

Special Session Could End in Fireworks

If Gov. **Rick Perry** gets his way, the legislative special session that starts on July 1 will be over before the July 4 holiday.

If he can pull it off, it will be the shortest special session of his tenure as governor – all seven specials he has called since taking office in 2000 have run for almost the full 30 days allowed by the Texas Constitution. But this time Perry's staff has engineered a highly restricted call, dealing with three pieces of outstanding business from the regular session.

The greatest acrimony is not over why Perry called the special session, but when and how. The regular session finished on June 1, and Perry announced on June 9 that lawmakers would need to come back – but he didn't provide a date. The prevalent rumor was work would start right after Independence Day weekend, but when he issued the call on June 25, he only gave legislators six days' notice that they needed to return to the Capitol. Rep. **Donna Howard**, D-Austin, said there were rumors that Perry was working on "a very short time frame [with] the Fourth of July holiday as an incentive to get this short order of business done." However, she said, "It certainly would have been nice to get a little more warning."

The big issue now is transportation. First is Senate Bill 1, releasing the \$5 billion in

Texas Department of Transportation general obligation bonds that legislators failed to authorize in the regular session. Lawmakers also failed to pass the TxDOT Sunset bill, as well as the Department of Insurance, Racing Commission, Office of Public Insurance Counsel, and State Affordable Housing Corporation Sunset bills: so SB 2 saves the agencies from closure.

The need for those measures was clear and well established, but Perry has extra business in mind. While ignoring pressure from conservatives to bring back the divisive matter of **voter ID** and bipartisan calls for reforming the **Children's Health Insurance Program**, Perry added the establishment of the **Texas Transportation Revolving Fund** to SB 1. That could be risky for a short session since the original language, filed in the regular session as SB 1350, never made it to the House floor and lawmakers may want a full debate. Finally, there's SB 3, another issue arising from the failure of the TxDOT Sunset bill. In 2007, the legislature passed a moratorium on comprehensive development agreements for new toll roads but granted exemp-

tions for a handful that were already in negotiations: SB 3 continues those exemptions for four years.

While there's little disagreement that these are all major issues, the legislation proposed, especially the Sunset bill, is raising questions. To keep the agencies open, Perry proposes bringing back the terms of House Bill 1959 – the Sunset Safety Net bill. Simply extending the life of those five agencies and adding them to the 2011 Sunset schedule – when the massive Health and Human Services Commission is up for review – would make that cycle impossibly huge. So the proposal reschedules what agencies would be reviewed in 2011 and 2013, to rebalance the workload. Sunset Advisory Commission Chair **Carl Isett**, R-Lubbock, called this "the shortest path to ground: to reauthorize those agencies, come back in two years and pass the reforms that were contemplated in the full Sunset bill."

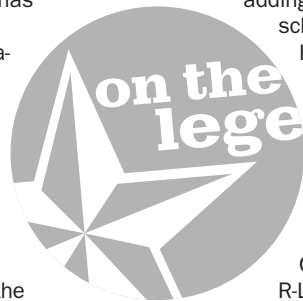
But HB 1959 was a stop-gap measure introduced at the last minute purely because the main Sunset bills didn't pass. In terms of governmental oversight, it's like losing a tire,

putting a doughnut on your car, getting to the mechanic, and, instead of buying a new tire, getting a replacement doughnut. That's frustrating for Sen. **Kirk Watson**, D-Austin, who, as vice chair of the Senate Committee on Transportation & Homeland Security, said he spent the regular session "up to my elbows" in the TxDOT Sunset process. Perry's plan restarts the process, and an exasperated Watson said, "We just did it."

Isett counters that, even without a full bill, Texas Transportation Commission Chair **Deirdre Delisi** can still use the Sunset review to reform TxDOT: "We've clearly shown the direction we want them to follow, and, to the extent that they implement those recommendations, it's that much less legislation we have to pass next time." When all five agencies come back in 2011, he said, "We've already done the full-blown review, so we'll just have to look at what's changed."

Yet even with both Republicans and Democrats publicly saying they don't plan to sabotage the session, there's no guarantee that all this legislation can be handled in three days. Perry may be planning for an early sine die, but, Watson warned, "If you come back, who knows how it extends?"

– Richard Whittaker



\$4 Million Later Austin loses lab to Waco

When the **Department of Veterans Affairs'** brain imaging lab leaves Austin for Waco, there won't be much to move. An MRI machine used for research belongs to the University of Texas. The lab's director was fired in January, and the plan he developed to study and treat returning veterans with **traumatic brain injury** has been scrapped.

Most of the money is gone, too. Of the \$6.3 million in taxpayer money allocated in 2004 to the **Central Texas Veterans Health Care System** to fund the lab, a little more than \$2 million is left, says VA spokeswoman Diana Struski. What remains, she says, will be used to clear out the **Brain Imaging and Recovery Lab's** offices at the **J.J. Pickle Research Center** and terminate the lease with UT.

After spending more than \$4 million, the Austin lab is closing without one veteran having been studied or treated. Last month, the VA announced that the BIRL was moving to Waco, where researchers using a \$3.5 million mobile brain scanner at the VA's **Center of Excellence for Research on Returning War Veterans** will conduct brain research.

The ousted director of the BIRL, neurologist **Robert Van Boven**, says that much of the wasted money was gone before he arrived. "By the time they hired me, they had already pissed away one-third of their money – \$2.1 million," he says. A July 2008 report by the **VA Office of Investigator General** backs up his accounting.

When Van Boven took the BIRL's helm in July 2007, he wrote a formal protocol to exclu-

sively study traumatic brain injury in veterans returning from battle. He reallocated the remaining \$4 million in BIRL funds for a four-year TBI study, and the budget was approved by his bosses at the **Central Texas VA**.

But before the research began, Van Boven butted heads with his superiors. The day after the BIRL's official grand opening in January 2008, Van Boven was suspended from his leadership role and reassigned to clinical work. He was fired in January of this year. The federal **Office of Special Counsel** is currently conducting an investigation into possible whistle-blower reprisals; it is illegal for a federal agency to fire an employee for disclosing misconduct.

Beginning in the fall of 2007, Van Boven began reporting misuses of BIRL funds to his bosses at the Central Texas VA, based in Temple. Van Boven alleged that an ongoing study of diabetes-related eye dysfunction – begun before he was hired – was outside the BIRL's mission. Moreover, he reported that an endocrinologist and a contractor conducting the research were not qualified researchers and had little or no data to show for contract work billed to the VA and hundreds of hours of brain scanner time, for which UT charged the lab \$486 per hour.

Van Boven's superiors at the Central Texas VA – including **Edward Sherwood**, then chief of staff, and **Paul Hicks**, associate chief of staff for research – refused to act on his disclosures, so Van Boven went over their heads to officials in Washington, D.C., adding accusations of mis-

management. His disclosures resulted in two VA Office of Investigator General reports – released in July and December 2008 – that partially substantiated claims that the research was faulty but did not verify his allegations of mismanagement.

Late last year, a VA committee was set up to consider closing the lab. "The panel has met, and there could be a possible recommendation to close the BIRL," Struski said in December. However, after an outcry from veterans' groups and a letter from four Central Texas congressmen, the VA announced last month that the BIRL would be moving. "We looked at the duplication of efforts between the BIRL and the Center of Excellence's missions, geographic access to active members, and not having duplication at two sites," Struski says. She was also quoted in a June 22 *Washington Post* article as saying that problems uncovered at the lab were "part of the decision" to move.

Mild TBI and **post-traumatic stress disorder** are a dual affliction seen in many returning war veterans and an area where experts agree that more study is needed. The center, which broke ground in April, and its mobile brain scanner will be better able to serve outpatients with mild TBI, Struski says.



JANA BIRCHUM

Robert Van Boven

Those with medium and severe TBI, she says, tend to be hospitalized and are being served at other facilities, such as the new National Intrepid Center of Excellence for Traumatic Brain Injury, which opened last year in Bethesda, Md.

Van Boven, meanwhile, has taken a position with the U.S. Army as clinical director of the TBI program at the **Irwin Army Community Hospital** in Fort Riley, Kan. Nevertheless, he continues to fight the BIRL closure. "What really pisses me off is that nobody has been held accountable for the waste, fraud, and mismanagement at the Central Texas VA," he says. "They want to deny the problem, cover up the problem, bury the problem, and at the same time use it as an excuse to shut down the BIRL."

– Laurel Chesky