Issues Facing the 85th Texas Legislature

January 2017
The following information is intended to serve as a reference guide to issues facing the 85th Texas 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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Elderly Financial Abuse

Elderly financial abuse is an illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly or disabled person in which the resources of the elderly or disabled person are used for monetary or personal benefit, profit, or gain, without informed consent. One in five Americans aged 65 or older has been victimized by financial fraud, and the financial loss due to such exploitation is estimated to be $2.9 billion annually. This population, which will rapidly grow in Texas over the next several decades, is at risk for financial abuse due to age, potential cognitive decline, and high net worth.

Adult Protective Services (APS), a division of the Department of Family and Protective Services of the State of Texas, protects older adults and people with disabilities from abuse, neglect, and exploitation. APS can protect victims of financial exploitation by educating families and victims, by collaborating with financial institutions to protect the victim’s funds, by arranging or making referrals for money management or payee services, and by providing emergency referral for guardianship to protect rapidly diminishing assets, among others. Due to the constraints of the current definition of “exploitation,” APS cannot investigate scams or issues involving contracts, or cases when the alleged perpetrator and victim do not have an ongoing, established relationship, but APS can investigate potential abuse when the alleged perpetrator is a caregiver, family member, or known acquaintance. Additionally, a time gap exists between the filing of an abuse report and when a governmental agency or an elderly person’s family member takes action to prevent further abuse from occurring or to seek the return of the elderly person’s funds from the culprit.

Protecting the financial assets of a senior citizen is nuanced, especially in response to potential abuse. A balance needs to be struck between protecting senior citizen funds and protecting the right for an elderly person to freely use their assets. Possible ways to further protect the elderly include providing “broker-dealers,” individuals who work for financial companies or banks and monitor transactions to prevent abuse or fraud, with reporting pathways that would allow them to report suspicious transactions to designated state entities without fear of liability; allowing broker-dealers to contact a client’s close family members when there is a good-faith concern about exploitation, fraud, or cognitive decline without fear of liability; allowing broker-dealers to place a temporary hold on suspicious transactions or disbursements without fear of liability; allowing APS to investigate alleged abuses that result from scams; and allowing broker-dealers to permanently stop a suspicious transaction once it has been determined to be exploitative or fraudulent. Developing collaborative initiatives, such as the Elder Financial Safety
Center in Dallas, which brings together key players—including probate courts and the district attorney’s office—and such state-level efforts as the Elder Abuse Task Force that was recently created by the South Dakota Legislature, can be considered to further protect the elderly.

The 85th Texas Legislature may consider legislation that further protects individuals from elderly financial abuse by examining the definition of “elderly financial abuse” and by increasing the reporting of abuse.
AGRICULTURE, WATER, AND RURAL AFFAIRS

Agricultural Crop Liens

Prior to the passage of S.B. 1339 (relating to the perfection and priority of an agricultural lien on an agricultural crop), 84th Legislature, Regular Session, 2015, farmers had little recourse to recover money owed to them for crops in instances of bankruptcy or foreclosure, according to testimony provided during an interim committee hearing. S.B. 1339 created the automatic attachment of an agricultural lien on the date on which the agricultural crop is delivered by the producer to the contract purchaser and, if certain conditions are met, ensures that the lien is perfected upon attachment. Additionally, the bill grants the perfected lien priority over a conflicting security interest in, or lien on, the agricultural crop or the proceeds from the sale of the crop.

Witnesses at an interim hearing expressed concern that current law does not protect producers who store crops in open-storage facilities or in warehouses (while holding a warehouse receipt) were a facility to undergo bankruptcy, and have proposed that the committee consider ensuring the farmer’s ability to repossess grain from storage or receive payment in the event of a facility’s insolvency. Witnesses have also proposed that, because agricultural liens are unavailable for grain held in open storage, increasing the minimum bond for a licensed and bonded warehouse facility that is used to make up for any shortfall in the proceeds of a Texas Department of Agriculture liquidation would guarantee that farmers are provided proper compensation for their crops.

The 85th Texas Legislature may consider legislation to further protect producers of crops in the event of bankruptcy or foreclosure.

Chronic Wasting Disease Testing

Texas currently has the largest number of deer, dove, and duck hunters in the nation. The Real Estate Center at Texas A&M University has documented that the primary motivation for many prospective Texas landowners is their interest in hunting and wildlife. The Texas Department of Agriculture estimates that the state receives a $4.5 billion economic impact from hunting, of which $2.2 billion is from white-tailed deer hunting alone, as over 700,000 deer hunters seek white-tailed buck.

Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy affecting farmed and free-range deer, elk, and moose in North America. This progressive, fatal, degenerative neurological disease has no known cure or vaccine. At present, 21 states have found CWD in captive and free-range deer. CWD can be transmitted to other deer through saliva and urine, which may contaminate the environment for an unknown
duration. As a result, the Texas Parks and Wildlife Department isolates and quarantines infected animals to minimize the spread of disease. In an effort to address the incubation period, which could last five years, the Texas Animal Health Commission (TAHC) has created a program to trace deer in and out of facilities across Texas.

In an interim committee hearing, TAHC stated that all herds of deer in Texas are currently under surveillance. Herds associated with infected deer are placed in a tiered structure based on risk of infection and are tested periodically. During the same hearing, stakeholders expressed concern over the cost-burden of testing and stated that the required testing rule is an unfair burden on facility owners because it reduces their numbers of livestock.

The 85th Texas Legislature may consider legislation to allocate funds for chronic wasting disease testing and address issues that arise from the testing process.

**Groundwater Conservation Districts**

In Texas, groundwater is governed primarily by the “rule of capture,” which allows a landowner to pump and capture any available water. Much of the groundwater in the state is monitored by groundwater conservation districts (GCDs) within groundwater management areas (GMAs). This is because groundwater provides roughly 60 percent of the 16.1 million acre-feet of water used in Texas and must be monitored to ensure that future resources are available in times of drought. In many parts of the state, more groundwater is being used than is being replenished through natural means.

GCDs, the first of which were created in 1949, are responsible for conserving and protecting groundwater resources in the state through management plans. In 1997, the state identified GCDs as the preferred method of groundwater management. GCDs perform a unique function in that they protect both the rights of landowners and the resource. Although GCDs exist throughout the state to protect aquifers, their political boundaries do not necessarily align with aquifers’ natural boundaries. As a result, aquifers are often managed by more than one GCD and may be overseen by only a single GMA.

GCD rules may require well spacing and permitting, limits on annual production, and allowable water table drawdown regulations, so GCDs that collectively manage one aquifer must plan with other districts within their GMA. When determining how much water may be appropriated from underground resources, GMAs determine the desired future conditions of the groundwater resource with respect to water levels, spring flows, or volumes at specified times. These desired future conditions must be physically possible and consider all other groundwater resources within the area so that the “groundwater availability model” is accurate and may be included in the “modeled available groundwater.” The modeled available groundwater is used in the state’s regional water planning processes as the reference by which water in the state is permitted within a GMA.
Proponents of restructuring groundwater management in Texas have stated that GCDs appear to implement permitting measures that rely on reverse-engineered desired future conditions designed to protect certain users or special interests, overreach into specific operations of permitting applications, and misrepresent or misapply science, thus producing a regulation-induced shortage of groundwater. Such proponents say that the current “hydro-political gridlock” may be resolved by managing groundwater within an aquifer’s natural boundaries, instead of by political subdivisions, and by using impartial regulations based on uniform rules.

Opponents of restructuring maintain that local control is necessary to address local issues and protect local interests. Opponents explain that the informal network among GCDs within a single GMA is sufficient for addressing any issue that may arise regarding desired future conditions or permitting.

The 85th Texas Legislature may consider legislation regarding the restructuring of groundwater management in Texas.

Litter
In 1986, the Texas Department of Transportation launched the iconic “Don’t Mess With Texas” campaign to reduce litter, specifically on Texas highways. Despite the campaign’s success, windblown and waterborne litter still present problems for beaches, property owners, public roads, and waterways across Texas. In an interim committee hearing, a witness indicated that unintentional littering is the main concern for Texans. The witness added that litter has been thought to increase incidences of petty crime and to have a negative economic impact on commerce, development, government, recreation, and tourism.

Witnesses at the hearing stated that litter abatement could occur in many ways:

- changes in single-use packaging;
- a reduction of single-use shopping bags;
- legislation that encourages litter cleanup, such as recycling programs offering refunds;
- partnerships between local governments and businesses to address the issue;
- enforcement of glass restrictions in and along rivers; and
- deposit-based systems for river floaters, which would only return deposits to customers who bring back the same number of bottles or cans with which they began the float.

The 85th Texas Legislature may consider legislation to address windblown and waterborne litter.
State Water Implementation Fund for Texas

The State Water Implementation Fund for Texas (SWIFT) program helps communities develop and optimize water supplies at cost-effective rates. SWIFT provides low-interest loans, extended repayment terms, deferred loan repayments, and incremental repurchasing terms for projects with state-ownership aspects. Any political subdivision of the state with a project included in an adopted regional water plan and that will be included in the state’s water plan can apply for assistance through SWIFT, including nonprofit water supply corporations, municipalities, counties, and river authorities.

SWIFT funds are collateralized, but not dedicated, because they are designed to be transferred through bond-enhancement agreements. Federal tax laws and state laws affect how SWIFT can be accessed. For example, SWIFT is constrained when issuing tax-exempt bonds because money that is set aside to pay debt services cannot be invested at a yield greater than the yield of the bonds. Since SWIFT is intended to be perpetual, both short-term and long-term strategies are considered.

During an interim committee hearing, witnesses noted that the Texas Water Development Board (TWDB) needs to do whatever it can to recruit rural projects. Additional testimony stated that there have to be ways for certain organizations that do not have a steady revenue source, such as irrigation districts, to participate in the SWIFT program. TWDB says that new water resources need to be incentivized and that funding is key for such a development. Authorities say that SWIFT would benefit from being used as a resource for the expansion of the cost in water plans.

The 85th Texas Legislature may consider legislation to develop funding solutions for the State Water Implementation Fund for Texas and the Texas Water Development Board so that organizations, such as irrigation districts, can easily be a part of future plans.

Surface Water

In Texas, water rights permitting is dependent on whether the water being considered is surface water or groundwater. Surface water is defined by Section 11.021 (State Water) of the Water Code as “water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state.” This means that all water that has entered a watercourse of any kind belongs to the state.

In the permitting of surface water rights, the water right (or the right to impound, divert, or use state water) does not transfer ownership of the water from the state to the right holder; it is simply a usufructuary right. This is because water in Texas is held in trust for its citizens.
Seniority of Surface Water Rights

Surface water in Texas is owned by the state, which grants rights to people, cities, industries, businesses, and other public and private interests. Texas has two types of appropriated water rights—perpetual rights, which are true property interests and may be bought, sold, or leased; and limited-term rights, which are not property interests and are basically surface water permits obtained from the Texas Commission on Environmental Quality. Perpetual rights take priority over limited-term rights.

When surface water is permitted, established water rights retain their priority ranking through priority dates that indicate the seniority of one water right over another. Essentially, the older a water right is, the sooner the right holder may obtain water. The purpose of water rights prioritization is to guarantee that senior rights holders receive their due amount of water in times of drought and water shortages.

One unintentional result of the prioritization of water rights permitting is that when a water right is sold or transferred between basins, its priority date is changed, thereby making it a junior water right in comparison to more senior water rights. Witnesses in an interim committee hearing testified in favor of eliminating the junior water rights provision in the subsection(s) of Section 11.085 (Interbasin Transfers), Water Code, because it inhibits the utilization rights of investors, particularly in areas of low flow where the return of water is not guaranteed. Opponents to the removal of the junior rights provision state that it should not be the first course of action.

The 85th Texas Legislature may consider legislation regarding the junior water rights provision.

Update of the Water Availability Model

During the drought of 1996, then-Governor Bush questioned how much water was available for use and did not find an appropriate answer. Subsequently in 1997, S.B. 1, 75th Legislature, Regular Session, was passed to regionalize water planning in Texas and establish a surface water availability model (WAM), which would inform each permit holder of their reliability of withdrawal during drought conditions. The current WAM includes the droughts of the 1950s and 1960s as the worst within the period of record.

Current concern from the Texas Water Conservation Association (TWCA) is that WAM has not been updated to include the most recent droughts of record and instead relies on droughts of record from the 1950s and 1960s, which could produce an overestimate of the yield. TWCA believes it is important that the hydrologic database, which WAM relies on for modeling, be updated to include the 2011 drought. The extension of the hydrologic database could cost nearly $8 million, which would include some allocation for the Texas Commission on Environmental Quality to administer the extension, provide funds for contractors, and conduct peer reviews to ensure that the data collection is conducted properly.
The 85th Texas Legislature may consider legislation to allocate funds for updating and extending the water availability model.
Duties of the Department of Public Safety Relating to Border Security

H.B. 11, as passed during the 84th Legislature, Regular Session, 2015, contained provisions relating to the powers and duties of the Department of Public Safety of the State of Texas (DPS), military and law enforcement training, and the investigation, prosecution, punishment, and prevention of certain offenses; created an offense and increased a criminal penalty; and authorized fees. With the passage of the bill, $800 million was dedicated to DPS to secure the Texas-Mexico border.

Officials state that cartels operating along the border present a threat not just to the state, but to the country as a whole. Because of this, DPS provides direct assistance to the United States Customs and Border Protection to deter, detect, and interdict smuggling along the border and has been able to work effectively with border patrol agents.

DPS uses a variety of measures to acquire troops for border security, including focusing recruitment on veterans because of their training and leadership. DPS also uses a rotational program in which troopers throughout the state are brought to border areas to serve for a specific period of time before being relieved. Some argue this rotation creates problems by weakening the counties from which the troopers are drawn and by separating families for a length of time. The 84th Legislature has allocated funding to DPS to provide 250 specially trained troopers to patrol the border.

Testimony given during an interim committee hearing expressed concern that DPS and local sheriff’s offices do not have much interaction, which has led to the latter feeling underrepresented in regard to border operations and to an occasional lack of trust between DPS and local sheriff’s offices. Additionally, although grant funds have been received from the Office of the Governor of the State of Texas for border programs, proponents state that local funding must also be used.

State legislators argue that the state has had to take on a large burden of responsibility because the federal government has not shown a significant interest in border issues. State legislators state that the federal government will not become involved in a criminal case until a certain threshold is passed, such as the amount of drugs being smuggled.

H.B. 11 also provided for the creation of an intelligence center. Officially known as the Texas Transnational Intelligence Center (TTIC) and jointly operated by the Hidalgo County Sheriff’s Office and the McAllen Police Department, it is designed to target border crime more efficiently. TTIC will be locally controlled and require the cooperation of agencies along the border. Opponents of TTIC state that several law
enforcement agencies, such as the El Paso Intelligence Center and the Texas Crime Information Center, already fulfill the role of sharing crime information across state agencies.

The 85th Texas Legislature may consider legislation to clarify and make modifications to how the Department of Public Safety of the State of Texas works with law enforcement agencies to secure the Texas-Mexico border.

**Efforts to Secure the Border**

The Secure Communities program, which operated from 2008 to 2014, was a federal enforcement program administered by the United States Immigration and Customs Enforcement (ICE). Secure Communities worked with preexisting federal information-sharing partnerships to identify and remove illegal immigrants who posed a threat to public safety. Secure Communities was replaced by the United States Department of Homeland Security’s (DHS) Priority Enforcement Program (PEP).

PEP allows DHS to work with state and local law enforcement to detain suspected illegal immigrants who pose a danger to public safety before being released into communities. PEP collects the detainee’s fingerprints, which are submitted to the Federal Bureau of Investigation and ICE for a determination regarding whether the individual is a candidate for deportation. PEP has enabled ICE to identify more criminal immigrants than in the past.

Since nearly half of all immigration-related activities in the United States occur in Texas, border officials say that it is vital that the state consider border security issues. Border officials state that PEP has a narrower focus than Secure Communities, as indicated by the lower number of detainees in 2016 than in 2014. Opponents of PEP say that the program makes it difficult to ensure that undocumented criminal immigrants would be deported. During an interim committee hearing, a witness testified that 900,000 undocumented immigrants are arrested each year and that 700,000 of those arrestees are subsequently released, despite being considered a flight risk, because they had not committed violent crimes. The witness testified that PEP allows state and local governments to establish sanctuary policies.

Proponents of PEP state that undocumented immigrants are less likely than citizens to be involved in criminal activities due to fear of deportation and say that immigrants who are arrested are only released when law enforcement agents determine that doing so is the best course of action. They say that arresting and deporting immigrants without going through the legal process has denied those immigrants the chance to defend their immigration status. Opponents state that immigrants who have been released from ICE detainers are required to be monitored by ICE, but that the increasing rate at which immigrants are being released is too much for ICE to keep track of adequately.
The 85th Texas Legislature may consider legislation addressing the Priority Enforcement Program and the United States Immigration and Customs Enforcement detainers for undocumented immigrants arrested in the state.

**Interstate Compact**

An interstate compact is an agreement between two or more states. In the United States, a compact cannot be entered into without consent from the United States Congress, which can be obtained by establishing a model compact or by seeking the approval of Congress prior to or after the creation of a compact.

A compact is created when an intermediate level of government is needed to address a certain issue. To address border security, Texas could work with other states—such as New Mexico, Louisiana, and Oklahoma—to pool resources and share expenses. However, states do not have to be contiguous to form a compact, and policies can be extended to other states to coordinate and make regulations. Each compact that is created has unique rules that are written into the charter providing for its creation, authority, role, and dissolution.

Historically, compacts have been constitutionally disfavored. According to testimony given during an interim committee hearing, states can only take certain actions, such as imposing tariffs, with the consent of Congress and a compact on border security would require congressional approval. The witness said that regulatory compacts that establish ongoing regulations and that require rulemaking functions and resources have been found to be ineffective and create problems due to the delegation of legislative authority. The witness further testified that a border compact would only be approved by Congress if certain conditions were met and if the compact could be dissolved.

Proponents say that interstate compacts can be useful for large-scale issues by addressing and improving coordination among states. Opponents, however, say that a border security compact could become a third level of government upholding federal immigration law, the responsibility for which is reserved to the federal government, and that creating a compact could be unconstitutional unless the federal government is properly consulted on all issues involving border security.

The 85th Texas Legislature may consider legislation to create an interstate compact on border security upon approval from the federal government.

**Sanctuary Cities**

Sanctuary cities are considered to be municipalities that have established policies prohibiting police officers from enforcing immigration laws or cooperating with federal immigration officials. Chapter 1701 (Law Enforcement Officers), Occupation Code,
states that police officers generally cannot arrest a person without probable cause of a crime and that immigration violations are seen as a civil, rather than a criminal, matter.

During the 84th Legislature, S.B. 185 (relating to the enforcement of state and federal laws governing immigration by certain governmental entities), Regular Session, 2015, was introduced to ban sanctuary city policies in Texas. The bill failed to pass. Proponents of the bill say that local police departments and municipalities that do not cooperate with the United States Immigration and Customs Enforcement (ICE) run the risk of losing state grant funds, which could result in the loss of important programs.

There is currently not a clear, legal definition of the term “sanctuary city,” which has hindered lawmakers’ efforts to establish policies to address sanctuary cities. During an interim committee hearing, a state official testified that although a clear definition is lacking, sanctuary cities are cities that have policies, either formal or informal, that prohibit local officials from inquiring about immigration status.

ICE officials state that undocumented criminals constitute one of the greatest threats to the state and that women and young children are often lured into the United States and then compelled into illegal activities. Formerly, ICE officials could place a detainer on an individual if there was a reasonable suspicion that the individual was in the United States illegally so that local law enforcement could commence an investigation on the detainee. Now, as a result of federal policy, local law enforcement agencies are no longer required to conduct such investigations. If ICE does not take custody of the individual in question, the local law enforcement agency could release that individual into the general population. Opponents of detainers argue that local law agencies should not be required to act as immigration officers because they lack appropriate training.

The 85th Texas Legislature may consider legislation to define “sanctuary city” and to determine how Texas can partner with federal agencies to address sanctuary policies.
Budgeting Format

The budget for the State of Texas provides transparency to taxpayers and directs state agencies on how to use funding. The current budgeting format used by the State of Texas began in 1991 as part of a statewide strategic planning and performance-based budgeting initiative. Prior to this change, state agency bill patterns varied in their levels of detail from high-level programmatic costs to itemized, specific expenditures. The goal of the new format was to change the agency bill pattern from a list of expenditure items to groups or programs organized by how they further the agency's mission, resulting in focusing budgeting decisions on outcomes and accountability rather than compliance with law and the relationship to prior funding levels.

At a high level, the bill pattern contains goals, strategies, and related performance measures and targets. The bill pattern also contains more detailed information, including methods of finance grouped by type of revenue; appropriations as a percentage of total funds available to the agency; number of full-time equivalents; exempt positions and salary caps; object of expense listing; estimated costs for employee benefits and debt services; and capital budget projects, along with their methods of financing. Other states have a tremendous amount of variation in their state budgeting formats, which includes the unit of appropriation, the level of detail on programs, methods of finance, objects of expense, and the inclusion of outcome targets or other performance elements. Three states, including Texas, insert performance measures in the budget bill, 33 other states reference performance measures in supporting budgeting documents, and 16 states note that strategic planning is part of their budgeting process. Stakeholders note that a successful state budget format is related to a specific state's needs and legislative process; that appropriations bills serve different purposes, including serving as a budgeting structure for agencies, a readable source of budgeting information, and a record of public law; and that supplemental budgeting documents are vital to understanding how legislatures in each state craft a budget. Legislators state that it is necessary to weigh the need for supplemental information to be well-informed and transparent and to consider the purpose of the state budget when deciding which method to use in developing the budget.

In addition to the budget, government effectiveness and efficiency reports are intended to address opportunities to better use funding, while incentive programs can be used by state agencies to identify savings.

Certain stakeholders argue that the amount of information in the budget is overwhelming and that a simplified budget would help the average individual understand the
information, especially since the format of the supporting document differs significantly from the final budget and there is no consistent program-level detail. Other stakeholders express concern that state agencies and the legislature do not spend significant time or energy reviewing decisions that form the base budget and recommend that state agencies adopt zero-based budgeting principles.

The 85th Texas Legislature may consider legislation that amends the budgeting format.

Factors Affecting Spending

Economic Stabilization Fund

The economic stabilization fund (ESF), or rainy day fund, is a constitutional fund that was created by the state’s voters in 1988. Whenever collections are sufficient, the fund receives an amount of general revenue (GR) equal to 75 percent of the amount of oil production tax collections in excess of the 1987 levels and 75 percent of the amount of natural gas tax collections in excess of the 1987 levels. A November 2014 constitutional amendment redirected a portion of oil and gas tax revenue to the state highway fund and included a requirement that ESF retain a sufficient fund balance, which was set at $7 billion through the end of the 2016–2017 biennium. 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 ESF at any time and for any purpose by a two-thirds vote of the members present in each house.

Limiting the Growth of Certain Appropriations (Spending Limits)

Article 8, Section 22, Texas Constitution, limits the biennial growth rate of appropriations from state tax revenue not dedicated by the constitution (the base biennium) to the estimated growth rate of the state’s economy. The Legislative Budget Board adopts items of information, which include the estimated growth rate of the Texas economy as measured by personal income; the level of appropriations supported by the base biennium; and the limit on appropriations, or the constitutional spending limit, for the upcoming biennium. The limit on appropriations for the 2018–2019 biennium is determined by multiplying the 2016–2017 base budget by the growth of Texans’ personal income from the 2016–2017 biennium to the 2018–2019 biennium.

The Pay-As-You-Go Limit

Article 3, Section 49a, 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 Texas Tax Relief and Exemptions 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 of Public Accounts of the State of Texas (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.

**State Indebtedness**

Article 3, Section 49-j, Texas Constitution, provides that the maximum annual debt service in any fiscal year on state debt payable from the general revenue (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 the 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.

**Welfare Spending Limit**

Article 3, Section 51-a, 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 (the Temporary Assistance for Needy Families program) shall not exceed one percent of the state budget in any biennium.

**Spending Limits**

The Texas Constitution includes four limitations on state spending: the debt limit, the welfare spending limit, the pay-as-you-go limit, and the limit on the growth of certain appropriations (known as the spending limit).

The debt limit, defined by Article 3, Section 49-j, Texas Constitution, limits the authorization of additional state debt if the resulting annual debt service payable from the unrestricted general revenue (GR) fund exceeds five percent of the average annual GR funds from the prior three years. The welfare spending limit, defined by Article 3, Section 51-a, Texas Constitution, provides that the state funds appropriated for assistance grants on behalf of needy, dependent children and their caretakers shall not exceed one percent of the state budget in any biennium.
The pay-as-you-go limit, defined by Article 3, Section 49a, Texas Constitution, requires that all appropriations be within available revenue in the fund from which the appropriations are made. The Office of the Comptroller of Public Accounts of the State of Texas is constitutionally required to certify whether appropriations are within estimates of available revenue. The term “pay-as-you-go limit” only applies to GR appropriations, which include the beginning balance in GR, collections deposited to GR after transfer is made to the economic stabilization fund (ESF) and the state highway fund (SHF), and consolidated funds composed of unappropriated GR-dedicated account balances. Certain federal, constitutional, and statutory provisions do not count against the limit and neither do certain major funds—such as ESF and SHF.

The state spending limit, defined by Article 8, Section 22, Texas Constitution, limits the growth rate of state tax revenues to the estimated growth rate of the state’s economy. Chapter 316 (Appropriations), Government Code, directs the Legislative Budget Board to establish the current biennium’s level of appropriations, the estimated rate of growth, and the state budget growth limit. The rate of growth is defined as growth in personal income. Only appropriations funded from tax revenue not dedicated by the constitution, such as sales tax, motor vehicle sales tax, franchise tax, and tobacco tax, are subject to the limit. Appropriations that are to be used for a certain purpose, such as motor fuel taxes and 25 percent of oil and natural gas production, and appropriations derived from nontax sources, such as fees, penalties, interest from investments, and lottery proceeds, are not subject to the limit.

The 84th Legislature had approximately $4 billion available for additional appropriations under the pay-as-you-go limit, and the spending limit had approximately $2 billion in room. To use this additional money, the legislature would have had to use complicated method of finance swaps for various appropriations, with many method of finance swaps requiring voter approval.

Legislators contend that the limits were implemented because taxpayers were worried that the state government was growing faster than their ability to pay for the increasing tax burden. Many states have stricter spending limits specific to certain expenditures, appropriations, or funds, meaning that the limited funding is much narrower than the limited funding in Texas. Any tax changes, such as the local property tax cut and the franchise tax cut, that impact the state funding formula could trigger changes to the appropriated amounts and the methods of finance. The legislature may adopt a concurrent resolution to exceed the adopted spending limit, which requires a majority of each chamber.

Certain legislators argue that tax relief should not count against the spending limit since it reduces each taxpayer’s tax burden. However, other observers say that any decrease in state funding that supports local programs, such as educational funding, could result in an offsetting increase in local tax revenue. In the past, changes have been proposed to the spending limit, including altering the base that is subjected to the limit, using a different rate of growth, or making the time frame prospective instead of retrospective.
The 85th Texas Legislature may consider legislation that alters the spending limits.
Balance Billing

Balance billing is the amount a patient pays for health care services that are left unpaid by insurance companies. This amount equals the difference between the billed service amount and the allowed amount (or contracted rate), which is paid by the insurance company.

To work effectively, balance billing requires a level of transparency, which involves creating policy language that is understandable and that discloses the process of reimbursements. Insurers must also provide consumers a notice of consumer rights and of substantial decreases in the availability of facility-based physicians at contracted hospitals. Additionally, insurers must annually provide policyholders detailed notices regarding any inadequacies in their network. The balance billing system also relies on network adequacy, payment standards, and a mediation process to resolve balance billing issues.

A mediation process for balance billing disputes was created in 2009, and the Texas Department of Insurance (TDI) has seen a gradual increase in mediation requests since 2010 as more consumers and providers become aware of the program. In 2015, the dollar threshold was lowered, which allowed mediation for balance bills of more than $500 (not including applicable coinsurance, co-pays, or deductibles). However, stakeholders argue that mediation does not work during instances in which health insurance companies fail to pay a reasonable amount (or an amount equal to the in-network rate) to the providers, which is the majority of balance billing cases, and because providers face no limits in what they can charge, which can result in exorbitant billed charges that force the patient to pay for a large percentage of the services provided. Expanding mediation protection to consumers who receive out-of-network services could reduce balance billing charges.

A lack of network adequacy can lead to high balance billing charges. State law requires insurers to provide adequate networks and authorizes TDI to regulate and penalize certain insurers who fail to provide adequate networks. Many factors contribute to network inadequacy, including isolated geographic regions lacking certain specialists in their networks or hospitals in urban regions refusing to partner with insurers. When network inadequacies exist, insurers offer access plans that allow individuals in a network to receive out-of-network services. While TDI can remove insurers from markets, TDI cannot force insurers or providers to contract with each other.

Freestanding emergency centers, which are exempt from balance billing laws, have requested to join networks but are either frequently dismissed or refuse to join networks that offer reimbursement rates at a fraction of what insurers offer emergency rooms for.
similar services. Furthermore, in-network hospitals may still cause unnecessary costs to patients, as 20 percent to 50 percent of hospitals in Texas lack in-network emergency room doctors for the three largest health plans. These issues result in patients seeing high balance billing charges.

The 85th Texas Legislature may consider legislation that improves network adequacy and protects consumers from significant balance billing charges.

Cybersecurity for Cloud Storage

Cloud storage is a type of data storage in which digital data is stored in servers that are typically owned by a third party. While this allows data to be acquired over the Internet or by other technological means, it creates additional cybersecurity risks for confidential information maintained by state agencies.

The Texas Department of Information Resources (DIR) coordinates statewide cybersecurity efforts for state agencies. Although the state has significantly improved its cybersecurity over the past three years, a push for storing state agency information in a cloud has led DIR to review possible contracting options and their levels of cybersecurity. Various concerns arise when data is moved into cloud storage, including questions on how parties can access data and how it is encrypted, how personal identifiable information is stored and processed, and how data migrates between cloud storage systems.

In 2012, DIR introduced the first public sector instance of a “cloud broker model” with four participating state agencies. After the success of the pilot program, DIR initiated a “solicitation and request” to extend commercial cloud services to all state agencies, institutions of higher education, and local governments by using state-negotiated procurement terms and conditions. The total value of all such contracts as of December 2015 was $3.4 million, and almost half of the 42 customers involved in contracts were state agencies. A second option is DIR’s Data Center Services program, which provides state agencies with a private community cloud built specifically for government users. A third option is a hybrid cloud service, which is a mixture of on-premises information technology (IT) services at the state’s data centers and off-premises IT services using a public cloud for computing and storage. When balancing costs and risks, stakeholders believe that community and hybrid clouds will be the best solutions for state agencies as they balance the security of private clouds for certain functions with the lower cost of public clouds.

The 85th Texas Legislature may consider legislation that addresses cybersecurity concerns and uniformity of cloud storage for confidential information maintained by state agencies.
E-Verify

On December 3, 2014, then-Governor Rick Perry issued an executive order that directed all state agencies to verify the eligibility of current and prospective employees through the federal government’s E-Verify system, which is an online system that compares information from a potential employee’s I-9 Employment Eligibility Verification Form to data from the United States Department of Homeland Security and the Social Security Administration to ensure employment eligibility for all new employees. The E-Verify system is considered by many to be the most accurate and efficient way to check a person’s legal status to work in this country. More than 98 percent of new employees processed in the program are confirmed or denied within 24 hours, and many times they are verified instantly.

Subsequently, S.B. 374, 84th Legislature, Regular Session, 2015, requires any department, commission, board, office, or other agency of any branch of state government, including an institution of higher education, to verify all job candidates’ eligibility to work using E-Verify. The Texas Workforce Commission (TWC) has developed rules and forms, as required by legislation, to assist in the administration of the new law. Notice, registration information, and online forms for E-Verify have been disseminated to state agencies.

While TWC believes that state agencies have quickly adopted the new policy, agencies are currently not required to report to TWC as to whether they are using E-Verify. State agencies do not report any applicants who are rejected by E-Verify because the legislation does not contain such a requirement. While there is no statutory oversight that determines whether state agencies use E-Verify, there are other mechanisms to monitor its implementation, such as standing legislative committees.

The 85th Texas Legislature may consider legislation that improves the oversight of the E-Verify system.

Occupational Licensing

In the 2015 Texas Supreme Court case Patel v. Texas Department of Licensing and Regulation (Patel), a plaintiff challenged whether the state could require eyebrow threaders to obtain a cosmetology license, a process that requires hundreds of hours of training and significant costs. The plaintiff argued that under the constitutional challenge, the State of Texas must establish a real and substantial relationship between the regulations and the public’s health and safety to uphold requiring an occupational license. The court held that the regulations were unconstitutional under the Texas Constitution, as they were unnecessarily harsh and prevented individuals from achieving economic liberty.

Although Texas is known for having a light regulatory environment, many observers say that it rigorously regulates occupations, as one in three citizens in the state needs a license.
to work. To protect economic liberty, stakeholders argue that the Texas Department of Licensing and Regulation (TDLR) should identify substantiated harms that have occurred with consumers before enforcing restrictive regulations. Furthermore, stakeholders argue that occupational licensing should focus on the least-restrictive regulations to limit barriers to entering into certain occupational fields, especially if those occupations have not produced substantiated harm to consumers.

The current practice of requiring certain occupational licenses may violate the Texas Constitution in a similar fashion to Patel. Although TDLR regulates licenses in Texas, only the legislature has the power to determine the extent to which continued state regulation and licensure is required to protect public health and safety, along with the necessity of certain licenses. Alternatives may include state-sanctioned certificates or private-sector regulation.

The 85th Texas Legislature may consider legislation that modifies current licensing practices.

Prompt Pay

In 2003, the Texas Legislature adopted the current Texas Prompt Pay Act to ensure that health plans pay claims correctly and on time to their Texas health care network providers. From 2003 to 2015, the Texas Department of Insurance (TDI) reported that provider complaints decreased by 75 percent while justified complaints decreased by at least 85 percent. Of the total number of complaints reported, less than one-third were confirmed or justified by TDI. In Texas, nearly 99.8 percent of claims are paid on time.

Under the Prompt Pay Act, health plans must pay, deny, or audit electronic “clean claims” within certain time frames depending on how the claim is reported. Texas standards for a clean claim are set out in the Texas Administrative Code. If a clean claim is not paid on time, penalties are assessed for each claim. There are two categories of late-payment penalties: administrative and institutional provider. Health plans that pay their claims late more than two percent of the time are subject to an administrative penalty of up to $1,000 per claim per day. Health plans that make a late claim payment to a provider (physician) or institution (hospital) are assessed for penalties. Provider penalties are entirely paid to the provider, while TDI is paid the interest on the penalty. One-half of an institutional penalty is paid to the institution while the other half, plus interest, is paid to TDI. Penalty amounts are based on two factors: how late a payment is made and the difference between the amount the provider bills (billed charges) and the amount the provider and health plan have agreed upon for the service (contracted rate) of the claim. A billed charge is a unilaterally set fee for a service, not a contracted rate determined by two or more parties.

Stakeholders have expressed concern that Texas’s prompt pay penalties are punitive and result in extensive costs and litigation, due perhaps in part to the penalty amounts being
tied to billed charges, which are set by providers and often have no connection to underlying market prices, costs, geographic region, or quality of care. Interested parties express concern that the use of hospital billed charges for prompt pay penalties creates an inequitable penalty system that rewards the highest-cost providers, incentivizes hospitals to inflate billed charges, and creates substantial costs and litigation for health plans. However, rural hospitals, which often provide lower-cost services that are argued to be less profitable, are more significantly impacted by delayed payments. To collect penalty payments, hospitals hire lawyers and third-party entities. Texas is one of nine states that allows for the recovery of attorney fees, which stakeholders argue may have led to the creation of a small group of specialized attorneys whose primary focus is leading prompt pay lawsuits. Stakeholders state that smaller practices or providers cannot afford to pay for such services.

Texas is the only state that uses billed charges to determine penalty amounts. Interested parties argue that the increased costs and litigation that result from basing penalties on billed charges can be ameliorated by implementing interest-based penalties for institutional providers. Those parties state that, rather than using billed charges, Employee Retirement Income Security Act (ERISA) rates could be used since they accurately reflect market value. Proponents of prompt pay laws argue that the penalty system incentivizes health plans to pay claims in a timely manner and that regulating billed charges is the chief issue.

The 85th Texas Legislature may consider legislation that amends prompt pay laws and how billed charges are set.

Property Tax Loans

Property tax loans, or tax lien transfers, have been used by Texas property owners since 1933 to pay taxes and avoid foreclosures. These transfers enable property owners to enter into a payment plan with a private lender, rather than with the county tax office. The property tax lender obtains the priority tax lien on the property, and the property owner obtains a payment plan. More than 13,000 property owners used this option to manage their property tax liabilities in 2014. Though property tax loans are popular, other financing options exist, including entering into an installment payment agreement with tax assessor-collectors.

Although installment agreements offered by tax offices, particularly on a residence homestead property, typically cost less than obtaining a loan from tax lien transfer companies, which have a higher average interest rate, property owners may not be aware of this option. While tax lien transfers forestall foreclosures, stakeholders raise concerns that the transfers do not benefit homeowners but greatly benefit the tax lien lenders, who can attempt to drain as much equity as possible from properties before placing them in foreclosure.
When a property tax lender advances money to a tax assessor-collector office to cover delinquent taxes, a tax lien is generated that includes the tax amount, the interest on the original amount, and any other penalties or related fees. Property tax lien transfer loans are currently underwritten based on the value of the property and do not include an analysis of the borrower’s ability to repay the loan. Additionally, the loans do not contain disclosures that consumers are given for comparable residential mortgage loans. Current law may impair the property rights and contract rights of mortgage lenders. A property owner who does not timely pay property taxes violates the provisions of any mortgage loan on that property, and a mortgage loan obligates the mortgagor to discharge, not create, any lien that has priority over the mortgage. Furthermore, deeds of trust and security arrangements include standard provisions that require the borrower to pay property taxes that are levied on collateral and that allow another lien, such as a property tax lien, to be imposed on collateral, which typically triggers default.

Stakeholders have offered several improvements to property tax loans, including allowing the property tax loans to be made subordinate to any preexisting mortgage; implementing a “lockout” provision of existing law to permit a mortgage lender to exercise its contractual rights to pay off a property tax lien transfer loan that is prior to the mortgage lien before the property tax lien can be removed; and providing the Texas Office of Consumer Credit Commissioner adequate authority to enforce compliance with laws applicable to property tax lien transfer loans.

The 85th Texas Legislature may consider legislation that reforms property tax loans to further protect consumers.

Weather Damage Insurance Lawsuits

Texas’s unique geographical location increases the occurrence of catastrophic meteorological events and natural disasters, such as hurricanes, tornadoes, wildfires, and hailstorms, that can cause significant property damage.

Over the last few years, various hailstorms have resulted in tens of thousands of claims filed against property and casualty insurers statewide, resulting in mass litigation. In many cases, third-party contractors, adjusters, and attorneys canvass consumers in post-event areas to solicit business or their representation to take legal action on behalf of the policyholder against the insurer. As a result, policyholders may be misinformed, contractors may circumvent statutory and policy guidelines, adjusters may inflate actual damages, and attorneys may apply mass tort models to simple property damage claims, according to testimony given during an interim hearing.

The Texas Department of Insurance (TDI) has collected a large amount of data regarding wind and hail claims and litigation from 2010 to 2015 and is currently reviewing the data. Preliminary results show that claims involving attorneys include higher payments to claimants and higher settlement expenses for insurers; an increase in
the percentage of windstorm and hail claims involving attorneys or lawsuits beginning in 2012; that insurers have been able to consistently make an underwriting profit for homeowner’s insurance in Texas from 2012 to 2015; that deductibles have increased throughout the state, though no clear pattern of deductibles increasing in reaction to litigation on claims from meteorological perils exists; and that seven insurers stated that they have intentionally reduced, limited, or stopped writing policies in Texas as a direct result of increased claims litigation from meteorological perils.

Supporters of meteorological lawsuits argue that without lawsuits pressuring insurers to pay claims, Texans will see their coverage for such damages disappear in a fashion similar to how Gulf Coast residents experienced their loss of private windstorm insurance coverage, resulting in the necessity of a public hailstorm insurance association, similar to the Texas Windstorm Insurance Association. Supporters contend that the increase in lawsuits can be attributed to a 10 percent decrease in claims paid over the last several years.

Opponents argue that many of the lawsuits are nefarious; that many homeowners do not go through the normal process of negotiating adjustments or take advantage of the current legal framework; and that a small segment of roofers, contractors, lawyers, and adjusters skirt around the edges of public adjuster statutes. Some stakeholders argue that the increased number of lawsuits increases deductibles and reduces marketplace options.

The 85th Texas Legislature may consider legislation that amends the current legal framework for meteorological insurance claim lawsuits.
Bullying
According to the National Center for Education Statistics, 28 percent of K–12 students in the United States were bullied during the 2013–2014 school year, making them much more likely to contemplate self-harm and suicide. Almost 11 percent of bullying victims contemplate suicide and 50 percent of those who consider suicide attempt it. Suicide is the third-leading cause of death among adolescents and the second-leading cause of death among college students. Bullying has been shown to increase depression and anxiety in victims, causing them to have lower academic scores and greater incidences of physical health problems.

Bullying, including cyberbullying, can be classified as a crime and thereby subject to punitive sanctions. So far, 20 states have enacted criminal sanctions to address bullying and cyberbullying, and in certain states, the bullying laws specify provisions allowing schools to discipline students in appropriate and measured ways. Except for Montana, every state’s bullying law requires that schools have a formal policy to identify bullying and to discuss the possible formal or informal discipline. Federal case law allows schools to discipline students for off-campus behaviors that result in a substantial disruption of the learning environment in the classroom, and certain states have codified that standard in state statute. No federal statute specifically applies to bullying. In some cases, when bullying is based on race, color, nationality, sex, disability, or religion, bullying overlaps with harassment, which schools are legally obligated to address.

In Texas, bullying is sometimes prosecuted under the state harassment statute. Section 42.07 (Harassment), Penal Code, defines “harassment” as a person committing certain acts with the intent to harass, annoy, alarm, abuse, torment, or embarrass another person. These acts of harassment include initiating obscene communication or alarming another person in writing, by telephone, or by electronic communication. “Electronic communication” is defined as a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, including a communication initiated by e-mail, instant message, network call, facsimile, or pager.

Recommendations to address bullying, particularly cyberbullying, include providing subpoena authority to investigators to allow them to obtain the identity of anonymous social media users who engage in cyberbullying and implementing bullying-prevention programs in schools that aim to identify students who need mental health support and those who have a history of trauma. Some lawmakers have indicated that it may be necessary to update statutes to address specific aspects of cyberbullying.
The 85th Texas Legislature may consider legislation regarding combating bullying in Texas schools with a special emphasis on cyberbullying.

Civil Asset Forfeiture

Civil asset forfeiture occurs when the state not only seizes property but perfects ownership of that real or personal property in the course of a criminal investigation. Chapter 59 (Forfeiture of Contraband), Code of Criminal Procedure, was enacted in 1989 to govern contraband seized by any Texas law enforcement officer. Forfeiture laws in Texas are similar to federal forfeiture laws in that the case proceeds against the seized asset. Therefore, the proceeding is against the asset itself, not the individual, and the matter is resolved through a civil proceeding rather than a criminal trial. For property to be seized, it must be considered contraband, meaning it has to have been used or been intended to be used in the commission of certain felony or misdemeanor offenses. Law enforcement agencies see forfeiture as removing the tools of crime from criminal organizations, depriving wrongdoers of the proceeds of their crimes, recovering property that may be used to compensate victims, and acting as a deterrent. The revenues generated by civil asset forfeitures provide supplemental funding for many law enforcement agencies. A criminal conviction is not required in a civil asset forfeiture proceeding and the burden of proof is preponderance of the evidence, the lowest standard in a civil case.

Law enforcement agencies and district attorney offices also participate in equitable sharing, which occurs when a state or local law enforcement agency partners with a federal entity so that the venue of least resistance to the forfeiture prosecution can be used. While equitable sharing is a useful tool for law enforcement agencies, there is concern as to whether proper protocols are in place to govern the process.

Recommendations intended to reform the civil asset forfeiture process include raising the burden of proof to clear and convincing evidence, the highest standard in a civil trial, and requiring a criminal conviction before assets are forfeited. In addition, while the legislature requires that information regarding asset forfeiture be provided to the Office of the Attorney General, it is provided in an aggregated form that makes it impossible to determine how the proceeds are being spent. Some observers feel that the forfeiture process is being abused, including the proceeds often being used for law enforcement salary increases and equipment purchasing when that funding should be appropriated by that jurisdiction’s local governmental entity. There are concerns about how the funding lost by law enforcement agencies and district attorney offices would be replaced if civil asset forfeiture practices were reformed.

The 85th Texas Legislature may consider legislation regarding civil asset forfeiture laws and reporting requirements in Texas to protect the private property rights of citizens.
Criminal Records Dissemination

Criminal records subject ex-offenders to a wide range of collateral consequences and barriers to successful reentry and reintegration into their communities. Significant growth in the number of employers who require background checks as part of the hiring process has resulted in concurrent growth in the private background-checking industry.

Criminal records in Texas are maintained at the state and local levels while the Department of Public Safety of the State of Texas (DPS) operates the Computerized Criminal History System (CCH), the state’s official criminal record repository. CCH includes criminal history data and records created by numerous governmental and law enforcement entities. The data needed to create a complete criminal history record is also maintained throughout the state by local police and sheriff departments, district and county clerks, and probation departments. Chapter 60 (Criminal History Record System), Code of Criminal Procedure, establishes a flow of information from local law enforcement entities to DPS with periodic updates. CCH was created to regularly provide law enforcement officers and federal agencies with accurate criminal history records and to support operational decision-making and performance evaluations. However, since CCH has become available for public use, DPS has instituted a multi-tiered dissemination system to determine a private entity’s level of access to criminal records.

Each CCH report includes certain information, including the date of birth and physical description of the offender, the arresting agency, the date of arrest, the charge, the offender’s Social Security number and home address, and prosecutorial information such as disposition and sentencing. E-filing rules define certain data in criminal records as sensitive, such as the person’s date of birth, Social Security number, or home address. As a result, clerks are not permitted to place that sensitive information online. However, clerks must provide sensitive information as part of a bulk data request, and the private requester may subsequently place the information on the Internet.

Concerns regarding the accuracy, fairness, and process by which criminal records, particularly bulk data requests, are disseminated have developed with the growth in the number of private background-checking companies. The legislature may want to clarify what a clerk must provide in a bulk data request and require that clerks and criminal justice agencies redirect to DPS all requests for bulk criminal records concerning certain misdemeanor and felony offenses for which a final disposition has been rendered. Some counties have spent significant resources building databases, and DPS might not have all the data that a county could provide. Recommendations made during interim committee hearings include mandating that bulk data contracts guidelines with private companies require those companies to frequently update their records.

The 85th Texas Legislature may consider legislation regarding streamlining the dissemination of records through bulk requests to ensure accuracy and to limit inappropriate use of records.
Familial Contact for Incarcerated Individuals

The Texas Department of Criminal Justice (TDCJ) manages offenders in state prisons, state jails, and private correctional facilities that contract with TDCJ throughout the state. The agency is also responsible for supervising offenders who are released from prison on parole or mandatory supervision. Each incarcerated individual is allowed one visit per weekend from any individual on the offender’s visitors list. Visitors must comply with specific requirements, including presenting photo identification, verifying their names on the offender’s approved visitors list, complying with TDCJ’s dress code guidelines, and not carrying cash or cellular phones into the unit. TDCJ encourages visitors to confirm before traveling that the offender is still assigned to the unit they are planning to visit and has visitation privileges and to coordinate with one another to prevent subsequent visitors from being declined upon arrival to the individual’s unit.

The distances a visitor may have to travel and the costs associated with maintaining a connection between them and an offender can be significant. Even after traveling lengthy distances, a family member can be denied visitation for any number of reasons, including not being on the incarcerated individual’s visitation list or not meeting the dress code requirements. Despite the fact that a visitor cannot be turned away without review by the unit’s warden, there have been reports of family members being turned away after having traveled significant distances.

The cost of services, such as taking pictures with an incarcerated individual and the rates charged to family members for calls from an incarcerated individual, are also significant. Family members are charged $3 for each picture taken with an incarcerated individual during a visit. While the proposed federal rate for telephone calls from incarcerated individuals is 11 cents a minute, TDCJ currently charges between 23 and 26 cents a minute.

It has been recommended that TDCJ review its visitation rules to ensure that they promote public safety while making it as easy as possible for individuals to visit their incarcerated family members. Specifically, the recommendations include having TDCJ-compliant clothing available for family members who have traveled long distances but have unintentionally violated the dress code requirements, reducing the cost of family photos if appropriate, and addressing the disparity in rates charged for telephone calls from incarcerated individuals between TDCJ and the federal system if federal law does not address this issue in the near future.

The 85th Texas Legislature may consider legislation regarding visitation practices and costs that family members incur to maintain contact with an incarcerated family member to promote effective and appropriate methods of maintaining familial contact for incarcerated individuals.
Jail Safety Standards

Over one million individuals are processed through Texas jails each year with an average daily inmate population of 65,000. Since 2010, there have been 514 deaths and 143 suicides in county jails. The state created the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) in 1987 to bridge the gap between the criminal justice and health care systems. TCOOMMI’s duties include developing plans for continuity of care between the two systems, providing forms to screen individuals entering the criminal justice system for mental illness, and promoting information-sharing among agencies. Texas established the framework for screening offenders for mental health issues with the enactment of Article 16.22 (Early Identification of Defendant Suspected of Having Mental Illness or Mental Retardation), Code of Criminal Procedure, which requires a sheriff to notify a magistrate if the sheriff has cause to believe that an inmate is mentally ill. In 2000, the Texas Commission on Jail Standards (TCJS) adopted suicide-screening forms as part of the jail intake process, including a continuity-of-care query to identify individuals in the criminal justice system who have a record of being in the mental health system. While the screening process helps flag certain individuals, there are issues regarding properly identifying individuals with mental health issues and accessing all of their records.

City jails are not regulated by the state and there are those who believe state oversight may be necessary. TCJS is small, with an operating budget of $900,000 per year and fewer than 17 full-time employees. However, testimony from interim committee hearings has suggested that the legislature needs to provide more oversight and assistance. Local judicial systems perceive a lack in the availability and quality of local mental health resources for offenders and a lack in communication between the judicial system and the mental health system.

Recommendations to address the safety of individuals with mental health issues in the criminal justice system include training for judges regarding Article 16.22 and Article 17.032 (Release on Personal Bond of Certain Mentally Ill Defendants); directing state agencies to develop standards for measuring their compliance with Article 17.032; clarifying requirements for mental health screening; requiring local jurisdictions to create transparent local court rules regarding mental health personal bonds; establishing a maximum time allowed before a mental health clinical assessment is required for a person who has been screened as mentally ill; creating a statewide, uniform clinical assessment tool for conducting jail-related clinical mental health assessments; and increasing funding in the criminal justice system that is dedicated to the purchasing of mental health services.

The 85th Texas Legislature may consider legislation addressing current guidelines and practices in county and municipal jails relating to the health, welfare, and safety of those in custody; training for law enforcement and correctional officers, with emphasis on mental health and de-escalation; revising existing oversight mechanisms to enforce jail
standards; and revising current mental health and substance abuse treatment services and medical resources offered in county, municipal, and state correctional facilities.

**Law Enforcement Interaction With the Community**

Across the United States, recent incidents involving police officers and minorities illustrate the need to foster cooperation between the public and law enforcement. Specialized training is currently offered to Texas law enforcement officers on de-escalating encounters between law enforcement and the communities they police. However, law enforcement and community leaders have expressed a need for law enforcement to coordinate with community organizations to improve relations. One recommendation to foster a spirit of cooperation is educating young adults to properly handle encounters with law enforcement, coupled with additional training for officers on proper behavior during traffic stops to de-escalate encounters. Some have suggested that initiatives to implement the public educational program for young adults should be made part of the Texas Essential Knowledge and Skills curriculum.

According to testimony given during an interim committee hearing, there is a need to raise citizen awareness regarding the complaint process in instances when an encounter with law enforcement results in a citizen allegedly being treated unfairly. Specifically for Department of Public Safety of the State of Texas (DPS) officers, the Office of Inspector General independently reports complaints against DPS officers to the Public Safety Commission for investigation. It has been suggested that a guide to initiating the complaint process on a citation issued to a citizen could increase awareness and encourage both citizens and officers to be less confrontational. To assist in fully investigating complaints, expanding the use of dashboard and body cameras by law enforcement officers to increase transparency for overzealous officers and decrease frivolous complaints has also been recommended.

Community leaders in Texas have raised a significant number of complaints regarding the use of stop-and-frisk searches, which occur when a police officer confronts a suspicious person in an effort to prevent a crime from taking place by asking questions and conducting a pat down of the person for weapons. Unlike a full search, stop-and-frisk is generally limited to a pat down of the outside of the suspicious person’s clothing. If the frisk results in the officer discovering an object that could be a weapon, the officer may retrieve the object from inside the person’s clothing. If the officer’s frisk does not uncover any weapons, there can be no further search of the individual without additional evidence of wrongdoing. Community leaders have discussed racial discrimination in the use of law enforcement’s stop-and-frisk procedure. With the absence of strict regulation, certain members of the law enforcement community have discussed the potential for abuse that can result from the procedure.

The 85th Texas Legislature may consider legislation regarding law enforcement efforts to engage community leaders, increase its involvement in communities, address dangers to
law enforcement officers, collect and distribute threat-assessment data, and reduce the number of injuries or deaths to or by law enforcement officers.

Pretrial Diversion Programs

Pretrial diversion programs remove a defendant from prosecution prior to a plea being entered. The prosecutor agrees not to move the case forward while the defendant is given a specified time frame to satisfy the conditions proposed by the program, including probation, counseling, or community service. While eligibility requirements for a program are set by statute, the prosecutor typically has the discretion to determine whether an individual is offered a pretrial diversion program. In some jurisdictions, judges can suggest a pretrial diversion and have the final word on whether to admit a defendant to a pretrial diversion program.

A defendant can be considered ineligible for pretrial diversion based on certain factors, including if the individual has already completed a pretrial diversion program in the past or if the crime has certain aggravating circumstances. If the defendant fails to meet the conditions of the pretrial diversion program, then the prosecution of the defendant resumes. There are a number of pretrial diversion programs that vary from county to county. Typically, there are pretrial diversion programs for misdemeanors and certain nonviolent felonies, as well as specialty courts for specific types of offenses. Whether the prosecutor offers a pretrial diversion program is determined on a case-by-case basis, and the requirements of the diversion program vary based on the type of offense.

Some observers express concern that excessive bail amounts are being set for nonviolent offenders, even though the judiciary has sole discretion over the amount set for bail based on certain factors, the most prominent of which is the likelihood of the defendant to appear for the next court date. There have been reports of nonviolent, low-level offenders being denied entry into a pretrial diversion program because they cannot afford to post bond, resulting in the defendant remaining in jail; of magistrates not holding timely bond hearings; of magistrates declining to release individuals either without a bond or on a personal recognizance bond; and of the need for the defendant to have an attorney present at the bail hearing. Certain counties have reported a need for additional resources to provide sufficient pretrial diversion programs, including mental health diversion programs and indigency screening programs.

The 85th Texas Legislature may consider legislation regarding the implementation and expansion of pretrial diversion and treatment programs in Texas to maximize the effective use of resources and reduce the jail population.
Texas Department of Criminal Justice Inmate Reentry Programs

There are currently 136 case managers and 10 special-needs case managers at the Texas Department of Criminal Justice (TDCJ) Reentry and Integration Division in units across the state. Special-needs case managers work directly with TDCJ to assist inmates with medical or mental impairments to ensure that necessary health benefits and continuity of care, including nursing home or group home placement, are in place before the inmate is released. One of the most important needs of an offender who is reentering the community is employment. Case managers recruit employers and connect them with the individuals being released. To improve the provision of reentry services, it has been recommended that employers searching for prospective employees should be able to look online at inmates nearing release and that the reentry process should include an individual assessment and a realistic reentry plan for each individual.

Windham School District (WSD), an entity within TDCJ and one of the largest correctional educational systems in the United States, provides educational programs and services to eligible inmates in most TDCJ facilities in an effort to reduce recidivism. Because many inmates lack the educational background and basic skills necessary to attain employment upon release, WSD offers programs—academic, career, technical, and behavioral—designed to provide inmates with those necessary skills. Additionally, WSD offers course work in entrepreneurship, financial literacy, parenting, and certain skilled trades. The Texas Board of Criminal Justice acts as the board of education. WSD offers a summer school program in 45 facilities, serving approximately 7,000 additional inmates. The summer pilot program costs approximately $250,000, but it has been suggested that more inmates could be served if additional resources were available. WSD has been instructed to document the resources needed to improve and extend its services and to present the request to the legislature during the upcoming legislative session.

The 85th Texas Legislature may consider legislation regarding current Texas Department of Criminal Justice and Windham School District programs designed to prepare incarcerated individuals for reentry, including inmates in administrative segregation, and expansion of successful programs to provide resources and support for released inmates.
**EDUCATION – HIGHER**

Baccalaureate Degrees Offered by Community Colleges

As the Texas job market evolves, it is essential that the education of the future workforce aligns with the skills and certifications that will be required of the state’s workers. The Texas Workforce Commission (TWC) states that community colleges are particularly adept at responding to labor market demands in applied technical areas. Witnesses stated during an interim committee hearing that information technology jobs are in higher demand than any other job in the Texas labor economy and will remain so in coming years. Witnesses also testified that workforce roles in retail, nursing, accounting, auditing, electrical work, and welding are also in high demand.

Recently, community colleges have requested permission to offer four-year baccalaureate degrees to help the state meet its workforce needs. Three community colleges—Midland College, Brazosport College, and South Texas College—were authorized by the legislature in 2003 to each offer a maximum of five applied science and technology degrees. Additionally, the 84th Legislature authorized Tyler Junior College to offer a dental hygiene baccalaureate degree as a pilot program. The Texas Higher Education Coordinating Board (THECB) recommends authorizing community colleges to offer certain degrees if they can demonstrate workforce needs in their areas, have adequate faculty resources, and base their programs on existing, successful programs. THECB also recommends directing the board to work with TWC to study three to five applied science degrees for community colleges to offer as baccalaureate degrees and repealing the statutory five-degree limit on how many baccalaureate degrees a community college may offer.

Community colleges may also be able to help the state meet nursing shortages. Witness testimony provided by the Texas Center for Nursing Workforce Studies at an interim committee hearing stated that as of 2015, Texas had a demand for an additional 17,000 registered nurses and that by 2030 the demand may increase to 66,000. Witnesses stated that qualified faculty and sufficient clinical space should be primary considerations to ensure adequate program quality.

The 85th Texas Legislature may consider legislation relating to authorizing community colleges to offer four-year baccalaureate degrees.
Funding for General Academic Institutions and Health-Related Institutions

Testimony provided by the Legislative Budget Board at an interim committee hearing discussed funding for general academic institutions (GAIs) and health-related institutions (HRIs). GAIs and HRIs are funded by general revenue (GR) and GR-dedicated funds, which consist of revenue generated by statutory tuition, interest on funds in the state treasury, and various fees charged by institutions. GAI formula funding is based on the number of weighted semester credit hours (WSCH) delivered by an institution, with a current rate of $55.39 per WSCH. Weights are applied to semester credit hours in academic majors in accordance with the relative costs of teaching each discipline. The GAI Infrastructure Formula allocates funding for physical plant support and utilities based on predicted square footage for universities’ educational and general activities. Under the Infrastructure Formula, GAIs currently receive $5.62 per predicted square foot of space.

Institutions of higher education with student enrollments below 5,000 receive the Small Institution Supplement, which totals $1.5 million per biennium, and institutions with student enrollments between 5,000 and 10,000 receive an appropriation that decreases from $1.5 million with each additional student.

While HRIs are primarily funded through the Instruction and Operations Formula, they are also supported by the Infrastructure Support Formula, the Research Enhancement Formula, the Graduate Medical Education Formula, and other mission-specific formulas. The Instruction and Operations Formula is based on full-time student equivalents (FTSE) during a three-semester base period, for which HRIs currently receive $9,829 per FTSE. The HRI Infrastructure Support Formula allocates funding for physical plant support and utilities based on the predicted square footage of an HRI, and the current Infrastructure Support Formula awards $6.65 per predicted square foot for HRIs other than The University of Texas (UT) MD Anderson Cancer Center (MD Anderson) and The UT Health Science Center at Tyler, which are funded at a rate of $6.26 per predicted square foot of space. The Research Enhancement Formula provides support for medical and clinical research conducted by an HRI and is allocated using a base amount plus a percentage of research expenditures from the most recent fiscal year. The base is currently $1,412,500 and the percentage is 1.23 percent of research expenditures. The Graduate Medical Education Formula funds HRIs at a rate of $6,266 per medical resident. The MD Anderson Cancer Center Operations Formula is mission specific and funds MD Anderson at a rate of $1,877 per Texas cancer patient served. The UT Health Science Center at Tyler Chest Disease Center Operations Formula is mission specific and funds The UT Health Science Center at Tyler at a rate of $215 per new diagnosis of primary chest disease.

The University of Texas Rio Grande Valley (UTRGV) School of Medicine and The University of Texas at Austin Dell Medical School (Dell Medical School) have begun accepting students, and the 85th Legislature will decide how to fund these schools. Currently, state support for Dell Medical School is provided through the Texas research
university fund, while UTRGV School of Medicine receives funding for research through the Texas comprehensive research fund.

The 85th Texas Legislature may consider legislation relating to the funding of general academic institutions and health-related institutions.

**Outcome-Based Funding**

According to the Legislative Budget Board, Texas public institutions of higher education (IHEs) served 91.4 percent of students enrolled in higher education across Texas, or about 1.36 million people, in 2015. Public IHEs in Texas include 37 general academic institutions, three lower-division institutions, 50 community college (CC) and junior college districts, and 12 health-related institutions. The legislature appropriates funds to IHEs for instruction, student services, administration, employee benefits, facility construction and renovations, and student financial aid. Institutions receive funds in a lump sum, which has few limits on transferability between uses. The 84th Legislature appropriated $17.3 billion in all funds to support Texas higher education for the 2016–2017 biennium, a $1.2 billion increase from the 2014–2015 biennium. This amount includes $12.2 billion in general revenue (GR) funds, $2.5 billion in GR-dedicated funds, and $2.6 billion in federal and other funds. Currently, a majority of higher education funding is allocated by funding formulas, including the Instruction and Operations Formula, the Infrastructure Formula, and the Instruction and Administration Formula, the latter of which is an outcome-based formula (OBF) implemented by the 84th Legislature under which CCs receive 10 percent of their formula funding according to success points that are earned when a CC meets a certain outcome metric.

Interim charges for the Senate Committee on Higher Education included examining current performance-based methods of funding for CCs and making recommendations on how to incorporate student-outcome measures in institutional funding to promote the educational needs of a growing and changing workforce. The committee took up the charge in a May 2016 hearing at which the Texas Higher Education Coordinating Board said that 26 states currently use some form of an OBF model and that five to six years of longitudinal data suggest that OBF works. CC leaders communicated to the committee that they are committed to such funding models and that access to funding is vital to their role in higher education in the state.

The 85th Texas Legislature may consider legislation relating to outcome-based funding for institutions of higher education.

**Student Debt**

Nationwide tuition rates for higher education have risen significantly and students are borrowing increasingly large amounts of money to pay their tuition. In Texas, the net cost of tuition and fees at public institutions of higher education has risen by 114 percent
since designated tuition was deregulated by the legislature in 2003. As of 2015, 62 percent of bachelor degree recipients have student loan debt averaging $30,136; 36 percent of associate degree recipients have debt averaging $15,426; and 29 percent of certificate recipients have debt averaging $12,546. The National Conference of State Legislatures states that the average student debt amount per borrower has grown to 35 percent above inflation over the last 10 years. Witness testimony given by the Texas Guaranteed Student Loan Corporation, which provides students information on paying for college and facilitates successful loan repayments, indicates that 60 percent of financial aid awarded to Texas students during the 2013–2014 school year was comprised of loans, against a national average of 50 percent.

Factors other than rising tuition costs affect student borrowing and the ability to repay loans, including graduation rates, financial literacy, quality of financial aid counseling, and the time students take to complete their degrees. Schools report that many students lack sufficient understanding of borrowing mechanisms and what it means to default on loans but contend that improving financial aid counseling can improve students’ understanding of borrowing and its risks. The Texas Higher Education Coordinating Board (THECB) explains that while most baccalaureate degrees require students to complete 120 semester credit hours, on average students are completing 140 hours before meeting their specific degree requirements. Reducing those hours would reduce what students must borrow to graduate and help them graduate sooner, according to THECB, which would reduce students’ debt amounts and enable them to pay down their loans sooner.

The 85th Texas Legislature may consider legislation relating to student loan debt.

**Tuition Deregulation**

Institutions of higher education (IHEs) charge three types of tuition: statutory, designated, and board-authorized. Statutory tuition is set by the legislature and is currently $50 per semester credit hour. Designated tuition is currently unregulated, which allows the governing board of an IHE to set its own tuition rates. Board-authorized tuition is the amount of tuition charged to graduate students and is set by each institution’s governing board. The effective increase in tuition rates is primarily accounted for by a large increase in designated tuition rates. While tuition rates have increased since deregulation in 2003, the state’s formula funding per full-time student has decreased by 24 percent. Institutional spending, however, has increased to improve competitiveness among IHEs nationwide, to provide a wider array of programs, to offer remedial education for an increasing number of students, and to fund increases in the costs of exemptions and waivers. The total cost of exemptions and waivers to Texas IHEs in 2015 was $752.2 million.

According to the National Conference of State Legislatures, the states of Missouri and Washington have strong tuition-cap policies. Missouri links tuition increases to inflation
and provides waivers to further increase tuition if state support falls below a certain level. Washington sets tuition according to an average of family income. Witnesses testified that tuition caps require substantial state support to be successful.

University system chancellors testified at an interim committee hearing that their systems have implemented strategies to minimize increases in tuition rates. These strategies include outsourcing, privatizing construction, improving administrative efficiencies, consolidating information technology services, adjusting tuition for higher-cost and lower-cost degrees, refinancing debts, renegotiating energy contracts, establishing group-purchasing initiatives, increasing grant amounts, and providing fixed-rate tuition options.

The 85th Texas Legislature may consider legislation relating to higher education tuition.
Charter School Funding
Texas currently has 196 authorized open-enrollment charter schools, according to the National Alliance for Public Charter Schools. The state currently caps open-enrollment charter school numbers at 255 but will increase the cap to 305 by 2019. According to the Texas Association of School Boards, the number of children on waiting lists at charter schools grew from 56,000 in 2011 to 130,000 in 2015.

Charters face facility funding issues and, according to the Texas Education Agency, because charters obtain five-year contracts from the state, banks are hesitant to award them a 20-year or 30-year loan because of their lack of collateral. In the 2015–2016 school year, eligible charters began receiving facility funding for new campuses.

A July 2016 study published by the National Bureau of Economic Research has found that charter schools, at the mean, have no impact on test scores but do negatively impact earnings, except in the case of “no excuses” charters, which increase test scores and four-year college enrollment but have no significant impact on earnings. Some proponents believe that charters provide educational opportunities that public schools cannot and should see increased funding, while opponents of increasing funding for charter schools express concern that it may decrease funding for traditional school district needs.

The 85th Texas Legislature may consider legislation related to facility funding for charter schools.

Extending Broadband Access
In March 2016, Governor Greg Abbott announced a goal to provide each of the 5.2 million schoolchildren in the state with broadband Internet by 2018. Extending broadband access to all schoolchildren would provide access to unlimited information resources, videos, and other digital-learning content hosted online. Currently, Internet providers avoid building broadband infrastructures in certain areas, such as rural regions with low populations, because the market is insufficient to support the associated project costs. A 2015 Texas Education Agency survey found that only 26 percent of the 7,838 campuses that responded actually met the targeted 100-megabits per second for every 1,000 students and staff members.

The state has partnered with the nationwide nonprofit EducationSuperHighway to achieve Governor Abbott’s goal. EducationSuperHighway explains that roughly $250 million in additional fiber infrastructure would be required for the state to become
completely wired for broadband access. The nonprofit states that the Schools and Libraries Program, also known as the E-rate Program, has $2.9 billion in funding for programs that increase broadband connectivity in schools. The E-rate Program requires that the state provide 10 percent of the total amount required to build the infrastructure, or $25 million, to receive funding.

The 85th Texas Legislature may consider legislation to allocate funds for the extension of broadband infrastructures to certain areas of the state or to develop a statewide plan to address the need for broadband infrastructures.

**Inappropriate Teacher-Student Relations on Social Media**

Educators in various districts across the state are subject to standards of conduct when using electronic media and social-networking sites to communicate with students. Social media applications are increasingly being used to communicate information between teachers and students. As social media becomes a more popular form of communication outside of the classroom, school districts may face an increasing risk of inappropriate relationships developing between teachers and students.

During the 2014–2015 school year, the Texas Education Agency (TEA) launched 188 investigations related to inappropriate teacher-student relationships, marking the fifth year of growth in the number of such investigations. These types of investigations do not result in immediate revocation of a teacher’s certification if convicted of sexual misconduct. In Texas, the revocation process can take 30 to 60 days if the teacher willingly surrenders the certification and up to two years if TEA uses the legal system to forcefully revoke the certification.

The 85th Texas Legislature may consider legislation to revoke a teacher’s certification immediately upon conviction of sexual misconduct with a student and to require that every school district promulgate a written policy concerning faculty-student communication.

**Low-Performing Independent School Districts**

The state’s current accountability system designates low-performing schools as “improvement-required,” which will change to an A–F labeling system in August 2017. The Texas Education Agency’s (TEA) 2016 accountability ratings show that 467 campuses statewide are labeled “improvement-required,” which is a reduction of 136 campuses over the preceding year. In an effort to reduce the number of low-performing schools, Commissioner of Education Mike Morath and TEA have required that superintendents and boards of trustees of underperforming independent school districts submit detailed plans to address the problems. In October 2016, TEA ordered that all failing school district superintendents and boards of trustees jointly attend a two-day training session designed to educate officials on how to address the struggling campuses.
According to TEA, the shift of focus from campus level to system level, regarding intervention in low-performing schools, is the purpose of H.B. 1842 (relating to public school accountability, including the intervention in and sanction of a public school that has received an academically unsuccessful performance rating for at least two consecutive school years and the designation of a school district as a district of innovation), 84th Legislature, Regular Session, 2015. Morath states that TEA is focused on producing system-level reforms within independent school districts and their “improvement-required” campuses.

The 85th Texas Legislature may consider legislation to address superintendents and school boards of low-performing independent school districts.

School Choice Programs

School choice programs aim to provide alternatives for parents who wish to place their children in nontraditional types of public and private schools. According to EdChoice, more than 25 states offer families financial assistance options to promote school choice, ranging from education savings accounts (ESAs), school vouchers, and tax-credit scholarships to individual tax credits and deductions. Texas is currently considering implementing ESAs or tax-credit scholarship programs. ESAs are designed to pay for educational options, such as tutors, homeschooling, private schools, and college-credit courses. Tax-credit scholarships provide tax credits to businesses that help fund scholarships for students who wish to attend private schools.

Proponents of school choice programs state that such programs expand educational opportunities and access for disadvantaged students, such as special needs students and learners of English as a second language. Proponents state that school choice provides parents power over their child’s education and increases academic competition between different types of schools.

Opponents state that school choice programs divert funding from underfunded public schools to private schools without maintaining the accountability associated with tax dollars. Opponents also state that public, charter, or private schools that accept state or federal funding should be subject to the respective mandates for those dollars, essentially requiring that schools that accept school choice funds be subject to the Texas Essential Knowledge and Skills standards.

The 85th Texas Legislature may consider legislation regarding school choice programs, specifically education savings accounts and tax-credit scholarships.
Teacher Retention and Shortages

In 2015, Texas employed roughly 342,000 teachers with an average teaching experience of 11 years. Of the estimated 342,000 teachers, 33 percent to 38 percent had been teaching for fewer than five years. Nearly half of the newly certified teachers in the 2014–2015 school year came from alternative certification programs, 34 percent came from traditional undergraduate certifications, 13 percent transferred from out of state, and four percent came from postbaccalaureate programs. Additionally, 68 percent of newly certified teachers, 76 percent of university undergraduates, 67.8 percent of postbaccalaureates, and 66.7 percent of alternatively certified teachers have remained in the field for five years.

New teacher hires have been outpacing teachers who are leaving the occupation since 2010, with the exception of the 2012–2013 school year. However, with increasingly large numbers of teachers leaving the profession, the needs of science, technology, engineering, and mathematics courses are not being met due to teacher shortages, resulting in roughly 3,000 teachers practicing outside of their fields. Shortages are also a concern for bilingual instruction, English as a second language classes, and special education areas.

Witnesses testifying at an interim committee hearing suggested a few ways to combat teacher retention and shortage issues in academic areas with the most needs, including:

- providing all general education teachers with special needs training;
- allocating funds for enhanced stipends for teachers of subject areas with teacher shortages;
- bolstering teacher preparation with ongoing mentorship programs;
- continuing to fund the Educational Aide Exemption program; and
- restoring funds to the Teach for Texas Loan Repayment Program.

The 85th Texas Legislature may consider legislation to address teacher retention and shortage concerns.
Behavioral Health Coordination

For the 2016–2017 biennium, a total of $3.6 billion in all funds, which includes $2.7 billion in general revenue, was appropriated to 18 agencies for behavioral health and substance abuse services. Behavioral health services are programs or services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, control, supervise, and rehabilitate individuals who have mental disorders or disabilities, including disorders or disabilities that result from alcoholism or drug addictions.

In the 2016–2017 General Appropriations Act, the Section 10.04 rider in Article IX lists the funding for behavioral health and substance abuse services across state agencies and requires certain agencies to coordinate their efforts to provide mental health services and to develop a strategic plan by creating a coordinating council. Stakeholders note that comprehensive cross-agency coordination, responsibility, and accountability for mental health services is critical to avoid duplication of services and to maximize resources, to increase access to appropriate services, and to ensure quality. While funding for mental health has increased, individuals have trouble navigating the various services or support that are offered by the state.

Recently, Texas has spent money on various pilot programs, and the coordinating council has been instructed to identify the best practices from those programs and determine a way for those practices to be implemented across the state. Additionally, mental health funding that has been provided to many agencies has resulted in a decentralized approach to funding mental health, which the coordinating council has also been instructed to examine.

Furthermore, the Legislative Budget Board is in the process of working with state agencies to coordinate a way to designate behavioral health and substance abuse services within mental health services and how the costs related to those mental health issues are designated as mental health funding. However, the General Appropriations Act does not budget funding for behavioral health services in the Medicaid program at the Health and Human Services Commission because those specific amounts could not be identified during the appropriations process, in part because the integration of Medicaid behavioral health services into Medicaid managed care results in complex capitation payments that officials state are hard to determine.

Legislators also note that stigma surrounding mental health must be addressed in order to improve individuals’ willingness to seek out the services available and that a robust crisis-
intervention program is needed, especially when the only option for many individuals is calling the local law enforcement agency to deal with an individual who is displaying mental health issues.

The 85th Texas Legislature may consider legislation that improves the coordination of behavioral health funding and services across state agencies.

**Debt Obligations**

The total state and local debt obligation is $259.5 billion, of which $41.0 billion (or 15.8 percent) is state debt, while the remaining amount is local government debt.

State debt is issued by state agencies and universities, which includes general obligation (GO) bonds and revenue bonds, while local debt is issued by local governments and is not an obligation of the state. GO bonds are backed by the Full Faith and Credit of the state, approved by a majority of voters, and used for construction projects, veterans’ housing, grants, and loans, while revenue bonds, which are authorized by the legislature and secured by a specific revenue, are used for enterprise activities and do not require voter approval. GO and revenue bonds can either be self-supporting, which are expected to be repaid with revenues outside of general revenue (GR), or non-self-supporting, which are expected to be repaid with GR.

Currently, $6.0 billion, or 14.8 percent, of outstanding state debt is not self-supporting. Although tuition revenue bonds are non-self-supporting bonds in practice because they are supported by GR, the Texas Bond Review Board classifies those bonds as self-supporting, which causes concern to legislators. Debt can be considered subject to appropriations that pay for debt service, and the state has $19.0 billion in outstanding debt that will be paid by appropriations, while the remaining $22.0 billion in state debt is self-supporting and does not receive appropriations for debt service.

Although unfunded liabilities are not considered debt, they are future amounts that the state is required to pay and include the unfunded liabilities of the Employees Retirement System, the Teacher Retirement System, and the Texas Guaranteed Tuition Plan, among others. Currently, the Legislative Budget Board is working with all involved agencies to develop a list of priorities for the unfunded liabilities, along with a list of criteria that could be used to prioritize those liabilities. Legislators have stated that using available cash on hand to pay additional debt service in the interim will reduce future costs.

The 85th Texas Legislature may consider legislation that regulates the issuance of state debt and reduces unfunded liabilities.
Emergency Leave

An investigation by the Texas State Auditor’s Office (SAO) has found that seven agencies have provided 44 employees at least $430,000 in emergency leave pay since September 2014 and that one agency, the General Land Office, has paid more than $1 million in separation agreements to employees.

Currently, emergency leave is subject to two levels of oversight: (1) the agency head is primarily responsible for reviewing leave requests and for appropriately granting leave, and (2) SAO is statutorily directed to enforce a uniform policy of how leave is administered. Section 661.902 (Emergency Leave), Government Code, contains two parts: the first part includes specific emergency leave provisions for when a death occurs in the family, and the second part is broad and allows leave to be granted for “good cause,” which is not defined in statute. Although SAO has established policies, including one that provides guidelines for granting emergency leave, some argue that a more robust policy coupled with legislation that codifies a uniform policy or provides further guidance could be beneficial. A rider in Article IX (General Provisions) of the General Appropriations Act could further outline an emergency leave policy as long as the policy does not infringe upon labor laws. Certain legislators have expressed concern that a rider would be temporary and that any policy should be implemented in the Texas Administrative Code or Government Code. Legislators have also expressed concern that emergency leave is being used as a form of severance pay and that the good cause provision is open to interpretation and subject to the judgment of the agency head who grants leave.

The 85th Texas Legislature may consider legislation to clarify the state’s emergency leave policy.

Franchise Tax

The Texas franchise tax, or margins tax, applies to each taxable entity that does business or is organized in the state. The Franchise Tax Reduction Act of 2015 decreases franchise tax rates, including the EZ computation rate, and doubles the upper limit on a taxable entity’s total revenue at or below which the taxable entity may elect to pay the franchise tax at the EZ computation rate.

The 2015 act also requires the Office of the Comptroller of Public Accounts of the State of Texas (comptroller’s office) to conduct a study of the effects of economic growth on future state revenue. The Legislative Budget Board and the comptroller’s office have the capability to produce analyses demonstrating the estimated economic and budgetary effects of various state revenue and appropriations proposals. The report, which includes a section on the impact of the reduction in franchise tax and the potential increased reductions in the franchise tax, has been published.
Certain stakeholders note that the franchise tax has met most of its goals, including providing a source of revenue to reduce property taxes and pay for school finance reforms. However, several issues with the tax concern some observers, including the complexity of calculating the amount of tax and the potential that a business could have zero profit and still be required to pay franchise tax. Although the tax applies to all liability protected businesses, only one in 10 liability protected entities pays the tax and only four percent of all businesses in Texas are subject to the franchise tax due to generous exemptions. Furthermore, the property tax burden borne by commercial property owners is significantly higher than in most other states, which some interested parties state makes the cost of doing business in Texas untenable at times.

Other stakeholders argue that entirely removing the franchise tax would essentially get rid of the property tax relief fund, which uses a portion of the franchise tax revenue to finance the Foundation School Program. The remainder of franchise tax revenue is kept in general revenue to support public education, health and human services, public safety, and criminal justice.

The 85th Texas Legislature may consider legislation that alters the franchise tax and the property tax relief fund.

**Funding for Therapy Services**

In the 2016–2017 General Appropriations Act, the legislature approved $350 million in Medicaid funding cuts to therapy providers, primarily those serving children, as part of a cost-containment strategy. The funding cuts include a loss of $200 million in federal funding. The Health and Human Services Commission (HHSC) has proposed significant rate cuts for therapy services, which many providers have cited as a reason to opt out of the system. A temporary injunction by a state district judge stopped the cuts from taking effect. However, the Texas Supreme Court announced that it would not hear the case, allowing the cuts to go into effect.

Legislators state that payment cuts to physical, occupational, and speech therapists are supported by a Texas A&M University study that shows that Texas has reimbursed therapists at higher rates than have other states or commercial insurance programs. However, the state district judge concluded that the study was seriously flawed, in part because state officials never asked university researchers to study how the cuts would affect access to care.

Due to federal mandates, any changes to any part of the Medicaid system cannot result in a loss of access to therapy services. Furthermore, mandates require that network adequacy not be reduced and that HHSC contracts with vendors to ensure that network adequacy is not reduced.
Therapy providers and families of children with disabilities warn that funding cuts will result in children being denied medically necessary services. However, HHSC explains that the agency has followed all the rules and procedures in setting the new therapy rates, including holding a daylong public hearing and reviewing an extensive amount of comments. HHSC states that following implementation of the new rates, it will closely monitor the ability of clients to obtain medically necessary services.

The 85th Texas Legislature may consider legislation that addresses funding for therapy services.

**Homestead Exemption Lawsuit**

As a result of S.B. 1, 84th Legislature, Regular Session, 2015, the homestead ad valorem property tax exemption has increased to $25,000 from $15,000. The exemption increase applies only to school district taxes and certain populations, such as disabled individuals or those over 65, who have received a proportionate adjustment to the tax ceiling that has lowered their taxes. Although a property tax bill might be higher for a taxpayer in subsequent years, the taxpayer still saves money due to the homestead exemption increase.

Currently, the governing body of a taxing unit may offer an additional exemption called the local option homestead exemption, which may not exceed 20 percent of the appraised value of a property. To prevent local jurisdictions from denying the tax relief granted to other individuals in the state, S.B. 1 prohibits local jurisdictions from removing local option homestead exemptions for a period of five years.

A lawsuit was recently filed by a property owner in response to a local school district removing the local option homestead exemption that was required to continue under the provisions of S.B. 1. Additional school districts throughout the state are also not following this provision. School districts contended that retroactive changes are unconstitutional. However, it was ruled that although the changes were retroactive, they were not unconstitutional since they did not cause harm to the school districts, due to the hold harmless provision in S.B. 1 that entitles districts to additional state aid to make up for any funding reduced by S.B. 1.

The 85th Texas Legislature may consider legislation that amends the homestead exemption.

**State Agency Contracting and Procurement**

The Statewide Procurement Division (SPD) of the Office of the Comptroller of Public Accounts of the State of Texas (comptroller’s office) oversees the majority of non-information technology (IT) consolidated state purchasing. In total, SPD annually
develops and manages more than $1 billion in expenditures by the state government, institutions of higher education, and local governments.

The 84th Legislature directed the comptroller’s office to conduct a study that examines the feasibility and practicality of consolidating state-purchasing functions. The comptroller’s office awarded a contract to a private vendor to perform data analysis and provide consulting services related to state purchasing. Although the private vendor is currently drafting the report, preliminary findings of the study show that contract spending is generally consolidated and that the Texas Department of Transportation accounts for more than half of state purchases. State agencies reported that conducting the study involved many challenges, including a limited ability to accurately analyze contracted spending due to nonintegrated contract management systems; the fact that only a portion of state agencies had used the Centralized Accounting and Payroll/Personnel System during prior fiscal years; and the fact that certain transactions and contracts were excluded from the study.

Although a state agency is not barred from meeting with a private vendor, state agencies have reported being very cautious in meeting with private vendors as a result of the contracting problems at several state agencies over the last couple of years. Furthermore, state agency officials have said that certain recent legislative changes, including the requirement that the agency director sign any contract for more than $1 million, are too onerous.

To increase transparency for state contracts, new provisions have recently been adopted, including automatic reporting of contracts over certain amounts regardless of the funding source and requiring agencies to provide copies of contracts and related documents to the Legislative Budget Board (LBB). The contract database has 151 reporting entities, which have submitted more than 2,100 contracts totaling over $82 billion in value. The LBB monitors state contracting to identify and mitigate risks by establishing protocols, conducting in-depth reviews of certain contracts, and developing policy recommendations.

Additionally, the Technology Sourcing Office at the Texas Department of Information Resources (DIR) is responsible for negotiating and awarding master contracts with vendors who sell products and services related to computers, software, information security, telecommunications equipment, and IT staffing services. The master contracts save at least $200 million annually, according to DIR.

The 85th Texas Legislature may consider legislation that amends state contracting and procurement processes.
1115 Waiver
Texas has had federal approval since December 2011 to participate in the five-year Texas Healthcare Transformation and Quality Improvement Waiver Program 1115 (1115 waiver) that preserves the upper payment limits (UPL) supplemental payment program. Under the 1115 waiver, historical and new UPL funds are earned by hospitals and other providers through two pools: the uncompensated care (UC) pool and the Delivery System Reform Incentive Payments (DSRIP) pool. According to the Health and Human Services Commission (HHSC), HHSC was required to submit to the Centers for Medicare and Medicaid Services (CMS) by September 30, 2015, a request to extend the 1115 waiver to help Texas make progress toward supporting and strengthening the health care delivery system for low-income Texans. Along with the extension request, Texas was also required to submit an independent study related to how the UC and DSRIP pools in the 1115 waiver interact with the Medicaid shortfall and what the dollar amount for UC would be if Texas opted to expand Medicaid. (The study was submitted in August 2016.) The report, done in collaboration with Health Management Associates, reveals that Texas has high UC costs and that, without money from the 1115 waiver, those costs would remain high. Through negotiations with CMS, Texas has received a 15-month extension of the 1115 waiver to expire December 2017.

Lawmakers in Texas have also suggested seeking a block grant for Medicaid funding to reduce UC costs and give Texas flexibility in Medicaid spending.

The 85th Texas Legislature may consider legislation to address the continuation of the 1115 waiver and to fund the Delivery System Reform Incentive Payments pool and the uncompensated care pool to better serve low-income Texans and maintain the health care safety net.

Chronic Diseases in the Aging Population
The Council of State Governments reports that public health policies at the state level include a three-step process: knowing the number of health problems within the state; convening public and private partners around common goals; and empowering citizens with new and creative tools to improve their health. Specifically, the focus on reducing chronic diseases through public health campaigns is important because chronic disease accounts for 75 percent of health care expenditures in Texas.

The commissioner of the Texas Department of State Health Services (DSHS) states that DSHS is involved in two roles that pertain to chronic disease—the collection of data and
the administration of certain public health programs. DSHS’s current approach to emphasize healthy lifestyle choices includes early intervention to discourage the start of unhealthy behaviors; social-support systems such as families and communities; the implementation of comprehensive approach that involves both health care and community partners; and the adaptation of these strategies to local community needs. Some of the challenges DSHS faces with chronic-disease prevention include numerous risk factors that impact the incidence of chronic disease, such as tobacco use, diabetes, and obesity; comorbidities with behavioral health conditions; and the complexity of measuring successful intervention outcomes because of the numerous factors contributing to chronic disease.

The 85th Texas Legislature may consider legislation to improve the collection of data on the effects of public health campaigns and to collaborate with local communities to prevent instances of chronic disease.

**Fetal Tissue Donation**

Chapter 692, Title 8 (Death and Disposition of the Body), Health and Safety Code, affirms the federal Anatomical Gift Act that permits the donation, but not the sale, of fetal tissue.

The selling of a human organ is currently illegal in Texas. According to Section 48.02 (Prohibition of the Purchase and Sale of Human Organs), Penal Code, “a person commits an offense if he or she knowingly or intentionally offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human organ defined for valuable consideration.” Additionally, statute defines “human organ” to include “kidney, liver, heart, lung, pancreas, eye, bone, skin, fetal tissue, or any other human organ or tissue, but does not include hair or blood, blood components, blood derivatives, or blood reagents.” The penalty for committing such an offense is a Class A misdemeanor.

According to the Texas Department of State Health Services (DSHS), no agency is currently responsible either for overseeing the practice of fetal tissue donation or for enforcing the law prohibiting the sale of fetal tissue. DSHS also states that it does not have statutory authority to oversee issues of consent for the donation of fetal tissue.

The 85th Texas Legislature may consider legislation regarding the regulatory powers of the Texas Department of State Health Services to enforce current statute prohibiting the sale of and regulating the disposition of fetal tissue.
Health and Human Services Transition

Sunset Advisory Commission recommendations and S.B. 200, 84th Legislature, Regular Session, 2015, have directed the Texas health and human services (HHS) system to consolidate and reorganize; improve oversight of system administrative support functions; make changes and updates to Medicaid; promote quality health care; create women’s health programs; make updates to behavioral health services; clarify and update the role of the Office of Inspector General; streamline the process for credible allegations of fraud appeals; ensure effectiveness of HHS websites and hotlines; update HHS advisory committees; continually study state hospital operations and make strategic plans to reduce certain diseases; and eliminate the Texas Health Services Authority, as well as other recommendations. The transition has already affected and will continue to affect all five HHS agencies, including the Department of Aging and Disability Services (DADS), the Department of Assistive and Rehabilitative Services (DARS), the Department of Family and Protective Service (DFPS), the Department of State Health Services (DSHS), and the Health and Human Services Commission (HHSC). September 1, 2016, was the first major deadline of the HHS transition. According to the HHS website, the first phase:

- moved some administrative and support functions from DARS, DADS, DFPS, and DSHS to HHSC as determined necessary by the HHS executive commissioner;
- transferred select programs from DARS to the Texas Workforce Commission;
- moved client services from DARS, DADS, and DSHS to HHSC; and
- transferred prevention and early intervention services from HHSC and DSHS to DFPS.

The deadline for the second phase of the HHS transition is September 1, 2017, and will include a transition of:

- other administrative and support functions from DADS, DFPS, and DSHS to HHSC as determined necessary by the HHS executive commissioner;
- remaining DADS programs (including operation of state supported living centers) to HHSC; and
- all regulatory functions from DADS, DFPS, and DSHS to HHSC.

Senator Nelson stated during an interim committee hearing that the transition oversight committee has tried to ensure that the transformation creates culture changes in the HHS system and is not merely a relabeling or moving around of boxes on an organizational chart. The final Health and Human Services System Transition Plan similarly states that “work will continue with a more in-depth focus on program operations within the transformed structure—with the continued goal of breaking down organizational silos, better connecting similar functions, and continuously improving the HHS system.”
The 85th Texas Legislature may consider legislation to continue monitoring the transformed structure of HHS to ensure better system delivery, culture change, and continuing improvement of the HHS system.

Infections in Long-Term Care Facilities

The Centers for Medicare and Medicaid Services (CMS) requires long-term care facilities to collect data on vaccinations for both pneumococcal disease and influenza. The collected data shows that trends in Texas from September 2014 to March 2016 were lower than the national average for both vaccination rates. The Texas Health Care Association testified during an interim committee hearing that “long-term care facilities [in Texas] are currently required to vaccinate employees, contractors, and other individuals that provide direct care; implement procedures to verify that vaccination policies have been carried out; implement procedures for the facility to exempt individuals from vaccinations for medical conditions identified as contraindications, or precautions by the Centers for Disease Control and Prevention, or conscience or religious beliefs; and implement procedures to follow for those exempt individuals to prevent the spread of diseases.” To ensure that more residents, staff, and family members receive vaccines, there is a need for educational efforts about the importance of vaccines at long-term care facilities.

Long-term care facilities are also at risk of spreading multidrug-resistant organisms (MDROs) because of the close quarters within which residents reside and their frequent movement between facilities. Furthermore, long-term care facilities are not measured on their ability to address infectious disease or infections. A Texas Medical Board member suggested during an interim committee meeting that the Texas Department of State Health Services should create guidelines for antimicrobial stewardship to help educate community members on the spread of MDROs and should require facilities with known MDRO infections to share that information with the facilities set to receive residents.

The 85th Texas Legislature may consider legislation to increase vaccination rates for infectious diseases and to implement policies of antimicrobial stewardship at long-term care facilities.

Long-Term Care Facilities

Improving Quality and Oversight

The state and federal governments have licensure requirements for nursing facilities, assisted living facilities, home and community support service agencies, and home and community-based services. These facilities and services are at risk of administrative penalties and a loss of federal funding from the Centers for Medicare and Medicaid Services if certain standards are not met. State legislators have expressed concern about state administrative penalties levied by the Department of Aging and Disability Services
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(DADS) against some of these facilities. Currently, facilities are not charged progressive sanctions, administrative penalty amounts are not equal across all facilities, and facilities still have the right to correct certain sanctions. A commissioner from DADS says that allowing DADS to levy progressive sanctions, so that repeat violators are charged increased fines, would help DADS address sanctioning issues and deter repeat violations.

The 85th Texas Legislature may consider legislation regarding administrative penalties for long-term care facilities licensed by the Department of Aging and Disability Services.

Staffing Shortages

The population of Texans aged 65-plus is projected to reach 5.7 million by 2020 and 7.7 million by 2030, according to the Department of Aging and Disability Services (DADS). This growing population presents a need for geriatric training and continuing education among physical and mental health professionals across the state. The Texas Nurses Association reports that a 2014 long-term care survey reveals that more than half of nursing facility respondents anticipate the need for more registered nurses in the next two years due to the increasingly severe loss of patient acuity in the older population. Furthermore, an additional one million direct-care workers will be needed nationwide by 2018, according to DADS.

S.B. 1058 (relating to the regulation of the practice of nursing), 83rd Legislature, Regular Session, 2013, requires that nurses working with geriatric patients take continuing education courses to care for older adults and geriatric patients. As of 2014, the Texas Board of Nursing (BON) started to require that nurses who care for older adults and geriatric patients have a minimum of two hours of continuing education in their license cycle and that the education focus on elderly abuse, age-related memory changes, and disease processes, including chronic conditions and end-of-life care. BON has also required that nursing programs in Texas have geriatric content in their curricula. Currently, there are limited schools and specialties available for those wishing to study geriatric care.

The 85th Texas Legislature may consider legislation regarding incentives and continued education for nurses and staff working in long-term care facilities.

Protection of Texas Children

Child Protective Services

The Department of Family and Protective Services of the State of Texas (DFPS) has a primary function to protect children and vulnerable adults by investigating allegations of abuse and neglect perpetrated by a caregiver. The agency oversees Child Protective Services (CPS), which places abused or neglected children with relatives or in foster care when they cannot remain safely in their homes. DFPS also regulates child care centers.
and 24-hour residential child care facilities to ensure minimum standards of health and safety for children.

In 2014, the Sunset Advisory Commission directed DFPS to propose statutory changes needed to implement goals of the CPS transformation, an ongoing effort to improve the management and processes of CPS by using recommendations from a privately contracted operational assessment and from the Sunset Advisory Commission. Recent legislation has sought to remove bureaucratic burdens on CPS caseworkers, to allow caseworkers to spend more time with children and families, to improve performance and morale, and to improve caseworker retention. Legislation also has included provisions to reduce unnecessary administrative tasks and paperwork, reduce workload where possible, and provide DFPS with the flexibility to make its processes more efficient and to adapt to changing best practices.

CPS has recently been under scrutiny from legislators, the public, and the press. Governor Abbot, Lieutenant Governor Patrick, and House Speaker Straus released a letter on October 12, 2016, directing the Commissioner of DFPS to develop a plan to hire and train more special investigators to reduce the backlog of at-risk children who have not yet had interactions with CPS. According to the Texas Tribune, this letter came “just eight days after DFPS publicly released numbers showing nearly a thousand at-risk children under CPS care were not checked on once over the course of six months.” The Texas Tribune also reports that CPS “is currently grappling with a spike in the number of children sleeping in CPS offices and psychiatric hospitals, high staff turnover and a spate of high-profile child deaths.”

Both DFPS and CPS have been undergoing organizational and staffing changes since August 2014, when the CPS transformation began. The transformation has three main priorities: to ensure child safety, permanency, and well-being; to establish effective organization and operations; and to develop a professional state workforce. A focus has specifically been on the retention of caseworkers, reducing caseloads, and improving the quality of caseworker supervisors. Officials from DFPS state that DFPS has redesigned its recruiting and hiring practices, overhauled current learning model for workers, provided additional support through mentorships, and strengthened management-employee performance evaluations and recognitions.

TexProtects, an association for the protection of children, reported that high turnover at DFPS cost the state an estimated $77.5 million in 2015. TexProtects advocates for increasing caseworker salaries, stating that 87 percent of caseworkers who completed an exit survey in 2016 indicated that they left for a better-paying position and that these concerns could be remedied by adding area-based cost-of-living stipends. Other advocates for social workers recommend that Texas maintain a qualification of a four-year degree for caseworker positions; recruit, hire, and retain social workers with four-year degrees; and develop partnerships with schools of social work to develop an enhanced child welfare specialty.
While the CPS transformation has led to several improvements, including a new case-training program and an improved management system, various problems still exist. During a recent legislative hearing, CPS officials stated that the agency struggles to make timely contact with children—2,800 children, including 511 children from the highest priority cases, had not yet been seen by caseworkers; that additional funding is needed to meet the current crisis of abused and neglected children; and that the estimated funding shortfall for the 2016–2017 biennium could total nearly $107 million in general revenue. While CPS is implementing new models of investigation to meet increasing demands, caseworker pay and an improved work environment are two of the more significant challenges facing CPS at the moment.

The 85th Texas Legislature may consider legislation regarding retention and recruitment efforts for Child Protective Services caseworkers.

**Foster Care Redesign**

The Department of Family and Protective Services (DFPS) is currently piloting a foster care redesign program and explains the program on its website as “a new way of providing foster care services that relies on a single contractor, within various geographic areas, which is responsible for finding foster homes or other living arrangements for children in state care and providing them a full continuum of services.” This program has been piloted in seven North Texas counties through a partnership between DFPS and ACH Child and Family Services, which is the designated single-source continuum contractor.

The *Dallas Observer* reports that since the start of the program and the launch of the new Our Community Our Kids division, the practice “of children sleeping in offices or hotels has ended in the region; they’ve increased the number of foster homes throughout—most significantly in their most rural area, Palo Pinto County, which had 81 foster children with only three licensed foster homes (now there are 20 foster homes); and more children are remaining within 50 miles of their home communities than ever before.” DFPS reports that ACH Child and Family Services has implemented advancements in safety, has improved quality of care, and has advanced technology and tools within the catchment area. In August 2016 DFPS released a request for proposals for the next foster care redesign area and anticipates that the contracts will begin in January 2017.

The 85th Texas Legislature may consider legislation regarding the monitoring and facilitation of the foster care redesign expansion.

**High-Needs Children in Foster Care**

According to the Department of Family and Protective Services (DFPS), capacity is not keeping up with demand nor with the shifting needs of children in foster care and children and youth with high needs, or at risk of escalating needs, are not being identified early enough for appropriate interventions to be provided.
According to The Stephen Group (TSG), which was directed by DFPS and the Health and Human Services Commission to conduct a study on high-needs children in foster care, high-needs children are placed more frequently than the average child; spend longer time in state care; reside in different placement settings in foster care; and experience a more difficult time achieving permanency. Through this study, TSG also found that high-needs foster children need a child welfare system that contains skilled and well-trained Child Protective Services (CPS) caseworkers, coordination among the entities responsible for serving them, services and placement options in the communities where they live, and an ability to move seamlessly and rapidly between placement settings. TSG provided recommendations, in a November 2015 report, to create a definition of “high needs” to ensure standard protocols are followed and to build an accountable case-management process. TSG further provided recommendations regarding CPS’s coordination with other entities, including STAR Health, which is a Medicaid benefit for children in foster care, and child-placement agencies.

The 85th Texas Legislature may consider legislation to address the needs of high-needs children in the foster care system.

**Reducing Recurrence of Abuse and Neglect**

Prevention and early intervention (PEI) programs work with families who have had contact with the Child Protective Services (CPS) system to stop the cycle of abuse and to promote positive outcomes for children, youth, families, and communities through family-strengthening programs that are based on research and supported by data. According to the Department of Family and Protective Services (DFPS) website, PEI also contracts with community-based programs and agencies to provide a variety of services to prevent abuse, neglect, delinquency, and truancy. These programs can help keep children out of the foster care system and reduce the recurrence of abuse and neglect.

DFPS made recommendations to reduce recurrences of abuse and neglect, including improving data tracking and use of data; allowing better coordination and access to data systems; considering options for additional post-adoption services; and reviewing the record-retention schedule to consider improvements to record-retention policies.

The Office of Child Safety (OCS) was created in September 2014 to help address and reduce child abuse. OCS is tasked with reviewing state and national data, trends, best practices, and prevention programs used elsewhere, as well as making recommendations to support Texas's implementation of prevention and intervention strategies to address and reduce child fatalities and serious maltreatment.

The 85th Texas Legislature may consider legislation on, and may continue to monitor, prevention and early intervention programs and Department of Family and Protective Services efforts to reduce child fatalities and the recurrence of abuse.
Reforms in the Office of Inspector General and Medicaid Managed Care

The role of the inspector general (IG), according to statute, is the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and the enforcement of state law relating to the provision of these services.

S.B. 207 (relating to the authority and duties of the office of inspector general of the Health and Human Services Commission), 84th Legislature, Regular Session, 2015, has created important reforms to IG operations, including incentivized collaboration with the Health and Human Services Commission (HHSC), improvements to the credible allegation of fraud hold standards, a newly established IG subpoena power, shorter preliminary investigation time lines, a newly required extrapolation tool, greater transparency through quarterly reports, and a 10-day processing requirement for Medicaid provider background checks. These new changes are still being implemented and a newly formed division has been created in the Office of Inspector General (OIG) to conduct systemic, issue-focused inspections across the health and human services system. During the interim, HHSC discussed new efforts for OIG investigators to work with special investigation units at managed care organizations (MCOs) to reduce instances of fraud, waste, and abuse. HHSC also discussed with the committee to whom is awarded recoveries of fraud, waste, and abuse and whether those recoveries should be returned to MCOs, to the state, or to taxpayers.

The 85th Texas Legislature may consider legislation to help prevent waste in Medicaid managed care, as well as continue efforts to monitor the Office of Inspector General and the recovery of funds lost to fraud, waste, and abuse.

Refugee Resettlement Programs

According to the state health and human services (HHS) website, Texas annually receives approximately 6,000 refugees through the United States Department of State’s refugee program. The Office of Immigration and Refugee Affairs, within the HHS system, helps these refugee families upon arrival into the United States. Refugees in Texas are eligible to receive temporary cash assistance, medical assistance, and social services assistance. According to the Health and Human Services Commission, Medicaid is the state service most accessed by refugees and in fiscal year 2015 the average monthly Medicaid caseload of 24,830 cost $55 million in general revenue. Committee members speculate that the first line of care for many refugees, because of the structure of Medicaid transition services, is the emergency room and suggest that a health literacy program should be established to help refugees understand appropriate use of emergency room services.

Refugees, after attaining refugee status in their country of origin, are settled within the United States by placement agencies, which are not licensed by the state. Some areas of Texas are seeing an increased amount of refugees and say that they are in need of further
assistance from the state and federal governments. The mayor of Amarillo testified at the committee meeting that Amarillo receives more refugees per capita than any city in the country and that many refugees move to Amarillo to join family after having been placed in other areas of the county.

The 85th Texas Legislature may consider legislation regarding licensure of refugee placement agencies, development of a program to help refugees with health care literacy, and further assistance and communication with areas that have received refugees.
Teleservices

The utilization of telemedicine, telehealth, and telemonitoring will allow under-served rural areas of the state to receive the same types of care available to urban areas. The Texas Medical Board states that telemedicine is allowed to be practiced in Texas; providers must be licensed in Texas or meet a licensing exemption to practice on Texas patients; and adequate diagnostic information must be gathered through a physical examination to establish a patient-physician relationship before telemedicine is used.

In Texas Medicaid, “telemedicine” is defined as a health care service that is initiated either by a physician who is licensed to practice in Texas or by a health professional who is acting under a physician’s delegation and supervision. “Telehealth” is defined as health services, other than telemedicine, delivered by a licensed or certified professional who is acting within the scope of the license or certification. “Telemonitoring” is defined as a scheduled, remote monitoring of data related to a patient’s health and the transmission and review of that data. Currently, 49 states offer some level of coverage and reimbursement for all the health services that are accessible remotely, often referred to as “teleservices,” and many have started to remove previous restrictions for reimbursement.

The National Conference of State Legislatures has stated that there are three primary policy issues related specifically to telehealth, which include coverage and reimbursement for telehealth services, licensure portability to help expand access across state borders, and safety and security to ensure that patient data is protected. An opinion piece in the Houston Chronicle by the chief executive officer of the Texas Association of Businesses states that there are three things the state should do to facilitate access to telemedicine: ensure standards of practices for telemedicine; adopt a technology-neutral definition of telemedicine; and require patient travel for in-person care only when medically necessary.

Federal insurance programs also have varying requirements for the reimbursement of teleservices. Medicare reimburses only for certain services, set geographical locations, and specific providers used within certain groups, while Medicaid gives states more flexibility to decide which services qualify for reimbursement. Telehealth, telemedicine, and telemonitoring can be useful in coordinating care and can provide easy, cost-effective health care for populations such as veterans or the elderly with a variety of needs.

The 85th Texas Legislature may consider legislation regarding definitions, access, and barriers to the implementation of services provided by telehealth, telemedicine, and telemonitoring.
Texas State Hospital System

Expanding Forensic Capacity

There are two types of forensic commitments—incompetent to stand trial and not guilty by reason of insanity. In 2014 the forensic population at state hospitals surpassed the civil population. In January 2016 the population of forensic patients was 1,226 and the population of civil patients was 1,118. Additionally, the waiting list for forensic patients, as of February 2016, includes around 400 individuals. Because of the increasing demand of forensic patients on the state hospital system, issues with aging campuses, workforce shortages, and retention issues have caused the Texas Department of State Health Services (DSHS) to slow, or even stop, state hospital admissions. Current DSHS efforts to expand bed capacity in order to reduce waiting lists at state hospitals have included critical repairs to state hospital infrastructures, purchase of private psychiatric beds, jail-competency restoration, staff recruitment and retention, psychiatric residents stipend program, and patient transitions into communities. According to Senator Rodríguez, the state lacks appropriate facilities, such as crisis centers, across the entire state and the overall lack of appropriately placed facilities must be addressed.

The 85th Texas Legislature may consider legislation to expand the forensic capacity at mental health facilities, reduce workforce shortages in state hospitals, and expand community programs to treat patients who have been civilly committed.

Failing Infrastructure

The Texas Department of State Health Services (DSHS) has identified a need to replace five hospitals and renovate another seven hospitals over the next 10 years at a cost of more than $1 billion. Specifically, Austin State Hospital, North Texas State Hospital-Wichita Falls, Rusk State Hospital, San Antonio State Hospital, and Terrell State Hospital have been identified as the five that need to be replaced because of critical infrastructure issues.

DSHS reports that the state hospital system has 557 buildings across the state and that buildings with a replacement value of $900 million need to be replaced. DSHS explains that its plans include transforming and clarifying the role of state and local hospitals, expanding access through local contracting, replacing and renovating state hospitals that are pursuing academic affiliations, considering universities or other partners for hospital operations, and addressing other critical issues such as telemedicine and electronic records. According to testimony from The University of Texas System, funding options for the initial construction of new state mental health hospitals would include legislative funding, philanthropy, public-private partnerships, and university partnerships.

A September report from DSHS states that through ongoing meetings with leaders from universities across the state, DSHS is exploring opportunities for new partnerships involving state hospitals and that each partnership has its own set of potential benefits,
risks, and challenges. According to the report, potential barriers to a partnership include: “the poor condition of some of the existing state hospitals may deter university affiliation; universities require agreements that do not place them at risk of financial loss; and adequate resources are a key ingredient in any successful partnership. At this time, it is unclear whether any state-university partnership can be established without additional funding and a clear pathway towards long-term fiscal stability.”

The 85th Texas Legislature may consider legislation regarding the state hospital system, as well as ways to approach partnerships between those facilities and universities across the state.
INTERGOVERNMENTAL RELATIONS

Disaster Preparedness and Coordination

Due to its geographic location, Texas is vulnerable to catastrophic weather. Texas has more major disaster declarations than any other state in the nation while also having the second-highest fiscal threshold for eligibility for a federal or state grant. As such, the state has used several methods to handle weather-related issues.

Disaster preparedness officials note that it is important to preserve the essential skills and corporate knowledge of officials who administer disaster response. Additionally, advanced planning for disasters is crucial so that assistance can be offered in a timely fashion. The Texas General Land Office (GLO) has created a comprehensive coastal master plan to protect and preserve Texas’s coast. GLO also conducts ongoing studies to examine drainage and infrastructure resiliency to determine where and when problems might arise. GLO uses a regional model to achieve a balance between local and state-run organizations so that local communities can recover effectively. Officials note that codifying the disaster relief process will help maintain stability in the event that experienced core-staff members depart for other ventures.

GLO has modified housing guidelines to better prepare for disasters and has also increased the amount of disaster relief funds disbursed annually.

Although programs are in place and roughly $1.1 billion has been allocated for disaster recovery, reconstruction projects have still experienced delays. Eight years after Hurricanes Ike and Dolly, for example, approximately 95 percent of single-family homes and 50 percent of multifamily homes had been repaired. Experts state that changes must be made so that recovery time is reduced.

The 85th Texas Legislature may consider legislation relating to response time and reconstruction after disasters.

Extraterritorial Jurisdiction Expansion

More than 1,400 people moved to Texas every day in 2015. To accommodate the large number of people entering the state, Texas cities have been given tools, such as broad revenue-raising authority and annexation powers; however, state aid does not comprise a large amount of that assistance. No more than four percent of a city’s budget comes from state-generated revenue, as most of it is sourced from grant funding.
Past issues have arisen in which cities allegedly were annexed against their wills, as with the City of Kingwood, which was annexed by the City of Houston despite being self-sufficient. The 80th Legislature, Regular Session, 2007, enacted legislation to give The Woodlands, also in the Houston area, the ability to incorporate any time before 2057 to avoid being annexed by the City of Houston. According to annexed cities, the benefits received are sometimes negligible. Some officials believe that a city should be able to annex as long as both cities benefit.

Authorities note that involuntary annexation allows municipal governing authorities to forego traditional balanced-budgeting techniques and selectively target and capture revenue-rich communities in a bid to increase their tax bases. Municipal growth can also neglect cities by not focusing on the individual needs of communities. Residents have also raised concerns that adequate advance notice has not always been provided when a city is to be annexed. Critics say that this has led to cities being annexed without having time to voice their support or opposition.

The 85th Texas Legislature may consider legislation regarding statutory extraterritorial-jurisdiction-expansion clarification and the provision of advance notice to individuals who may be affected.

**Home Rule Municipality Transparency**

Texas currently has 848 general law cities and 369 home rule cities. While general law cities do not have a charter and can only adopt an ordinance that is authorized by state law, home rule cities possess a charter and are authorized to adopt ordinances. Since home rule cities are able to adopt their own rules, they have some freedom when drafting and creating ballot language.

Although recent Texas Supreme Court rulings have provided clarification, statutes do not clearly define how ballots should be created. Proponents of language clarification suggest that codifying supreme court decisions that define the common law standard for ballot integrity would be beneficial because muddy ballot language and missing features can confuse voters.

Certain information is required to be posted at polling places, including tax rate, maturity of bonds, total amount of principal debt, and the interest on the debt for every specific political subdivision. H.B. 1378 (relating to the fiscal transparency and accountability of political subdivisions), 84th Legislature, 2015, made these changes, but did not modify regulations for notices of an election, the order of an election, or what appears on a ballot. S.B. 1041 (relating to required disclosures in and to the length of ballot proposition language authorizing political subdivisions to issue bonds or impose or change a tax), 84th Legislature, 2015, would have required the inclusion of additional ballot language in the future, but the bill did not pass.
Officials have considered longer ballots even though additional information would require a greater level of coordination among governmental entities. However, opponents of adding information argue that sufficient information is already available to voters and that adding information to ballots would only serve to disenfranchise voters intimidated by the ballot’s overwhelming size.

The 85th Texas Legislature may consider legislation to define the authority of a home rule municipality with regard to the clarity and transparency of ballot language.

**Municipal Management Districts**

Municipal management districts (MMDs), which were first established in the 1980s, allow commercial property owners to work together to facilitate improvements that supplement city and county services. MMDs are authorized to develop a wide array of improvements and are both driven and monitored by property owners. MMDs can be tailored to serve the needs of a specific city, but they often support existing activity centers, promote neighborhood revitalization, and support raw land development. The vast majority of MMDs are supplemental assessment districts, and assessment fees come from property owners.

When an MMD is created in a populated area, notice in a local newspaper under a provision known as the “constitutional right to notice” is required to be given to landowners. Landowners who may be subject to an assessment must be additionally notified by mail. However, notice is not required to be given to existing assessment or taxing entities. Additionally, overlapping districts and districts that may have duplicate features do not require that a notice be submitted to property owners when they are created or modified. This has created issues because entities may not be aware when an MMD is being created. Property owners are not allowed to opt out of MMD creations or expansion areas.

Officials state that those proposing the creation of a new MMD should be required to first confirm that there are no existing assessment or taxing entities within the boundaries of the proposed district and then provide notice to those who would be affected. A secondary notice could also be provided to property owners so that property owners are not taken by surprise.

The 85th Texas Legislature may consider legislation to require that municipal management districts provide notice to all affected individuals and organizations and confirm that no existing assessment or taxing entities are within the boundaries of a proposed district.
Public Debt

As of 2016, only New York has a higher local debt per capita than Texas. According to the Texas Bond Review Board, local governments in Texas borrowed more than $5 billion between September 2013 and August 2014, which brought the total local debt across the state to $205 billion. With 10 of the fastest-growing counties in the nation located in Texas, cities require a range of new public infrastructure that can be difficult to afford without borrowing money.

Texas has two main types of local debt issues: taxpayer-supported debt and revenue-supported debt. Taxpayer-supported debt is backed by local property taxes while revenue-supported debt is usually paid through sales tax or user fees. More than two-thirds of taxpayer-supported debt issued in 2015 came from school districts, many of which used it to construct schools for fast-growing student populations. Some critics have expressed concern that taxpayer-supported debt can be more difficult to pay off if projections for economic performance or population growth numbers differ. Experts argue that bond election ballots should include detailed information about an entity’s existing debt obligations. However, opponents argue that the ballot box is too late in the stage to inform voters about issues and that adding information could make ballots difficult to comprehend.

Capital appreciation bonds (CABs) have been used as a financing tool that allows districts to borrow money at higher interest rates while avoiding making repayments for years. However, CABs can grow quickly, even as much as 10 times the amount originally borrowed by the time repayment is due. Local officials believe that districts must be given flexibility for how much money they can borrow.

The 85th Texas Legislature may consider legislation regarding information provided to the public about public debt issuances.

Texas Department of Housing and Community Affairs

The United States Supreme Court ruled in Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (U.S. 2015), that the federal government is to provide tax credits for low-income housing to designated state agencies that will in turn distribute them to developers. The Texas Department of Housing and Community Affairs (TDHCA) is the state agency designated to distribute those credits in Texas. The Inclusive Communities Project Inc. (ICP) is a Texas-based nonprofit that assists low-income families in obtaining affordable housing. ICP brought a disparate impact claim under Sections 804(a) and 805(a) of the Fair Housing Act (FHA), 42 U.S.C. 3601 note, alleging that TDHCA and its officers had caused cyclically segregated housing patterns by allocating too many housing tax credits for predominantly black inner cities and too few in predominantly white suburbs. The Supreme Court determined that the allocation of housing tax credits caused a disparate impact.
Although FHA was adopted in 1968 to eliminate housing segregation, some say that its efforts have become less effective in recent years. The Texas Supreme Court has not yet issued an order that invalidates any rules relating to affordable housing. Officials note that TDHCA has to be able to provide affordable housing in the state to the same degree as was provided prior to the United States Supreme Court ruling. Proponents say that affordable housing is not being built as frequently as it should. Others say that while the construction of high-quality homes is important, the state has gone too far in attempting to balance affordable housing.

Through the use of private money, tax credit programs have been used to construct houses with little governmental intervention. Additionally, social services, such as GED classes, can be provided in affordable housing areas. States need to have a qualified allocation planner to be eligible for tax credits or they risk lawsuits from disparate impacts.

Officials may write letters—state representative support letters, city and county resolutions of support, and neighborhood opposition letters—to support or oppose the construction of affordable housing in a particular area. Even though the letters are often subjective, government officials who reject them may risk alienating their constituents.

The 85th Texas Legislature may consider legislation regarding construction of affordable housing.
Economic Development Incentives

The Texas Legislature has evaluated the effectiveness and necessity of programs and resources used to support economic development in Texas. Recently, issues related to providing incentives to businesses have been characterized as contentious. Proponents of economic development incentive programs have suggested that these programs lead to the creation of high-paying jobs and economic growth. Those who oppose these programs suggest that economic development incentive programs are mainly political and serve no actual purpose because lower individual taxes and a regulatory climate—among other factors—are what attract new residents and businesses to Texas.

The Texas Economic Development Act, created by H.B. 1200, 77th Legislature, Regular Session, 2001, is considered to be Texas’s largest economic development incentive program. Found in Chapter 313 of the Tax Code, the Texas Economic Development Act (commonly referred to as “Chapter 313”) allows a school district to offer an entity that plans to build certain kinds of projects a 10-year appraisal limitation on the maintenance and operations portion of its school district property tax, meaning that the entity will only pay property taxes on the value of its property up to the appraisal limitation. According to the Senate Committee on Natural Resources and Economic Development’s Interim Report to the 85th Legislature, an eligible project must be committed to “either manufacturing, research and development, clean coal, an advanced energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, nuclear power generation, or a computer center used primarily in connection with one of the other approved uses.” Projects that will invest more than $1 billion in any industry are also considered eligible.

According to the report, proponents of Chapter 313 argue that the value not being taxed by school districts would not be in Texas at all but for the incentives provided by Chapter 313 agreements. Proponents conclude that nothing is really lost to anyone as a result of the agreement. Opponents have suggested that Chapter 313 serves no purpose because the investments would have been accrued with or without the program subsequently losing money for the district or taxpayers.

The 85th Texas Legislature may consider legislation related to methodologies for creating and maintaining economic development incentives, as well as the amendment of Chapter 313.
Expedited Permitting

S.B. 709 was enacted by the 84th Legislature, Regular Session, 2015, and applies to all permits filed after September 1, 2015. The legislation made changes to the Texas Commission on Environmental Quality (TCEQ) case-hearing process related to permit applications for air quality, underground injection control, municipal solid waste, industrial and hazardous waste, and water quality. According to TCEQ, it is the largest permitting agency in the world.

Because speed in the permitting process is considered critical, proponents of S.B. 709 have indicated that although they support the reform, most of the reforms have not put Texas at the forefront to permitting efficiency. The Texas Association of Business testified at an interim hearing that it would continue to monitor the reforms, but suggested that public participation options and processes are in need of improvements. The Texas Chemical Council stated that permitting is a critical issue that business owners take into account when deciding to move their businesses to the state.

The 85th Texas Legislature may consider legislation to continue monitoring the status of permit applications under new procedures.

Implementation of Environmental Protection Agency Regulations

Clean Power Plan

On February 9, 2016, the United States Supreme Court stayed implementation of the Clean Power Plan pending judicial review. The Clean Power Plan, a response to President Obama’s Climate Action Plan, aims to reduce carbon pollution from power plants and address other issues related to climate change. According to the Texas Commission on Environmental Quality (TCEQ), the United States Environmental Protection Agency (EPA) follows Section 111(d) of the Clean Air Act in regulating methane emissions but has not used the section frequently. According to public testimony, Section 111(d) requires each state, with assistance from the EPA, to develop standards of performance (i.e., “the degree of emission limitation achievable through the application of the best system of emission reduction taking into account the cost of achieving such reduction”) for existing stationary sources and an implementation plan to achieve those standards. TCEQ says that the EPA’s use of the section presumes that there is a valid rule for new, modified, and reconstructed sources under Section 111(b) of the act and that Section 111(b) is also under litigation.

Opponents to the plan state that it intrudes upon the state’s sovereign authority in regard to the operation and regulation of electricity markets, does not adequately reflect how power markets work, and is dangerously cavalier about reliability. The Electric Reliability Council of Texas has estimated that the imposition of the Clean Power Plan on Texas could result in up to a 44 percent increase in wholesale electricity prices by 2030. It has
also been suggested that Texas often does not receive credit for all of the renewable energy that has been built.

Proponents of the plan state that under the Clean Power Plan, Texas has the opportunity to enter into agreements with states that are not as successful at complying with the plan and sell them excess emission-reduction credits.

The 85th Texas Legislature may consider legislation regarding the implementation of federal environmental regulations relating to the Clean Power Plan.

**Cross-State Air Pollution Rule**

The Cross-State Air Pollution Rule (CSAPR) requires states to reduce power plant emissions that contribute to ozone or fine-particle pollution in other states in an effort to improve air quality. According to the Senate Committee on Natural Resources and Economic Development's *Interim Report to the 85th Legislature*, the United States Environmental Protection Agency (EPA) has proposed CSAPR to replace the Clean Air Interstate Rule, which applies to 27 upwind states, including Texas.

According to the EPA, proponents of CSAPR state that the rule will not disrupt the reliable flow of affordable electricity for American consumers and businesses. They also contend that although the effects on prices for specific regions or states vary, they “are well within the range of normal electricity price fluctuations.”

Opponents of the rule state that Texas had expected the EPA to revisit the budget for the rule, but that the EPA instead issued a memorandum in June 2016 stating its intent to institute rulemaking in the fall of 2016 to remove four states, including Texas, that were affected by the remand of the budgets unless those states choose to voluntarily participate. The Texas Commission on Environmental Quality says that the United States Court of Appeals for the District of Columbia Circuit remanded the 2014 annual sulfur dioxide and nitrogen oxide budgets for Texas as unlawful overcontrol, but that all Texas units currently comply with the CSAPR budgets. Opponents have expressed concern regarding the compliance deadline.

The 85th Texas Legislature may consider legislation regarding the implementation of federal environmental regulations relating to the Cross-State Air Pollution Rule.

**Reduction of Methane and Volatile Organic Compounds**

On May 12, 2016, the United States Environmental Protection Agency (EPA) issued three final rules intended to curb emissions of methane, smog-forming volatile organic compounds (VOCs), and air toxins from new, reconstructed, and modified oil and gas sources, while providing greater certainty about permitting requirements under the Clean Air Act for the oil and gas industry.
Opponents of the regulations say that the proposal adds methane controls to the oil and gas industry’s regulations for the first time and requires a significant amount of recordkeeping from the industry. It has also been suggested that the proposed regulations regarding methane are unnecessary and would have a detrimental effect on the industry by making the production of natural gas more difficult.

Proponents of the regulations argue that for natural gas to be considered a cleaner energy source, methane emissions from its production must be addressed. It has also been argued that other energy-producing states have implemented rules similar to the rule proposed by the EPA and that rules to limit methane emissions work, are cost-effective, and do not impede the industry’s ability to thrive.

The 85th Texas Legislature may consider legislation regarding the implementation of federal environmental regulations relating to the reduction of methane and volatile organic compounds.

**Regional Haze Rule**

According to the United States Environmental Protection Agency (EPA), the Regional Haze Rule calls for state and federal agencies to collaborate to improve visibility in 156 national parks and wilderness areas. Other states, the EPA, the National Park Service, the United States Fish and Wildlife Service, the United States Forest Service, and other interested parties work together to develop and implement air quality protection plans in order to reduce pollution that affects visibility.

Proponents of the Regional Haze Rule say that the rule has reduced emissions of visibility-impairing pollutants and has improved visibility. The National Park Service estimates that emission controls established under the first planning period led to reductions of approximately 500,000 tons per year of sulfur dioxide and 300,000 tons per year of nitrogen oxide.

Opponents of the rule have suggested that the sheer size of the investment required to address the issue is of a magnitude far larger than for any other rule and that there are issues related to the imminent compliance deadline.

The 85th Texas Legislature may consider legislation regarding the implementation of federal environmental regulations relating to the Regional Haze Rule.

**Waters of the United States**

The United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers finalized a redefinition of “Waters of the United States” in the Clean Water Rule in May 2015 to include which rivers, streams, lakes, and marshes fall under the jurisdiction of the EPA and the Army Corps of Engineers.
Opponents to the rule have said that the greatest challenge to Texas under the waters rule will be the types of situations related to the collection of water by individuals in rural areas. It has also been suggested that implementing the rule amounts to federal overreach that could impact Texans and industries in Texas, including housing developments, and could increase the cost of constructing new housing.

Proponents suggest that due to pending litigation relating to the waters rule, the legislature should take no further action and should invite a representative from the EPA to testify in defense of the rule.

The 85th Texas Legislature may consider legislation regarding the implementation of federal environmental regulations relating to the Clean Water Rule.

**Oil Theft**

According to the Energy Security Council (ESC), oil theft includes the theft of crude oil, oil condensate, and skim oil. The ESC estimates that one to three percent of the 700-million barrels of oil and oil condensate produced in 2013 was stolen, which represents a more than $700 million loss that significantly impacts both the industry and the state’s tax revenues. Working with the Department of Public Safety of the State of Texas and the Federal Bureau of Investigation’s Permian Basin Oilfield Theft Task Force, the ESC works to prevent the aforementioned crimes.

It has been suggested that current processes for preventing and prosecuting oil theft in Texas are inadequate and that stolen oil can be easily transferred to market without a bill of lading. Additionally, it has been suggested that Texas law enforcement is hampered by the investigatory tools currently at its disposal and that asset forfeiture is not used to sequester equipment, such as oil or water tankers used during oil theft.

S.B. 1393 (relating to the creation of the offense of theft of pipeline equipment, oil and gas equipment, oil, gas, or condensate and the unauthorized purchase or sale of oil, gas, or condensate) was passed by the 84th Legislature, Regular Session, 2015, but it was vetoed by Governor Abbott.

The 85th Texas Legislature may consider legislation that provides additional capacity to identify, investigate, and prosecute those who engage in oil theft, as well as criminal penalties for those found guilty of oil theft.

**Quad-O**

The United States Environmental Protection Agency (EPA) proposed new regulations and made changes to existing regulations for the oil and gas industry. The New Source Performance Standards define what processes and equipment are affected and quantify necessary emission reductions. According to the *Pipeline and Gas Journal*, Quad-O (Code
of Federal Regulations (CFR) 40, Part 60, Subpart OOOO) resulted after the EPA was sued in January 2009 for failure to review and update existing regulations related to hydraulic fracturing’s reinvigorated production. The new regulations apply to all onshore oil and gas facilities that were constructed, modified, or reconstructed after August 23, 2011, and must be met within a timeline assigned to each facility.

According to the Texas Commission on Environmental Quality (TCEQ), the EPA estimates that Quad-Oa will cost $150 million to $170 million in 2020 and $320 million to $420 million in 2025, contrasted with EPA-estimated benefits of $360 million in 2020 and $690 million in 2025. TCEQ suggests that the EPA has vastly underestimated the number of sources that will be subject to regulations and that the cost for implementing the rules has been underestimated.

Proponents of the new regulations have said that other energy-producing states, such as Colorado, have implemented rules similar to the rule proposed by the EPA and have found them to limit methane emissions, be cost-effective, and not be an impediment to the industry’s ability to thrive.

Opponents of the new regulations have argued that the proposed regulations are unnecessary, costly, and would have a detrimental effect on industry.

The 85th Texas Legislature may consider legislation that would call for a reconsideration of the proposed regulations by the United States Environmental Protection Agency.

**Texas Emissions Reduction Plan**

The United States Environmental Protection Agency (EPA) lowered the National Ambient Air Quality Standards for ground-level ozone to 70 parts per billion in October 2015. According to the Texas Commission on Environmental Quality (TCEQ), preliminary air monitoring data reveals that the Dallas–Fort Worth, Houston–Galveston, San Antonio, and El Paso areas currently have ozone levels above the new standard. It has been suggested that when an area has emission levels higher than the set standard, contributing causes and the specific type and source of precursors, such as nitrogen oxide, need to be determined in order to limit them. TCEQ has indicated that the Texas Emissions Reduction Plan (TERP) has reduced some precursors.

TERP provides financial incentives to eligible individuals, businesses, or local governments to reduce emissions from polluting vehicles and equipment. The Texas Chemical Council supports TERP and has noted that the program is the most important tool that Texas has to mitigate motor vehicle emissions. American Natural Gas Alliance also supports TERP and has voiced its support for protecting and improving air quality and for the use of natural gas as a clean alternative to motor fuel.
It has been suggested that the legislature consider rewriting statutes for how TERP collects revenue since an excess of revenue is being collected from all areas of the state, but only a fraction of the money is being used to improve nonattainment areas.

The 85th Texas Legislature may consider legislation regarding the expansion of the Texas Emissions Reduction Plan and the release of its funds.
Rollback Rate Elections

Although the property tax burden in Texas is increasing, taxpayers have limited opportunities to vote on property tax rates.

Voter approval is required for a school district to increase its maintenance and operations (M&O) tax above a rate of $1.04 per $100 of property value and to issue bonds backed by interest and sinking tax revenues. However, under current law taxpayers can be faced with up to eight percent annual growth in property tax revenue in their city, county, and special district property taxes, for which they have no resource to challenge imposed tax burden increases under the Tax Code. Furthermore, the current rollback rate does not consider tax revenue from new property, resulting in the actual rate of revenue growth exceeding 12 percent in certain taxing units.

If the rate of growth exceeds eight percent, taxpayers can attempt a petition to request an election for the rollback tax rate, a process which critics say is time-consuming and expensive. When pursuing a petition, taxpayers have 90 days to collect signatures from a certain percentage of taxpayers in a city, county, or special district taxing unit. This process is entirely driven by taxpayers and could require taxpayers to use their own money. In contrast, a proposed school district’s M&O tax rate increase requires a tax rate ratification election, which is a simpler process and does not cost the taxpayer money.

Stakeholders note that Section 26.04 (Submission of Roll to Governing Body; Effective and Rollback Tax Rates), Section 26.041 (Tax Rate of Unit Imposing Additional Sales and Use Tax), and Section 26.08 (Election to Ratify School Taxes), Tax Code, could be amended to change the rollback tax rate calculation for cities, counties, and special districts. This change would only allow them to gain a smaller percentage of additional property tax revenue each year from growth in property values without voter approval. The current election-petition requirement could also be amended to mirror the process used in a school district’s M&O tax rate election, or be removed entirely.

The 85th Texas Legislature may consider legislation that amends rollback rates and rollback rate elections.

Transparency and Accountability

Texas has a median property rate of $2.17 per $100 in property value, which is the fifth-highest property tax rate nationwide. Since 2005, property tax obligations have increased at a significantly faster rate than median household income. Property tax obligations are
calculated by multiplying the appraised value of a property by the tax rate. Although property tax rates have remained relatively constant since 2005, city and county property values have risen rapidly during the same time frame, which increase the taxes that are levied even if the tax rate does not change.

The required truth-in-taxation notices are meant to increase transparency and accountability within the property tax system, but the notices are complex and difficult to understand—even for tax professionals. Furthermore, the notices contain the taxable value amount within a taxing unit, but deductions and exemptions—such as homestead exemptions, senior citizen exemptions, and additional value from tax increment reinvestment zones—are excluded from the total taxable value on notices, which can total billions of dollars for larger taxing units. Stakeholders state that notices need a major overhaul to be more transparent and that authorizing the Office of the Comptroller of Public Accounts of the State of Texas to enforce the collection of information from local governments will further enhance the truth-in-taxation notices. The information collected by the comptroller’s office would include property values, rollback and effective tax rate calculations, adopted tax rate, and the projected and actual tax levies.

The current property tax calendar begins each year on January 1, when the central appraisal districts (CADs) set the initial appraisal value. The appraisal values for homeowners are mailed by March 15, while all other property appraisal values are mailed by April 15. The varying deadlines for different property types can create confusion for the average property owner. Property owners have complained about many policies that are followed by CADs and taxing units, including the uneven application of appraisal policies around the state, large increases in appraisal values in consecutive years, the refusal of CADs to reappraise property after a natural disaster, and the ability of a taxing unit to challenge the values of an entire class of properties. Property owners recommend revising Title 1 (Property Tax Code), Tax Code, to require the automatic reappraisal of property that is located in an area that is or was subject to an official disaster declaration by the governor. Property owners further recommend the creation of an appointed board in the comptroller’s office to provide oversight for the property tax system, including the ability to issue and enforce binding rulings.

Furthermore, the appraisal challenge process, which uses an Appraisal Review Board (ARB), has been criticized by property owners who say it is not independent from CADs, has limited transparency, and has members who are not properly trained or educated in tax policies. Property owners recommend improving the training of ARB members, with respect to the Title 1 (Property Tax Code), Tax Code, and public meeting procedures, and improving ARB’s independence by having the comptroller’s office use local funds to issue ARB members’ paychecks rather than CADs issuing the checks.

The 85th Texas Legislature may consider legislation that improves the accountability and transparency of the property tax system.
Advertising Public Notices

In Texas, more than 100 state laws require cities to publish notices in a print newspaper. More than 50 percent of those statutes concern notices required to be published during a procurement process, while other statutes address notices around such issues as annexation hearings and budget deliberations. Other statutes govern the publishing of notices by school districts, special districts, and state agencies on a variety of subjects, including environmental permits.

Stakeholders note that local governmental entities collectively spend millions of dollars annually publishing public notices in newspapers, and many local officials have begun advocating for moving some or all of those notices to the websites of governmental entities. Some observers state that money spent to publish notices is money not spent on roads, police, firefighters, and other public services. Others suggest that governmental entities be allowed to publish an abbreviated notice that contains a website link or a phone number that interested parties could use to access additional information. Additional suggestions include moving some notices to government websites; moving one notice to a website when state law requires two or more notices; moving the notices to newspaper websites, if there is concern about government websites; moving all public notices to a state-sponsored website; or allowing legitimate online-only publishers to be the repository of public notices rather than print newspapers, as is currently required.

Supporters of current laws regarding print publication of public notices state that many Texans, particularly those who are elderly, poor, or residents of rural areas, cannot or do not use the Internet and would be unable to acquire public notices if those notices migrate to websites. Other supporters say that informing citizens is a core function of government, which must ensure that the public has access to notices of government actions; that placing information solely on a government website can make it difficult to find; and that the cost to publish public notices in print newspapers is miniscule compared to the cost of even one corrupt infrastructure project.

The 85th Texas Legislature may consider legislation regarding the publication of public notices.

Payroll Deductions for State-Employee Organization Membership Dues

State employees and employees of institutions of higher education may authorize one or more monthly deductions from their salaries or wages to pay membership fees to eligible employee organizations that advocate the interests of state employees concerning
grievances, compensation, benefits, hours of work, or other conditions or benefits of employment. Participation is voluntary and the authority to conduct these payroll deductions is provided by Section 403.0165 (Payroll Deduction for State Employee Organization), Government Code, and by Section 659.1031 (Deduction of Membership Fees for Eligible State Employee Organizations), Government Code.

Seven state-employee organizations are currently approved for membership-fee-payroll deductions and must meet certification requirements, including a membership of at least 4,000 state employees, activities conducted by the organization on a statewide basis, dues structure for state employees in place and operating for at least 18 months, and membership dues collected from state employees equal to an average of at least one-half of membership dues received by the organization nationwide. The Office of the Comptroller of Public Accounts (comptroller’s office) is tasked with certifying eligible state-employee organizations in accordance with statutory criteria. The comptroller’s office is authorized to charge an administrative fee to cover the costs of providing payroll deductions, and the qualifying state-employee organization is responsible for the payment of that fee. However, the comptroller’s office is not currently charging a fee to any state-employee organization because the cost to the state of performing those payroll deductions is de minimis.

There has been discussion of ending the payroll-deduction service due to a perceived conflict of interest involved in the state’s collecting of membership fees for state-employee organizations. However, groups of firefighters, law enforcement, first responders, and teachers have expressed concern regarding the service being terminated.

The 85th Texas Legislature may consider legislation regarding the payroll-deduction program for state employees and specifically the processing of membership dues for state-employee organizations.

Compensation for Private Property Taken Through Eminent Domain

Population and economic growth have created a need to maintain and expand the state’s infrastructure, creating conflicts with private landowners and their property rights. Texas has established laws and regulations to create transparency in the eminent domain process and is considering certain reforms to ensure that private property owners are treated fairly in that process.

Chapter 21 (Eminent Domain), Property Code, sets forth a three-stage process for an entity with eminent domain authority that wants to acquire real property for public use. The first stage consists of negotiations between the entity or “condemnor” and the landowner, in which the condemnor describes the easement or property it seeks to condemn and makes an offer to the owner. A final offer must be issued at least 30 days following the initial offer and must be based on an appraisal by a certified appraiser. Section 21.0113 (Bona Fide Offer Required), Property Code, requires the condemnor to
make a bona fide offer for the property and sets out seven factors that an offer must include to be bona fide. If the condemnor violates this section, the property owner can only litigate for court costs and attorney fees.

If the parties cannot negotiate an agreement, the next stage is for the condemnor to petition a local court to appoint three special commissioners to hear the dispute in an informal hearing. The special commissioners must be landowners who are living in the county and acquainted with local property values, and a 20-day notice of the hearing must be posted. In the hearing, both sides present evidence of value and the special commissioners post an award, which either party may appeal. If appealed, the third stage is a court proceeding, which can be a long and expensive process that might not make sense for a landowner unless the amount in controversy exceeds a certain amount. Because of the time and expense of litigation, most property owners do not reach the third stage.

The Texas Supreme Court has held that a condemnor is not required to inform a landowner that an offer may include more property than the condemnor can legally condemn under eminent domain. In 2004, the Texas Supreme Court, in *Hubenak v. San Jacinto Gas Transmission Company*, held that condemnors may seek to purchase more property and property rights than they can obtain under eminent domain and that the landowner bears the responsibility to limit the condemnor to obtain only what is reasonably needed for a project. It has been suggested that because an initial offer may include more property than can be legally condemned, the condemnor should be required to make two offers—the first for the property needed for the project and the other for additional rights and property that the condemnor seeks to purchase. It has also been suggested that a condemnor be required to present the landowner with a copy of a valid T-4 form, which is to be on file with the Texas Railroad Commission, indicating that the condemnor will operate as a common carrier and thereby has eminent domain authority, because a landowner may not know whether a private entity has the power of eminent domain.

The 85th Texas Legislature may consider legislation regarding compensation provided to private property owners for property purchased or taken by entities with eminent domain authority, including addressing any variance between the offers and the fair market values of properties taken through eminent domain to ensure property owners are fairly compensated.

**Electronic Voting for Military Members Serving Overseas**

In 2009, the United States Congress passed the Military and Overseas Voter Empowerment (MOVE) Act to provide greater protections for service members, their families, and other overseas citizens. Among other provisions, the MOVE Act requires states to transmit validly requested absentee ballots to voters no later than 45 days before
a federal election except where the state has been granted an undue-hardship waiver approved by the United States Department of Defense for that election.

S.B. 1115, 84th Legislature, Regular Session, 2015, authorized the Texas secretary of state (SOS) to continue to expand its e-mail ballot pilot program that allows a member of the United States armed forces who is on active duty overseas and eligible for hostile fire pay to cast an early voting ballot by e-mail. SOS has been given the discretion to expand the program beyond Bexar County and has identified Bell and El Paso Counties as possible targets, based on the large military population in those counties. SOS has been pursuing an electronic blank-ballot-delivery system, as well as a voted-ballot-return system. These systems are being used in Alabama, Arizona, Montana, and the District of Columbia. The electronic blank-ballot delivery is a form of electronic transmission that, instead of using e-mail, sets up an interface system developed by a third-party vendor. An electronic blank-ballot delivery would be more secure because it would eliminate the possibility of sending a ballot to the wrong e-mail address. Another option would be allowing voters to make their selections and then e-mail the ballot to the county where it would be printed out.

No funds have been appropriated to SOS for the electronic blank-ballot-delivery or voted-ballot-return system. Consequently, SOS has tried to use existing agency resources but the bids received have exceeded the funding that SOS allocated. SOS is currently working with vendors to determine if it is possible to use an existing product that is less expensive because allowing for electronic signatures, rather than requiring the voter to print, sign, and scan the ballot, may also lower costs. SOS states that the program cannot be expanded with current resources unless SOS finds a vendor with an existing product that complies with statute.

The 85th Texas Legislature may consider legislation regarding electronic voting programs for certain military members serving overseas.

**Employees Retirement System and Teacher Retirement System**

The Employees Retirement System (ERS) of Texas manages four major investment funds: the ERS pension fund; the law enforcement and custodial officers supplemental retirement (LECO) fund, which provides supplemental benefits to law enforcement and custodial officers; the judicial retirement system plan 2 (JRS 2) fund, which is prefunded for members of the judiciary who began service on or after September 1, 1985; and the judicial retirement system plan 1 (JRS 1) fund, which is a pay-as-you-go legacy program for members of the judiciary who began service prior to September 1, 1985.

H.B. 9, 84th Legislature, Regular Session, 2015, increased state and employee contribution rates in an attempt to address the unfunded liability of the ERS pension fund, making it fully funded by 2048, a period of 33 years. H.B. 9 increased contributions by active employees from 7.5 percent to 9.5 percent and eliminated the 90-day waiting
period so that members begin contributing sooner. H.B. 1 (General Appropriations Bill), 84th Legislature, Regular Session, 2015, increased the state contribution rate from 7.5 percent to 9.5 percent and has maintained the half percent contributed by agencies, which increases the overall contribution rate to 19.5 percent. To be considered actuarially sound, a pension plan must have a funding period of less than 31 years. The normal cost rate is what ERS pays for additional liabilities moving forward, currently at 12.27 percent, while the actuarially sound rate, the rate needed to pay the normal costs and unfunded liabilities within 31 years, is at 19.62 percent. This leaves an unfunded liability of $8 billion generated over the past 20 years that will be addressed through the increased contributions put in effect by H.B. 9 over the next 33 years. By 2048, it will have taken $29 billion to pay off the $8 billion unfunded liability, while a lump-sum payment of $1 billion now would reduce the total amount paid to $20.7 billion. In addition, LECO and JRS 2 still have infinite funding periods and are moving toward depletion. It has been suggested that this could also be addressed with small increases in the two funds’ contribution rates.

The Teacher Retirement System (TRS) of Texas is the sixth-largest plan in the country and manages $128 billion in assets. TRS provides pensions and other benefits to 1.4 million members, and one out of every 20 Texans is a member of TRS. Due to Texas’s size and the fact that many of the retirees reside in Texas, the vast majority of the nearly $9 billion in pension benefits that TRS distributes annually stays in the state. The average annuity is approximately $2,000 a month.

S.B. 1458, 83rd Legislature, Regular Session, 2013, was passed to assist TRS in paying off its $33 billion in unfunded liabilities. In 2015, the funding period for TRS was approximately 29 years, but an interim study conducted by TRS included mortality assumptions and such factors as the rate of return, which has increased the funding period to 33 years, making the fund actuarially unsound. The increase is due to members living longer, resulting in a higher cost to the pension system. TRS anticipates paying off the $33 billion in unfunded liabilities over 33 years due to the contribution rate and benefit changes enacted in S.B. 1458. Individual investments have been delegated to TRS’s internal investment committee consisting of senior staff members who also make investment decisions. In some cases, investment decisions are handled by external managers. TRS staff can make investments of up to and including $250 million in an entity. Any larger investment must be considered by the TRS board. There is a $30 billion cap on the amount that can be invested through external managers. The majority of TRS investments are managed internally.

The 85th Texas Legislature may consider legislation regarding changes to the Employees Retirement System of Texas and the Teacher Retirement System of Texas.
First Amendment Religious Liberty Protections

The First Amendment to the United States Constitution contains the Free Exercise Clause, which protects the free exercise of religion. In 1999, Texas enacted the Texas Religious Freedom Restoration Act (RFRA), which imposes a strict scrutiny test when the state takes actions that may impinge on a person’s free exercise of religion. RFRA prohibits the government from substantially burdening a person’s free exercise of religion, unless the government demonstrates that the law furthers a compelling governmental interest by using the least restrictive means. The 84th Legislature passed S.B. 2065, Regular Session, 2015, known as the Pastor Protection Act (PPA), permitting clergy members to refuse to officiate at weddings that violate their sincerely held religious beliefs.

Attorney General Ken Paxton, in a letter issued on October 7, 2015, set forth several topics the legislature may want to consider addressing by enacting legislation, including specific protections relating to staffing and housing for religious organizations, faith-based adoption and foster care agencies, small businesses and closely held corporations that provide goods and services for weddings, persons who solemnize marriages, and government employee and student speech. Paxton also suggested that the legislature consider addressing accreditation of religious schools, religious tax accommodations, and the uniformity of discrimination laws and ordinances. Other states have already enacted legislation to address some of these concerns or are considering legislation to do so, including Alabama, Alaska, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, and Washington.

At least 10 Texas cities with populations of more than 100,000 protect residents or city employees based on sexual orientation or gender identity either through a nondiscrimination ordinance or by amending city employee personnel policies. Concern has arisen regarding how these laws interact with RFRA and PPA. A perceived lack of uniformity among nondiscrimination laws and ordinances passed by certain Texas cities, and the burden those ordinances could place on individuals’ religious beliefs, have prompted some to call for the legislature to adopt a state law addressing those issues.

The 85th Texas Legislature may consider legislation regarding the Free Exercise Clause as guaranteed by the First Amendment and addressing the relationship between local ordinances and state and federal law.

Implementation of Open Carry and Campus Carry Legislation

The Texas Legislature recently passed legislation affecting the carrying of a handgun by individuals licensed to do so. S.B. 11, 84th Legislature, Regular Session, 2015, was enacted to permit the carrying of concealed handguns on the campuses of institutions of higher education by individuals with a license to carry (LTC). The legislation took effect for four-year universities and colleges on August 1, 2016, and will take effect for
community colleges on August 1, 2017. S.B. 11 gives university and college administrators some discretion to regulate campus carry, including that after an initial consultation a private or independent institution of higher learning may prohibit LTC holders from carrying handguns on campus, on any grounds or building where a university-sponsored activity is being conducted, or in certain university-owned vehicles. H.B. 910, 84th Legislature, Regular Session, 2015, authorizes an LTC holder to openly carry a holstered handgun. H.B. 910 went into effect on January 1, 2016. H.B. 910 also addresses trespassing with an openly carried handgun if an LTC holder enters another’s property without effective consent, has notice that the entry is forbidden, or receives notice that remaining on the property is forbidden and fails to depart.

Testimony provided to the Senate Committee on State Affairs suggests that there is some confusion regarding where a person can legally open carry, including the areas in which a university can prohibit open carry, the nature and content of the notice required for a private business owner to ban open carry on its premises, whether open carry is banned at after-school activities, and how the law applies to restaurants and bars.

The 85th Texas Legislature may consider legislation regarding clarification to the open carry and campus carry laws regulating the places where handguns can be carried to ensure that the average citizen understands when, where, and under what circumstances it is lawful to carry a weapon.

Judicial Salaries, Judicial Elections, and Legislative Retirement Annuities

Every two years, the Office of Court Administration (OCA) is required to undertake a study and produce a report on how Texas judicial salaries compare to those in other states. In addition, the Judicial Compensation Commission (JCC) is required by law to make specific recommendations regarding judicial compensation to the legislature every two years. According to the most recent OCA study, Texas judicial salaries are the lowest among the six most populous states, with the exception of supreme court justices in Florida.

The average compensation of Texas judges and justices compared to the average judicial salaries in the other five most-populous states is almost 33 percent lower for Texas district court judges, 26 percent lower for justices of the Texas courts of appeals, and 25 percent lower for the justices of the Texas Supreme Court and the judges of the Texas Court of Criminal Appeals. The judiciaries in the five most-populous states received raises in 2013, 2014, and 2015. Texas judges last received a salary increase in 2013. Nationally, Texas judicial compensation for district judges ranks 24th, justices of the courts of appeals rank 21st, and high court justices and judges rank 23rd. In 2013, JCC recommended a 21.5 percent increase and the legislature granted a 12 percent increase. JCC recommended a five percent increase to the legislature last session, but the legislature made no adjustment.
Federal judicial salaries are significantly higher than those for comparable Texas judges as well. Federal district court judge salaries are 42 percent higher, federal court of appeals judge salaries are 37 percent higher, and justices of the United States Supreme Court earn salaries that are 31 percent higher overall. The OCA study also looks at the effect of inflation on Texas judicial salaries. Since 1991, compensation of state judges has generally not kept up with inflation and the current structure provides little predictability regarding when increases in compensation will occur. Prior to 2000, Texas judges had generally received raises every fiscal year, but since 2000, judges have received salary increases only in 2005 and 2013.

OCA is required to collect data regarding voluntary judicial turnover. The judicial turnover rate during fiscal years 2014 and 2015 was 15.1 percent, the highest level since turnover data has been collected. During the last biennium, 40 percent of departing judges did not seek reelection and 31 percent resigned. The top three reasons given for leaving are retirement, the election process, and compensation. OCA has found that only six percent of the judges who leave the bench say that they are retiring and not seeking other employment. In response to a survey question regarding incentives that would likely increase retention, approximately 38 percent cited changes in compensation and 59 percent cited changes in the judicial election process.

Nine states have a straight-ticket voting option, seven states have partisan judicial elections, and three states—Alabama, Pennsylvania, and Texas—have partisan judicial elections and allow straight-ticket voting. Currently, the trend is moving away from straight-ticket voting, and since 2006 New Mexico, West Virginia, Michigan, Missouri, New Hampshire, North Carolina, and Rhode Island have abolished the straight-ticket voting option for judicial offices.

The linkage between legislative retirement annuities and judicial wages in Texas was enacted in 1975. Using judicial salaries as a measure for gauging legislative retirement annuities has been seen as a way to prevent criticism of the legislature for improving its own benefits or increasing its own compensation. Although the federal system provides parity between legislative pensions and judicial salaries, it lacks a strict statutory linkage. The majority of states have legislative retirement systems that are similar, if not the same, to that for state employees, with varying compensation formulas and retirement ages. While 11 states offer no retirement for legislators and four states have a completely separate retirement system, Texas is the only state that ties its legislative pensions to judicial salaries.

The 85th Texas Legislature may consider legislation regarding an adjustment in Texas judicial salaries to attract, maintain, and support a qualified judiciary; delinking legislators’ standard service retirement annuities from district judge salaries; eliminating straight-party voting for candidates of judicial offices; and ensuring candidates are given individual consideration by voters.
Monitoring Requirements for Guardianships

Establishing guardianship over another individual statutorily requires that the individual be found by a physician to be incapacitated by clear and convincing evidence, the highest burden of proof in civil cases. The physician is required to issue a physician’s certificate of medical examination declaring the individual incapacitated. When a person is found to be incapacitated and meets certain criteria, including that it is in the best interest of the incapacitated individual that a guardian be appointed, the court is authorized to appoint a guardian. The guardian must then be found eligible and qualified by a preponderance of evidence to serve in that position. The guardian can have a varying degree of control over the incapacitated individual’s affairs, and certain factors are considered to determine that level of control. Guardianship cases are typically handled by probate courts but constitutional or statutory county courts may handle the matter if the county lacks a probate court. Many county judges handling guardianship arrangements have no formal legal training. In the 244 counties without a statutory probate court, the county court often lacks funding to pay staff to assist the judge in guardianship monitoring and investigative duties.

Private, professional guardians are required to be certified by the Judicial Branch Certification Commission; however, other individuals can serve as guardians without being certified. National probate standards for guardians include criminal background checks, orientation, education, and assistance. Additionally, guardians of the estate have a bond requirement for an amount equal to one year of the liquid assets and annual income of the estate. The Texas Estates Code has no equivalent requirement for orientation, education, or assistance for guardians. The Estates Code also requires that an inventory be taken of the incapacitated individual’s assets and revenue within 30 days of establishing the guardianship and requires judicial approval of the inventory. Annual reporting requirements for guardians include performance reviews of the guardian, the well-being of the ward, the solvency of the bond, and the need to continue the guardianship. Based on Texas’s population growth, an increase in guardianships is anticipated when an “increased population” becomes elderly.

The Guardianship Compliance Project is a pilot program that was partially funded by the 84th Legislature to review adult guardianship cases to identify reporting deficiencies by guardians, to audit the guardians’ annual accountings and report the findings back to the judge, and to work with courts to develop best practices in managing guardianship cases. Participating counties include Anderson, Bexar, Comal, Guadalupe, Hays, Montgomery, Orange, and Webb. The initial findings of the 5,637 cases reviewed in the pilot program as of September 1, 2016, reveal that 32 percent of counties are missing the annual reports of persons, 45 percent are missing initial inventory reports, 47 percent are missing annual accounting reports, and 25 percent have waived the bond requirement for a guardianship of the estate. The average value of an estate under guardianship is $187,498 and an estimated total of $5 billion is under guardianship statewide. The State Commission on Judicial Conduct has recommended the expansion of the pilot program statewide. Guardians not meeting their reporting requirements have resulted in suspicion that in
some cases the guardian may be trying to profit illegally from the incapacitated person's estate.

The 85th Texas Legislature may consider legislation regarding mandatory education and training for guardians, expansion of the Guardianship Compliance Project, and stricter annual reporting requirements for guardians.

Public Integrity Unit

The 84th Legislature passed H.B. 1690, Regular Session, 2015, which created the Public Integrity Unit within the Texas Ranger Division of the Department of Public Safety of the State of Texas to investigate offenses against public administration by state officers and state employees.

Upon receiving a formal or informal complaint regarding an offense against public administration or on request of a prosecuting attorney or law enforcement agency, the Texas Rangers Public Integrity Unit (TRPIU) performs an initial investigation into whether the individual has committed such an offense. TRPIU is also authorized to investigate any lesser-included offense or other offenses arising from conduct that constitute an offense against public administration. If the initial TRPIU investigation demonstrates a reasonable suspicion that an offense against public administration has occurred, TRPIU is required to refer the matter to the prosecuting attorney of the county in which the defendant resided at the time the offense was committed, or in which venue is proper under the Code of Criminal Procedure.

TRPIU is required, on request of the prosecuting attorney, to assist the prosecuting attorney in the investigation of an offense against public administration, and the prosecuting attorney is required to notify TRPIU of the termination or final disposition of an investigated case. State agencies or local law enforcement agencies are required to cooperate with TRPIU and the prosecuting attorney by providing resources and information upon request. TRPIU is also authorized to issue subpoenas in connection with an investigation of an alleged offense against public administration.

In 2015, the Texas Rangers conducted 191 criminal investigations against public officials, 99 of which resulted in the filing of charges and 74 of which were adjudicated. There is currently no routine reporting requirement for active TRPIU investigations or for statistical data regarding public corruption trends. There have also been reports that cases typically assigned to the Travis County PIU have not been investigated because of significant defunding and have also not been investigated by TRPIU.

The 85th Texas Legislature may consider legislation regarding the routine reporting requirements, operations, and jurisdiction of the Texas Rangers Public Integrity Unit.
State Real Property Data Collection, Reporting, and Assessment

State Property Database

Currently, a database that contains a list of all the property owned by the State of Texas does not exist. Relevant state agencies, such as the Texas Facilities Commission, which manages certain state-owned properties; the State Office of Risk Management (SORM), which provides risk-management services to state agencies; and the Texas General Land Office (GLO), which appraises all state-owned properties every four years, and the legislature do not know how much property the state owns or what that property is worth. As a result, the state has limited ability to assess, effectively use, or insure its assets.

Pursuant to H.B. 3750, 84th Legislature, Regular Session, 2015, the Senate Select Committee on State Real Property Data Collection, Reporting, and Assessment and the House Select Committee on State Real Property Data Collection, Reporting, and Assessment were tasked with studying potential ways to ensure that the state is able to identify, track, and maintain information on the location, condition, and replacement value of all real property owned by the state. It has been suggested that the creation of a comprehensive database of all real property owned by the state will be critical in determining potential financial losses that the state could face if uninsured and underinsured real properties were destroyed.

SORM, GLO, the Texas Higher Education Coordinating Board, and the Legislative Budget Board are currently working together to collect data to create a secure database. The collection of data is time-consuming, especially because there is no uniform methodology for state agencies to record their real property and other property within the buildings, such as computers and desks. The estimated 21,000 state properties have a projected property worth of approximately $100 billion. SORM has stated that properly insuring state properties to avoid risk requires a master list of buildings and properties and that the state is currently exposed to significant risks and financial losses due to underinsured properties. Although data has been collected, further legislation may be necessary to fill all data gaps and promote uniform reporting practices. Furthermore, it has been suggested that legislation to maintain and update the database would be useful to ensure cooperation from multiple agencies. H.B. 3750 requires that the select committees issue a report, including findings and recommendations, to address issues raised during hearings.

The 85th Texas Legislature may consider legislation that maintains the database that helps identify potential risk from uninsured or underinsured state-owned property.

Disposal of State Property

Tasked by H.B. 3750, 84th Legislature, Regular Session, 2015, the Senate Select Committee on State Real Property Data Collection, Reporting, and Assessment and the
Issues Facing the 85th Texas Legislature

House Select Committee on State Real Property Data Collection, Reporting, and Assessment convened to study potential ways to ensure that the state is able to identify, track, and maintain information on the location, condition, and replacement value of all real property owned by the state. During discussions regarding the status of state property, particularly whether the property is currently underutilized, several obstacles regarding the disposal process for state property were identified.

Currently, the Texas General Land Office (GLO) inventories state agency property and determines whether property is underutilized. Occasionally, a state agency informs GLO of unused land or underutilized property. A list of underutilized properties is given to the governor, and the property, with certain exceptions, cannot be sold unless its sale is approved by the governor or legislature. GLO is then responsible for selling the property after it receives permission from the governor or legislature and cannot dispose of the property below market value as according to statute. In determining market value, the state can consider whether the buyer will incur environmental or waste-disposal costs.

Although the process is guided by statute, members of the select committees expressed concerns that the process has resulted in delays in the disposal of property, which has accumulated costs. Because the GLO appraisal process occurs on a four-year cycle, a property may not be categorized as underutilized until years after it ceases to be fully utilized, resulting in the state paying for the upkeep of an entire property, even though only a fraction of it may be in use. Furthermore, GLO cannot sell underutilized property without gubernatorial or legislative approval. Even if a property is designated for sale, the statute that requires the state to sell the property at market value may artificially lengthen the disposal process and cost the state money to upkeep a building that is unused and languishing on the market. Without an efficient way to determine whether a property is underutilized, nor a timely way to dispose of hard-to-sell property, the state could cost itself money.

The 85th Texas Legislature may consider legislation that amends the disposal process for state property.

Teacher Retirement System of Texas

The constitutional amendment that created a statewide teacher retirement system was passed by voters in November 1936. The purpose of the retirement system was to provide service and disability retirement benefits to teachers and administrators of the public school systems of Texas, including institutions of higher education. The Teacher Retirement System (TRS) of Texas is funded through state, district, and active teacher contributions.

S.B. 387 (relating to the creation, administration, powers, duties, and financing of the Texas Public School Retired Employees Group Insurance Program), 69th Legislature, Regular Session, 1985, codified the Texas Public School Employees Group Benefits
Program for public school retirees. In 1995, S.B. 9 (relating to the functions and systems and programs administered by the Teacher Retirement System of Texas), 74th Legislature, Regular Session, authorized TRS to offer a health insurance program for active public school employees. Today, TRS administers TRS-ActiveCare for active employees and TRS-Care for retirees.

In recent years, both of these benefit plans have seen budgeting shortfalls and increased premiums due to increasing costs in health care.

**TRS-ActiveCare**

According to TRS, TRS-ActiveCare premiums have increased because of growing costs in medical care across the public and private sectors. TRS reports that there are five options to correct affordability issues within TRS-ActiveCare:

- increase funding from the state and district;
- offer a single high-deductible health plan with a Health Reimbursement Account (HRA);
- offer a single, exclusive provider-organization plan with a high-performance network;
- establish premiums for TRS-ActiveCare levels based on age or geographical area; or
- eliminate coverage for spouses.

The 85th Texas Legislature may consider legislation regarding funding changes or elimination of TRS-ActiveCare health benefit programs.

**TRS-Care**

According to TRS, the current TRS-Care structure is not sustainable because its funding is based on percentages of active employees and does not represent the true costs of the retirees. TRS reports that there are seven options to correct affordability issues within TRS-Care:

- prefund the long-term liability with increased contributions from the state, districts, and active employees;
- fund on a pay-as-you-go basis through fiscal year 2021 with increased contributions from the state, districts, and active employees;
- fund on a pay-as-you-go basis through fiscal year 2027 with increased contributions from the state, districts, active employees, and retirees;
- require retirees to pay the full cost of optional coverage;
- require retirees to purchase Medicare Part B with mandatory participation in Medicare Advantage and Medicare Part D plans;
• provide either a fixed contribution or less coverage for non-Medicare retirees by having TRS deposit a monthly stipend into the retiree’s HRA; or
• create a single consumer-directed plan designed for non-Medicare enrollees.

Another solution proposed by TRS includes replacing both TRS-Care and TRS-ActiveCare with a single fund providing coverage for both active and retired education employees in Texas.

The 85th Texas Legislature may consider legislation regarding funding changes or elimination of TRS-Care health benefit programs.

Texas Ethics Commission

The Texas Ethics Commission (TEC) carries out the responsibilities given to it by the Texas Legislature under the enabling statute located in Chapter 571 (Texas Ethics Commission), Government Code. Chapter 571 provides TEC the authority to administer and enforce certain laws, including laws relating to campaign financing, the regulation of lobbyists, the filing of personal financial statements, and the regulation of state employees. As a constitutionally created entity, TEC is not subject to the will of any agency, the governor, or lieutenant governor. However, the legislature has the ability to change not only the laws that TEC enforces but also how it enforces those laws.

TEC is currently handling approximately 160 sworn complaints, with 15 to 30 complaints typically adjudicated per TEC meeting. Concern has been expressed regarding the need to encourage individuals who have incurred fines while trying to make corrections to campaign finance report errors made in good faith to correct mistakes in order to increase transparency regarding campaign finance reporting. Recommendations have been made to the legislature relating to streamlining the filing process for personal financial statements and campaign finance reports, which would provide more information to the public while potentially reducing the number of complaints.

Chapter 36 (Bribery and Corrupt Influence) and Chapter 39 (Abuse of Office) of the Penal Code provide TEC purview over bribery, gifting, and the misuse of government resources. TEC is authorized to adopt rules relating to laws it enforces and Section 2252.908 (Disclosure of Interested Parties), Government Code, requires business entities to disclose their interested parties at the time the entities submit certain contracts to a governmental body. H.B. 1295, 84th Legislature, Regular Session, 2015, is a transparency bill that prohibits business entities from contracting with governmental entities or state agencies unless the entity or agency submits a disclosure of research, research sponsors, and interested parties at the time it submits a contract. TEC has adopted rules and a form to be used by business entities to disclose interested parties. In addition, S.B. 20, 84th Legislature, Regular Session, 2015, has made comprehensive changes to state agency contracting, purchasing, and accounting procedures in an effort to reform state agency contracting by clarifying accountability, increasing transparency,
and ensuring a fair, competitive process. Additional legislation may be required to ensure that H.B. 1295 and S.B. 20 are working together in the most efficient manner.

Chapter 571, Government Code, requires TEC to make recommendations to the legislature relating to necessary statutory changes no later than December 31 of each even-numbered year. Possible recommendations to the 85th Texas Legislature include ways to increase the effectiveness and value of personal financial statement disclosure by simplifying the reporting requirements, focusing on the substantive aspects of disclosures, and electronically filing campaign finance reports at the local level with TEC to improve compliance with campaign finance laws. In addition, certain recommendations made to the legislature in previous years that were not adopted may also be recommended, including electronically alerting those required to comply with TEC regulations that they are late in filing the necessary reports.

The 85th Texas Legislature may consider legislation regarding current ethics laws governing public officials and employees, public officials’ reporting requirements to the Texas Ethics Commission, the categorization of ethics-reporting violations, the accurate reporting and timely correction to inadvertent clerical errors, and the preservation of certain constitutional rights during the Texas Ethics Commission sworn complaint hearing process.
Coastal Barrier System Planning

As a result of the destruction caused by Hurricane Ike in September 2008, Dr. William Merrell of Texas A&M University at Galveston began developing a project that would construct a coastal barrier system to protect the coast from future storms. The Ike Dike project, as it became known, was modeled after the Delta Works project in the Netherlands. The Ike Dike would extend the Galveston Seawall to create a 60-mile long surge barrier along the Bolivar Peninsula and the rest of Galveston Island, as well as create floodgates at Bolivar Roads and the associated ship channels to reduce damages in Galveston Bay by more than 85 percent.

The United States Army Corps of Engineers explains that Bolivar Roads is the most navigated ship channel in the Western Hemisphere because of its nexus of the Houston Ship Channel and the Gulf Intracoastal Waterway. According to testimony from an interim hearing, the Houston-Galveston region produces 27 percent of the nation’s gasoline, 60 percent of the nation’s jet aviation fuel, and 80 percent of the United States Department of Defense’s aviation fuel, in addition to being the headquarters of 26 Fortune 500 companies and a global leader in energy, life sciences, and aerospace industries. Testimony was also given that the Texas Gulf Coast’s petrochemical complex is the largest in the United States, producing more than 50 percent of plastics, resins, and commodity chemicals used in the nation and worldwide, and that the Gulf Coast region is the seventh-largest estuary in the United States and the top producer of crab, shrimp, oysters, and other seafood.

Although Hurricane Ike caused roughly $30 billion in damages, loss of life, and damage to the natural environment in the Port of Houston area, a storm as impactful as Hurricane Katrina could increase the damages and losses to the Texas economy to $73 billion in gross product, $61.3 billion in income, and more than 860,000 jobs, according to The Perryman Group report. Currently, various organizations and state entities are studying the effects of the implementation of various aspects of a coastal barrier system plan.

Stakeholders have stated a need for a governmental entity that will partner with the Army Corps of Engineers for the project and act as a central hub for researchers and developers seeking to study, understand, and collaborate on the mitigation of storm impacts along the coast. Stakeholders have also expressed concern regarding which entities would be responsible for producing the funds required for maintenance and operations of the coastal barrier system once the system has been constructed.
The 85th Texas Legislature may consider legislation to designate or create a central hub for the research and development of a coastal barrier system.

Cruise Industry Development

The cruise ship industry has experienced steady growth despite certain economic downturns in the country’s economy. Global industry growth is based on the number of ships and berths in operation. Approximately 50,000 additional new berths are expected to be established over the next two years, and worldwide industry capacity is expected to double over the next 15 years. Along the Gulf of Mexico, major ports are currently located in Galveston, New Orleans, and Tampa. In terms of the Texas Gulf Coast, popular destinations for cruise ships departing Galveston leave significant room for steady growth of the cruise ship industry. Over the next 12 years, cruise ships are projected to serve an additional 3.3 million passengers. To accommodate industry growth in the Texas Gulf Coast region, Texas would need to at least double the amount of berths and terminals along its coast to realize the growth projections. New terminals must be able to accommodate newer ships, which are significantly larger than previous vessels. Other states, including Florida and California, are already making necessary improvements to accommodate the growth that is comparable to those needed in Texas.

Texas has experienced a positive economic impact from the existing cruise ship industry presence in Galveston. Overall growth taking place in the Coastal Bend region and tourism industry investments have created high-paying jobs, and in turn people with disposable income who can support the cruise ship industry. Diversifying revenue sources by bringing foreign funds into the state through the cruise ship industry is viewed by many in the Coastal Bend region as an important goal. Because cities have made significant investments in the Coastal Bend region to expand the tourism industry, another cruise ship terminal along the Texas Gulf Coast is considered economically viable. In addition, interested parties perceive a need to act quickly to establish a cruise ship terminal and berth (most likely in Corpus Christi) to recapture business lost by the closing of the Bayport Cruise Terminal in Houston due to issues with its shipping channel.

The 85th Texas Legislature may consider legislation regarding the development of the cruise industry on the Texas Gulf Coast between Calhoun and Cameron Counties.

Panama Canal Expansion

The expansion of the Panama Canal is the biggest project in the region since construction of the canal in 1914. The canal can currently pass ships up to 106 feet wide, 965 feet long, and 39 feet deep. In 2006, the Panamanian government authorized the canal’s expansion to enable room for the Neopanamax mega-ships to carry 14,000 standard shipping containers, rather than carrying at its current shipping capacity of
5,000 containers. According to Forbes, the $5.5 billion project will widen the waterway, thicken the walls, install new locks, and pursue further modernization.

The expansion will allow ships carrying goods from Asia to bypass ports in the Los Angeles-Long Beach area and instead go to Texas and other states along the Gulf of Mexico and East Coast ports. The result of loading and shipping cargo on trains and trucks across the country from these ports could generate billions of dollars in economic impact and create thousands of jobs not only in coastal ports but also in inland hubs such as Dallas-Fort Worth, according to the Fort Worth Star-Telegram.

According to the United States Department of Transportation, Texas has 18 ports along the Gulf Coast, seven of which are ranked nationally in the top 50 for total tonnage. The Texas Department of Transportation reports that from 2010 to 2014, Texas ports invested at least $300 million in improvements to become more competitive in global trade. According to The Perryman Group, the Panama Canal expansion will also have an impact on Texas’s exports, such as liquefied natural gas, and, by increasing efficiency and lowering shipping costs, the expansion can enhance economic activity worldwide.

Although Texas stands to benefit economically from the expansion, there is concern about air pollution from emissions from the larger engines. Opponents have argued that because the ships are bigger, they will require more loading and unloading time, increasing emissions from cargo-handling equipment and hoteling ships. Additionally, it has been suggested that a higher volume of ships will be in ports due to bigger ships offloading to smaller ships that may not be clean-air emitting. Other concerns related to the expansion are the need for more federal funding and whether Texas has the proper maritime port infrastructure to support an expansion.

The 85th Texas Legislature may consider legislation regarding clean air projects, increasing the state’s focus on maritime ports, and dedicating money to expanding port capacities.
Driver Responsibility Program
The Driver Responsibility Program (DRP), enacted in 2003, requires the Department of Public Safety of the State of Texas (DPS) to assess a surcharge to an individual for certain traffic convictions. Drivers with such convictions are assigned a number of points for each violation. The number of points is based on each conviction and can accumulate if the driver has further convictions in the future. Under DRP, points are applied for moving traffic violation convictions and remain on a driver’s record for three years. A surcharge is assessed when a driver has six or more points on his or her record within three years, at which point a driver is required to pay a $100 surcharge for the first six points and an additional $25 for each additional point. The surcharge is assessed each year that the driver maintains six or more points. Surcharges of up to $2,500 can be assessed to drivers who are convicted of driving while intoxicated or of manslaughter. Some drivers with unpaid surcharges may qualify for significant reductions in what they owe through the Indigency Program, which waives the surcharges owed for some individuals whose incomes are at or below 125 percent of the federal poverty guidelines. The penalty for not paying surcharges is suspension of the driver’s license.

DRP revenue in 2015 totalled $151 million with a surcharge collection rate of 51 percent. One percent is directed to DPS to administer DRP, and 99 percent of DRP revenue goes into general revenue or the designated trauma facilities and emergency medical services account.

DRP was discussed at an interim committee hearing. Several members expressed significant dissatisfaction with DRP, likening its annual surcharges to payday lender practices that have become known for trapping borrowers in a cycle of delinquency fees. Witness testimony indicated that while it may seem as though people who are poor have the most difficulty paying the surcharges, in fact DRP surcharges affect DRP participants at every socioeconomic level. Members also expressed concerns regarding DRP’s inability to account for participants’ surcharges in some cases, DRP’s inability to improve driver safety, and the complexity of the surcharge schedule.

According to Baylor Scott & White hospitals and Texas Hospital Association, Texas trauma centers have benefited greatly from DRP revenue, which offsets between 10 percent and 12 percent of uncompensated trauma care by hospitals that totals $300 million.

The 85th Texas Legislature may consider legislation relating to the Driver Responsibility Program.
Regional Mobility Authorities

A regional mobility authority (RMA) is an independent, local governmental agency formed by one or more counties to finance, develop, and maintain transportation projects that can be tolled or non-tolled. An RMA may develop a transportation project, issue revenue bonds, establish tolls, acquire property, enter into comprehensive development agreements, enter into contracts with other governmental entities and with Mexico, maintain a feasibility fund, and enter into agreements with other governmental entities to develop projects on their behalf. An RMA may generate revenue from three sources: fares charged to drivers who use a toll road, proceeds from the sale or lease of a transportation project, and proceeds from the sale or lease of property. The Texas Transportation Commission oversees RMAs and authorizes the creation of RMAs, approves certain projects, establishes reporting requirements for RMA directors and employees, and approves RMA applications for federal highway or rail funds.

During an interim committee hearing, some members expressed disapproval over the lack of oversight of RMAs and their inconsistent reporting format. Specifically, because RMAs receive grants and loans from the state, members also raised concerns regarding their operational efficiency and effectiveness, including their delivery of projects and creation of numerous toll roads.

In February 2016, the Texas A&M Transportation Institute (TTI) published Regional Mobility Authorities in Texas: History and Current Status, a review of the financial status, annual financial statements, and demographic and geographic profiles of each RMA. The report finds that RMAs have diverse profiles with unique transportation needs and that while some RMAs report their data in depth, many reports lack details concerning the progress and costs of projects. The Transportation Policy Research Center at TTI suggests implementing performance-based planning consistent with performance measures established by the Texas Department of Transportation and creating a clearinghouse website for RMA data and reporting.

The 85th Texas Legislature may consider legislation relating to regional mobility authorities.

Regulation of Oversize and Overweight Vehicles

Texas requires oversize and overweight vehicles to obtain a permit to travel on roads. These vehicles must take specific routes that accommodate their height and weight. The Texas Department of Transportation provides data for the safe routing of such vehicles through the Texas Permitting and Route Optimization System, which the Texas Department of Motor Vehicles (TxDMV) uses to assign routes and issue permits to vehicle operators. Concerns have arisen as a result of tall vehicles striking overpasses as they pass beneath and the fatigue of bridges over time as they are used by overweight vehicles.
Interim charges for the Senate Committee on Transportation included reviewing state and federal regulations, penalties, and fines related to oversize and overweight vehicles and making recommendations to minimize the impact of those vehicles on the state’s roadways.

During an interim committee hearing, witnesses provided testimony that the *Oversize/Overweight Vehicle Permit Fee Study*, also known as the Rider 36 study, that was ordered by the 82nd Legislature reviewed various configurations of oversize and overweight trucks to determine how quickly they would consume, or damage, the roads. Witnesses said that the study provides a permitting fee structure that reflects the cost incurred to the roads by traveling vehicles.

The 83rd Legislature passed H.B. 2741 (relating to the regulation of motor vehicles by counties and TxDMV; authorizing a fee; creating an offense), Regular Session, 2013, which created new permits for ready-mixed concrete trucks, timber trucks, and deliveries of relief supplies during emergencies and disasters.

The 84th Legislature passed measures related to the issuance of permits by port authorities in certain border counties and the designation of travel routes that oversize and overweight vehicles are required to use.

The 85th Texas Legislature may consider legislation relating to the regulation of oversize and overweight vehicles.

**Toll Roads**

Toll road projects in Texas are owned and managed by the Texas Department of Transportation (TxDOT), regional and county toll authorities, regional mobility authorities, transportation corporations, transit authorities, counties, road improvement districts, and other entities. Construction of toll roads began 25 years ago to accommodate traffic increases as the population of Texas grew, and by 2014 Texas had 671 miles of toll roads. According to TxDOT, toll roads provide new transportation options without straining existing funding sources.

Interim charges for the Senate Committee on Transportation included monitoring the progress of TxDOT’s efforts to propose a plan to eliminate toll roads in Texas.

TxDOT published the *Report on the Elimination of Toll Roads* in September 2016. The report reviewed toll roads and financial tolling systems in the state and concluded that eliminating toll roads by making a total upfront payment would cost the state $36.7 billion, which includes $24.2 billion to eliminate debt on publicly operated toll roads and $12.5 billion to eliminate debt on all five toll road projects developed and funded through comprehensive development agreements. The report laid out amounts for lump-sum payments of outstanding toll project debt if funds become available in 2017, 2019, 2021,
and 2023 and specified accelerated repayment alternatives that use the toll projects’ projected excess revenue to annually prepay a portion of outstanding bond principal.

During an interim hearing, Senator Nichols said that lawmakers understand that the public is displeased with paying tolls in addition to taxes and presented a historical perspective on the rise of toll roads, noting that the budgetary emphasis on transportation has been decreasing in recent decades, which has made toll roads more common as a result.

The 85th Texas Legislature may consider legislation relating to toll roads.

Transportation Funding
During an interim committee hearing, the Texas Department of Transportation (TxDOT) discussed its legislative appropriations request (LAR) and explained that a majority of its baseline request of $30 billion will be devoted to project development and delivery. TxDOT said that the baseline request includes funding for 627 new full-time equivalent staff, in addition to 11,900 current staff, who will fill vacancies in construction, engineering, and inspection roles.

During the same hearing, the Texas Department of Motor Vehicles (TxDMV) discussed its LAR and said that it is requesting $327.8 million in baseline funding and $40 million in exceptional items that will, for example, allow TxDMV to assume responsibility for the building that serves as its headquarters. TxDMV discussed its separation from TxDOT and the reconstitution of the TxDMV fund by S.B. 1512 (relating to the Texas Department of Motor Vehicles fund), 84th Legislature, Regular Session, 2015.

In November 2014, voters approved Proposition 1, a constitutional amendment to allow the redirection of general revenue (GR) bound for the economic stabilization fund into the state highway fund (SHF).

The 84th Legislature approved S.J.R. 5, proposing a constitutional amendment that dedicates a portion of the revenue derived from the state sales and use tax and the tax imposed on the sale, use, or rental of a motor vehicle to SHF. S.J.R. 5, which voters approved 83.24 percent to 16.76 percent (effective September 1, 2017), dedicates:

- the first $2.5 billion that exceeds $28 billion in the existing sales, use, and rental taxes to the GR fund;
- the next $2.5 billion to SHF; and
- half of every dollar exceeding the first $5 billion after $28 billion to SHF and GR.
The 84th Legislature approved H.B. 122 (relating to the Texas Mobility Fund), Regular Session, 2015, which prohibits the issuance of new Texas Mobility Fund bond obligations and prohibits those funds from being spent on toll roads.

The 85th Texas Legislature may consider legislation related to transportation funding.

**Vehicle Inspection Requirements**

Currently, motor vehicles are required to pass an annual safety inspection performed by a licensed inspector.

The 83rd Legislature passed H.B. 2305 (relating to motor vehicle inspections; creating an offense; changing the collection method for certain fees), Regular Session, 2013, which integrated safety inspection stickers and registration stickers. Under the new law, drivers may receive a registration sticker once their vehicle passes a safety inspection.

Interim charges for the Senate Committee on Transportation included evaluating the efficiency and effectiveness of the state’s vehicle inspection program.

During interim hearings held by the committee, members discussed repealing the inspection requirement for private passenger vehicles. Some committee members suggested that the time and money spent by motorists on annual safety inspections is burdensome and may not be necessary. Those members said that while it seems that safety inspections would improve overall road safety by ensuring proper vehicle functioning, the number of wrecks caused by unsafe vehicles that is prevented by safety inspections is so low that a mandatory annual inspection cannot be justified. Other members said that they wanted more information and that a discussion should continue regarding such a repeal.

The 85th Texas Legislature may consider legislation relating to vehicle inspection requirements.
Military Value at Military Installations

The United States Department of Defense (DOD) has 15 major and minor defense installations headquartered in Texas, producing nearly $150 billion in economic impact and providing 255,000 service members with jobs. State agencies, such as the Texas Commanders Council (TCC), work with DOD to facilitate intergovernmental dialogue between all branches of service and the state legislature.

One result of this dialogue is the consideration of wind farms as a source of power for military bases. Although wind power could be beneficial and environmentally friendly, Lieutenant Colonel Mitchell Cok, Sheppard Air Force Base, testified at an interim hearing that large farms could negatively impact military bases. Due to wind farm encroachment, military bases may be forced to move, which would cost millions of dollars. Cok said that civilian aircraft could conflict with military aircraft because of an inability to see each other and that wind farms could disrupt pilot training and interfere with vital military services.

Urban light pollution, telecommunication jamming, and dense land use and development all create obstacles that TCC and military bases have to address. Urban encroachment and the high number of private drone operators in the state require the military to continually ensure that its bases are not compromised. The Joint Land Use Study is a grant-funded study that monitors relationships between military installations and civilian communities to ensure that military bases are not disturbed. H.B. 1640 (relating to the compatibility of certain defense community regulations and structures with military operations), 84th Legislature, Regular Session, 2015, helps to support military bases and H.B. 1639 (relating to providing information to the public and to purchasers of real property regarding the impact of military installations), 84th Legislature, 2015, requires that early notification be given to agencies when encroachment might occur, but military officials note that more can still be done.

The 85th Texas Legislature may consider legislation to address urban encroachment upon military bases, as well as wind farm issues.

Veteran Hiring Policies

Due to various technical skills that can be acquired while serving in the military, veterans can be beneficial hires for Texas agencies. S.B. 805 (relating to the employment of individuals qualified for a veteran’s employment preference), 84th Legislature, Regular Session, 2015, provides for the direct hiring of veterans and establishes several provisions,
such as setting a goal that at least 20 percent of employees be veterans, allowing veteran candidates in hiring pools, and changing the way veterans are hired and how their issues are resolved. Additionally, S.B. 389 (relating to the placement of military occupational specialty codes on certain notices of state agency employment openings), 84th Legislature, Regular Session, 2015, aims to increase veteran employment at state agencies.

The Texas Veterans Commission (TVC), the Texas Workforce Commission (TWC), and 28 veteran boards across the state collaborate to provide job opportunities for veterans. Currently, approximately 12.1 percent of TWC employees are veterans. TWC and TVC work extensively with the private sector to help veterans obtain jobs in a variety of roles. Due to S.B. 389, Texas has been able to attract veterans throughout the country for jobs.

Texas universities have also worked to provide faculty positions for veterans. The University of Texas at Austin, Texas A&M University, Texas State University, and others have recruited veterans through a variety of methods, such as job fairs and veteran liaisons. Texas State University has 94 veterans as faculty members, which represents at least five percent of its faculty.

The 20 percent hiring threshold, while possible for some universities, has proved to be difficult for all universities to achieve. Dr. Lula Pelayo, Alamo Colleges System, testified during an interim hearing that efforts to recruit veterans to university positions have increased but that 20 percent can be hard to achieve due to factors such as the university’s location. Pelayo said that the 20 percent threshold is a goal that should be worked toward but that more has to be done so that all universities can reach that number.

Officials note that it is important that veterans with special needs be considered for state employment. Reaching out to groups such as the Wounded Warrior Project and finding veterans who may not realize they are qualified for a job could help more veterans find employment, according to officials.

The 85th Texas Legislature may consider legislation regarding veteran hiring programs and providing benefits to state agencies that are able to reach veteran employment thresholds.

**Veteran Mental Health**

From 2010 to 2013, the Health and Human Services Commission (HHSC) analyzed suicide rates of veterans and non-veterans ages 17 and up and found that 11,413 suicides were documented in Texas, of which approximately 18 percent were veterans. Although Texas is considered a leader in veteran mental health issues, HHSC officials state that there is room for improvement.
Former state Representative Suzanna Hupp testified during an interim hearing that many veterans are not likely to seek mental health assistance, despite the existence of several programs. These veterans assistance programs include phone applications, Internet portals, the 2-1-1 Texas program, and offices that are designed specifically to address veterans' issues. Additionally, S.B. 55 (relating to the creation of a grant program to support community mental health programs for veterans and their families), 84th Legislature, Regular Session, 2015, has created the Texas Veterans and Family Alliance Grant Program. The program provides access to behavioral health services, along with the coordination of support services. With its implementation, HHSC will be able to determine where the gaps are in veterans assistance. The program will be established in areas where a large number of veterans reside so that the largest number of people are able to benefit.

Although several programs are in place, some officials note that the programs have taken a long time to make a noticeable impact. This has created backlogs that can prohibit veterans from receiving timely assistance when needed. The Texas Veterans and Family Alliance Grant Program is split into two phases, and since the second phase requires $20 million for each fiscal year of the biennium for its implementation, officials have said that progress must be made before money can be dedicated.

The 85th Texas Legislature may consider legislation to expedite the processes for veterans mental health programs.

Veterans Benefits for Texas Residents and Potential Lawsuits

The Hazlewood Act is a Texas statute that provides certain higher education benefits to qualified veterans, spouses, and dependent children. In 2014, 14,304 veterans, 21,781 veterans' legacy recipients, 2,187 survivors of veterans, and 550 spouses received benefits. The Office of the Attorney General (OAG) testified during an interim hearing that the act uses a fixed-point residency requirement, which means that a service member must enter military service in the State of Texas. OAG further testified that the requirement should withstand constitutional scrutiny because it incentivizes high school students to return to Texas upon graduation, encourages students to graduate, motivates those most likely to stay in Texas after their service, addresses concerns about the portability of education, and controls costs. However, OAG stated that all five reasons were rejected by the district court in a suit challenging the residency requirement and that it has appealed the ruling to the Fifth Circuit Court of Appeals.

The district court ruled in *Harris v. Hahn* 827 F.3d 359 (5th Cir. June 23, 2016) that Keith Harris should obtain the benefits of the Hazlewood Act despite not having originally entered the service from Texas. OAG argued that the remedy is legally impermissible and that the state cannot afford to extend Hazlewood benefits to nonresidents. S.B. 1735 (relating to tuition and fee exemptions at public institutions of higher education for certain military personnel and their dependents), 84th Legislature,
Regular Session, 2015, requires that a person be a resident of the state for eight years before being awarded Hazlewood benefits. OAG has testified that S.B. 1735 has lessened arbitrary regulations, has made the residency criteria curable, and has allowed a person who leaves the state and returns to receive benefits, all of which should withstand greater scrutiny.

The Hazlewood Act is one of the few veterans benefit programs that has a residency requirement and is the only state-level program that provides full educational benefits to veterans.

The 85th Texas Legislature may consider legislation regarding Hazlewood benefits.

Veterans Courts Successes and Challenges

Due to the nature of their service, veterans do not share many common experiences with civilians. Officials note that traditional community service programs may not be sufficiently suited to meet the specific needs of veterans in the criminal justice system. As such, veterans treatment court programs have been established to create a court process environment that is designed to serve the unique needs of veterans.

Veterans court treatment programs attempt to reform veterans and change negative behaviors over time. By instilling a military culture in veterans courts, a sense of camaraderie can be established for veterans. Currently, the State of Texas has 24 veterans courts, 12 of which are funded by the Office of the Governor of the State of Texas (governor’s office). Chapter 124 (Veterans Treatment Court Program), Government Code, sets the parameters and duties for establishing a veterans court, as well as the eligibility of veterans to participate in the program.

Veterans courts differ from more traditional courts in that their funding comes primarily from grants awarded by the Criminal Justice Division of the governor’s office and certain crimes are expunged once probation has been completed. Veterans courts can also choose which court cases they wish to hear, giving them more freedom than traditional courts. Once referred to a veterans court, veterans are assigned a caseworker during their probationary period. Participants must attend every veterans court session to be reviewed by a judge and, once enough progress is shown, can graduate from the program and have their cases dismissed.

Advocates of veterans courts note that more money would benefit these courts by providing a stable stream of funding and allowing more efficient procedures for the courts. Additionally, the speed with which issues are addressed in courts has been noted to be very slow. This process could be expedited by hiring more personnel or building more courts.
The 85th Texas Legislature may consider legislation regarding veterans courts in the state.
The Sunset Advisory Commission (Sunset) has reviewed 25 entities scheduled for consideration by the 85th Legislature. The Sunset process examines state boards, agencies, and commissions to determine their efficacy in carrying out their missions. Sunset legislation for the following entities may be considered by the 85th Texas Legislature:

- State Bar of Texas
- Central Colorado River Authority
- Texas Board of Chiropractic Examiners
- Texas State Board of Examiners of Professional Counselors
- State Board of Dental Examiners
- Board of Trustees of Employees Retirement System of Texas
- Health Licensing Consolidation Project
- Board of Law Examiners
- Texas State Board of Examiners of Marriage and Family Therapists
- Texas Medical Board
- Texas Board of Nursing
- Texas Board of Occupational Therapy Examiners
- Texas Optometry Board
- Palo Duro River Authority of Texas
- Texas State Board of Pharmacy
- Executive Council of Physical Therapy and Occupational Therapy Examiners
- Texas Board of Physical Therapy Examiners
- Texas State Board of Podiatric Medical Examiners
- Texas State Board of Examiners of Psychologists
- Railroad Commission of Texas
- Texas State Board of Social Worker Examiners
- Sulphur River Basin Authority
- Texas Department of Transportation
- Upper Colorado River Authority
- Texas Board of Veterinary Medical Examiners
WEB RESOURCES

Many publications and other resources used in this publication are accessible through the Internet. Helpful websites include:

- **Senate Research Center**, http://www.senate.texas.gov/src/index.htm
- **Legislative Budget Board**, http://www.lbb.state.tx.us/
- **Office of the Governor of the State of Texas**, http://gov.texas.gov/
- **Governor’s Offices of Budget and Policy**, http://gov.texas.gov/bpp
- **Texas State Auditor’s Office**, https://www.sao.texas.gov/
- **The Official Website of the State of Texas**, https://www.texas.gov/
- **Texas Legislature Online**, http://www.capitol.state.tx.us/
- **Legislative Reference Library**, http://www.lrl.texas.gov/
- **Office of the Comptroller of Public Accounts of the State of Texas**, https://www.comptroller.texas.gov/