



Senate  
Research  
Center

ISSUES FACING  
THE  
81<sup>st</sup>  
TEXAS LEGISLATURE



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A report prepared by the Senate Research Center

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The following information is intended to serve as a reference guide to issues facing the 81st Legislature. It is not a comprehensive list of issues, but rather an outline of broad categories and topics of concern that have arisen during the interim. This is not intended to function as an endorsement of any issue by the Senate Research Center.

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## Senate Research Center

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## STATE BUDGET AND FINANCE

### Budget

#### **H.B. 1, General Appropriations Act, 80th Legislature, Regular Session**

The 2008-2009 biennial budget includes appropriations for state government operation that total \$167.8 billion in All Funds. The 2008-2009 biennial budget includes estimated appropriations of \$80.0 billion from general revenue (GR) funds, \$6.3 billion from GR-dedicated funds, \$51.0 billion in federal funds, and \$30.6 billion in other funds. The All Funds budget represents a total increase of \$22.7 billion, or 15.7 percent, from the 2006-2007 biennial budget.

The three largest dollar amount increases in the All Funds budget occur in the agencies of education, health and human services, and business and economic development functions. The \$12.9 billion increase for public education is primarily due to an increase in the state's share of funding for local school districts. Appropriations for additional property tax reductions for school districts account for approximately \$12 billion of the increase for public education. The \$3.8 billion increase in health and human services is primarily due to an increase in caseloads and costs, as well as rate restorations and increases in Medicaid and the Children's Health Insurance Program (CHIP). Most of the \$1.1 billion increase in funding for the business and economic development function is due to increased funding for the Department of Transportation.

#### **Fiscal Year 2010-2011 Budget Instructions**

On May 5, 2008, the Legislative Budget Board (LBB) and the Governor's Office of Budget, Planning, and Policy (GOBPP) issued a memorandum detailing instructions for agency and institution of higher education (IHE) legislative appropriation requests (LARs) for the 2010-2011 biennium.

Under the instructions set forth in that memorandum, an agency's baseline request for GR-related funds may not exceed the sum of amounts expended in fiscal year (FY) 2008 and budgeted in FY 2009 plus an amount equal to the GR-related allocation for the two-percent/\$50 employee pay raise in FY 2009. Agencies are also required to submit a supplemental schedule detailing how they would reduce the baseline request by 10 percent, or down to 90 percent, in general revenue-related funding.

Exceptions to the baseline request limitation include amounts necessary to maintain funding for the Foundation School Program, satisfy debt service requirements for existing bond authorizations, maintain caseloads for federal entitlement services, satisfy employer contribution requirements for state pension systems, and maintain adult prison populations. Funding requests for other purposes which exceed the baseline spending level may not be included in the baseline request but may be submitted as exceptional items.

## **Factors Affecting Spending**

### **Pay-As-You-Go Limit**

Article III, Section 49a, of the Texas Constitution prohibits the legislature from appropriating more revenue than will be collected during the biennium unless the appropriation is approved by a four-fifths vote of each house. Under the Tax Relief Amendment of 1978, the growth of appropriations from state tax revenues not dedicated by the constitution is limited to the estimated growth of the state's economy.

Once an appropriations bill is passed by the legislature, the comptroller must determine whether anticipated revenue will be sufficient to cover appropriations. If the comptroller determines that the appropriations bill is within the constitutional limit, the bill is certified and sent to the governor for approval. If the comptroller determines that the bill appropriates more than the amount of anticipated revenue, thus exceeding the constitutional limit, the bill must be returned to the house in which it originated, where steps may be taken to bring the appropriations within the amount of anticipated revenue.

### **Welfare Spending Limit**

Article III, Section 51-a, of the Texas Constitution provides that the amount that may be expended from funds for assistance grants to or on behalf of needy dependent children and their caretakers (Temporary Assistance for Needy Families, or TANF) shall not exceed one percent of the state budget in any biennium.

### **Limit on the Growth of Certain Appropriations (Spending Limits)**

The Texas Constitution, under Article VIII, Section 22, limits the biennial rate of growth of appropriations from state tax revenue not dedicated by the constitution to the estimated rate of growth of the state's economy. The LBB adopts items of information, which include the estimated rate of growth of the Texas economy as measured by personal income; the 2008-2009 level of appropriations supported by the state tax revenue not dedicated by the constitution (the base biennium); and the limit on appropriations or the constitutional spending limit for the 2010-2011 biennium. The limit on appropriations for the 2010-2011 biennium is determined by multiplying the 2008-2009 base budget by the growth of Texans' personal income from the 2008-2009 biennium to the 2010-2011 biennium.

### **State Indebtedness**

Article III, Section 49-j, of the Texas Constitution provides that the maximum annual debt service in any fiscal year on state debt payable from the GR fund may not exceed five percent of an amount equal to the average of the amount of GR fund revenues, excluding revenues constitutionally dedicated for purposes other than payment of state debt, for the three immediately preceding fiscal years. Bonds and agreements initially required to be repaid from GR funds would be subject to the debt ceiling provision if GR funds were subsequently needed to repay the obligations.

## **Economic Stabilization Fund (ESF) or “Rainy Day” Fund**

The ESF, or rainy day fund, is a constitutional fund that was created by the voters in 1988. Whenever collections are sufficient, the fund receives an amount of GR equal to 75 percent of the amount of oil production tax collections in excess of 1987 levels, and 75 percent of the amount of natural gas tax collections in excess of 1987 levels. The fund also receives one-half of any unencumbered GR funds balance at the end of each biennium. The legislature may also appropriate revenue to the fund. The legislature may appropriate amounts from the ESF at any time and for any purpose by a two-thirds vote of the members present in each house.

## **State Cash Management, Assets, and Infrastructure**

During the interim of the 80th Legislature, the Senate Finance Subcommittee on General Government Issues studied the effectiveness of the state’s cash management strategies. The subcommittee discussed whether the statutorily defined payment schedule of the Foundation School Program could be organized on a school district basis instead of according to payment classes.

The subcommittee discussed the process of issuing tax and revenue anticipation notes, which are short-term debt instruments used by the state to finance current operations, with repayments made from expected revenues and tax receipts. Borrowing through the use of such notes does not constitute debt under the state’s pay-as-you-go requirement, since the notes are paid back during the same year. However, some stakeholders have expressed concern regarding a widening cash flow mismatch.

The subcommittee also studied the state’s significant assets and infrastructure, requirements for the reporting of state assets, the General Land Office’s process for the evaluation of assets, and how the state determines whether a property is unused, underused, or should be sold. According to Edward Johnson, executive director, Texas Facilities Commission (TFC), many state agencies have grown but have had to lease space from TFC because they lack a construction budget. He said that the state has not constructed an administrative building in Travis County in about 25 years and has not acquired a building in 17 years. Johnson said that some underused or unused state-owned properties could be sold and that the proceeds from the sales could be used to fund new construction.

The 81st Legislature may consider ways to improve the state’s cash and asset management strategies.

## **Finance and Revenue**

### **Texas Economic Development Act**

H.B. 1200, 77th Legislature, Regular Session, 2001, created the Texas Economic Development Act (Chapter 313, Tax Code). This Act allows schools districts to attract new taxable property by offering qualifying entities a tax credit and an eight-year limitation on the appraised value of a property for the maintenance and operations portion of the school district property tax. The Act is also meant to encourage large-scale manufacturing, research and development, and renewable energy capital investment projects to the state. Eligible companies must invest a specified amount of money.

Legislation passed by the 80th Legislature, Regular Session, 2007, requires the Comptroller of Public Accounts (comptroller) to conduct a biennial study for the legislature of the progress of all value limitation agreements. The list of property types eligible for such agreements was also expanded.

Proponents of the Texas Economic Development Act say that prior to its passage, businesses in Texas were asked to pay a disproportionately large share of school property taxes. Others caution that a balance must be struck with respect to the types of enterprises that are eligible for value limitation agreements so that the state does not give away too much in order to attract business.

The 81st Legislature may consider changes to the Texas Economic Development Act.

## **Business Margins Tax**

H.B. 3, 79th Legislature, 3rd Called Session, established the business margins tax or “revised franchise tax.” It established a new mechanism for calculating the franchise tax and revised the base of entities subject to the tax. The revised franchise tax took effect on January 1, 2008.

Under H.B. 3, the tax is based on a business’s taxable margin. Once the entity’s taxable margin is determined, a rate of one percent is applied to the margin for an entity that is not engaged in retail or wholesale trade. For a taxable entity that is engaged primarily in retail or wholesale trade, a rate of one-half of one percent is applied to the entity’s taxable margin. Revenue from business done outside the state is not required to be apportioned to Texas. Certain allowable exemptions may also be subtracted to determine the entity’s taxable margin.

The base of taxable entities subject to the revised franchise tax includes businesses in Texas that enjoy state liability protection, including corporations and limited liability partnerships. The tax is not applied to sole proprietorships, general partnerships that are directly owned by individual persons, certain unincorporated passive entities, and nonprofit organizations. Businesses with no more than \$300,000 in total revenue, indexed to inflation, are exempt, as are businesses that owe less than \$1,000 under the tax.

H.B. 3928, 80th Legislature, Regular Session, made several revisions to the revised franchise tax, including a modification of the calculation of tax for entities with revenue between \$300,000 and \$900,000, an optional alternative method for calculating tax for businesses with total revenue of \$10 million or less, and the provision of an additional compensation deduction for a small employer, as defined under the Insurance Code, for initiative health care coverage for employees during the first and second years that coverage is provided.

The 81st Legislature may examine the implementation of the new business margins tax, the difference between the estimated revenue and actual revenue generated, its impact on state businesses, and whether any further changes to the tax should be made.

## **State Trust Funds**

There are currently several state trust funds that are administered separately, including the Employees Retirement System Pension Trust Fund, the Teacher Retirement System Pension Trust Fund, the Permanent School Fund, and the Permanent University Fund. During the interim of the 80th Legislative Session, the Senate Committee on Finance studied the feasibility and advisability of establishing an investment policy that is consistent across all state trust funds.

In order to consider such an investment policy, the state would have to address the differences between the state's trust funds, including their individual investment objectives, organizational structures, methods of governance, and fiduciary duties, and the unique laws that apply to each fund. The state would also have to determine acceptable levels of risk and rates of return.

The 81st Legislature may consider issues related to the establishment of a consistent state trust fund investment policy.

### **Property Tax Circuit Breakers**

During the interim of the 80th Legislature, the Senate Finance Subcommittee on Property Appraisal and Revenue Caps studied the issue of property tax appraisal caps and the possibility of alternative sources of funding to replace property tax revenues.

Some stakeholders maintain that property taxes are regressive and that the tax burden should be tied to an owner's ability to pay. A "circuit breaker" would cut off or reduce property taxes when they reach a certain percentage of family income. The implementation of property tax circuit breakers in other states that use them varies widely. Some apply only to senior citizens and people with disabilities. In most states, circuit breakers apply to both homeowners and renters, since it is assumed that property owners pass through a portion of their property taxes to tenants.

In Texas, there is concern that implementation of a property tax circuit breaker may present some challenges. Since the state does not collect an income tax, it may be difficult to accurately and efficiently determine individual income levels.

The 81st Legislature may consider ways to link property tax rates to the ability of the owner to pay.

### **State Tax Incentives for Employer-Sponsored Health Care**

During the interim of the 80th Legislature, the Senate Committee on Finance studied the effectiveness of existing state tax incentives that encourage employers to provide health coverage to their employees. According to Dianne Longley, Texas Department of Insurance, 24.5 percent of the Texas population was uninsured for the entirety of 2006. She said that this constitutes the highest rate of uninsured individuals in the country.

Most uninsured adults are employed, according to the Office of the Comptroller of Public Accounts. The provision of health insurance by employers to their employees could help to reduce the burden on the public health care system. At issue are the factors that lead businesses to choose to locate in Texas over other states, including tax structures and labor costs, and how to maintain a business-friendly environment while increasing the number of insured.

The 81st Legislature may consider legislation to provide additional deductions, credits, and financial incentives to encourage more businesses to provide health care insurance to their employees.

### **County Public Hospitals**

In Texas, counties have a statutory responsibility to provide health care to indigent populations. Counties

that are not fully served by a public facility, such as a hospital district or a public hospital, are responsible for administering an indigent health care program for eligible individuals of all or any portion of the county not served by a public facility. Chapter 61 (Indigent Health Care and Treatment Act), Health and Safety Code, defines the responsibilities of counties, hospital districts, and public hospitals in providing health care to eligible residents who are considered indigent.

Many of the counties that lack a public hospital are located in rural areas, while many of the counties that have the largest tax bases are not where the majority of indigent populations are located. Moreover, the financial resources available to public hospitals may vary considerably in different parts of the state. Some stakeholders feel that legal responsibilities for the provision of indigent care should take into account such geographic, economic, and demographic factors.

The 81st Legislature may consider alternative methods to address funding for public hospitals, including a possible statewide solution or a regional health care approach.

### **Medicaid Provider Reimbursement Rate Methodology**

The State of Texas employs several major rate methodologies for reimbursing providers of health care services, including actuarial-based, prospective, Medicare-linked, and Centers for Medicare and Medicaid Services (CMS)-mandated methodologies.

Several reimbursement rate increases were approved by the 80th Legislature, Regular Session, including restoration and increase of Medicaid and Children's Health Insurance Program (CHIP) provider rates, \$150 million in general revenue appropriated to rebase hospital rates assuming that a proposed Medicaid reform waiver is approved, and provider rate increases associated with lawsuit settlement agreements.

The 81st Legislature may consider changes to provider reimbursement rates that relate to Home and Community Based Services (HCS), nursing facilities, personal care attendants, nursing facilities, lawsuit settlement agreements, and parity of rates for services provided to adults and children. The 81st Legislature may also consider whether reimbursement rates are keeping pace with health care costs and may address how to spend state funds dedicated to health care more efficiently.

### **Property Tax Appraisals and Public Education Funding**

Property taxes are assessed by local governments and used solely for the purposes of local government. The local property tax is the largest funding source for community services and helps support public schools, roads, emergency services, and other programs.

The governing body of each local governmental entity sets its own property tax rate. However, several restrictions apply. Taxation must be equal and uniform, property must be taxed on its current market value, each property in a county must have a single appraised value, all property is taxable unless federal or state law exempts it from the tax, and property owners have a right to reasonable notices of increases in their appraised property value. The Property Tax Division of the comptroller's office conducts an annual property value study for each school district in the state, in order to measure whether their appraisal districts are appraising property at market value.

The appraised value of a residence homestead for a tax year is limited to the lesser of either its market value or the sum of the market value of any new improvements and 110 percent of the appraised value of the preceding year. This is known as an “appraisal cap.” Appraisal caps slow the growth in property values for tax purposes, so that homeowners do not face significantly higher taxes from year to year.

Many homeowners would like to see the current 10 percent cap lowered. Proponents of appraisal caps say that drastic property value and tax increases reduce disposable income, deter home ownership, and negatively impact the state economy. However, opponents say that when appraisal caps keep taxable property value artificially low, either schools, cities, and counties must operate with less revenue or tax rates must be raised to generate the same level of funding. Moreover, they stress that appraisal caps disproportionately benefit owners of higher-value homes in better neighborhoods, while renters receive no discernable benefits.

Some stakeholders support the maintenance of an effective tax rate, under which the same amount of tax revenue is generated from year to year. They say that if property values rise, tax rates should drop, and vice versa. Proponents of an effective tax rate say that the issue is one of truth in taxation and that it is unfair to maintain the same tax rate when property values rise, since this would constitute an increase in taxes. Critics of the current system also maintain that taxation notices should be made easier for homeowners to understand.

Some stakeholders support providing school property tax relief through the implementation of a local sales tax. However, opponents say that such a measure would increase taxes for many families.

The 81st Legislature may consider ways to improve the property tax appraisal system, including through the simplification of notices of property tax increases, a review of how effective tax rates are calculated, and a lowering of appraisal values. It may also consider allowing cities or counties to adopt a local sales tax dedicated to property tax relief.

### **Permissive Pooled Collateral Program**

The portion of a deposit of public funds, including accrued interest, in excess of Federal Deposit Insurance Corporation (FDIC) coverage must be secured by eligible collateral. School district funds must be secured by collateral in the amount of 110 percent of the deposit. Funds for each public entity must be collateralized individually.

The participation of school districts or other public agencies in an alternative permissive pooled collateral program may allow the centralization of collateral in a pool that can be tracked and verified with respect to state requirements, potentially streamlining the collateral management process. Several factors to be considered are whether participation in such a program should be voluntary or mandatory, whether participation fees should be levied, what reporting requirements should be established, and what steps should be taken in the event of noncompliance with pooled collateral program procedures.

The 81st Legislature may consider the establishment of a permissive pooled collateral program for school districts or other public agencies.



## **Public School Facilities**

The Instructional Facilities Allotment (IFA) program was enacted by the 75th Legislature to provide assistance to school districts in making debt service payments on qualifying bonds or lease-purchase agreements. Under the program, bond or lease-purchase proceeds must be used for the construction or renovation of an instructional facility. The IFA program is prospective, in that the state awards funds in relation to voter-approved debt before that debt is issued.

The New Instructional Facility Allotment (NIFA), created by the 76th Legislature, is provided to school districts for operational expenses associated with the opening of a new instructional facility and is available to all public school districts that construct new instructional facilities that meet statutory and regulatory requirements. The NIFA program does not grant state aid for debt service, but rather is meant to help districts defray start-up costs at new campuses. Contingent upon available funding, the NIFA provides support through a reimbursement of up to \$250 per student in average daily attendance (ADA) in the first year of operation of the new campus, plus up to \$250 for each additional student in the second year of operation. Only completely new campuses are eligible for funding. Charter schools are not eligible to receive NIFA funding.

The Existing Debt Allotment (EDA) program, created by the 76th Legislature, provides tax rate equalization for local debt service taxes. The EDA program is retrospective, in that school districts must have made a payment on debt during the previous biennium in order to be eligible for funding. By providing a guaranteed yield on interest and sinking fund (I&S) taxes levied by school districts to pay the principal of and interest on eligible bonds, the program guarantees a specific amount of state and local funds per student for each cent of tax effort up to \$0.29 per \$100 of assessed valuation. Currently, the guaranteed yield for EDA provides \$35 per student in ADA per penny of tax effort. Only general obligation bonds are eligible for the EDA program. Debt service for which the district currently receives assistance through the IFA is not eligible to receive EDA assistance.

The 81st Legislature may consider legislation to revise and combine elements of the IFA, NIFA, and EDA programs to ensure the stability, reliability, and equitability of facility and infrastructure funding.

## **School District Rate-Rollback Elections**

Once an appraisal review board approves the appraisal records of a school district, the chief appraiser prepares an appraisal roll for the taxing unit that lists the taxable property within the boundaries of the district. The district then adopts a tax rate that will raise the needed tax revenue.

State truth-in-taxation laws give taxpayers a voice in decisions that affect their property taxes. Beginning in early August, taxing units take the first step toward adopting a tax rate by calculating and publishing the effective and rollback tax rates.

The effective tax rate would provide the school district with approximately the same amount of revenue it received the year before on properties taxed both years. The rollback rate provides the school district approximately the same amount of tax revenue it spent the previous year for day-to-day operations plus an extra cushion of eight cents per \$100 of property value, and sufficient funds to pay its debts in the coming year.

If the adopted rate of a school district exceeds the rollback rate, the school board calls for an election to ratify the adopted rate. The school board must publish a quarter-page ad in a local newspaper for a public meeting to discuss the proposed tax rate and budget. This meeting gives taxpayers an opportunity to voice their opinion about the proposed tax rate. If a majority of voters vote to ratify the adopted rate, the school's adopted rate stands. If voters disapprove the adopted rate, the school district's calculated rollback rate is the district's current tax.

Many school districts approve their budgets contingent on the passage of a rate-rollback election. However, the holding of such elections in November does not coincide well with the budget-setting timeline of many districts.

The 81st Legislature may consider legislation to allow school districts to call rollback elections in June, so that the elections would better complement the budget-setting timeline of school districts.



## BORDER ISSUES

### Colonias

Colonias are impoverished residential communities that typically lack access to potable water, water and sewer treatment systems, sound housing structures, health care facilities, and job opportunities. There are more than 2,294 colonias in Texas, and while a majority of colonias are located along the Texas-Mexico border, many colonias are located in other areas across the state, particularly in Harris County. According to the Office of the State Demographer, rural areas of the state are increasingly vulnerable to economic distress because new rural residents are more likely than new metropolitan residents to be poor.

Since 1989, Texas has passed legislation to improve conditions in colonias and provide economic opportunities to colonias residents. Existing programs that support the development of colonias include the Border Colonias Access Project, the Economically Distressed Areas Program, the Texas Community Development Block Grant Colonia Fund, the Texas Capital Fund, and the Texas Housing Fund.

S.B. 99, 80th Legislature, 2007, requires the secretary of state to compile and update a list of state-funded improvement projects in colonias, which will help the state develop a more consistent approach to preventing and improving conditions in colonias.

S.B. 408, 80th Legislature, 2007, granted regulatory authority to specific counties over land development in areas along the Texas-Mexico border to prevent and regulate substandard housing in colonias.

The 81st Legislature may consider issues related to promoting workforce readiness programs in colonias to attract business investment and increase economic opportunities, promoting infrastructure construction, supporting local leadership training programs, increasing infrastructure and business loan funding opportunities through the Texas Capital Fund and increasing affordable housing assistance through the Housing Trust Fund, and providing transportation assistance.

### Illegal Activity on the Texas-Mexico Border

Crime along the Texas-Mexico border has continued to threaten the peaceful existence of people on the border and across Texas. Each year, about 18,000 people are trafficked into the United States, and approximately 25 percent of human trafficking victims are in Texas. Drug trafficking and illegal immigration are also highly problematic and significantly strain the resources of local law enforcement agencies along the border.

In 2000, Congress passed the Trafficking Victims Protection Act to enable the prosecution of human traffickers and protection of human trafficking victims. Thirty-nine states, including Texas, have passed legislation to combat human trafficking.

S.B. 11, 80th Legislature, 2007, created the Border Security Council that reports to the Office of the Governor regarding the most appropriate ways to allocate border security funding along the border. S.B. 11 also required the Office of the Attorney General to issue the *Texas Response to Human Trafficking Report*. The report emphasized the need for increased funding for law enforcement agency education, increased funding

for social service programs that assist human trafficking victims, improvement of existing criminal laws and creation of new civil laws to combat human trafficking, and creation of a statewide task force agency to share information.

The 81st Legislature may consider increasing local law enforcement capacity to fight crime by enhancing interoperable communication between law enforcement officials, reviewing the use of the Commission on State Emergency Communications service fee balance to fund maintenance of communications technology in the border area, and examining funding options to hire additional police officers and to establish public safety training centers. The legislature may also consider increasing funding to allow the hiring of additional Department of Public Safety commissioned officers for highway patrol, narcotics, criminal intelligence, and motor vehicle threats and enhanced support for drug interdiction efforts and disruption of prostitution rings.



## BUSINESS AND COMMERCE

### **Affordable Homeowner's Insurance and Reinsurance**

According to the Texas Department of Insurance (TDI), making certain that private market insurance companies and safety-net insurance entities, such as the Texas Windstorm Insurance Association (TWIA) and the Texas Fair Access to Insurance Requirements (FAIR) Plan Association, are strong enough to withstand the costs associated with natural disaster is critical to maintaining affordable and available homeowner's insurance. Reinsurance is one mechanism that helps maintain the stability of insurance entities and keeps premium rates affordable for homeowners following natural disasters.

Reinsurance is additional wholesale insurance that insurance companies can purchase to help ease the costs of natural disasters. Because it is linked to the global market, the reinsurance industry spreads the risks associated with natural disasters across the country and lessens the burden for private insurance companies and homeowners.

During the interim, legislators discussed the possibility of providing reinsurance through funds from TWIA or implementing an additional state-sponsored reinsurance facility or catastrophe fund. Currently, Texas does not have a state-sponsored reinsurance plan. Because private insurance companies in Texas participate in the global reinsurance market, Texas homeowners are bearing some of the increased costs of reinsurance due to disaster events in other states. Proponents say that state-sponsored reinsurance would keep premium dollars within the state and would benefit small insurance carriers. Opponents caution that a state reinsurance program would leave Texas homeowners at total risk for costs of a natural catastrophe. The legislature would have to provide incentives for private companies not to buy additional reinsurance in order for a state-sponsored reinsurance program to be successful. Some legislators question the role the state should play in the insurance market and whether insurance companies have the ability to protect themselves without state mandates for reinsurance.

The 81st Legislature may consider whether statutory changes are needed to maintain affordable and available homeowner's insurance.

### **Building Codes to Mitigate Hurricane Damage**

Following Hurricane Rita in 2005 and Hurricane Humberto in 2007, it was found that properties that were not built to code incurred four to five times more insurance claims than those that were built to updated codes, according to statistics provided by TWIA. More stringent building codes result in fewer insurance claims and less damage to properties in the event of a natural disaster. Consequently, structures that are built to code are more attractive for the industry to insure.

Although building codes may save customers money in damage and insurance claims, additional building codes increase expenditures for builders and increase the costs of construction. Mandating additional building codes may increase housing prices and close a section of the housing market to those who can barely afford homes in present conditions, according to testimony provided by TDI to the Senate Committee on Business and Commerce.

The 77th Legislature, 2001, mandated that the International Residential Code (IRC) be the standard residential building code in Texas, and S.B. 1458, 79th Legislature, Regular Session, 2005, established the International Building Code (IBC) as the standard building code for commercial properties in Texas. In 2003, TWIA updated its minimum codes for structures to be eligible for Texas windstorm insurance. City jurisdictions have adopted amendments to IRC and IBC to address specific property regulations to mitigate hurricane damage. The codes adopted by local jurisdictions and TWIA overlay IRC and IBC and have resulted in an inconsistent patchwork of codes throughout the state.

One of the primary issues regarding building codes is to whom the legislature should give the authority to enforce building codes and how large a role the state should play in implementing such codes. Currently, non-incorporated areas are not subject to local jurisdictions that adopt building regulations. Even though IRC statutes mandate that all residential structures be built to code, counties do not have the authority to issue building permits or to enforcement building codes.

The 81st Legislature may consider developing more stringent building codes specific to coastal properties to mitigate hurricane damage.

### **Businesses and Hiring of Illegal Immigrants**

An estimated 11 million unauthorized persons live in the United States and approximately one million of those persons reside in Texas. The use of public funds by businesses to employ persons who may be in the country illegally is an ongoing issue. Pursuant to federal law that prohibits unauthorized entry of illegal immigrants to the United States (Section 1325 (a), Title 8, Chapter 12, U.S. Code) and prohibits employers from knowingly hiring or employing unauthorized persons (Section 1324 (a), Title 8, Chapter 12, U.S. Code), the 80th Legislature passed H.B. 1196 to ensure that state funds are not used to encourage illegal immigration to the state. H.B. 1196 prohibits businesses that violate federal immigration laws from being awarded job creation grants and tax abatements.

H.B. 1196 requires a business to submit a statement certifying that it will not employ an undocumented worker when it submits an application to receive a public subsidy. If a business is found to be in violation of federal law, the business is required to repay the amount of the public subsidy with interest. Proponents claim that the bill removes incentives for employing undocumented workers and mirrors federal law. Opponents stated that the bill creates a different legal standard. Section 1324(a) of the U.S. Code provides for a “good faith” defense for a business that did not knowingly employ or recruit an unauthorized person and made a “good faith” effort to obtain legal documentation as evidence that a person was authorized to live or work in the United States. H.B. 1196 has no provision to allow a business to offer such a defense and the implementation of H.B. 1196 is further complicated by the fact that immigration law and employer sanctions are enforced by the federal government and state entities find it difficult to seek repayment of public funds from businesses that are in violation of state law.

The 81st Legislature may consider modifications to H.B. 1196 to ensure that state law complements federal immigration law and clearly defines state responsibilities.

## **Licensure and Computer Repair Service Providers**

The Texas Department of Public Safety Private Security Bureau (PSB) is interpreting H.B. 2833, 80th Legislature, Regular Session, 2007, as requiring a person performing certain types of computer maintenance to obtain a private investigator's license. The bill amended Section 1702.104, Texas Occupations Code, to state that a person acts as an investigations company when that person obtains or furnishes information that includes information obtained or furnished through the review and analysis of, and the investigation into the content of, computer-based data not available to the public. PSB has warned computer repair or support services that if they offer to perform investigative services, such as assisting a customer with solving a computer-related crime, then they must be licensed as investigators. The review of computer data for the purpose of investigating potential criminal or civil matters, stated PSB, is a regulated activity under Texas Private Security Act.

According to news reports, persons who provide computer repair services are concerned that they may now be required to obtain a license in order to analyze common computer data issues, such as problems caused by viruses or spyware. Unlicensed providers would be subject to criminal and civil penalties. On June 26, 2008, the Texas Institute for Justice (TIJ) announced that it was filing a lawsuit against PSB on behalf of computer repair service providers, who are concerned that the law is overly broad and vague and could hamper them in providing services to analyze and repair computer problems. TIJ asserts, that, in order to obtain a license, owners of computer repair shops will have to either earn a criminal justice degree or complete a three-year apprenticeship under a licensed private investigator.

The 81st Legislature may clarify whether Section 1702.104 requires persons who provide certain computer maintenance and repair services to obtain a private investigator's license.

## **State Business Licenses**

The cost of licensing in Texas has decreased due to agencies implementing fee assessment structures and online systems for licensing. However, licensure costs have increased due to bureaucratic regulations, such as fees for mandatory background checks and fingerprinting and subsequent evaluations. In some cases, licensing agencies experience a backlog of cases due to the background investigations that they have been mandated by the legislature to enforce.

Agencies such as the Texas Department of Licensing and Regulation and the Office of Consumer Credit Commissioner (OCCC) have implemented online systems and have transitioned from paper licenses to online licensing to be more cost efficient. Annual fee studies also help agencies ensure that licensees are paying for their unit costs and not the costs of other licensees. Fee assessment structures, such as those implemented by OCCC, allow for variable provisions applicable to larger business license applicants as well as for fixed provisions that are applicable to all licensees, so that small businesses share some but not all of the same costs as larger businesses. Other agencies, such as the Texas Board of Nursing, have no individual assessment for licensees for background checks, and all licensees share the cost of enforcement.

In addition to reducing costs, some legislators have expressed concern regarding the process of attaining licenses for individuals who may be licensed in other states and who are moving to Texas, particularly with the military. Currently, there are no exceptions for licensing of military members or their spouses. With the expected influx of military members and their families who are relocating to Texas through the Base

Realignment and Closure (BRAC) measures, some legislators have expressed the need to accommodate individuals in Texas with professional experience from other states.

The 81st Legislature may consider the process of licensing and license requirements for businesses and individuals in Texas.

### **Generally Accepted Accounting Principles and the Cable and Video Franchising Process**

S.B. 5, 79th Legislature, 2005, established a state-issued video and cable franchise and promoted competition in the video and cable market in Texas. While an increase in competition has motivated providers to invest in new technology and service products, some providers have also encouraged legislators to pass provisions that establish uniformity and consistency in the definition of gross income in Chapter 66 of the Public Regulatory Utility Act (PURA).

Generally Accepted Accounting Principles (GAAP) are standards and procedures that auditors and accountants use to report accounting information. GAAP are implemented to ensure that financial statements are objective and credible. Cable and video providers support using GAAP in the calculation of their gross income that determines their franchise application fee.

In a 2007 report relating to the cable and video franchising process, the Federal Communications Commission (FCC) found that GAAP do not produce uniformity and clarity because GAAP function as professional guidelines and do not create rules. The FCC stated that GAAP were established for disclosure of financial information to investors and stockholders and were not intended to determine franchise fee payments.

The 81st Legislature may consider applying GAAP to Chapter 66 of PURA relating to the state-issued cable and video franchises that provide services throughout the state.

### **White-Tailed Deer Breeding**

White-tailed deer breeding is a fast growing industry in Texas, generating an estimated \$318 million in direct impacts on the state's economy. However, according to the Institute for White-tailed Deer Management (institute), white-tailed deer account for billions of dollars in damage to agriculture and kill approximately 300 people per year in accidents. The need to help regulate and diversify the deer breeding industry is a growing concern for the industry, consumers, and environmentalists as the deer population is expected to surpass one million in the next 10 years.

Processing deer for venison would provide the deer breeding industry with another market product. A representative of the institute testified before the Senate Subcommittee on Agriculture, Rural Affairs, and Coastal Resources that it would take up to five years before the state could produce venison due inadequate marketing and production systems, the limited research on chemicals and antibiotics used in the process, and issues relating to the handling and harvesting of disease of the animals. The move to venison also raises the question of which agency will have the authority to regulate deer management. Currently the Texas Parks and Wildlife Department (TPWD) regulates the habitat and movement of white-tailed deer but the deer breeding industry may be subject to regulation by the Texas Department of Agriculture and the Texas Department of Public Health should deer be processed as a food source.



The cost of disease testing and the degree to which the state should be responsible for such costs are crucial issues concerning deer breeders. In Texas, unlike other states, deer breeders and owners are allowed to liberate their deer into the wild, and there is no clear distinction between wild deer and bred deer. This practice disables certain disease control measures. While TPWD closely regulates the movement of animals, some observers have expressed concern about the process of liberating deer and the need to distinguish between wild deer and deer released from pens. The Texas Animal Health Commission (TAHC) currently has the task of monitoring disease control regulations, but TAHC has requested additional authority and funding for research to help diagnose and control diseases that affect deer. Currently, deer breeders and owners must shoulder the costs of deer that are injured or that die in the process of disease testing. Because testing for diseases is mandated by the state, some deer breeders are calling for indemnification.

Another issue of concern to the deer breeding industry is the movement of animals across state lines. Deer breeders have expressed support for the ability to safely transport animals to accredited facilities in other states. Currently, the deer breeding industry is not allowed to engage in interstate commerce and some deer breeders and owners believe that the restriction limits economic opportunities.

Preservation of Texas' hunting culture may impact discussions about the future operations of the deer breeding industry. Hunting has a \$4.6 billion economic impact on the state and represents an important part of wildlife conservation, according to TPWD. Currently, deer that are released into the wild are not allowed to be hunted within 10 days after their release. The Texas Wildlife Association (TWA) has suggested that the 10-day rule is not sufficient time for deer to acclimate to the wild, regain their natural instincts, and be fair game for hunters. TWA has recommended that the legislature consider a protection period of six months to dispel the perception of "catch and release" associated with the 10-day rule.

The 81st Legislature may consider regulating the operation of the deer breeding industry to allow processing of deer for venison, evaluate mechanisms for animal disease control, provide indemnification for deer owners, and redefine the current procedures governing the release of deer into the wild.



## CRIMINAL JUSTICE

### **Asset Forfeiture**

Chapter 59 of the Texas Code of Criminal Procedure provides for the seizure and forfeiture of contraband. “Contraband” is defined as property of any nature that is used or intended to be used in the commission of certain specified crimes, the proceeds gained from the commission of certain crimes, or property that was acquired with the proceeds of certain crimes. Pursuant to proceedings set out in Chapter 59, the forfeited property is transferred to the law enforcement agency that originally seized the property and is to be used only for law enforcement purposes. While forfeiture is a valuable tool and has helped fund law enforcement agencies throughout Texas, there are concerns that Chapter 59 is being abused by some law enforcement agencies, as there is little oversight of the reporting and use of such funds.

At a June 5, 2008, hearing held by the Senate Committee on Criminal Justice, witnesses testified that the state has little regulatory power regarding the use of such funds and discussed the difficulty the state would have in investigating and prosecuting any misuse of the funds by local agencies. An article in the July 10, 2008, issue of *The Economist* reported that Texas law enforcement agencies had used forfeiture funds to send employees on a trip to Hawaii, to purchase a margarita machine, and to pay for campaign materials.

Other problems relating to the asset forfeiture issue are the uneven distribution of such funds, as some areas of the state have more drug traffic and therefore have more access to potential forfeiture funds, and that the monetary incentive from forfeiture may entice local law enforcement officials to focus on more lucrative drug crimes or to abuse the power of forfeiture.

The 81st Legislature may consider more clearly defining legitimate uses of forfeiture funds, providing for more oversight by imposing higher auditing and reporting requirements, and creating procedures for prosecuting the abuse of such funds.

### **Concurrent Fines**

On February 6, 2008, the Texas Court of Criminal Appeals ruled that when a defendant is convicted in a single criminal action of multiple offenses arising out of a single criminal episode and is assessed a fine on each of multiple counts, the fines run concurrently, meaning that the defendant need only pay the most substantial fine. The majority noted that Section 3.03(a), Texas Penal Code, provides that when “the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action,” the sentences will run concurrently. A sentence is the portion of the judgment setting out the terms of punishment, and therefore a fine, the majority declared, is part of a sentence. The majority held that the concurrent sentences provision of Section 3.03(a) therefore would plainly require that the fines in this case run concurrently. Those opposed to the ruling argue that it allows a defendant to avoid satisfying multiple judgments by simply discharging the largest fine assessed against him or her and that the legislature did not intend to bar cumulative fines.

The 81st Legislature may clarify whether Section 3.03(a) requires fines to run concurrently.

## **Correctional Officer Pay**

Discussion has occurred during the interim regarding the current pay level for Texas correctional officers and the role that that pay level plays in the state's ability to attract and retain quality correctional officers.

Beginning correctional officers in Texas currently receive approximately \$13.20 per hour. Correctional officers with over seven years of experience earn approximately \$17.70 per hour. The Texas Department of Corrections requested in its current LAR an average pay increase of 20 percent for correctional officers, authority to expand its use of recruitment bonuses, and authority to utilize annual retention bonuses for officers assigned to units which require certain staffing levels that are difficult to maintain due to the unit location or other factors.

The 81st Legislature may consider proposals to increase correctional office pay and to authorize the use of retention and recruitment bonuses.

## **Deferred Adjudication**

Under deferred adjudication, a defendant accepts responsibility for a crime and the judge defers a finding of the defendant's guilt and the imposition of a sentence. Instead, the judge places the defendant on a period of supervision and imposes certain conditions on the defendant, such as attending counseling, performing community service, or paying restitution to the victim. If the defendant successfully completes deferred adjudication, no conviction or sentence is entered in the defendant's record. A judge may grant deferred adjudication in all cases, except as specifically barred under statute. The idea behind deferred adjudication is to help rehabilitate first-time or minor offenders, and both the defense bar and prosecutors see deferred adjudication as a useful tool. Persons who have been placed on, and successfully completed, deferred adjudication may petition a court for an order of nondisclosure regarding such record, but this is not the same thing as expunging the record. Over the years, the legislature has provided exceptions in Texas law that allow deferred adjudication to be treated as a conviction. There is concern that these exceptions are undermining the purpose and usefulness of deferred adjudication.

The 81st Legislature may review provisions in Texas law that allow deferred adjudication to be treated as a conviction or consider changing the law to allow expunction of the record for certain offenses.

## **Firearms**

Texas currently issues licenses permitting the concealed carrying of a handgun, but generally bars the open carrying or display of such weapons. There has been a movement nationwide to permit persons to openly carry a handgun, such as in a holster outside of their clothing. A history of Texas law shows that as early as 1879, Texas generally barred an individual from carrying pistols or handguns on or about his or her person.

The 81st Legislature may consider permitting the open carrying of firearms.

## **Inmate Reentry Initiatives**

Despite a general nationwide downturn in reported crime since the early 1990s, in 2007 and 2008 the per

capita violent crime rate has begun to creep up; in some areas the rate has increased significantly. To reduce crime, new crime-fighting strategies have emerged that include employment initiatives targeting people with criminal records.

Nearly 700,000 people are released from state and federal prison each year into communities nationwide. Nearly nine million persons reenter communities from local jails—some of whom may experience reentry multiple times in a year. According to the Bureau of Justice Statistics (BJS) over 50 percent of those released from incarceration will be in some form of legal trouble within three years. Prisoner reentry initiatives to expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups, have emerged at the federal, state, and local level across the nation.

The City of Philadelphia, Pennsylvania, plans to offer any business that hires someone who has been incarcerated a \$10,000 per-job credit against the city's Business Privilege Tax for three years. The city is home to 200,000 to 400,000 people returning from prison or jail, many of whom are in need of a job and support services, according to a study by the University of Pennsylvania's School of Social Policy and Practice.

The City of Jacksonville, Florida, is also implementing innovative crime prevention strategies to reverse recent upticks in crime, including a \$31 million anticrime initiative, Jacksonville Journey, a comprehensive, community-wide effort focused on prevention, intervention, and rehabilitation. Included in the \$31 million is funding for job placement services, job training, and educational support for people coming out of prison.

The City of Newark, New Jersey, has implemented employment-focused strategies to assist over 1,200 people returning to Newark from prison with basic job skills training and support services.

The Council of State Governments recently released a report, *Reentry Partnerships: A Guide for States & Faith-Based and Community Organizations*, which offers practical recommendations for how state government officials and community-based service providers can better use limited resources to help the individuals released from prisons and jails each year to successfully and safely reenter society.

The 81st Legislature may consider various inmate reentry programs to facilitate the reintegration of offenders.

### **Local Enforcement of Immigration Laws**

In response to concerns over illegal immigration, state and local governments have implemented or are considering immigration-related laws and ordinances, such as denying licenses or contracts to employers who hire undocumented immigrants, imposing fines on landlords who rent to such immigrants, directing state and local police to verify the immigration status of arrestees, barring the solicitation of day laborers on public streets, and requiring officials to verify the legal status of individuals seeking public benefits. Proponents of such laws assert that immigrants who are here illegally, and those who hire them, are violating federal law. They also argue that illegal immigrants depress wages, put pressure on local services, such as health care and the public schools, increase crime, and undermine national security. Opponents of such laws challenge these assertions and claim that these laws encourage racial or ethnic discrimination, impact ethnic communities and their relationship with local law enforcement agencies, divert limited local resources to enforce federal law, and require training local law enforcement officers in the complexities of federal immigration law.

The 81st Legislature may consider legislation related to the enforcement of immigration laws.

## Needle Exchange Programs

On May 5, 2008, in Opinion No. GA-0622, Texas Attorney General Greg Abbott ruled that participants in a needle and syringe exchange program (exchange program) authorized under the Texas Government Code could be subject to prosecution under the Texas Controlled Substances Act (TCSA). The 80th Legislature, Regular Session, 2007, enacted Section 531.0972, Government Code, which authorizes a pilot program in Bexar County to prevent the spread of HIV and other infectious and communicable diseases, which may include an exchange program. However, under the Texas Controlled Substances Act (TCSA), it is a criminal offense to possess or deliver drug paraphernalia, including a hypodermic syringe or needle. Section 531.0972 contains no express exception to TCSA.

Abbott found that Section 531.0972 is not ambiguous on its face and is not inconsistent with TCSA, because Section 531.0972 merely allows an exchange program, but does not require it. The conflict, he explains, only arises if Bexar County elects to implement an exchange program. Abbott presumed that the legislature enacted Section 531.0972 with complete knowledge of the existing TCSA. He found that nothing in the plain language of Section 531.0972 or TCSA provides an exception to TCSA. Abbott stated that the Office of the Attorney General has no authority to rewrite the statute and that it is the legislature's prerogative to remedy any alleged defects.

Abbott also held that if Bexar County implements an exchange program, it is possible that prosecutorial discretion may be exercised regarding whether a criminal violation of TCSA has actually occurred. He noted that even if Section 531.0972 is construed as an exception to prosecution under TCSA, participants in an exchange program could possibly be subject to prosecution under other state and federal laws.

The 81st Legislature may consider legislation providing express exceptions to TCSA and other state laws under Section 531.0972.

## Smuggling Contraband Into Prisons

The smuggling of contraband such as cell phones, tobacco, and narcotics into Texas Department of Criminal Justice (TDCJ) prisons is a widespread and serious problem. The Legislative Oversight Committee on Criminal Justice and the Senate Committee on Criminal Justice have heard testimony regarding the problem of contraband smuggling in TDCJ. In the past year there have been over 700 contraband cell phone and Subscriber Identity Module (SIM) card cases in TDCJ, including 19 cases involving inmates on death row. Incarcerated gang members have used contraband cell phones to conduct criminal activities.

Witnesses at the hearings testified that the key to stopping contraband cell phone use is to utilize technology to jam cell phone frequencies. Utilizing such technology would require permission from the Federal Communications Commission.

Also contributing to contraband activity at TDCJ is the lack of equipment to detect contraband and the shortage of correctional officers (COs). There are insufficient surveillance cameras, metal detectors, and drug dogs to monitor all 112 TDCJ units. A shortage of COs makes it difficult to adequately search all persons and deliveries entering TDCJ units and to monitor inmates. Low compensation for COs makes it difficult to recruit professional persons and makes COs susceptible to bribes. A corrupt CO can make hundreds of dollars by accepting payment to smuggle contraband into inmates. There was testimony that ensuring swift prosecution of all contraband activities and increasing penalties would also discourage smuggling.

The 81st Legislature may consider increasing compensation for COs; providing appropriations for additional security equipment, such as metal detectors and surveillance cameras, throughout TDCJ institutions; increasing the penalties for contraband offenses; providing additional funding for the investigation and prosecution of contraband activities; and enacting a resolution encouraging the federal government to allow the jamming of cell phone frequencies at TDCJ facilities.

### **Texas Youth Commission**

The Texas Youth Commission (TYC) provides treatment and rehabilitation for the state's most serious youth offenders. There is a history of physical and sexual abuse of youth in TYC and failure by TYC to protect and support youth and TYC staff. One of the interim charges submitted to the Senate Committee on Criminal Justice for the 80th Legislature was to examine the allegations of abuse and neglect within TYC. In March 2007, Governor Perry placed TYC in conservatorship because of continuing allegations of abuse and criminal conduct. S.B. 103, enacted by the 80th Legislature, Regular Session, 2007, made extensive changes to TYC. TYC has been implementing the reforms required under S.B. 103 and on October 14, 2008, Governor Perry removed TYC from conservatorship. However, there are still a number of concerns regarding TYC, including the fact that many facilities are located in remote rural areas far away from the urban communities from which most of the youth come, the small number of youth at certain facilities, the comparatively high ratio of administrative staff to youth, and issues with communication and the continuing implementation of reforms.

The 81st Legislature will continue its oversight of TYC and may implement further reforms, including the closing and consolidation of TYC facilities, moving facilities closer to urban areas, reduced staffing needs, and increasing community-based diversionary programs. The legislature may also consider restructuring TYC.

  
EDUCATION

## Higher Education

### Addressing Workforce Needs

Certain vital industries in Texas are experiencing or will soon be facing workforce shortages. Since efforts have been implemented to address nursing shortages, enrollment in nursing diploma programs has risen by 19.7 percent, enrollment in associate degree nursing programs has risen by 37.4 percent, enrollment in bachelor degree nursing programs has risen by 37.0 percent, and enrollment in master of science alternative entry programs has risen by 56.9 percent between 2001 and 2006. The programs' ability to admit more nursing applicants have been limited primarily by the lack of clinical space, the lack of budgeted faculty positions, and the lack of qualified faculty applicants. The Texas Higher Education Coordinating Board (THECB) has recommended increasing the appropriation to the Nursing Shortage Reduction Program by \$10.3 million for all institutions and basing disbursement on increases in nursing graduates from those programs.

The energy sector is also facing a severe shortage of workers and some estimate that up to half of the energy workforce will be retiring in the next five to 10 years. New jobs are being created at nuclear power plants, coal plants, liquefied natural gas terminals, oil refineries, wind turbines, and electricity transmission lines being built across the state, requiring a highly skilled workforce. Between 2004 and 2007, the job growth rate in energy industries in Texas was 18.9 percent compared to the overall state job growth rate of 8.9 percent. This highlights the need for rigorous career and technical education at secondary schools to attract students to these fields and to encourage them to obtain a two-year degree or certificate to adequately prepare for their career.

The 81st Legislature may consider providing incentives for community colleges to cater to certain industries that are facing workforce shortages in the state.

### Community College Funding

After the 80th Legislature adjourned *sine die*, Governor Rick Perry vetoed a section of the General Appropriations Act (H.B. 1, 80th Legislature, Regular Session) that appropriated \$154 million to community colleges in Texas. Governor Perry said that community colleges had inappropriately requested state money to pay health benefits to employees whose salaries are not funded by the state. In October of 2007, Governor Perry, Lieutenant Governor David Dewhurst, and Speaker of the House of Representatives Tom Craddick came to an agreement to restore \$99 million for the cost of health benefits for community college employees and \$55 million in transitional payments to prevent community colleges from suffering from the large funding cut and to prevent tuition increases. The governor has since endorsed the implementation of incentive funding programs to encourage community colleges to strive for success.

Community college officials testified during the interim that state support has decreased to an all-time low and that the formula used for determining appropriations is only funded at 56 percent. At the same time, community colleges in Texas have kept tuition lower than the national average at \$1,639 versus \$2,737 for

the 2007-2008 academic year. Some have predicted that 80 percent of the high-demand jobs in the state's future will require postsecondary education and that 60 percent of those jobs require a two-year degree or certificate, putting community colleges in the important role of ensuring the health and vitality of the state's future economic success.

THECB has recommended increasing the base funding for community colleges minus the cost of tuition and fees, amounting to an increase of \$667 million. THECB also recommends that the legislature provide \$100 million for performance funding based on the number of degrees and certificates awarded by community colleges and the number of transfers to four-year universities.

The 81st Legislature may consider increasing financial support for community colleges.

### **Tuition Deregulation**

H.B. 3015, 78th Legislature, Regular Session, 2003, transferred the authority to set tuition rates from the state legislature to the governing boards of universities. Tuition at Texas state universities rose 58 percent between the 2003-2004 and 2007-2008 academic years. The average cost of tuition at a four-year university in Texas remains below the national average at \$5,481 versus \$5,526. However, the rate of increases in tuition costs have accelerated much faster than the national average. United States Secretary of Education Margaret Spellings called upon universities to demonstrate improvement in institutional efficiency and productivity in order to reduce the cost of education for students.

The 81st Legislature may consider measures to limit the amount that institutions of higher education may charge for tuition.

### **Developmental Education**

Nearly 60 percent of community college students in Texas were deemed to be unprepared for college, requiring developmental education courses to teach them the material that they were supposed to learn in secondary school. Raymund Paredes, commissioner of higher education, has called for an overhaul of developmental education programs because of the poor success rates of those programs. Of those students who completed developmental education courses, only 11 percent went on to pass a mathematics course, only 33 percent went on to pass a reading course, and only 24 percent went on to pass a writing course. Currently, \$185 million is appropriated per biennium for developmental education and THECB has recommended that an additional \$30 million be appropriated for new pilot programs to identify best practices.

El Paso Community College spearheads a program that partners with The University of Texas at El Paso and the El Paso Independent School District to reduce the need for developmental education. High school juniors in the school district take the Accuplacer placement examination so that students needing additional help are identified before graduation. Such programs are encouraging to legislators who have expressed concern about the poor success rates of standard developmental education.

The 81st Legislature may consider providing more funding for developmental education and may consider measures to improve the quality of developmental education currently provided to students.



## **Financial Aid**

With the recent national economic crisis, lawmakers have become aware that many students may be unable to obtain student loans for the fall semester of 2009. The cost of attending college, in inflation-adjusted dollars, has nearly doubled over the past 20 years and more students today are dependent on loans, which now account for more than 70 percent of higher education financing. State and federal financial aid based on merit has increased while aid based on need has declined. Pell grants now cover only 32 percent of tuition whereas 52 percent of tuition was covered by such grants 20 years ago. Merit-based aid is aimed toward middle-class populations and is politically popular; however, merit-based aid has not been shown to be effective at providing access and affordability to low-income populations, minorities, and non-traditional students. These populations are often not exposed to individuals who have attended college and may not be aware of financial aid options.

The federal government created a number of loan and grant programs for students in the 1960s and 1970s with the goal of reducing the achievement gap between certain groups based on income and ethnicity. During the 1980s, the federal government assured private lenders of high subsidies, leading to increased loan volume. In the early 1990s, the Clinton Administration created the Direct Lending Program operated by the United States (U.S.) Department of Education (department) to compete with private lenders. This program was thought to remove the “middle man” in the lending process and allow the government to receive profits made from loan interest payments. In 2007, New York Attorney General Andrew Cuomo began an investigation of colleges that accepted favors to steer students toward private lenders regardless of interest rates or possible risk to students. In response, the U.S. Congress enacted the College Cost Reduction and Access Act (CCRAA) that reduced interest rates on direct government loans, raised funding for Pell grants, cut subsidies for private lenders, and made it possible for students to make income-dependent loan payments. The CCRAA made student loans less profitable and more risky for private lenders. Reduced liquidity has also led to fewer secondary lenders willing to buy loans from banks and universities. Therefore, private lenders are leaving the student aid market, leading students to depend on direct government loans. Education Secretary Margaret Spellings has said that the department is funding 20 percent of all student loans in the U.S. and that the department is able to handle double that amount. Private lenders have indicated that certain students will not be given student loans due to their unprofitability, including community college students, new borrowers, and non-traditional students.

The 81st Legislature may consider increasing financial aid provided to students to make up for the shortfalls in the private lending community.

## **Funding Formulas**

Rising costs at institutions of higher education have led to rapidly increasing tuition and fees for students. Institutions are using state-appropriated funds and funds from tuition to offer competitive salaries to potential faculty in certain fields; pay for rising energy, healthcare, and security costs; pay for staff to ensure compliance with government mandates and oversight; and combat losses associated with the most recent national economic downturn. Universities are experiencing increases in interest rates from variable-rate debt, encountering difficulty with obtaining lines of credit from banks, and finding that their investment funds are frozen without access. Although some view these examples as a justification for record-breaking tuition increases, some legislators are calling for institutions to provide proof that every effort has been made to control costs before students are asked once again to pay more for their education.

Overall state support for institutions has decreased over the past several decades, particularly since tuition deregulation was authorized in 2003. Since 2000, the amount of formula appropriations per weighted semester credit hour has dropped from \$66 to \$59 in constant dollars. THECB recommends that the funding formula be changed to provide an additional \$267 million (phased in over time) to the base funding, an additional \$178 million for performance funding, and an additional \$243 million for infrastructure and utilities funding, and to reduce the small institutions supplement by \$1.5 million.

During the interim, legislators have discussed the possibility of eliminating special item funding and hold-harmless provisions written into the formula. In addition, legislators have discussed changes that would allow The University of Texas at Austin (UT-Austin) and Texas A&M University (TAMU) to receive additional formula funding without increasing enrollment.

The 81st Legislature may consider modifying the structure of the higher education funding formula.

### **Research Commercialization**

Research commercialization is an effort that has been endorsed by Governor Rick Perry in the past several years. The Emerging Technology Fund invests tax dollars in start-up companies created by universities in order to profit from technologies discovered by academic research. This fund connects investors, entrepreneurs, and professors with the goal of commercializing research that was once only destined for publication in academic journals. These efforts will drive academic research to consider practical applications in order to increase alternative revenue for institutions of higher education.

The governor's staff has studied the possibility of creating a commercialization institute that would coordinate efforts by state universities and would provide consistency of contracts and procedures in place at campuses.

The 81st Legislature may consider increasing funding for the Emerging Technology Fund and may consider creating incentives for universities to pursue research commercialization.

### **Textbooks**

The continual rise of textbook costs has become a financial burden for many students attending institutions of higher education. Bills filed in the 80th Legislature attempted to require publishers to unbundle materials to reduce costs for students. The Higher Education Opportunity Act, signed by President George W. Bush in August 2008, includes a provision that requires publishers to provide the option of unbundling to professors. However, this Act does not impose any penalties on publishers who do not comply with this law.

Some colleges and universities in the state have implemented pilot programs to examine the effectiveness of certain methods to reduce textbook costs to students. A program at UT-Austin has explored providing digital versions to students with an average reduction of the cost of a traditional textbook of 54 percent. Using this model, UT-Austin purchases digital versions of textbooks for all students, thus saving money due to economy of scale, and collects payment from the students for those textbooks. This also ensures that students actually purchase the textbook because nearly 25 percent of students currently do not purchase textbooks due to high costs.

The 81st Legislature may consider ways to reduce textbook costs for students at institutions of higher education.

### **Top 10 Percent Rule**

In 1997, legislation was enacted that guaranteed admission for high school students graduating in the top 10 percent of their class to enroll in the public university of their choice. This policy was put in place after a federal appeals court decision made affirmative action illegal in Texas college admissions.

From 1998 to 2007, the number of Hispanic undergraduates at UT-Austin rose by 29.3 percent and the number of African American undergraduates increased by 32.4 percent. Similarly, Hispanic and African American enrollment at TAMU was at its highest level in university history in the fall of 2007. Despite the optimistic numbers, opponents of the top 10 percent rule argue that a majority of the freshman admitted to UT-Austin and TAMU are automatically enrolled, leaving little room for others, including out-of-state students. In the fall of 2007, 81 percent of freshman enrolled at UT-Austin were admitted through the top 10 percent rule.

Legislators have previously proposed to cap the percentage of students enrolled automatically in the entering freshman class. In the 80th Legislature, the senate passed legislation capping automatic admissions at 50 percent, but that bill was defeated in the house of representatives.

The 81st Legislature may consider modifying the automatic admission program.

### **Top Tier Universities**

UT-Austin and TAMU are often referred to as top tier, flagship, tier one, or research institutions. Although none of these terms are clearly defined in statute or by THECB, there is a general consensus that Texas should have one or more additional top tier universities in order to attract more federal funding for research and to remain academically competitive. Currently, Texas universities receive only 5.6 percent of federal research funds compared to the 14.2 percent of federal research funds that are disbursed among California's nine research universities annually.

THECB has recommended an increase of research-related state appropriations, including increases to the advanced research program, the research development fund, and the emerging technology fund. Seven existing universities have been considered by legislators as possibly becoming the state's next top tier universities, including Texas Tech University, the University of Houston, the University of North Texas, UT-Arlington, UT-Dallas, UT-El Paso, and UT-San Antonio.

The 81st Legislature may consider increasing research appropriations and creating one or more new top tier universities in order to improve the academic reputation of Texas institutions of higher education and to attract more federal research funding.

## **Public Education**

### **Textbooks**

Each year, the State Board of Education sets the maximum price that the state will pay for textbooks for students in grades kindergarten through 12. Once this price is set, publishers often price textbooks at or directly below the state's maximum cost. Texas is the only state to set a maximum cost and, in effect, sets the price of textbooks for the nation. Some have recommended replacing this practice with a blind bidding process to reduce the cost of textbooks for public schools.

Some campuses have supported the concept of allowing textbook funds to be used for digital and on-line course materials. These materials are interactive, can be accessed outside of the school, and are often cheaper than traditional textbooks.

The 81st Legislature may consider eliminating the practice of setting a maximum cost for textbooks. The 81st Legislature may also consider providing the option for schools to use textbook funds to purchase digital and on-line course materials.

### **Adult Basic Education**

Adult basic education (ABE) services provide comprehensive English literacy education, including basic instruction in reading, writing, and mathematics, to certain individuals with the goal of earning a diploma or GED, advancing a career, and enrolling in higher education. Participants must be at least 16 years of age and must either have no diploma or perform at or below an eighth grade level. The Texas Education Agency (TEA) contracts ABE programming to Texas LEARNS and loosely monitors its implementation. Funding for ABE services is provided by both federal and state sources and is disbursed by TEA. The government requires that 25 percent of federal funding be matched by the state in order to receive any funding. Texas is the only large state to match funds at the minimum level while California matches 88 percent of federal funding, Florida matches 90 percent of federal funding, and New York matches 65 percent of federal funding.

Currently, 100,000 Texans receive ABE services each year, although over five million Texans could benefit from these services, including approximately 3.7 million individuals without a high school diploma, about 1.1 million individuals who have a diploma but live below the poverty line, and an additional 700,000 individuals who have a diploma but have limited-English proficiency. Individuals could benefit from ABE services by earning higher salaries and benefits, entering into more fulfilling employment opportunities, providing an improved quality of life for their children, and enjoying better health and longer life expectancy. The State of Texas could also realize benefits in the form of increased tax benefits, greater productivity, decreased reliance on government financial support, and reduced crime rates.

THECB projects that the state would realize an estimated \$40 billion increase to the state economy by investing in ABE services. Commissioners from THECB, TEA, and the Texas Workforce Commission (TWC) are creating a memorandum of understanding regarding the implementation of ABE services. The commissioners of THECB and TWC have endorsed TEA's legislative appropriation request for an additional \$50 million in state funding for ABE in order to meet the needs of more Texans, align the educational standards with the

college readiness standards, create a public campaign to motivate enrollment, increase support services (e.g., childcare and transportation), and enhance accountability.

The 81st Legislature may consider increasing appropriations and expanding the scope of ABE services.

### **Public Accountability System**

Texas's public school accountability system measures and holds campuses and school districts accountable for the performance of students on a standardized state examination, the Texas Assessment of Knowledge and Skills (TAKS), that tests for basic skills. An annual rating is assigned to campuses and school districts based on the overall passing rate of students on the TAKS test and the passing rate of certain groups disaggregated by ethnicity. Certain interventions are required to take place at schools that are deemed as academically unacceptable and repeated unacceptable ratings may lead a school to be closed. This accountability system was used as the model for the federal government's No Child Left Behind (NCLB) Act.

During the interim, the Select Committee on Public School Accountability (committee) met to discuss issues related to the accountability system and have made recommendations for improvement. The committee found that the current system has the following flaws:

- Overemphasizes minimal performance on one examination;
- Fails to recognize and reward growth;
- Narrows the scope of curriculum and instruction;
- Focuses on minimum passing standards;
- Presents reports that are not easily understandable to parents, educators, or the public; and
- Aligns poorly with NCLB requirements.

The committee has proposed a framework for the accountability system that contains two tiers. The accreditation tier would provide for the rating of campuses and districts based on postsecondary readiness and growth in individual achievement calculated as three-year rolling averages. Members of the committee discussed implementing a growth model that would take into consideration improvement on a trajectory for students who are performing below minimum standards. Data would continue to be disaggregated to ensure that campuses and districts meet the needs of all students. The committee's proposal calls for standards to incrementally increase over the next 10 years so that Texas would eventually outperform other states in postsecondary readiness. This tier would also recognize the financial efficiency of districts.

The distinction tier would recognize the top quartile of districts demonstrating outstanding efficiency in resource allocation and would recognize the top quartile of campuses demonstrating the best overall individual student growth. Campuses would also be able to earn distinctions for outstanding academic achievement, 21st century workforce development, outstanding second language learning, and high quality fine arts programs.

The 81st Legislature may consider modifications to the public school accountability system.

### **Non-Instructional Costs**

H.B. 1, 79th Legislature, 3rd Called Session, 2006, allowed for school districts to request tax increases from

local voters. More than 100 districts in Texas requested property tax increases from voters in 2008 and only about half of those propositions were passed. The national economic crisis has contributed to the reluctance of voters to approve tax increases and school districts are running out of resources to pay for increased costs of transportation, utilities, and construction. Energy increases are fueling most of the cost increases as energy costs affect the price of fuel for buses, food shipment, air conditioning, electricity, construction, and maintenance. School districts have put in place emergency cost-saving policies to counter budget shortfalls, such as no-idling policies for buses, fees for field trips, lunch price increases, and reduced after school activities to save on utilities. In addition to rising energy costs, some districts' budgets have been affected by the global freeze in credit markets and by risky investments.

The 81st Legislature may consider increasing appropriations for non-instruction-related costs for public schools.

### **Career and Technical Education**

Legislators have been examining successful career and technical education (CTE) programs across the state that are aligned with local industry needs and provide clear career pathways to students. In some cases, high schools have partnered with local businesses and community colleges to tailor programs to workforce needs. TEA has recommended increases in funding for CTE programs to increase the rigor of curriculum and to align standards with the college readiness standards.

Some students have been discouraged from enrolling in CTE courses, however, because these courses are not eligible to be counted towards the four by four (4x4) graduation requirements for secondary students. The 4x4 graduation requirements comprise the recommended high school curriculum for high school.

The 81st Legislature may consider measures to strengthen CTE programs and may consider making modifications to allow CTE courses to count towards 4x4 course requirements.

### **Dropout Prevention and Recovery**

During the 80th Legislature, legislators approved a \$6 million pilot program to disburse funds to public schools and private groups working to recover students who had dropped out of school. Three of the 22 schools to receive funds from TEA are private schools, sparking criticism from some who perceive this to be a voucher program. Legislators have discussed providing clearer provisions for this program in the future.

Earlier this year, United States Secretary of Education Margaret Spellings announced new rules to standardize the measurement used to determine a state's dropout rate. She said that this will allow comparisons to be made between states and will simplify the public's understanding of the rate. Some districts have expressed concern that they are penalized when repeat dropouts are counted twice under the dropout measurement and claim that this is counterproductive in providing incentives to schools to recover dropouts.

Robert Scott, commissioner of education, has authorized a waiver for schools and districts with high dropout rates for the second year in a row. This practice has raised concerns for some legislators who believe that schools and districts will not change ineffective dropout-prevention practices without the potential consequences. Without the waiver, these schools and districts would have automatically received an academically unacceptable rating, increasing the chance of being closed after repeated unacceptable ratings.

The 81st Legislature may consider refining provisions related to dropout recovery programs and may consider providing consequences for schools with high dropout rates.

## **Limited English Proficiency Education**

Between the 1996-1997 and 2006-2007 school years, the number of students in bilingual or English as a Second Language (ESL) classes grew by 51.9 percent. In the 2006-2007 school year, 15.9 percent of students—731,304 students—in Texas were reported to have limited English proficiency (LEP) and 92 percent of those students identified Spanish as their primary language. Some sources have projected that enrollment in the state’s bilingual or ESL programs may double over the next 25 years if current growth trends continue.

In July of 2008, a United States district judge ruled that Texas has failed to properly educate LEP students and that a different plan to address those students’ needs must be developed by January 31, 2009. Although that ruling has been appealed by the Texas Education Agency, legislators are now aware that bilingual programs must be improved to ensure the state’s future success. Discussions during the interim have included collecting best practices of effective curriculum and instruction methods for LEP students and sharing that information statewide. Legislators also discussed implementing funding methods that would provide incentives for educators to “graduate” students from bilingual or ESL programs.

The 81st Legislature may consider implementing measures to address the needs of LEP students, including dropout prevention programs, improved curriculum and instruction, dual-language immersion programs to replace traditional ESL classes, and incentive funding programs.

## **School Choice**

School choice refers to the practice of providing private school tuition vouchers to students in failing schools. Those who favor such practices point to research that shows that students who receive vouchers are more likely to be successful than their counterparts who remain at the failing school. Also, proponents suggest that vouchers may encourage competition with public schools, leading those schools to improve conditions to prevent losing students (i.e., funding).

Those who oppose school choice claim that the Public Education Grant (PEG) program allows students to transfer from low-performing schools to high-performing schools without removing funding from the public school system. However, the high-performing schools are not required to accept transfer students and no funding is provided for transportation costs of busing students to those schools, leading some to claim that the PEG program is rarely used and ineffective. Another argument against school choice is that school options are limited in rural areas, making this program ineffective for many Texas students.

The 81st Legislature may consider implementing school choice policies to provide vouchers to students in low-performing schools.

## **Special Education**

The Individuals with Disabilities Education Act (IDEA) requires that all students have access to free and

appropriate public education, regardless of any disability they might have. An important part of IDEA requires that all students with disabilities participate in transition services that may include training for a career, higher education, and day-to-day living skills. According to federal law, a plan for transition services must be created for each student by the time he or she is 16 years of age; however, some have suggested that this process could be more effective if undertaken at an earlier age. Successful transition programs should reduce the dropout rate and provide students postsecondary options for independent living.

Students with special needs are often provided with specific accommodations during mandatory examinations, such as the Texas Assessment of Knowledge and Skills (TAKS) state test and the National Assessment of Educational Progress (NAEP) test. These accommodations are often based on a student's individualized education plan (IEP) that is developed by a local official and can sometimes conflict with national testing requirements. Parents of children with special needs have stated that they do not necessarily want their children excluded from testing because they fear that special education populations could be forgotten if performance reports are not observed annually. Rather, parents have indicated a preference for testing that is developmentally appropriate for every child with special needs and that the growth of performance indicators be measured over time.

Parents have also voiced concern regarding the dispute resolution process that they must participate in after filing a complaint regarding the special education services provided to their child. TEA directs the process and attempts to mediate a resolution between the school and the parents. If a resolution cannot be agreed upon, parents are eligible for a due process hearing on the matter. Recent complaints about the process include the fact that school districts spend a large amount of taxpayer money on legal fees during the dispute resolution process and that districts are hosting informational meetings on the subject with lawyers and teachers but intentionally excluding parents.

The 81st Legislature may consider altering provisions related to TEA's special education dispute resolution process, special education transition programs, and testing accommodations for special education students.





## GOVERNMENT ORGANIZATION

### **State Energy Conservation Office**

The State Energy Conservation Office (SECO), a division of the Office of the Comptroller of Public Accounts (comptroller), is tasked with creating programs to educate the public and implement ways to reduce the use of water and energy across the state of Texas. Using funding from three annually apportioned grants, as well as loan repayments from the oil overcharge-funded Lone Star program, SECO has created programs that help the public sector to be more efficient in the use of resources.

One program created by SECO was the Clean School Bus USA Program, which funded retrofitted traps on diesel buses to enable them to run cleaner. Another program provides comprehensive analyses of utility bills for schools and hospitals to determine ways to more efficiently use energy. Following the analysis, SECO recommends maintenance procedures that can help these institutions reduce their energy use. In August 2008, SECO launched a similar program that is tailored to the needs of agricultural producers.

In order to make SECO more effective, one proposed plan is to create a statewide database that would allow companies to see how much energy they use. This would also allow companies to monitor changes in energy use that can detect needed repairs, such as water leaks.

Another area of interest for the Senate Committee on Government Organization was the overlapping goals of programs implemented by SECO and by other state agencies. For example, the Texas Commission on Environmental Quality launched a clean school bus initiative around the same time as SECO. The plan allowed schools to apply for money to fund bus upgrades. Martin Hubert, deputy comptroller, explained that SECO's plan was more narrowly focused and that the two programs were complementary. However, policymakers are still considering how to best approach agencies with overlapping goals so that appropriations are spent as effectively as possible.

The 81st Legislature may consider adjusting funding for SECO as necessary to support current and proposed energy programs and enacting legislation to better monitor government groups with similar interests.

### **Criminal Background Checks**

The State Auditor's Office recently conducted a statewide audit of over 150 state agencies to determine their practices for conducting background checks. The results concluded that while nearly 87 percent of the agencies polled had the authority to conduct criminal background checks, diverse interpretations of the statutes led some agencies that had the authority not to use it while other agencies that lacked the statutory authority to seek the information still obtained the information either by either putting it in their individual agency policies or by merely asking the applicant.

Many of the agencies that chose not to exercise their right to perform criminal background checks said that they did not do so because the licensing required to be eligible for the position usually included background checks and performing another check themselves would be redundant and would cause money to be spent unnecessarily.

Practices differ among agencies with regard to the method of obtaining a background check as well as the number of employees required to submit to one. Fingerprint tests are more expensive than a simple name-based search but are significantly more accurate. Due to cost, however, name searches are far more widely used. Many agencies only conduct background checks on employees who handle sensitive material in their daily tasks.

Due to the varied interpretations of the statute, a more specific method of accessing information has been proposed. In a hearing of the Senate Committee of Government Organization, David Gavin, Department of Public Safety (DPS), testified on behalf of the use of fingerprint searches across the board, citing that as many as 11 percent of criminals who were detected through the fingerprint database would not have been noted in the results of a name search. Furthermore, he said that a fingerprint database would allow employers to be notified if an employee is charged with a crime after the employee is hired. Other witnesses requested that certain state agencies be permitted to gain access to criminal background checks for the first time.

The 81st Legislature may consider standardizing criminal background check laws.

### **High Performance Building Standards**

The implementation of high-performance building standards may result in increased energy efficiency and long-term cost reduction.

The State of Texas is largely invested in natural gas to meet energy needs. But due to limited supply and an ever-growing demand for fuel, the price of natural gas is expected to continue to rise, with a resultant increase in the cost of utilities.

The Senate Committee on Government Organization has investigated alternative energy sources that, when implemented, may drastically reduce the use of fossil fuels and curb the rising cost of energy. Solar energy, for example, has the potential to produce up to 70 percent of a building's electricity. Solar technology can also be installed on preexisting residential roofs, making its use minimally invasive. The upfront cost of this new technology is high, however, and discussion has included the addition of wind power grids and glass insulation measures to supplement the use of solar energy.

Other states have implemented building codes to conserve energy with overall favorable results. California leads the movement with a recent poll ranking Los Angeles first in cities with the highest number of green buildings per capita.

The committee also considered possible alternatives to mandates such as government incentives. During a hearing of the Senate Committee on Government Organization, there was discussion regarding the dangers of market intervention.

The 81st Legislature may consider revising state building codes to include increased energy efficiency measures.

### **Master-Planned Campus for State Agencies**

According to the Austin Chamber of Commerce, the city of Austin has grown 48 percent since the 1990s. The

number of buildings housing state agencies in the city has stayed nearly the same. This has caused crowding problems as Austin continues to have more government employees per capita than any other area of Texas. Addressing the Senate Committee on Government Organization, on September 23, 2008, Edward Johnson, executive director, Texas Facilities Commission (TFC), petitioned the committee to consider acquisition opportunities for a new government campus. He suggested that the best location for such property is Austin, where continued growth of state agencies is inevitable.

The campus would be expected to be easily accessible for Austin residents and provide relief for the agencies that are currently renting space in the downtown area. Johnson noted that the purchase of a campus would allow the state to invest in itself instead of spending money to lease privately owned properties. In order to find the appropriate location, TFC will be required to research future growth trends in order to anticipate the state's needs.

To address the quickly changing economy and the expected effect a new facility will have on its surrounding community, the committee instructed TFC to submit a report of their plan to the senate including as much detail as possible in an attempt to keep the public well informed of the proposed changes.

The 81st Legislature may consider legislation that will create a new campus for state agency facilities in Travis County.

### **Open Document Formatting**

During the interim of the 80th Legislature, the Senate Committee on Government Organization discussed the adoption of a mandate that state-created documents be saved in a specific, standardized format.

The open document format is a way to save a document so that it is publically accessible. Some benefits to adopting the use of such a format for state-created documents include efficiency and increased government transparency. It also makes the data more flexible by allowing it to be used by new technology which is constantly being created. Using an open document format would also allow the state to maintain ownership of its documents instead of giving them to a software provider. Studies in Maine and Massachusetts reported cost savings when documents were stored in such a way.

Costs would come from the process of converting older files and keeping both versions if it were required. Many companies testified before the Senate Committee on Government Organization in opposition to an open document format, stating that it would favor one program and therefore one company and would stifle technological advancements. They expressed concern that people would avoid using a program that was not compatible with the state-mandated format. Stuart McKee, national technology officer, Microsoft, claimed that mandating technology is not necessary, and that hidden costs such as facilities and training for the new format should also be considered.

The 81st Legislature may further discuss the implementation of a standardized format for state documents.



## HEALTH AND HUMAN SERVICES

### **Vaccinations**

Early childhood vaccinations are necessary to ensure that children do not contract debilitating infectious diseases such as measles, smallpox, and tuberculosis. Vaccinations are able to prevent the outbreak of 13 major diseases. Despite their effectiveness, not all children in Texas receive vaccines.

It is particularly challenging in Texas to ensure that every child is vaccinated because of the state's size and diversity and because children who live along the Texas-Mexico border and in rural areas oftentimes lack access to health care. Many preschool-age children do not have a "medical home" from which they receive the most important early immunizations.

Previous legislatures have worked to extend health care coverage and provide essential vaccinations to children. S.B. 11, 80th Legislature, 2007, allows providers to submit immunization information to ImmTrac, the Texas children's immunization registry, immediately after parents give consent. Prior to this legislation, providers had to fax the parental consent form to the Department of State Health Services (DSHS) and wait for authorization to submit immunization information to ImmTrac. The bill also permits the inclusion of immunization records for "first responders," or public employees who rapidly respond to emergencies, and their immediate family members. First responders will be able to request that their immunization information be included in ImmTrac through their healthcare provider or their local health department. The bill also requires any individual who receives an antiviral, medication, or immunization in preparation for or in response to a declared disaster to have individually identifiable information included in ImmTrac for a mandatory five-year retention period.

H.B. 3184, 80th Legislature, 2007, requires DSHS to increase immunization awareness and participation among parents of children in child-care facilities and in the early childhood vaccination program. The bill also requires the completion of a study of wholesale distribution of influenza vaccine.

The 81st Legislature may consider ways to ensure that an adequate number of vaccines are available; to improve access to insurance and ensure that immunizations are available in the child's medical home; to increase the number of children who have a medical home; to facilitate the use of reminders so that parents can ensure that children receive vaccines in a timely manner; to continue to promote and enhance public/parent education and immunization media campaigns designed to target underserved populations, general populations, and private providers; and to address ways to lower the cost to physicians who provide vaccines.

### **Child Abuse Prevention**

In 2008, the Centers for Disease Control and Prevention (CDC) reported that state and local governments investigated 3.6 million reports of child abuse or neglect in 2006. Of these children, 900,000 were victims of maltreatment and 75 percent were first-time victims of abuse. About 150,000 children died from injuries sustained during abuse and neglect. In 2006, 3.8 million children in the United States were recipients of abuse prevention services.

Children who are victims of abuse—such as neglect or emotional, physical, or sexual abuse—often develop a variety of problems throughout childhood and adulthood. The National Scientific Council on the Developing Child reported that victims of child maltreatment experience “toxic” stress that permanently hinders brain development that affects memory and increases children’s susceptibility to infections and diseases. It is also known that people who are victims of maltreatment in childhood can develop violent tendencies in adulthood and are at an increased risk of developing negative health outcomes, including alcoholism, depression, illicit drug use, sexually transmitted diseases, chronic diseases, and smoking.

Childhood sexual abuse is especially damaging. The 2008 CDC report entitled *The Effects of Childhood Stress on Health Across the Lifespan* states that of the 17,000 surveyed adults, 25 percent of women and 16 percent of men were victims of childhood sexual abuse. The report states that victims of childhood sexual abuse were more than twice as likely as other survey participants to report suicide attempts and were more likely to marry an alcoholic and to have marital problems.

Many states are considering a variety of child abuse prevention programs that require a nurse or health official to visit with new mothers in their homes. In 2000, Wyoming created the Public Nursing Infant Home Visitation Program, in which nurses assist and educate first-time low-income or previously incarcerated mothers during the first two years of the children’s lives. Healthy Families Arizona provides nurse home visits to qualifying families with new babies for up to five years. The purpose of these programs is to build family strength and encourage healthy living.

Other programs focus on parental education and support. Parents as Teachers is an organization that provides education to parents until their children reach age five. All families qualify for assistance. Some programs provide respite care for children with disabilities in order to temporarily relieve the parent(s) of stress related to child care.

Texas has several state-level programs that address child abuse prevention. Services to At-Risk Youth (STAR) seeks to prevent child maltreatment by providing intervention counseling for family crises, emergency residential care, and counseling to at-risk youth up to age 17. STAR is available in all 254 Texas counties.

The 81st Legislature may consider issues related to increasing funding for in-home visitation, parental education, and other programs designed to prevent child abuse, and may review ways to increase case management services.

### **Chronic Conditions Management**

According to the Center on an Aging Society at Georgetown University, more than 50 percent of people in the United States suffer from at least two chronic conditions such as cardiovascular diseases, Alzheimer’s disease, diabetes, asthma, arthritis, cancer, and obesity. Many of these conditions are preventable with tobacco cessation, exercise, healthy eating, and early, regular health care.

Tobacco use causes approximately 90 percent of lung cancers and 30 percent of all cancer-related deaths. In 2005, 20 percent of adult Texans smoked cigarettes, and 35 percent of secondary students in Texas reported using some type of tobacco product. Although adult and child tobacco use has decreased in the past several years, it is still the greatest preventable cause of death and disease. S.B. 10, 80th Legislature, 2007, required the creation of a smoking cessation pilot program that rewards Medicaid recipients who quit smoking.

The prevalence of asthma is also particularly high. More children suffer from asthma than any other chronic disease, and asthma causes 25,000 adult and child hospitalizations per year. From 1999 to 2005, more than 1,800 Texans died from asthma-caused conditions. In 2000, the Texas Department of Health (now the Department of State Health Services) and the American Lung Association created the Asthma Coalition of Texas and the Texas Asthma Plan to engage in statewide coordination of asthma prevention and treatment strategies.

The 81st Legislature may consider reviewing the need for additional wellness promotion programs, public tobacco bans, access to early and preventative treatments, public education campaigns related to healthy lifestyle habits, and access to asthma treatments.

### **Child Protective Services Caseworkers**

Child Protective Services (CPS) caseworkers have a significant responsibility to keep Texas families together while ensuring that children are free from abuse and neglect. Ensuring the safety of children, however, is complicated by the high turnover rate of CPS caseworkers caused by high levels of stress and large caseloads. The 2008 turnover rate was 42 percent for special investigators and 35.4 percent for investigators. Although the overall CPS staff turnover rate has decreased from 21.2 percent in 2006 to 19.4 percent in 2007, turnover is still high.

In 2008, the Department of Family Protective Services (DFPS) reported that the causes of caseworker turnover are safety concerns, stress, high workloads, and low salaries. The legislature has addressed workforce support and retention issues in past sessions.

H.B. 1, Rider 13, and S.B. 1, Rider 15, 80th Legislature, 2007, required DFPS to create a Human Resources Management Plan (plan) designed to increase caseworker retention by improving morale. The plan entails promoting employee communication, improving hiring practices, strengthening supervision, managing workloads, enhancing work environments, and valuing employees.

S.B. 758, 80th Legislature, 2007, required DFPS to complete a caseworker education reimbursement study that examines the effect financial reimbursement for higher education would have on retention.

The 80th Legislature also authorized the hiring of an additional 1,335 DFPS staff members, including about 370 conservatorship caseworkers and 215 family-based safety services caseworkers. DFPS has also altered the way in which caseloads are distributed by implementing the “functional units” organizational model that reduces caseloads and improves the quality of investigations.

The 81st Legislature may consider increasing funding to lower the caseworker turnover rate, increase the number of functional units, review alternatives to organizational models that reduce in caseworkers’ caseloads, and provide funding for hiring additional caseworkers with advanced degrees.

### **Texans With Developmental Disabilities**

In 2007, there were approximately 4,900 people with intellectual disabilities in one of Texas’ 13 state schools and 6,600 people with intellectual disabilities in more than 800 community intermediate care facilities for the mentally retarded (ICF/MR) across the state. As the population ages and grows, the state will have a greater need for state and community mental health facilities. Texas continues to work to improve services

for people with intellectual disabilities in state schools and provide them with adequate community living options and the freedom to choose such options.

S.B. 27, 80th Legislature, 2007, directs the Department of Aging and Disability Services (DADS) to improve the community living option information process so that people with developmental disabilities have the option of moving from a state facility to a community care setting. DADS implemented consumer-directed planning in which each individual with a developmental disability and their legal representative meet with an interdisciplinary team to create a personalized plan to increase the consumer's freedom and establish and meet the consumer's goals.

H.B. 1, 80th Legislature, 2007, provided funds to reduce the number of people on the Home and Community-based Services Waiver Program waiting list and allow 250 individuals on the waiting list to move from state facilities to community care settings. Funds were also allocated to hire additional staff for state mental facilities.

The 81st Legislature may consider ways to further reduce the number of people on waiting lists for community care services, reduce the number of developmental disabilities institutions and increase the number of community care providers, improve communication between community living coordinators and mental health consumers, and investigate allegations of abuse in state schools and ICF/MRs.

### **Foster Care and Adoption**

DFPS tries to ensure that all Texas children live in safe households free of abuse and neglect by either removing a threat from the home or by removing the child from the home. Children who are removed are frequently placed in foster or kinship care. There are approximately 17,400 children in foster care and 8,500 children in kinship care in Texas. Approximately 4,400 children are awaiting adoption.

In September 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act (Act). The Act significantly reforms the child welfare system by providing Family Connection Grants that fund kinship care, family group decision meetings, and residential family treatment programs. The Act gives states the option of using federal funds to extend foster care maintenance and adoption assistance and requires states to develop transition plans with children who age out of the foster care system and ensure children's education stability.

Although S.B. 6, 79th Legislature, 2005, increased CPS capacity to investigate allegations of child abuse and neglect and remove children from dangerous living conditions, the increased number of removed children has severely strained the foster care system. In May 2007, the *Austin American-Statesman* reported that since 2001, the number of children in foster care has risen 45 percent but that the number of foster homes has risen only 26 percent.

S.B. 758, 80th Legislature, 2007, required DFPS to improve family group decision making, reduce the number of CPS caseloads for conservatorship services, and enhance supervision of foster care and child placement agencies. The bill also improved in-home support to impoverished families, authorized a reduction in the number of privatized cases, and increased judicial power to mandate child welfare services.

The 81st Legislature may consider ways to recruit and retain additional foster and adoptive parents, increase the use of kinship care, review best practices to decrease foster care placement breakdowns, enhance the

Preparation for Adult Living program for children who age out of foster care, reduce the disproportionate number of African Americans in the foster care system, enhance support of court services and preparation of records, provide additional purchased client services to reunite families more quickly, and reduce caseloads for conservatorship and family based services.

## **Health Professions Shortage**

Many rural and Texas-Mexico border counties are still suffering from a shortage of health care professionals, including nurses, primary care physicians and long term care physicians, dentists, psychiatrists, social workers, and clinical laboratory scientists. In 2007, the U.S. Department of Health and Human Services reported that 25 Texas counties had no direct patient care physicians, and 37 counties had no primary care physicians. In January 2008, 184 Texas counties had severe shortages of mental health professionals. Although most shortages exist in rural and border counties where populations primarily consist of Hispanics and other minorities, there is a lack of ethnic diversity in the health care workforce.

As outlined in the *2005-2010 Texas State Health Plan*, the shortage of health care professionals in rural and border areas persists because of a variety of reasons—the aging of the population, the aging of the health care workforce, the high percentage of the uninsured population, the increasing number of people with chronic illnesses, the lack of diversity among health care professionals, the increased demand for nurses coupled with a decreased supply of nurses and low salaries, and the low supply of nurse educators.

S.B. 138, 80th Legislature, 2007, required the Texas Higher Education Coordinating Board (THECB) to study ways to increase nursing student retention and graduation levels and to recognize nursing programs with an 85 percent graduation rate. The bill created the Professional Nursing Shortage Reduction Program to distribute funds to programs that have increased nursing graduation rates.

H.B. 2426, 80th Legislature, 2007, required the Texas Board of Nurse Examiners to partner with THECB and the Texas Health Care Policy Council to devise a plan that utilizes innovation models to increase enrollment in state nursing education programs.

H.B. 3443, 80th Legislature, 2007, established the Texas Hospital-Based Nursing Education Partnership Grant Program to provide funds to hospitals that create or operate a hospital-based nursing education partnership and increase nursing education capacity.

S.B. 29, 80th Legislature, 2007, required the collection of non-specific information about health care professionals and nurses in Texas to enable the completion of workforce studies that will more fully capture the problem of the health care professional shortage.

Although improvements have been made to reduce the shortage of health care professionals, the 81st Legislature may consider issues related to increasing salaries for nurse faculty salaries; implementing loan forgiveness programs and other incentives to recruit and retain more primary care and long term care health professionals; reviewing funding streams for graduate medical education; reviewing the role of the state's teaching hospitals in the provision of indigent care; reducing the uninsured population; increasing ethnic diversity in health care professions; implementing telemedicine technologies; reviewing the need for the establishment of a new medical school in the border region; and enhancing public education campaigns for preventative care and health care professional career opportunities.



## **Health Enterprise Zones**

Because of the shortage of health care professionals in certain parts of the state—particularly along the Texas-Mexico border and in rural areas—many Texans lack access to adequate and consistent medical care. Texans who do not have access to a primary care physician or dentist must frequently delay preventative care and rely on hospital emergency rooms to treat costly conditions in their advanced stages.

In Texas, there are 514 health professional shortage areas (HPSAs). An HPSA is a federally designated area of the state with a shortage of primary care physicians, dentists, or mental health physicians. Texas also has 304 federally designated medically underserved areas (MUAs). An MUA is an area of the state that lacks an adequate number of primary care physicians and has high levels of poverty, high infant mortality, or a significant number of elderly persons.

To reduce the shortage of health care professionals, particularly primary care physicians, New Jersey enacted legislation in 2004 that created health enterprise zones (HEZs). HEZs are located in MUAs and offer financial incentives to primary care physicians and dentists who practice in HEZs or within five-miles of an HEZ. Physicians and dentists can deduct an amount equal to funds spent to serve patients enrolled in Medicaid and the state's FamilyCare program from their income taxes.

The HEZ program also provides low-interest loans to qualifying primary care physicians and dentists to support construction or renovation of medical buildings in HEZs and purchases of medical equipment. Qualifying providers may also receive property tax deductions for serving patients in HEZs.

The 81st Legislature may consider issues related to the adoption of HEZs and the use of the state margins tax and local sales and property tax abatement to provide financial incentives to health care professionals who practice in HSPAs or MUAs.

## **Medicaid Reform**

In Texas, over 25 percent of the public, or 5.5 million people, are uninsured. Of these, 2.1 million are adults and 857,000 are children citizens or legal residents living at or below the 200 percent federal poverty level (FPL). Many who cannot afford to purchase private insurance or insurance through their employers do not receive consistent medical coverage or preventative care from a primary care physician. The uninsured are thus more likely than those with insurance to be hospitalized for serious health problems that could have been avoided with early or preventative treatment.

The high costs incurred with frequent and avoidable hospitalizations add tremendous stress to the Medicaid system, which currently consumes 20 to 25 percent of the state's general revenue. Uncompensated care charges increased from \$5.5 billion in 2001 to \$11.6 billion in 2006 and are expected to continually rise under the current system. Avoidable hospitalizations also crowd hospitals, drive up the costs of private insurance, and add to the burden on safety net hospitals and local taxpayers.

S.B. 10, 80th Legislature, 2007, authorized the Health and Human Services Commission (HHSC) to apply for a Section 1115 waiver to reduce the cost of the Medicaid system, lower the number of uninsured, increase access to primary and preventative health care, improve the overall health of low-income Texans, and reduce the burden on hospitals. Once approved by the federal government, the Texas Health Care Reform waiver will utilize federal and state funding to create the Health Opportunity Pool (HOP) trust fund from which

adults under the 200 percent FPL can use premium subsidies to access market-based insurance coverage. The HOP will also provide funding to hospitals to cover uncompensated care costs and develop programs that divert patients from hospital emergency rooms to physician offices and improve low-income Texans' access to bilingual primary health care.

The goal of the Texas Health Care Reform Waiver (waiver) is to provide no or very low deductibles and sliding scale premiums that will, over time, help to establish a "culture of insurance" in Texas. Another goal of the waiver is to reduce the cost of the Medicaid system by reducing reliance on hospitals and promoting primary and preventative care.

Another way in which states are seeking to reduce the increasing costs of Medicaid is by altering Medicaid reimbursement so that it resembles an outcome-based payment system in which providers of medical procedures are paid per performance rather than receiving payment prior to performing the medical service. Pay-for-performance reimbursement systems reward providers who meet specified expectations while treating patients.

The Center for Health Care Strategies, Inc. reported in July 2008 that as many as 30 states manage pay-for-performance programs for Medicaid health plans. An increasing number of states are adding pay-for-performance programs to the individual provider level. Beginning in 2002, California participated in the Local Initiative Rewarding Results program, which encouraged improvement for and access to preventative care for newborns to infants under the age of 15 months on Medicaid. Incentives included in the program were bonus payments, distribution of risk pool money to providers, and staff assistance. Arizona is designing a pay-for-performance program in which providers are encouraged to improve the treatment of patients with diabetes and high risk pregnancies and to expand their practices to include other treatments and conditions such as long-term care. Arizona is attempting to choose measures that accurately reflect providers' performances while also ensuring that physicians will not be held responsible for patients' behaviors.

The 81st Legislature may consider ways to lower the high rate of uninsured and improve access to preventative health care by reviewing pay-for-performance program options for the Medicaid provider reimbursement system.

### **Mental Health Delivery System**

The mental health delivery system in Texas is being challenged to provide sufficient, timely services to people with severe mental illnesses. People who do not receive emergency mental health services when needed are at risk for suicide and may develop avoidable health problems that must be treated by hospital emergency rooms. DSHS reported that 53 percent of admissions to state mental health hospitals address a need for crisis care and 46 percent of admissions to emergency rooms are caused by behavioral health issues. If they do not receive immediate crisis services, some mentally ill persons may be incarcerated and may not receive necessary treatment in prisons and jails.

H.B. 1, 80th Legislature, 2007, provided \$82 million for Crisis Service Redesign (CSR), which seeks to change the state's mental health care delivery system to ensure that Texans have immediate access to mental crisis services. These funds are used to assist Local Mental Health Authorities in providing crisis hotlines and mobile outreach to Texans who cannot access transportation to mental health facilities. Funding is also available to help local communities provide extended services, including outpatient crisis, extended observation units, crisis stabilization units, respite care, and projects for jail diversion.

H.B. 2292, 78th Legislature, 2003, authorized the Resiliency and Disease Management Program, which was created to change the way in which adults with severe and persistent mental illnesses and children with severe emotional disturbances receive services. The program uses best practices to provide continuous and flexible services that cater to individual needs.

The 81st Legislature may consider issues related to increasing access to mental health services, increasing the number of inpatient psychiatric acute beds, promoting the use of recovery-based services, increasing access to community-based services, improving transportation options for mental health crisis consumers, developing an information technology strategy to increase community collaboration, creating early intervention programs that treat children with mental and behavioral issues, and reducing gaps in services to accommodate increasing numbers of veterans needing treatment for traumatic brain injuries and other disorders.

### **Nursing Homes**

As the population in Texas ages, there is a greater need for affordable long term care that provides health services to people with chronic conditions who can no longer care for themselves. In the past, long term care was primarily provided in family settings or institutional nursing homes. In recent years, however, there has been greater demand for nursing homes that provide a welcoming environment with community-oriented and consumer-driven care that lessens the strain of boredom and isolation.

Nursing homes are primary consumers of Medicaid funding; however, nursing homes in many states do not receive enough Medicaid funding to cover patient care expenses. The American Health Care Association reported in October 2008 that the average national shortfall in 2008 Medicaid nursing home reimbursement is projected to total approximately \$12.50 per Medicaid patient day. The total unreimbursed costs for nursing home care in the United States in 2008 is projected to be \$4.2 billion. Nursing homes and other long term care facilities are also faced with accessing funds to improve and update infrastructure.

To address high costs and incentivize quality care, the federal government and several states are establishing pay-for-performance programs to determine reimbursement rates for nursing homes. In 2005, the Centers for Medicare and Medicaid Services created the Nursing Home Value-Based Purchasing Demonstration Program that rewards nursing homes that improve the quality of patient care and reach certain quality measures. In 2008, the Virginia Legislature authorized the Virginia Medicaid Nursing Facility Pay for Performance Reimbursement Program, which measures performance based on quality of care; resident, family, and employee satisfaction; and employee retention.

The 81st Legislature may examine incentive-based pay-for-performance rate plans for nursing home reimbursement and consider funding options for staff enhancement programs.

### **Obesity**

Obesity continues to be a potentially catastrophic public health problem in Texas. According to DSHS, approximately 27 percent of adult Texans are obese and 33 percent of children are overweight, increasing the likelihood that they will grow into obese adults by 25 to 50 percent.

The prevalence of childhood overweight was greater in Texas, in 2005, than prevalence nationwide. Children who are overweight are at greater risk for developing serious health conditions, including Type

2 diabetes, risk factors for heart disease, asthma and sleep apnea, and psychosocial effects such as decreased self-esteem. In August 2008, the *Washington Post* reported that there will be an additional 100,000 cases of coronary heart disease by 2035 in the United States due to childhood obesity. As adults, the obese and overweight are at risk for developing chronic diseases, such as heart disease, cancer, stroke, and diabetes, which are leading causes of death in the United States and account for billions of dollars in medical treatment costs.

In a 2004 document entitled *The Burden of Overweight and Obesity in Texas 2000-2040*, the Texas Department of Health (now DSHS) reported that health problems attributed to obesity and being overweight will cost Texas \$39 billion by 2040 if current trends do not change. Obesity costs Texas businesses billions of dollars every year in lost productivity, absenteeism, health care, and disability. Obesity has also led to higher insurance premiums. Since 2001, insurance rates have risen 68.2 percent and businesses pay approximately 74.4 percent of insurance costs.

Although it is well established that fitness is essential, more than 60 percent of American adults do not get enough physical activity, and 25 percent are not active at all, according to the National Conference of State Legislatures. Many states are enacting legislation to promote fitness and wellness in the workplace.

H.B. 1297, 80th Legislature, 2007, required Texas to hire a state wellness coordinator, develop a worksite wellness advisory board, develop model worksite wellness programs, complete a baseline survey of state agency wellness activities, and host an annual wellness conference.

S.B. 556, 80th Legislature, 2007, created the Interagency Obesity Council to monitor and evaluate obesity prevention efforts in Texas for both children and adults. H.B. 4062, 80th Legislature, 2007, requires the Texas Department of Agriculture to increase the number of students who eat breakfast and to study how to reduce trans-fatty acids from all school meals and nutrition programs. These initiatives—the *Strategic Plan for the Prevention of Obesity in Texas: 2005-2010*, a study demonstrating how to fight obesity; and previous legislation that mandated school health and activity reports—promote childhood wellness in Texas.

The Trust For America's Health and the Robert Wood Johnson Foundation reported that in 2007 and 2008, seven states enacted legislation related to nutritional quality of school foods and beverages. Eleven states enacted school physical education legislation. Other states enacted policy approaches to address childhood obesity such as nutritional education or wellness initiatives in schools, body mass index measurement and reporting, increased physical activity during the school day, and improving the nutritional content of school food, or taxing or prohibiting snack foods with minimal nutritional value.

In 2007 and 2008, four states set nutritional standards for school meals that are stricter than existing United States Department of Agriculture requirements. Many of these bills focused on providing students with access to healthy food produced at local farms. Four states established nutritional standards for competitive foods and two states enacted legislation that limits when and where competitive foods may be sold beyond federal requirements.

Three states—New York, Rhode Island, and Texas—enacted body mass index (BMI) legislation in 2007 and 2008. Fourteen other states already had BMI legislation in place.

In 2007, the federal government amended the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to cover fruits, vegetables, and whole grains. The program also encourages breastfeeding, which has been shown to reduce the risk of obesity. This program will be up for reauthorization in

2009. The Federal Obesity Prevention Act of 2008 was introduced in Congress in 2008 and, if passed, will amend the Public Health Service Act to create a Federal Task Force on Obesity.

The 81st Legislature may consider options to expand existing obesity prevention efforts through promotion of wellness programs through the Healthy Communities Program and fitness council grants; review increasing coordination between state agencies; improve communication between the state and businesses regarding available wellness resources; and enhance public education programs.

### **Pandemic Influenza**

Influenza pandemics occurred in 1918, 1957, and 1968, during which millions of people died worldwide from the influenza virus. Officials are currently preparing for the possibility of a new influenza pandemic by coordinating statewide emergency plans and stockpiling antiviral medications.

Officials are particularly concerned about the H5N1 avian influenza strain because it has infected 265 and killed people 159 since 2003, according to the World Health Organization. H5N1 infection occurs frequently in birds and can spread to humans through direct contact.

Texas would face many challenges during an influenza pandemic because the pandemic would afflict people in all groups, be located in all parts of the state, and come in waves, causing social and economic disruption.

DSHS has been working to ensure Texans' preparedness should a pandemic occur. In 2005, DSHS and other stakeholders updated the *2004 Texas Pandemic Influenza Preparedness Plan* to provide guidance to local health departments for working with their community leaders, discuss the allocation and distribution of vaccines and antivirals, update designs for mass vaccination clinics, and provide information for health care providers and the public. The goal of influenza pandemic preparedness and response is to minimize serious illness, hospitalizations, and death; to preserve critical infrastructure; and to minimize social disruption in Texas as a result of an influenza pandemic.

H.B. 10, 80th Legislature, 2007, appropriated \$10 million for the purchase of 677,000 courses of antiviral medication that will be stored within the Texas antivirals cache.

The 81st Legislature may consider issues relating to the state's preparedness for a pandemic influenza outbreak, including the state's limited health care capacity; shortages and delays in vaccine administration; potential infrastructure disruption as a result of a pandemic; and resource allocation and laws pertaining to social distancing, activity restrictions, and quarantine.

### **Statewide Smoking Ban**

In 2008, the Centers for Disease Control and Prevention journal, *Morbidity and Mortality Weekly Report (MMWR)*, stated that about 35 percent of adult Medicaid recipients were smokers in 2006 and that ailments caused by tobacco use account for about 14 percent of Medicaid costs.

The CDC reported that in 2006, 20.8 percent of U.S. adults were current tobacco smokers and that tobacco use in the United States results in \$193 billion in yearly health care costs. A November 9, 2007, *MMWR*

article states that smoking-related illnesses cost more than \$167 billion and that smoking causes about 438,000 premature deaths—or one of every five deaths—annually.

On June 27, 2006, the U.S. Surgeon General's Office released a report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, on the serious health hazards of breathing the toxic chemicals in secondhand smoke and confirmed that smoking should be eliminated in indoor spaces to protect nonsmokers.

Legislatures have enacted statewide bans with the intention of preserving public health and protecting nonsmokers from deadly secondhand smoke.

Ten states passed legislation in 2007 and 2008 to partially or fully ban smoking statewide, including Illinois, Iowa, Maryland, Minnesota, New Hampshire, New Mexico, Oklahoma, Oregon, Pennsylvania, and Tennessee. Twenty-one other states already had statewide smoking bans in place. The National Restaurant Association reports that 288 municipalities have laws banning smoking in restaurants and workplaces.

In 2008, Iowa passed legislation to ban smoking at public indoor bars and restaurants. Casino floors and designated sections of state penitentiaries were not included in the ban. Pennsylvania enacted a partial statewide ban on smoking in enclosed workplaces and in some restaurants. The law restricts local governments from establishing stricter regulations.

S.B. 91, 80th Legislature, 2007, requires point-of-sale tobacco signage to include certain text regarding the health risks of smoking during pregnancy.

The 81st Legislature may consider a statewide ban on smoking in public places, tobacco cessation initiatives, and mass media awareness campaigns.

### **Stem Cell Research**

Embryonic stem cell therapies can treat debilitating diseases such as diabetes and Parkinson's disease. It was formerly thought that the potential for adult stem cell therapies was limited. However, recent developments have demonstrated greater potential for adult stem cell therapies. Witnesses who testified before the Senate Committee on Health and Human Services stated that a new technique allows genes from embryonic cells to be introduced into adult stem cells, enabling adult stem cells to differentiate into any other type of cell. Engineered adult stem cells are also beneficial because they are genetically identical to the patient and cannot be rejected. Recent studies have shown that when injected into a patient, adult stem cells can successfully treat spinal cord injuries, certain bone fractures, Parkinson's disease, diabetes, and heart disease.

While many scientists agree that embryonic stem cell research is vitally necessary, many are also pursuing adult stem cell research because of the recent technological developments that enable adult stem cell differentiation and because adult stem cell research avoids the debate stemming from the ethical dilemma of embryonic stem cell research.

Other technologies are also being developed. Researchers at the University of California Los Angeles (UCLA), for example, have reprogrammed skin cells into embryonic stem cells through a complex fusion process. Other scientists have shown that testicular stem cells have the ability to differentiate into other types of cells. Though additional research is necessary, scientists claim that skin cells and testicular cells can potentially

treat many diseases. Another type of healing treatment already in use is cord blood therapy. Cord blood can be collected from the placenta after the birth of a baby and can be stored to be used in stem cell therapies that treat malignancies, and immunodeficiency and other disorders. These studies and therapies are part of a broader effort to find ways to conduct embryonic stem cell research without destroying embryos.

In 2004, California approved a \$3 billion program to fund embryonic stem cell research. New Jersey distributed \$6.5 million for the creation of the state's Stem Cell Institute. Some states support adult and embryonic stem cell research. In 2006, Maryland allocated \$15 million to the creation of the Maryland Stem Cell Research Fund, which awards grants for adult and embryonic stem cell research. Massachusetts passed legislation to create a stem cell and regenerative medicine research institute and a life sciences center to promote additional research. The legislation was funded with \$11 million. In 2007, New York created the Empire State Stem Cell Trust (trust) to fund stem cell research and provided the trust with \$600 million for distribution over 10 years. Virginia created a fund to provide support to adult stem cell research only, but money has not been appropriated.

Witnesses who testified before the Senate Committee on Health and Human Services stated that Texas is a leader in adult stem cell research but that recruitment efforts are hampered by low funding.

The 81st Legislature may consider options to provide funding for adult stem cell research and funding for cord blood transplants.



## HIGHWAYS AND TRANSPORTATION

### Billboard Regulation

Federal, state, and municipal law govern the issuance and construction of off-premise outdoor advertising signs in Texas. In 1965, Congress enacted the Highway Beautification Act (HBA), which sets minimum guidelines for signs within 660 feet of the nearest edge of the right-of-way on federal interstate and primary highways. The federal government required all states to limit the construction of signs on interstate and primary highway systems and established that the federal government could reduce federal transportation funding by 10 percent to a state that is noncompliant.

Chapter 391, Texas Transportation Code, implemented HBA and the contract with the Federal Highway Administration. Chapter 394 of that code governs rural or non-federal roads while Chapter 216, Local Government Code, authorizes cities to extend sign code ordinances into their extraterritorial jurisdiction (ETJ).

Current state law allows a municipality to enforce stricter requirements along all federal roads, rural roads, and city streets within the municipality's corporate limits and its ETJ for off-premise outdoor advertising signs and allows local municipal sign code restrictions to regulate or ban any new off-premise signs within the corporate or extraterritorial jurisdiction. State law requires the Texas Department of Transportation (TxDOT) to identify whether an off-premise outdoor advertising sign is illegal. Sign owners must receive a permit from TxDOT before erecting a sign unless TxDOT has certified that the city can provide its own permits for signs. If a sign is deemed to be illegal, TxDOT notifies the owner of the sign that the owner has a certain number of days to remove the sign. If the owner does not remove the sign, TxDOT refers the matter to the Texas Office of the Attorney General for legal recourse. There are 1,253 off-premise outdoor advertising sign license holders and 12,955 active permits on the interstate or primary transportation systems under TxDOT supervision; of those permits, 652 are in rural areas.

According to *Scenic Texas*, Texas has the most off-premise outdoor advertising signs of any state, an estimated 40,000 legal and illegal billboards, and TxDOT permits 550 new billboards annually. Some 130 Texas cities have adopted "no new sign" ordinances, including Austin, Dallas, Flower Mound, Fort Worth, Frisco, Hondo, and Houston. Many signs are located outside of cities and lack regulation and both legal and illegal signs are being erected at a fast rate. Double-decker signs, large signs, and signs with light emitting diodes (LED) are being erected in areas with no commercial activity.

Many off-premise outdoor advertising sign owners who have had their signs condemned seek payments for loss of a business through potentially costly lawsuits.

The 81st Legislature may provide counties with the authority to prohibit the installation of new off-premise outdoor advertising signs. The legislature may, in response to TxDOT recommendations, change the fee structure for permitting signs; streamline current regulations; increase consistency between primary and rural road system programs; provide methods for consistent enforcement; and impose restrictions regarding construction of signs in rural areas. The legislature may also place a monetary cap on sign condemnation lawsuits.



## **Bus Safety**

According to the Federal Motor Carrier Safety Administration (FMCSA), Analysis Division, there were 322 fatalities involving bus accidents in 2007. In Sherman, Texas, a bus accident occurred on August 8, 2008, killing 17 people. The bus company involved in the accident had previously been investigated by FMCSA and found to be an unsatisfactory carrier. FMCSA issued an out-of-service order prohibiting that carrier from operating interstate and intrastate commerce. The company operators formed a new company under a new name and were awaiting operating authority by FMCSA. The bus operating under the new company was operating under temporary tags. FMCSA issued an imminent hazard order to both companies, which shut down the operation of both companies after the accident.

Major Mark Rogers, Texas Department of Public Safety (DPS), Commercial Vehicle Enforcement Service, stated to the Senate Committee on Transportation and Homeland Security, at a hearing in Irving, Texas, on August 12, 2008, that there is adequate statute in place to prevent companies from committing such an offense but that these companies decided to not follow the law.

Rogers stated that DPS annually inspects an estimated 3,000 buses, including in-route bus inspections, destination inspections, and terminal inspections, with 221 certified inspectors conducting these inspections. The large number of inspections needed and the relatively few inspectors may create a public hazard. He said that DPS has 800 individuals capable of conducting bus inspections, but may need additional inspectors due to size of the state.

The 81st Legislature may provide additional funding to DPS to increase the number of certified inspectors or individuals capable of inspecting buses.

## **Transportation Financing**

Funding for construction of new highways is not able to keep pace with demand due to the growing need for transportation infrastructure and the decline of revenue generated from the motor fuels taxes due to a reduction of “individuals per mile traveled.” The motor fuels tax has not kept pace with inflation and is an increasingly unstable funding source. In addition to declining revenue, other factors have affected transportation infrastructure funding, including a TxDOT accounting error that counted \$1.1 billion in proceeds from bond sales twice and the diversion of funds from the State Highway Fund.

There have been several options that the state has used or is considering using to provide additional funding to alleviate the transportation budget shortfall, including comprehensive development agreements (CDA), pass-through funding mechanisms, or indexing the motor fuels tax to inflation, or using 5.1 billion in bond programs. A CDA is a tool that enables TxDOT to use private investments in the Texas transportation system. Pass-through financing is a partnership between a developer and TxDOT that funds roadway construction with a per-vehicle or per-vehicle mile fee paid by TxDOT to the developer. The motor fuels tax does not grow with the economy, but inflation increases the costs of roadway maintenance and construction that are funded by motor fuels tax revenues. Indexing the motor fuels tax to the consumer price index would apply inflation costs to roadways. The bond programs are a temporary solution to a long-term problem and will most likely be a short fix to the state’s transportation problems.

The 81st Legislature may consider establishing more stringent reporting procedures regarding TxDOT’s

accounting procedures; redirecting the funds currently diverted from the State Highway Fund to be used solely for transportation purposes; and indexing the motor fuels tax to inflation.

### **Comprehensive Development Agreements**

H.B. 3588, 78th Legislature, Regular Session, provided for a comprehensive restructuring of the methods of developing, financing, operating, and policing the state's transportation system in order to enhance safety, efficiency, and mobility. The bill authorized TxDOT to use a CDA to fund a turnpike. CDAs provide the competitive selection process for developing regional projects or larger projects such as the Trans-Texas Corridor. A public-private partnership, like a CDA, accelerates financing, design, construction, operation and maintenance of a project.

S.B. 792, 80th Legislature, Regular Session, 2007, placed a moratorium on all CDA projects beginning on May 1, 2007, but exempted certain projects. The moratorium was established to enable the legislature to review and modify the CDA process.

Concern has been raised regarding CDA term lengths, the complex method of establishing a market value, and the need to build supporting transportation infrastructure for toll roads. The 81st Legislature may consider certain actions, including removing the moratorium on CDAs; defining the business terms regarding a CDA in order for the state to facilitate the agreement to those terms; and modifying the contract term lengths for CDAs and allowing for the state to have a buyout option every 10 years. The legislature may consider removing the requirement for a market valuation process when entering into a CDA and removing the requirement for a non-compete clause or stipulate how and when such clauses should be used.

### **Transportation Finance Zones**

S.B. 2051, 80th Legislature, Regular Session, 2007, would have authorized the Texas Transportation Commission (TTC) to create transportation finance zones (TFZs) within two miles on either side of the center line of a state highway. This bill would have required the state sales and use taxes collected within the boundaries of a TFZ to be deposited into the Texas Mobility Fund for the sole purpose of paying the principal and interest on obligations issued in connection with the state highway project within the boundaries of the TFZ.

S.B. 2051 failed to pass. S.J.R. 67, 80th Legislature, Regular Session, 2007, the proposed constitutional amendment needed to create TFZs, also failed to pass.

With the growing demand for transportation infrastructure needs the state may develop innovative ways to fund highway projects.

The 81st Legislature may consider establishing TFZs in order to assist with highway funding needs.

### **Abolishment of the Texas Transportation Commission**

H.B. 2, 35th Legislature, Regular Session, 1917, created the Texas State Highway Department (department) to aid counties in the construction and maintenance of state highways and to provide for state motor vehicle registration.

In 1924, the department assumed control from the counties for the maintenance and construction of highways.

In 1969 the legislature created the Texas Mass Transportation Commission, which merged with the department in 1975 to create the State Department of Highways and Public Transportation (SDHPT).

On September 1, 1991, the legislature created TxDOT by consolidating SDHPT with the Texas Department of Aviation and the Texas Motor Vehicle Commission, and placed TxDOT under TTC.

TTC currently consists of a five-member board appointed by the governor to oversee TxDOT. TTC's responsibilities include: planning and making policies for the location, construction and maintenance of state highways; overseeing the design, construction, maintenance and operation of the state highway system; developing a statewide transportation plan that contains all modes of transportation, including highways and turnpikes, aviation, mass transportation, railroads, high-speed railroads, and water traffic; awarding contracts for the improvement of the state highway system; encouraging, fostering and assisting in the development of public and mass transportation in the state; and adopting rules for the operation of TxDOT.

According to the Sunset Advisory Commission (SAC) eliminating the five TTC members would result in an annual savings of about \$79,570 for the part-time salary; eliminating the five commissioner assistant positions would result in a savings of \$380,234 for those salaries; and an additional savings of \$108,622 would result from elimination of the travel and operating expenses of both TTC members and their assistants. In addition to the cost savings to the state by eliminating TTC, there has been public concern regarding the oversight of TxDOT due to a \$1.1 billion accounting error. It is SAC's opinion that a single transportation commissioner could help restore accountability, trust, and responsiveness to TxDOT.

The 81st Legislature may, under a SAC recommendation, replace TTC with a single commissioner responsible for planning, design, construction, maintenance, and operation of state highways, awarding contracts, and adopting rules and may establish a Transportation Legislative Oversight Committee to provide oversight of TxDOT and the state's transportation system.

### **Regional Mobility Authorities**

S.B. 342, 77th Legislature, Regular Session, 2001, authorized the creation of regional mobility authorities (RMAs). Also in 2001, voters approved Proposition 15, the accompanying constitutional amendment for S.B. 342, that created the Texas Mobility Fund and authorized grants and loans of money and issuance of obligations to finance the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges and other mobility projects. This modified the state's longstanding "pay-as-you-go" policy for transportation funding, allowing transportation officials to borrow money to construct new roads instead of waiting to build until funding was appropriated. Voters approved another bonding package in 2003, Proposition 14, that authorized TxDOT to borrow money from any source for transportation-related projects.

An RMA is a political subdivision formed by one or more counties to finance, acquire, design, construct, operate, maintain, expand, or extend transportation projects. RMAs have the authority to issue revenue bonds and interim bonds and are required to repay those bonds with revenue from projects, agreements with TxDOT or other governmental entities, or surplus revenue. RMAs can combine transportation projects into systems and can transfer turnpike projects to TxDOT, under certain conditions.

RMA can acquire property by eminent domain and can operate in adjacent counties with the counties' permission. RMA can hire project developers and contractors through exclusive development agreements for construction, operation, and maintenance.

Currently, there are areas of the state that are interested in forming an RMA that do not have the startup capital necessary to do so.

The 81st Legislature may establish a new method for creating RMA or may provide additional funding so that RMA have adequate startup capital.

### **Funding Toll Projects With Texas Pension Funds**

The growing financial crisis in the United States has left many investors searching for new and smart ways to invest their funds. Pension investment firms have been hit hard and many individual pensions have been affected by the financial downturn and slipping economy. The instability in the market has left investors scrambling to decide where to invest or whether to just save the money until the market has a chance to recover.

Using pension plans to fund toll projects is a fairly new concept. The Australian government was the first to use pension funds for infrastructure projects and United States pension plans have been only funding transportation infrastructure for a few years.

Toll revenues have been successful in generating a steady stream of revenue but many Texas toll roads are in their infancy and it remains to be seen whether they will be stable long-term investments. Currently, many of the toll projects are exceeding the TxDOT's revenue and traffic projections.

According to the Pension Consulting Alliance, pension investment firms may consider providing equity for infrastructure privatization projects that may be able to produce high stable yields, duration hedging, inflation protection, ability to transfer risk, and low volatility related to the asset.

The growing need for financial backing for toll road transportation infrastructure projects and the declining trust of investors may make infrastructure privatization projects more attractive to pension investment firms. Pension investment firms may see these investments as a safer and more reliable choice than the stock market.

The 81st Legislature may consider authorizing the use of state pension funds for infrastructure privatization projects such as toll roads.



## HOMELAND SECURITY

### **Enhanced Driver's License**

Under the Western Hemisphere Travel Initiative, enacted by Congress in 2004, oral declarations of citizenship alone are no longer accepted at land and sea ports for United States citizens returning from Mexico, Canada, and Bermuda. In Texas, border crossers will need a Texas driver's license plus a birth certificate, in the absence of a U.S. passport, to enter the United States.

S.B. 11, 80th Legislature, Regular Session, 2007, created the enhanced driver's license (EDL) pilot program, which is a state license embedded with technology that allows it to be used as a border-crossing document on the Texas-Mexico border.

Currently, the Department of State, Bureau of Consular Affairs, Passport Services Directorate, offers a passport card that is a less expensive and more portable alternative than the traditional passport. The card is valid for 10 years for an adult and five years for children aged 15 years and younger. Adults who already have a fully valid passport may apply for the card as a passport renewal and pay only \$20. First-time applicants pay \$45 for an adult card and \$35 for a child card.

The implementation of the EDL program has been halted due to a provision in S.B. 11 that conflicts with current federal law, which states that a United States passport must be used to cross international borders. In addition to the conflict with federal law and the availability of the passport card, EDL poses a security risk because radio frequency identification devices could be hacked and traveler's information could be stolen, according to the American Civil Liberties Union.

Some have claimed that EDLs would be less vulnerable to forgery and cost 50 percent less than purchasing a separate state driver's license and a federal passport card or passport.

The 81st Legislature may consider reauthorizing EDLs in a manner that complies with federal law and, if it does so, it may also provide for further security enhancements to EDLs.

### **Drug and Gang Violence Along the Border**

Gang violence is a growing concern along the Texas-Mexico border. During 2008, over 1,100 people have died in Ciudad Juarez, Mexico, due to gang violence. With the increased anti-crime police actions occurring, such as the Operation Linebacker, Operation Rio Grande, and Operation Del Rio, Mexican crime cartels have increasingly used gangs, including the Texas Syndicate, Mexican Mafia, Barrio Azteca and MS-13, to smuggle drugs and humans into Texas.

Operation Del Rio, a multi-agency border security operation to target international criminal enterprises and reduce crime and violence in a five-county region along the Texas-Mexico border, was launched in June 2006. The operation is a partnership between the sheriffs of Kinney, Maverick, Val Verde, Zavala and Dimmit counties, the police departments of Del Rio and Eagle Pass, the United States Customs and Border Protection, the Texas Department of Public Safety (DPS), the Texas National Guard, the Texas Parks and

Wildlife Department (TPWD), the Civil Air Patrol, and the Governor's Division of Emergency Management. This increased law enforcement presence is an attempt to thwart Mexican crime cartels and gang activity along the border region.

Operation Rio Grande was established to support Operation Linebacker, which was an effort of the Texas Border Sheriff's Coalition to increase manpower and equipment to reduce crime and violence along the border.

Currently, there is no central location where law enforcement agencies, which have independent databases, can share information. A Fusion Crime Center is being developed in El Paso to facilitate the sharing of gang intelligence information with various law enforcement agencies.

Governor Perry has stated that he will seek \$100 million from the Texas Legislature in order to support anti-gang efforts. In order for the Fusion Crime Center to achieve operational status it will need funding support from the legislature, and further funding may be needed to facilitate increased law enforcement efforts in the border region.

In addition, Texas may have the opportunity to use license plate readers that identify stolen vehicles used in drug trafficking to provide the locations of those vehicles to law enforcement agencies. Steve McCraw, director, Governor's Office of Homeland Security, has stated that the Drug Enforcement Agency (DEA) may provide \$11.2 million and the United States Office of National Drug Control Policy (NDCP) may provide \$15 million for the use and installation of a license plate reader program. However, he noted that these funds were offered for a limited time and may no longer be available. The use of such license plate readers was determined to be illegal by the Texas Department of Transportation, which stated that the state's red light enforcement law prohibited the use of such data gathering devices for law enforcement purposes other than red light violations.

The 81st Legislature may amend state law regarding the use of license plate readers and may work with DEA and NDCP to establish a license plate reader program. The legislature may provide funding for such a program if the funds previously offered by those agencies are no longer available. The legislature may authorize funding for enhanced law enforcement efforts along the border to reduce drug trafficking and violence.

### **Hurricane Response**

Hurricane Ike made landfall in Galveston on September 13, 2008, as a category two storm with sustained winds of 110 miles per hour. The National Weather Service stated that Hurricane Ike was an unusually large storm with a wind field over 400 miles across and produced a storm surge similar to a category four storm.

In the aftermath of the storm, many people were left without power and access to basic services. The lack of power raised numerous concerns for many facilities, including nursing homes, assisted living facilities, municipal utility district (MUD) water sewage systems, and schools. The lack of power to MUDs in the Galveston area prevented water sewage systems from working in the Galveston area. The nursing homes and assisted living facilities that lost power were unable to operate certain necessary medical equipment and schools that were serving as shelters were without power.

During the storm, jail inmates had to be moved to safer locations as part of the evacuation effort. A logical solution would be to house jail inmates with prison inmates, but current state law does not allow state and

county inmates to be collocated. The state has the most available space to house inmates in the event of a hurricane while a lack of facilities forces counties to come up with innovative methods to house inmates when a hurricane occurs.

Another concern that surfaced during the hurricane emergency was that previously convicted sex offenders were being sheltered at the same locations as families and children.

The storm's aftermath raises many concerns that may be addressed during the 81st Legislature. The 81st Legislature may consider providing minimum requirements for generators and fuel supplies for those facilities. The legislature may consider legislation to allow inmates to be collocated in emergency situations. Additionally, the legislature may consider legislation requiring the separation of convicted sex offenders from families and children in the case of sheltering.



## INTERGOVERNMENTAL RELATIONS

### Affordable Housing

With the ever-increasing population in Texas, the lack of affordable housing in the state is becoming more apparent. The Texas Legislature has addressed affordable housing issues with the passage of legislation in past sessions; however, the 81st Legislature may consider readdressing current laws in an effort to increase affordable housing and homeownership opportunities.

The Housing Tax Credit Program (HTC) was created under federal law to provide tax incentives for the development and preservation of rental housing for low-income families and individuals. Since 1987, the HTC Program has provided tax credits for the construction or renovation of over 120,000 units of affordable multifamily housing throughout Texas, and is generally recognized as the most effective incentive for the development of new and affordable multifamily housing units.

The Texas Department of Housing and Community Affairs (TDHCA) administers the HTC Program. To qualify for the tax credits, at least 20 percent of the units in the development must be rent-restricted and occupied by individuals and families whose incomes are less than 50 percent of the area median family income (AMFI), or 40 percent of the units in the development must be occupied by individuals and families who have incomes that are less than 60 percent AMFI. Once a development meets those requirements, TDHCA uses a point-based scoring system to determine which developments receive a certain number of tax credits. The tax credits are allocated on a regional basis to encourage fair and diverse planning initiatives.

Another program that provides funding for affordable housing is the Housing Trust Fund (HTF). The HTF was created in S.B. 546, 72nd Legislature, Regular Session, 1991. The HTF is the only state-authorized affordable housing program, and it provides for the acquisition, rehabilitation, and new construction of affordable homeownership developments, as well as tenant-based rental assistance. Funds are available to nonprofits, units of local government, public housing authorities, community housing development organizations, for-profit entities, and income-eligible individuals and families.

The Texas Bootstrap Loan Program provides a total of \$3 million for mortgage loans to very low-income families whose incomes are below 60 percent AMFI, not to exceed \$30,000 per unit. The Bootstrap Loan Program is a self-help construction program that requires a borrower to invest sweat equity into the home by providing at least 60 percent of the labor that is necessary to construct or rehabilitate the home.

In addition to reforming current affordable housing programs, another measure that the 81st Legislature may consider implementing is the establishment of community land trusts (CLTs). CLTs are typically created by nonprofit organizations that acquire and retain title to land to preserve its long-term affordability but sell the improvement or building on the land to a homebuyer who leases the land from the CLT through a long-term lease agreement. Current law allows for the creation of CLTs; however, CLTs are not being utilized because of ambiguity in the law applying tax exemptions.

Inclusionary zoning is another proposed method of increasing affordable housing opportunities. It requires that a portion of new construction within a local jurisdiction qualify as affordable housing for low-income families



and individuals. Current law prohibits a municipality from using voluntary inclusionary zoning. Opposition to amending the current law relating to inclusionary zoning focused on not amending the statute.

The 81st Legislature may consider whether to expand the HTC Program to include mixed-income developments, to increase the amount of funding allocated to the HTF, and to expand the Bootstrap Loan Program by increasing the amount of the loan per unit or by increasing the funding allocated to the program. The legislature may also consider whether to amend current laws relating to CLTs, so that the laws provide more tax incentives to developers, and whether to require inclusionary zoning by municipalities.

### **Development of Rural and Unincorporated Areas**

Texas counties are experiencing tremendous growth in both incorporated and unincorporated areas and are having to provide services such as road maintenance and construction, water supplies, and emergency services. Counties, however, lack authority to provide adequate services and regulate development to prevent incompatible land use and the proliferation of substandard housing in rural unincorporated areas.

Substandard housing in rural unincorporated areas of the state is especially problematic. People who cannot afford housing in urban areas often move to inexpensive, low-quality housing in unincorporated areas that lack transportation and accessible health care services. Quality of life can also be diminished when factories or slaughterhouses, for example, construct facilities adjacent to homes.

Researchers at The University of Texas Environmental Law Clinic reported that a number of states—Arizona, California, Colorado, Florida, New Mexico, Oregon, and Washington—have enacted legislation that grants broad authority to county governments over zoning and land use specification. New Mexico and Washington grant counties additional authority to assess impact fees to fund development.

H.B. 2095, 80th Legislature, 2007, authorizes counties to apply for and participate in federal and state programs that provide financial assistance to municipalities.

The 81st Legislature may consider ways to expand counties' ability to prevent provide services in unincorporated areas; review minimum housing standards; examine the use of extraterritorial jurisdiction laws to grant regulatory power to counties; and review counties' authority to assess fees to fund economic development.

### **Emergency Service Districts**

Current law does not provide a post election carve-out provision for two overlapping taxing jurisdictions that vote to pass sales taxes, requiring that one of the jurisdiction's election have no effect.

The 81st Legislature may review current law relating to emergency services districts and the effect of overlapping taxing jurisdictions.

### **Municipal Utility Districts**

Current law does not provide a standard form for the creation of a municipal utility district (MUD). A

standard MUD statute might enable the legislature to more efficiently evaluate proposed districts during the legislative session.

The 81st legislature may consider the passage of legislation that incorporates a standard template for the creation of MUDs.

### **Hurricane Preparedness**

Hurricanes Katrina and Rita made apparent a lack of preparedness among the Gulf Coast states in protecting residents and their property in the event of a disaster. The federal and state governments have taken a number of actions in establishing preparation measures, evacuation plans, and recovery efforts in the event such a disaster were to occur again. The 81st Legislature may consider other methods of ensuring further protection and better response in the event of such a disaster.

The 81st Legislature may consider developing a plan that promotes coordination between local and county authorities. A lack of communication between such authorities can be detrimental to evacuation and response efforts. The 81st Legislature may also consider other methods of transportation and shelters necessary for evacuations, especially those provided by private entities to assist individuals with special needs. Liability issues may arise when contracting for such efforts, so the legislature may consider providing protection in the law for those who assist in the evacuation and response to a disaster.

Florida implemented statewide building codes that have proved to provide ample protection from the strong winds and rain during hurricanes.

The 81st Legislature may consider whether to adopt similar standards in Texas and how such standards would affect new construction and the renovation or rehabilitation of existing buildings.



## JURISPRUDENCE

### **Wrongful Convictions**

In Texas, as many as 38 persons have been freed from prison based on DNA evidence exonerating them from the crime. Texas has the highest number of DNA exonerations in the country, and the greatest number of these were prosecuted in Dallas County. Some of these persons spent over 20 years in prison before being exonerated. Wrongful convictions not only cost the innocent person his or her freedom, but are also costly for the state. Under Chapter 103 of the Texas Civil Practice and Remedies Code, persons who have been wrongfully convicted can file for compensation by the state. The amount of compensation is \$50,000, multiplied by the number of years served in prison, or, if the person was sentenced to death, \$100,000 multiplied by the number of years served. The state is also liable to the person for compensation for unpaid child support payments that accrued while he or she was incarcerated, as well as for counseling. This does not include the cost to the state of the prosecution and incarceration of a person who was innocent of the crime. A wrongful conviction often leaves the person who actually committed the crime free to engage in further criminal activity and may undermine public confidence in the fairness of the criminal justice system.

There have been attempts in past sessions to create an Innocence Commission that would investigate wrongful convictions and make recommendations to prevent such wrongful convictions from reoccurring in the future. The Texas Court of Criminal Appeals created the Texas Criminal Justice Integrity Unit in June of 2008 to study issues regarding wrongful convictions and recommend reforms in the criminal justice system.

The 81st Legislature may consider the creation of an Innocence Commission to investigate wrongful convictions and make recommendations to prevent such wrongful convictions from occurring in the future.

### **Counseling of First-Time or High-Risk Homebuyers**

Texas does not require first-time home buyers to obtain financial counseling. However, Section 2306.253, Texas Government Code, requires the Texas Department of Housing and Community Affairs to develop and implement a statewide homebuyer education program designed to provide information and counseling to prospective homebuyers. The collapse of the subprime mortgage market and the resulting wave of home foreclosures have made some lawmakers consider the advisability of providing for mandatory counseling for certain first-time or high-risk home buyers.

Two states have laws requiring counseling of certain homebuyers. South Carolina prohibits a lender from making certain types of high-cost home loans unless the borrower has first received counseling on the advisability of the loan transaction from a counselor approved by the State Housing Finance and Development Authority. Illinois has implemented a pilot project in Cook County that requires first-time homebuyers or persons refinancing a primary residence to undergo counseling before taking out certain mortgages, such as an interest-only or adjustable rate mortgage. In recent years, legislation was introduced in California, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, New York, Tennessee, Virginia, and Washington that would have required persons seeking certain types of home loans to receive financial counseling, but none of these bills were enacted.

The 81st Legislature may consider enacting legislation requiring counseling for certain homebuyers or providing for a homebuyer education program.

### **Expanded Legal Assistance Program**

An Expanded Legal Assistance Program (ELAP) grants full-time military officers serving the Judge Advocate General (JAG) corps of any branch of the United States military limited admission to the bar of any state so that the JAG attorney may represent military personal before the courts of that state. Alaska, California, Colorado, Florida, Hawaii, Illinois, Mississippi, Pennsylvania, Rhode Island, South Carolina, Utah, Washington, Wisconsin, and Virginia all have adopted ELAPs. There has been an interest in establishing an ELAP in Texas.

Generally, the rules governing the admission of lawyers to practice in any state is left up to that state's judicial branch. For example, Section 81.061 of the Texas Government Code grants the Texas Supreme Court exclusive jurisdiction regarding the rules governing admission to the practice of law. The American Bar Association (ABA) adopted a model ELAP Rule in 2003. Title 10, Section 1044, Subsection (d), of the United States Code provides that notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide such assistance in any jurisdiction, subject to such regulations as may be prescribed by the United States Secretary of Defense. "Military legal assistance" includes legal assistance such as powers of attorney, advanced medical directives, and testamentary instruments. Although read broadly, the subsection would seem to authorize military attorneys to practice before state courts in civil matters affecting military personnel, currently the section is interpreted to cover legal matters outside of litigation and the states still retain the power to determine who is eligible for admission to their state bars.

The 81st Legislature may consider legislation encouraging the Texas Supreme Court to establish an ELAP program.



## NATURAL RESOURCES

### **Coastal Affairs**

The Texas Open Beaches Act (Act) and the Dune Protection Program were created to help local landowners and communities protect and preserve beaches. Because cities and counties along the coast must have laws to protect the public's beach access rights, dune protection and beach access plans have been created as local laws. The state must review these plans in order to certify that they meet minimum state standards set forth in the General Land Office's beach and dune system rules.

Because of recent hurricane activity along the Texas coast, erosion has occurred that may require a revision of the enforcement of the Act.

The 81st Legislature may examine how to enforce and control revisions to the Act.

### **Agriculture**

The passage of the federal Food, Conservation and Energy Act of 2008 (2008 Farm Bill) updated provisions that require all farmers to label the country of origin for chicken, goat meat, ginseng, pecans, and macadamia nuts. These commodities are in addition to muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; and peanuts.

The 81st Legislature may examine how to help Texas farmers implement provisions of the 2008 Farm Bill related to country of origin labeling.

### **Water**

A groundwater conservation district (GCD) is a district created under the Texas Constitution, Article III, Section 52, or Article XVI, Section 59, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

A groundwater management area (GMA) is created for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions.

According to the Environmental Protection Agency (EPA), mercury released as a result of coal-burning accounts for 40 percent of all domestic human-caused emissions. Eventually, mercury settles into water or onto land, where it can be washed into water. Certain microorganisms can then change mercury into methylmercury, which builds up in fish, shellfish, and animals that eat fish. It is highly toxic.

Arsenic is a semi-metal element that enters water supplies from natural deposits in the earth or from agricultural and industrial practices. EPA's arsenic standard for drinking water is .010 parts per million.

Brackish water typically contains total dissolved solids in concentrations ranging from 1,000 milligrams per liter (mg/l) to 10,000 mg/l. Using desalinated groundwater in Texas preserves fresh water aquifers. Because Texas' population is expected to double within the next 50 years, demand for water is expected to increase by almost 27 percent. During that same time, groundwater supplies are expected to decrease about 32 percent.

The Texas Commission on Environmental Quality (TCEQ) creates Texas surface water quality standards (standards) to recognize suitable uses for aquatic life, contact or noncontact recreation, and drinking water. These standards include rules for common criteria of water quality, such as dissolved oxygen, temperature, pH levels, the amount of dissolved minerals present, and the amount of bacteria present. There are also standards for toxicity in water that would affect aquatic life and human health. TCEQ has site-specific and statewide standards.

The 81st Legislature may consider reviewing groundwater law, policy, and management issues related to groundwater conservation districts.

The 81st Legislature may consider methods to help GCDs and GMAs with joint planning.

The 81st Legislature may determine new or improved methods of reducing mercury and arsenic emissions in the Texas water supply.

The 81st Legislature may examine salinity reduction as part of water planning for major bodies of water.

The 81st Legislature may revise water quality standards to include regions.

### **Air**

The Texas Emission Reduction Plan (TERP), established by the 77th Legislature, Regular Session, 2001, includes voluntary financial incentive programs to help improve Texas's air quality.

Legislators have noted that persons located in state implementation plan (SIP) areas have not taken full advantage of TERP funds and have discussed methods of garnering more use of the funds.

The Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) was created to assist low-income vehicle owners who meet certain criteria to repair their vehicle or replace it with a new vehicle that is environmentally friendly. The legislature has discussed the possibility of changing the terms of the LIRAP program to include appliances that can be eligible for repair.

An area that is increasingly regulated because of an increase in air pollution is called a nonattainment area. A near nonattainment area meets national ambient air quality standards but does not meet the eight-hour ozone standard of no more than 0.08 parts per million (84 parts per billion) of pollutants in the air.

The Houston-Galveston-Brazoria (HGB) SIP is classified as an eight-hour nonattainment area and is composed of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties.

Because of rapid population and economic growth, unique weather patterns, the amount of reductions needed to reach attainment, and a need for emission reduction strategies, reaching attainment in the HGB SIP has proven

to be a challenge. As of October 31, 2008, the HGB SIP has been reclassified from a moderate nonattainment area to a severe nonattainment area for the 1997 Environmental Protection Agency standard.

The Clean Air Mercury Rule (CAMR) was created by the Environmental Protection Agency to work in context with the Clean Air Interstate Rule to reduce the amount of mercury pollution that is created as a result of coal-fired power plants, which are categorized as one type of point-source pollution. CAMR establishes standards that limit mercury emissions from new and existing coal-fired power plants and creates a cap-and-trade program that will reduce utility emissions of mercury.

The 81st Legislature may consider an adjustment of these funds so that more qualifying individuals in corresponding SIP areas take full advantage of TERP funds.

The 81st Legislature may consider reevaluating terms for LIRAP eligibility to create a broader definition of eligibility for repair.

The 81st Legislature may re-examine the HGB SIP to determine its classification and any improvements made to the HGB SIP.

The 81st Legislature may consider having TCEQ reevaluate CAMR.

The 81st Legislature may also consider charging the Texas Commission on Environmental Quality with creating more effective methods of mercury reduction in the air as related to CAMR.

### **Carbon Capture and Storage**

Existing carbon capture and storage technologies are not cost-effective because of the extensive process related to sequestering carbon dioxide from power plants. Effective carbon capture and storage would involve the carbon dioxide's separation and concentration in flue and natural gases. The cost of carbon capture and storage, using current technology, is \$150 per ton of carbon.

The U.S. Department of Energy (DOE) does not have detailed information about carbon capture because extensive research and development for improvements of carbon capture and separation technologies has not been completed. The legislature has considered studying the effectiveness of using abandoned wells for carbon dioxide injection.

Currently, DOE is considering the following methods for carbon capture and sequestration:

- Absorption (chemical and physical);
- Adsorption (physical and chemical);
- Low-temperature distillation;
- Gas separation membranes; and
- Mineralization and biomineralization.

The 81st Legislature may consider how the state can finance or provide incentives for the creation of reasonable carbon capture methods.

## **Greenhouse Gas Emission Registry**

Greenhouse gases trap heat in the atmosphere and are derived from natural and human activities. Carbon dioxide can occur naturally and through the burning of fossil fuels, solid waste, tree and wood products, and is the result of chemical reactions. Other man-made greenhouse gases are a result of methane emitted during the production and transportation of natural gas, coal, and oil, emissions from livestock and other agricultural practices, and the decay of organic waste in solid waste landfills. Nitrous oxide is emitted as a result of industrial and agricultural activities, the combustion of fossil fuels, and the combustion of solid waste. Fluorinated gases such as hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are emitted from different industrial processes. Currently, Texas is the number one producer of greenhouse gases in the United States.

The 81st Legislature may consider the merits of participating in a greenhouse gas emission registry so that emissions can be tracked appropriately.



  
STATE AFFAIRS

## Elections and Voting

### Elections

The federal Help America Vote Act (HAVA) was passed in 2002, requiring all state and local authorities to upgrade their voting systems. Since that time, issues concerning voter fraud and inaccurate ballot counting have arisen, which may cause the Texas Legislature to address whether current state law should be amended.

All voting systems are required to be certified by the Texas Secretary of State (SOS) and undergo a testing process to ensure accurate recording and ease of use. Currently, Texas uses three methods of voting: paper ballot, an optical scan system, and a direct record electronic system (DRE). Paper ballots are still used as the primary method of voting in a number of counties in Texas. Voters mark their ballot by hand with a marker or pen and place it in a ballot box when finished. Local election officials then count the marked ballots by hand. The optical scan voting systems allow voters to mark their ballots by connecting “arrows” or filling in “bubbles” next to a candidate’s name. The ballots are then inserted into an electronic ballot counter that scans the ballot and counts the markings on the ballot. DREs enable voters to record their votes electronically into a machine, either by a touch screen or a dial. The DRE then provides a summary of the selected choices and allows the voter to go back and change any of the votes before pressing a “vote” or “cast ballot” button.

Current law also requires the SOS to maintain a computerized list of all registered voters. There have been reports that the centralized statewide voter registration system has not always performed well.

The 81st Legislature may consider ways to ensure security and accuracy in Texas elections, in the voter registration system, and in electronic voting systems.

### Voter Identification

On April 28, 2008, in *Crawford, et al. v. Marion County Election Board, et al.*, the United States Supreme Court upheld an Indiana election law requiring individuals voting in person to present government-issued identification. Proponents of such laws argue that these laws promote governmental interests in deterring voter fraud and safeguarding voter confidence. Supporters also assert that in close elections voter fraud may actually alter the elections results, undermining the democratic system. Opponents of such laws assert that there is little evidence that in-person voter impersonation is a problem and that such laws risk discouraging or disenfranchising large numbers of legitimate voters rather than addressing legitimate election fraud issues. Those opposed to such laws argue that they unfairly burden thousands of qualified voters who lack the necessary identification, generally poor, elderly, and disabled voters. Such persons, opponents assert, lack the resources, time, and money required to obtain the documentation necessary to apply for government identification, such as a certified copy of a birth certificate, and to travel to governmental offices to obtain the requisite photo identification. Supporters of voter identification laws respond that there is currently no evidence such laws risk disenfranchising large number of voters or that these laws unduly burden voters.

The 81st Legislature may review the current Texas system for registering voters and consider reforms to ensure the validity of the voter rolls.

### **Redistricting Commission**

A redistricting commission, a nonpartisan or bipartisan body, is an entity designated to draw district lines for elections to avoid gerrymandering.

Eleven states currently utilize a nonpartisan or bipartisan redistricting commission composed of citizens who are not officeholders. These states include Alaska, Arizona, Colorado, Hawaii, Idaho, Iowa, Missouri, Montana, New Jersey, Pennsylvania, and Washington. Proposition 11, which amends the California Constitution to create a bipartisan redistricting commission composed of non-office-holding citizens was approved by California voters in November of 2008. Arkansas and Ohio have redistricting commissions that are wholly composed of elected officials. Efforts to establish a redistricting commissions in other states, including Georgia, Indiana, Kansas, Massachusetts, New York, New Hampshire, North Carolina, Oregon, Ohio, Virginia, and Wisconsin, have not been successful to date.

Many states have either an advisory redistricting commission which advises lawmakers but has no voting power or a backup commission which takes over redistricting in the event that the legislature fails to adopt a plan within the given time frame.

The 81st Legislature may consider legislation to establish a bipartisan redistricting commission for purposes of drawing congressional and legislative districts.

### **Financial Institutions**

Despite a weakening national economy and ongoing problems in the financial markets, the Texas economy expanded modestly and 2008 was a comparatively profitable year for Texas commercial banks and savings institutions. Texas institutions, which are better capitalized than U.S. banks as a whole and thus able to better absorb the impact of the disruptions to national financial markets, have throughout much of 2008 experienced loan and deposit growth despite the subprime mortgage crisis and other disruptions.

Although Texas institutions have been generally healthier, the disruptions to national markets have had an impact on the state's financial institutions. The Texas Department of Banking and the Texas Department of Savings and Mortgage Lending report that the percentage of unprofitable state-chartered and federally chartered banks increased to 12.33 percent as of June 30, 2008, up from 7.20 percent in June 2007, and that the change for thrifts was that 36.73 percent are now unprofitable, compared to 11.90 percent in June 2007. Net interest margins (NIM) for banks and thrifts remained acceptable despite an increase in the cost of funds for the year, and the return on assets for banks and thrifts dropped. The combined assets of state and federally chartered banks and savings institutions operating in Texas totaled \$613.2 billion as of June 2008, with Texas state-chartered banks and savings institutions accounting for 30 percent of the total assets.

Although not as strong as it was at year-end 2007, the Texas economy continued to outperform the rest of the nation. While Texas home values have generally remained stable, existing home sales are showing signs of deceleration. Permits for new homes have also decreased. Trends show that the Texas housing market

is cooling off, but at a slower pace than in other parts of the nation. Concerns that lending standards have become too stringent, thus making it difficult for creditworthy individuals to obtain mortgage loans, have emerged. Foreclosures in Texas for the first three quarters of 2008 remained stable compared to other states, with only one in every 849 homes being foreclosed upon.

While most Texas banks did not participate in the high-risk lending practices or the securitization of loans, Texas banks could be impacted by a general slowdown in the economy or other markets factors that could develop.

The 81st Legislature may consider modifications to the monitoring responsibilities and regulatory authority of state agencies with oversight responsibilities for Texas financial institutions.

The legislature may also consider requiring certain institutions such as credit unions to make certain financial status information available to institution members.

### **Health Insurance**

#### **Texas Health Insurance Risk Pool**

The Texas Health Insurance Risk Pool (THIRP) was created in 1989 by the Texas Legislature to cover medically uninsurable Texas residents. Because THIRP was not funded by the original statute, it lay dormant until 1997, when it was activated to serve as the Texas mechanism for compliance with the federal Health Insurance Portability and Accountability Act (HIPAA).

THIRP provides guaranteed insurance coverage to individuals with at least 18 months of prior creditable coverage that was provided through an employer-sponsored plan offered by a private employer, religious institution, or political subdivision. The top conditions treated, based on medical claims paid, include cancers and circulatory and musculoskeletal system disorders. Since January 1998, approximately 62,000 Texas have been covered by THIRP.

The 81st Legislature may consider ways to improve THIRP, including increasing the accessibility to and affordability by consumers, as well as examining efficiency in administration and expanding the eligibility requirements.

### **Transparency and Efficiency**

Due to increasing costs associated with technology and pharmaceuticals and the growing number of aging, unhealthy adults needing medical care, the cost of health care has increased considerably in recent years. The three largest components of health care spending include hospital care, services by physicians, and prescription drugs. Another factor contributing to the rising cost of health care is an increase in health insurance premiums, which is attributed to a number of factors, including an increase in administrative costs associated with more stringent requirements placed on insurance carriers.

While both providers and insurance carriers advocate for lowering prices in health care, there is a dichotomy of opinion between providers and carriers: each blames the other for increasing prices. Physicians argue that they are having to raise the price of their services due to low reimbursement rates of insurance carriers,

while the insurance companies argue that they are raising their rates due to increases in the cost of physician services.

Health insurance is the most regulated form of insurance in Texas. However, without statutory authority, insurance carriers are reluctant to provide specific information in their annual reports regarding costs, profits, and spending practices. Some argue that more transparency in the health care market will lead to more informed consumers who will use health care more efficiently and that will then lead to better quality services at a lower cost. When consumers have more cost and quality data, they may be more savvy in their health care decisions, creating an incentive for providers to provide higher quality services to attract more patients.

Current processes and policies in the health care industry may discourage cost-effective behavior. The health care system tends to reward quantity, rather than quality. Providing incentives for physicians to focus on the quality of the services that they provide and providing rewards for quality services and optimal outcomes could lead to better efficiency and lower costs. Furthermore, limiting regulations on insurance carriers and providers may help reduce overhead and administrative costs, thereby reducing the amount charged for premiums to the patient.

An underlying theme in the health care industry has been to provide information and educate consumers as to the advantages of preventive measures and primary care, so that they are healthier and need less medical services for preventable complications. When consumers do not have a need for medical services and the demand is lowered, the price of health care tends to decrease. Providing more transparency in the health care industry may lead to a more efficient health system and lower medical costs.

The 81st Legislature may consider methods of improving efficiency and transparency in the health insurance industry.

### **Uninsured Texans**

Texas has the highest uninsured rate in the nation, with over 5.5 million Texans—more than 25 percent of the population—uninsured. While the legislature has repeatedly tried to address the health insurance needs of Texans, the state has remained well above the national average for uninsured residents for over 15 years.

The Texas Department of Insurance (TDI) has reported that uninsured Texans are generally young adults who do not face serious health problems and therefore see no need for health insurance. Over 60 percent of the uninsured population in Texas is under the age of 35, with over 20 percent of the uninsured population between the ages of 25 and 34. TDI has also reported that 55 percent of the uninsured population is Hispanic and that 63 percent have incomes below 200 percent of the federal poverty level (FPL). Sixty-six percent of uninsured adults are employed, and only 33.6 percent of small employers offer health insurance. Employers report that cost, participation requirements, an inability to offer multiple plans, rate stability, and underwriting and rate variability based on employee demographics are challenges to providing insurance to employees.

In order to reduce the number of uninsured Texans, health insurance will have to be more affordable to individuals, families, and employers. There are several options for reducing health insurance premiums, such as subsidy programs, benefit plan design changes, reinsurance for high cost claims, and other insurance reform.

Three-share programs are a form of a public-private subsidy program in which the state provides subsidy funds to purchase approved individual or employment-based benefit plans. These programs are termed

“three-share” programs because typically, the state or local government, employer, and employee contribute to paying the monthly premium. New Mexico, Arkansas, and Oklahoma have implemented statewide three-share programs and counties and municipalities in Illinois and Michigan have adopted similar programs on a local level.

Another option for reducing premiums is changing the benefit plan design to provide either basic coverage, which limits the number of doctor visits, inpatient care days, lab and radiology coverage, and amount of money spent on prescription drugs, or to provide catastrophic or high deductible coverage, which is virtually unlimited coverage for lab work, radiology, prescription drugs, and inpatient care.

Reinsurance, or providing insurance to the insurance companies, has been used to encourage carriers to sell small employer coverage and address underwriting concerns with the goal of stabilizing rates and reducing costs. Reinsurance is generally funded by premiums paid but may also be subsidized with state funds or insurer assessments. The current Texas Health Reinsurance System, created in 1993, was designed to address carriers’ concerns regarding guaranteed issues and guaranteed renewals; however, approximately only 52 lives are currently reinsured.

In addition to the above-mentioned options, the 81st Legislature may also consider measures for reducing health insurance premiums by mandating or reducing rate regulations, establishing standardized plans for small employer and individuals, and creating purchasing pools in which a number of small employers participate to decrease the amount of risk involved, thereby decreasing the cost of the insurance coverage.

### **Mortgages and Foreclosures/Predatory Lending**

The subprime mortgage crisis is a national problem and a Texas problem. Subprime lending refers to the practice by financial institutions of providing credit to borrowers deemed “subprime,” generally classified as those where the borrower has a credit score below a particular level, e.g. a FICO score below 660. [A FICO score is a credit score developed by the Fair Isaac & Co. system, a method of determining the likelihood that credit users will pay their bills.] Subprime borrowers may include persons who have a history of loan delinquency or default, those with a recorded bankruptcy, or those with limited debt experience. These borrowers generally are perceived to have higher risk of default and may not qualify for loans from mainstream lenders. Subprime lending encompasses a variety of credit types, including mortgages, auto loans, and credit cards.

Subprime loans are actually at higher interest rates than prime mortgage loans. Subprime could also refer to a security for which a return above the “prime” rate is adhered. In mortgage lending specifically, the term “subprime” can be applied to “nonconforming” loans, those that do not meet Fannie Mae or Freddie Mac guidelines, generally due to one of an array of factors including the size of the loan, income to mortgage payment ratio, or the quality of the documentation provided with the loan. The phrase also refers to bank loans taken on property that cannot be sold on the primary market, including loans on certain types of investment properties and loans to certain types of self-employed persons.

Subprime mortgages traditionally represented a very small portion of the mortgage market. But the housing boom in the late 1990s and early 2000s emboldened many lenders to make riskier loans. In 2006, subprime mortgages accounted for approximately one-fifth of the total U.S. loan market. Many of these subprime loans were made to borrowers who lacked the income to make the monthly payments.

Between 2001 and 2005, the nationwide rate of growth in subprime mortgages was explosive. Several Texas cities were cited as having among the highest number of subprime loans. African Americans and Latinos have been disproportionately affected by the increase in subprime lending and Texas border cities have been particularly hard hit.

The unprecedented number of subprime loans contributed to a foreclosure crisis across the nation. As property values flattened—or even dropped—in the middle of the decade many subprime borrowers were forced into delinquency and eventual foreclosure. In 2007, the national foreclosure rate jumped to record high levels and delinquency rates for all mortgages rose to the highest level in two decades. In Texas, subprime loans account for nearly 13 percent of all residential mortgages and the state continues to rank among the states with high foreclosure rates and large numbers of foreclosure filings.

It has been suggested by opponents of subprime lending that some lenders engaged in predatory lending practices, including lenders that deliberately targeted borrowers who may not fully understand the terms of their loan, or loaned to people who cannot afford the long-term interest payments. Many of predatory subprime loans include exorbitant fees and hidden terms and conditions, and they frequently lead to default, seizure of collateral, and foreclosure.

Proponents of subprime lending maintain that the practice extends credit to people who would otherwise not have access to the credit market.

Texas does not have a specific anti-predatory lending statute and federal preemption laws could make state regulations less effective in controlling such practices.

The 81st Legislature may consider requiring lenders to provide more explicit and detailed consumer and financing information to prospective home buyers. The legislature may consider requiring that counseling be provided to Texas consumers, particularly first-time home buyers, regarding mortgage and loan products, the foreclosure process, and available consumer resources.

The 81st Legislature may consider establishing requirements that mortgage lenders work with homeowners to resolve loan default issues before foreclosure action is taken.

### **Secure and Fair Enforcement (SAFE) Mortgage Licensing Act**

The Housing and Economic Recovery Act, signed into law by President Bush on July 30, 2008, addresses issues relating to the nation's real estate and economic crisis. Title 5 of that Act, known as the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act, establishes minimum licensing standards for all residential mortgage loan originators and requires that they be trained in federal lending laws, ethics, consumer protection, and subprime market lending. Loan originators includes any one who originates residential mortgage loans for personal, family, or household use secured by a mortgage, deed of trust, or other lien on a dwelling or its real estate location. SAFE enhances the current state mortgage licensing system known as the Nationwide Mortgage Licensing System (NMLS) created in 2004 by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR).

The Federal Financial Institutions Examination Council (FFIEC) will coordinate the registration of residential mortgage originators employed by banks and bank holding companies. While SAFE allows federal agencies

to create a system for registering loan originators employed by depository institutions and their wholly owned and controlled subsidiaries, it requires such persons to be registered with the NMLS.

SAFE requires all residential mortgage loan originators to be state licensed or federally registered, and to provide fingerprints, personal and work history, and consent for a background check to licensing authorities. SAFE establishes minimum requirements to obtain a license, including:

- A prohibition against felony convictions within the previous seven years and no convictions involving fraud, dishonesty, breach of trust, or money laundering;
- A prohibition against prior revocation of a similar license;
- Demonstration of financial responsibility and character;
- Completion of certain education; and
- Passing a written examination with a minimum score of 75 percent.

SAFE requires an individual to renew the license by completing eight hours of continuing education on an annual basis.

SAFE requires federal banking agencies to register all residential mortgage loan originators employed by depository institutions within one year of the law's enactment, including employees of subsidiaries owned and controlled by depository institutions. The Secretary of Housing and Urban Development (HUD) is authorized to license and regulate a state's loan originators, if the state fails to participate in the NMLS, or does not enact its own licensing and registration system that meets the requirements of SAFE within one year.

NMLS, a secure web-based system that allows state mortgage loan originators to apply for, amend, or renew licenses, was intended to streamline the supervision of mortgage loan originators by maintaining a single record for each licensee and a unique identifier for that licensee. SAFE will be integrated into this system and that system will become the National Mortgage Licensing System and Registry or NMLSR. NMLSR will be accessible to state regulators, licensees, and consumers. As of August 31, 2008, 17 states are using the new system. Texas has not moved to the new system.

Texas, through a nationwide cooperative protocol and agreement for mortgage supervision, is working with several other states on model legislation that incorporates the requirements SAFE which the states must implement by the end of the 2009 legislative session.

The 81st Legislature may consider amending Texas law regarding the licensing of mortgage lenders and brokers to implement the requirements of SAFE.

## **Lottery and Gambling**

### **Texas Lottery**

In 1991, Texas voters approved the creation of the Texas Lottery. Since that time, the lottery has generated over \$15 billion in state revenues, with more than \$10 billion of those revenues contributed to the Foundation School Fund to support public education.

Several states have considered privatizing their state lottery system in an attempt to generate more revenue. Large financial firms have provided bids to some states that include a lease agreement, whereby the state

would enter into a contract with the private entity to run the lottery system for an annual fee, in addition to a large up-front payment. California, Illinois, and Indiana are among the states considering such a proposal.

The 81st Legislature may consider whether to privatize the Texas Lottery through various means, including by entering into a lease or management agreement with a private company, in which the private company would operate and manage the lottery system for an annual fee to the state with a large up-front payment.

## **Illegal Gambling**

The Texas Penal Code sets forth provisions prohibiting various forms of gambling. Section 47.01, Penal Code, defines “gambling device” as “any electronic electromechanical, or mechanical contrivance . . . that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.” The definition also includes a list of devices that are considered to be gambling devices for the purposes of that section. However, that section explicitly excludes any devices used for amusement purposes if they reward the player with noncash merchandise prizes or a representation of value redeemable for those items that have a wholesale value of not more than 10 times the amount charged to play or \$5, whichever is less.

There have been allegations of the illegal use of “eight-liners.” Eight-liners are video slot machines that simulate slot machine rollers and provide eight ways to win—three horizontal lines, three vertical lines, and two diagonal lines—based on the combination of images on the machine.

Operators of eight-liners argue that the machines are authorized under the current law based on the amount of money paid out for the rewards. Individuals and groups that oppose the use of eight-liners have argued that the use of such devices is illegal, difficult to investigate, difficult to prosecute, and a way of taking advantage of players of the machine.

The 81st Legislature may consider whether to refine the definition of “gambling device” in the Penal Code or to provide some form of oversight, through licensing and certification, over the use of such machines.

## **Pensions**

### **Pension Plans**

Currently, many public pension funds in Texas operate as defined-benefit plans. A defined-benefit plan allows employees and employers to make regular contributions to a large fund, which chooses how to invest the money. Employees participating in these plans are automatically enrolled and are guaranteed certain retirement income as a result of their participation.

Defined-contribution plans, on the other hand, allow employees to make tax-deductible contributions to a personal retirement fund, which are often matched by the employer. Employees then choose how to invest the money and often face limitations on how and when they can withdraw the money from the plan.

Generally, under defined-benefit plans, employers and employees share the risk of the investment, in contrast to defined-contribution plans, where all of the investment risk falls upon the employee. Furthermore, pensions



operating under a defined-contribution plan are more likely to be directly impacted in the short-term by changes in the stock market.

Some employees may have investment knowledge and experience and may feel comfortable making decisions regarding the investment of their retirement funds. Furthermore, they may have other sources of retirement income on which they can rely upon retirement. However, a number of public employees do not have such experience or other sources of income, and therefore, rely upon the experienced investors hired by the public pension funds to make investment decisions.

The 81st Legislature may consider whether to maintain the defined-benefit pension plan, phase in a defined-contribution pension plan for future employees, offer a combination of a defined-benefit and defined-contribution plan, or offer the choice between a defined-benefit and defined-contribution plan.

### **Torts**

#### **Restatement (Second) of Torts, Section 674**

Current law does not provide a remedy against a plaintiff who brings a civil lawsuit that is found to have no merit and that may be found to be for the purpose of harassment, intimidation, or some other wrongful purpose. In criminal terms, this type of action is called “malicious prosecution.”

Section 674 of the Restatement (Second) of Torts provides a remedy for wrongful civil proceedings when an individual takes an active part in the initiation, continuation, or procurement of civil proceedings against another if he or she acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based.

In 1996, the Texas Supreme Court refrained from adopting the Restatement’s expansion of the tort of malicious prosecution in the case of *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203 (Tex. 1996), on the grounds that the expanded cause of action might otherwise lead to a series of repetitive lawsuits and that it might deter the bringing of well-founded litigation.

The 81st Legislature may consider whether to adopt the Restatement (Second) of Torts, Section 674, and whether a person may be allowed to recover court costs and attorneys fees when another has brought an action without probable cause and for the purpose of intimidation or harassment.



## UTILITIES AND ENERGY PRODUCTION

### **Governance Structure of Electric Cooperatives**

S.B. 7, 76th Legislature, 1999, deregulated the retail electricity generation market from supervision by the Public Utility Commission of Texas (PUC) and permitted utility providers and cooperatives (co-ops) to compete for customers. S.B. 7 also allowed co-op boards of directors to decide whether and when to offer customer choice. PUC maintained authority over the rate structure in the electric market. However, Chapter 41 of the Public Utility Regulatory Act excludes co-ops from the definition of an electric utility company, thus removing co-ops from PUC rate regulation. Most co-ops do not participate in the wholesale generating and transmission business, and are therefore not subject to review by the PUC.

In the case of the Pedernales Electric Cooperative (PEC) board of directors, this deregulation led to many abuses, including exorbitant compensation packages, salaries, and benefits for co-op board members, falsified Internal Revenue Service reports, lack of transparency for board meetings, failure to follow the competitive bidding process, and excessive profits not being relayed to ratepayers and customers.

During the interim, legislators discussed the possibility of re-regulation to adequately protect customers, increase reliability, and respond to customer complaints. Although the situation at PEC may be an isolated case, legislators discussed the need for preventative measures to ensure that such abuses do not happen statewide. One mechanism discussed by legislators is to mandate that co-ops comply with a state audit rather than an optional third-party audit. The nomination and election process for board members, pay and benefits for board members, and capital credit refunding were additional issues discussed in the interim.

The 81st Legislature may consider changes in the governance structure of electric co-ops.

### **Investment in the Texas Electric Market**

The demands on the electric market have increased as the population of Texas has continued to grow. A representative of the Association of Electric Companies of Texas said that the competitive retail market in Texas is healthy and stable and that Texas electric providers have been able to reduce their prices for customers. However, Texas Ratepayers' Organization to Save Energy (ROSE) representatives say that ratepayers are currently paying the highest prices since the electric market was deregulated in 1999. Electric provider companies have invested in renewable sources of energy and new technologies to help meet the increases in demand and to keep prices affordable for consumers, but some companies have requested additional assistance to ensure sufficient generation and cost-effective transmission of electricity.

One investment that has gained attention from the legislature is the nodal project of the Electric Reliability Council of Texas (ERCOT). ERCOT encompasses most of the land area and electric load in Texas and manages the deregulated electric market for 75 percent of the state. ERCOT is currently in the process of switching from a zonal pricing system that bases wholesale electric prices for five broad zones to a nodal market that calculates prices for specific sites, or nodes. The legislature awarded ERCOT \$319 million to have the nodal project in operation by January 1, 2009, but as of November of 2008, ERCOT representatives stated that additional time and money would be necessary before the nodal system would be operational.

Although a 2005 cost-benefit analysis showed that the nodal system would return billions of dollars in benefits, legislators and representatives from ERCOT and the PUC have expressed the need to reevaluate the state's investment in the nodal project. An updated cost-benefit analysis was made available in December, 2008, and ERCOT representatives have stated that they will ask the legislature for an additional \$144 million for the project's completion.

The cost of natural gasoline is directly related to electricity prices in Texas and reducing the state's reliance on natural gasoline is critical to attaining a more cost-efficient electric market. Energy developers are moving toward renewable sources of energy, including solar, biomass, and wind to provide electricity. Nuclear energy is the most contentious resource, and while opponents say nuclear energy is unreliable, costly, and the least environmentally friendly source of energy, a PUC commissioner has said that the use of nuclear energy is an important part in meeting electricity demands for the state.

Extreme weather and hurricanes also have an impact on the costs of electricity. Most recently, Hurricane Ike hit the Texas coast in September of 2008 and caused damage to the electrical infrastructure of coastal electric provider companies. Some have argued that provider companies should be required to deposit funds in a security account for natural disasters so that consumers do not shoulder the burden of cost recovery following a natural disaster. The Alliance for Retail Markets and ROSE have suggested that the legislature consider funding a year-round system benefit discount fund to help low-income and critical-care customers.

National energy policies and the role Texas will play in upcoming national energy policymaking is a concern for electric providers and legislators. The generation of electricity in Texas is subject to federal climate change and carbon dioxide emission policies, and national renewable portfolio standards. Currently, Texas is the largest producer of carbon in the nation and uses natural gasoline for 80 percent of electric generation, more than the 50 percent used by the rest of the nation. Additionally there is a growing move toward greater federal involvement in interstate and interregional transmission of electricity.

The 81st Legislature may consider current investment in the Texas electricity market to ensure sufficient and cost-efficient generation and transmission of energy to meet the growing demand for electricity. The 81st Legislature may also respond to efforts at the federal level to implement regulations that could impact the Texas electric market.

### **Smart Metering**

An October 2008 report from the American Council For an Energy-Efficient Economy cited energy efficiency programs as the most reliable and cost-effective means to combat increasing energy prices. According to the report, state governments are investing two to three times more than the federal government in energy efficiency programs and technology.

Smart metering is one option that encourages residential and small commercial consumers to switch to new technology to help ease costs of energy. Smart meters allow users to monitor their energy use in real time by recording a building's or residence's electric load in 15 minute intervals. Because these devices allow users to track their energy loads within a 24-hour period, users can identify the times of peak energy usage and make adjustments to cut back on their energy consumption on a daily rather than monthly basis. Smart meters also help identify state and local electric demand patterns and can help policymakers determine ways to curtail usage at times of peak electric load.

In 2003, the State of New York began providing customers that installed smart meters with reimbursement incentives through the New York State Energy Research and Development Authority Peak-Load Reduction Program. In September 2008, the United States Senate Finance Committee, through the Energy Improvement and Extension Act, introduced tax incentives for the development of energy conservation programs, including a \$915 million credit that would reimburse customers that implement smart meters and smart power grids. Oncor, a Northern Texas utility company, plans to supply its customers with over 300,000 smart meters by 2011 and needs regulatory approval from the PUC to pass any cost savings from the use of the meters to Oncor customers.

The 81st Legislature may consider incentives for utility companies to implement smart meter devices and evaluate federal incentives that do the same.

### **Energy Production - Solar and Biomass**

Options for cost-effective alternative energy production include solar and biomass electricity generation.

Biomass is currently the nation's largest source of renewable energy. Biomass uses plant or animal matter to produce energy and, because of the many agricultural resources in the state, Texas has many viable options for biomass energy production. An April 2008 report from the Houston Advanced Research Center estimated that Texas agricultural wastes have the potential to produce 418 megawatts of electricity, enough to power over 250,000 Texas homes. However, using food crops for energy production has resulted in higher food prices and livestock production costs. For example, the expansion of ethanol production has increased the price of corn, one of the main components of cattle, hog, and poultry feedstock. The use of animal waste for fuel might then be compromised if owners scale down their herds due to rising feed prices. Organizations such as the Texas and Southwestern Cattle Raisers Association have urged legislators to investigate alternative types of biomass resources, such as algae, that do not compete with food or livestock feed.

Solar energy production converts sunlight to provide heat or light or to generate electricity through photovoltaic (PV) systems. Unlike other energy resources, solar energy does not require transmission and can be generated on site. According to the Energy Report provided by the Texas comptroller, Texas has the largest solar energy resources in the nation but has failed to capitalize on its abundant sunshine due to the lack of state policies that encourage the implementation of PV systems. The report found that Texas trailed California, New Jersey, Arizona, Colorado, and New York in PV installation. California became the world's third largest market for PV systems due to a state action that afforded per-watt rebates for PV system implementation. While Texas has implemented a renewable portfolio standard and some franchise-based tax incentives to promote the growth of renewable energy in the state, solar energy has been overlooked by utility companies for less costly options such as biomass and wind energy.

The 80th Legislature directed the State Energy Conservation Office (SECO) to assess the state's renewable energy resources. SECO's detailed study is scheduled to be released at the beginning of 2009.

The 81st Legislature may consider the potential of biomass and solar energy resources, their impact on the state's economy, and the incentives necessary to increase the market for alternative energy production.

## **Renewable Energy Development**

Currently, energy companies offer residential and commercial tax incentives for energy technologies such as photovoltaic solar panels, solar water heaters, and geothermal heat pumps.

The legislature has addressed a need for state tax incentives for Texans so that energy technologies can be used by more citizens.

Incentive programs for biofuels were put on hold after the 80th Legislature transferred authority for administration to the Texas Department of Agriculture (TDA) and did not appropriate funds for fiscal years 2008 and 2009.

Governor Rick Perry has spoken of the need for renewable energy development and energy diversification in Texas. Appropriating funds for biofuel incentive programs would address this issue.

Biomass energy is acquired from plants and plant-derived materials. Wood is still the largest biomass energy resource used, but other forms of biomass include food crops, grassy and woody plants, residues from agriculture or forestry, and the organic component of municipal and industrial wastes.

The farming and wood industries have voiced concerns about how the development of biomass energy will affect their industries.

The 81st Legislature may consider creating legislative tax credits for alternative energy technologies for residences. The 81st Legislature may also re-examine the appropriation of funds for biofuel incentive programs. Finally, the 81st Legislature may consider legislation that balances the creation of programs aimed at creating biomass energy with the needs of the farming and wood industries.

## **Location and Regulation of Wind Turbines**

S.B. 7, 76th Legislature, 1999, set a goal of producing 2,880 megawatts of energy generating capacity from renewable energy sources by January 1, 2009. Texas has since become the largest producer of wind power in the nation, and the wind industry has exceeded the goals and expectations for generation capacity and is expected to produce over 10,000 megawatts of energy within the next two years. Advocates have said that wind power offers many advantages over traditional energy sources, including the improvement of air quality, additions to the local tax base, an increase in local jobs, and payments to landowners for lease of their lands.

The siting of wind turbines and the lack of county jurisdiction over such activity has created concern for landowners. A representative of the Wind Coalition stated that achieving a balance between private ownership and the will of the public is the main public policy issue regarding wind energy. Some landowners state that wind farms cause economic loss through the devaluation of land, particularly properties that are located near wind turbines. County officials claim that wind farms result in a decline in tourism and have requested that counties be given the power to reject activities that are detrimental to the community and to the livelihood of local residents. The lack of regulatory oversight in the siting of wind turbines has resulted in the development of wind farms in areas where capacity for wind energy production is low. For example, Gillespie County is ranked as one of the lowest areas for wind capacity in the state, but developers have still attempted to build wind farms in the county.

In 2006, ERCOT identified areas that would be most profitable for wind power in the state. A competitive renewable energy zone (CREZ) is an area within the state with suitable wind and land resources for the implementation of renewable energy technology and a certain level of financial commitment from developers to produce or generate energy from renewable sources. Siting within a CREZ is driven by the best availability of wind resources and the ability of developers to make a profit from transmission. The dispatch priority rulemaking process used by the Public Utility Commission of Texas (PUC) awards priority status to developers within a CREZ to avoid power congestion. Developers who choose to build outside the CREZ are at risk of not being able to connect to power transmission grids.

Currently, neither ERCOT nor PUC have a permitting process for siting wind turbines and regulating wind generation. ERCOT has the ability to curtail electric output that contributes to wind power congestion or that challenges the reliability of the wind power system, but the agency does not have the authority to keep developers from building transmission systems. PUC likewise does not have the authority to determine the siting of wind turbines but has the authority to determine which developers may connect to transmission grids.

Most of the surface acreage that is eligible for wind power is in far West Texas and the Panhandle area, but the Texas coast is another area where wind turbines may be sited. Although the natural challenges of developing wind off the coast may be more costly than onshore wind farms, the consistency of offshore winds and proximity to existing transmission lines are possible advantages of coastal wind generation.

Concerns have also been expressed regarding the decommissioning of wind generators if wind energy technology becomes obsolete.

The 81st Legislature may consider policies regulating the siting of wind turbines and determine whether state oversight is necessary to guarantee individual property rights relating to wind farms.



## VETERAN AFFAIRS AND MILITARY INSTALLATIONS

### **In-State Tuition for Veterans**

Currently, in order to receive in-state tuition, a veteran must (1) be independent for income tax purposes, (2) be a U.S. citizen or permanent resident, or an international student who is eligible to establish a domicile in Texas, and (3) live in Texas for 12 consecutive months and establish a domicile in Texas prior to enrollment.

The veteran can establish residency by establishing a domicile in Texas, at least 12 months prior to the census date of the semester in which he or she is to enroll, if the person:

- owns real property in Texas;
- owns a business in Texas;
- is married to someone who has established a domicile in Texas; or
- has had gainful employment other than work-study and other such student employment in Texas.

The temporary absence of a person or of a dependent's parent from the state for the purpose of service in the United States Armed Forces, Public Health Service, Department of Defense, or United States Department of State, as a result of an employment assignment, or for educational purposes, will not affect a person's ability to continue to claim that he or she is a domiciliary of this state. Many veterans move to Texas because of the number of bases here and remain in Texas post-deployment. The system for establishing residency has been confusing to many veterans.

The 81st Legislature may consider allowing all veterans living in Texas to qualify for in-state tuition and clarify military members' residency qualifications.

### **The Interstate Compact on Educational Opportunity for Military Children**

According to the Council of State Governments, the average military student faces transition challenges more than twice during high school, and most military dependents will attend six to nine different school systems between kindergarten and 12th grade. Regular moves between postings can disrupt the lives of children in military families. There are many issues children face when they are forced to move, including losing friends and making new friends, adjusting to new cities and bases, and changing schools. The armed services have attempted to ease the transition of military personnel, their spouses, and their children, but transition issues such as inflexible administrative and bureaucratic practices can disrupt a child's education and transition.

The Interstate Compact on Educational Opportunity for Military Children (ICEOMC) attempts to address education transition issues by formulating rules that will better facilitate the transition of military dependents. Eleven states are currently members of ICEOMC and have already begun to meet to discuss rules regarding education transition issues. A state's membership in the compact must be directed by the state legislature. Because of the number of military families transitioning in and out of Texas, membership in the ICEOMC could be beneficial for Texas and for Texas children of military families.

The 81st Legislature may consider requiring the state to join ICEOMC in order to better ease the transition of military dependents to and from the state's education system.

### **Housing Assistance for Veterans**

According to the National Alliance to End Homelessness (NAEH), 26 percent of all homeless individuals are veterans and Texas ranks third among the states with the highest numbers of homeless veterans. NAEH reported that in 2005, 196,000 veterans were homeless nationwide. The United States Department of Veterans Affairs (VA) stated that male veterans are 1.3 times more likely to be homeless than non-veteran males and female veterans are 3.6 times more likely to be homeless than non-veteran females, and that 33 percent of all homeless veterans served in a combat zone.

The VA started addressing the homelessness issue in 1987, and has more than 15,000 residential rehabilitative, transitional and permanent beds for homeless veterans nationwide. The VA spends about \$265 million annually on homeless-specific programs and about \$1.5 billion for all health care costs for homeless veterans.

NAEH recommends that the federal government provide 5,000 housing units per year for the next five years dedicated to chronically homeless veterans that would provide permanent housing linked to veterans' support systems. NAEH also recommends that the federal government provide funding for an additional 20,000 housing vouchers exclusively for homeless veterans and create a program that helps bridge the gap between income and rent.

The 81st Legislature may consider funding for employment services or housing assistance to supplement the federal government's efforts to combat homelessness among veterans.

### **Military E-mail Voting Pilot Program**

According to a report by the United States Election Assistance Commission, 33 percent of military and overseas voters are disenfranchised during elections. The 80th Legislature, Regular Session, 2007, enacted a pilot program for the 2008 general election for state and county officers to allow certain county clerks or election administrators in Texas to deliver a blank ballot via electronic mail to a voter outside the United States provided that the voter has requested the ballot to be delivered via e-mail to ensure speed and efficiency of the voting process for overseas military voters.

The program may make ballot delivery more efficient and may provide a secure method to deliver the ballots because ".mil" e-mail addresses are government issued and are monitored. If both an e-mail ballot and a mail ballot were to be returned, the legislation states that only the e-mail ballot would be counted. Once the pilot program is completed the Office of the Secretary of State will make a determination whether to recommend to the legislature that the program be made permanent and whether any additional statutory protections are needed to eliminate any possibility of interception or tampering with electronic ballots or counting duplicate ballots. If the pilot program is successful, the program could be expanded and could have a beneficial impact on the morale of military personnel serving overseas and the election process.

The 81st Legislature may consider expanding the e-mail voting program statewide so that all counties may take part in the program.



## **School Counseling Services for Military Dependents**

Recent base realignment and closure (BRAC) decisions will transfer tens of thousands of military dependents from other states and overseas to Texas over the next several years. These children are faced with special challenges, including adjusting to a new school in a new community or having one or both parents stationed abroad in a combat zone. School districts could ease these transitions by providing counseling services to assist these children if the school allotment provided to school districts was mandated to be used for that purpose.

Chapter 42, Subchapter C, Education Code, provides additional state funding for students with certain characteristics. The student's "weight" on how much funding is allocated is increased for students who require extra resources, such as students with disabilities or those enrolled in bilingual education or gifted and talented programs. Funding is also distributed through special allotments based on the number of students in average daily attendance.

The 81st Legislature may consider increasing the allotment provided to a school district for each student who has transferred to a campus in the district because a parent or guardian is on active duty as a member of the armed services of the United States or the state military forces. The legislature may also consider restricting the use of this additional funding to counseling services for dependents of military members.

## **Services for Veterans With Post-Traumatic Stress Disorder, Major Depression, or Traumatic Brain Injury**

According to the Texas Health and Human Services Commission, Texas has the third-largest population of veterans in the United States and contributes a significant number of the military service members deployed in Iraq and Afghanistan. Since 2001, more than 230,000 Texans have served on active duty. The VA reported that, as of February 2008, 70,797 people in Texas had registered with the VA as having served in Iraq or Afghanistan.

Nearly 12,000 service members from the Texas Military Forces have returned to Texas after serving in Operation Enduring Freedom (OEF) in Afghanistan or Operation Iraqi Freedom (OIF) in Iraq. An additional 15,000 are expected to return over the next four years.

According to a recent report from the RAND Corporation, an estimated one-third of the service members returning from OEF or OIF are suffering from post-traumatic stress disorder (PTSD), major depression, or traumatic brain injury (TBI). These conditions require ongoing behavioral health services and supports for veterans as well as their families. Many soldiers suffering from PTSD and TBI do not receive treatment due to the fear that doing so may negatively affect their military career.

Services that are offered include individual counseling, family therapy, marital therapy, and other types of therapy to address the specific needs of veterans related to TBI or PTSD. Active duty service members, their families, and veterans are covered under TRICARE, the health insurance program of the U.S. Department of Defense (DOD). TRICARE beneficiaries receive services at military treatment facilities such as veteran centers or through private provider networks.

However, TBI and PTSD can have a late onset of symptoms and a veteran who experiences such symptoms after the VA services expire relies on the TRICARE system, which may not provide all the needed services,

especially in rural areas. A veteran could be diagnosed with PTSD or TBI after VA healthcare services have expired, leaving the veteran dependent on another healthcare carrier or on the state for needed healthcare services, which may be provided at mental health and mental retardation centers (MHMR). Family members might need mental health support services to handle the stress associated with combat related issues. In addition, many veterans might not seek treatment through the VA because of stigma or might not know that they need treatment.

The 81st Legislature may consider funding for outreach and education programs regarding state services available to treat PTSD or TBI, for additional training for outreach workers to enable them to better serve veterans who need services, for research regarding development of PTSD and TBI screening tools, and for expanding healthcare coverage so that veterans can receive medical treatment for mental health conditions.

### **Veterans' Employment Preference**

The 49th Legislature, Regular Session, 1945, enacted the veterans' employment preference law, which has since been amended to stipulate that a veteran, a veteran's surviving spouse who has not remarried, or an orphan of a veteran qualifies for a preference over any individual who does not have a greater qualification who is seeking employment at certain state entities. Currently, many veterans are not aware that certain state entities are required to give employment preference to veterans.

The 81st Legislature may consider establishing an outreach program to notify veterans of the state laws relating to employment preferences and/or attach a statement to all state job applications to make veterans aware of the preference.

### **City Encroachment on Military Bases**

According to the U.S. Census Bureau, Texas's population is projected to grow by 12 million people from 2000 to 2030, an increase of 59 percent. The growing population and increased land development over the last several decades has led to vital military training areas being surrounded by urban, suburban, and other types of development. Many military missions have been moved to other installations as encroaching development has negatively impacted those missions. The most notable base that is being affected by city encroachment in Texas is Camp Bullis, which is currently three-fourths surrounded by the city of San Antonio. The military has a large economic impact on the state and losing missions could eventually cause the federal BRAC commission to close bases that have been rendered inoperable by development.

Large residential tracts can limit an installation's operational capability as complaints about noise, dust, and smoke from aircraft, weapons, and vehicles force commanders to limit training missions during certain hours. As development destroys or displaces native species of plants and animals, military posts can become their refuge, with their presence further restricting military operations.

Congress provided funding and enacted legislation to create the Readiness and Environmental Protection Initiative (REPI), which partners DOD, states, local governments, and government organizations to acquire development rights for property surrounding military bases, create a buffer zone between the communities, and provide a place for endangered animals to seek refuge. DOD has found that 32 states have successfully addressed urban encroachment on military installations through legislation. An estimated 38 military

installations have used REPI and many installations are planning to use REPI. The manager of the buffer zone area in most cases has been a third party, such as a nonprofit organization, due to REPI restrictions stipulating that the military may not own this land. In most cases the third party is a nonprofit conservation organization that works to obtain the funding needed to purchase the land.

The 81st Legislature may consider a program similar to REPI that could be administered by the Texas Parks and Wildlife Department and work in conjunction with REPI or may provide funding to purchase conservation easements around military bases in order to provide a buffer zone between residential developments and to ensure that there is no habitat displacement.

### **Military Base County Zoning Authority**

Currently, counties have limited zoning authority, such as restricting the development of certain properties around airports and limiting the operation of sexually oriented businesses to certain locations, but there is no statute that provides counties the ability to regulate land use around military installations. Regulation of land and land use around military installations has grown in importance. Issues related to endangered species, citizen expectations in contiguous housing developments, ambient lighting, and other factors may suggest that land regulation around such installations is warranted. Subchapter D, Chapter 231, Local Government Code, creates military zones around military installations that restricts the taking of photographs and parking of vehicles but does not provide any other type of authority.

The 81st Legislature may consider granting zoning authority to counties for areas around military bases.

### **Defense Economic Adjustment Assistance Grant Program**

The Defense Economic Adjustment Assistance Grant (DEAAG) program was created by the 75th Legislature, Regular Session, 1997, to provide state funding to leverage federal grant dollars and to allow the state and federal governments to share redevelopment costs for communities that were highly impacted by military base closures. DEAAG funding is available to local municipalities, counties, defense base development authorities, junior college districts and Texas State Technical College campuses, and regional planning commissions representing these communities. The funding is available upon federal matching requirements for the purchase of DOD property, new construction, rehabilitation of facilities or infrastructure, or purchase of capital equipment or insurance. The grants range from \$50,000 to \$2 million per project.

The 81st Legislature may consider adjusting the DEAAG funding formula to allow areas of the state that currently do not meet certain requirements, such as DEAAG's job creation requirements, to access the program. The legislature may also provide additional funding in an amount ranging from \$5 million to \$10 million.

### **The Texas Enterprise Fund and Base Realignment and Closure (BRAC) Adjustments**

The 78th Legislature, Regular Session, 2003, created the Texas Enterprise Fund (TEF) to provide financial resources for a variety of economic development projects, including infrastructure development, community development, job training programs and business incentives. According to the Office of the Governor, TEF has brought more than 51,000 new jobs to the state and generated more than \$13.7 billion in capital investment.

TEF projects must demonstrate a project's worthiness, maximize the benefits to the State of Texas, and realize a significant rate of return of the public dollars being used for economic development. Capital investment, job creation, wages generated, financial strength of the applicant, applicant's business history, analysis of the relevant business sector, and federal and local government and private sector financial support of a project are factors in approving the use of TEF. The application must be submitted to the Office of the Governor, Economic Development and Tourism Division, which provides information on how funds are to be utilized and how the proposed project meets the criteria of the program. The grants are awarded by a consensus of the governor, the lieutenant governor, and the speaker of the house.

TEF is currently not available to be used for BRAC redevelopment purposes.

The 81st Legislature may consider legislation to authorize TEF funds to be used for BRAC redevelopment purposes so that communities have another option for economic development.



**SUNSET ADVISORY COMMISSION REVIEW  
2008-2009 Biennium**

Texas Department of Agriculture  
Board of Directors of the Official Cotton Growers' Boll Weevil Eradication Foundation  
Credit Union Commission  
Equine Research Account Advisory Committee  
Facilities Commission Study  
Texas Commission on Fire Protection  
Texas State Affordable Housing Corporation  
Texas Department of Insurance  
Office of Public Insurance Counsel  
Commission on Jail Standards  
Texas Juvenile Probation Commission  
Texas Commission on Law Enforcement Officer Standards and Education  
Texas Medical Board (Limited Review)  
Texas Military Preparedness Commission  
Texas Parks and Wildlife Department  
Polygraph Examiners Board  
Prescribed Burning Board  
Texas Private Security Board  
Texas Department of Public Safety  
Texas Racing Commission  
Texas Residential Construction Commission  
Office of State-Federal Relations  
Board of Tax Professional Examiners  
Texas-Israel Exchange Fund Board  
Texas Department of Transportation  
Office of Independent Ombudsman, Texas Youth Commission  
Texas Youth Commission



**SUNSET ADVISORY COMMISSION REVIEW**  
**2010-2011 Biennium**

Department of Aging and Disability Services  
Department of Assistive and Rehabilitative Services  
Texas Board and Department of Criminal Justice  
Texas Council for Developmental Disabilities  
Texas Education Agency (2012)  
Office of the Department of Information Resources Electronic Government Program Management  
Texas Emancipation Juneteenth Cultural and Historical Commission  
Commission on State Emergency Communications  
Department of Family and Protective Services  
Office of Fire Fighters' Pension Commissioner  
Health and Human Services Commission  
Department of State Health Services  
Texas Health Services Authority  
Texas Department of Housing and Community Affairs  
Department of Information Resources  
Office of Injured Employee Counsel  
Division of Workers' Compensation of the Texas Department of Insurance  
Texas Lottery Commission  
Board of Pardons and Paroles  
Governor's Committee on People with Disabilities  
Comptroller of Public Accounts Procurement and Support Services Division  
Texas Public Finance Authority  
Public Utility Commission of Texas  
Office of Public Utility Counsel  
State Office of Administrative Hearings Tax Division