



Dear Friend:

I write today to outline the following 10 legislative issues El Pasoans should be watching for the rest of the 81st Legislative Session. The session ends in 21 days, with Sine Die on June 1, 2009.

Here is our Top Ten:

### **1. Tier One:**

Currently, Texas has three Tier One institutions: The University of Texas at Austin, Texas A&M University and Rice University. In comparison, California has nine Tier One institutions and New York has five. Tier One institutions bring together a critical mass of talent and enrich the area in which they are located. By not having more Tier One institutions, Texas loses out in research funding, venture capital, top students who leave to attend Tier One institutions outside of the state, and top faculty, researchers and scientists.

[SB 9](#) is the University Tier One funding bill authored by Senator Judith Zaffirini (D-Laredo) and co-authored by me. As there are no current statutes to support, aid and encourage emerging research universities, and create new Tier One higher education institutions, this legislation creates two new programs and enhances another to promote this effort. SB 9 as amended changes current law relating to financial support and incentives for the development of national research universities and high-quality comprehensive regional universities and a review of the institutional groupings under the Texas Higher Education Coordinating Board's accountability system.

The bill has been passed by the Senate and is currently in the House Committee on Higher Education.

### **2. Texas physician shortages**

Currently, El Paso is the least staffed large city in the United States. In 2008, El Paso County had less than 109 direct care physicians per 100,000 people, much lower than the state average of 159 per 100,000 people national average of 214 per 100,000 people. This shortage will only be exacerbated as a result of Base Realignment and Closure (BRAC).

Growth at Fort Bliss is estimated to be more than 67,000 troops and dependents. BRAC alone will require an additional 615 doctors by 2017.

Two bills filed by our office this session work to address severe doctor shortages in Texas cities like El Paso:

[SB 202](#): This bill would allow qualified, out-of-state doctors to begin seeing patients while waiting for their licensure applications to be processed. The bill would allow the Texas Medical Board to extend provisional medical licenses to out-of-state doctors who are licensed and in good standing in another state, sponsored by a currently licensed Texas doctor and will practice in medically underserved areas of Texas.

This bill has already passed the Senate and has moved to the House Committee on Public Health.

[SB 616](#): This bill will allow qualified, out-of-state doctors to obtain Texas medical licenses, by loosening existing law regarding exam attempts and the time frame for passing all parts of the national exam. Currently, a physician can not ever obtain a medical license in Texas if he or she takes longer than seven years to pass all three parts of the national licensing exam. Also, a physician can not obtain a license if a physician takes any part of the national exam more than three times. To qualify for exceptions to these rules under SB 616, a physician must meet all of the following requirements:

- be licensed and in good standing in another state (each medical license must be free of any suspensions, revocations, restrictions, disciplinary order or probation);
- be licensed in the other state for at least five years; and
- practice in a medically underserved area or a health professional shortage area.

This bill has already passed the Senate and has moved to the House Committee on Public Health.

### **3. Transportation**

With Texas set to grow to 49 million inhabitants by 2050, we are \$256 billion short of meeting mobility needs, or \$8 billion each year. Over 10 years, more than \$11.2 billion that is supposed to be dedicated to roads has been diverted from the highway fund to pay for other underfunded programs like the Department of Public Safety and public schools.

Legislation passed last month by the Senate, [SB 855](#), would give certain urban areas the option to call an election for voters to decide whether or

not to approve new funding streams to build roads and railways. As introduced, the bill would have only allowed areas in North Texas, Bexar County and Travis County to opt-in to the program. I filed an amendment to the bill that would include El Paso as an eligible county. The bill, as passed by the Senate would allow any of these funding options be put up for a vote:

- a new resident impact fee on vehicles previously registered out of state;
- a mobility improvement fee to be imposed at time of vehicle registration;
- a driver fee imposed upon renewal of driver's licenses;
- a local option gas tax;
- an emissions fee imposed at time of vehicle inspection; or
- a parking fee imposed on publically-owned parking lots.

The bill has moved onto the House Committee on Transportation.

#### **4. Expanding CHIP**

Texas ranks [first in the nation in the number and percentage of uninsured children](#). Of the approximately nine million uninsured children in the U.S., 1.5 million are from Texas. The state also ranks [seventh nationally in the number of children living in poverty](#). To help address this, last week, the Senate passed a bill to expand participation in the state's Children's Health Insurance Program (CHIP).

[SB 841](#), authored by Senator Kip Averitt (R-Waco) and coauthored by me would expand CHIP eligibility to children whose families earn up to 300 percent of the federal poverty level. Children are currently only eligible for enrollment if their family earns up to 200 percent federal poverty level. Families of four with an annual income of about \$22,000 are at the federal poverty level, according to 2009 guidelines set by the U.S. Department of Health and Human Services. The bill could expand coverage to more than 80,000 additional children in Texas.

Earlier this session, our office filed [SB 577](#) which is nearly identical to SB 841. My bill would have also created a buy-in option for children above 300 percent of the federal poverty limit, where they can pay a premium and fees to access health insurance.

SB 841 has been referred to the House Committee on Human Services.

## **5. Trans fat prohibition**

Most of the trans fat Americans consume is [artificial trans fat, which comes from oil that has undergone partial hydrogenation](#), a process in which hydrogen is added to an oil to make it more solid. This process is used in most margarine or shortening. Trans fat lower levels of HDL ("good") cholesterol, which leads to clogged arteries and increases the risk of heart attack and stroke. Trans fat also decreases HDL cholesterol, the body's "good cholesterol." Researchers at the Harvard School of Public Health estimate that consumption of trans fat [causes 72,000 to 228,000 heart attacks, including roughly 50,000 fatal ones](#), per year.

In response, I filed [SB 204](#), which amends the Health and Safety Code to prohibit Texas restaurants from packaging, storing or using trans fat to prepare or serve food. Under the bill, it would be required that all prepared and served food items contain less than 0.5 grams of trans fat per serving. Restaurants would be inspected for compliance as part of their regular health and safety inspections. The ban would be phased in over the next few years. Franchises of 15 or more restaurants must comply by September of 2010. The bill will give franchises of less than 15 restaurants one additional year to comply. Contracts signed prior to September 1, 2009 for food wholly or partially prepared with trans fats are exempt for the length of the contract.

The bill exempts nonprofit organizations, volunteer fire departments, grocery stores, bakeries, private catering events and convenience stores with at least 50 percent revenue from gasoline.

Across the county, major restaurant chains and food companies have [already eliminated trans fat from their menus](#). Our office has worked closely with the Texas Restaurant Association and Texas Retailers Association to make sure the bill improves Texans' health without putting undue burden on Texas businesses.

S.B. 204 passed the Senate last Friday. A companion bill to SB 204, [HB 1523](#) by Representative Carol Alvarado (D-Houston), has passed out of the House Committee on Public Health and will soon be heard by the full House.

## **6. Expanding solar energy and technology in Texas**

By allowing for investment in solar technology, this measure is a significant step toward creating thousands of solar-related jobs in Texas and could lead to more manufacturing locating in the state. Texas alone receives enough solar energy to supply one and a half times the world's

current energy consumption. Today, Texas households pay 56 percent more in monthly energy costs than the national average. Harnessing Texas' natural resources for the production of high efficiency, clean energy will not only help preserve the environment, it will boost the economy and help energy consumers save money.

Late last month, the Texas Senate passed [SB 545](#), an omnibus solar bill authored by Senator Troy Fraser (R- Horseshoe Bay) that [includes concepts long advanced by our](#) office to develop solar energy technology in Texas. Among other provisions, [SB 545](#) as amended:

- Creates a distributed solar generation incentive program for residential and business customers administered by electric utilities;
- Ensures that costumers putting solar or other renewable energy on their property get paid a minimum fair market value should they generate surplus energy;
- Ensures that information about the incentive program and about what buyback rates are offered by retail electric providers is available on the PUC Web site, <http://www.puc.state.tx.us/>, and on customers' bills;
- Provides net metering policies requiring customers to receive real time market price for exported energy and allows them to obtain other offers from renewable energy producers and clarifies that customers can have third parties install solar energy devices on their home and lease the system;
- Bars residential homeowners associations from imposing arbitrary bans on solar technology on homes;
- Mandates that municipally-owned utilities and electric co-ops would have to report their own efforts to create solar rebate programs;
- Authorizes the State Energy Conservation Office to establish a revolving loan program to help schools install solar energy systems;
- Requires that home builders of new subdivisions with more than 50 homes offer the installation of solar energy devices as an option for new home buyers- a concept originally filed by Senator Shapleigh under [SB 427](#).

SB 545 has been referred to the House Committee on Energy Resources.

## **7. Small business exemption from franchise tax**

During the 79th Legislature, Third Called Session, the Legislature revised the state's franchise tax to base the tax on gross margins. Businesses with total revenue of less than \$300,000 were exempted from the tax. In

the 80th Legislature, Regular Session, a sliding scale of franchise tax discounts were implemented for businesses with revenue between \$300,000 and \$900,000.

This session, [HB 4765](#), authored by Representative Rene Oliveira (D-Brownsville), temporarily raises the total revenue exemption from \$300,000 to \$1,000,000 for tax reports due in 2010 and 2011, which are tax years 2009 and 2010, respectively. After that period, the total revenue exemption returns to \$300,000.

Our office filed similar legislation this session, [SB 193](#), which would have had moved the total exemption to \$1,000,000.

HB 4765 has passed the House and is currently in the Senate Committee on Finance.

## **8. Expanding TxDOT's authority to relocate rail**

Legislation filed by our office this session would grant the Texas Department of Transportation (TxDOT) greater authority over rail projects in the state.

Current state law relating to the Texas Rail Relocation and Improvement Fund (TRRIF) does not include the necessary authority for TxDOT to buy ROW for the relocation of a privately owned rail facility. In response, I filed [SB 612](#), which clarifies current law by providing TxDOT with the authority to undertake certain types of railroad projects. Specifically, this bill clarifies TxDOT's authority to acquire property to relocate a public or private rail facility, tap into the Texas Rail Relocation and Improvement Fund and the Texas Enterprise Fund to fund rail facilities, and issue loans and provide alternative funding options for rail facilities. This bill also provides for state conformity with federal law relating to the statewide transit safety program.

Rail relocation and improvement will require TxDOT to work with private entities, in a process that will be very costly. Under current law, TxDOT already has authority to acquire property to relocate a (public or private) rail facility, but it applies only when the department uses funds in the TRRIF. To date, the TRRIF has not been capitalized. Current law also does not specifically allow for the state to develop and construct projects on privately owned rail facilities. In many instances, TxDOT will work with private entities that own rail facilities to be relocated. Given this case, TxDOT's authority, for example, to acquire property to be owned by a private party, is not explicit, and needs to be made clear.

[SB 612](#) clarifies that TxDOT has this authority. The bill provides that in order to apply for many of the competitive rail grants, applying entities must have the authority to construct the project, making this change necessary. The improvement must be in the best interest of the state and meet four of the five TxDOT goals of reducing congestion, enhancing safety, improving air quality, expanding economic opportunity and preserving the value of our transportation assets.

Current law does not allow TxDOT to use money from the general revenue except under line item, nor does current law authorize TxDOT to fund a rail facility by using funds from the TRRIF. Considering the huge expense entailed in rail relocation, TxDOT may now spend money received from the Texas Economic Development Bank and the Texas Enterprise Fund.

[SB 612](#) also adds rail to the definition of a transportation project, thus allowing TxDOT to leverage funds for rail projects through tolling and to use surplus revenue of a toll project or system to pay the costs associated with a rail project. The bill would allow the Commission to issue loans to private railroads, excluding overhead and indirect costs. TxDOT would need to establish rules to implement the loan program.

In the House, Representative Ruth Jones McClendon (D-San Antonio) offered an amendment to SB 1, the state's budget that would set aside \$91 million a year to relocate rail lines from busy metropolitan areas to the country.

## **9. Public Education**

Following the 2006 special session, the legislature reduced property tax rates, resulting in an increase in the amount of the state share of funding used for public schools and a corresponding decline in revenue needed from local taxes for school maintenance and operations. But, instead of increasing the funding level per penny of property tax in proportion to the decrease in the number of allowable pennies (and therefore maintain the funding level), the state allowed every school district to fall in to a hold-harmless target revenue, guaranteeing each district a unique "target revenue" per student. In other words, every district receives funding based on their target revenue hold-harmless, rather than through an equalized system based on current costs.

This results in an inefficient use of taxpayer funds since funding is not based on the educational costs of the students within a district. Districts will continue to be capped at their target revenue hold-harmless until the cost-based formula system delivers more funding to school districts than the target revenue hold-harmless. In addition, districts will be forced to

increase taxes and spend fund balances to offset the lack of funding provided under current law.

The Senate budget had approximately \$1.9 billion budgeted for the return to a formula-driven public school finance system that improves equity and reduces recapture.

[HB 3646](#) by Representative Scott Hochberg (D- Houston) would take this money and:

- increase aid to districts with low revenue targets;
- improve equity by increasing the basic allotment, guaranteed yield, and equalized wealth level, putting districts with low revenue targets back onto formula funding;
- reduce recapture payments and eliminate recapture for 30 districts;
- provide every district a minimum \$100 per Weighted Average Daily Attendance (WADA) increase;
- provide an across-the-board teacher pay raise of at least \$800 a year;
- apply the "golden penny" yield to two additional pennies, without requiring districts to raise taxes;
- allow districts to include Teacher Retirement System and Social Security payments in funds allocated for pay increases;
- removes the mid-sized adjustment exception for Chapter 41 districts;
- repeals set-asides from the Compensatory Education allotment;
- establish a permanent "roll forward" for the Existing Debt Allotment (EDA) program;
- allow districts to exceed the 50 cent debt cap for debt refinancing when it saves taxpayers at least 10 percent on debt service; and
- provide funding for credit recovery classes for students.

## **10. Stopping violent transnational gangs and drug cartels**

In the United States today, there are at least nine well established gangs engaged in criminal enterprise with Mexican cartels.

They work from inside prisons, have operators in the streets and links with local and border police who facilitate their drug trafficking. The criminal activities of these organizations, which operate inside and outside Texas' prisons, include drug trafficking, extortion, kidnappings, sexual assault and murder. In El Paso, there is a direct link between the drug cartels and the gangs, especially the one known as "Barrio Azteca."

According to the annual National Drug Threat Assessment by the National Drug Intelligence Center, Mexican drug trafficking organizations represent the greatest organized crime threat to the United States. Mexican gangs control distribution in most U.S. cities and are gaining strength in areas they do not yet control. Mexican gangs maintain cross-border communication centers near the U.S. border to coordinate smuggling and continue to increase their connections to U.S.-based crime organizations, including street and prison gangs.

Late last month, the Senate passed [SB 11](#), authored by Senator John Carona (R-Dallas) and co-authored by me, which is designed to curb gang activity in Texas and stop violent transnational drug cartels.

[SB 11](#) includes the following provisions:

- Members of a criminal street gang would be made liable for monetary damages they inflict on a city or neighborhood. Civil suit may be brought by a district, city, or county attorney or the attorney general. Damages may include actual damages, exemplary damages, court costs and attorney's fees;
- The bill raises the cap on penalties that a prosecutor can recover against a person who violates a gang injunction from \$10,000 to \$100,000;
- Persons convicted of a gang offense would have their driver's licenses suspended for one year;
- A judge would have the discretion to require persons convicted of multiple gang-related offenses serve consecutive sentences;
- Where a person over the age of 21 creates an illegal or false ID, that person cannot use the defense of writing "not a government document" on the ID;
- Expands the criteria under which offenders may be added to the State's Gang Database to include the use of the internet to identify one's self as a gang member or to recruit new membership;
- Mandates that an annual Gang Report be produced by the Texas Fusion Center and provided to the Governor. This report would include an evaluation of the threat of criminal street gangs and recommendations to prevent human trafficking, reducing gang violence, preventing the growth of gangs, and ensuring law enforcement training;
- Allows judges the power to prohibit persons on probation from having contact with "any person convicted of an offense involving or furthering criminal street gang activity;"
- Allows for a wiretap to effectively attach to a person rather than a specific phone or device where a standard wiretap is impractical. This is focused on the use of cell phones by organized crime. Under

- current law, when a suspected gang member switches from phone to phone, law enforcement must apply for new wiretaps each time;
- Creates a new offense for firearm smuggling if the person intentionally or knowingly possesses transports or transfers a firearm in violation of the law. The penalty for this offense is a third degree felony unless committed with respect to three or more firearms, which causes the penalty to be increased to a second degree felony. Either of these penalties is increased to the next highest level of penalty if the offender was acting for profit;
  - Creates a law enforcement integrity unit to be placed within the Texas Rangers to investigate law enforcement corruption by criminal street gangs and organized crime. The unit will assist Federal agencies, state and local agencies, and district and county attorneys in investigations and prosecutions;
  - Gang members would be registered on a database, like sex offenders. Offenders must register themselves annually for ten years or more frequently if deemed necessary by DPS. Upon third conviction of a gang-related felony, a judge would have the discretion to require the offender to wear an ankle monitoring device if placed on probation or parole;
  - Makes the penalty for a gang member directing minors to commit crimes equal to the penalty for the crime committed if done in furtherance of gang activity;
  - Makes it a state jail felony to threaten a family member of a child who is being solicited to participate in gang activities;
  - Makes it a state jail felony for a member of a criminal street gang to intimidate, harass, or threaten another person;
  - Juveniles who have participated in gang-related conduct would be required to participate in a gang intervention program; and
  - Creates "Gang-Free Zones," within which penalties for gang-related offenses increase by one increment. These "gang-free zones" include:
    - areas within 1,000 ft off school property;
    - areas within 1,000 ft of higher education property;
    - areas within 1,000 ft of youth centers;
    - areas within 1,000 ft of playgrounds;
    - areas within 300 ft of public pools or video arcades;
    - areas within 1,000 ft of movie theaters or shopping malls;
    - and
    - school buses

This session, our office also filed [SB 849](#), which would make it a first degree felony if a person knowingly initiates, organizes, plans, finances, directs, manages, or supervises a criminal street gang or members of a criminal street gang with the intent to benefit, promote, or further the

interests of the criminal street gang or to increase the person's standing in the criminal street gang.

SB 11 has passed the Senate and has been referred to the House Committee on Criminal Jurisprudence.

### **The Budget**

And finally, before moving to the Governor's desk for his signature or veto, the budget will be considered in a conference committee comprised of members of the House and Senate appointed late April. The conference committee will resolve major differences between the Senate and House, specially in TxDOT funding, Texas Grants, and Medicaid.

For more information, please contact Daniel Collins at [daniel.collins@senate.state.tx.us](mailto:daniel.collins@senate.state.tx.us) or 915-5441990.

Very truly yours,

Senator Eliot Shapleigh