



# City Council Agenda Item Report

April 16<sup>th</sup>, 2013

## Agenda Item \_\_\_\_

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**SUBJECT: STAFF REPORT: LEGISLATIVE UPDATE ON 83<sup>RD</sup> LEGISLATURE**

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### 1. BACKGROUND/HISTORY

This staff report is an ongoing effort to provide updates on city-related bills as well as tracking the City of Buda's sponsored bills on sales tax split between ESDs and cities (HB 3159) and on black hydrants (HB1797 and SB1086) .

### 2. FINDINGS/CURRENT ACTIVITY

#### Water issues:

Councilmember Fletcher, ESD #8 Fire Marshal Mike Duffey, the City Manager and I along with Jim Boyle attending the committee hearings on Tuesday, April 9<sup>th</sup>, 2013. Also in attendance were Mayor Johnson, Director of Community Services Jerry Hendrix and a few residents from Amberwood and Indian Paintbrush from the City of Kyle. Testifying were Councilmember Fletcher, Mr. Duffey, Mr. Hendrix, and the Kyle residents. Both bills (HB1797 and SB1086) were being heard on the same day by the House and Senate Natural Resource Committees. Due to the enormous amount of agenda items and contemplating the timing on when which bill would be heard first, we estimated HB 1797 would be addressed before SB 1086, therefore, everyone remained in the House committee forum until such bill was recognized. When we were called for testimony, Councilmember Fletcher and Fire Marshal Duffey did an excellent job in depicting City of Buda's situation with black hydrants in the industrial area and providing a picture to all House Committee Members illustrating a black hydrant. Chairman Ritter was outraged about the behavior Monarch was portraying and stated that the House would do something about it with Monarch's help or without. When we finished testimony with the House Committee, everyone immediately rushed to the Senate Natural Resource Committee for testimony on SB 1086; however, we were informed the Committee approved the bill earlier in the day.

With the passage in the Senate Committee, SB 1086 is on its way to the Senate Floor on a local and consent calendar. If no more than three senators speak against the bill, it is expected to be out of the Senate Floor by April 24<sup>th</sup> and forwarded to the House. Regarding HB 1797, it will be pending until SB 1086 comes over to the House whereupon SB1086 will substitute for HB1797.

In other water bills, Jim provides the following updates:

"HB 3857, was heard on Tuesday in HNRC. This is the bill that allows for an automatic rate increase of 5% every year. This sort of bill was first introduced and passed in Pennsylvania at the request of Aqua America, the parent of Aqua Texas. The legislation was first enacted in 1996 started out with a rate increase cap of 2.5%, then it went to 5% and later it was raised to 7.5% per year. My experience with rate mechanisms of this sort is very bad. In general mechanisms of this sort get very superficial review. "Ask and you shall receive".

HB 1600, the PUC Sunset bill, was passed out of committee with the provisions of SB 567 rolled into the committee substitute. The bill is headed to the Senate Floor. I expect this bill to be passed in the Senate sometime during the week of the 22nd.

The Senate Natural Resources Committee also heard SB 1162 and 1163. These bills deal with the standards for consolidating or acquiring water systems. I believe if these bills had been in place the rates of Monarch/SouthWest Water would be much lower today. Mayor Brockhouse came all the way from Ivanhoe in East Texas to testify in support of SB 1162. His testimony was much appreciated by Senator Nichols. Both bills were authored by Senators Watson and Nichols. "

In addition, HB 1973, Rep. Lucio's bill, is still being worked on. This is a statewide bill that provides minimum fire flow for hydrants for residential areas. However, an amendment was placed on it from investor-owned utility companies which nullified the intent of the bill. The bill was heard by the House Natural Resource Committee on Tuesday and passed through. According to Jim, this bill is getting a lot of attention with the hopes that TML and investor-owned utility companies can come to a compromise on the language. Jim is assisting TML on this bill and will keep us up-to-date on any progress.

#### Sales tax allocation between cities and ESDs:

HB 3159 calls for 50/50 allocation of sales tax revenue between ESDs and cities if a city annexes property, but any available sales tax has been accounted for by the ESD. In order to meet the filing deadline, this bill was submitted to Rep. Isaac prior to the Council-approved agreement (agreement) between ESD #8 and the City, and, thus, not reflecting the agreement's sales tax split between the City and ESD of 2/3 to 1/3. The City Manager, ESD #8 Fire Chief and I met last week to discuss any concerns to the bill, and to see if the bill could be revised to reflect the agreement's sales tax split. The Chief indicated that the Texas State Association of Fire & Emergency Districts had concerns regarding the split would take sales tax revenue away from ESDs that have captured all available sales tax, and the bill does not account for any existing agreements and could challenge the validity of such. As a result, both sides indicated that a possible revision to the bill could be entertained whereby eliminating the 50/50 split and requiring the bill to allow ESDs and cities to enter into agreements with negotiated sales tax splits recognized by the State and requiring the Comptroller to make payments to each entity. City staff asked the Chief to provide feedback to that effect, and city staff would revise the bill language to reflect such. Rep. Isaac has indicated that he would provide his support if both sides were in agreement to this bill.

Enclosed is the revised bill that was sent to the Fire Chief for his review. In speaking with the Chief, he indicated the bill's revisions were closer to the original intent in not

compelling ESD's of any mandatory sales tax split and allowing the State to recognize a negotiated agreement with the Comptroller making such sales tax payments to each entity. The Chief indicated he could not make any formal recommendations in that the bill needed to be discussed at the next ESD #8 meeting which is on Wednesday, April 17<sup>th</sup> wherein staff will be in attendance. Also, due to the approaching deadline for committee hearings, staff sent the revised bill to Rep. Isaac's office for review. The bill is set for a hearing before the House Ways & Means Committee, but no hearing date has been set; however, a hearing is likely for the week of April 15<sup>th</sup>-19<sup>th</sup>. Hopefully, the hearing will be set after the ESD #8 meeting, so formal feedback from the Board can be collected prior to the hearing.

**2. FINANCIAL IMPACT**

**4. ACTION OPTIONS/RECOMMENDATION**

**5. ATTACHMENTS**

1. Revised HB 3159

By: Isaac

C.S.H.B → H.B. No. 3159

A BILL TO BE ENTITLED

AN ACT

relating to the authority to contractually provide for the allocation...

of sales and use tax after a municipality annexes land in an emergency services district and to the provision of emergency services in that area.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 775.0753(c), Health and Safety Code, is amended to read as follows:

(c) Except as provided by Sections 775.0754 and 775.0755, the [The] provisions of Section 321.102, Tax Code, governing the application of a municipal sales and use tax in the event of a change in the boundaries of a municipality apply to the application of a tax imposed under this chapter in the event of a change in the district's boundaries.

SECTION 2. Subchapter E, Chapter 775, Health and Safety Code, is amended by adding Sections 775.0754 and 775.0755 to read as follows:

Sec. 775.0754. SALES AND USE TAX AGREEMENT WITH MUNICIPALITY AFTER ANNEXATION. (a) This section applies when:

(1) a municipality annexes for full purposes part of a district that imposes a sales and use tax; and

(2) the annexed area is not removed from the district.

(b) The municipality and the district may, before or after the annexation, agree on an allocation between the municipality and the district of revenue from the sales and use tax imposed in the

1 annexed area.

2 (c) Under policies and procedures that the comptroller  
3 considers reasonable, the comptroller shall pay the amounts agreed  
4 to between the municipality and the district.

5 (d) A municipality that enters into an agreement under this  
6 section is not required to provide emergency services in that  
7 annexed territory. To the extent of a conflict between this  
8 subsection and Section 43.056, Local Government Code, or any other  
9 law, this subsection controls.

10 (e) Section 321.102(f), Tax Code, does not apply if the  
11 municipality and the district enter into an agreement under this  
12 section.

13 ~~Sec. 775.0755. SALES AND USE TAX ALLOCATION BY COMPTROLLER~~  
14 ~~AFTER MUNICIPAL ANNEXATION. (a) This section applies when:~~

15 ~~(1) a municipality annexes for full purposes part of a~~  
16 ~~district that imposes a sales and use tax;~~

17 ~~(2) the annexed area is not removed from the district;~~  
18 ~~and~~

19 ~~(3) the municipality and the district do not enter~~  
20 ~~into an agreement under Section 775.0754(b).~~

21 ~~(b) The sales and use tax rate for the municipality and the~~  
22 ~~sales and use tax rate for the district in the annexed area shall~~  
23 ~~both be reduced in an amount equal to one-half of the amount that~~  
24 ~~the combined sales and use tax rate in the area from all sources~~  
25 ~~exceeds two percent.~~

26 ~~(c) Under policies and procedures that the comptroller~~  
27 ~~considers reasonable, the comptroller shall pay the revenue from~~

1 ~~the sales and use tax imposed in the annexed area based on the tax~~  
2 ~~rates determined under this section.~~

3 ~~(d) A municipality that is a party to an allocation under~~  
4 ~~this section is not required to provide emergency services in that~~  
5 ~~annexed territory. To the extent of a conflict between this~~  
6 ~~subsection and Section 43.056, Local Government Code, or any other~~  
7 ~~law, this subsection controls.~~

8 ~~(e) Section 321.102(f), Tax Code, does not apply to an~~  
9 ~~allocation made under this section.~~

10 SECTION 3. This Act takes effect September 1, 2013.