

MEMORANDUM

To: Members and Interested Parties

From: Sid Rich

**Subject: LEGISLATIVE REPORT FOR 2011
July 4, 2011**

**SPECIAL SESSION CALLED, 2012-2013 BUDGET PASSED, RATE CUTS AVERTED,
AND FINGERPRINT BILL KILLED. DETAILS INSIDE.**

GENERAL—Not since 2005 have we had less legislative proposals. There were **1,931 Senate bills** and **3,865 House bills**, for a total of 5,796. They passed **1,377, or 23 percent**. Not passing a great deal of legislation is probably a good thing. It's hard to pass legislation and that's the way it should be.

Legislative Year	Bills Filed	Bills Passed	Percentage Passed
2009	7,419	1,459	19%
2007	6,181	1,481	23%
2005	5,491	1,389	25%

PURELY POLITICAL—Representatives of 100 tea party and related groups posted an open letter to members of the Texas House urging them NOT to sign pledge cards that would commit them to voting for Speaker Straus at the start of the 2013 regular session. The tea party folks didn't want Straus this session and were VERY upset when he won reelection. The Democrat Caucus had already asked their members not to sign cards for Straus.

THE FOCUS—There is no question that the BUDGET was the main item of business that dominated this session. It was tough and controversial. But right behind it was the VOTER ID bill, the abortion related legislation dealing with SONAGRAMS, the SANCTUARY CITY legislation, and REDISTRICTING. Carrying handguns on college campuses was also controversial. But who would have predicted that SB 1811, a school finance measure, would have been the poison pill. The legislation, which most members didn't like but felt they had to pass, freed up \$3.5 billion dollars—mostly by bumping a payment to school districts into the next budget. It also changed school finance law that was required to appropriate the \$37 billion budgeted for public school aid, and amount \$4 billion less than what the school districts would otherwise be owed under current law. An amendment to SB 1811 added the continuation of the small business tax exemption. The measure might have passed but Senator Windy Davis (D-Ft. Worth) got the floor and ran out the clock with a filibuster that lasted until midnight on Monday, May 30. Perry immediately called them back for a Special Session which began at 8:00 am on Tuesday, May 31.

Under Senate rules, it takes 21 yes votes to even bring up a bill for discussion. Senate Democrats, outnumbered 19-12, have used the rule to block otherwise passable legislation. But

the Special Session rules are different—it only takes a simple majority to do business.

The Legislature also had to pass a bill that overhauls windstorm insurance, specifically The Texas Windstorm Insurance Association (TWIA), the quasi-governmental agency which serves as the insurer of last resort for homeowners and businesses in 14 coastal areas that are prone to hurricanes. The impasse, blamed on trial lawyers, centered on whether policyholders whose claims are denied by TWIA can win punitive damages—and to what extent—if they challenge the decision and win. This legislation, that was headed for passage, died in conference committee. Perry added it to the Special Session.

The session was also interesting for us because of a couple of issues we didn't have to deal with. Bills that seemed to be priorities for their authors last session were not filed this session. **ADVANCED DIRECTIVES**—A Senate bill would trigger an administrative penalty for the disregard or violation of a resident's advance directive by a nursing home facility. We successfully amended it on the Senate floor but were able to kill it in the House Calendars Committee. **EMERGENCY GENERATORS**—Gulf coast lawmakers we hot to pass legislation requiring nursing homes and assisted living facilities to install emergency generators on premises and require the state's emergency management division in the governor's office to review all emergency management plans for nursing homes, assisted living and continuing care facilities. We were able to stop them.

FINANCING STATE GOVERNMENT—The House, a supremely feckless body in my opinion, passed a budget with a 10 percent across the board cut in everything. I wondered at the time why they bothered to have public hearings. To be fair, sometimes the sub-committee members have good intentions and want to help but the final decision comes down from the leadership. But, having said that, they stood tall and did nothing.

The Senate sub-committee on Health and Human Services recommended no cuts in community care and minor cuts in rates for nursing homes and hospitals. Under the circumstances, I felt pretty good until Chairman Ogden refused to take a vote on the recommendations and sent the sub-committee back to reevaluate what they had already done. But—it gave us additional time to work on the group and we definitely took advantage of it. Chairman Ogden wanted to delay things until Sen. Robert Duncan's sub-committee, tasked with finding \$5 billion in nontax revenue, reported their findings. In the final analysis Duncan's group was about \$3 billion short of what Senate Finance needed.

I had said earlier that most key senators had no stomach for decimating the state, particularly in the areas of public education and health care, with the kind of draconian cuts the House had sent them in HR 1. I was right about that. On April 21, the Senate Finance Committee boldly passed a \$176.5 billion budget, \$12 billion larger than the House version, which patched some deep cuts in state services. **AND**—what made it even bolder is that they took \$3 billion more from the rainy day fund in defiance of Perry's threat. **Here's the really good news—we got all the rate cuts for nursing homes and assisted living providers in the CBA program restored.** Here's what they did with regard to rate cuts:

No.	Provider or Program	House	Senate	Conference
1.	Home and Community-Based Services	-10%	-01%	-01%
2.	Foster Care	-10	-01	-2.7
3.	Community Based Alternatives (CBA)	-10	0	0
4.	Nursing Homes	-10	0	0
5.	Employee Rate Enhancement	-10	0	0
6.	Intermediate Care Facilities-MR	-10	-2	-2

7.	Chip Physicians	-10	0	0
8.	Other Chip Providers	-10	-8	-5
9.	Medicaid Physician Services	-10	0	0
10.	Medicaid Hospital Services	-10	-8	-8
11.	Medicaid Dental Services	-10	0	0
12.	Medicaid Durable Medical Equipment	-10	-10.5	-10.5

HERE’S WHERE WE WERE—The House seems to have little appetite for tapping the rainy day fund beyond what it already took, with Gov. Rick Perry’s approval, to balance the budget for the remainder of 2011. Perry had said he would not sign a budget that uses any more money from the rainy day fund, although the fund will still have some \$6 billion remaining in it and that isn’t exactly chump change. Was he bluffing to keep lawmakers looking for more non-tax revenue? Somebody knows, but its not common knowledge. When Lt. Governor Dewhurst approved of the extra spending by Senate Finance but didn’t back taking more money from the rainy day fund, a lot of Republican Senators got weak in the knees. That resulted in Senate Finance Chairman Ogden not being able to get the 21 votes necessary to bring up the spending bill for a vote by the full Senate. So, it was back to the drawing board.

On Friday, April 29, 2011, the Senate passed SB 1811, which provided \$4 billion dollars to take the place of the rainy day money. The bill freed up money primarily through accounting maneuvers such as pushing the \$2 billion payment to school districts into the next budget and speeds up a variety of tax collections. I don’t like it and I don’t think Ogden liked it either but felt it was the only way to get the votes. They were able to get the spending bill up for a vote in the full Senate the first week in May.

While I am VERY disappointed in the House, I do understand the politics over there where tea party candidates, who think they’re in Congress, are perfectly willing to approve the 10 percent cuts no matter what the ramifications are. My hunch was that House leaders were quietly whispering to the Senate, “Please save us.” Our hope was that the Senate would “hang tough” when they went to conference, particularly on human services, and come out with a budget close to what the Senate passed. Since neither body used more rainy day money, Perry would presumably have no reason to veto the budget—if indeed he really would have anyway.

Well—the Senate conferees did hang tough and our rates were not cut. (The table on page 3 is correct.) Agreement was reached on a budget and passed by the full House and Senate. The session should have ended with the “must business” having been completed. Senator Wendy Wilson (D-Ft. Worth), changed all that, as I explained earlier. In my opinion, Wilson’s move gained the Democrats absolutely nothing. The move made a lot of members, House and Senate, angry and increased the cost of the Session where every penny is precious. The 21 vote Senate rule to bring up legislation for consideration did not apply during the Special so SB 1811 was going to pass and the Republican leaning Congressional redistricting map was going to be approved. Every Republican priority was added to the “call list.”

THE SCHOOL ISSUE—Because education wound up being the second most continuous issue of the session and the reason Governor Perry was forced to call a Special Session, we decided to spend a little ink to discuss the issue in more detail. A long-standing pact between the State of Texas and its public schools could soon be null and void. For about 60 years, Texas lawmakers have afforded public education a special status in terms of state funding. Written into law is a guarantee that schools would get enough money to provide a basic, foundational education for each student. That obligation has dictated what the state has put into the Foundation School Program to cover growing enrollment and a changing population. The school finance plan by this legislature wipes out the guarantee and makes future appropriations dependent upon how much money is available rather than how much is needed.

Most of the public discussion on school finance has focused on how the state will apportion a \$4 billion reduction in aid among the school districts over the next two years. The House and Senate compromise in Senate Bill 1, the special session version of SB 1811, docks school districts 6 percent of what they are owed under current law in the first year of the budget. The next year, districts that have been getting more in terms of per-student funding take a larger hit. Austin, for example, takes a 8.5 percent reduction while the statewide average is 5.6 percent. There is no question that under this proposal, school districts will no longer be legally entitled to a certain amount of state aid. Is that right or wrong? You be the judge.

SPECIAL SESSION RECAP

- **School Finance**—Passed and sent to the governor.
- **Teacher Furloughs and contracts**—Passed and sent to the governor.
- **Medicaid cost saving**—Which has nothing to do with rates but does have a lot to do with managed care, passed and was sent to the governor.
- **Congressional redistricting**—Passed and was sent to the governor.
- **Windstorm insurance renewal**—Passed and sent to the governor.
- **Sanctuary cities**—Did not pass. However, an immigration-related provision was tucked into the school finance bill that will require people to prove US citizenship or legal residence before they can renew or obtain a Texas driver's license. Most pundits think this requirement will have much more punch in combating terrorists and criminal activity by illegal immigrants.
- **Airport security pat-downs**—Died in the House.

LONG TERM CARE LEGISLATION—We “tracked,” meaning that we followed their progress and status on a daily basis, some 110 individual bills this session because they had an affect, or possibly could have, on the way we do business. Some of them we wanted to pass—some we wanted to amend—and some we wanted to kill. We did exactly what we wanted to do. Here is the final status report on the most important measures.

Bills of Special Industry Interest or Significance

SB 75 by Nelson (R-Lewisville)—This one requires background checks and fingerprinting of every employee, applicant for employment and volunteer who works in every nursing home, assisted living facility—and every other kind of facility and program doing business with the Department of Aging and Disability Services. This is an expensive administrative nightmare. For example, the first year cost for an average 110-bed nursing home would be \$22,188 and \$25.9 million for the industry. The cost for an average 31-bed assisted living facility would be \$4,729 and \$7.6 million for the industry the first year. We had to kill this bill and we did. Nelson never even brought it up for a hearing in her own committee and it died.

SB 78 by Nelson (R-Flower Mound)—relating to adverse licensing, listing, or registration by health and human services agencies. The idea here is to be able consider the past performance of health care providers in determining future licensure and certification. This could be a problem and we successfully amended it. Passed and sent to the governor.

HB 309 by Menendez (D-San Antonio)—This bill is intended to allow developers, also supported by elements of TALA, to build Supportive Living Facilities like they have in Illinois. The program is assisted living, by a different name, funded by a 1915 (c) Medicaid waiver. There is nothing unique or different about the proposed program. With assisted living at a statewide occupancy of 64.93 percent, we don't need any more assisted living facilities. We "nailed it" at a public hearing and it died in the Human Services Committee.

HB 329 by Guillen (D-Rio Grande City)—relating to a pilot project to establish a

comprehensive access point for long-term services and support. This is a big AARP initiative. Our Board thought this proposal would cause the system to be overwhelmed. We killed it in House Calendars. Guillen added it to SB 7 in the special session but it was stripped off in the conference committee. So—HB 329 was finally dead.

SB 426 by Duncan.(R-Lubbock)—intended to eliminate any liability and provide payment of legal fees for court-appointed trustees in nursing homes and assisted living facilities. The impetus for the bill is the assertion that DADS is having a hard time recruiting trustees because of the potential liability. The funny thing is that I have a copy of the Trustee Directory which contains the names of 90 certified trustees. I called a number of them at random and they had never been asked to serve. So, the reason for the bill is not credible. From 2005-2010 DADS used the same three trustees and the same two lawyers and paid the trustees \$3,3 million dollars which cannot be accounted for. I was personally involved in a case and I have first-hand knowledge of how this sorry system works. The provider who hired me was targeted for elimination. We eventually went to court and would have won but the provider went bankrupt. Anyway, this sorry bill protects unscrupulous trustees and their lawyers. We went after it with a vengeance in the House Committee on Human Services and it didn't survive.

SB 795 by Nelson (R-Flower Mound)—relating to listing in the nurse aide registry. She agreed to changes and a committee substitute which reduced some of the required hours, let them get their in-service requirement over a two-year period and requires training in geriatrics and Alzheimers. Passed and sent to the governor.

HB 985 by Menendez (D-San Antonio)—relating to abuse, neglect, and exploitation of residents in assisted living, nursing homes and from family members or caretakers. This bill needed amendments and we offered them. He took one minor amendment but that was it. They really didn't want to work with anyone. We had a floor amendment ready but were able to kill it in the Calendars Committee. Menendez added the bill to SB 7 in the special session as an amendment. This amendment stayed on in conference. I guess the good news is that nursing homes are already doing the most critical requirements of the bill. The Health and Human Services Commission is charged with writing the rules to implement this bill. I am going to ask them to fix some things with the rule making.

HB 2041 by Menendez (D-San Antonio)—Relating to alternative methods of dispute resolution in certain disputes between the Department of Aging and Disability Services and licensed assisted living facilities. We had lots of questions about it. It died in committee.

HB 2109 by Truitt (R-Southlake)—relating to inappropriate placement in assisted living—aging in place. I won a case against the Department which led to the issue being addressed in the statute. Allows administrative penalty only after facility applied for a waiver, was turned down, lost an appeal and still refused to transfer resident. The substitute prohibits retaliation against a facility, an employee of the facility for complaining about a department employee, disagreeing with a department employee about a violation or rule or asserting a right under state or federal law. Passed and sent to the governor.

HB 2579 by John Davis (R-Houston)—relating to relief for certain employers from penalties and sanctions under the Texas Unemployment Compensation Act. Good bill and we supported it. Passed and sent to the governor.

HB 3299 by Zerwas (R-Simonson)—The attorney general ruled that licensed nurses cannot perform limited services, allowed under their license, as an employee of an assisted living facility. This bill makes limited nursing practices possible. Our leadership does not object to this measure. It was the number one priority of the TALA. It died in the House Committee on Public Health.

Other Long-Term Care Legislation

HB 68 by Martinez (D-Weslaco)—This proposal would require an employer, who didn't make an offer for employment because of criminal history, to provide a written explanation. The

thing is, there is no requirement that an employer tell a non-hire why they were not hired. This proposal accomplishes very little. We'll just leave it alone. It died in the Economic and Small Business Development Committee.

SB 71 by Nelson (R-Lewisville)—relating to certain reports submitted by health and human services agencies. Not a problem as currently written. Passed and sent to the governor.

SB 93 by Lucio (D-Brownsville)—relating to the appointment of an attorney for a workers' compensation claimant in certain proceedings initiated by a workers' compensation carrier. No problem as written. It died in Senate State Affairs.

HB 124 by Legler (R-Pasadena)— relating to payment for health care services and participation. Not applicable to us as written. It never made it to the House floor for debate.

HB 144 by Laubenberg (R-Rockwall)— **HB 203 by Hughes (R-Marshall)**—same as HB 124. Both bills died in committee.

SB 222 by Nelson (R-Flower Mound)— relating to access to certain long-term care services under the medical assistance program. Not applicable to our providers. Passed and sent to the governor.

HB 276 by Alonzo (D-Dallas)—requires an employer to pay the greater of a new adjusted state minimum wage or the federal minimum wage. It is not a problem as currently drafted. Died in the committee on Economic and Small Business Development.

SB 278 by Davis (D-Fort Worth)—raises the personal needs allowance for nursing home patients and residents in other long-term care facilities from \$60 to \$75 dollars. Died in the Health and Human Service Committee.

SB 355 by Ellis (D-Houston)—relating to the elimination of smoking in certain workplaces and public places. This is the statewide smoking ban. We amended this bill last session to make long-term care exempt. The exemption is contained in this bill as well. Unless something changes it won't affect our facilities. It never got the 21 votes necessary to bring it up for debate on the Senate floor and it died.

SB 511 by Van de Putte (D-San Antonio)—relating to the designated doctor's examination under the workers' compensation system. Not a problem as written. Died in State Affairs.

HB 528 by Solomons (R-Carrollton)—relating to the provision of pharmaceutical services through informal and voluntary networks in workers' compensation. Not a problem for us. Passed and sent to the governor.

HB 625 by Solomons (R-Carrollton)—relating to notice of staff leasing services company workers' compensation claims and payment information and providing an administrative violation. No problem as currently drafted. Passed and sent to the governor.

SB 643 by Seliger (R-Amarillo)—relating to the creation of a grant program to defray the construction cost of rural hospitals. (Same as HB 1327) Never got a hearing.

SB 651 by Huffman (R-Southside Place)—relating to the continuation and functions of the office of injured employee counsel under the workers' compensation program. Not a problem as currently written. Died in Government Organization.

SB 658 by Huffman (R-Southside Place)—this is the workers' compensation sunset bill. No problem as currently written. Same as HB 2605 which passed.

HB 670 by Crownover (R-Lake Dallas)—same as SB 355. A lobbyist for the Smoke Free Coalition thanked me for being neutral on their bill this session. I was their worst nightmare last session. Reported favorably from the Public Health Committee but it died on the House floor.

SB 798 by Nelson (R-Flower Mound)—relating to the amounts of administrative penalties assessed or imposed against certain health facilities. Does not apply to any of our providers. Died in House Public Health.

HB 800 by Duncan (R-Lubbock)—relating to a workers' compensation data collection agent designated by the commissioner of workers' compensation. Not a problem as currently written. Passed and sent to the governor.

SB 809 by Seliger (R-Amarillo)—Judicial review on certain workers' compensation disputes. Not a problem as written. Passed and sent to the governor.

SB 938 by Lucio (D-Brownsville)—relating to required workers' compensation insurance coverage for building and construction contractors. Not a problem as written. Was never heard in State Affairs.

SB 1016 by Wendy Davis (R-Fort Worth)—relating to the use of a checklist during the investigation of abuse or neglect. No problem. Died in Health and Human Services.

HB 1069 by Menendez (D-San Antonio)—relating to the provision of and payment for certain health care services provided through workers' compensation health care networks to fire protection personnel. Not a problem as written. Died in State Affairs.

HB 1142 by Turner (D-Houston)—relating to regulation of fire protection sprinkler technicians. Not a problem as currently written. Died in the Committee on Licensure and Regulation.

HB 1168 by Miller (R-New Braunfels)—relating to smoke alarms and fire extinguishers. Not a problem as currently written. Passed and sent to the governor.

SB 1174 by Deuell (R-Greenville)—same as HB 1961 by Deshotel. Died in State Affairs.

SB 1194 by Rodriguez (D-El Paso)—relating to the amount of temporary income benefits to which an injured employee is entitled under the workers' compensation system. No problem as written. Died in State Affairs.

SB 1317 by Van de Putte (D-San Antonio)—relating to coverage for certain pharmaceutical services by a workers' compensation insurance carrier. No problem. Died in State Affairs.

HB 1327 by Darby (R-San Angelo)—relating to the creation of a grant program to defray the construction cost of rural hospitals. (Same as SB 643) Never got out of the Calendars Committee.

SB 1452 by Zaffirini (D-Laredo)—relating to unannounced on-site surveys. Does not affect our providers. Died in Health and Human Services.

SB 1632 by Birdwell (R-Granbury)—relating to certain do-not-resuscitate orders and advance directives. Does not affect any of our providers as written. Died in State Affairs.

HB 1687 by Raymond (D-Laredo)—relating to the amount of certain civil penalties and criminal fines under the Health and Safety Code. Doubled the “not less than” fee. We didn't like it. Never had a hearing.

HB 1739 by Walle (D-Houston)—same as SB 938. Died in State Affairs.

SB 1748 by Gallegos (D-Houston)—same as HB 1853. Never made it to the Senate floor for consideration.

SB 1754 by Van de Putte (D-San Antonio)—relating to the closed formulary for workers' compensation pharmaceutical benefits. No problem as written. Was never heard in State Affairs.

HB 1764 by Rodriguez (D-El Paso)—relating to workers' compensation supplemental income benefits. No problem as written. Died in State Affairs.

HB 1774 by Taylor (R-League City)—same as SB 651. Passed and sent to the governor.

HB 1853 by Hamilton (R-Mauriceville)—relating to the licensing and regulation of fire protection sprinkler technicians. Not a problem as currently written. Never heard in the Senate.

HB 1870 by Giddings (D-De Soto)—same as SB 809, which passed.

HB 1872 by Giddings (D-De Soto)—relating to requirements regarding information to be provided employees covered by workers' compensation health care networks. Never got a hearing in State Affairs.

HB 1876 by Truitt (R-Southlake)—relating to the authority of municipalities to require fire protection. Not a problem as written. Died in the Urban Affairs Committee.

SB 1878 by Deuell (R-Greenville)—relating to the program of all-inclusive care for the elderly. This is the PACE program and does not affect us. Died in the House.

HB 1947 by Gonzales (D-El Paso)—to increase the personal needs allowance to \$60 and index it to the consumer price index. Died in Human Services.

HB 1961 by Deshotel (D-Port Arthur)—relating to workers' compensation medical benefits to peace officers or firefighters injured in the line of duty. Not a problem as written. Died in State Affairs.

HB 1987 by Workman (R-Spicewood)—relating to workers' compensation coverage for building and construction contractors. Died in State Affairs.

HB 2088 by Smithee (R-Amarillo)—relating to failure to submit to an examination by a designated doctor under workers' compensation. Not a problem as written. Did not make it out of the Calendars Committee.

HB 2089 by Smithee (R-Amarillo)—relating to the resolution of overpayment or underpayment of income benefits under workers' compensation. Not a problem as written. Passed and sent to the governor.

HB 2192 by Elkins (R-Houston)—relating to the qualifications and operations of workers' compensation data collection agents. No problem as written. Died in State Affairs.

HB 2320 by Naishtat (D-Austin)—same as SB 795. The Senate bill passed.

HB 2452 by Zedler (R-Arlington)—relating to disclosures regarding liability limits and malpractice and related coverage. Not a problem as written. Died in the Judiciary Committee.

HB 2605 by Taylor (R-League City)—workers' compensation sunset bill. Not a problem as written. Passed and sent to the governor.

HB 2692 by Deshotel (D-Port Arthur)—relating to the authority of the office of injured employee counsel under workers' compensation. Not a problem as written. Died in State Affairs.

HB 2740 by Quintanilla (D-El Paso)— same as SB 1194. Never got a public hearing.

HB 2745 by Quintanilla (D-El Paso)— same as SB 1764. Never got a public hearing.

HB 2827 by Hopson (R-Jacksonville)—same as SB 131. Never got a public hearing.

HB 2903 by Zerwas (R-Simonton)— same as HB 1878. Passed and sent to the governor.

HB 3304 by Marquez (D-El Paso)—relating to creating the offense of exploitation of the elderly individual; providing a penalty. It died in the House Committee on Criminal Jurisprudence.

HB 3362 by Smithee (R-Amarillo)—same as SB 93. It died in the Calendars Committee.

HB 3427 by Zedler (R-Arlington)—same as SB 511. It died in State Affairs

HB 3428 by Zedler (R-Arlington)—relating to the eligibility of certain physicians to provide and receive remuneration for workers' compensation. No problem. Died in State Affairs.

HB 3495 by Coleman(D-Houston)—relating to workers' comp' death benefit eligibility for certain spouses. No problem. Committee substitute voted out of State Affairs but ultimately died.

HB 3520 by Hughes (R-Marshall)—relating to advance directives or health care treatment decisions made by or on behalf of patients. Last session we had SB 1663 which was directed specifically at nursing homes. We amended it to make it workable, but it died in the House. This bill, as written, is directed at physicians—not long-term care providers. Died in House Human Services.

HB 3687 by Perry (R-Lubbock)—same as SB 1754. Referred to State Affairs. Never got a hearing and died.

HB 3744 by Gonzales (D-McAllen)—relating to the reimbursement methodology used for certain services provided to Medicaid recipients. Not applicable to us. Public Health voted out a substitute but died in Calendars.