THE Neal Spelce AUSTIN LETTER

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Dear Client:

The Texas Legislature is being asked to put about $600 million in a kitty to be doled out by the Governor, Lieutenant Governor and Speaker of the House as they see fit, if they feel it will help the state's economy.

"Texas doesn't attach any strings to the money, other than requiring the recipients to deliver the jobs they promise. The companies decide how to use the funds, and noble-sounding pursuits like job-training are **no more worthy than padding the bottom line**," writes **Mitchell Schnurman**, a columnist for the *Fort Worth Star-Telegram*.

"You gotta hate it. Texas can't figure out how to pay for kids' education or teachers' insurance or health care for the poor; but on **corporate payola**, it has the answer. **And what about corruption**? How do we make sure the booty isn't funneled to the governor's friends or political supporters or other powers-that-be? These are legitimate concerns – and they'll always be worth worrying about – but they **won't derail this train**."

"**And they shouldn't**," he says, writing in support of the Texas Enterprise Fund and the Texas Emerging Technology Fund (see our 12/17/04 edition). "That's because the **enterprise fund is working even better than hoped**, in landing jobs, attracting investment and generating publicity. In less than a year and a half, the fund has helped make Texas the nation's No. 1 site for business expansion."

Schnurman points out that since the TEF became available in September 2003, the state has used it to close 16 deals, including some of the largest industrial projects in the nation. **Texas has pledged almost $205 million** to companies, medical programs and an engineering school. In exchange the recipients promise to **spend almost $6.2 billion on facilities and create nearly 20,000 jobs**.

"For perspective, consider what North Carolina is paying Dell to build a computer plant there: about **$300 million**, **for which Dell is committing at least 1,200 jobs**. Do the math, and it's clear Texas is getting much more bang for its money, at least in this case," commented Schnurman.

In the next item, we'll tell you why the TEF is in some ways better than traditional tax breaks.

Tax abatements offered to companies by local governments are complicated and controversial. **They also make it difficult to determine the actual cost to the public**. **The Texas Enterprise Fund incentives are simple to quantify**.

The simplification is the reason some prefer using the TEF instead of tax breaks. But, more importantly, the direct payments cut through the red tape and let state leaders play deal makers. "Governor **Rick Perry** likes to pick up the phone and talk CEO to CEO, asking what it will take to make the project happen," comments **Mitchell Schnurman**, in the *Fort Worth Star-Telegram*. "Obviously, it's a lot easier to offer a million-dollar check than to suggest that the prospective company rifle through various state programs for support."

> The TEF also gives the state the flexibility to make unconventional deals. "Texas Instruments was mulling a $3 billion chip-making plant in Richardson, but it **wanted** $**50 million from the state – not for its bottom line but the University of Texas at Dallas**," Schnurman wrote.
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> "TI wanted to bolster the university's school of engineering and computer science to help ensure a qualified labor pool. The state estimates that 1,000 jobs will be created at the plant, but **it's easy to imagine a much bigger impact in attracting faculty**, **students and suppliers**," he added.
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> "The Texas fund also agreed to put up $25 million toward a new diagnostic-imaging research center in Houston. M.D. Anderson Cancer Center and the University of Texas Health Science Center are pitching in a combined $25 million, with General Electric providing millions in equipment, technology and expertise," Schnurman reported. "**It's the sort of joint venture that would be difficult to support if the state didn't have a flexible funding source**."

Yeah, but how much is made public about all this wheeling and dealing on such high corporate and state government levels? First of all, no deal is done until the governor, Lt.Gov **David Dewhurst** and House Speaker **Tom Craddick** each approve. Even though they are all Republicans, you know the trio does not always march in lock-step – especially if you kept a close eye on the last legislative session. Secondly, after the deal is struck, the documents are released. And, thirdly, the state's analysis of its return on investment is also released.

The requested $600 million for the Texas Enterprise Fund and the Texas Emerging Technology Fund is a lot of money. As USSenator **Everett Dirksen** quipped during a debate about funding: "**A billion here**, **a billion there**, **and pretty soon you're talking about real money**!"

Obviously, this is not on that level. The $600 million is about one-half of one percent of Texas' two-year budget and only about 2.1% of the amount spent on education. But it is a significant sum. And if it is appropriated – and the current success is replicated – the returns on this investment should **pay strong dividends** for years as it bolsters the Austin and Texas economy.

Speaking of economic development dollars, the Austin area will have $2 million more than the anticipated $11 million to create jobs over the next five years.

The Greater Austin Chamber of Commerce's fundraising campaign officially closed with a final tally of $13 million. Dubbed Opportunity Austin, the effort will fund a multi-pronged economic development program aimed at creating 72,000 jobs over a five-year period, while pumping $14 billion into the regional economy. **The $13 million came from 247 investors, almost all of it in private contributions**. This is the most money ever raised in the Austin area for this purpose. The money-raising was kicked off in 2003.

Another sign of the economic turnaround: **the Austin office building market is seeing its highest occupancy rates since 2001 and rental rates are continuing to increase**.

The average overall occupancy rate was at 80.8% at the end of the 4th quarter 2004, the highest it has been since the 4th quarter 2001. This is still a far cry from the boom year of 2000 when the occupancy rate topped out at more than 95%. As a result, **the market is considered by commercial real estate brokers to still be a tenant's market** – especially since almost 7 million square feet of space remains available.

But the occupancy rate trend lines are heading in the right direction. "These rates are encouraging and have many Austin area office brokers and economic analysts feeling that **the bottom of the market is long behind us**," reports Colliers Oxford, a commercial real estate firm. "Steady activity has set the pace that Austin will see as the office real estate market continues to improve."

As *occupancy* rates rise, *rental* rates are being ratcheted upward, albeit slowly. Colliers Oxford reports an average 4th quarter 2004 rental rate of $18.76/sq.ft. for all classes of office space. This compares to $18.01 in 4th quarter 2003. One of the reasons the **rates are rising slowly** is the market has yet to absorb all the discounted sublease space out there.

When the bottom fell out during the dot-com debacle, companies not only folded and abandoned their office space, but many companies scaled way back and ended up with unused space. To try to cut their losses, companies started subleasing this vacated office space – at below-market rates, driving down rental rates. This situation is changing. **The available sublease space is down more than 45% from a year ago** (from 1.4 million sq.ft. to today's 760,000 sq.ft.) but it still is skewing the rates on the low side.

For *tenants*, time is quickly running out on good deals. For *landlords and building owners*, the end of the crunch is in sight. And for **lenders**, you can start to breathe a bit easier.

Three Austin attorneys have been designated by their peers as "Distinguished Lawyers."

The first Austin attorney to be named a Distinguished Lawyer in 1986 was **Don Thomas**, a founder of the Clark, Thomas & Winters law firm. The Austin Bar Board of Directors award recognizes Travis County lawyers who have practiced for 30 years or more and have "significantly contributed to the profession and the community."

This year's recipients: **Shannon Ratliff**, **Sr**., sole owner and president of Ratliff Law Firm, has served as lead counsel for Fortune 500 companies in a variety of nationwide class actions and other complex litigation; **Bill Whitehurst**, senior shareholder of Whitehurst, Harkness, Ozmun & Brees, is a past president of the State Bar and recently won the two largest verdicts ever against the US for a brain damaged baby in Austin and another in San Antonio($32 million and $44 million); and **Larry York**, a founder of York, Keller & Feld who has substantial legislative experience and acted as chief negotiator for the major tort reform group in the 1995 and 1997 sessions of the Texas Legislature.

The previous Distinguished Lawyers include: **Larry Temple** and **Mike Cook**, 2004; **Tom Davis**, **Pam Giblin**, Judge **Pete Lowry** and **Broaddus Spivey**, 2003; **Jack Eisenberg**, **Dick McCarroll** and **Sam Perry**, 2002; Judge **Mace Thurman**, Judge **Tom Blackwell** and **Will Davis**, 2001; **Joe Hart** and **Tom Watkins**, 2000; **Sandy Shapiro** and **Dan Moody**, **Jr**., 1999; **Harley Clark** and **Robert Sneed**, 1998; Judge **Will Garwood**, 1997; **Bill Hilgers**, 1996; Judge **Joe Greenhill**, 1995; Judge **Jim Myers**, Judge **Bob Shannon** and **Chrys Daugherty**, 1993; Judge **Herman Jones**, Judge **Jack Pope**, Judge **Robert Calvert**, **Dudley McCalla** and **Roy Minton**, 1992; Judge **Frank Maloney**, Judge **Tom Reavley**, **Lloyd Lochridge**, **Ralph Yarborough**, Senator **Toney Byrd** and **Page Keeton**, 1991. No others were so designated between 1991 and the first designee, Thomas, in 1986.

The Inaugural prayer breakfast in Washington this week reminded **Dr**. **Louis Overholster** of the story that when President Lyndon Johnson told his press secretary, Bill Moyers, to speak up, he couldn't hear his invocation, Moyers replied: "Mr. President, I wasn't speaking to you!"

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Sincerely

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