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CONTENTS:

- * Voter irregularities abound in Harris County.....1
- * Interest groups debate how to solve budget crunch.....3
- * DOJ letter on TYC problems marks start of long investigative process.....5
- * Statewide windstorm insurance public option to make TWIA solvent?.....7
- * AROUND TEXAS.....9
- * OPINION: Texas leaders not taking it from EPA, Obama regime.....11

EDITOR'S NOTE: LSR will not be publishing next week. We will return Sept. 10. Happy Labor Day!

Voter irregularities abound in Harris County

by Andy Hogue

Voter ID proponents looking for ammo may have just gotten a whole crossbelt full of examples of registration irregularities in Texas' largest county -- about 5,000 examples, it seems.

Harris County Tax Assessor-Collector **Leo Vasquez** called a press conference Aug. 24 highlighting thousands of examples of duplicate signatures, false addresses, and incomplete data on voter registration forms -- all stemming from a Houston-based voter registration group "conspiring in a pattern of falsification," he said.

If it were not for his office and a conservative activist group catching these inconsistencies, the errors may have translated into votes in November.

Calling the voter registration project Houston Votes "our area's new 'ACORN' organization," Vasquez, a Republican whose term ends at year's end, said he heartily welcomes a U.S. Department of Justice investigation into the registrations to get to the bottom of the problems. He welcomes the public attention, as well.

The group's president, however, is calling Vasquez "a liar" and claims his press conference was part of a partisan attack.

Supporters of the last legislative session's Voter ID bill (SB 362), including co-author Sen. **Jane Nelson** (R-Flower Mound) say such incidents will help make the case in the Legislature, though in the court of public opinion it's pretty much settled.

"Examples of voter fraud, which we know is occurring," Nelson said, "will help our effort, along with the recent polling suggesting that 82 percent of Americans now believe you should have to show picture ID at the voting booth. Photo IDs are used to prevent fraud at the bank, the airport and the movie rental store. Our elections are important enough to safeguard."

Errors abound

Print media were relatively silent at first, and a handful of TV stations picked up on the press conference, which featured Vasquez flanked by numerous members of the Tea Party-affiliated King Street Patriots.

During the conference, Vasquez unveiled a report that asserted out of a total of 25,640 applications submitted by Houston Votes to deputy voter registrars:

A lengthy discussion on the so-called "structural deficit" raised the question of whether the state has sufficient revenue stream to fund existing programs and whether that revenue, or lack thereof, is to blame for the shortfall. Reps. **Mike Villarreal**(D-San Antonio) and **Sylvester Turner** (D-Houston) both questioned the fiscal note on the 2006 revised franchise tax. Actual revenue turned out more than \$1 billion below the initial estimate, they pointed out.

But both Craymer and Heflin discounted the theory that Texans aren't taxed enough. Craymer noted that the 2006 change was always designed as a net tax cut. Even though the franchise tax came in below the revenue estimate, he said, other revenue sources -- including the sales tax -- exceeded revenue projections.

Craymer blamed the economic downturn, not the school finance package, for the current shortfall.

Heflin, similarly, blasted the use of the term "structural deficit." "The supposed structural deficit is an indication that government spending is too high, not that state revenues are too low," he said.

Income tax? Not if Button has anything to do with it

During his testimony, Lavine made his usual pitch for raising taxes. Unlike most elected officials, Lavine is quite open that he believes a state income tax would reduce state reliance on property taxes and make the state tax system fairer for the poor.

Rep. **Angie Chen Button**(R-Richardson) wasn't having any of it. "A state income tax is a very scary thought," Button said, asking Lavine whether a state income tax would hurt job creation.

Lavine argued that the Texas Constitution requires that two-thirds of revenue from an income tax be dedicated to lower property taxes. He said lower property taxes and investment in education would help the Texas economic development, and that 60 percent of Texas families would be better off under an income tax.

Button wasn't convinced. She noted that with tax swaps, the new tax always gets implemented but the reduction often doesn't happen. "When you start to talk about a state income tax, it scares off a lot of companies that might be interested in coming to Texas to invest ... It's not a good idea to even talk about it in this [economic] environment. "

Franchise tax revenue continuing to sputter

The House Select Committee on Fiscal Stability received an update from Associate Deputy Comptroller **Mike Reissig** on the state's revenue situation. The first year the revised franchise tax was implemented, it brought in \$4.45 billion, but due to a declining economy, Reissig told the committee the most current revenue figure for 2010 was \$3.846 billion. Reissig noted that a lot of the revenue decline is due to the current state of the economy. He also said the old franchise tax was estimated to bring in \$2.6 billion this year.

Reissig noted that Fiscal Year 2010 collections are based on business done in 2009, which year the Comptroller believes will form the trough of the current recession. He said the Fiscal Year 2010 franchise tax revenue will likely come in about half a billion dollars under the current certification revenue estimate. Reissig expects revenue projections from the franchise tax to be revised downward in the January 2011 biennial revenue estimate.

The associate deputy comptroller said whereas his office had initially estimated franchise tax receipts of \$5.9 billion, the tax actually brought in \$4.45 billion the first year. He attributed the shortfall to lowballed estimates of the number of businesses likely to take the cost of goods sold exemption from the tax, as opposed to the payroll exemption. The revised franchise tax base is called "gross margin" which is a business's gross receipts minus either the cost of goods sold or payroll. The cost of goods sold deduction from margin turned out to be larger than expected. ☐

DOJ letter on TYC problems marks start of long investigative process

by Mark Lavergne

A letter from four advocacy groups to the U.S. Department of Justice highlighting continued problems at Texas Youth Commission facilities marks the start of a long investigative process to see if the reforms in 2007's SB 103 have done any good.

The letter's authors include Texas Appleseed and Advocacy Inc. Texas Appleseed, a pro bono project of corporate attorneys, says TYC is unable to ensure the safety of the youthful offenders incarcerated in its facilities. It raps the agency also for lack of adequate mental health and educational programs. The letter, sent Aug. 24, encourages DOJ to investigate all 10 TYC facilities.

The authors visited TYC facilities in 2010, interviewed inmates, and made open records requests to TYC. The youths to whom they spoke recounted stories of being improperly restrained by staff and assaulted by other youth. The letter also tells of youthful offenders being locked in solitary confinement for 23 hours a day.

The letter concludes that there remain "serious risks to the safety and well being of youth in TYC facilities."

House Corrections Chairman **Jim McReynolds** (D-Lufkin) has called for investigations into the events of which the youthful offenders speak in the advocacy report.

TYC's population has gone down dramatically in recent years, leaving only the most troubled and violent offenders behind in TYC's correctional facilities, with less troubled youth in various diversionary programs.

That, McReynolds said, makes it all the more important to thoroughly investigate each allegation.

Marc Levin, Director of the Center for Effective Justice at the Texas Public Policy Foundation, said that with the population drop at TYC facilities, spending per youth has gone from \$271 per youth per day to \$320. "You'd think with all that money we're spending that we would be able to have basic security and decent conditions," Levin said.

Employees of TYC have sent SWAT teams to every facility in the state to start investigations, McReynolds said. McReynolds' office is investigating and pulling data together. McReynolds is currently getting additional information and talking to other legislators to determine where to go from here.

"Information that has been provided in their letter is primarily anecdotal, and it does not give us sufficient information to go back and investigate specific claims," Hurley said.

McReynolds said he was surprised by the report in light of the myriad changes to TYC in SB 103 from 2007, which created an Office of Inspector General for the TYC, as well

as an ombudsman to serve as an advocate for incarcerated youth.

"To get a report like that is a bit frustrating, because it's not consistent with what's been reported to us as policy writers from, for example, Mr. **[John] Moore**, the ombudsman, or Mr. **[Chris] Love**, the inspector general, or **[TYC Executive Director] Cherie Townsend**, and that raises the question, where do we go from here?" McReynolds said.

McReynolds told LSR that Moore told him, prior to recently filing for resignation, he had no knowledge of the problems in the letter to DOJ.

Nor did he see anything based on conversations with Love to show any pattern of abuse, neglect, exploitation or crime, McReynolds said.

McReynolds and Senate Criminal Justice Chairman **John Whitmire** (D-Houston) plan to quickly hold a hearing to look more closely at the issues raised in the letter. The hearing will occur after the next Senate Criminal Justice hearing on Sept. 7.

Whitmire's committee has made a series of requests for information from TYC -- physical information, grievance information, security information, unit monitoring and staffing reports, as well as educational programming issues.

Texas Appleseed Legal Director **Deborah Fowler**, who participated in the visits to facilities, said that she and other authors did not talk closely with staff at the Al Price facility about the reports of youth on youth violence, but a TYC contact said that the agency was aware of the problems. "It's no secret that Al Price has had culture problems," including overuse of pepper spray and keeping youths in security for long periods of time, she said.

She also cited the teacher shortage at the Mart II correctional facility.

"I do think the agency has improved under Cherie **[Townsend]** quite a bit, but ... obviously it's not necessarily easy for all of those best practices that Cherie knows to have those translated and implemented on the ground at every institution," Levin said.

TYC issued a preliminary response to the DOJ letter, which said, among other things:


*TYC has been collaborating with Advocacy Inc., Texas Appleseed and other groups during the last three years, and will work to fully investigate allegations in the letter;
*TYC has taken specific steps to reduce youth assaultive behavior and violence through staff training and implementation of evidence-based programs, resulting in a 61 percent reduction in youth assaults involving bodily injuries during the last year;
*security referrals are used as a last resort, after everything else has been tried;
*educational programming has been significantly expanded and improved; and
*the mental health plan adopted in Feb. 2010 by TYC and the University of Texas Medical Branch used best medical and mental health treatment practices.

A more detailed response to the DOJ letter is forthcoming, Hurley said.

McReynolds has been crusading to preserve funding on the front end for diversionary programs in youth corrections -- intended to steer youths away from TYC facilities.

Levin thinks this development helps McReynolds' cause, because it places probation in contrast to correctional facilities, saving the state money and getting results.

The federal government is not necessarily the place to turn to address the remaining problems, Levin said. TPPF has not recommended abolishing TYC. But he said it may be time for Texas to consider new ways to hold staffs at specific facilities accountable, a la school accountability, and perhaps even look at outsourcing either entire facilities or functions within facilities.

Said Fowler: "The fate of TYC has been in question now for years and those are all issues that legislators and the policymakers will have to deal with in the coming days and the coming legislative session. And we hope to work hand in hand as they're trying to decide what the best way is to ensure that the reforms are reaching the ground level." 

Statewide windstorm insurance public option to make TWIA solvent?

by Mark Lavergne

The 81st session's HB 4409 may have helped, but much work remains to fully repair the Texas Windstorm Insurance Association, the quasi-state agency that insures coastal residents.

That was the consensus of insurance carriers and officials Aug. 24 at Sen. **John Carona's** (R-Dallas) first meeting as chairman of Senate Business and Commerce.

If Texas wants a healthy coastal risk pool, it will need to depopulate TWIA and repopulate the voluntary property and casualty marketplace on the coast.

For that to happen, private insurers need to be able to compete with TWIA. But they can't as long as TWIA's rates are held artificially low, private carriers have said.

Which means: TWIA needs to raise its rates.

Sen. **Mike Jackson** (R-La Porte) made clear Aug. 24 that he does not like that idea. Jackson went so far as to float the notion of allowing TWIA to write insurance policies statewide, not just along the coast.

"That way they would be able to generate premiums that weren't as high of a risk," Jackson said, asking, "Wouldn't that in effect be a solution to help subsidize the losses that are out there?"

Carona likened Jackson's idea to the recently passed national health care reform. "Isn't that a lot like ObamaCare competing against the private sector?"

Jackson retorted, somewhat jocularly: "If TWIA could insure the chairman's house, that would be a money-making deal."

Representatives of private insurers were not knee-jerk in their reactions.

Jay Thompson, a lawyer for the Association of Fire and Casualty Companies of Texas, said lawmakers would have to think of TWIA more as an insurance company, which is capitalized and buys reinsurance, than as a quasi-state agency. Thompson said the state already had something