, Division for Regulatory Services, Texas Department of State Health Services*
- Peter Rotwein, *Vice President for Research, Texas Tech University Health Services Center at El Paso*

Introduction

The primary goal of this interim charge is to ensure that researchers who are funded by public money can be held accountable to the public for ethical norms such as: adhering to necessary federal policies on research misconduct, conflicts of interest and human subjects protections.

Currently, there are no laws in Texas restricting the use of fetal tissue from induced abortions for research purposes. Recent controversies have raised questions regarding the methods used to obtain fetal tissue for the purpose of research, and if those methods respect the dignity of the human body, as it would for adult human tissue used for research. Some researchers argue that tissue from unborn children is necessary and crucial to certain studies focused on curing diseases, and that there are no other viable methods. Alternatively, some bioethicists and researchers maintain that adult stem cell research has proven to be vastly more effective in producing cures than fetal tissue research. Moreover, some scientists argue that fetal cell lines from aborted fetuses already exist; therefore, the practice is unnecessary, as well as unethical.

Background

Bioethics

Bioethicist Jennifer Allmon contends that a primary function of research ethics is to ensure the protection of vulnerable or "voiceless" persons and the need to prevent them from being taken advantage of by researchers. The testimony emphasizes the need to ensure that research on fetal tissue is treated with the same high standards as any other tissue donated for research, regardless of the stage of human life. Using fetal tissues for research never excuses us of our humanity or ethical and moral obligation to others.[xliii]

Key Bioethical Concerns

Consent

The requirement to obtain voluntary informed consent from individuals before research is a fundamental principle of research ethics. The use of fetal tissue from an induced abortion raises serious ethical problems. For example, does an abortive mother have the capacity to consent on behalf of her child, whose life she is choosing to end?[xliv]

The premise of voluntary participation requires that people not be coerced into participating in research. However, consent forms from one abortion facility obtained by the Committee, which is included in this report, contradicts this requirement. It begins with the following: "Research using the blood from pregnant women and tissue that has been aborted has been used to treat and find a cure for such diseases as diabetes, Parkinson's disease, Alzheimer's disease, cancer, and AIDS." Some believe that this statement coerces a woman into feeling that she is doing something good for mankind, during very vulnerable moments of filling out paperwork before an abortion. In addition to be coercive, this statement is patently false, as there are currently no cures for diabetes, Parkinson's, Alzheimer's or AIDS.

The lack of a consistent and voluntary consent form is tantamount to using human beings and their tissue as a means to the ends of others -- without their knowledge or freely granted permission, which constitutes exploitation and is unethical. In her testimony, Ms. Allmon states that history has revealed where scientists had previously relied on "captive audiences" for their subjects, often in prisons; pointing out the ways some scientists had used captive human beings as subjects in abhorrent experiments, which was exposed during the Nuremberg War Crimes Trial following World War II.

According to written testimony provided by the Texas Hospital Association, current law gives parents the option of consenting to donation of fetal remains for medical research. The process is similar to that used for donating a deceased patient's body or organs for medical research, or donating organs for transplant.

Infection Control

The core of the "scientific method" is knowing and controlling variables and verifying the source of the sample; therefore, it is particularly concerning that reports from the Department of State Health Services (DSHS) show repeated findings in abortion facilities

of poor infection control, rusty equipment, and staff that was either not trained or failed to comply with infection control precautions when handling human remains. Attorney Catherine Foster testified that the Office of the Inspector General (OIG) determined that Planned Parenthood Gulf Coast staff was not trained in or failed to comply with infection control and barrier precautions. Although the OIG did not testify at the hearing, as there was an ongoing investigation, the Committee obtained the public document, which is enclosed in this report -- an October 2015 OIG *Notice of Termination* letter addressed to the Planned Parenthood Gulf Coast abortion facility, citing three specific violations. On December 20, 2016, the OIG issued a *Notice of Final Termination* letter, which terminated the enrollment of all Texas Planned Parenthood affiliates from the enrollment in the Texas Medicaid program. The letter enclosed in this report states that the provider violated state and federal law.

Texas Department of State Health Services (DSHS)
DSHS has regulatory authority over Texas abortion facility infection control, patient rights and licensing. In exercising its regulatory authority, DSHS performs annual inspections of each abortion facility every 10-14 months, in addition to conducting complaint-based investigations. DSHS testified that the predictability of annual inspections was problematic, as abortion facilities often learned of the inspection date in advance. DSHS noted that it is currently amending these practices to decrease the predictability of annual inspections.

The agency's records indicated that in 2015, there were three complaint-based investigations in abortion facilities. The facilities that are found to be non-compliant are given DSHS correctional plans and deadlines for the remediation. If the problem persists, DSHS can enforce administrative penalties, emergency license suspension or revocations; and in certain circumstances, civil and criminal penalties may be enforced.

Researchers
Testimony at the April 28, 2016 hearing asserted that scientists conduct research using human remains, including fetal tissue, to save lives and improve quality of life for patients afflicted with medical conditions. Witnesses from The University of Texas System and Texas Tech University Health Services testified that they only use fetal tissue for research on a small number of studies, because it is currently the only viable option for those studies. For example, The University of Texas System cites using fetal tissue to research in utero conditions to find solutions to lower mortality rates.

Although neither researcher at the April 28, 2016 hearing testified about the ethics of using fetal tissue from induced abortions, the Committee acquired public testimony from the March 2, 2016 hearing of the Committee on Energy and Commerce Select Investigative Panel "Bioethics and Fetal Tissue". One of the witnesses, Dr. Kathleen M. Schmainda, who argues that the use of such tissue is both unethical and unnecessary, stated the following reasons:[xlv]
1) "…no medical treatments exist that have *required* using fetal tissues for their discovery or development."
2) "I refute the claim that without continued access to fetal tissue, the discovery of new therapies will be prevented."
3) "The repeated assurances that 'proper *ethical* guidelines are in place' to avoid the connection

between abortion and subsequent research are entirely inadequate."

Dr. Schmainda's testimony also included that scientists can unknowingly become entrenched in using cell lines from aborted fetuses and that only upon specific request are alternatives provided. She claims, "This lack of transparency is devastating for scientists who have ethical objections to use of this tissue and amounts to moral coercion."

Both Texas university witnesses testified that they procure fetal tissue from third party vendors, such as Advanced Bioscience Research (ABR), in California, which uses fetal tissue obtained through induced abortions. Dr. Greenberg testified that researchers rely on the third party vendor for oversight of infection control and consent. Current practice does not require the researcher to obtain or review the consent form for the fetal tissue. Dr. Greenberg declared that in the future, The University of Texas System would ask for consent forms. This practice may prove to be problematic, as ABR's formal application for the acquisition of human fetal tissue for research states:

> IV. DONOR INFORMATION CONSENT VERIFICATION: Consent for tissue donation is obtained prior to specimen procurement. <u>The consent is extremely confidential in nature and shall not be communicated to the researcher or facility.</u>

Conclusion

Recent investigations exposing unsanitary environments and improper informed consent at certain abortion facilities have evoked concerns that human remains obtained from induced abortions are not held to the same bioethical standard as other human remains. Typically, the fetal remains acquired at abortion facilities go to a third party vendor before going to researchers. Because researchers are depending upon the third party for oversight, the accountability for proper informed consent and infection control is lost. This practice potentially jeopardizes the dignity and respect owed to human remains, as well as the validity of research performed on fetal remains.

Dr. Greenberg and Dr. Rotwein disclosed that studies utilizing fetal tissue are funded by federal grants and are reviewed by the appropriate review boards to ensure compliance with all laws, standards and guidelines. However, the aforementioned consent form obtained from a Texas abortion facility does not meet these rigorous standards. Moreover, even if the forms did actually meet the rigorous standards, obtaining them appears challenging. With these findings, the question becomes, what entity does the State of Texas hold accountable?

Recommendations

The 85th Legislature should ban research on fetal remains obtained from an induced abortion, but provide the resources and support necessary to assist scientists or biopharmaceutical companies to make transitions to ethical tissue sources. Policymakers should strengthen laws and agency rules that ensure proper infection controls are utilized at abortion facilities.

Enclosure: Consent Form

EXHIBIT A-3

[redacted]

Client Information for Informed Consent

DONATION OF BLOOD AND/OR ABORTED PREGNANCY TISSUE FOR MEDICAL RESEARCH, EDUCATION, OR TREATMENT

Research using the blood from pregnant women and tissue that has been aborted has been used to treat and find a cure for such diseases as diabetes, Parkinson's disease, Alzheimer's disease, cancer, and AIDS. [redacted]

You can donate your blood and/or pregnancy tissue after an abortion. Before you give your consent, read each of the following statements and initial the line to the right. We will be happy to answer any questions you have.

Before I was shown this consent, I had already decided to have an abortion and signed a consent form for it. _____

I agree to give my blood and/or the tissue from the abortion as a gift to be used for education, research, or treatment. _____

I understand I have no control over who will get the donated blood and/or tissue or what it will be used for. _____

I have not been told the name of any person who might get my donation. _____

I understand there will be no changes to how or when my abortion is done in order to get my blood or the tissue. _____

I understand I will not be paid. _____

I understand that I don't have to give my blood or pregnancy tissue, and this will not affect my current or future care at [redacted] _____

Signature:_____ Date:_____

Witness:_____ Date:_____

[xlvi]

Enclosure: OIG October 2015 Letter

OFFICE OF INSPECTOR GENERAL
TEXAS HEALTH & HUMAN SERVICES COMMISSION

STUART W. BOWEN JR.
INSPECTOR GENERAL

October 19, 2015

****** NOTICE OF TERMINATION ******

Via First Class Mail & CMRRR No. 7015 1730 0000 9897 1876

Planned Parenthood Gulf Coast
Registered Agent: Melaney Linton
4600 Gulf Freeway
Houston, Texas 77023-354

Re: Planned Parenthood Gulf Coast
TPI Numbers: 0834095-01, 1126104-08, 1126104-09, 3035461-01, 1126104-05, 1126104-04, 1126104-12, 1126104-14, 1126104-11, 1126104-10, 1126104-06, 0834095-02, 1126104-02, 1126104-07

Dear Provider:

Your receipt of this Notice of Termination effects a process to end your enrollment in the Texas Medicaid program. *See* 1 TEX. ADMIN. CODE § 371.1703(e) (2014). We have begun terminating your enrollment because, based on the evidence outlined below, you are liable, directly or by affiliation, for a series of serious Medicaid program violations. The State has determined that you and your Planned Parenthood affiliates are no longer capable of performing medical services in a professionally competent, safe, legal, and ethical manner.

Your termination and that of all your affiliates will not affect access to care in this State because there are thousands of alternate providers in Texas, including federally qualified health centers, Medicaid-certified rural health clinics, and other health care providers across the State that participate in the Texas Women's Health Program and Medicaid. Our women's health programs, mostly State-funded since 2013, have increased overall funding for women's health services and access to these services for women across the State.

Therefore, in connection with this Notice of Termination and out of respect for the patients who otherwise would receive Medicaid services from you and your affiliates, the State of Texas

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requests your cooperation in informing all clients and potential clients about alternatives where they can obtain Medicaid services from providers in good standing with the State. HHSC staff will provide you with information you can share regarding those Medicaid providers.

I. FINDINGS SUPPORTING TERMINATION

We have determined the bases for your termination are as follows:

A. Earlier this year, you committed and condoned numerous acts of misconduct captured on video that reveal repeated program violations and breach the minimum standards of care required of a Medicaid enrollee. You are being terminated from the program because of these program violations, which include, but are not limited to, the following:

1. The videos indicate that you follow a policy of agreeing to procure fetal tissue even if it means altering the timing or method of an abortion. These practices violate accepted medical standards, as reflected in federal law, and are Medicaid program violations that justify termination. *See* 42 U.S.C. § 289g-1; 1 TEX. ADMIN. CODE § 371.1659(2) and (6).

2. You failed to prevent conditions that would allow the spread of infectious diseases among employees, as well as patients and the general public. Specifically, you allowed individuals posing as commercial buyers of fetal body parts to handle bloody fetal tissue while wearing only gloves. You did not comply with mandatory "universal precautions," including the use of "protective barriers," required whenever anyone handles "blood," "non-intact skin," and "body fluids." *See* 25 TEX. ADMIN. CODE § 139.49; *see also* 29 CFR § 1910.1030. These program violations justify termination. *See* 1 TEX. ADMIN. CODE § 371.1659(2) and (6).

3. Your staff were not trained in infection control and barrier precautions with regard to the handling of fetal blood and tissue or they failed to comply with the minimum standards that mandatory training requires with regard to these critical public health and safety issues. *See* 25 TEX. ADMIN. CODE § 139.49(b)(3). These program violations justify termination. *See* 1 TEX. ADMIN. CODE § 371.1659(2) and (6).

As a Planned Parenthood affiliate, you have agreed to abide by mandatory medical and operational standards established by the Planned Parenthood Federation of America (PPFA) located in Washington, D.C. You are a legal affiliate of the PPFA and of all similarly situated Planned Parenthood providers in Texas.

Our decision to terminate you and all affiliates in Texas finds support in the extensive video evidence filmed at your facility and other Planned Parenthood affiliates across the country, including video footage of the Medical Director of

PPFA who appears to not only condone such program violations but also endorse them. This suggests that the program violations recorded at your facility reflect PPFA national policy or accepted practice, which explains in part their widespread occurrence across the country among Planned Parenthood affiliates.

B. My office has information suggesting that fraud and other related program violations have been committed by a number of Planned Parenthood affiliates enrolled in the Medicaid program in Texas, including you. For example, there is reliable information indicating a pattern of illegal billing practices by Planned Parenthood affiliates, including you, across the State.

Our prima facie case of fraud is supported by related cases involving fraudulent practices identified by Whistleblowers from inside the Texas Planned Parenthood network. These Whistleblowers alleged in federal court that Planned Parenthood encourages employees to knowingly file false claims. *See, e.g*, Settlement Agreement, *Reynolds v. Planned Parenthood Gulf Coast*, No. 9:09-cv-124 (E.D. Tex. July 25, 2013) (lawsuit by a health care assistant who worked at Planned Parenthood Gulf Coast for 10 years alleging Medicaid fraud); Memorandum Opinion and Order, *Carroll v. Planned Parenthood Gulf Coast*, 4:12-cv-03505 (S.D. Tex. May 14, 2014) (lawsuit by a former accounts-receivable manager at Planned Parenthood Gulf Coast alleging Medicaid fraud).

In *Reynolds*, a Planned Parenthood Whistleblower alleged sufficient evidence of fraud to assure the federal court handling the matter that the case was worth pursuing, after which Planned Parenthood promptly settled the lawsuit for $4.3 million. Furthermore, when the United States Department of Justice (DOJ) announced the 2013 settlement in *Reynolds*, it openly and compellingly criticized PPGC for "abuse of programs that are extremely important to the well-being of many American women." Further, the DOJ was "particularly grateful to the Whistleblower" who came forward for revealing that Planned Parenthood Gulf Coast had billed the Texas Medicaid program, Title XX, and the Women's Health Program "for items and services that were either medically unnecessary or were never actually provided."

The varied program violations by Planned Parenthood revealed in these two federal cases and the information my office has recently received regarding similar program violations supports this Notice of Termination. *See* 1 Tex. Admin. Code § 371.1653.

Our rules provide that if you are affiliated with a provider that commits program violations subjecting it to enrollment termination, then you, as an affiliate, are subject to the same enrollment termination. *See* 1 TEX. ADMIN. CODE § 371.1703(c)(7). The definitions section of our rule substantiates this position. It provides that an enrolled provider is an affiliate of another enrolled provider if it

"shares any identifying information, including ... corporate or franchise name." You share such identifying information with other affiliates about which a prima facie case of fraud exists and are thus subject to termination. *See* 1 TEX. ADMIN. CODE § 371.1607(3)(I). Your affiliation with Planned Parenthood entities in Texas about which there is reliable evidence of fraud and other program violations - as well as your participation in such - substantiates your termination as an enrollee in the Medicaid program. *See* 1 TEX. ADMIN. CODE §§ 371.1703(c)(6), (c)(7), and (c)(8).

II. PROCESS

You may request an Informal Resolution Meeting (IRM) with my legal staff to discuss the findings in this Notice of Termination. If you wish to pursue an IRM, you must file a written request with my office on or before the 30th calendar day from the date you received this Notice of Termination.

Your request for an IRM must:

1. Be sent by certified mail to my office at the address specified below;
2. Include a statement as to the specific issues, findings, and legal authority in the Notice of Termination with which you disagree; and
3. Be signed by you or your attorney.

In the alternative, you may submit, within 30 calendar days of receipt of this Notice, any documentary evidence and written argument regarding whether this Notice of Termination is warranted. *See* 1 TEX. ADMIN. CODE § 371.1613 (d). You must state the specific issues, findings, and legal authority that support your contention that this Notice is improper.

In the further alternative, you may both request an IRM and submit documentary evidence and written argument to contest this Notice of Termination.

III. FINAL TERMINATION

If you fail to respond to this Notice of Termination within 30 calendar days of receipt, then we will issue a Final Notice of Termination. Alternatively, if the IRM fails to resolve the case, then we will similarly issue a Final Notice of Termination. You have 15 days after receipt of the Final Notice of Termination to request an administrative hearing to appeal the Final Notice before an Administrative Law Judge at the Texas Health and Human Services Commission.

A. The effective date of your final termination from the Medicaid program will be either:

1. Upon the expiration of 15 calendar days after receipt of the Final Notice of Termination, if you do not timely request an administrative hearing before HHSC; or

2. The date of any final order issued by an HHSC Administrative Law Judge affirming the Final Notice of Termination.

B. Once the Final Notice of Termination becomes effective, the following events immediately occur:

1. Your enrollment in the Medicaid program terminates;
2. Your Texas Provider Identification Number is revoked; and
3. Your enrollment in the Medicaid program of any other state may be subject to revocation.

If, after your termination from the Texas Medicaid program, you wish to enter the program again, you must apply for re-enrollment.

NOTICE

IF YOU DO NOT RESPOND TO THIS NOTICE WITHIN 30 CALENDAR DAYS FROM THE DATE YOU RECEIVED IT, WE WILL ISSUE A FINAL NOTICE OF TERMINATION.

Requests for an IRM and/or the provision of additional documentary evidence and written argument should be mailed via certified mail to the following address:

Texas Health and Human Services Commission
Office of Inspector General
Mail Code 1358
P.O. 85200
Austin, Texas 78708-5200

Respectfully yours,

Stuart W. Bowen, Jr.

Enclosure: OIG December 2016 Letter

OFFICE OF INSPECTOR GENERAL
TEXAS HEALTH & HUMAN SERVICES COMMISSION

STUART W. BOWEN, JR.
INSPECTOR GENERAL

December 20, 2016

******* FINAL NOTICE OF TERMINATION OF ENROLLMENT *******

Via First Class Mail and CMRRR Nos. 7011 2970 0004 0129 1228, 7011 2970 0004 0129 1235, 7011 2970 0004 0129 1242, 7011 2970 0004 0129 1259, 7011 2970 0004 0129 1266 and 7011 2970 0004 0129 1273

Planned Parenthood Gulf Coast
Registered Agent: Melaney Linton
4600 Gulf Freeway
Houston, Texas 77023-3548

Planned Parenthood of Greater Texas / Planned Parenthood of North Texas
Registered Agent: Kenneth Lambrecht
7424 Greenville Avenue, Suite 206
Dallas, Texas 75231-4534

Planned Parenthood San Antonio / Planned Parenthood South Texas Surgical Center / Planned Parenthood Association of Cameron and Willacy County
Registered Agent: Jeffrey Hons
2140 Babcock Road
San Antonio, Texas 78229-0000

Re: Planned Parenthood Final Notice of Termination

Dear Provider:

I. FINAL NOTICE OF TERMINATION

This notice is to inform you that the Texas Health and Human Services Commission's Office of Inspector General (HHSC-IG) is hereby terminating the enrollment of the following providers and associated Texas Provider Identification (TPI) numbers from the Texas Medicaid program: Planned Parenthood Gulf Coast, Planned Parenthood of Greater Texas, Planned Parenthood of North Texas, Planned Parenthood San Antonio, Planned Parenthood South Texas Surgical Center, and Planned Parenthood Association of Cameron and Willacy County (hereafter Planned Parenthood, you, or your). 1 Tex. Admin. Code § 371.1703(e) (2016). *See* Attachment A for list of TPI numbers. Because of the violations listed below, HHSC-IG finds that you are not qualified

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to provide medical services in a professionally competent, safe, legal and ethical manner under the relevant provisions of state and federal law pertaining to Medicaid providers.

The basis for your termination and the termination of your affiliates stems from an extensive undercover video obtained by the Center for Medical Progress at the Planned Parenthood Gulf Freeway facility in April 2015, which contains evidence that Planned Parenthood violated state and federal law. The evidence arises from detailed discussions with the Planned Parenthood Gulf Coast's staff. In addition, the United States House of Representatives' Select Investigative Panel (House Investigative Panel) uncovered evidence consistent with and supportive of this termination.[1]

The unedited video footage indicates that Planned Parenthood follows a policy of agreeing to procure fetal tissue, potentially for valuable consideration, even if it means altering the timing or method of an abortion. These practices violate accepted medical standards, as reflected in federal and state law, and are Medicaid program violations that justify termination. *See* 42 U.S.C. § 289g-1; 42 U.S.C. § 289g-2; 1 Tex. Admin. Code § 371.1659(2) and (6); 1 Tex. Admin. Code § 371.1661; 1 Tex. Admin. Code § 371.1703(c)(6); 1 Tex. Admin. Code § 371.1605(a); 1 Tex. Admin. Code § 371.1603(g)(5) and (7). The HHSC-IG's Chief Medical Officer reviewed the video and concluded that your willingness to engage in these practices violates generally accepted medical standards, and thus you are not qualified to provide medical services in a professionally competent, safe, legal and ethical manner.

The video reveals numerous violations of generally accepted standards of medical practice. Examples include:

1. a history of deviating from accepted standards to procure samples that meet researcher's needs;
2. a history of permitting staff physicians to alter procedures to obtain targeted tissue samples needed for their specific outside research;
3. a willingness to convert normal pregnancies to the breech position to ensure researchers receive intact specimens;
4. an admission that "we get what we need to do to alter the standard of care where we are still maintaining patient safety, still maintaining efficiency in clinic operations, but we integrate research into it";
5. an admission that Planned Parenthood gets requests for "information from our study sponsor on what data they need that is not our standard of care," and that you provide what

[1] On October 7, 2015, the U.S. House of Representatives passed H. Res. 461, which created the Select Investigative Panel, a bipartisan panel, to conduct a full and complete investigation of the medical practices of abortion providers and the practices of entities that procure and transfer fetal tissue. On December 1, 2016, the Investigative Panel referred its evidence to the Texas Attorney General.

is needed by creating a separate research protocol or template that can include medically unnecessary testing; and

6. a willingness to charge more than the costs incurred for procuring fetal tissue.

In addition, HHSC-IG has evidence that you engaged in misrepresentations about your activity related to fetal tissue procurements, as revealed by evidence provided by the House Investigative Panel. These misrepresentations show that you are not qualified to provide medical services in a professionally competent, safe, legal and ethical manner, and thus they support this termination. *See* 1 Tex. Admin. Code § 371.1661; 1 Tex. Penal Code § 37.08; 1 Tex. Admin. Code § 371.1603(g)(6); 42 U.S.C. § 1320a-7(b)(5); 42 U.S.C. § 1320a-7(b)(16); 1 Tex. Admin Code § 371.1651(15); 1 Tex. Admin. Code § 371.1655(7); 1 Tex. Admin. Code. § 371.1655(24); 1 Tex. Admin. Code § 371.1605(a).

In the *HHSC Medicaid Provider Agreement*, you agreed to comply with all of the requirements in Title 1, Part 15, Chapter 371 of the Texas Administrative Code, the Texas Medicaid Provider Procedures Manual, and all state and federal laws governing or regulating Medicaid. You further acknowledged in that agreement that failing to comply with any applicable law, rule, or policy of the Medicaid program or permitting circumstances that potentially threaten the health or safety of a client would be grounds for termination of your enrollment.

Your misconduct is directly related to whether you are qualified to provide medical services in a professionally competent, safe, legal and ethical manner. Your actions violate generally accepted medical standards, as reflected in state and federal law, and are Medicaid program violations that justify termination.

HHSC-IG rules provide that if you are affiliated with a provider that commits a program violation subjecting it to enrollment termination, then the affiliate is also subject to enrollment termination. *See* 1 Tex. Admin. Code §371.1703(c)(7); 1 Tex. Admin. Code §371.1605(a). Furthermore, the video and other evidence provide numerous indicia of affiliation, including:

1. common identifying information among affiliates;
2. individual providers working across affiliates;
3. a requirement that affiliates follow protocols and procedures prescribed by the Planned Parenthood Federation of America;
4. a requirement that affiliates report research studies to the Planned Parenthood Federation of America;
5. Planned Parenthood Federation of America provides for the legal review of research contracts;
6. Planned Parenthood Federation of America requires training for affiliates;
7. Planned Parenthood Federation of America provides certification of affiliates;

8. Planned Parenthood Federation of America centralizes the oversight, use, and review of research projects; and
9. Planned Parenthood affiliates may use research agreements at one affiliate to facilitate additional research at other affiliates.

II. SCOPE OF TERMINATION

The termination of your enrollment means that:

1. Your contract with the Texas Medicaid program will be nullified on the effective date of the termination. 1 Tex. Admin. Code § 371.1703(g)(1);
2. The TPI Number(s) related to your contract will become ineffective on the effective date of the termination;
3. No items or services furnished under your TPI will be reimbursed by the Medicaid program, after your enrollment is terminated. 1 Tex. Admin. Code § 371.1703(g)(2);
4. You will be required to re-enroll in the Texas Medicaid program, if you wish to participate as a Texas Medicaid provider. 1 Tex. Admin. Code § 371.1703(g)(3);
5. Your enrollment or contract in the Medicare program may be subject to termination. 1 Tex. Admin. Code § 371.1703(g)(4);
6. Your enrollment or contract in the Medicaid program of any other state may be subject to termination. *Id.*; and
7. This termination will remain in effect until such time as you re-enroll and are approved to participate as a Texas Medicaid provider.

III. APPEAL PROCESS

You may appeal this enrollment termination. In order to do so, **HHSC-IG must receive a written request from you asking for an administrative hearing before HHSC's appeals division on or before the 15th calendar day from the date you receive this notice.** 1 Tex. Admin. Code § 371.1703(f)(2).

All submissions, including your request for an administrative hearing, should be mailed to:

Texas Health and Human Services Commission
Office of Inspector General
Mail Code 1358
P.O. Box 85200
Austin, Texas 78708-5200

Pursuant to 1 Tex. Admin. Code §§ 371.1615(b)(2) and (4), any request for an administrative hearing must:

1. be sent by certified mail to the address specified above;
2. include a statement as to the specific issues, findings, and/or legal authority in the notice letter with which you disagree;
3. state the bases for your contention that the specific issues or findings and conclusions of HHSC-IG are incorrect;
4. be signed by you or your attorney; and
5. arrive at the address specified above on or before the 15th calendar day from the date you receive this Final Notice of Termination.

IF HHSC-IG DOES NOT RECEIVE A WRITTEN RESPONSE TO THIS NOTICE WITHIN 15 CALENDAR DAYS FROM THE DATE YOU RECEIVE IT, YOUR FINAL NOTICE OF TERMINATION WILL BE UNAPPEALABLE.

IV. TERM OF ENROLLMENT TERMINATION

The effective date of this enrollment termination depends upon whether you choose to appeal:

- If you do not request a hearing as discussed above, the effective date of your enrollment termination will be the 30th calendar day following your receipt of this Final Notice of Termination. 1 Tex. Admin. Code §§ 371.1615(c), 371.1617(a)(1), 371.1703(g)(8); or
- If you request an administrative hearing, then the effective date will be the date the administrative law judge's decision to uphold your enrollment termination becomes final. 1 Tex. Admin. Code § 371.1703(g)(7).

This enrollment termination is permanent. If you want to participate as a provider in the Texas Medicaid program in the future, you will be required to submit a new provider enrollment application. 1 Tex. Admin. Code § 371.1703(g)(3).

Respectfully yours,

Stuart W. Bowen, Jr.
Inspector General

Attachment

Attachment A

These are the TPIs that Texas Medical Health Partnership reports as affiliated with Planned Parenthood and which are believed to be active:

2164345-01, 2164360-01, 1269599-06, 1269599-07, 1269599-10, 1269599-11, 2187189-01, 2815037-01, 2815060-01, 1126104-02, 1126104-04, 1126104-06, 1126104-07, 1126104-08, 1126104-09, 1126104-14, 3035461-01, 0834095-01, 0834095-02, 0834095-04, 1126104-05, 1126104-10, 1126104-11, 1126104-12, 1122699-01, 1122699-06, 1272197-02, 1272197-03, 1272197-05, 1272197-07, 1272197-10, 1272197-12, 1364812-06, 1364812-13, 2999112-01, 2999112-02, 2999112-03, 2999112-05, 2999112-08, 2999112-09, 3147803-01, 3150385-01, 3150484-01, 3159402-01, 2100489-01, 2120669-01, 2121964-01, 2096414-01, 2103566-01, 2109696-01, 3353781-01, 1373391-01, 1373391-10, 1373391-04, 1373391-11, 1373391-12, 2866873-01

UNIVERSAL SERVICE FUND

<u>Interim Charge #5:</u> Study support mechanisms for the Small and Rural Incumbent Local Exchange Carrier - Universal Service Fund. Consider alternative funding mechanisms as well as necessary statutory changes to ensure reasonable cost of basic local phone service in high cost, rural areas without expanding the size of the Texas Universal Service Fund.

Introduction

The purpose of the Small and Rural Incumbent Local Exchange Company Universal Service Plan (Small ILEC High-Cost Program), which is part of the Texas Universal Service Fund (TUSF), is to assist telecommunications providers in providing local telephone service at reasonable rates in high-cost rural areas of the state.[xlvii] During fiscal year 2016, the TUSF disbursed $235,698,418.99 in program expenditures to support providers, of which $92,013,828.82 was disbursed as part of the Small ILEC High-Cost Program.[xlviii]

Background

In 2000, the Public Utility Commission of Texas (PUC) implemented the Small ILEC High-Cost Program and established the support mechanisms for small and rural incumbent local exchange companies (Small ILECs) and competitive providers in certain high-cost rural areas of Texas.[xlix] Supported providers would receive specified support amounts for each eligible line listed in monthly reports to the Commission. Small ILECs continued to receive support on a per-line basis until 2011, when the PUC implemented statutory changes that allowed Small ILECs to receive support from the Small Company program in fixed monthly disbursements.

Specifically, House Bill 2603, passed by the 82nd Legislature, amended Tex. Util. Code §56.032(d) to allow certain ILECs to elect to receive fixed monthly support amounts.[l] These fixed monthly support amounts were to be determined by calculating the support that the electing Small ILEC was eligible to receive pursuant to the original implementation of the Small ILEC High-Cost Program in 2000 and increasing that sum by the change in inflation since 2000, as measured by the Consumer Price Index (CPI).[li] Through 2016, electing Small ILECs have continued to receive annual increases in their fixed monthly support amount based on the annual change in CPI.[lii] On September 1, 2017, the authorization for these annually adjusted fixed monthly support amounts, as well as any monthly support amounts approved under that authorization, expire.[liii]

Effective September 1, 2017, electing Small ILECs will immediately return to the monthly per-line support amounts established in 2000 and will no longer receive support that is increased based on the annual change in CPI since 2000.[liv] Depending on the number of eligible lines served in the future by each Small ILEC, most or all of these Small ILECs will experience a decrease in the level of support they receive from the Small ILEC High-Cost Program.

Also beginning on September 1, 2017, the PUC will have the authority to revise the monthly support amounts to be made available from the Small ILEC High-Cost Program to these Small

ILECs by any mechanism.[lv] However, such a revision, if any, will occur after the PUC conducts a rulemaking and then a contested case proceeding to implement any adopted rule.

Conclusion

If no legislative change is adopted, effective September 1, 2017, electing Small ILECs will return to the monthly per-line support amounts originally approved by the PUC in 2000. The Committee acknowledges that an immediate reduction in support from the Small ILEC High-Cost Program may not be consistent with the goals of universal service. Instead, a period of transition may permit the PUC an opportunity to determine whether it is appropriate to revise the support amounts to be made available to these Small ILECs.

Recommendations

The legislature should extend the expiration date set out in Tex. Util. Code § 56.032(h) until December 1, 2018 and direct the PUC to conduct a project to determine the appropriate level of support for electing Small ILECs to receive in the future. In doing so, the legislature may direct the PUC to evaluate whether rate increases are an appropriate source of revenues for Small ILECs as an alternative to maintaining or increasing the current level of support provided by the Small ILEC High-Cost Program.

UTILITY RATEMAKING PROCESS

<u>Interim Charge #6:</u> Evaluate the administrative process used to determine utility rates. Consider if sufficient opportunities exist to ensure customer representation. Also determine if additional legislative guidance is needed to ensure public notification and participation.

Public Hearing

The House Committee on State Affairs held a public hearing on August 15, 2016, at 1:00 p.m. in Austin, Texas in the John H. Reagan Building, room 140, to address the above interim charge. The Committee heard testimony from the following invited witnesses:

<u>Witnesses are listed in alphabetical order</u>

- Tonya Baer, *Public Counsel, Office of Public Utility Counsel*
- Mark Caskey, *President, Sharyland Utilities, L.P.*
- Brian Lloyd, *Executive Director, Public Utility Commission of Texas*

Introduction

Vertically-integrated utilities and transmission and distribution utilities are regulated monopolies; they are obligated to serve all existing and new customers in their service territories. In exchange for exclusive jurisdiction, utilities are allowed to recover a specific rate of return, determined by a regulatory body. The Public Utility Commission of Texas (PUC) oversees the rates of investor-owned utilities, while municipally-owned utilities and electric cooperatives are overseen by the cities they serve.

Customers are expected to have the opportunity to provide input on utility service, and to be made aware of that opportunity.

Background

There are several existing processes for the determination of utility rates, depending on the structure of the utility. The PUC reported that it has jurisdiction over the rates of investor-owned utilities providing electric and water service, as well as local phone service. Once again, the PUC does not have jurisdiction over municipally-owned utilities or electric cooperatives.[lvi]

Rate cases are conducted under the Administrative Procedures Act, which entitles parties to an opportunity for hearing, an opportunity to respond to rate cases and an established procedure for the rate case. Electric and telecom utilities are required to provide four weeks of notice in newspapers and by mail, while water utilities require notification by mail.

As an example, Sharyland Utilities filed an unbundling rate case in 2013 to enter retail competition, separating transmission and distribution charges from other parts of the electric bill. The utility embarked on an extensive outreach effort to explain retail competition, through

newspaper advertisements and town hall events. A subsequent rate filing in 2016 also met PUC requirements, as well as outreach to municipal leadership in the Sharyland service territory.[lvii]

The Office of Public Utility Counsel (OPUC) participates in rate cases for investor-owned utilities, representing the interests of residential and small commercial customers before the PUC.[lviii]

Conclusion

Customers are represented before the PUC by the OPUC, as well as interested parties prompted to take part in rate proceedings by communications required by the Administrative Procedures Act.

The PUC plans to submit a report on alternative ratemaking mechanisms in January 2017, in compliance with Senate Bill 774 (84 R).

Recommendations

PUC rules appear to invite participation by customers in ratemaking proceedings, with the OPUC serving as the representative for residential and small commercial customers. The legislature should continue to monitor the oversight of these functions.

UTILITY METERING AND BILLING

<u>Interim Charge #7:</u> Examine how the Public Utility Commission of Texas, when applicable, and utility providers, whether vertically integrated, privately owned, or municipally owned, can ensure consumer protection regarding metering devices for water, gas, and electricity service. Review recent examples of inaccurate or confusing billings and offer recommendations on appropriate consumer recourse and appeal. In addition, assess utility procedures regarding meter installation.

Public Hearing

The House Committee on State Affairs held a public hearing on August 15, 2016, at 1:00 p.m. in Austin, Texas, in the John H. Reagan Building, room 140, to address the above interim charge. The Committee heard testimony from the following invited witnesses:

<u>Witness are listed in alphabetical order</u>

- Rudy Garza, *Vice President, Government and Regulatory Affairs and Public Policy, CPS Energy*
- Sheila Hemphill, *Texas Right to Know*
- Brian Lloyd, *Executive Director, Public Utility Commission of Texas*

Introduction

Many electric, water and gas utilities have installed advanced meters to provide improved service to consumers. The chief improvements have included remote reading and, in the case of electric service, improved outage restoration.

Because advanced metering systems rely on digital communications, the interim charge was focused on the need to protect consumer information, and maintaining consumer rights when protesting inaccurate bills or other service concerns.

Background

Regulators appear to have extensive rules to address concerns related to billing and service, especially for utilities overseen by the Public Utility Commission of Texas (PUC). The PUC reported that electric meters must meet compliance standards set by the American National Standards Institute, while water meters must meet American Water Works Association standards.[lix]

Use of advanced metering is extensive. Legislation passed in 2005 and 2007 allowed utilities under the jurisdiction of the PUC to deploy advanced meters. As of 2016, 7 million advanced electric meters had been installed in ERCOT. It is important to note that utilities collect no personal information; they only record the usage of electricity, and the consumer's Electric Service Identifier (ESI) number.

Additionally, the PUC does not have jurisdiction over advanced metering deployment of municipally owned utilities or the electric cooperatives.

When meters were initially installed, the PUC engaged the company, Navigant to evaluate complaints that advanced meters had raised electric bills; Navigant found no statistically significant difference between the measurements of advanced meters and mechanical meters.[lx]

In 2013, the PUC adopted a rule to allow customers to opt-out of advanced electric meters by paying a one-time fee for removal of the meter, plus a monthly fee. According to the PUC, 561 customers have opted out of the electric advanced metering program.[lxi] CPS Energy, the municipal utility of San Antonio, noted that 700 of its 600,000 customers have opted out.[lxii] CPS Energy is the largest municipally owned gas and electric utility in the country.

The PUC also reported its effective complaint resolution procedures, noting that refunds are typically resolved in 19 days or less.[lxiii]

Conclusion

Advanced metering systems are designed to facilitate easier interactions between consumers and utilities. The systems have significant oversight and established processes to resolve consumer complaints.

Recommendations

Advanced meters have become the norm in most of Texas. As consumers grow more accustomed to the benefits meters can offer, there will be continued increases in the amount of consumer usage information transmitted from these devices. Moving forward, the focus should be on continuing to monitor and address complaints and request periodic updates from the PUC to ensure compliance.

IMMIGRATION REFORM

<u>Interim Charge #8:</u> Examine state and local laws applicable to undocumented immigrants throughout the State of Texas and analyze the effects of those laws in conjunction with federal immigration laws and the policies and practices followed by U.S. Immigration and Customs Enforcement.

Public Hearing

The House Committee on State Affairs held a public hearing on December 10, 2015, at 1:30 p.m. in Austin, Texas in the extension, room E1.014, to address the above interim charge. The Committee heard testimony from eleven invited witnesses that included law enforcement and relevant state agencies. The following expert witnesses testified:

<u>Witnesses are listed in alphabetical order</u>

- Dee Anderson, *Tarrant County Sheriff*
- Michael Dirden, *Executive Assistant Chief of Police, Houston Police Department*
- Faye Kolly, *Senior Attorney, De Mott, McChesney, Curtright & Armendariz*
- Don Lee, *Executive Director, Texas Conference of Urban Counties*
- A. J. "Andy" Louderback, *Former President, Sheriffs' Association of Texas, and Jackson County Sheriff*
- Steven McCraw, *Director, Texas Department of Public Safety*
- Clint McDonald, *President, Texas Border Sheriff's Coalition, and Terrell County Sheriff*
- Jerry McGinty, *Chief Financial Officer, Texas Department of Criminal Justice*
- Brantley Starr, *Deputy Attorney for Legal Counsel, Office of the Attorney General*
- Lupe Valdez, *Dallas County Sheriff*
- Jackie Watson, *Chapter Chair, American Immigration Lawyers Association, Texas Chapter*

Introduction

The term "sanctuary city" refers to an entity that enacts policies limiting state or local law enforcement communication or cooperation with the federal government regarding immigration matters. The power to which criminal immigrants may enter or be removed resides solely with the federal government, particularly Congress.[lxiv] Federal law requires state and local authorities to comply with federal immigration laws and enforcement; however, according to the testimony from the Office of the Attorney General, there is no enforcement mechanism for this law, therefore, "sanctuary city" policies can be implemented with no federal consequence.

Background

The controversy surrounding "sanctuary city" policies is the question of whether or not law enforcement decides to honor each Immigration and Customs Enforcement (ICE) detainer request. Testimony at the hearing revealed that to date, none of the 254 Texas County Sheriffs have refused an ICE detainer request.[lxv]

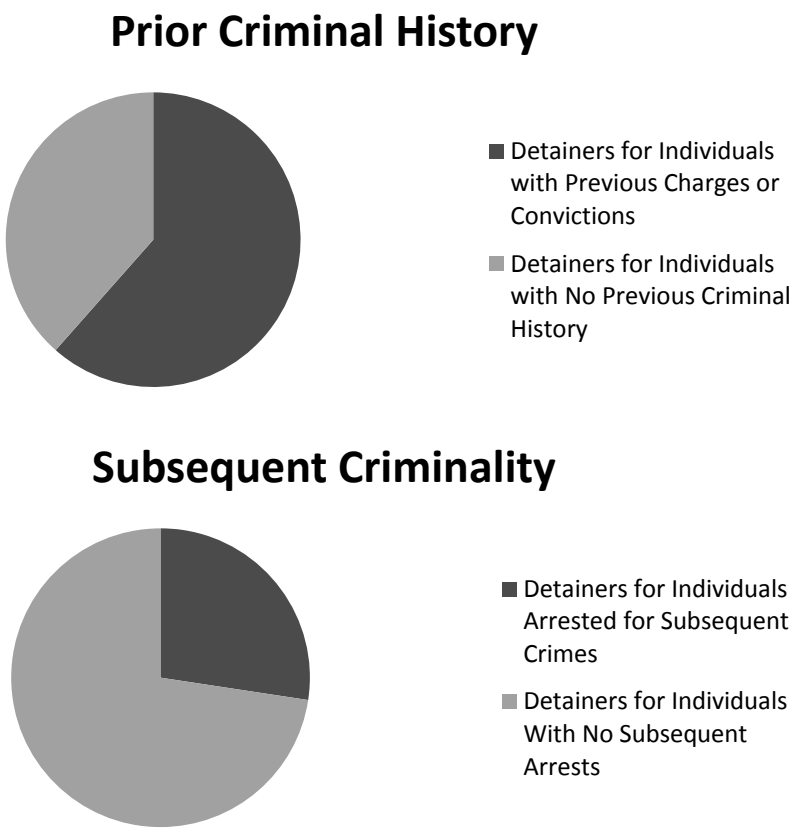
In other states that have chosen not to honor ICE detainers and have released criminal immigrants, additional crimes have been committed. For example, in 2015, a young San Francisco woman was shot and killed by a criminal immigrant who was released from the San Francisco authorities. The man accused of firing the deadly shot is an undocumented criminal immigrant and repeat felon who has been deported five times to Mexico, according to immigration officials. It would have been six, but law enforcement in San Francisco did not comply with an ICE detainer request. This tragic shooting incident sparked debate in Texas when Dallas County Sheriff Lupe Valdez announced a change to the Dallas County Sheriff's Office policy, to determine ICE detainer requests on a case-by-case basis.

An ICE detainer is a written request issued to state and local authorities, asking:

- **For notification of the identified illegal immigrant's release date**
- **Or, to detain the identified illegal immigrant for an addition 48 hours**

The governor responded sharply to Sheriff Valdez's announcement, calling for state laws to be passed that prohibit policies promoting sanctuary to people illegally in the state, and prohibit sheriff's departments from not honoring all ICE detainers.

Figure 1. Representing refused ICE detainers in the U.S. associated with prior criminals and future criminals



***Data represents the 8,811 total declined detainers in the U. S. from January 1, 2014 through August 31, 2014**[lxvi]

Sheriff Valdez's testimony stated that her arguments for honoring ICE detainer requests on a case-by-case basis are as follows:

- Economic: fulfilling all ICE detainer requests further strains Dallas jails and its budget. In order to fully comply, Dallas County needs additional jail facilities, estimated at $100 million, or to release other incarcerated individuals.
- Community Trust: illegal immigrants in the community are less likely to report crimes in fear of "show me your papers" policies. Because there are an estimated one million undocumented immigrants in Dallas alone, the law enforcement needs to have community trust and support.

Jackson County Sheriff A. J. "Andy" Louderback refuted Sheriff Valdez's assertions by stating that the federal immigration policy change to the then Secure Communities deportation program, in November 2014, has reduced the amount of ICE detainers so significantly that tens of thousands of criminal immigrants are released back into Texas communities.

State Legislation

During the 84th Legislature, Senate Bill 185 was introduced; however, this bill did not make it out of the Senate. The bill prohibited Texas law enforcement entities from enacting "sanctuary city" policies, and created consequences for noncompliance that result in a loss of state funding for that entity the following fiscal year.[lxvii]

In 2011, the Texas House was successful in passing House Bill (HB) 12, which also prohibited "sanctuary city" policies and denied state grant funds to entities that do not comply. This bill provided law enforcement officers with a uniform immigration policy that does not interfere with their duty to enforce the law. The comprehensive legislation included a number of provisions, including not prohibiting law enforcement from the following:[lxviii]

- Communicating with ICE or U.S. Citizenship and Immigration Services regarding the immigration status of a lawfully arrested or detained individual
- Inquiring into the immigration status of a person lawfully detained or arrested
- Assisting a federal immigration officer as reasonable and necessary, including with enforcement assistance

This bill also died in the Senate in 2011.

Border Security

During the 84th Legislative Session, the Texas Legislature passed two bills, HB 11 and HB 12, which enhanced Texas border security protection from criminal immigrants. This legislation not only increased the number of troops stationed at our border, but also created a Border Prosecution Unit and increased the consequences for human trafficking. With over 25,000 immigrants crossing into Texas every month, according to Department of Homeland Security Secretary Jeh Johnson, HB 11 and HB 12 were passed in effort to further protect Texans from the dangers of those that cross the border and commit serious crimes, such as human trafficking.

According to the Texas Department of Public Safety (DPS) Director McCraw, this program has effectively reduced crime in Starr and Hidalgo counties, and expansion of this effort would further protect border counties.[lxix]

Texas Department of Public Safety Records
As of January 1, 2016, the DPS was required through legislation, to erase the database of fingerprint records. According to the testimony of Director McCraw, this put DPS at a disadvantage for identifying detainable criminals, citing that name based identification is no longer adequate with the increase of people moving to Texas and the increased ability of criminals to produce fake identification. DPS contends that the ten-print fingerprints are necessary to help ensure that someone who is detained or is applying for a Texas identification card or license is not a criminal.

Federal Jurisdiction
According to federal law, unlawful presence in the country is a civil offense, which cannot be enforced by state or local authorities. However, the process for removing dangerous criminal immigrants relies on the willingness of state and local law enforcement to communicate and comply with ICE requests for custody.

The Department of Homeland Security has a number of programs for identifying and removing dangerous criminal immigrants. Two of those programs involve state or local law enforcement, the Priority Enforcement Program (PEP) and the 287(g) Program.

Priority Enforcement Program	*287(g) Program*
• Replaced Secure Communities in 2014 • Utilizes ICE detainers to obtain custody of criminal immigrants subject to removal proceedings, from state or local detention facilities • Prioritizes detaining criminal immigrants that have already been convicted of enumerated crimes or pose a significant threat to public, border or national security.	• A partnership between state or local law enforcement and the DHS • State and local law officers can be federally trained to exercise certain ICE duties in detention facilities. • Does NOT allow trained officers to arrest on basis of citizenship or deport individuals • Two Texas entities are part of the 287(g) program: Carrollton Police Department and Harris County Sheriff's Office

Conclusion

The hearing revealed that currently no Texas Sheriff has denied any ICE detainer requests. However, statements from Sheriff Valdez about deciding to honor ICE requests on a case-by-case basis demonstrate the potential for "sanctuary cities" to develop. Moreover, the newly elected Travis County Sheriff, Sally Hernandez, has publicly stated that she will not hold inmates for ICE when the federal agency seeks to remove them from the country. Such policies are a violation of federal law and could be dangerous to Texas communities.

Recommendations

Although the power to which criminal immigrants may enter or be removed resides solely with the federal government,[lxx] the 85th Texas Legislature should work to ensure citizens are protected from criminal immigrants through legislation. Enacting a law, which provides an enforcement mechanism, as well as a uniform policy for state and local law enforcement compliance with ICE, could assist law enforcement in keeping Texas streets safe. The legislature could assess the potential outcomes of more Texas law enforcement entities participating in the 287(g) program. The program could offer a more efficient process for dealing with criminal immigrants, instead of using jail space and law enforcement's time while waiting for ICE to determine whether to assume custody. Policymakers should debate reinstating DPS's authority to collect fingerprints, as it is counterproductive to remove an essential tool, which law enforcement needs to protect Texas citizens from criminal immigrants.

UNION DUES

<u>Interim Charge #9:</u> Examine payroll deductions from state or political subdivision employees for the purpose of labor organization membership dues or fees as well as charitable organization and nonprofit contributions. Determine if this process is an appropriate use of public funds.

<u>Written Testimony</u>
At the request of the House Committee on State Affairs, the following entities submitted written testimony addressing the above interim charge, which is enclosed in this report:

<u>Testimony authors are listed in alphabetical order</u>

- Jon Fisher, *President, Association of Builders and Contractors*
- Jerome Greener, *State Director, Americans for Prosperity*
- Ray Hunt, *President, Houston Police Officers' Union*
- Rick Levy, *Secretary-Treasurer, Texas AFL-CIO*
- Ed Martin, *Public Affairs Director, Texas State Teachers Association*
- Bill Peacock, *Vice President of Research, Texas Public Policy Foundation*
- John Riddle, *President, Texas State Association of Firefighters*
- Annie Spillman, *Texas Legislative Director, National Federation of Independent Business/Texas*

Introduction

On March 13, 2015, Senate Bill (SB) 1968 was filed in the Texas Senate. The Texas House of Representatives received the bill on May 8, 2015, and it was referred to the House Committee on State Affairs on May 15, 2015. Although the Committee had completed its public hearings for the 84th Legislative Session, the House Rules were suspended and a public hearing took place on May 21, 2015. Over 200 witnesses registered and 17 were in support of the legislation.

It is important to note that the bill was not drafted by the Texas Legislative Council and there was strong evidence that it violated the constitutional two subject rule. Additionally, when addressing complex policy matters that impact countless people, lawmakers require more time than remained in the session to be necessarily thoughtful and deliberate. For these reasons, and the reality that policymakers still had a state budget to pass, this initiative was left pending.

SB 1968, if passed, would have amended current law relating to organizations of public employees.

Background

According to a report published by the *Pacific Research Institute*, dated October 26, 2015, Texas ranked No. 3 in the nation for small business.[lxxi] The report cites low taxes and limited regulation for making Texas "a great place for small businesses to start and to grow."

Furthermore, the report states, "Texas took the top marks in categories such as minimum wage regulations, energy regulations, telecommunications regulations and right-to-work status."[lxxii]

Legislative Arguments

Proponents of the bill maintain that the government should not be the collector of dues for unions and that this practice gives unions an unfair political advantage. They maintain that this is analogous to taxpayers subsidizing labor union membership dues collection. Moreover, supporters of the legislation claim that these same unions back efforts that advocate against businesses in Texas. The efforts that proponents cite include initiatives to increase the minimum wage and mandate paid leave requirements. Supporters declare that unions attack businesses that choose to remain union-free.

Opponents contend that both union membership for public employees and payroll deductions for dues are completely voluntary. Unions emphasize that state law explicitly provides that organizations receiving the deduction must pay the administrative costs associated; and therefore, taxpayers are not subsidizing the deductions. Unions also oppose the legislation because they claim that deductions allow for a convenient and secure way to make dues payments. Opponents cite Texas Law that explicitly prohibits union dues, regardless if received by payroll deduction or any other means, from being used for political contributions to candidates and political action committees.

Conclusion

During the interim, the committee sought input from the proponents and opponents through meetings and written testimony. Although some of the aforementioned arguments have been established, one very essential question remains unanswered: What groups should be included in the bill, or, alternatively, what groups should be excluded from the bill? Last session, in the bill that the House received from the Senate, first responders were the only group exempt from the bill. However, upon receipt of the bill, State Representatives quickly heard from countless teachers and other law enforcement groups and individuals, who also wanted the exemption. This left the committee, in the waning days of the session, to grapple with what groups should this legislation affect and the rationale for doing so. Moreover, in dealing with complex and divisive matters, it is a priority for the committee to address everything possible to withstand constitutional challenges.

Recommendations

Those working to advance this legislation should use the short time left before committees are named to thoroughly vet this proposed legislation. The legislature should seek input about the policy rationale from both sides of the debate regarding the need for the law change and most importantly, what groups the bill should address.

Enclosure: Written Testimony

Associated Builders
and Contractors, Inc.
of Texas

October 13, 2016

The Honorable Byron Cook
Chair, Committee on State Affairs Texas House of Representatives
P.O. Box 2910
Austin, TX 78768-2910

Dear Chairman Cook:

I appreciate the opportunity to submit written testimony in letter form for Interim Charge #9 relating to payroll deductions for union dues.

Associated Builders and Contractors of Texas (ABC of Texas) is the construction association that advocates free enterprise and the merit shop philosophy. ABC of Texas is comprised of 8 Local ABC Chapters-TEXO (North and East Texas), Central Texas (Austin), South Texas (San Antonio), Texas Mid Coast (Victoria), Texas Coastal Bend (Corpus Christi), Texas Gulf Coast (Freeport), Southeast Texas (Golden Triangle) and Greater Houston-and represents over 1750 members of those chapters.

ABC of Texas strongly supports ending the practice of government acting as the collector of dues for unions. We believe that, on the local level, this can give unions an unfair political advantage. Many of these same unions support groups that advocate against our industry making absolutely ridiculous claims. It is unfair for government to collect dues for groups that use those dues to harass employers.

We understand that some groups might need to be exempted. We just urge that exemptions be held to a minimum.

Again, thank you for the opportunity.

Sincerely,

Jon Fisher
President

P.O. Box 1891 • Austin, TX 78767-1891 • Phone: 512-470-5756 • www.abctexas.org

AMERICANS FOR PROSPERITY TEXAS

House State Affairs Committee
Written Testimony submitted by Americans for Prosperity -Texas
By Jerome Greener, State Director

Chairman Cook and members of the committee, thank you for your request for our perspective on Paycheck Protection legislation.

We believe that the best policy position for our great state is to remove taxpayer dollars and resources from the collection of labor union membership dues because 1) this responsibility should not be the financial burden of taxpayers, and 2) a role of these unions includes political activity.

Labor union members will still be able to personally submit payment for their normal membership dues– similar to recurring payment such as a gym membership, Netflix subscription, etc. - rather than having the State of Texas deduct it automatically for them from their paychecks.

We respect the rights of individuals to participate in the political process, and the role of unions independent from government entities. However, we believe it is not an appropriate role of Texas taxpayers to subsidize labor union membership due collection.

We were strong supporters of Senate Bill 1968 and were discouraged that it failed to be adopted. We look forward to working with the committee to raise awareness of this issue, address any questions that arise, and find a solution that removes government from the role of facilitating the funding of political transactions. Please consider us as a resource, and we are willing to meet and work with your members at your pleasure, in hopes that the committee will advance similar legislation in the upcoming Session.

Thank you

Jerome Greener State Director
Americans for Prosperity – Texas 469-265-7768
jgreener@afphq.org

HOUSTON POLICE OFFICERS' UNION

Texas' Largest Police Union

1600 State Street • Houston, Texas 77007 • 713-237-0282 • Fax 713-227-8450

TO: Chairman Byron Cook
FROM: Ray Hunt, President
REF: Texas House of Representatives, State Affairs Interim Study on Dues Deductions for Public Employees
DATE: October 17, 2016

As stated last session, the Houston Police Officers' Union remains opposed to the State of Texas prohibiting public employees at the local level from voluntarily contributing their money to employee organizations, whose mission is to assist their members with a variety of benefits.

In Texas, it is entirely voluntary for an employee to join any employee organization. Last session the primary reason given for prohibiting deductions was the cost to local governments. Current statute requires the employee organization that receives the contribution to reimburse the processing costs to the impacted local government if the government incurs any costs.

In our particular case, our organization provides services via dues to members that our city cannot/does not provide, and the contract was unanimously passed by our city council. These services include legal services for police officers while in the course and scope of duties as law enforcement officers, disability insurance, an enhanced dental and vision program, and medical reimbursement. None of our dues deductions are used for political contributions.

It puzzles us to understand why the Texas Legislature is seriously considering this legislation based on the argument of costs to the city, which we believe there is none or is reimbursed. Some supporters claimed last session that such organizations harm local businesses. I assure you that our organization has absolutely nothing to do with harming private businesses and would oppose any such activity. In fact, we actually encourage and protect private businesses.

Houston police officers have a difficult and dangerous job in the largest city in Texas. Our organization is a respected professional labor organization that looks out for the interests of working police officers who protect people and businesses alike. We hope our elected officials show their support to our officers by opposing any legislation that prohibits local governments from allowing completely voluntary dues deductions.

My name is Rick Levy. I am Secretary-Treasurer of the Texas AFL-CIO, a state labor federation consisting of approximately 237,000 affiliated union members who advocate for working families in Texas on whose behalf I offer the following testimony as to Interim Charge Number 9.

We support of the liberty of state and local employees to deduct union dues, as well as any other authorized deduction, from their paychecks. This should not be a partisan or an ideological issue. It is an issue of economic liberty and freedom from government dictates regarding the personal decisions public employees make on how to spend their earnings:

Payroll deduction is entirely voluntary. Union membership for public employees is entirely voluntary in Texas and any decision to have dues deducted from their paycheck is completely voluntarily as well. It is also a choice that the employee may terminate at any time.

No expense to taxpayers. State law explicitly provides for organizations receiving payroll deduction to pay the administrative costs associated with those deductions. Taxpayers simply **do not** foot the bill for these activities. Indeed, the proponents of the legislation conceded this point in the recent Senate State Affairs Committee hearing.

Benefit to employees. Payroll deduction provides a safe and secure means of making payments in timely fashion. The payroll deduction system works within existing capabilities of state and local government, and diminishes the risk of ID theft and credit card fraud. Important benefits, such as survivor benefits, insurance and training, are often provided through employee associations. Access to those benefits could be compromised by the proposed legislation.

Local authority. Local authorities and school districts are in the best position to know what works best for their jurisdiction and their employees. This state is too big and diverse for a one-size-fits-all mandate from Austin on this matter.

Political Contributions Prohibited. Use of dues money for political purposes by labor unions and corporations is strictly regulated by Texas law. Unions in Texas are **explicitly prohibited** from using dues, whether received by payroll deduction or any other way, in making political contributions to candidates and PACs. *Texas Government Code 253.091-253.104*. All political contributions must be made through a PAC, and all contributions to the PAC must be made voluntarily. *Texas Government Code Section 253.102*. A corporation or labor organization may make one or more direct campaign expenditures from its own property for the purpose of communicating directly with its stockholders or members, as applicable, or with the families of its stockholders or members. *Texas Government Code Section 253.098*.

After *Citizens United*, labor unions, like corporations, can legally make independent expenditures on behalf of or in opposition to candidates. Unlike corporations, union Independent expenditures must be reported to the Texas Ethics Commission. This is because labor unions become subject to taxation if money is spent on this political purpose. Therefore, unions must set up separate, segregated accounts to make these expenditures, and the expenditures are reportable to the Texas Ethics Commission. If the funds spend more than $100,000 in any given calendar year, they must provide an accounting to the IRS as well. These funds are also prohibited from receiving money from any outside source, or else the fund is deemed a PAC and subject to all the reporting requirements and the restrictions of a PAC.

Payroll Deduction does not imply government endorsement. Payroll deduction is no more an endorsement of organized labor than it is an endorsement of organizations like United Way, the ACLU, Christian Legal Society, American Family Association, or Focus on the Family, which also have access to payroll deduction for state employees. Allowing public employees the freedom to spend their paycheck as they see fit does not mean the state has to like everything that they spend it on, nor supersede the liberty of employees to make the decision.

Private labor disputes should not drive state policy as to the rights of public employees. Much of the impetus of this proposed legislation stems from a private labor dispute between the janitorial company PJS and the Service Employees International Union Local 5. Empower Texans, Texas Public Policy Foundation, and National Federation of Independent Business repeatedly cite this dispute as proof that this legislation is necessary. But this dispute is completely irrelevant to the issue of whether teachers, fire fighters, and other public employees should be able to voluntarily deduct their dues from their paycheck.

First, this matter is a private labor dispute between two private parties. It has resulted in federal administrative complaints and state court litigation. While we reject the notion that the union has engaged in any wrongdoing, the ultimate determination of that matter will be made in more appropriate venues that have the authority and capacity to address the merits of the dispute.

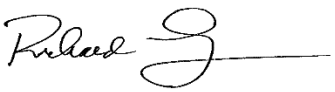
Second, the Service Employees International Union does not represent a single state employee in the state of Texas. Neither does it represent a single public school teacher, a single firefighter, police officer, or even a single public employee in Houston. Using the union's alleged conduct as the foundation for legislation affecting the rights of literally hundreds of thousands or public employees who have nothing whatsoever to do with this dispute is ludicrous.

The proponents of this legislation are seeking to use this dispute and this issue to drive an ideological and political agenda aimed at unions and at politicians that don't readily bend to their will, and they are using public employees as their pawn in this struggle.

Payroll dues deduction poses no threat to public welfare. It does not cost the government anything at all. It is a ministerial process that is embedded in modern payroll practices. It makes government a better employer, not a partner in any organization or ideology. Dues deduction is requested voluntarily by dedicated, hard-working employees who make sacrifices to engage in public service. Selective dues deduction bans that turn a ministerial system into one with winners and losers should have no place in state or local government.

The state of Texas is facing many significant concerns in this upcoming legislative session, many of which are of direct importance to millions of Texans. Spending more valuable time and resources on this non-issue would be a disservice to Texas taxpayers.

Thank you for considering our views. Respectfully submitted,



Rick Levy
Secretary-Treasurer Texas AFL-CIO

October 2016

Testimony of Ed Martin, Texas State Teachers Association, presented to the House Committee on State Affairs regarding dues collections by payroll deduction for public employee organizations

The Honorable Chairman Byron Cook and members of the State Affairs Committee,

For the reasons enumerated below, a prohibition on payroll deduction for public employee organizations is another example of a "solution in search of a problem." The state, municipalities and school districts typically provide employees the option to use payroll deduction to contribute their own money to any number of organizations. These public employees include TSTA members. A prohibition on payroll deduction that targets only a select group of individuals would unfairly deny teachers and other public school employees the opportunity to make voluntary payments to the employee or professional organizations of their choice through the safest and most secure method possible.

When testifying before the Senate Committee on State Affairs last month, the supporters of a payroll deduction ban alleged that payroll deduction is harmful to the business climate in Texas. However, none of the "examples" of alleged "harm" they cited had anything to do with public employee organizations, including public employee unions. Again, there is no problem in need of the proponents' so-called "solution." Instead of rhetoric, here are the facts.

- **In a right-to-work state like Texas, no one is forced to join a union or any employee organization, and payroll deduction is entirely voluntary**. Public employees in Texas do not have collective bargaining, and mandatory union membership is illegal in Texas because we are a right to work state. Every school district and public employee in Texas who chooses to direct a portion of earnings to an employee or professional organization is doing so freely and voluntarily.

- **Safety and security for employees**. Payroll deduction provides the safest and most secure means of making payments in a timely fashion and removes virtually all risk of ID theft and credit card fraud.

- **Dues deduction has no expense to taxpayers**. Even payroll deduction proponents admit that no state or local funds are needed to operate a payroll deduction system. And, if there should be an expense caused by deducting TSTA dues, the Texas Education Code, Section 22.001, says the organization receiving dues (TSTA) would be responsible for paying any administrative cost.

- **Dues cannot be used for political expenditures, and TSTA members cannot be required to make PAC contributions**. Under the Election Code, employee organizations may not use dues dollars for political contributions. TSTA has a political action committee that pays for anything related to political activity. All income and expenditures from a PAC are reported in compliance with state law.

Given these facts, it should be clear to any fair-minded observer that payroll deduction for public employee organizations presents no problem to employers or taxpayers. In fact, many local school board members have opposed proposed bans on payroll deduction because these school board members work with TSTA and other employee organizations to address the needs of our students and educators, and banning payroll deduction could impact the good work we do in Texas communities.

- **Professional development.** TSTA regularly provides training to help teachers master their teaching skills, often in cooperation with local school districts. Since the state adopted its new T-TESS teacher evaluation system, TSTA has trained more than 700 teachers, including many who are not dues-paying members.

- **Community involvement.** Local TSTA organizations regularly participate in and sponsor programs and community events, especially those that benefit our students and their families. **This community involvement** is increasingly important in a state where 60 percent of our 5.2 million public school students are considered economically disadvantaged.

- **Campus turnaround.** In many school districts, TSTA and our fellow teacher organizations have worked with local school districts and community leaders to implement the "community schools" model to address poverty, inadequate health care and other problems our students "bring to school" with them. This is a proven approach to turning around low-performing campuses by building bonds among educators, parents and community leaders.

TSTA members are educational employees who are dedicated to our communities and our students. The proponents seeking to ban payroll deductions for our organization seek to brand us as something we are not. Their attempt to deny our members the freedom to direct their dues to an organization that supports public education and the communities we serve would not be in the best interest of our great state.

Written Testimony of Bill Peacock
On House Committee on State Affairs Interim Charge #9

"Examine payroll deductions from state or political subdivision employees for the purpose of labor organization membership dues or fees as well as charitable organization and nonprofit contributions. Determine if this process is an appropriate use of public funds."

Mr. Chairman, members of the committee. My name is Bill Peacock. I am the Vice President of Research at the Texas Public Policy Foundation. Thank you for the opportunity to submit this written testimony on your interim charge #9.

Texas' economic success over the last 15 years, i.e., the Texas Miracle, has been grounded in the Texas Model: lower taxes and spending, less regulation, a sound civil justice system, and reduced reliance on the federal government.

The results of the Texas Model speak for themselves. Texas has been a magnet for high skilled and low skilled workers alike. For instance, from 2007 to 2013, the population of Texans aged 25 to 64 with at least a bachelors' degree increased by nearly 19 percent, almost 9 percent above the national average. The growth in the Texas workforce has also been ethnically diverse.

Why is this the case? Jobs. Texas has led the nation in job creation for more than a decade now, and Texas businesses have created both high paying and low paying jobs to meet the needs of workers and boost the economy.

Another measure of Texas' success is the performance of its public schools. Texas schools generally outperform the national average on National Assessment of Educational Progress (NAEP) tests in math and reading scores. For instance, average 8th grade math scores for Texas whites, Hispanics, blacks, and Asian/Pacific Islanders were all higher than the national averages for their groups.

What is the reason for these successes? What is the connection between a booming economy, good jobs, and above average test scores?

One significant factor connecting all of these is that Texas is a Right to Work state in which Texans cannot be forced to join a union to get a job. Unlike those states that don't have this employee protection, Texas employees and employers have not seen control of wages, work standards, and other labor-management policy shift almost entirely to unions. So both in the public and private sectors employers have had more flexibility to innovate, generate better levels of production, and pay productive employees more.

Yet, even though Texas' Right to Work status has kept us from experiencing the labor problems like those in the Midwest, the Northeast, and the West Coast, there are still problems that need to be addressed.

For instance, unions like the Service Employees International Union, National Nurses United, the Teamsters, and the Communications Workers of America have used federal law or pressure tactics, such as "corporate campaigns," to make significant inroads into Texas. One tactic often used is negative publicity to push companies into "neutrality agreements" with a union under which companies might provide personal contact information for employees, give unions access to employees in the workplace, and not to allow employees to vote in secret-ballot elections.

Often, because of the relatively small percentage of union members in Texas, these campaigns against private sector businesses are subsidized by union revenue from other states. Another way to fund them is when the state acts as the agent for the payment of employee dues by deducting them from paychecks.

There is nothing wrong with private employers deducting union dues—or other things like charitable contributions—from their employees' paychecks. However, the government should not be in the business of collecting dues/membership fees from public employees on behalf of a trade union, labor union, employees' association, or professional association, charitable organization, or other private organization. In today's world, technology has made it possible for employees to easily contribute to any organization they choose. And public employees, because they work for the people, should avail themselves of this technology.

The state of Texas should not allow government at any level to collect dues/membership fees from public employees on behalf of a trade union, labor union, employees' association, or professional association, charitable organization, or other private organization.

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October 14th, 2016

Re: John Riddle, President, Texas State Association of Fire Fighters Written Testimony on House State Affairs Interim Charge #9:

My name is John Riddle and I am President of the Texas State Association of Fire Fighters and am a retired fire fighter from Conroe, Texas. The Texas State Association of Fire Fighters (TSAFF) has over 14,000 members that are all professional fire fighters affiliated with local fire fighter associations from around Texas. The Association has been in existence since 1938. The Association is comprised of adults that have made a conscious, legal decision to join and either have their dues deducted or not.

We believe the main opponents of payroll deductions (according to testimony and written endorsements, the National Federation of Independent Business (NFIB), the Texas Public Policy Foundation (TPPF), and Empower Texans) are misleading legislators and the public in several ways. First, opponents of payroll deduction insinuate that members of our association are being forced to participate in payroll deductions and even go so far as to refer to this legislation as “paycheck protection”. Texas is a right-to-work state, which determines that membership in our organization is completely voluntary and those that choose not to join pay nothing. Then, if they choose to have their dues taken out through payroll deductions, they must fill out paperwork with the city authorizing the city to do so. This results in a two-step process, both of which are completely voluntary and state law, Texas Local Government Code 141.008(b), mandates that participation is voluntary.

These opponents also imply that payroll deductions are using appreciable amounts of taxpayer money. This is absolutely false. These deductions are handled no differently than insurance, federal withholding or voluntary charitable contributions. The cost to process these payroll deductions is microscopic if even existent and state law, Texas Local Government Code 141.008(d), explicitly provides that the organization receiving the dues is responsible for any administrative costs incurred in processing the deduction. These opponents have attempted to speak for local governments claiming that dues deduction is an imposition on those local entities. Local officials are largely positive towards dues deduction, as has been testified to, and there has been no local government outcry for this change.

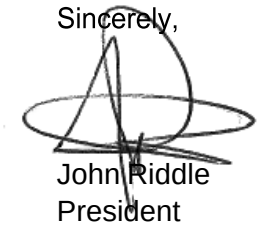
Our affiliated associations use these dues to advocate for things such as better equipment, better training, new fire stations and safe staffing levels, all of which can result in improved Insurance Service Office (ISO) ratings that lower insurance costs to members of the organizations that are attacking us now. Many of our local associations use these dues

deductions to provide extra benefits for fire fighter families such as supplemental insurance policies that cities often do not offer. The attempts by these groups to confuse people and contend that our dues are used for political purposes is dishonest in our opinion. Under the election code, employee organizations may not use dues dollars for political contributions. Such contributions require the formation of a political action committee and all income and expenditures from a PAC must be reported in compliance with state law.

The recent genesis of this legislation appears to be a private labor conflict inside a janitorial services company owned by Brent Southwell, Don Dyer and Rex Gore. We are confused as to why they and the opposition groups they are affiliated with in this effort would want to push a bill affecting public sector organizations. The bill they endorsed, SB1968-84R, would not have had any effect on their private employee union dispute other than to gain some kind of misdirected vengeance. One of the supporters of the legislation, Empower Texans, has made this one of their scorecard issues and heap scurrilous attacks on those that are not in lockstep with their distorted views. We don't keep scorecards in an attempt to embarrass or extort our wants because it is uncouth and without merit. Unfortunately, scorecards must be effective since people continue to listen to these political groups even as they make daily attacks on police, firefighters, teachers and for the most part Texans in general.

In closing, we would like to reiterate to NFIB, TPPF, Empower Texans and anyone else that is pushing this legislation: Our association is made up of grown men and women who are professional firefighters that make life and death decisions on a daily basis and put themselves in harm's way to protect life and property. They do not need the legislature or anyone else to "protect" their paychecks. We certainly have no opposition to private sector employees being able to utilize their paychecks in whatever way they deem necessary for their families and we would appreciate the same freedom.

Sincerely,



John Riddle
President

NFIB
The Voice of Small Business®

Testimony before the House Committee on State Affairs

On behalf of the small business community, we appreciate the opportunity to provide written material to the House Committee on State Affairs relating to interim charge #9, an examination of payroll deductions from state and political subdivisions.

1. Why Do Texas Businesses Care About Public Sector Unions? Few legislators understand how national unions are using their exclusive relationships with our public sector agencies to expand their private-sector interests in our state. Because Texas is a right-to-work state and most Texans oppose institutions that limit their liberty, unions work with elected officials to gain access to our public sector employees. Public sector unions then rely on our government agencies to collect their dues for them. Funds raised by this government/union partnership are sent out of state to then be selectively filtered back into Texas in the form of anti-business policy campaigns, like "Fight for $15" for example, which mandates a minimum wage increase on employers, whether they can afford it or not. Other labor union backed, anti-business policy campaigns include increasing employee paid leave, or forcing an employer to pay overtime to mid to upper-level managerial positions—*DOL Overtime Rule*—which places an extreme burden on smaller businesses. Business community advocates lobby to fend off these unmanageable mandates and because of labor union involvement in advocating against employers in these cases, we believe it is not only **not** the role of the government to collect dues for labor unions, but a conflict of interest.

From 2005 to 2015, our state comptroller's office collected over $34 million for public sector labor unions. We estimate the state's political subdivisions collected at least $50 million more. One-third of dues collected for AFSCME and SEIU are sent to Washington, D.C. and returned to Texas in the form of funding for anti-business campaigns. *(see 9/14/16 testimony by Brian Olsen before the Senate Committee on State Affairs).*

2. Unions Claim They Cannot Use Dues to Fund Political Causes—That's Only Half-True. It is true that unions may not use member dues to fund political *candidates*—this is not the issue. <u>The problem is that some public sector unions use funds collected for them by our government to finance partisan non-candidate initiatives businesses oppose</u>.

3. Claims Against Proposed Legislation to End Gov't Dues Deduction Do Not Hold Up. <u>Union Member Support</u>: Unions say state employees prefer government-managed payroll deductions for union dues. In fact, a 2015 statewide survey by Keep Texas Working found that 67% of union members who are registered to vote said they support legislation to end government withholding of union dues, *and 57% of union members* believe allowing government to withhold union dues presents a conflict of interest. <u>Public Support</u>: Unions say Texans do not care about legislation to end government withholding of union dues. In fact, according to the KTW survey, 60% of registered Texas voters (70% of Republicans and 49% of Democrats) believe it is a conflict of interest for government to collect dues for labor unions, and 62% of all Texans (70% of Republicans and 54% of Democrats) support legislation to end the practice. Most recently, Proposition 3, an initiative on the 2016 Republican primary ballot asking legislators to end government withholding of union dues, won 83% of the vote. **NFIB/TX members who polled on the issue, and of those who responded 93% agreed the practice should be prohibited.** <u>Employee Rights</u>: Some argue that ending government involvement in

dues withholding will limit rights for government employees and poses constitutional issues. These claims are false. Ending government's role in this abusive process places no restrictions on employees who wish to join, participate in, or fund unions or other employee organizations. It only restricts government's efforts to favor unions by offering to manage their dues programs. This is why similar laws have been enacted in numerous states, including Alabama, Arizona, Idaho, Indiana, Iowa, Kansas, Michigan, Tennessee, Wisconsin, and most recently, Oklahoma. Unions also claim their members will be harmed by losing the "convenience" of government services to collect their payments. In fact, employees may make the same arrangements through their banks or credit cards—a one-time task that will produce the exact results. Finally, unions claim legislation that allows payroll deductions for some purposes and not others is not constitutional because it results in "viewpoint suppression" and lacks a "rational basis." In fact, such legislation does not suppress the views of these groups (or of the employees who belong to them) in any way, just as the current refusal by government to collect dues for churches, health clubs, or our business organizations does not suppress the views of these organizations. Data Breaches: Unions say government-managed payroll deductions are safer than other methods. In fact, Texas agencies and municipalities have been responsible for numerous data breaches that have exposed critical state employee information. For example, in 2011, the Comptroller's office exposed 3.5 million Social Security numbers, names and address and in 2012, the Texas Attorney General's office exposed 6.5 million Social Security numbers and names.

4. Payroll deductions for unions and charitable organizations are not the same. The State Employee Charitable Campaign is strictly regulated and governed by committees, whose members are appointed by the Governor, Lt. Governor, and Comptroller, and approved by the Senate. Most importantly, law provides that none of the money collected for the SECC shall be spent on lobbying. This is not the case relating to the money collected by our government for labor unions. *(see www.secctexas.org for more on the highly regulated charitable campaign in Texas.)*

5. Conclusion: Government has no business serving as a dues collector for labor unions. Government dues programs for unions stack the deck against Texas business owners and their employees who want to remain union-free. They also undermine important Texas values that are widely supported by most Texans. Many other states have already banned this practice as a conflict of interest for government. It is clear that our government has no business serving as a dues collector for labor unions, and that maintaining this practice has a single purpose—to serve national unions that are seeking a stronger financial footing in Texas from which to undermine Texas businesses. Small businesses in Texas are drowning in a sea of anti-business regulations and rules put in place by the Department of Labor, the National Labor Relations Board, and our federal and state government. The fact is that those movements are backed by anti-business labor unions who are given access by our government to public employees to help fund these efforts. We just ask that these groups collect their own membership dues, and fund their own lobbying efforts, just as we do.

Respectfully,

Annie Spilman, Texas Legislative Director, National Federation of Independent Business/Texas.

DISCLOSURE
ELECTION TRANSPARENCY

<u>Interim Charge #10:</u> Monitor the impact of major State Affairs legislation passed by the 84th Legislature, including updates regarding recent contracting reforms. Conduct legislative oversight and monitoring of the agencies and programs under the committee's jurisdiction and the implementing of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should:

- **a) consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;**
- **b) identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;**
- **c) determine whether an agency is operating in a transparent and efficient manner; and**
- **d) Identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.**

Introduction

Under the Texas House Rules, which allow the House Committee on State Affairs broad jurisdiction over "questions and matters of state policy" and under the interim charge listed above, the Committee continues to study the need for more disclosure of money spent on political activity and increased transparency in our elections.

Money that is raised and spent to influence voting decisions should be completely transparent and subject to public scrutiny. In Texas, where there are no limitations on contributions or expenditures, disclosure is the only protection the public has to make an educated decision. Moreover, the United States Supreme Court in numerous rulings, including the *Citizens United* and *McCutcheon* cases, repeatedly held disclosure requirements to be constitutional.

Background

The Committee has addressed the issue of campaign finance disclosure since receipt of Senate Bill (SB) 346, in 2013. The bill required a person or group of persons who do not meet the definition of a political committee and spends more than $25,000 in a calendar year on political expenditures, to disclose the identity of political donors whose contributions exceeded $1,000 in a reporting period. According to the House Research Organization Bill Analysis of SB 346, supporters of the bill said, "SB 346 would close a loophole in existing political contribution reporting requirements and ensure that all entities spending money to influence elections were treated the same." SB 346 passed the Senate on a vote of 24 to 5, and the House 95 to 52. The bill was vetoed by Governor Rick Perry on May 25, 2013.

In 2015, the Texas House of Representatives once again passed the measure, but with several improvements. The bill increased the reportable political donations threshold from $1,000 to $2,000, in a reporting period. This change was made to ensure the reporting requirements would

not be overly burdensome and was intended only for larger political donors. This reporting would have required only those political donors who know, or have a reason to know, that the contributions would be used to make political expenditures. Moreover, it included an opt-out provision for donors who do not want their donations to be used for political purposes. The measure died in the waning days of the session, when the Senate would not agree to the disclosure of these political donations.

The Committee continues the pursuit of important disclosure reforms because money raised and spent to influence voting decisions and election results should be subject to public scrutiny. Certain politically active entities should not be given a pass from disclosure, while ALL others who receive political donations are required to disclose.

On October 22, 2016, the Texas Federation of Republican Women's (TFRW) 110 member board unanimously passed a resolution supporting legislation requiring organizations engaged in political advocacy to publicly disclose its political donors. TFRW is a formidable conservative grassroots organization, comprised of approximately 10,000 influential women.

TFRW's support of disclosure legislation to ensure transparency in elections is a tremendous step in allowing voters to better measure the authenticity and accuracy of political messages.

The TFRW resolution is enclosed in this interim report.

Conclusion

President Ronald Reagan remarked in a 1988 Legislative and Administrative Message to Congress entitled: *A Union of Individuals*, "The right to free speech and the right to participate in the democratic process are two of our most fundamental freedoms. In *Buckley v. Valeo*, the Supreme Court held that limits on how individuals spend their own resources in the political process can violate the First Amendment. This is a sound principle. We should make sure 'campaign reform' will not have the effect of reducing popular participation in the political process or impairing constitutional rights. Today, there are proposals to restrict certain parts of our electoral process. A more beneficial reform would be the requirement of full disclosure of all campaign contributions, including in-kind contributions, and expenditures on behalf of any electoral activities…."

Recommendations

President Reagan and the TFRW got it right. The Texas Legislature should enact these principles as well, by passing legislation that requires those engaged in campaign activity to disclose their contributions and expenditures. If we fail to act, we leave the opportunity for loopholes for a growing number of entities to anonymously manipulate and control our elections, which undermines the democratic process.

Enclosure: TFRW's Resolution

Promoting Free Speech and Transparency in Elections

Whereas, the ability of voters to evaluate issues and candidates and make informed decisions is the cornerstone of our democracy; and

Whereas, a key part of making an informed decision is the ability to evaluate who is advocating the ideas or endorsing candidates being considered; and

Whereas, Texas has a long history of requiring transparency and disclosure in the political process; and

Whereas, Texas has chosen not to place limits on political spending to protect the rights of individuals to freely give money and fully participate in the political process; and

Whereas, at the same time, voters have a right to know who is funding the political information they receive so they can evaluate the information and possible motives of those who are providing it; and

Whereas, knowing who is giving money to try to influence elections is the only way to ensure transparency and allow voters to make fully informed choices; and

Whereas, an individual's constitutional right of free speech can be threatened when his or her voice is drowned out by outside sources who secretly aim to influence elections and legislation; and

Whereas, the late Supreme Court Justice Antonin Scalia wrote: "Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed." And now, therefore, be it

Resolved, that the Texas Federation of Republican Women supports legislation to clarify that organizations engaged in political advocacy must publicly disclose their donors just as candidates and political action committees do. This legislation should not apply to religious congregations or groups primarily engaged in providing charitable services, but specifically to those organizations which primarily engage in formal political advocacy for candidates, causes or legislation.

APPENDIX A -- DISSENTING LETTER

Texas House of Representatives
State Representative
Helen Giddings
District 109

December 9, 2016

Representative Byron Cook, Chair
House Committee on State Affairs
P.O. Box 2910
Austin, TX 78768

Chairman Cook:

As Vice-Chair of the State Affairs Committee, it has been a pleasure serving at your side to confront so many issues of significance to our state. Our committee is often the first to face issues of human rights, government transparency, and taxpayer stewardship. Our hearings host some of the Legislature's most important debates, and I'm very proud of that.

In reviewing the 2016 interim report, these important disagreements and debates are clear. With most interim charges, the committee may not walk away in full agreement over the path forward. I am appreciative of the fact that typically there's an effort to present balance and respect of both sides of the debate. As it relates to a couple of sections, I have concerns regarding the cited conditions and recommendations.

I first turn to Charge #4, the Bioethics of Fetal Tissue Research. After reviewing the film of the hearing, I believe the informative testimony from the University of Texas System and Texas Tech University Health System was not fully reflected. For example, the UT System explained in great detail the review and oversight processes of their fetal tissue research. They explained how they, and any third party suppliers, must comply with clearly outlined state and federal guidelines regarding treatment and consent. They spoke about the major progress achieved through the use of fetal tissue for the study of lung development, which is necessary to help prematurely born children with infant respiratory distress syndrome (IRDS). They explained further that fetal tissue is critical in the study of infectious diseases, including HIV/AIDS at the Galveston National Laboratory. In some cases, it would take years, and may be impossible, to find cures of certain diseases without the use of fetal tissue. This would imperil the lives of prematurely born infants with IRDS and the unborn affected with Zika. The use of fetal tissue research in state universities is also very rare. For instance, in the thousands of research projects underway at UT Southwestern, only three involve the use of fetal tissue.

These critical pieces of information are not properly reflected in the report. Instead, the description unfortunately too often relies on unsubstantiated conjecture and accusations. Our committee should not be relying on one-sided conclusions in ongoing investigations, testimony

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to committees outside of our purview, or partisan conclusions without evidence- particularly when such critical information from our state's researchers is not properly reflected.

I believe that each member of the committee, as well as our colleagues in the Legislature, want to ensure total respect for the dignity of the human body. However, the committee has an important responsibility to properly and fairly reflect the testimony and discussion from our experts. In my opinion, I feel that was not accomplished in Charge #4.

I also disagree with the characterization of Charge #8's final recommendation: "Policymakers should also reinstate DPS's authority to collect fingerprints." As you will recall, many members, if not most, believe the Department of Public Safety never had this authority to begin with. This policy was clarified after significant public outcry when DPS unilaterally changed their policy, without legislative directive, around fingerprint collection. During our hearing, I recall no testimony that addressed those concerns or supported this recommendation.

Again, Chairman Cook, I thank you for your partnership in the critical work of the State Affairs Committee. I look forward to continuing this work next session.

Sincerely,

Helen Giddings

Helen Giddings

APPENDIX B -- DISSENTING LETTER

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HOUSE OF REPRESENTATIVES

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COMMITTEES:

JUDICIARY & CIVIL JURISPRUDENCE
VICE-CHAIR

STATE AFFAIRS

December 27, 2016

Representative Byron Cook, Chair
House Committee on State Affairs
P.O. Box 2910
Austin, TX 78768

Dear Chairman Cook,

This report includes many fine recommendations, however, we do have concerns regarding Interim Charge #4, the bioethics of fetal tissue research. The report includes reliance on unsubstantiated charges for which there has been no adjudication. Additionally, the report does not provide a thorough and balanced discussion of tissue donation utilized by biomedical researchers in Texas. We submit this letter to be included in the report as a record of our concerns about the potential impact to the biomedical research community in Texas.

The report should not rely on information for which the State Affairs Committee received no public testimony. Proceeding in this manner marks an alarming deviation from fact-finding processes. The courts and administrative processes must make decisions regarding ongoing investigations. Reaching a conclusion concerning an ongoing investigation in the Committee's interim report is not appropriate at this time. Nor should the report rely on investigative materials as conclusive evidence without evidentiary and procedural standards being satisfied.

The report should include information regarding investigations throughout the country, including in Texas, that have uniformly concluded in no finding of wrongdoing related to the donation of fetal tissue for the purpose of medical research. Further, the report should contain enclosures of the court rulings in which courts, including the 5th Circuit, have found that facilitating the donation of fetal tissue does not justify terminating a provider from Medicaid. The report should present the full array of facts surrounding the transfer of fetal tissue for the purpose of medical research.

The report should also present a balanced view of tissue donation in Texas. The State Affairs Committee has heard no testimony, nor has the Committee been presented evidence that indicates that Internal Review Boards at Texas universities or facilities have failed to ensure

ethical research practices in Texas. Additionally, the report relies on testimony from an unknown individual to a federal committee outside the jurisdiction of the State Affairs Committee. Texas researchers should not be subjected to the opinions presented to a federal committee by someone who does not appear to be familiar with research practices in Texas. The State Affairs Committee should have an opportunity to ask questions of a witness quoted in the report to determine the testimony's veracity and adherence with accepted medical and ethical standards.

Biomedical research is a key component to ensuring medical advancement in the future. In order to best support the biomedical research community in Texas, the report should not rely on unsubstantiated and unadjudicated claims of improper informed consent. Nor should the report rely on claims made during testimony before committees outside Texas. Consent standards should require proper documentation and fully informed obtainment of consent. However, the Committee has not been presented evidence that indicates Texas facilities have not followed ethical standards for research. Therefore, the unproven allegations of improper consent practices mentioned in the report should not guide legislative decisions regarding consent standards.

Thank you for your dedication to these important issues. We look forward to continuing to work with you and other members of the State Affairs Committee during the forthcoming legislative session.

Respectfully,

Jessica Farrar
State Representative, District 148

Ina Minjarez
State Representative, District 124

ENDNOTES

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[iii] Vollbrecht, Stephen. State Office of Risk Management. Texas House of Representatives Committee on State Affairs Public Hearing. Texas Capitol, Austin, Texas. 28 April 2016. Testimony.
[iv] Marek, Mark. Texas Department of Transportation. Texas House of Representatives Committee on State Affairs Public Hearing. Texas Capitol, Austin, Texas. 28 April 2016. Testimony.
[v] Id. In response to question by Representative Dan Huberty.
[vi] According to the testimony of Brian Lloyd, the Texas Commission on Environmental Quality manages emergency response for water utilities.
[vii] Lloyd, Brian. Public Utility Commission of Texas. Texas House of Representatives Committee on State Affairs Public Hearing. Texas Capitol, Austin, Texas. 28 April 2016. Testimony.
[viii] Id.
[ix] Magness, Bill. Energy Reliability Council of Texas. Texas House of Representatives Committee on State Affairs Public Hearing. Texas Capitol, Austin, Texas. 28 April 2016. Testimony.
[x] Richardson, Dale. Department of Information Resources. Texas House of Representatives Committee on State Affairs Public Hearing. Texas Capitol, Austin, Texas. 28 April 2016. Testimony.
[xi] Id.
[xii] Wisian, Ken. Texas General Land Office. Texas House of Representatives Committee on State Affairs Public Hearing. Texas Capitol, Austin, Texas. 28 April 2016. Testimony.
[xiii] Id.
[xiv] Howe, Mike. Texas American Water Works Association. Texas House of Representatives Committee on State Affairs Public Hearing. 28 April 2016. Written Testimony.
[xv] Id.
[xvi] See: http://www.txccri.org/wp-content/uploads/2013/03/TCCRI-Best-Value-White-Paper-3.25.13.pdf and http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=SB1681.
[xvii] Letter to Chairman Byron Cook and the House Committee on State Affairs from Texas Ethics Commissioner Jim Clancy. 2 September 2016.
[xviii] Health and Human Services Commission. Texas House of Representatives Committee on State Affairs Public Hearing. 15 August 2016. Texas Capitol, Austin, Texas. Testimony.
[xix] Texas State Auditor's Office. Texas House of Representatives Committee on State Affairs Public Hearing. 15 August 2016. Texas Capitol, Austin, Texas. Testimony.
[xx] Id.
[xxi] Texas Comptroller of Public Accounts. Texas House of Representatives Committee on State Affairs Public Hearing. 15 August 2016. Texas Capitol, Austin, Texas. Testimony.
[xxii] Id.
[xxiii] Texas Senate Bill 20 (84R, 2015).
[xxiv] Texas Comptroller of Public Accounts. Texas House of Representatives Committee on State Affairs Public Hearing. 15 August 2016. Texas Capitol, Austin, Texas. Testimony.
[xxv] Quoted from Texas Conservative Coalition Research Institute. Texas House of Representatives Committee on State Affairs Public Hearing. 15 August 2016. Texas Capitol, Austin, Texas. Written Testimony.
[xxvi] Arriaga, Amanda. Texas Department of Public Safety. Texas House of Representatives Committee on State Affairs Public Hearing. 15 August 2016. Texas Capitol, Austin, Texas. Testimony.
[xxvii] Id.
[xxviii] Id.
[xxix] Kimbriel, Todd. Texas Department of Information Resources. Texas House of Representatives Committee on State Affairs Public Hearing. 15 August 2016. Texas Capitol, Austin, Texas. Testimony.
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[xxxi] CompTIA. Texas House of Representatives Committee on State Affairs Public Hearing. 15 August 2016. Texas Capitol, Austin, Texas. Written Testimony.
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[xxxv] Blair, Christine; Kushmeider, Rose. "Challenges to the Dual Banking System: The Funding of Bank Supervision". FDIC Banking Review. Vol. 18. No. 1. 2006.
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[xl] Id.
[xli] Cooper, Charles. Texas Department of Banking. Texas House of Representatives Committee on State Affairs Public Hearing. Texas Capitol, Austin, Texas. 28 April 2016. Testimony.
[xlii] Phillips, Keith. Federal Reserve Bank of Dallas San Antonio Branch. Texas House of Representatives Committee on State Affairs Public Hearing. Texas Capitol, Austin, Texas. 28 April 2016. Testimony.
[xliii] Allmon, Jennifer. Texas Catholic Conference. Texas House of Representatives Committee on State Affairs Public Hearing. Texas Capitol, Austin, Texas. 28 April 2016. Testimony.
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[xlv] Schmainda, Kathleen. U.S. House of Representatives Committee on Energy and Commerce. Bioethics and Fetal Tissue Hearing. 2 March 2016. Testimony. http://docs.house.gov/meetings/IF/IF04/20160302/104605/HHRG-114-IF04-Wstate-SchmaindaK-20160302.pdf
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[xlvii] Tex. Util. Code § 56.021(1) (West 2016).
[xlviii] Quarterly reports of disbursements from the TUSF are available at http://www.puc.texas.gov/agency/resources/reports/Default.aspx.
[xlix] *Compliance Proceeding for Implementation of the Small and Rural Incumbent Local Exchange Carrier Universal Service Plan*, PUC Docket No. 18516, Order (Jan. 14, 2000).
[l] HB 2603, Act of June 17, 2011, 82nd Leg., R.S (HB 2603).
[li] Id.
[lii] *See Annual Adjustment to Support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to PURA § 56.032(d)*, PUC Docket No. 45809, Order (Aug. 25, 2016).
[liii] Tex. Util. Code § 56.032(h).
[liv] PUC Docket No. 45809, Order at 4 (Aug. 25, 2016).
[lv] Tex. Util. Code § 56.032(b) and (h).
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