

Topics for the 81st Legislature

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The Texas Legislature will consider a wide variety of topics when it convenes in regular session on January 13, 2009. Funding public and higher education, health and human services, criminal justice, and other state priorities will command the attention of state lawmakers, as well as dealing with the aftermath of the devastation from Hurricane Ike. Also, 27 state agencies and programs, including those concerned with transportation, public safety, youth offenders, insurance regulation, agriculture, and parks and wildlife, will be subject to review under the Sunset process. Many other issues, such as revisions to the property tax appraisal system and the business margins tax, enforcement of immigration laws, and the public school accountability system, also will be considered.

This report highlights many, although by no means all, of the topics that the 81st Legislature may consider during its 2009 regular session. The House Research Organization has addressed a number of these issues in more detail in Focus Reports and *Interim News* articles since the end of the 80th Legislature's 2007 regular session.

Appropriations and spending

While many states recently have faced economic difficulties that have caused serious fiscal shortfalls requiring substantial spending cuts, the downturn has not yet hit Texas hard enough to require significant adjustments to the fiscal 2008-09 budget. In adopting the current budget, the 80th Legislature left an unencumbered surplus of \$2 billion in general revenue. It also required that \$3 billion be transferred to the property tax rate relief fund as a down payment on the general revenue that will be required in fiscal 2010-11 to replace local tax revenue as a result of school district property-tax rate reductions mandated in 2006. Because state revenue from the business margins tax earmarked for school property tax revenue replacement has been smaller than anticipated, more general revenue will have to be spent to maintain lower school property taxes. Also, higher-than-anticipated oil and gas tax revenues and other

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surpluses totaling \$6.9 billion have been transferred to the economic stabilization, or “rainy day,” fund. These reserves built into the current budget are expected to be sufficient to meet supplemental and emergency spending needs, such as those resulting from Hurricane Ike, for the current biennium.

The challenge for the 81st Legislature will be to meet state spending needs for fiscal 2010-11 during a period of economic uncertainty. On October 13, the governor directed all executive branch state agencies to take immediate steps to prepare for a slowing economy. He asked them to curtail taxpayer-funded travel, to look for other ways to rein in agency expenditures, and to re-examine their Legislative Appropriations Requests for fiscal 2010-11 to be prepared in the event economic circumstances worsen.

The state leadership asked agencies to submit their fiscal 2010-11 spending requests at no more than the amount spent in fiscal 2008 and budgeted in fiscal 2009, plus the amount needed to cover in future years the 2 percent pay raise granted to state employees in 2008. Agencies also were required to submit a plan showing how they would reduce their baseline requests by 10 percent. Exceptions to baseline request limits were amounts necessary to maintain public education funding, satisfy debt service requirements for existing bond obligations, maintain caseloads for federal entitlement services, satisfy employer contribution requirements for state pension systems, and maintain adult prison populations.

On November 14, the Legislative Budget Board adopted a projected state personal income growth rate of 9.14 percent for fiscal 2010-11, the lowest growth rate ever adopted. Under the constitutional spending cap, state spending not constitutionally dedicated to particular purposes cannot increase from one biennium to the next beyond the growth limit set by the LBB, unless the cap is waived by a majority vote of both houses.

Beyond new demands on state spending for fiscal 2010-11, which are discussed below under specific topic categories, legislators may consider a pay raise for state employees. The Legislature may decide to grant an across-the-board increase or targeted raises to employees in certain areas, such as prisons or health and human services.

Taxes and revenue

Property tax. Legislators likely will address property tax issues, including issues related to appraised values, the homestead exemption, circuit-breakers, and sales prices disclosure.

Appraised value increases. Lawmakers may consider proposals to reduce the cap on the increase of the appraised value of a residence homestead. Under the Texas Constitution, the annual percentage increase may not exceed 10 percent, and lawmakers may consider constitutional amendments to reduce the cap to 5 or 3 percent. Debate also may emerge on whether local taxing entities should be allowed to set their own lower caps by local option. The Legislature also may consider further limiting how much a local taxing entity may increase its tax rate each year before triggering an automatic or petitioned rollback election. Another proposal would limit appraisals to once every two years and restrict appraised value increases between appraisals.

Homestead exemption and circuit-breakers. Legislators may consider increasing the homestead exemption from the current \$15,000. They also may consider a “circuit-breaker” measure that would freeze property taxes once they reached a certain percentage of a household’s income.

Sales price disclosure. Proposals may emerge for mandatory disclosure of real estate sales prices intended to help appraisers more accurately determine a property’s value. Such discussions may include whether sales prices should be kept secret to protect property owners’ privacy or made public so that property owners could compile information on comparable properties to bolster appraisal challenges.

Appraisal process. The Legislature also may consider changes in how the state monitors the performance of local appraisers. Proposals may include expanding the statistical margin of error within which local appraisal districts may operate or replacing the Comptroller’s Property-Value Study with a performance audit of an appraisal district’s standards and methods. Such an examination would focus on the appraisal process rather than the end result.

Board of Professional Tax Examiners. The Board of Professional Tax Examiners is under Sunset review

this year, and the Sunset Advisory Commission staff has recommended abolishing the agency and transferring its functions to the Texas Department of Licensing and Regulation.

Business margins tax. Legislators will consider changes to the business margins tax, taking into consideration findings on how the margins tax affects different industries and business models.

Legislators may consider proposals to expand the cost-of-goods exemption to include certain industry-specific costs, such as contract workers. Legislators also may consider a proposal to create an exemption for flow-through funds that are mandated by contract to be passed through to other entities, such as allowing debt collectors to exempt as income those funds they acquired on behalf of their clients.

Changes to the compensation exemption to the margins tax may be considered, such as allowing employer payments to independent contractors to be an eligible deduction. The Legislature also may consider establishing a research and development credit and allowing it to be carried forward to future years. Allowing a business's losses on the margins tax to be carried forward for up to 10 years also may be considered. Proposals could emerge for further protections for small businesses, such as raising the exemption from the tax for any business with total revenue below \$300,000 to a higher threshold, such as \$1 million.

Sales tax. Legislators may consider proposals to raise the state sales-and-use tax rate, currently set at 6.25 percent, and apply increased revenues to property-tax relief or to additional state services or infrastructure. The Legislature also may consider proposals to allow local taxing entities to increase local-option sales taxes above the current local cap of 2 percent and dedicate additional revenue to property-tax relief or other purposes, such as transportation improvements.

Business and economic development

Telecommunications. Legislators may consider changes to municipal franchise fees that cities levy on telephone, cable, and video services as compensation for utilities' use of municipal rights of way. Proposals could

include moving away from the current fee structure, where municipal franchise fees are an added tax on telecommunications providers for voice and video services. One proposal could be to allow cities to charge a fee to wire owners on the lines that are physically present in the right of way, rather than on every service that uses the lines. Legislators also may consider "hold-harmless" provisions that would compensate local governments for any lost revenue.

Economic and workforce development. The Legislature may consider proposals related to grants for economic development, state workforce needs, and the minimum wage.

Texas Enterprise Fund and Emerging Technology Fund. The Texas Enterprise Fund and Emerging Technology Fund, accounts from which the governor may award grants for economic development and for research and development programs, may receive additional funding. The Legislature also may consider proposals to support microlending of loans between \$500 and \$50,000 to small businesses, through dedication of part of the Texas Enterprise Fund or reinstatement of the Capital Access Program.

Lawmakers could consider creating a state director position responsible for developing strategies to fulfill the workforce needs of Texas industry. Under this proposal, the director would head an entity composed of members from various fields of expertise tasked with assisting regions with economic development, workforce education, and other workforce issues.

Minimum Wage. Lawmakers may consider proposals to increase the minimum wage to between \$6 and \$7.50 per hour. Some proposals may require the automatic adjustment of the minimum wage based on annual changes in inflation.

Homeowners Associations. Lawmakers may debate the responsibilities and authority of homeowners associations. Some proposals may seek to protect and empower homeowners by increasing the information provided to buyers before they purchase a residence, prohibiting associations from claiming rights customarily reserved for developers and builders, and decreasing the ease with which an association may foreclose on a residence for failure to pay fees.

Insurance. The Legislature is likely to address issues related to windstorm insurance and workers' compensation, as well as the functions of the Texas Department of Insurance (TDI) and the Office of Public Insurance Counsel (OPIC), both of which will undergo Sunset review.

TDI and OPIC Sunset review. OPIC, which represents the interests of consumers in insurance matters, and TDI will undergo Sunset review this session. The Legislature may consider abolishing OPIC and establishing a consumer representation function within TDI. Proposals also may emerge to make the insurance commissioner an elected position. Lawmakers may consider requiring additional claims and financial reporting by insurers and may examine publishing some of the data for consumers.

In 2003, SB 14 by Jackson changed the way most property and casualty rates are set to a file-and-use system in which TDI may disapprove excessive, inadequate, or unfairly discriminatory rates either before they are implemented or after they are implemented and already in use. The Legislature may consider revising the existing file-and-use system to add more certainty about when rates may be implemented or by establishing a system in which TDI must approve rates before they are implemented. Proposals also may emerge to limit how much rates can vary within a zip code and to ban credit scoring in determining rates.

Texas Windstorm Insurance Association. The Texas Windstorm Insurance Association (TWIA) provides insurance of last resort for hurricane and wind damage along the Texas Gulf Coast. TWIA is funded by premiums, assessments on all Texas property insurers, reinsurance, and a catastrophe trust fund. When these sources have been exhausted, an unlimited assessment is made on all Texas property insurers to pay remaining claims. Lawmakers may consider new funding mechanisms for TWIA, including authorizing TWIA to issue bonds, allowing surcharges on certain policyholders, and giving the association more flexibility in setting rates to generate additional funding.

Other proposals could address overlapping regulatory responsibilities held by the TWIA Board and TDI. The Legislature also may consider proposals to require property owners to show proof of having been declined by other insurers before obtaining TWIA coverage.

Workers' compensation. In *Entergy v. Summers*, the Texas Supreme Court held that a premises owner could qualify as an employer if the premises owner met the standards for a general contractor. Before the ruling, a premises owner was not considered a general contractor with the same legal immunities afforded to an employer who participates in the workers' compensation system. The Legislature may consider proposals that would prevent premises owners, such as those who own refineries or chemical plants, from buying workers' compensation insurance for contract employees in order to avoid liability for injuries to those workers. Some may propose amending state law to prevent a premises owner from being considered a general contractor, while others may propose explicitly that a premises owner can be a general contractor or may propose specific criteria by which to determine which premises owners meet the standards of a general contractor. Others may propose specifying that all premises owners may purchase workers' compensation insurance.

Proposals also may emerge to address arbitration and attorney's fees in workers' compensation cases. Lawmakers may consider whether to keep or eliminate the subsequent injury fund, which reimburses insurance companies for benefits to which an employee is later found to be unentitled, helps employers pay benefits for permanently disabled employees whose injuries were sustained in part with a previous employer, and pays certain death benefits to families of the deceased. Mandating employer participation in the workers' compensation system also may be proposed.

Unemployment insurance. Proposals may emerge to require drug testing for unemployment insurance beneficiaries.

Whistleblower protections. The Legislature could consider penalizing employers who take retaliatory actions, such as firing, against employees who report crimes at their business.

Arbitration agreements. The Legislature could consider restricting arbitration as it applies to consumers to ensure arbitration agreements did not impede existing rights, such as participating in class action lawsuits or pursuing punitive damages.

Texas Residential Construction Commission. The Texas Residential Construction Commission

(TRCC) will undergo Sunset review. The Sunset Advisory Commission staff has recommended abolishing the TRCC. Others may seek to revise the current complaint process, expand enforcement mechanisms for commission rulings, or strengthen building codes.

Gambling. The Texas Racing Commission will undergo Sunset review, and changes to pari-mutuel wagering may be considered. Proposals could include authorizing video lottery terminals at pari-mutuel racetracks or allowing betting at sites other than racetracks. Authorizing “account wagering,” which allows bettors to use the Internet to place wagers on races using funds already placed in their accounts, also could be considered. Another proposal would authorize “instant racing,” in which bettors use an electronic machine to wager on thousands of previously run races. Ways to increase the promotion of pari-mutuel racing also may be considered.

Proposals could be made to authorize casinos or other gambling centers. Some could focus on gaming conducted by Texas’ Native American tribes, including authorizing any gaming permitted under federal law, legalizing casino-type gambling centers, and allowing tribal fraternal organizations to organize and operate charitable bingo. Lawmakers also may consider licensing and taxing the gross receipts of poker games.

The Legislature may consider options for administering the lottery because the contract with the current lottery operator expires in August 2011. Options include the state running the lottery directly rather than hiring an outside contractor, employing a different contractor to run the lottery, employing multiple contractors, or selling the lottery to a private entity. Proposals could be made to allow the sale of lottery tickets at different locations, such as gas pumps, bars, and restaurants, and to increase advertising of the lottery.

Several proposals could emerge on charity bingo in Texas, including authorizing electronic bingo, satellite bingo, or progressive bingo. In progressive bingo, jackpots are allowed to grow and transfer to subsequent games if there is no winner. Lawmakers could examine proposals to streamline the licensing process for organizations that conduct bingo. They also may examine the relationship among manufacturers, distributors, and bingo organizations and the definition of charitable expenses.

The laws governing electronic gaming machines — or “eight-liners” — could be examined, including attempts to regulate them more strictly or to outlaw them.

Illegal immigration

The 81st Legislature is expected to consider several proposals on how the state of Texas should deal with illegal immigration, including laws concerned with work place requirements, access to public benefits, and the roles of state and local law enforcement in immigration enforcement.

Work place requirements. Proposals on work place requirements may include imposing sanctions or penalties on employers who hire illegal immigrants, including suspension or revocation of business, professional, or occupational licenses. Other proposals could require all employers or state agencies, local governmental entities, or government contractors to use the federal E-Verify system to determine if potential employees have legal authority to work in the United States.

Law enforcement. Lawmakers may debate the role of law enforcement agencies in enforcing federal immigration laws, including possible proposals to require peace officers to verify the citizenship and immigration status of people they arrest or detain. Other proposals could be made to authorize or encourage law enforcement officers to gain federal authorization to enforce federal immigration law, to cooperate with federal officials who enforce the law, or to prohibit local rules that limit cooperation with federal immigration enforcement. Prohibiting state agencies and local governments from adopting policies under which they would not enforce state or federal immigration laws also may be debated. Another proposal would make it a state criminal offense to enter or remain in the United States illegally.

Proof of citizenship. Other proposals may include requiring proof of citizenship from people who seek public benefits or who seek to register to vote or obtain a driver’s license or other professional and occupational licenses issued by the state. Legislators could debate proposals to either codify or eliminate a new DPS rule that requires non-U.S. citizens to present proof of legal status before they can receive a Texas driver’s license or identification card. Another proposal may require that

certain identity documents issued by other countries be sufficient to prove identity to receive a driver's license.

In-state tuition. Lawmakers also could seek to restrict or repeal current law that allows resident undocumented immigrants to pay in-state college tuition at public institutions in Texas. Other proposals could require proof of legal presence in the United States for admission to public colleges and universities.

Compilation of statistics. Legislators could require state agencies, schools, or other entities to gather statistics on the number of illegal immigrants served or on the costs of services and benefits provided to illegal immigrants.

Human trafficking. Creating a criminal offense for unlawful transport of undocumented persons may be debated and could be extended to making it a crime to conceal or house illegal immigrants. This issue also could be studied under a proposal to establish a human trafficking prevention task force.

Money transmission fee. Another proposal would require a fee for money transmitted to certain destinations such as Mexico or Central and South America.

Citizenship status of U.S.-born children. Debate also could emerge on the citizenship status of children born in Texas to parents who are illegal immigrants, including a proposal to prohibit a Texas birth certificate under such circumstances.

English as official language. Efforts could be made to make English the official language of Texas and to require that official state business be conducted in English or to authorize employers to adopt English-only policies.

Landlord discrimination. Debate could occur on a proposal to establish whether landlords may refuse to lease to a renter based on the renter's immigration status.

Criminal justice and public safety

Corrections and state prison capacity. According to June 2008 projections by the LBB, the state's prison population will exceed the system's

capacity of 156,759 in fiscal 2010 by 1,922 and in fiscal 2011 by 1,610. This could prompt proposals to further expand prison diversion and substance abuse treatment programs. Proposals could include whether to increase incentives to route certain offenders to substance abuse and mental health treatment instead of to incarceration. Other proposals could create additional services for offenders with mental health issues and provide or require more training for judges on substance abuse and mental health issues.

Probation funding. Lawmakers could debate whether to change the way local probation departments are funded by changing the computation for determining state basic supervision funding. A change to the computation was approved by the Legislature in 2007, in HB 3200 by Madden, but vetoed by the governor. Proposed factors to be considered when determining state funding could include higher rates for probationers in the early years of their terms, penalties that discourage revocations due to technical violations of probation, and funding formulas that include weights for different risk levels of offenders. Increased funding to local community supervision departments may be proposed to help retain experienced probation officers and to hire more officers in order to reduce caseloads.

Legislators could debate a proposal to require probation with treatment for certain low-level, non-violent drug offenders. Increasing resources for outpatient substance abuse also could be considered.

Inmate re-entry. Some proposals may focus on the challenges faced by offenders when they leave prison, such as housing and employment. This could include revising the state's program to help freed offenders find jobs, called Project RIO. Another proposal would establish a council to coordinate efforts to help freed offenders re-enter society. Current prohibitions on freed offenders receiving certain occupational licenses may be examined with proposals to reduce the restrictions or to allow for provisional licenses for specified types of non-violent, non-sex offenders.

Prison security. Improving security at prison units also may be considered, with some proposals to reduce the amount of contraband, including cell phones, tobacco, and narcotics, smuggled into prisons. The Texas Department of Criminal Justice (TDCJ) requested \$15

million annually in fiscal 2010-11 to expand the use of video surveillance equipment, contraband screening, and metal detectors at entrances.

Correctional officer pay. Debate about a pay raise for correctional officers began during the interim when TDCJ proposed in its Legislative Appropriations Request an average pay increase for correctional and parole officers of about 20 percent. The agency also requested legislative authority to expand its use of recruitment bonuses at critically staffed units to include annual retention bonuses for employees at these units.

Criminal justice. Several areas of criminal law may be examined, including standards for eyewitness identifications and testimony, penalties for sex offenders, indigent defense, joint trials for more than one criminal defendant, and whether the death penalty should be permitted for accomplices to capital murder.

Criminal procedure. Proposals may emerge to set standards for eyewitness identifications, such as requiring written policies and procedures and training in the procedures. Procedures for suspect line-ups may be examined, and proposals could include setting standards for traditional line-ups, photographic line-ups, and so-called “show-up identifications,” which are one-person line-ups.

Other proposals could include requiring electronic recording of custodial interrogations, setting uniform requirements for preserving evidence in criminal cases, and establishing standards for testimony from informants or witnesses who may have an incentive to lie. Proposals dealing with confidential informants could include requiring warrants to include information on the informants and requiring corroborating information if information from confidential informants were used to acquire a warrant. Timelines for having criminal convictions expunged from a person’s record may be examined, as well as whether it is proper to use deferred adjudication for certain offenses.

Seized property. State rules governing the forfeiture of money and property seized by law enforcement officers may be revised to provide more accountability and oversight.

Death penalty for accomplices. The Texas law that allows accomplices to capital murder to receive the

death penalty could be debated, with possible proposals either to eliminate the possibility of a death sentence for accomplices or to allow only certain types of accomplices to receive such a sentence.

Joint trials. Changes may be proposed to the Texas law that allows more than one defendant involved in the same offense to be tried jointly. Proposals could be made to require all trials — or at least all capital murder trials — to be held separately or to allow them to be held jointly but severed at the defendant’s request without any special showing required.

Innocence commission. Whether Texas should create an innocence commission could be debated again this session. The debate may address the structure and powers of such a commission, which could include studying wrongful convictions, recommending changes in law, and examining individual claims of innocence. One proposal could authorize the governor to declare a temporary moratorium on death sentences. Another would increase the compensation the state could pay to those who have been wrongfully convicted.

Indigent defense. Among the proposals that may emerge on criminal indigent defense are establishing separate requirements for attorneys appointed for trial and for appeals in death penalty cases. Public defender offices also may be examined, with possible proposals for encouraging establishment of such offices, revising the way counties can establish them, and allowing oversight boards to oversee them, rather than relying solely on commissioners courts, especially those public defender offices established jointly by several counties. Legislators also may consider creating another option for counties to provide indigent defense services by authorizing independent, assigned-counsel programs, under which the management is outsourced to a government office or nonprofit agency independent of the judiciary.

Sex offenders. Legislators could debate proposals to toughen penalties on sex offenders or to increase their supervision. Several proposals may be made to restrict the activities of sex offenders on-line, including prohibiting them from using certain social networking sites, accessing pornographic material, or contacting children or requiring them to register their on-line identities with the state.

Border security. Debate on funding for border security may continue in the 81st Legislature. Gov. Perry has said that he plans to request \$110 million for sustained border security programs and another \$24 million to combat activity throughout the state by transnational gangs.

Juvenile justice. The Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) will be under Sunset review. Debate about these agencies may address which duties are assigned to each agency, with some proposals calling for more coordination between the two. The structure of TYC may be addressed, including the Sunset Advisory Commission staff recommendation to combine the TYC and TJPC. Another proposal could shift responsibility for handling serious juvenile offenders to the counties. Whether TYC should be governed by a board appointed by the governor or by a single, independent, full-time professional also may be addressed.

Some may propose that a system of smaller, regional facilities replace the current TYC secure facilities. Part of that debate could include whether to locate facilities closer to urban areas that may have better access to services and rehabilitation programs. Discussions could include the programs and services offered to serious juvenile offenders, such as treatment, rehabilitation, education, and vocational education.

Legislators may debate calls for more investment in local community-based, non-residential juvenile justice programs for non-violent youths. The discussion could include how to allocate state funds between secure confinement and non-residential programs. Proposals could be made to examine the revocations of probation that result in juveniles being sent to state facilities. Services for juvenile offenders with mental health issues, both those on probation and those in TYC, may be debated.

Another issue may be what types of youths should be removed from public schools and sent to Disciplinary Alternative Education Programs, with one proposal to prohibit sending youths who engage in serious and persistent misconduct. Other proposals would increase programs and services that divert low-level, first-time offenders from the juvenile justice system.

Alcohol. Legislators could debate proposals on driving while intoxicated, including authorizing sobriety checkpoints where law enforcement officers could check motorists for signs of intoxication. Another proposal would require the installation of ignition interlock devices after a driver's first DWI offense. Others may propose developing a set of standards for when interlock devices must be used and having the state, rather than the offender, pay for them. Legislators also may consider proposals to require peace officers to take blood or breath samples from drunk driving suspects with two or more DWI arrests and to revise the administrative license revocation procedures to encourage alternatives to holding live hearings when the revocations are contested.

The adequacy of regulation and labeling requirements for energy drinks that contain alcohol could be debated. The debate could include whether energy drinks that contain alcohol and are subject to the state's standards on alcoholic beverages are distinguished enough from non-alcoholic energy drinks.

DPS Sunset. The Texas Department of Public Safety (DPS) will undergo Sunset review during the 2009 session. Legislators may consider proposals to structure and operate the driver's license program with a civilian business management model rather than the law enforcement command structure now used. Lawmakers also may consider other proposals for organizational changes to the agency, while trying to increase retention and recruitment of staff.

Handguns. Legislators may debate allowing holders of concealed handgun permits to carry their weapons openly. They also may consider allowing handgun licensees to carry their weapons onto college campuses, either public or private. Proposals also may emerge to clarify rules under which school districts enact policies on how and when district employees may bring concealed handguns onto school property.

Health and human services

Public benefits and the uninsured. Access to health care and the high rate of uninsured Texans are likely to drive much of the discussion of state health and human services programs. The state currently is seeking a federal Medicaid waiver based on provisions of SB 10

by Nelson, enacted by the 80th Legislature in 2007 and intended, in part, to leverage federal and state dollars to increase health coverage among low-income Texans. The Legislature could provide direction to the Health and Human Services Commission (HHSC) for revisions to the waiver request to improve the likelihood of gaining federal approval.

Legislators also may consider revisions affecting eligibility for Medicaid and for the Children's Health Insurance Program (CHIP), including:

- restoring eligibility for the Medicaid Medically Needy program to populations that were eligible before program cuts in 2003;
- increasing outreach and education funding to enroll eligible but not enrolled children in CHIP and Children's Medicaid;
- extending to 12 months continuous eligibility for Children's Medicaid; and
- permitting parents to "buy in" to CHIP if they do not have other affordable coverage options for their children.

Texas agreed to spend \$1.8 billion in all funds to improve services to children in the state Medicaid program as part of a corrective action plan to comply with the terms of a federal court consent decree in *Frew v. Hawkins*. The largest portion of funding, \$1.3 billion in all funds, was designated for provider rate increases. Lawmakers may consider the recommendations of HHSC, the Frew Advisory Committee, and other stakeholders in determining how to spend the remaining Frew-related funds designated for strategic dental and medical initiatives for children enrolled in Medicaid.

Several proposals may emerge for increasing provider reimbursement rates for public programs. Lawmakers could consider increasing reimbursement rates for CHIP and Medicaid adults to the higher rates recently implemented in Children's Medicaid resulting from the *Frew* settlement. The Legislature also could try to achieve parity between Medicaid and higher Medicare reimbursement rates or consider annually adjusting rates to a measure of inflation. Proposals may emerge to prohibit providers from requesting reimbursement from patients, health plans, or Texas Medicaid for services

provided as a result of medical error, similar to a recently implemented Medicare policy.

In 2003, the Legislature authorized privatizing the system that determines eligibility for public benefits. Private contractors have since begun the transition process for shifting clients and applicants into the new TIERS eligibility-determination system. The contract with the first contractor was terminated in response to issues with the timeliness of application processing and system performance, and the 80th Legislature enacted legislation establishing system performance goals and performance monitoring and oversight bodies. This session, the Legislature may consider recommendations made by the Select Committee on Oversight of the HHS Eligibility System. Proposals may address placing in statute benchmarks that HHSC must achieve to permit the agency to add clients from new regions to TIERS. Lawmakers also could consider establishing a state office devoted to helping all state agencies develop sound contracts with private entities.

Health insurance coverage. The Legislature may consider proposals to increase access to health insurance for small businesses and individuals. Debate may address revising the Texas Health Reinsurance System and the Texas Health Insurance Risk Pool to model them after successful programs in other states. Lawmakers may consider implementing a "health insurance exchange" that helps consumers and employers select and purchase appropriate health coverage. Some proposals may focus on child health coverage, including employer-based plans that cover only children. Another proposal could require parents to obtain health insurance for children in the child support system from a private insurance pool created for that purpose if no other health coverage option were available. The Legislature also could revise the benefits it mandates health insurers to provide in certain types of plans.

Legislators may use the Sunset review of the Texas Department of Insurance (TDI) as a vehicle to revise rate regulation and reporting standards for health insurers. Proposals may address whether insurers should be required to file rates, and if so, if the rates would have to be approved before they were implemented. Lawmakers also could consider whether insurers should have to report their medical loss ratios or other financial data and if TDI could use this data to influence the premiums that insurers charge.

Provider shortages. Debate may emerge on how to increase the number of health care providers practicing in Texas. Lawmakers may consider establishing new medical schools in South Texas and elsewhere so more physicians could graduate yearly from Texas medical institutions. Other proposals may seek to increase the number of graduate medical education slots for physicians and increase physician student loan repayment rates. Legislators could consider more flexible licensing standards for veterans or for physicians willing to practice in underserved areas of the state.

Scope of practice. A number of proposals are likely to address scope-of-practice issues for non-physician health care providers, such as whether optometrists and podiatrists, for example, should be allowed to perform certain procedures that currently are the exclusive province of medical doctors. Legislators also may address the extent to which physicians must oversee the care provided by advance practice nurses and physician assistants practicing at retail health clinics and the services these health practitioners may provide.

Nursing issues. Each Texas hospital develops a facility-specific plan to meet nurse staffing needs, in

accordance with Department of State Health Services rules. The Legislature could consider ways to enhance the current planning process, including strengthening the role of hospital nurse staffing committees in making recommendations to hospital boards. The Legislature also could consider if nurse staffing needs more adequately could be met by instituting statewide mandates for nurse-to-patient ratios. Other proposals could prohibit mandatory overtime and allow publicly employed hospital nurses to file suit if retaliated against because they engaged in protected patient advocacy activities. Proposals also may address funding for incentives to recruit and retain nursing school faculty and to hire retention counselors for nursing students.

Managed care. Lawmakers may seek to limit or prohibit the practice of “balance billing,” in which a patient obtaining care at a facility within a managed care network may be charged additional fees by a non-network practitioner who treats patients there. Last session, legislation was enacted requiring health plans, health care facilities, and physicians to disclose information to patients about non-network providers they may encounter in the course of seeking care and the financial obligations patients might incur as a result.

Sunset Review

The 27 agencies or programs reviewed by the Sunset Advisory Commission for 2008-09 are:

- Texas Department of Agriculture
- Boll Weevil Eradication Foundation
- Credit Union Commission
- Equine Research Account Advisory Committee
- Texas 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
- Texas Youth Commission
- Texas Youth Commission, Office of Independent Ombudsman

Proposals could follow this session to define what constitutes an “adequate provider network” and require health plan networks to meet this standard.

Corporate practice of medicine. Lawmakers may debate whether Texas should allow the corporate practice of medicine, which is when hospitals directly employ physicians. Proposals may focus on eliminating state prohibitions on the corporate practice of medicine at all hospitals or only at certain rural hospitals.

Public health and wellness. Lawmakers may seek to enhance tobacco prevention and general wellness programs and consider ways to address health problems associated with obesity and diabetes. Debate may continue from last session on whether to institute a statewide ban on smoking in workplaces and certain public areas. Other proposals may seek to promote the nutrition and physical activity of children in schools.

Lawmakers in 2007 approved a pilot needle-exchange program in Bexar County that was not implemented after an attorney general’s opinion indicated program participants could be subject to prosecution under drug paraphernalia laws. Lawmakers again may debate whether to permit anonymous needle exchange programs as a part of a disease prevention program as well as discuss the legal protections that should be afforded to program participants.

Emergency preparedness. The Department of State Health Services (DSHS) is responsible for coordinating the public health and medical response to health emergencies, including evacuation and shelter for medical special-needs populations. The Legislature may consider providing DSHS more emergency preparedness funding to enhance staff recruitment and retention policies, improve the quality and timeliness of lab and environmental analyses, improve disease surveillance, and expand local health services. The Legislature also may consider limiting liability for health care providers providing emergency care during a disaster.

Protective services. The Legislature has made significant changes to the Child Protective Services system in the last two sessions. The 80th Legislature in 2007 approved but did not fund a pilot program for privatization of case management services for 5 percent of foster children. Legislators may revisit whether or not to continue pilot planning or whether the pilot program

should be expanded to include more foster children. The Legislature also could consider building upon last session’s revisions to encourage family involvement in decision-making and placement processes for children removed from the custody of their parents. Lawmakers may hear proposals to make relative care providers eligible for higher foster care payments, closer to the payments provided to non-relative foster parents. Proposals also may emerge to increase foster care payments and adoption subsidies for low-income caretakers or those who care for special needs children. The Legislature could consider providing more funding, support, and respite services for foster families caring for youth transitioning out of intensive psychiatric services.

The Legislature may investigate why certain children have been placed in permanent managing conservatorship by the state when parental rights have not been terminated, making these children unavailable for adoption. Proposals could require caseworkers to explain their efforts to find alternative placements for these children at each six-month placement review hearing and assess whether a temporary extension of support services to parents could permit families to be reunited.

Lawmakers may consider proposals to help children aging out of the foster system to prepare for adult living, including funding for more transition centers and independent living arrangements that are semi-supervised for children up to age 20.

Mental health services. Last session, funding was provided to expand community-based mental health crisis services. This session, lawmakers could consider increasing funding for crisis services and designating funds for underserved communities, intensive ongoing services, and services for youth. Other youth-related issues may include diverting juveniles with mental health issues from the criminal justice system and providing treatment to them and resources to their families. The Legislature could consider suspending rather than terminating CHIP and Medicaid benefits for incarcerated youth. Lawmakers also could require all agencies serving youth to use the same formulary for medications so children had more consistency in the medications they received if they moved among state facilities.

State schools are state-run facilities that provide residential care and treatment for people with cognitive or developmental disabilities. In response to numerous

allegations and incidents of abuse and neglect in state schools, the U.S. Department of Justice investigated the Lubbock State School and has announced all other state schools will be placed under investigation. The Legislature will consider recommendations from the House Select Committee on Services for Individuals Eligible for Intermediate Care Facility Services on how to resolve problems with the level of care provided at state schools. Proposals may be considered to strengthen complaint investigations, establish an independent authority to monitor state schools, consolidate some state schools in order to free resources for more community care alternatives, and increase the pay, training, and education requirements for direct care staff. Lawmakers also may introduce proposals to reduce waiting lists for Medicaid waiver programs that help Texans with cognitive or developmental disabilities obtain services in the community.

Proposals also may emerge to ensure “parity” in coverage for mental health services similar to health coverage for other illnesses and for state programs to use terms mental health advocates deem more respectful, such as “intellectual disabilities.” Legislators could debate using state money to create incentives for counselors to work in community mental health centers that specialize in services for veterans, particularly to address a shortage of providers in South Texas.

Abortion. Lawmakers may propose “trigger” legislation to establish state law banning abortions in the event that constitutional rights as currently established in *Roe v. Wade* are overturned by the U.S. Supreme Court.

Lawmakers also may consider proposals to require physicians to report abortion complications. Other proposals may establish that consent to an abortion is considered voluntary and informed only if an obstetric ultrasound is performed on the woman, provided to the woman, and reviewed with the woman on whom an abortion is to be performed, except in the case of a medical emergency. Some proposals may include requiring the woman to certify in writing that she has been provided with and had the opportunity to review the ultrasound image without requiring that she actually review it.

Stem-cell research. Efforts may be made to restrict state funding for stem-cell research and to prohibit research by state-funded institutions involving

embryonic stem cells. Others may seek to promote state-funded research, especially involving adult stem cells.

Public education

Accountability. Legislators are likely to address the state’s public school accountability system, with possible proposals to simplify the system and make it more transparent, as well as to incorporate individual student growth and financial accountability into the system. Some proposals also may seek to align the state and federal public school accountability systems.

School finance. HB 1 by Chisum, the omnibus school finance bill enacted in May 2006, provided that in future years school districts would be guaranteed at least the funding appropriated to them for the 2005-06 school year, a provision often referred to as the “hold-harmless” provision or “target revenue.” Lawmakers may examine how this provision affects the equity and adequacy of funding for school districts, particularly in light of inflation and the increased costs of educating different student populations.

Proposals may seek to apply the mid-size school district adjustment to chapter 41 (higher wealth) school districts. Other proposals may emerge to increase the technology and transportation allotments paid to school districts. Lawmakers might examine a school district’s ability to increase revenue through property taxes by considering proposals to increase the number of pennies of a school district’s property tax rate that are not subject to recapture. Lawmakers may address whether a school district that receives voter approval to increase property taxes by a certain number of pennies may reserve the right to levy some of those pennies in future years.

Teachers. Legislators may address the process for terminating teachers and other public education employees. Proposals to improve teacher training and alternative certification programs may be considered. Proposals may emerge to make professional development for teachers more available in order to increase teacher quality and retention. Lawmakers may debate the effectiveness of incentive pay for teachers. Some proposals may increase funding for both the Texas Educator Excellence Grant (TEEG) and District Awards for Teacher Excellence (DATE) programs.

Dropouts. Proposals may seek to prohibit private institutions from receiving state money under the dropout recovery grant program, as the Texas Education Agency (TEA) allowed in implementing HB 2237, enacted by the 80th Legislature in 2007.

Uniform GPA. Lawmakers are likely to debate implementation of the uniform grade point average (GPA), the formula that high schools must use to calculate a student's GPA for college admission purposes. Some proposals may seek to repeal the uniform GPA requirements. Other proposals may seek to clarify when and to whom the uniform GPA requirements apply and establish whether or not the development of a standard GPA by TEA would usurp the uniform GPA established by the Texas Higher Education Coordinating Board. Some proposals also may seek to clarify which classes must be included in the uniform GPA formula.

State Board of Education. Some proposals may seek to limit the authority of the State Board of Education (SBOE) over textbook adoption and curriculum content. Other proposals may emerge to address the process by which the SBOE adopts the Texas Essential Knowledge and Skills (TEKS) test. Lawmakers may seek to modify the TEKS for English/language arts or elective Bible classes. Others may seek to expand career and technology education curricula.

Other public education issues. Other proposals could emerge to:

- revise the state's methods for electronic reporting and data management through the Public Education Information Management System (PEIMS) and the system for maintaining electronic school district records;
- expand access and increase funding to pre-K programs;
- re-evaluate mandatory testing for steroids and other performance-enhancing drugs for high school athletes;
- prevent cyber-bullying and inappropriate interactions between teachers and students, including on social networking sites and through text messages; and

- investigate student possession of sexually explicit photography stored on cell phones and the transmitting of sexually explicit photography between students via cell phones.

Higher education

Tuition deregulation. Legislators likely will review tuition deregulation and debate whether to continue allowing institutions to set their own designated tuition. Lawmakers also may consider freezing or lowering the cost of higher education tuition.

Top Ten Percent Law. To increase flexibility in admissions at Texas universities, some lawmakers may propose amending the Top Ten Percent Law by capping the number of students automatically admitted under the law in each entering freshman class or revising how the top 10 percent of high school graduates is calculated. Others may propose repealing the law altogether.

National research universities. Some legislators may propose establishing at least one more tier-one university, also known as a "flagship institution," to join the ranks of the state's two public, tier-one research universities, the University of Texas at Austin and Texas A&M University. One strategy for establishing more tier-one institutions could be to select one or more of the state's seven "emerging research universities" — Texas Tech, the University of Houston, the University of North Texas, UT-Arlington, UT-Dallas, UT-El Paso, or UT-San Antonio — using incentive funding that rewards attributes critical to tier-one success.

Financial aid. Lawmakers may consider increasing state aid to students overall, but especially to students attending community colleges and other two-year institutions. The Texas Educational Opportunity Grant (TEOG), a purely need-based financial aid program for community college students, currently funds only 4 percent of eligible students. Some may propose increasing TEOG funding to assist at least 33 percent of eligible students. TEXAS Grants, the state's premier grant program, awards grants with preference to the neediest students. Current funding provides assistance to about 50 percent of eligible students, and lawmakers may consider increasing state funding to assist at least 67 percent of eligible students. Some may recommend adding merit criteria to the program in order to target

needy students with the strongest academic credentials. Other proposals may include stacking the TEXAS Grants and B-On-Time loan programs, which would award eligible students grant money for the first two years of college and a loan for the final two years, and establishing a merit-based academic scholarship fund that would aid students from middle-income families.

Proportionality. In 2007, Gov. Perry vetoed \$154 million in fiscal 2009 funding for community college employee group insurance contributions. General revenue funding for the contributions has since been provided, but the budgetary principle known as “proportionality,” or the cost-sharing between the state and the institutions for employee benefits, likely will be reviewed during the 2009 session. The Legislature could address whether to apply proportionality and whether the state is responsible for providing group health care insurance benefits to all community college employees involved with educational programs.

Incentive funding. The 80th Legislature established the Higher Education Performance Incentive Initiative and appropriated \$100 million to the Texas Higher Education Coordinating Board (THECB) for this purpose. The incentive-based performance funding is to be awarded to specified higher education institutions and will be based on student and institutional outcomes that are aligned with state and regional priorities. The Legislature may consider recommendations of the THECB and a governor’s task force on how to structure and implement the incentive funding.

Medical school. Legislators may debate establishing a four-year medical school in the Rio Grande Valley to address a shortage of health care professionals in South Texas. Other proposals could include establishing a medical school in the Austin area.

Veterans’ tuition. The 81st Legislature may consider waiving out-of-state tuition rates for non-resident veterans and their spouses and children, allowing them to pay in-state rates. Currently, veterans and their qualified dependents who are Texas residents or who were Texas residents when they entered the service are exempt from paying tuition and fees through the Hazlewood Exemption. Non-resident veterans are not eligible to have their tuition and fees exempted and must pay out-of-state tuition rates, which are not fully covered by G.I. Bill benefits.

Transportation

Highway finance. Proposals may emerge to eliminate diversions of fuel tax revenue (Fund 6) to agencies other than the Texas Department of Transportation (TxDOT) for purposes other than public highway construction or maintenance. Such proposals could include alternative funding for agencies that now receive Fund 6 money, including the Department of Public Safety. Proposals also could surface to authorize issuance of \$5 billion in general revenue bonds approved by voters in 2007 for transportation improvements.

Lawmakers also could consider changes to the state motor fuels tax to bring in more revenue to Fund 6. One proposal would index the motor fuels tax to the consumer price index or the producer price index so that it increased incrementally each year. Another proposal could allow local-option elections on local increases in the motor fuels tax. Revenue from a local-option motor fuels tax could be used to fund transportation projects in the jurisdiction of the entity holding the election. Lawmakers also may consider an additional sales tax for transit or expanding the number of counties that could impose additional vehicle-related fees, such as registration fees, within their jurisdictions.

Proposals could surface to fund transportation projects by alternative means, including authorizing transportation finance corporations to consolidate various investment sources to finance tolled projects, redirecting revenue from motor vehicle sales taxes to transportation, and reviewing avenues for using state pension fund investments to finance toll road projects. Lawmakers also may seek to authorize additional contingent appropriations to TxDOT to pay debt service on previously issued bonds.

Private participation in road projects.

Lawmakers may examine the roles of public and private entities in building new toll roads and the conditions under which an existing toll-free highway could be incorporated into tolled projects. The 80th Legislature in SB 792 placed a limited moratorium on contracts authorizing private entities to develop and operate toll projects. This limited moratorium expires in 2009, as does the authority of the state to enter into comprehensive development agreements (CDAs) to develop toll projects. The expiration of these provisions may lead to proposals to modify state laws governing CDAs and private

participation in toll projects. Proposals may include extending the state's authority to enter into CDAs, modifying the maximum duration for which the state may enter into a CDA, allowing potential CDA projects to be solicited only after the project receives an environmental clearance, or further revising restrictions on the so-called non-compete clauses sometimes found in these contracts.

The Legislature also could re-examine the right of first refusal it granted last session to local public tolling entities to negotiate for rights to develop and operate toll projects within their jurisdiction. Proposals could arise to modify or remove the primacy of local public tolling entities or to modify or remove the market evaluation process that now precedes any agreement that those entities reach with TxDOT on a toll project.

TxDOT Sunset review. TxDOT will undergo Sunset review by the 81st Legislature. Lawmakers may propose restructuring the Texas Transportation Commission, including replacing the commission with a single commissioner or making commission members subject to popular election. Other proposals may place TxDOT under the review of a legislative oversight committee that could be charged with monitoring and reporting on the agency, the state's transportation system, TxDOT's research program, and other aspects of transportation performance in the state. In addition, proposals may seek to move transportation research contracting authority for the Texas Transportation Institute and other research institutions from TxDOT to the Legislature directly.

Lawmakers also may consider statutory changes to TxDOT's planning and project development process, including requiring the agency regularly to update the Statewide Transportation Plan, redesigning the agency's project programming process to include clear goals and progress indicators, and requiring the agency to report project progress and goals. A number of proposals also could arise in response to criticisms that the agency does not have adequate systems in place to collect and evaluate public input into transportation projects. Such proposals could include requiring the agency to implement standard procedures to document and track complaints and developing a public involvement policy.

Lawmakers could consider moving some of TxDOT's functions — such as the motor vehicle division, vehicle titles and registration, motor carrier division,

and automobile burglary and theft prevention — into a separate agency. They also may consider proposals to require a contract advisory team of staff from four state agencies to review CDAs or could authorize TxDOT to use contracts that consolidate project design and construction under a single contract, known as “design-build,” on traditional transportation projects.

Planning organizations. Lawmakers may consider changes to state statutes governing metropolitan planning organizations (MPOs), which are regional planning entities mandated as part of federal highway funding requirements. Proposals could include modifying the relationship among MPOs, TxDOT, and other local and regional transportation authorities, creating corridor planning organizations to collect public input in geographic areas around the Trans-Texas Corridor, and implementing Sunset staff recommendations to require TxDOT to support creating transportation planning entities in rural areas.

Rail. In 2005, voters approved a constitutional amendment creating the Texas Rail Relocation and Improvement Fund to finance or partially fund the relocation and improvement of privately and publicly owned passenger and freight rail facilities. Legislators may decide to allocate money for the fund through a direct appropriation or a rededication to the fund of the business and sales taxes the railroad industry now pays. Lawmakers also may consider authorizing general revenue for a number of passenger and other rail improvements in the state.

Cell phones. The Legislature may consider creating a criminal offense for non-emergency use of cell phones and text messaging while driving in a school crossing zone or more generally.

Energy and environment

Energy. The 81st Legislature likely will address issues involved with meeting the state's growing energy needs, including how to expand power generation capacity across the state. These proposals also are likely to address the diversified fuel mix — the proportions of oil, natural gas, coal, nuclear energy, and renewable sources, such as wind, solar, and geothermal — needed to fuel the expanded capacity. These proposals also may include energy conservation measures to reduce

demand. Others may propose a temporary moratorium on new coal projects that do not capture and sequester in a geological formation the carbon dioxide that is emitted during generation. Lawmakers may seek to fund and expand the advanced, clean-energy project grant and loan program established by the 80th Legislature. Incentives may be proposed for technologies such as CO₂ enhanced oil recovery. Some lawmakers may wish to focus on accelerating biofuel production technology using alternative feedstocks, such as biomass, waste oils, and processed animal fats.

Lawmakers may examine whether to expand the mandates in the renewable portfolio standard (RPS). The RPS, established in 1999 and expanded in 2005, ensures the use of renewable energy statewide by requiring a certain number of megawatts of renewable capacity be incorporated into the electric grid. Lawmakers may discuss whether the 500-megawatt RPS target for renewable resources other than wind, which currently is not mandated, should be increased and mandated and if so, whether there should be a carve-out for a particular resource, such as solar energy. Proposals for an energy storage portfolio standard similar to the RPS also may be discussed. Some lawmakers may advocate a State Energy Plan modeled after the State Water Plan. Some may propose an increase in energy-efficiency goals, high-performance building standards, and conservation measures to both meet energy demand and mitigate effects of climate change.

A proposal could emerge to create incentives for the use of distributed energy — energy created at or near the place it is used — such as residential solar and wind systems. Lawmakers may consider prohibiting homeowners association rules against solar panels or other distributed energy sources.

Lawmakers may debate environmental siting regulations for wind turbines. Legislation also could be proposed to reverse the conclusion in an attorney general opinion that calls into question whether a wind energy developer may receive county tax abatements on wind turbines placed on leased land.

A request may emerge to replenish the \$750,000 taken out of the Oil Field Cleanup Fund, an account normally used to plug abandoned wells and remediate contaminated drilling sites. Earlier this year, the Texas Railroad Commission, facing a backlog of well

permitting requests and an expansion of drilling, voted to use funds from this account to hire more people and provide overtime pay to process permits and oversee activity in oil and gas fields.

Electricity. Residential and commercial energy costs may receive scrutiny. Legislators may consider the effect on consumers, workers, and the utility industry from the full implementation of electric deregulation in 2007 and the events of the summer — including electric price spikes that forced five retail electric providers to leave the market and the aftermath of Hurricane Ike. Some may propose more consumer protections and changes in the way electric rates are established, including rate caps. Others may move to repeal electric deregulation altogether. Lawmakers may propose more stringent qualifications for a retail electric provider to enter the market and may scrutinize the provider-of-last-resort system set in place to protect residential customers in the event their electric provider goes out of business. Legislators may consider whether the state should implement a complete roll-out of advanced metering systems by transmission and distribution utilities. Advanced meter systems can automatically and remotely read, monitor, and control meters and may provide information about energy use to help manage costs. Some lawmakers may propose fully funding electric discounts and weatherization programs for low-income Texans under initiatives funded through the System Benefit Fund.

Air quality. Although recent changes to the State Implementation Plan (SIP) have brought Texas closer to federal Environmental Protection Agency (EPA) requirements, pending federal carbon regulation and the recent tightening of federal air quality standards may bring scrutiny to Texas' air permitting process. Some lawmakers may propose streamlining the permitting process to ensure that business and industry can comply with environmental laws while minimizing expensive procedural delays. Others may advocate a permitting process that considers the cumulative impact of air pollution sources. Lawmakers may examine carbon sequestration of coal plants and debate the development of clear sequestration rules, authority, and permitting limits on CO₂ for new plants.

Recent tightening of federal air quality standards from 85-parts-per-billion (ppb) to 75-ppb will change the status of several urban areas from attainment to

nonattainment. The Texas Commission on Environmental Quality (TCEQ) may request more funding and staff to deal with the increase in the number of counties with non-attainment status. To ensure compliance with federal clean air standards, lawmakers likely will follow up on the implementation of the Texas Emissions Reduction Program (TERP) and Low-Income Vehicle Repair, Retrofit, and Accelerated Vehicle Replacement Program (LIRAP). Lawmakers may seek to continue and expand the Clean School Bus Program, a component of TERP, which was funded for the first time by the 80th Legislature.

Debate could emerge on implementing a low-emission vehicle program consistent with the California program, which has stricter regulations than the national standard. Some lawmakers may propose a formal process for air toxins, also known as hazardous air pollutants, that is similar to the standards for ozone and particulate matter from diesel. Currently, there is no national standard for air toxins, such as benzene and styrene, which have been detected in the ship channel area of Houston. Others may propose an expansion of TCEQ's regulatory tools to include an emissions cap for benzene and other known toxins. Discussion is likely on current guidelines for developing "effects screening levels" for air contaminants — that is, concentration levels for specific chemicals below which no adverse human health effects would be expected to occur — and whether the standards contained in the guidelines should be enforceable.

Proposals may seek to restrict a city's ability to regulate air pollution outside its jurisdiction. Another proposal could require the TCEQ to prepare a report listing strategies for combating greenhouse gas emissions, while others may propose establishing a statewide greenhouse gas emissions limit.

Water. Recommendations from the Joint Committee on State Water Funding may receive attention regarding a funding mechanism to meet water infrastructure needs. Other topics to be considered may include financial assistance programs, such as the water infrastructure fund and the state participation fund, for projects identified in the State Water Plan and the economically distressed areas program. Lawmakers may consider protections for some newly designated reservoir sites to increase the state's supply of surface water and may consider

proposals to support desalination and other water development projects across the state.

More resources for the TCEQ may be considered, along with authority to regulate dams. The Legislature may consider recommendations from the Environmental Flows Advisory Committee explicitly to integrate environmental needs for surface water and bays and estuaries into the state's water rights allocation system. Recommendations from the interim Water Conservation Advisory Council on funding expanded water conservation strategies, including a public awareness campaign, may be considered, as well as improving municipal water conservation planning. Lawmakers also may re-examine the ability of existing groundwater districts to effectively manage aquifer levels and the groundwater resources under their jurisdictions. They may revisit the debate on whether groundwater is a vested property right. The nexus between water and energy is likely to be considered as incentives may be proposed to promote technologies that more efficiently use water and energy resources, without one draining the other. Legislators also may address whether the Bexar Metropolitan Water District should be subject to conservatorship, receivership, or the divestiture of assets.

Parks. The Texas Parks and Wildlife Department (TPWD) will be under Sunset review. Lawmakers may seek to ensure the continued independence of TPWD's internal affairs office when investigating crimes committed on TPWD property or related to the duties of TPWD employees. The Texas Parks and Wildlife Commission may be authorized to join the Interstate Wildlife Violator Compact to enforce hunting and fishing laws involving non-residents. The TPWD may be required to create a list of aquatic plants that may be imported and possessed within Texas without a permit. The Legislature may examine the mechanics of state parks funding for TPWD during the budget process. Some may propose that all revenue from the existing tax on sporting goods sales be dedicated to state parks and historic sites and appropriated for that purpose. Others may propose a permanent stream of funding for the parks system.

Omnibus grave protection legislation is likely to emerge during the 81st Legislature. This proposal would be in response to a disturbance of graves at the Texas Ranger Hall of Fame and Museum in Waco that resulted

from unclear and conflicting laws on cemetery protection and relocation.

Agriculture. The Texas Department of Agriculture (TDA) will undergo Sunset review, along with the Texas Boll Weevil Eradication Foundation, the Texas-Israel Exchange Fund Board, and the Prescribed Burning Board.

The Texas Agriculture Finance Authority, which was created to provide financial assistance to borrowers in the agriculture industry, may be restructured to reduce its previous high rate of defaults. Proposals may be made for TDA to issue formal rules to administer and enforce the Texas Public School Nutrition Policy, which establishes requirements for public schools participating in the National School Lunch Program to improve the nutritional value of school lunches.

Legislators may consider giving the Texas Boll Weevil Eradication Foundation more statutory flexibility for collecting and using grower fees, which subsidize maintenance and eradication efforts.

The Sunset Advisory Commission has recommended abolishing the Texas-Israel Exchange Fund Board, giving TDA the discretion to seek funding for cooperative binational agricultural research.

Lawmakers may propose regulating certified prescribed burn managers to ensure that those who conduct prescribed burns in Texas have the training, experience, and financial responsibility to protect the interests of the landowners. Prescribed burning controls vegetation that can contribute to wildfires and can help maintain or restore ecosystems. Others may propose liability protection for landowners who perform prescribed burns and for county commissioners who approve burns during burn ban periods. Another proposal would create a statewide oversight position for prescribed burning and a program to inform the public on the importance of using fire to prevent fires and to aid wildlife.

Financial institutions

Loans and credit. Lawmakers may continue efforts to restrict predatory lending practices, including by the “payday loan” industry, in which borrowers use

their paychecks as collateral for short-term, high-interest cash loans. Lawmakers may consider instituting data reporting requirements for payday lenders to make their business practices more transparent. Proposals also may emerge to enhance disclosure requirements for all credit products.

Mortgages and foreclosures. Lawmakers may consider requiring more consumer and financing information be provided to prospective home buyers and providing more counseling opportunities for consumers to understand the mortgage products they are considering.

The Legislature may consider providing more tools to help Texas homeowners understand the foreclosure process and the resources available to help them. Lawmakers may require mortgage lenders to undertake more extensive efforts to contact homeowners before filing for foreclosure and to provide homeowners with more time to resolve a default on a mortgage before foreclosure on the property. Lawmakers also may consider providing former homeowners more time to vacate a property after the foreclosure date.

Credit Union Commission Sunset review. The Credit Union Commission will undergo Sunset review this session. The Legislature may address the commission’s enforcement authority and potential requirements for credit unions to make information available to members about their financial status and management.

Motor vehicle financing. Lawmakers may discuss enhancing disclosure of negative equity and the true value of a trade-in vehicle in automobile financing contracts. Proposals also may address limiting the practice among vehicle sellers of conditional delivery — allowing consumers to take possession of a vehicle before completing the financing process.

Prepaid funeral benefits. Lawmakers may consider proposals to enhance disclosure requirements for pre-paid funeral benefits so consumers understand the true value of the services for which they are paying.

Government organization

Pensions and Investments. The Legislature may consider proposals to revoke or limit expanded authority

granted to the Employees Retirement System (ERS) and the Teacher Retirement System (TRS) by the 80th Legislature to pursue alternative investment strategies. Lawmakers also likely will debate whether to allow state pension funds to invest in state projects such as transportation.

Proposals may emerge to allow public employees to establish health savings accounts in lieu of health benefits. Lawmakers also may debate pre-funding TRS and ERS retiree health benefits or requiring retirement systems to begin setting aside money to fund expected future liabilities. Establishing a state trust to which municipalities, cities, and the state could contribute to pre-fund retiree health benefits also may be proposed.

Some proposals may seek to provide a cost-of-living pension increase to TRS or ERS retirees.

Proposals may emerge to change qualifications and procedures for selecting members of the TRS board of trustees, such as by increasing the number of members that are retirees or active employees or electing some trustees by a vote of active members. Proposals may seek to strengthen the laws on the ethical standards imposed upon the fiduciary counsels and members of the board of trustees for TRS and ERS and the qualifications of fiduciary counsel. Other proposals might seek to include additional law enforcement officers employed by the state in the Law Enforcement and Custodial Officers Supplemental Retirement Fund, such as officers employed by institutions of higher education or by the attorney general.

Lawmakers also may discuss proposals to overhaul the Texas Municipal Retirement System to allow the system to credit unrealized gains and losses to the cities and to guarantee a set annual interest rate and annuity purchase rate for members' accounts.

Campaign finance and ethics. Legislators may consider proposals to amend campaign finance laws to clarify when a political committee may use corporate funds to pay for administrative expenses. Lawmakers may seek to establish a statewide filing initiative, which would allow local governments — including municipalities, counties, and school districts — to use Ethics Commission software and hardware to file required reports online. Another issue that may surface is whether blogs or e-mails should be included in the

definition of political advertising and if so, whether disclosure statements should be required as with other types of political advertising. Lawmakers also may consider setting limits on political contributions and expenditures.

Elections. Proposals may emerge to require proof of U.S. citizenship when registering to vote. Legislators also may consider requiring all voters to present a government-issued photo identification at the polling place before being permitted to vote. Another possible issue is establishing same-day voter registration at the polls. Some legislators may propose moving the May uniform election day back one week from its current second Saturday in May. Abolishing straight-ticket voting also may be considered. Another proposal would criminalize deceptive election practices, such as deliberately notifying voters of the wrong election date or polling place.

Some lawmakers may propose establishing permanent mail-in ballot registration status for certain disabled and elderly voters. Currently, voters who wish to vote by mail must obtain mail-in ballot applications for every election. Legislators also may consider amending election restrictions for individuals witnessing an application for a mail-in ballot. An individual now may assist only one voter with a disability by witnessing that person's mail-in ballot application, and exceptions to criminal liability for assisting more than one person apply to early voting clerks, deputy early voting clerks, and family members. One proposal would be to expand the exemptions to include individuals, such as vocational nurses and social workers, working in their professional capacity to provide services to individuals with disabilities.

Redistricting. Legislators may debate changes to the current redistricting process, including appointing a bi-partisan commission to draw up new congressional and legislative redistricting plans after the decennial census and altering the requirements for how districts could be drawn, such as prohibiting consideration of incumbency or seniority in drawing districts or requiring that city or county boundaries be respected.

Eminent domain. A number of proposals could seek to amend aspects of eminent domain law in Texas, with several derived from HB 2006 by Woolley, enacted in 2007, but vetoed by the governor.

Among these proposals may be a reconsideration of how to assess compensation owed to a property owner facing condemnation. At the core of this discussion is what special commissioners may consider when valuing property and whether this should include diminished access to highways and impact on the value of land that remains after adjoining segments are acquired through condemnation. Legislators also could debate what constitutes a legitimate or permissible public use, the permitted uses of eminent domain by local governments for blighted properties, and whether certain entities should be required to conduct feasibility studies on alternative development scenarios before taking land.

Another theme that could resurface is whether owners whose land is taken through eminent domain should have the right to repurchase if the public use is cancelled and what price the previous owner should have to pay to reclaim the land. Lawmakers also could reconsider due diligence requirements imposed on condemning entities to make good faith offers to property owners upfront and to provide any requested documents relating to the subject property.

Local zoning and regulatory powers. In addition to eminent domain, lawmakers may consider other aspects of the relationship between private property owners and public entities. Such proposals could include revising municipal powers of annexation, such as modifying local government's ability to fast track small-scale annexations and possibly requiring local entities to hold elections prior to annexing new areas into their jurisdiction. Lawmakers also could modify existing laws to extend the scope of the Private Real Property Rights Preservation Act by requiring municipalities to compensate private property owners when the municipalities enact regulations that demonstrably reduce the value of the owner's land.

Electronic Documents. Proposals may seek to set uniform standards on state agency use of open source software to ensure all documents created and archived by state agencies are accessible in the future. Lawmakers also may consider establishing interoperability standards to make sure operating systems and software do not inhibit the readability of documents shared between agencies or with the public.

Office of State-Federal Relations. The Office of State-Federal Relations again will be under Sunset review

during the 2009 regular session after the Legislature could not agree on changes to the office during the 2007 session. The Sunset Advisory Commission staff has recommended that the office be eliminated as a separate state agency and be placed under the Governor's Office. It also recommended that the office establish clear guidelines for any contracts it may make with federal-level lobbying consultants and that it collect and report on all federal lobbying contracts and subcontracts made by Texas state agencies and local governments.

Family law

Marriage and divorce. Some proposals may involve eliminating no-fault divorce, while others may involve creating "covenant marriages," in which a couple would voluntarily limit the circumstances under which they may divorce. Lawmakers also may consider extending the 60-day waiting period to grant a divorce to as long as two years.

Legislators may review how property and financial assets are divided between parties in a divorce and also may debate certain rights of custodial and non-custodial parents, such as the ability of a custodial parent to move from the same city as the non-custodial parent without the non-custodial parent's consent.

Child support. Legislators may consider increasing flexibility in laws that govern the establishment and disestablishment of paternity. Proposals may include eliminating the validity of a voluntary, signed acknowledgment of paternity without DNA testing. Some may seek to require that when authorities serve an individual being sued to establish paternity that they do so in person or a default judgment establishing paternity would not be valid. Lawmakers also may consider whether to extend or eliminate the four-year statute of limitations on challenging paternity in marital relationships.

Judiciary

Court reorganization and administration. Legislators may consider reorganizing the Texas court system with a goal of achieving greater efficiency, including making the subject matter jurisdictions of district courts and county courts at law more similar.

The Legislature also may consider proposals to abolish separate jurisdiction for small claims courts within Justice of the Peace courts. Legislators may consider authorizing the Texas Supreme Court to promulgate rules for small claims courts and increasing Supreme Court oversight of presiding judges in administrative judicial regions. Additional grant funds for court improvements and backlog reduction also may be considered.

Shield law. The Legislature may consider a shield law protecting journalists from having to reveal confidential sources in certain criminal investigations or prosecutions.

Hurricane Ike recovery

The Legislature is likely to address a variety of issues related to recovery from Hurricane Ike, as well as proposals related to preventing or minimizing damages from future disasters.

Electricity. Lawmakers likely will discuss reconstruction costs resulting from Hurricane Ike, including mobilization, staging, construction and reconstruction, and replacement or repair of electric generation facilities. The 79th Legislature in 2006 enacted HB 163 in its third called session, allowing Entergy to recover Hurricane Rita costs through a surcharge on residential electric bills, and a similar proposal may be made allowing Entergy to recover storm costs incurred from Hurricane Ike.

Lawmakers may consider whether to implement “hardening” techniques, such as burying electrical lines to avoid another power disaster in the future or implementing a regular pole inspection system and more vegetation trimming to reduce the number of outages and the time it takes to restore power.

Requiring retail water and utility services to maintain auxiliary generators for use during extended power outages may be considered, as well as whether tax breaks should be provided for gas stations, pharmacies, and retail stores to buy back-up generators.

Texas Windstorm Insurance Association.

Lawmakers may debate new funding mechanisms for the Texas Windstorm Insurance Association (TWIA). After exhausting other funding sources to pay claims, TWIA

made an assessment of \$430 million to Texas property insurers for excess losses associated with Hurricane Ike. Insurers may receive \$230 million in premium tax credits associated with this assessment, which will diminish general revenue collections. An assessment of \$100 million already had been made this year for damages caused by Hurricane Dolly in South Texas.

Coastal erosion. Lawmakers may face issues related to coastal erosion caused by Hurricane Ike, including providing the General Land Office (GLO) with broader authority, resources, and flexibility to deal with the devastation. The Texas Open Beaches Act, meant to ensure that Texas beaches are open to the public, may come under scrutiny as shifting beach boundaries have placed private structures on the public beach. A proposal may emerge to use some of the funds from the sporting goods tax to clean up beaches. According to the GLO, the cost of replenishing beaches is roughly \$2 million per mile. The Texas Parks and Wildlife Department also may seek funding for planning and restoration of two coastal state parks whose facilities were destroyed in the storm. Coastal counties damaged by Hurricane Ike could receive publicity funds to promote tourism.

Criminal justice. TDCJ has requested funds to pay for damages and expenses related to Hurricane Ike. Preliminary estimates put the damage at \$18 million, which includes \$2 million for facilities repair, \$4 million for overtime, \$3 million for fuel, \$8 million for offsite hospital care, and \$1 million for equipment, such as portable restrooms and generators.

University of Texas Medical Branch at Galveston. According to early estimates, the University of Texas Medical Branch at Galveston (UTMB) suffered nearly \$710 million in damages and lost revenue from Hurricane Ike. UTMB officials have indicated that about 3,000 people are expected to lose their jobs. In deliberating on whether or not to restore UTMB health services to pre-hurricane conditions, lawmakers may consider creating a public hospital district in Galveston County to help pay for health care, especially indigent health care. Funding for the hospital district could come from a sales tax or through property taxes.

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