



The Capitol Report

Fall 2011

Dear Friends,

Far be it that the serious nature of the 82nd Session of the Texas Legislature be interpreted otherwise, but a bit of levity associated with one of Texas' flagship institutions comes to mind when describing the intensity of my involvement. "Why" it goes, "do you keep banging your head against the wall?" My reply is no joke. It's because the people I represent in District 23 and beyond need for me to.

To elaborate, the legislative session opened on the heels of what many openly called a referendum on the leadership of this country. The 2010 Midterm Elections saw the incumbent majority overturned in the U.S. House of Representatives. This coincides with the virtual landslide election of a supermajority in the Texas House of Representatives of those whose ideas about how this state and country should be governed differ sharply from many that I represent. Right away, Governor Rick Perry declared legislation on Voter ID, abortion rights, federal spending and sanctuary cities as emergency items, meaning that they would be placed on a fast-track for passage through the legislative process.

With equal dispatch, procedures to override the Senate tradition that a two-thirds vote is needed for legislation to come to the floor for a vote was imposed on a bill involving Voter ID.

The Regular Session and the subsequent Special Called Session would see measures on the state's FY12-13 budget, funding for education and Health and Human Services, and state and congressional redistricting all play out along the same theme. But I was asked repeatedly by school boards, counties, cities and constituents to keep banging away - to keep and even stand atop my seat at the table.

That is not to say that all is lost. Your advocacy enabled us to shape in some part, legislation diecast by opposing views. And we found ways to move forward with progressive and needed initiatives in the areas of homeowner rights, urban and county development, education, Health and Human Services and criminal justice.

I persist because on a monumental evening in 2008, you, for the fifth time, overwhelmingly chose me to serve as your voice in the Texas Legislature. But you did not send me there for ceremony or to observe, but to roll up my sleeves and become immersed in the legislative fray. For this, I am humbled, appreciative, and renewed to continue the good fight.

Royce West



Team West - Senator West joined at floor desk by capitol, district and committee staff and interns that worked during the 82nd Legislature.

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The Budget - Overview

Texas did not stumble blindly into the most challenging fiscal environment that any current member of the Texas Legislature has ever experienced. We saw at least part of it coming years ago when a former comptroller advised the Legislature that the property tax reduction passed in 2006 would not pay for itself. This self-imposed, recurring shortfall is known as the "structural deficit" and has run about \$5 billion each year.

Part of public school funding comes from local property taxes. That's right - the same property taxes that were reduced by one-third in 2006. But to sell the tax cuts, the Legislature promised school districts that the state would make up the difference between reduced property tax collections and the amount it takes to fund schools; a policy we call "hold harmless." It worked for the 2007 Session when state revenues finally climbed out of the post 9-11 financial implosion that caused the \$10 billion budget crisis of the 2003 Legislative Session.

It worked again in 2009, but only due to the infusion of some \$12 billion in federal stimulus money, about \$6 billion of which went to support public schools. This session, there was no stimulus package to offset structural deficit costs and reduced tax revenue. Unfortunately, we'll be faced with the same funding gap in 2013, because the Legislature and state leaders chose not to address the structural deficit this year. Remember, "No new taxes!"

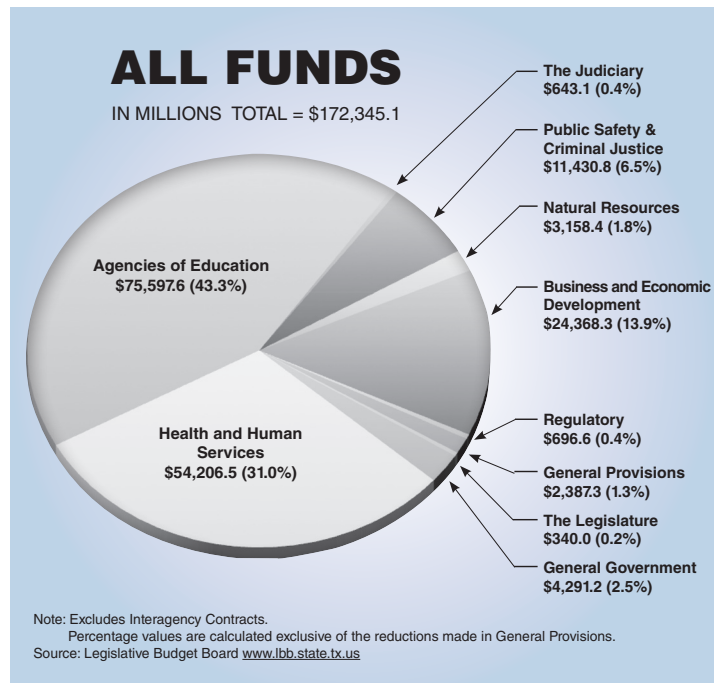
State spending historically needs to grow at about 12 percent each biennium, to keep up with normal population growth and increased service demands. Using this assumption, the state would need roughly \$93 billion in tax revenue just to maintain current spending levels through 2012-13. But early during the 82nd Session, the comptroller projected that the state would have only \$72 billion in available revenue by 2012-13. This left us with a \$21 billion shortfall that put state budget writers to task this year - a shortfall partly attributable to the recession, but also aided by the entrenched structural deficit. Given the current political climate, another stimulus bailout is unlikely.

It's Raining Already

Highly-charged debate took place throughout the session over the use of the state's savings account, the Economic Stabilization Fund - *aka* - Rainy Day Fund. Governor Perry and Speaker of the House Joe Straus were opposed to using the Rainy Day Fund to fill FY12-13 budget holes. Estimates are that the fund will accrue approximately \$9.5 billion by the end of FY13. During negotiations, the Senate had a tentative agreement to use Rainy Day funds for FY12-13 in their version of HB1, the budget bill. But the budget bill lost support when last minute changes removed those provisions.

Decisions made during the six months we spent in Austin have already tapped into Rainy Day Fund reserves. By March, budget writers and leadership chose to use \$3.2 billion of the fund to

supplement FY11 spending. With the later decision to not fund Medicaid caseload growth through the budget, an estimated \$4.8 billion must be set aside to pay-up in 2013. The remaining Rainy Day Fund by then will only harbor about \$1.5 billion. Pray for clear skies!



The Budget

The state's budget for the FY12-13 biennium is \$172.3 billion in All Funds spending. This includes money from the federal government, and represents a decrease of \$15.1 billion from FY10-11.

Texas will spend \$86.9 billion in monies generated from state taxes, a decrease of \$1.6 billion (1.9%) from FY10-11. This is known as General Revenue (GR) and General Revenue Dedicated (GR-D) funds. The FY12-13 budget does not fund anticipated growth in population and demand which is crucial to public education and Health and Human Services spending.

Public Education

When you consider that 59 percent of the state's FY12-13 budget will be spent on education, one can begin to understand the acrimony that fueled the debate over public school funding. The initial House budget would cut an unthinkable \$9.3 billion cut in education funding that supports more than 4.8 million school kids, 1,237 school districts - including 200 charter districts - and the Texas Education Agency (TEA). Senate budget writers proposed spending \$4.6 billion more on public schools than the House. When a spending bill that emerged during the regular session's final days minus a discussed \$3 billion in Rainy Day Funds, it no longer had the support needed for passage, thus catapulting both chambers into a Special Session.

Texas schools and TEA will have to make do with \$4 billion less in Foundation School Program appropriations for 2012-13, than used to fund school formulas at 2010-11 levels. Overall, statewide cuts to public education will average 3.3 percent in 2011-12 and 5.5 percent in 2012-13. Texas will spend about \$4,043 per student in 2012-13. That's about \$700 less in a state that already ranks 44th in per pupil spending.

Of District 23 schools, the Dallas ISD will be hit hardest. A 3.1 percent cut for FY11-12 will cost about \$35.4 million. In FY12-13, the Dallas district will lose \$99 million (8.6%). Cedar Hill schools will lose about \$2 million (3.4% less) for FY11-12 and will spend about 5 percent less in FY12-13. The district will also close a campus. Duncanville schools stand to lose more funding for FY11-12 (\$2.2 million) than for FY12-13 (\$1.2 million). The DeSoto school district follows a similar



Senator West pictured on the Capitol steps with Dallas-area teachers during March 14, Statewide AFT Teacher Rally supporting public education.

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pattern, losing about \$1.8 million for the next school year and a projected \$0.9 million for FY12-13. Lancaster schools, like Dallas will lose more funding during the second year of the budget cycle (\$1.2 million - \$2.2 million).

Each district faces a combination of staff, programmatic and general belt-tightening cuts to make budget ends meet. In addition to raising class sizes across the state and placing local district finances in peril, the decisions of the 82nd Legislature will also have the distinction of passing the first budget since the creation of the School Foundation Program in 1949 that does not fund student enrollment growth.

While funding for TEA and programs targeting dropout reduction, reading, math and science were slashed, we were able to keep resources in place for Pre-K instructional materials, high school completion, college readiness and improving teacher effectiveness. And we made sure that our Pre-K-12 students will have textbooks.

With huge cuts looming, school districts lacked the flexibility to reduce professional staff salaries. This left districts with few options other than reductions in force through non-renewal of contracts.

After session-long negotiations with school districts and teacher organizations, SB8 passed during the Special Session. Under SB8, districts will be able to furlough contract employees for up to six days if state funding remains below FY10-11 levels. School districts will only be able to negotiate salary reductions impacting teachers if corresponding reductions are also applied to administrators. Other language provides a 10-day notice to prevent teacher contracts from being voided due to the expiration of their certification.

Higher costs for Higher Education

After a banner 81st Legislature in which I chaired a committee that crafted the higher-ed budget, there were no such good fortunes available for the 82nd. In 2009, we created competitive funding grants to promote more research universities and sent long-awaited resources to community colleges. This year we cut formula funding to all four-year universities and by the end of the 82nd, some state leaders were questioning the validity of research investments.

All financial aid programs took a hit and no higher-ed institution, 2- or 4-year, received funding to accommodate enrollment growth. Special items funding was also cut by 25 percent.

When state appropriations are cut, colleges are forced to raise tuition and fees and make cuts to programs and staff. And with reduced financial aid, college affordability becomes an even greater concern. With this in mind, I authored SB1799 and SJR50 that will increase student loan funding. Knowing the added burden that our higher education institutions must shoulder, we also passed laws to streamline reporting and administrative costs.

Some of our would-be scholars enter college with academic deficiencies, so I authored SB1564, to reform developmental education courses to help students get on track to earning a degree. When it stalled in the House, I was able to pass it by amending it onto HB1244.

Many students have defrayed college costs by taking dual-credit courses while still in high school. This requires careful coordination between TEA and the Texas Higher Education Coordinating Board. To this end, I authored SB419. In Fall 2010, more than 90,000 Texas high school students enrolled in dual-credit courses.

An aside, I feel a lot safer knowing that all efforts to pass a bill that allows handguns on college campuses were successfully defeated.

The University of North Texas at Dallas

In Fall 2010, UNT - Dallas admitted its inaugural freshman class and held its first graduation ceremony as an independent, state supported, four-year university. Legislation and

funding approved during session will ensure the campus' continued growth.

Total funding for FY12-13 was approved at \$30,478,300, including \$11.8 million in transitional funds for maintenance and operation. Another \$2.9 million was budgeted to further plans for the law school that expects to enroll its first class of nearly 100 students by 2013. In addition, the Legislature approved plans that create a School of Pharmacy to be run through a joint partnership of UNT System schools - including UNT-D.

HBCUs

My advocacy for Texas' two state-supported predominately Black universities - Prairie View A & M University and Texas Southern University - continued. We maintained funding for the Pre-College Enrichment Program, the Undergraduate Medical Academy, graduate and undergrad programs and initiatives that target enrollment growth and student success.



Senator West is visited by Dallas ISD students from T.C. Marsh Middle School.

Texas' five private Historically Black Colleges and Universities, including Paul Quinn College, all part of the Texas Association of Developing Colleges (TADC) were recipients of \$3 million in funding over the biennium for their Centers for Teacher Education. These dollars go to provide distance learning programs, enhance library and computer resources, mathematics and science laboratories and other efforts to enhance teacher preparation.

Intergovernmental Relations

With my appointment to chair the Senate Committee on Intergovernmental Relations (IGR) prior to the 2007 Legislative Session, I soon became aware of an outstanding list of issues related to homeowner associations (HOAs) and the various associated interests; none more important than the property owners themselves. From the myriad concerns, hours of testimony and stakeholders input, it was obvious that this body of law was in dire need of comprehensive reform.

This session, we were finally able to get legislation across the finish line - although not in the manner that it is normally done. While my omnibus bill, SB142, did not pass, most of it was enacted by parceling it out into several House and Senate bills.

When SB142 language reconstitutes in statute, reforms will provide greater HOA transparency before and after purchase by giving prospective homebuyers the information needed to make an informed decision during the transaction. HOAs will have to provide access to all association records and adequate notice of board meetings and elections to homeowners.

Reforms will help homeowners facing financial hardships by requiring HOAs to: (1) offer payment plans; (2) apply payments to delinquent and current assessments that are subject to foreclosure first, (3) provide notice by certified mail and (4) provide the ability to cure delinquencies prior to turning accounts over to a collection agency.

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The new law also gives homeowners a voice on HOA boards and in elections. Homeowners can call an election to replace an HOA board that has failed to call an annual meeting and the bill provides a mechanism to transition from a developer-controlled board to a board that is elected by homeowners.

And, most importantly, the new law prohibits HOAs from foreclosing through non-judicial methods. Homeowners will also be able to vote to strip an HOA of its power to foreclose.

I also passed legislation that prohibits HOAs from barring the installation of solar panels and "cool roof" shingles (HB362).

Health and Human Services

Only public education tops the amount of money Texas spends under the umbrella of Health and Human Services (HHS). For FY12-13, Texas will spend about \$23.3 billion in GR, about 27 percent of all state spending.

Even though the state will spend more in GR over the next biennium, the total HHS spending will be \$11.3 billion short of FY10-11 levels. This is because many areas of state spending for Health and Human Services, such as for the Children's Health Insurance Program (CHIP) and Medicaid, is matched at higher amounts by federal dollars. So in a way, spending less will cost Texas more in the long run.

At the start of the regular session, all state agencies were asked to cut 10 percent from their budgets. The Senate worked hard to restore \$4.8 billion in funding for the safety net programs that protect our most vulnerable citizens.

The approved budget restored funding to CHIP providers, nursing homes, state-supported living centers, child protective services, foster care, mental health beds, state hospitals and substance abuse treatment. When resources are not devoted to mental health and substance abuse initiatives, costs soar higher because those left untreated end up in more expensive county jails and penitentiaries.

We were able to protect funding we carved out last session for subsidized Kinship Care services that allow children, who otherwise would become part of the foster care system, to be cared for by qualified family members who assume legal custody.

Lately, it seems that more and more incidents have been reported of children harmed - or worse - at childcare facilities. To address this problem, I was able to pass SB260 that increases the training requirements of childcare workers and directors.

New childcare employees must now complete 24 hours of training within the first 90 days of employment, with eight hours coming before the responsibility of caring for our babies. Annual required training hours will increase from 17 to 24 hours. New online courses will make training less costly.

Even with our hard work to improve the HHS budget, there are still unresolved issues. I've mentioned the \$4.8 billion

Medicaid tab, but the budget also assumes significant Medicaid savings from various cost-cutting measures in SB7 and budget riders. Some ideas, like reducing preventable hospital readmissions, had widespread support. Others, like seeking approval from the federal government to reduce the number of people who qualify for Medicaid are in my view not only unwise, but also unrealistic.

Helping Cities and Counties grow and govern

Senate IGR also has legislative oversight on matters related to city and county government and the regulation of the various instruments used by them to spur development.

With input from our community partners, we were able to author and pass SB402, a bill that allows cities and counties to partner with non-profits to create Community Land Trusts. This tool provides new opportunities for homeownership for low-income families who would otherwise be unable to afford a home. It responds to gentrification worries by ensuring that a property is appraised at levels consistent with other land acquired for affordable housing use.

SB173 gives tenants added protections by giving cities the ability to enforce health and safety violations committed by slum lords who routinely sell properties found in violation and move on to acquire others. Under this law, any property cited is tied to the owner of record at the time the violations occurred.

I sponsored HB1862 by Rep. Rafael Anchia. It protects tenants further by allowing them to recover - from the landlord - their full security deposit, any rent paid in advance, actual damages for out-of-pocket moving expenses and any associated court costs and attorney fees when apartment complexes have fallen into such disrepair that a city or county must pull the building's certificate of occupancy, thereby forcing tenants out of their homes.

Another goal of IGR focused on increasing employment and creating economic development initiatives. HB1400 and SB412 on public improvement districts and SB1234 addressing municipal management districts, will provide incentives that promote tourism, entice studio and film production facilities, spur mass transit development and bring the jobs that accompany these ventures. I also sponsored HB1869 to assist local businesses' efforts to contract with municipal and county governments.

Payday lending

Much has been said and written locally on the subject of payday and auto title lending. It is to many, an insidious practice that in some instances, has left borrowers in worse financial straits than the events that brought them to lenders' doors.

We were thrilled when Dr. Frederick D. Haynes III - Friendship West Baptist Church, representing several prominent District 23 ministers, traveled to Austin to testify in Senate and House committees because of the impact this issue has on their congregations and the community.

SB251 was filed before the start of session. It would close the loophole payday lenders use to operate as credit services organizations (CSOs) and skirt laws that bind banks and credit unions by allowing them to charge interest rates as high as 500 percent APR. When SB251 stalled, we joined Sen. Wendy Davis' efforts to advance SB1862.

SB1862 sought to cap payday loan rates at 15 percent and auto title loans at 20 percent. It would have prohibited "roll-over" fees (that don't apply to outstanding balances) charged by lenders to renew loans that aren't paid in full. SB1862 would also have required that after a third renewal fee, subsequent payments would convert into an installment plan.

Staunch industry opposition helped defeat SB1862. Instead, members approved HB2594 by Rep. Vicki Truitt that requires each payday and auto title lender site to register, pay a yearly license fee to the state and submit a quarterly activity report to the Consumer Credit Commission.



Senator West on Senate Floor with Pastor Frederick D. Haynes III.

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HB2592 by Truitt also passed. It requires payday and auto title lenders to disclose interest rates and fees charged to borrowers as compared to conventional loans. Lenders must also disclose all fees paid by borrowers to renew a loan. In my opinion, these bills are starting points for legislation that should have done more to curtail predatory payday lending practices.

Fortunately, the City of Dallas was able to accomplish what the legislature lacked the will to do. It recently passed an ordinance to prohibit lenders from rolling over a loan more than three times and requires each rollover payment to reduce outstanding loan balances by 25 percent. Payday loans are also capped at 20 percent of a borrower's gross monthly income by the ordinance.

Voter ID

So enthusiastic were my colleagues over requiring photo identification to vote that 19 senators signed on as authors. In the House, SB14 had 5 sponsors and 84 co-sponsors. Opposing arguments - mine included - were that elderly, minority or disabled voters, or those who must travel up to 100 miles to obtain a state-issued photo ID will be adversely impacted by the new law's requirements.

Come January 1, the voter registration card traditionally used as primary verification will become a supporting document. Under the new law, a voter must present either a Texas driver license or state-issued ID, a military ID, a U.S. citizenship certificate that contains a photo, or a U.S. passport. All documents must be current or not have expired for longer than 60 days. House amendments added a concealed handgun license and created a new, free, election identification certificate as acceptable documents. State IDs issued to persons age 70 and over will not expire.

The disabled are exempt from photo ID requirements if their conditions are confirmed by the Social Security Administration or the Veterans Administration. But the bill also gives election judges the ability to deny voters if the names on approved documents and voter rolls are not an exact match. In a tight budget cycle, no one knows how much it will cost to implement these changes that were designed to address a problem for which there is little evidence to support claims of widespread abuse.

Transportation - unlocking local gridlock

The gasoline tax won't be indexed. Neither will we create a new vehicle-miles-traveled fee. Remember, "No new taxes!" But the Dallas metro area will see new cash to address what has been labeled the fifth most congested area in the U.S. This session, the Legislature voted to authorize the use of \$3 billion in Proposition 12 bond monies to fund transportation projects. Also reauthorized was the ability to enter comprehensive development agreements (CDAs) to help solve the state's backlogged congestion and delayed construction woes. In all, some \$850 million in funding is heading to the Dallas District/North Texas region, mostly to kick start construction.

Dallas will receive about \$320 million to spend on the I-35/I-30 Mixmaster and remaining Calatrava bridges connected to the Trinity Corridor Project. Another \$124 million will go to address mobility improvements. The area will *finally* see funding to add a lane in both directions on US-67 from Cockrell Hill to FM-1382 that are part of delayed Southern Gateway plans.

Criminal Justice

During a session where hard choices on budget cuts were forced, lawmakers decided to continue the effective, cost-efficient programs that have garnered national acclaim for reducing prison populations, lowering recidivism rates and halting prison expansion.

The new budget maintains most treatment and diversion programs at FY10-11 levels. It costs about \$51 a day to house a person in prison. Parole supervision costs \$3.74 per day compared



Senator West listens intently during Senate Education Committee hearing.

to \$2.92 to supervise an offender on probation. Keeping probation and parole officers on the job is a better choice for Texas than hiring more prison guards.

Under SB653, the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) will be abolished. They will merge to form the Texas Juvenile Justice Department. Since the reform measures implemented by the passage of SB103 in 2007, the number of youth housed in TYC facilities has declined from 4,800 in Summer 2006, to about 1,600 students currently. The new agency is scheduled to begin operations December 1, 2011.

While Dallas County convicted people who were later proved innocent, it also kept the means to eventually set them free. We worked with the Dallas County District Attorney's Office to pass SB1616, a bill that creates the first statewide standard for the collection, analysis, retention and destruction of biological evidence (DNA).

In addition, SB122 by Sen. Rodney Ellis provides testing of untested DNA evidence and retesting of evidence when advanced testing techniques become available. SB1636 by Sen. Davis will break through backlogs of untested, rape case DNA evidence. It also requires police to submit evidence from new rape cases to crime labs within 30 days of collection and for the evidence to be tested within 90 days.

Given the impact of background checks on employment, I continued my work to refine Texas' laws on criminal history records. On the fourth try, we passed SB144/SJR9 that will allow a person who has successfully completed deferred adjudication to apply for a pardon. Jobseekers will also welcome SB462 that permits the expunction of many arrest records if the case has not been indicted or was dismissed.

SB198 revises so-called Romeo and Juliet laws pertaining to lifetime sex offender registration for young adult offenders. In 2009, the governor vetoed a similar bill involving unforced sex with an underage victim. SB198 raises the minimum victim age to 15, expands the permissible age difference from three to four years and allows a person convicted or placed on deferred adjudication for the offense, to petition the courts for removal from the registry.

SB694 follows-up on legislation I authored in 2007 that created a statewide electronic database for reporting the sales of items containing copper, brass and bronze. We've found over the four years since, that while the database has been a great tool, 1) many metal yards have not registered through the Texas Dept. of Public Safety (DPS) and 2) subsequently, if they are not registered, they are also not reporting sales.

SB694 gives local and state law enforcement more tools to fight copper theft. Unregistered scrap yards could face a possible \$1,000 a day fine or temporary closure. The bill also requires sellers of regulated materials to be photographed.

Senator Royce West

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THE TEXAS SENATE IS AN EQUAL OPPORTUNITY EMPLOYER AND DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, RELIGION, AGE OR DISABILITY IN EMPLOYMENT OR THE PROVISION OF SERVICES.

REDISTRICTING

Following the decennial U.S. Census, the Texas Constitution requires the legislature to engage in the process of redistricting. In addition to drawing new state Senate and House districts, legislators are also given the authority to devise new U.S. House Congressional maps.

Congressional reapportionment also occurs. States that lose population also lose representation and states that gain population - like Texas - gain seats. Texas gained four U.S. House seats through reapportionment. But despite Texas' tremendous population growth being tied to that of Hispanics, under new congressional maps, minorities actually have one less district where they may be able to elect their candidate of choice.

While maps redrawing Texas Senate and House districts were passed during the Regular Session, Congressional redistricting was not brought up until we were in Special Session. The Congressional remapping plan approved by the Legislature would redraw U.S. House districts in both Dallas and Tarrant counties.

Although 52 percent of those who live in Dallas and Tarrant counties are African American or Hispanic (2.1 million), it is argued that only one of eight districts covering these jurisdictions provide an effective opportunity for ethnic minority voters. The plan approved by the Legislature would add more Blacks and Hispanics

into District 30, currently represented by Congresswoman Eddie Bernice Johnson and distribute the remaining D-FW minority residents among seven other districts.

While headlines and sound-bites focused on the budget, school funding, sonograms, Voter ID, sanctuary cities and guns on campus, redistricting assumed a lower profile.

As approved by the Legislature, the newly configured Texas Senate District 23 will extend south to the county line to represent most all of Cedar Hill, all of Duncanville, DeSoto and Lancaster and add Wilmer. We welcome back a larger part of Grand Prairie than before and the Elm Thicket neighborhood near Dallas Love Field Airport.

The Congressional map and the Senate plan approved by the Legislature have drawn intense scrutiny from civil rights groups. Under federal law, Texas is one of 16 mostly southern states that must receive federal pre-clearance under the Voting Rights Act when statutory changes impact minority voters. Even during calmer political times, redistricting is most times contentious. As predicted by opponents of the maps approved by the Legislature, Texas House, Senate and Congressional maps are now in the hands of courts in Washington D.C, San Antonio and the U.S. Justice Department.