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HOUSE RESEARCH ORGANIZATION

state finance report

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FISCAL 1998-99 BUDGET — HOUSE APPROPRIATIONS COMMITTEE VERSION

CSHB 1 by Junell, the general appropriations bill for fiscal 1998-99, was reported favorably by the House Appropriations Committee on March 6 and is scheduled for floor consideration on March 19. The proposed state budget would appropriate a total of $83.3 billion, up 3.2 percent from fiscal 1996-97 spending, with $51.5 billion coming from general revenue-related funds, a 4.1 percent increase. CSHB 1 appropriations would fall within the comptroller's revenue estimates for the next biennium. They do not take into consideration any of the pending tax restructuring proposals.

Article 11 of the bill includes a "wish list" of provisions totaling $4.217 billion. These amounts are not appropriated nor included in CSHB 1 reported spending amounts. Some or all of these provisions may be added by the conference committee should additional revenue become available.

This State Finance Report, by Kristie Zamrazil, reviews CSHB 1 spending by state function, highlighting major funding issues, changes from current spending, and differences from the governor's January 1997 budget proposal, Senate Finance Committee considerations, and the bill as introduced. For a complete summary of funding proposals for all state agencies, see the Legislative Budget Board report, *Summary of the Committee Substitute for HB 1*, March 11, 1997.

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STATE FUNDING OVERVIEW

The committee substitute for HB 1 reported by the House Appropriations Committee would increase state spending $2.6 billion (3.2 percent) over fiscal 1996-97 by appropriating $83.3 billion for fiscal 1998-99. It would spend $51.5 billion in general revenue-related funds, an increase of $2.0 billion (4.1 percent) over spending in fiscal 1996-97. About $24.1 billion would come from federal funds and $7.7 billion in other funds.

Spending Increases/ Decreases

CSHB 1 is very similar to HB 1 as filed. The House Appropriations Committee added $69.9 million to overall appropriations (a 0.1 percent increase over HB 1 as filed) but decreased general revenue-related spending by $393.7 million (a 0.8 percent decrease).

Most of the cuts from the filed version of HB 1 would come from Article 9 (General Provisions) cross-agency reductions. Other net general revenue decreases would occur in Article 3 (Education), Article 5 (Public Safety/ Criminal Justice) and Article 7 (Business and Economic Development).

Although CSHB 1 represents an overall increase over fiscal 1996-97 expenditures, it would reduce several budget items by a total of $533.9 million from their fiscal 1996-97 levels due to:

- *one-time expenditures* for fiscal 1996-97 (e.g., the $3.5 million emergency financial assistance appropriation to the Water Development Board for Fort Bend County and Bexar Metropolitan County Water District);

- *elimination of unexpended fiscal 1996-97 balances* (e.g., deletion of a Parks and Wildlife budget rider that would appropriate between biennia unexpended balances of cigarette tax revenue worth about $8.6 million);

- *program savings* (e.g., $66.5 million from declining welfare caseloads);

- *substituting other funds* for general revenue spending (e.g., using the new federal welfare block grant and other federal funds to replace $114.9 million in general revenue spending); and

- *project completions* (e.g., the Capitol restoration project).

Several Texas Performance Review (TPR) proposals were also included in the CSHB 1. Some of the proposed general revenue savings are contingent upon enactment of legislation.

Spending versus Revenues

CSHB 1 would spend about $1.6 billion less than the general revenue estimated to be available for fiscal 1998-99 spending. Based on revenue estimates submitted by State Comptroller John Sharp, the proposed budget would require no increases in the tax rate nor any new taxes. It does not take into consideration pending tax restructuring proposals. Appropriations in many regulatory agencies are contingent upon increased fee rates to cover additional costs.

On January 14, 1997, the comptroller estimated that the state would have $50.0 billion in general revenue to spend during the next two-year budget period, including about $1.7 billion carried over from the fiscal 1996-97 biennium (see the Comptroller's Office report, *Biennial Revenue Estimate 1998-99*). In February the comptroller notified legislative leadership that an additional $300 million also would be available for certification from fiscal 1997 unspent balances in the Department of Criminal Justice ($100 million), Department of Health ($150 million), and Department of Human Services ($50 million).

The Texas Constitution, in Art. 3, sec. 49a, limits legislative appropriations for a two-year spending period to the amount of state revenue that the comptroller estimates will be available to spend during that biennium. An appropriations bill may become law only if the comptroller certifies that sufficient revenue will be available to fund it. The Legislature may override the provision if at least four-fifths of the members of each house approve. The comptroller is not bound by the pre-session revenue estimate and may revise it at any time.

Because the comptroller's estimate of available general revenue is the major limit on legislative appropriations, most discussion of appropriations focuses on general revenue spending rather than spending from all sources.

Table 1

Fiscal 1998-99 Available Revenue Calculations
(*billions of dollars*)

Available General Revenue fiscal 1998-99 (includes $1.7 billion fiscal 1997 balance as reported in the *Budget Revenue Estimate* in January plus $300 million fiscal 1997 balance in Medicaid and criminal justice programs reported in February)	$50.273
Appropriated receipts (receipts from the sale of publications and equipment and reimbursements to state agencies categorized as "other funds" by the LBB)	($0.4518)
Disproportionate Share funds to hospitals (hospital funds held in general revenue account for federal Medicaid match and distributed directly back to hospitals without appropriation)	($1.886)
CSHB 1 (Art. 1-10) (proposed spending of general revenue; does not include *dedicated* general revenue appropriations)	($46.573)
Dedicated revenue balances and adjustments made in CSHB 1 (an approximated amount; adjustments include such items as new agency budget riders allowing increased appropriations if offset by fee increases and enhanced comptroller tax collection efforts)	$0.236
Remaining available general revenue	$1.6

Wish List

CSHB 1 would leave about $1.6 billion in unspent available revenue. Article 11 of the bill contains a "wish list" of about 716 provisions, totaling $4.2 billion for the biennium, that are deemed to be "desirable and necessary." These items have not been included in the CSHB 1 reported spending amounts *and are not considered as appropriations*. The Article 11 provisions, which would affect the budgets of about 155 state agencies and institutions of higher education, include strategy funding increases, new program funding, and budget riders. About 95 percent of the $4.2 billion reflects additional general revenue spending.

Article 11 represents the committee's additional priorities for funding when fiscal 1998-99 funds become more certain or additional funds become available, through such means as tax legislation, updated revenue estimates, budget execution actions, or other actions by the 75th Legislature. The Senate Finance Committee is also compiling an Article 11 wish list.

The House Appropriations Committee has compiled a wish list each session since 1993. Proponents of the wish list say it allows the Appropriations Committee to recommend essential agency funding within existing revenue estimates and to prioritize additional appropriations for conference committee consideration in the event that new legislation or other factors raise revenue estimates for the next biennium or reduce anticipated fiscal 1998-99 spending levels.

Critics of the wish list say that it does not actually reflect spending priorities because it contains over $4 billion in provisions that are unranked, often only loosely described with few spending directives or details. They say the list removes real funding choices from House floor consideration and is solely a negotiating tool, placing some of the state's most important or controversial spending decisions in the hands of the five senators and five representatives on the conference committee.

Budget Format

CSHB 1 organizes individual agency budgets in essentially the same strategic planning format as was used in the fiscal 1996-97 appropriations act enacted by the 74th Legislature. For a more detailed description of fiscal 1998-99 agency budget formats, see HRO State Finance Report Number 75-1, *Writing the State Budget*, February 7, 1997.

HB 1 as introduced was organized into 12 articles; the committee substitute contains 13 articles due to the insertion of a new Article 11, the wish list that would exceed total appropriations.

Articles 1 through 8 group spending by government function, Article 9 contains cross-agency provisions, such as salary schedules, and Article 10 appropriates funds to the Legislature and legislative agencies.

Article 12 is the "savings clause" stating that other portions of the bill would not be affected if any part of the act were held to be invalid. Article 13 is an emergency clause that would allow suspension of the constitutional rule requiring bills to be read on three separate days and would allow the bill to take effect immediately upon enactment.

Budget Process Changes

Traditionally the House and Senate alternate originating the appropriations bill. However, by agreement between the House and the Senate, the General Appropriations Act is originating this session in the House, just as it did in the 74th Legislature. This change was made to expedite the consideration of the budget bill by both chambers and to allow sufficient time to develop and consider possible legislation revising state taxes. House rules prohibit consideration of the general appropriations bill until 168 hours (seven days) after it is set on the calendar, and a week to ten days will be saved using the House bill as the budget vehicle.

The Senate Finance Committee already has considered documents prepared by Chairman Bill Ratliff proposing changes to the filed version of the budget and Article 11 provisions. The committee is tentatively scheduled to vote on the committee substitute on March 25.

FUNDING STATE FUNCTIONS

Total state spending is concentrated in education and health and human services, which account for 43.7 percent and 30.7 percent, respectively, of the state budget. Business and economic development functions (12.1 percent) and public safety and criminal justice functions (8.1 percent) rank distant third and fourth places. All other state functions combined represent less than six percent of total state expenditures.

Public Education

Education, the largest function area in the state's budget, accounts for 60.0 percent of all general revenue spending.

Two-thirds of general revenue funding for education is spent on public elementary and secondary education, predominately through the Texas Education Agency (TEA). Other state public education agencies funded primarily through general revenues include the State Board for Educator Certification, the School for the Blind and Visually Impaired, and the School for the Deaf. Public elementary and secondary education is financed by general revenue related funds and other state funds (42.7 percent), federal funds (8.6 percent), and local property taxes (48.7 percent).

Overall, CSHB 1 would increase funding to TEA by $1.3 billion in all funds, primarily general revenue. General revenue appropriations for the School for the Blind and School for the Deaf would remain at fiscal 1996-97 levels, but due to reductions in other sources of funding their total appropriations would be reduced by less than 1 percent.

Table 2

Texas Education Agency
(*billions of dollars*)

	1996-97	CSHB 1	CSHB 1 change from 1996-97
General revenue	$ 17.502	$ 18.786	7.3 %
All funds	$ 21.803	$ 23.129	6.1 %

Source: LBB, Budget Summary for CSHB 1, March 1997.

Public school enrollment, a driving factor in school funding allocations, is projected to grow at slower rates than in the past due to the overall aging of the population. Average daily attendance in public schools has grown 17 percent between 1988 and 1997. CSHB 1 funding is based on LBB calculations that project enrollment of about 3.64 million children by the end of next biennium.

CSHB 1 also would establish a $200 million contingency fund in the comptroller's budget to cover enrollment in excess of LBB projections. TEA projections, based on school district input, exceed LBB calculations by about 15,000 students, a number that would require over $100 million in additional state funding.

Court-imposed equity standards require Texas to finance public education in a manner that gives substantially equal access to similar revenues per pupil at similar levels of local tax effort. CSHB 1 would fund the public school system to meet an acceptable level of school finance equity by increasing general revenue funding over fiscal 1996-97 levels by $200 million. (The funding is included in the amount listed under strategy A.2.1., the Foundation School Program.)

CSHB 1 also would maintain the fiscal 1996-97 appropriation of $170 million to help school districts improve or expand school facilities and classrooms, another factor affecting school finance equity. However, the TEA and the governor have proposed spending an additional $130 million in facilities funding for the biennium to address the needs of more than 300 districts that met eligibility requirements but did not receive a grant during the last biennium.

Impacts of proposed changes to local and state tax systems are unknown at this time. CSHB 1 would fund all programs within the available revenue projections made by the comptroller and fund public education based on amounts anticipated to be collected by local school districts. Early estimates indicate that CSHB 1 general revenue increases would be sufficient to meet any changes in locally collected amounts due to variations in tax rates and property values, the local "tax rate response," that is, the effect of changing tax rates and property values.

CSHB 1 does not take into account state revenue increases or decreases caused by proposed tax restructuring proposals. The governor's budget proposal anticipated using $1 billion in available general revenue, plus additional revenue generated by other tax restructuring proposals, to reduce local school property taxes by a total of $3.615 billion in fiscal 1988-99.

The Telecommunications Infrastructure Fund (TIF) would not be funded at the $150 million level anticipated by the 74th Legislature (HB 2128 by Seidlits). CSHB 1 would fund TIF at $87.5 million a year; riders to the budget would appropriate to the fund interest earned and fiscal 1997 unexpended balances.

TIF provides loans and grants to elementary and secondary schools, post-secondary institutions and libraries, health care facilities and other institutions to meet telecommunication infrastructure needs.

TIF funding is derived from assessments on telecommunications utilities and commercial mobile service providers, such as cellular phone and pager service providers. However, the state has been enjoined from assessing commercial mobile service providers, who contested the equity of the state's assessment on their much smaller share of the telecommunications market. The revenues collected prior to the injunction, about $134 million, are held in a special fund and collecting interest. Several bills have been introduced to address this issue and the fairness of the assessments.

The technology allotment of $30 per student per year for anticipated enrollment would be fully funded under CSHB 1, an increase of $5.2 million per year of general revenue funding due to growth in enrollment. Since 1992 the Legislature has appropriated the $30 allotment to help school districts pay for computers and other technology-related costs.

School districts recently sued the state for payment of an additional technology supplement of about $25 per student, or about $97 million total, that they say was authorized but not fully funded last session. The Education Code revisions (SB 1 by Ratliff) directed that remaining balances in the textbook fund be used to supplement the allotment; however the State Board of Education did not distribute the funds because the Legislature did not specifically appropriate the supplement through the General Appropriations Act for fiscal 1996-97. In February 1997, State District Judge F. Scott McCown of Austin ruled in favor of the State Board of Education, and the supplement was not allocated to the districts.

Special reading programs proposed by Gov. Bush and several legislators would direct increased state funds toward improving reading ability and comprehension of elementary school children. The governor's plan would spend $70 million for fiscal 1998-99 on a competitive grant program to develop special school reading programs and for professional development to upgrade reading instruction. According to the governor, approximately 25 percent of Texas students do not pass the reading portion of the state assessment of skills, and $70 million for the biennium would help approximately one-third of the students in need.

The "wish list" in Article 11 of CSHB 1 includes a potential appropriation of $70 million for the biennium for the governor's reading initiative, and would add a rider designating $3 million of that amount to train and certify dyslexia coordinators to screen and diagnose students for this and other-related disorders.

House Appropriation Committee members debated the need and relevance of this funding. Teaching reading is a fundamental function of public education, some said, and should be done within TEA's overall $23 billion budget for fiscal 1998-99. Others said $70 million is just a drop in the bucket and would most likely help only a few students or schools. Some also have questioned the need for a special diagnostic tool, saying that teachers should be able to detect students with reading problems during normal school activities.

Proponents of additional funds said students with reading problems are often mislabeled as "lazy" or "stupid" and are not given the extra attention they need to perform at higher levels. Special screening would help more accurately identify students with reading needs. High teacher/pupil ratios and outdated teaching approaches also are to blame, they said, and additional funding could be targeted to direct resources to schools where many students have reading problems.

Alternative education programs (AEPs) would be funded at 1997 levels for each year of the biennium ($18 million per year). Part of the Safe Schools initiative enacted by the 74th Legislature in SB 1, these programs are used by school districts to teach students removed from schools for being disruptive or committing certain offenses.

County Juvenile Justice Alternative Education Programs (JJAEPs), also established by the Safe Schools initiative, would receive no funding under CSHB 1. JJAEPs, which provide educational services to expelled students and others who committed more serious offenses, received $7 million during fiscal 1996-97 for start-up expenses. However, Article 11 contains provisions that would increase the safe schools strategy by $32 million a year and transfer not less than $7 million by October 1997 to the Juvenile Probation Commission to develop and operate JJAEPs.

The Texas Retirement System health benefit program fund, TRS Care, is projected to be depleted in December 2000, under current operating conditions. CSHB 1 would maintain current TRS funding patterns and increase general revenue appropriations only in areas related to payroll growth.

The Senate Finance Committee is considering placing in Article 11 of the Senate Committee substitute a provision that would replace general revenue funding for TRS administration (about $47.3 million for the biennium) with funds from earned interest on the Teacher Retirement Fund and use the "freed up" general revenue for supplemental contributions to TRS-Care. Some say this funding mechanism would extend TRS-Care solvency until 2001 and allow more time for the state to develop a long-term structure that would bring health benefit costs down or improve overall funding and fund management.

The governor's budget proposal also would fund TRS administration out of pension fund interest and contribute an additional $15.6 million to TRS-Care.

Other education provisions in Article 11 include funding for drop-out prevention, improving educator performance, the Texas Advanced Placement Incentive Program, the Communities in Schools program, and teacher salary and other increases for the School for the Blind and School for the Deaf.

Higher Education

CSHB 1 would generally fund higher education at fiscal 1996-97 levels and provide additional funding for enrollment growth at two-year institutions and in certain health-related institutions. CSHB 1 also includes a $2 per semester hour tuition increase for fiscal 1998 and for fiscal 1999, for an overall increase of $64.2 million for general academic institutions.

Texas funds 35 general academic four-year colleges, nine health-related institutions, four technical colleges, 50 community colleges, and Baylor College of Medicine. State funding for four-year colleges varies widely depending upon the institution; some institutions are almost totally supported by state funding while others rely heavily on external support. About 75 percent of the state funds appropriated to public universities is allocated through 12 funding formulas designed by the Higher Education Coordinating Board. Health-related institutions are appropriated funds by justification, except for nursing faculty salaries, which are allocated by formula. CSHB 1 would directly appropriate funds for nursing programs instead of using the salary formula.

Higher education enrollment has grown 8 percent and community college enrollment has grown 36.5 percent between 1988 and 1997.

Funding for the Baylor College of Medicine is calculated to approximate the cost of educating their students in Texas public medical schools. Baylor College of Dentistry, formerly a private institution, became part of the A&M system in fiscal 1997 and would be funded at about fiscal 1996-97 levels under CSHB 1.

Public community colleges and technical colleges receive state assistance through a funding formula based on contact hours taught in each discipline. Public community colleges also are supported by local taxes.

Table 3

Higher Education Funding
all funds
(*millions of dollars*)

	1996-97	CSHB 1	change from 1996-97
Two-year colleges	$ 1,302.5	$ 1,310.8	0.6%
General academic institutions	$ 3,661.5	$ 3,716.1	1.5%
Health-related institutions	$ 2,912.6	$ 2,922.0	0.3%
Texas A&M System	$ 456.9	$ 462.3	1.2%
Higher Education Fund	$ 448.7	$ 448.7	0.0%
Available University Fund	$ 495.0	$ 505.5	2.1%
Other	$ 406.1	$ 406.1	0.0%
Total	**$ 9,683.4**	**$ 9,771.6**	0.9%

Source: LBB, Summary of CSHB 1, March 11, 1997 (biennial change calculated on actual amounts before rounding)

Funding for new construction, major repair or rehabilitation, land acquisition, capital equipment, and library materials is derived from endowment funds. The Permanent University Fund (PUF) supports the University of Texas System, the Texas A&M System and Tarleton State University — a total of 24 institutions and agencies. The Higher Education Assistance Fund (HEAF) supports 32 institutions not supported by PUF, including the Texas State Technical College System.

The federal circuit court ruling in *Hopwood v Texas* (78F.3d 932, 5th Cir.1996) forced Texas universities to reexamine affirmative action admissions policies and may require increasing student financial aid to attract economically disadvantaged students. The *Hopwood* decision generally ruled that race may not be used as a factor in admissions decisions.

While *Hopwood* specifically addressed an admissions policy no longer used at the University of Texas law school, it was interpreted by Attorney General Dan Morales as potentially prohibiting all Texas institutions of higher education from using race as a factor in admission decisions, absent a showing that the "present effects of past discrimination" felt by the racial group in question come from past discriminatory actions by the institution and are not due to general societal discrimination.

CSHB 1 would respond to the *Hopwood* decision by directing the comptroller to conduct a disparity study to determine whether past acts of discrimination by institutions of higher education have created any present effects of discrimination. The report must be completed by November 1, 1998, and distributed to the Legislature, the Higher Education Coordinating Board, and all institutions of higher education (Comptroller's budget, rider 16; Art. 3, Special Provisions, sec. 46).

Article 11 contains provisions that would increase funds for scholarships for disadvantaged students and minority staff by $1.5 million per year, double the amount for scholarships in the coordinating board budget. The Article 11 wish list also contains provisions to increase scholarships for several institutions of higher education.

The *Hopwood* decision diverges from standards set 18 years ago in a U.S. Supreme Court decision (*Regents of the University of California v Bakke*, 1978) that found that universities could use race as a "plus" factor in admissions decisions, similar to the use of grades, test scores, and recommendations. The *Bakke* decision continues to apply to all U.S. states except Texas; higher education institutions in Mississippi and Louisiana, also covered by Fifth Circuit decisions, operate under previously imposed federal court orders that *require* them to use race as a factor in admission considerations.

Substituting other socio-economic indicators for race would only reach 50 to 60 percent of the minority students attained under *Bakke*, higher education officials said, so scholarships funds may have to be doubled in order to grant assistance to all qualified applicants and still maintain or exceed current target levels for minority students.

A "Back to Basics" initiative has been developed by the chancellors of the university systems and community colleges, who have requested a funding increase of almost $1 billion over proposed fiscal 1998-99 funding levels to meet growing population disparities in education, increase the number of higher education graduates, and improve Texas' overall economic prosperity and workforce development. The chancellors predict that if current trends continue, Texas will have a growing proportion of unskilled, undereducated citizens who are unprepared for the jobs of the future and who will increase pressure for state spending on prisons and welfare.

Table 4

Higher Education "Back to Basics" Funding Request
general revenue
(*millions of dollars*)

Public school partnerships	$ 71.6
Community college initiatives	$ 204.8
Public university initiatives	$ 326.1
Student financial assistance	$ 51.5
Tuition Equalization Grants	$ 40.0
R&D and workforce preparation	$ 100.0
Health education and research	$ 132.0
Total	**$ 926.0**

Article 11 of CSHB 1 contains $926 million for the Back to Basics Initiative for all institutions of higher education. Article 11 also contains funding provisions to increase formula funding and to meet growth and expansion at public community and junior colleges.

Proponents of increased funding for higher education point out that the portion of the state's general revenue budget dedicated to higher education has been declining since the early 1970s, falling from almost 60 percent to below 20 percent of total general revenue appropriations. According to the chancellors, state dollars spent per student dropped from $3,187 in 1985 to $2,408 in 1997, and Texas lags behind other states in higher education spending. Tuition and fee increases are making access to education difficult, especially for low-income or minority students, whose retention and graduation rates are already significantly lower than other students.

Critics say higher education receives a relatively large portion of the state's general revenue (about 13.7 percent in CSHB 1). Tuition and fees at most public institutions in Texas are among the lowest in the nation; there still is room for raising tuition and fees to make up for the formerly high level of state assistance.

Funding increases in health profession education also were requested by medical schools and health science centers on the grounds that the demand for additional health professionals is expected to increase faster than other sectors of employment, that inflation and enrollment growth have exceeded general revenue resources, and that managed care payment schemes have reduced the availability of private funds to pay for the uncompensated or undercompensated services provided by teaching institutions.

Medical schools requested an additional $123 million in general revenue appropriations for the biennium. Funding increases would go to pay for residency program costs that had traditionally been assumed by the teaching hospitals prior to the spread of managed care ($40 million), and to compensate physicians whose patient care volume is reduced by duties related to instructing medical students ($61 million).

Article 11 contains provisions to increase funding for the Family Practice Residency Program by $7 million for the biennium, for Baylor College of Medicine by $3.8 million per year, for the Primary Care Residency Program by $4.5 million for the biennium, and for Texas Chiropractic and Parker Chiropractic $2 million each for the biennium. Individual health-related institutions also have provisions for increased funding in Article 11. The governor proposed spending an additional $15 million in the Family Practice Residency program to add 250 new resident positions.

Article 11 also contains a rider that would appropriate $150,000 per year for a "preceptorship," similar to an internship, in public health. Another rider would reimburse entities for certain costs associated with residency training. Under the rider, medical schools and other entities that provide faculty to teach primary care residents would receive $12,500 per year for each filled residency position. Teaching hospitals and other entities with residency program costs would receive $15,000 per year for each filled residency position. Some estimates put the potential cost of this rider at $15 million or more for the biennium.

Rider 47 of the Texas Department of Health budget would direct the Health and Human Services Commission to remove from hospital Medicaid reimbursement rate methodologies the portion that is related to graduate medical education (GME) funding and make direct Medicaid payments to hospitals and clinics for GME. Because GME funding and patient care funding are currently rolled into one Medicaid reimbursement formula, teaching schools and others have argued that Medicaid managed-care contracts siphon off to private HMOs public Medicaid funds earmarked for teaching expenses along with Medicaid funds related to direct patient care.

Audits of funding formula spending found inaccurate reporting that resulted in net overpayments of $11.6 million to 22 universities. The audits were performed by the State Auditor's Office under the direction of a special higher education provision in the fiscal 1996-97 budget (Sec. 21), which also gave direction to revise appropriations to the institutions based on the audit results.

CSHB 1 would include a similar rider but would allow the institutions an error rate of up to two percent, and would adjust institution budgets for fiscal 1998-99 accordingly, for a decrease in general revenue funding of $4 million. Texas Southern University and Prairie View A&M are the only institutions that incurred error rates greater than two percent.

HB 1 as filed adjusted fiscal 1998-99 appropriations to universities to reflect SAO findings. Some members of the Appropriation Committee said the penalty of reduced appropriations was unduly severe because it did not allow room for "reasonable error" in the course of reporting formula-based data. Other members, however, said state-funded activities should not allow for any errors.

The Senate Finance Committee is considering provisions that would allow an error rate of 0.1 percent of an institution's appropriation, leave appropriation adjustments to the discretion of the LBB, and restore adjustments made in the LBB recommendations for fiscal 1998-99 that were based on audit reports.

Texas Southern University is expected to become insolvent in fiscal 1997, due to problems documenting student federal financial aid eligibility and other management inefficiencies. The U.S. Department of Education has demanded reimbursement for $680,000 for school year 1993-94, $100,000 for 1994-95, and $13 million for 1996 for financial aid payments that TSU received without providing adequate proof of student eligibility. About 40 percent of TSU's budget is drawn from federal financial aid reimbursements. The State Auditor Office projects that TSU will run out of funds in April 1997.

CSHB 1 would require TSU to establish a team of experts to implement management and financial procedures, comprehensive internal oversight systems, and other controls and relevant policies (TSU budget, rider 4). The team would be required to provide quarterly progress reports to the Legislature and legislative offices. CSHB 1 also would establish in the TSU budget an *unfunded* strategy for targeting the deficit and management rehabilitation efforts. This strategy may be funded later this session through an emergency appropriation to support TSU operations through fiscal 1997, with carry over provisions to fiscal 1998-99.

Funding formula changes being considered by the Senate Finance Committee would collapse current formulas, plus utilities, system office appropriations, and scholarships into four formulas and supplemental items. Any university losing funding because of the proposed formula changes would receive general revenue compensation during the fiscal 1998-99 biennium to help make the transition to the new formula structure. Transition costs are anticipated at about $25.6 million.

CSHB 1 would retain most current funding formulas and methodologies and maintain general revenue formula funding at fiscal 1996-97 levels. Formula funding for nursing faculty salaries would be eliminated and salaries would be funded at fiscal 1996-97 levels.

Health and Human Services

Health and human services, the state's second largest budget function, accounts for 30 percent of the fiscal 1996-97 budget and 20.8 percent of general revenue-related spending. Federal directives are the driving forces for many of the health and human service programs, and federal funds, which often require the state to spend a matching amount, finance approximately 58 percent of all health and human services spending. Texas' health and human services expenditures rank consistently low in comparison to other states.

Entitlement programs, such as Medicaid and some welfare programs, are programs in which the state is required to provide services to *all* individuals who meet the eligibility standards. However, most entitlement caseloads are expected to be lower during fiscal 1998-99, a trend that is being experienced in many other states, possibly because of such factors as a healthier economy, welfare reform changes, and perceived stigmatization of welfare recipients.

Article 2 of CSHB 1 appropriates funds to 13 health and human service agencies. The bill would fund most of the agencies above fiscal 1996-97 spending levels.

Table 5

Health and Human Services
all funds
(*millions of dollars*)

	1996-97	CSHB 1	change from 1996-97
Department on Aging	112.0	115.9	3.5%
Commission on Alcohol and Drug Abuse	255.8	260.3	1.8%
Commission for the Blind	78.7	83.1	5.6%
Cancer Council	8.0	8.0	(0.2%)
Children's Trust Fund of Texas	5.9	6.3	6.6%
Commission for the Deaf	2.3	2.4	4.1%
Interagency Council on Early Childhood Intervention	101.7	138.9	36.5%
Texas Department of Health	12,631.5	12,694.4	0.5%
Health and Human Services Commission	27.0	23.6	(12.7%)
Department of Human Services	6,242.5	6,619.6	6.0%
Department of Mental Health and Mental Retardation	3,141.1	3,271.0	4.1%
Department of Protective and Regulatory Services	993.9	1,107.3	11.4%
Rehabilitation Commission	485.0	506.5	4.4%
Special Provisions	0.0	(13.8)	NA
Total	**$24,085.5**	**$24,823.7**	**3.1%**

Source: LBB, Summary of CSHB 1, March 11, 1997(biennial change calculated on actual amounts before rounding)

Significant changes would be felt by the Health and Human Services Commission, slated to receive a net decrease of $3.4 million in federal and other funds; the Cancer Council, which would lose 0.2 percent in general revenue-related funds; and the Department of Mental Health and Mental Retardation and the Texas Commission on Alcohol and Drug Abuse, which would receive net increases in all funds but reduced general revenue-related funds due to method of finance changes and fund transfers to other state agencies.

A new, welfare-related federal block grant fund, the Temporary Aid to Needy Families (TANF) block grant, will require a new spending framework for Texas health and human services. If used under fiscal 1996-97 spending patterns, TANF is expected to provide a surplus of about $393 million in federal funds for fiscal 1998-99, because Texas will receive more federal funds through TANF than it would have prior to federal welfare reform and the state has declining welfare caseloads and unspent fiscal 1997 TANF funds. HB 1 as filed based TANF spending on fiscal 1996-97 spending patterns

Texas has several options for spending *all* of the TANF funds. They include using TANF to replace state general revenue funding or other federal funding sources in certain programs, augmenting appropriations in current programs, and funding the creation of new state initiatives.

The federal welfare reform effort created TANF to replace Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS), and Emergency Assistance programs. Federal funding allocations were based on state 1994 AFDC spending levels. To receive the full amount allocated, Texas must comply with a maintenance of effort (MOE) requirement to continue to spend at least 80 percent of its previous state expenditures to match federal funds in former welfare programs. Federal rules specifically defining state expenditures applicable to MOE have not yet been promulgated.

TANF funds can be spent on low-income families to provide child care assistance, promote job preparation and employment, support two-parent households, and prevent or reduce the incidence of out-of-wedlock pregnancies. Thirty percent of TANF funds also may be used to replace reduced funds in the federal Social Services Block Grant and to augment spending under the new Child Care and Development Block Grant. The state also may place some of its TANF funds in a reserve fund for future use.

HB 1 as introduced would have followed fiscal 1997 TANF spending patterns to fund programs in the Texas Workforce Commission, Department of Human Services, Department of Protective and Regulatory Services and Texas Education Agency, leaving unspent about $296 million from the block grant in fiscal 1998-99. Unspent funds from fiscal 1997 were estimated at about $97 million.

CSHB 1 would revise the patterns for spending local, state and federal funds. It would allocate about 56 percent of all TANF funds and reserve

$140 million in a contingency account (Article 9, section 166). About $33 million also has been reserved for emergency appropriations for fiscal 1997.

CSHB 1 would use TANF to fund a cash grant to welfare clients, continue a $50 payment collected from child support to the custodial parent of a TANF-eligible child, perform eligibility determination for clients, and provide a number of protective services. TANF money also would be used in Article 7 agencies, e.g., to expand job training, education and literacy services, and child care activities of the Texas Workforce Commission and to provide $1 million for a micro-enterprise development program run by the Commerce Department.

The CSHB 1 allocation of TANF funds would replace about $114 million in general revenue spending, which was redirected into maintaining or improving health and human service priorities. About $5 million in federal funds under Title 20 were also redirected for use in other areas.

Some legislators expressed concern about setting spending precedents now, since changing funding patterns between agencies, programs and constituent recipient groups may be difficult for subsequent legislatures. Also debated was whether TANF funds and surplus should be used to "free up" general revenue to fund tax reduction proposals or state activities outside the health and human services function. Some say CSHB 1 does not go far enough in maximizing the availability and flexibility of federal dollars to sufficiently expand health and human service programs to meet Texas' needs.

The LBB, the Governor's Office and the Center for Public Policy Priorities, a nonprofit advocacy organization for low-income families, all have proposed a different mix of federal, state and local health and human services funding alternatives. A special committee composed of representatives from these groups and House and Senate staff was established to recommend spending revisions.

The health and human services funding mix will likely continue to be refined during the budget-writing process this session. The Senate Finance Committee is considering placing all TANF-related funding changes into Article 11 instead of incorporating them in the base bill, as proposed by CSHB 1.

Medicaid funding changes at the federal level are translating into increased spending for the state. CSHB 1 would raise general revenue appropriations to the Medicaid program to pay for federal minimum wage increases, to meet the state's growing matching requirement, and to meet caseload increases in the long-term care programs of in-home and community services, and in foster care and adoption subsidies.

CSHB 1 also would implement Medicaid fraud detection efforts by increasing general revenue funding in the Health and Human Services Commission budget by $2 million and implementing a contingency rider based on TPR-recommendation FR-1 for a net reduction of $5.2 million in

Medicaid assists about 2 million low-income, uninsured Texans with health care and pays for about 66,000 nursing home residents each month, almost 75 percent of the total population of Texas nursing homes. More than half of the state's Medicaid recipients are children. In fiscal 1995, Medicaid accounted for 72 percent of the health and human services budget and 18.6 percent of the entire state budget.

general revenue funds (Article 2, Special Provisions, rider 17).

Medicaid program expenditures are split between state and federal funding. The state matching rate fluctuates according to the economic standing of Texas in comparison to other states. For fiscal 1998 and 1999, the Texas match is proportionately higher than it was in fiscal 1997, so that even with a $14.3 million increase in general revenue spending there will be a $30.2 million decrease in total Medicaid fund spending under CSHB 1.

Federal minimum wage increases have affected the adequacy of state-promulgated Medicaid payment rates to certain health care providers, notably nursing homes, whose labor pool consists mostly of lower wage employees. For example, funding for the nursing home services strategy in the Department of Human Services budget would provide an increase of $56 million in general revenue (and $155.6 million in all funds) to cover higher minimum wages while maintaining 1997 caseloads.

CSHB 1 would fund slightly lower Medicaid caseloads in fiscal 1998-99 than in the current biennium. However, a contingency fund of $200 million would be established in the comptroller's budget to meet higher than expected Medicaid caseload growth or costs. Because caseloads grew less than anticipated, fiscal 1996-97 will end with about $350.9 million in unspent general revenue and other funds in the TDH Medicaid budget.

Savings and eligibility expansions caused by Medicaid program changes enacted by SB 10 by the 74th Legislature were only partially realized. The development of intergovernmental health care initiatives (IGIs) never got off the ground due to contract concerns between the State Medicaid Office and many public hospitals. A revised proposal expanding services to only children, with the assistance of certain state and public hospitals, still awaits federal government approval. However, savings expected from the implementation of managed care (which has expanded from two locations in fiscal 1994 to five locations in fiscal 1997) were used in the Medicaid cost projections for fiscal 1998-99.

Medicaid is the largest single source of federal funds to the entire state budget, helping fund programs in at least 12 state agencies: the Department of Health, Department of Human Services, Department of Protective and Regulatory Services, Department of Mental Health and Mental Retardation, Early Childhood Intervention, Texas Rehabilitation Commission, Health and Human Services Commission, School for the Blind, School for the Deaf, Commission for the Blind, Texas Commission on Alcohol and Drug Abuse, and Attorney General's Office (Medicaid fraud detection unit). Medicaid also funds some health programs in public schools and contributes toward graduate medical education costs.

In-home and community care services funding for elderly and disabled individuals would be increased by CSHB 1 by $393.5 million, including a general revenue increase of $163.8 million. The increase would cover caseload growth and higher federal minimum wages and contribute toward services to elderly and disabled legal aliens.

Thousands of disabled children and elderly or disabled legal immigrants in Texas will soon lose federal and state benefits due to federal welfare changes in Supplemental Security Income (SSI), a 100 percent federally funded cash assistance program to aged, blind and disabled individuals with limited income and resources. New changes in SSI eligibility criteria mean an estimated 3,600 children and an estimated 37,300 legal immigrants in Texas will lose their SSI benefits and corresponding eligibility to receive Medicaid coverage. Changes in the federal Food Stamp program will also cause an estimated 141,000 legal immigrants in Texas to lose benefits by September 1997. Texas could lose more than $250 million annually in federal disability and food stamp benefits to legal immigrants. Many community leaders complain that due to the multiplier effect of benefit-funded expenditures, the federal changes also could result in significant losses to local businesses.

CSHB 1 would provide a total of $109.6 million in general revenue funds for disabled children and elderly and disabled legal immigrants who would lose their Medicaid coverage under SSI changes. The general revenue appropriation would not be matched by federal Medicaid funds but would be equal to the amount spent in fiscal 1996-97 to meet the state's matching requirement, about 40 percent of full funding.

Congress is considering reinstating SSI and Food Stamp eligibility for legal immigrants, and federal matching funds may also be made available through federal executive branch or court actions.

A rider authorizing a moratorium on nursing home Medicaid beds would *not* be imposed by the appropriations bill for the first time since fiscal 1992-93. Article 11, however, contains a provision that would allow DHS to decertify Medicaid nursing home beds if a nursing home's Medicaid bed occupancy rate fell below 95 percent for six consecutive months.

Since September 1, 1985, when the state health care planning program was discontinued by the Legislature, the supply of nursing home Medicaid beds has been regulated by a DHS-imposed moratorium prohibiting increases unless specified occupancy standards or considerations are met. DHS has no specific statutory authority to enforce the moratorium or to limit certification of otherwise eligible beds. Nursing homes are under no state-imposed restrictions on the construction of new beds or facilities to be used by non-Medicaid, or private pay, residents.

The rider to the fiscal 1996-97 budget prohibits DHS from contracting for additional Medicaid beds in counties where the occupancy rate of available beds for each of the previous six months has been less than 85 percent. The restriction does not apply to hospital beds that could be converted to long-term care beds under the federal "swing bed" program in counties with populations less than 100,000. The rider also specifies that the DHS commissioner may grant waivers only to meet a need to serve individuals under the supervision of the Texas Department of Criminal Justice, to meet documented demand in underserved minority communities, or to serve medical school-affiliated facilities that treat persons with Alzheimer's disease.

Critics of the moratorium say it has prevented competition from qualified providers, thereby sustaining the operation of substandard nursing homes, and has inhibited the redistribution of beds to meet population needs. Although Texas has a relatively low statewide average occupancy rate, indicating more nursing home beds are available than needed, certain areas lack sufficient beds.

Critics also say nursing homes whose authorized beds are not fully occupied "tie up" the supply of beds that could be used by another facility in the same county, and that some facilities purposefully keep occupancy rates below 85 percent to prevent competition. They say rural residents are the most inconvenienced and are often placed in nursing homes at great distances from their family because the moratorium prevents the construction of new facilities in closer proximity. Some also say that because Medicaid rate methodologies cover the overhead costs of unutilized beds, current appropriations could be used to finance new construction if poorly run homes went out of business.

Opponents to eliminating the moratorium say using a free-market approach to nursing home construction would increase state Medicaid expenditures because reimbursement methodologies pay for overhead costs associated with over-built and under-utilized Medicaid facilities. Some recommend amending the moratorium to instate a "use it or lose it" approach to authorizing the number of beds per facility. Others recommend developing a comprehensive long-term care bed and services planning process that would direct state expenditures toward predetermined state goals on nursing home, personal care, and hospital-based long-term care beds as well as home health services.

Other health and human services items in Article 11 include $116 million in various provisions for TDH; $414.5 million for DHS nursing facility and hospice payments and $220.1 million for other DHS programs; $172 million for Mental Health/Mental Retardation programs; $64.7 million for the Department of Protective and Regulatory Services; and $4 million for the Rehabilitation Commission. Article 11 also would authorize DHS to study the use of Electronic Benefit Transfer for the Food Stamp program and other benefits.

Adult and Juvenile Justice

The criminal justice system in Texas has experienced nearly a decade of increasing incarceration rates, system bed capacity and community supervision and intervention programs. Now, some experts say, a shift in policy direction may be warranted, some experts say.

Criminal justice has experienced the fastest expenditure and employment growth of any function of state government. Between 1988 and 1997 the inmate population served by the Texas Department of Criminal Justice (TDCJ) increased 230.9 percent, while the average daily population in the Texas Youth Commission (TYC) has grown by 134 percent. In fiscal 1986-87, public safety and criminal justice accounted for 4.2 percent of the budget; in fiscal 1994-95, 9.5 percent. In fiscal 1996-97, Article 5 funding was 8.2 percent of the budget at $6.647 billion. CSHB 1 would increase funding to $6.819 billion, still about 8 percent of the total budget.

Some observers believe that the system has grown too fast for adequate management support or oversight, as exemplified by the Vita Pro food supplement contract and engineering problems in TDCJ facilities construction. Many also say that the state's focus on incarceration and punishment diverts funding from what should be state priorities on education and health and human services that can prevent propensities for crime. They say that the state seems to be more willing to spend $15,000 a year to incarcerate an offender than $5,000 a year to educate a child.

In 1995 Texas ranked first among the states in rate of incarceration per 100,000 population, eighth in the number of juveniles in state correctional programs, and 14th in property crime, 15th in index crime, and 17th in violent crime.

The Texas Criminal Justice Policy Council (CJPC) has recommended that the Legislature continue to provide adequate capacity for adult and juvenile offenders, but that it focus also on controlling escalating correctional costs by efficiently managing available capacity, increasing the effectiveness and accountability of correctional rehabilitation programs, increasing juvenile justice funding and early deterrence policies, and improving "front-end" crime prevention policies.

Adult programs

In 1991 Texas embarked on an aggressive prison construction program, followed in 1993 and 1995 with a restructuring of criminal incarceration and supervision strategies. The Texas correctional system grew from 41,166 beds in 1989 to 144,300 beds by January 1997, and includes one of the nation's largest correctional substance abuse treatment programs.

Table 6

Texas Department of Criminal Justice
(*millions of dollars*)

	1996-97	CSHB 1	change from 1996-97
General revenue related	$ 3,822.3	$ 4,043.5	5.8%
All funds	$ 4,258.6	$ 4,383.7	2.9%

Source: LBB, Summary of CSHB 1, March 11, 1997

The cost of meeting the projected growth of the Texas inmate population will depend upon the construction strategy finalized by the Legislature. Existing beds and facilities within the prison system must also be reconfigured to meet security and other requirements. Demand for beds is predicted to exceed capacity by 1,340 beds in 1999, and up to 5,523 beds by 2001. However, by August 2001, it is also possible that there will be between 5,000 and 7,000 unoccupied county jail beds. Since August 1995, the state has not used county jails for holding state criminals.

Texas has the highest incarceration rate of all western democracies; in 1995 five percent of the adult population, or 688,854 adults, were under the control of the Texas criminal justice system. In addition, the number of cases approved for parole dropped from 56,442 in 1990 (an approval rate of 79.4 percent) to 12,471 in 1996 (20.3 percent).

CSHB 1 would increase TDCJ funding to pay for full operation of state jail beds that were phased in during 1996-97 and fund the phasing in of 2,500 additional state jail beds during fiscal 1998. State jail beds are now being used to house both state jail felons and other felony offenders awaiting transfer into prison facilities. Article 11 contains a provision that would also pay for the operation of two new 660-bed high security facilities in addition to the 660-bed unit scheduled for completion in May 1997.

CSHB 1 would not fund the department's request to build three 990-bed prison units. The Appropriations Committee was advised that the more prudent action would be to build only the additional 660-bed units, under existing bond authority, and to add more units later if demand for beds remained high, using excess county capacity in the meanwhile. The governor's budget proposal included funding for three 660-bed units and three 990-bed high security units to begin operation in fiscal 2000.

CSHB 1 would also authorize TDCJ to request funds to cover emergency expenditures related to caseload growth from the contingency fund of $200 million (rider 4 in the budget of the Office of the Comptroller - Fiscal Programs). Article 11 also contains provisions to authorize hazardous duty pay for guards and other personnel and to fund at $425,000 per year a victim services program that will lose federal funds next biennium.

Funding levels for criminal justice could change depending on the outcome of other proposed legislative activities. Proposals to increase time served in prison or transfer adult beds into juvenile justice facilities could increase demand for prison and state jail beds and reduce excess capacity.

The substance abuse treatment strategy overall would see decreased funding under CSHB 1 due to programmatic changes and lower negotiated costs for contracted providers. CSHB 1 would appropriate $71.4 million for the strategy. However, the bill would increase by $11 million general revenue-related funding over the fiscal 1996-97 level for full operation of all substance abuse treatment beds operational in fiscal 1997; 4,500 beds in the Substance Abuse Felony Punishment (SAFP) program, and 800 beds in the In-Prison Therapeutic Community (IPTC) program.

Some legislators were looking hard at the usefulness and cost-effectiveness of the IPTC program, established in 1991 for phase in between

1992 and 1995. The 74th Legislature reduced the targeted number of operational IPTC beds from 2,000 to 800. Although the IPTC program has not met some legislators' standards of success in addressing inmate drug habits, CJPC advised retaining the program for another biennium on the grounds that IPTC cases are harder to address because they tend to have a longer history of substance abuse than the probationers in SAFP, that the IPTC beds could be used to address the SAFP backlog, and that more time should be given to fully develop and evaluate the program.

TDCJ computer and information management systems continue to be viewed as problematical. During the past two legislative sessions members have criticized the agency for excessive delays and inordinate expenditures in the development of a modern data system to track prisoners, parolees and probationers and provide information on arrests, prosecutions and court decisions. The State Auditor's Office recently found evidence of poor financial and other administrative data keeping and management.

TDCJ requested an additional $65 million for fiscal 1998-99 to upgrade and redesign the computer system. Article 11 contains a provision to fund almost $40 million in additional general revenue to continue the information resources re-engineering project and to provide computer hardware and software, maintenance and other expenses related to the growth of the criminal justice system.

Juvenile justice

The juvenile justice system includes incarceration programs at the Texas Youth Commission (TYC) and intermediate intervention and correction remedies and disposition through county courts and juvenile probation departments and the Texas Juvenile Probation Commission (TJPC). Both TYC and TJPC have been recommended for continuation by the Sunset Commission.

Many have expressed concern about spending so much money on punitive and incarceration measures instead of targeting at-risk children, families and neighborhoods to prevent or deter juvenile criminal activities. Some officials testifying before the committee cited state human service programs, such as Texas Early Childhood Intervention (ECI) and Child Protective Services, as an "investment" that would be more effective at preventing juvenile crime.

Table 7

Juvenile Justice
all funds
(*millions of dollars*)

	1996-97	CSHB 1	change
Juvenile Probation Comm.	$ 167.7	$ 131.1	(21.8 %)*
Texas Youth Comm.	$ 314.9	$ 349.5	11.0 %

** reflects a $37 million decrease in general obligation bonds authorized by the 74th Legislature; general revenue funding was maintained at fiscal 1996-97 levels.*

Source: LBB, Summary of CSHB 1, March 11, 1997

Increased juvenile commitments and referrals to TYC are caused by a growing youth population, rising juvenile crime rates and juvenile justice reform measures. In January 1997, TYC reported that its youth population was at 115 percent of total capacity of 3,213 beds. Experts predict that even with the 2,248 beds scheduled to come on line by August 1999, Texas will need an additional 500 beds to meet demand by August 2001. Compounding the increasing commitment and referral numbers is the trend toward keeping juveniles in TYC longer to make long-term beneficial changes in their behavior.

Juvenile probation departments receive on the average one delinquent conduct referral every five minutes. Departments average one referral for violent crime every hour; for drug offenses every 56 minutes; and for property crime every 14 minutes. Of the 133,866 juveniles referred to juvenile probation departments, 12.4 percent exhibited symptoms of sexual abuse; 15.6 percent, symptoms of physical abuse; 31.9 percent, symptoms of emotional abuse; and 25.6 percent, symptoms of substance abuse.

CSHB 1 would appropriate an increase of $92.8 million in general revenue funds for facilities in operation by fiscal 1997 and for additional capacity authorized by the 74th Legislature scheduled to come on line in fiscal 1998-99. Legislative funding options to meet increasing TYC bed demand includedconstructing a new 500-bed unit or retrofitting and transferring to TYC facilities from TDCJ.

Article 11 contains provisions that would allocate: $13.8 million in general revenue-related funds to build additional capacity to meet Criminal Justice Policy Council (CJPC) projections and $5 million to retrofit a TDCJ unit (such as the Woodman state jail unit in Gatesville) to meet additional capacity needs; $8 million in general obligation bonds; $2.6 million for vocational education programs; and $10 million for staffing increases to improve safety, mental health, and other services for youth and for teacher pay raises.

The governor’s budget proposal recommended an increase of $18 million over HB 1 as filed to provide sufficient funds for TYC institutions to operate at the capacity levels projected by CJPC.

Progressive Sanctions Model funding needs and options continue to studied. The model, adopted by the 74th Legislature, provides guidelines for making dispositional decisions regarding juvenile offenders and assigning sanctions based on the severity of the offense and prior history of the juvenile. The guidelines provide for seven levels of sanctions that are incrementally more severe; level one provides supervisory activities while level seven requires determinate sentencing to TYC. So far, 148 out of 165 local Texas juvenile probation departments have adopted the Progressive Sanction Model. These departments have estimated that they would need at least $98.2 million to adequately implement it.

CSHB 1 would maintain fiscal 1996-97 funding levels for implementing the Progressive Sanctions Model and not include any increases to incrementally improve the system. TJPC says most of the current funding goes to the higher-end, more punitive sanction levels (levels four through seven). Sanction levels one through three, with programs designed to deter further criminal activities and commitment to TYC, are considered underfunded. TJPC asked that about half of the amount requested by local juvenile probation departments be added to the budget recommendations.

Article 11 contains provisions to increase funding for the Progressive Sanctions Model by about $27.8 million per year, to be distributed to local probation departments to fund services in the first three progressive sanction levels. Committee members were advised to increase funding incrementally in order to allow counties time to adjust and improve disposition policies, personnel, and service infrastructures since the model is a relatively new approach to juvenile offenses.

Juvenile Justice Alternative Education Programs (JJAEPs), mandated by the 74th Legislature in the Education Code revisions (SB 1), require counties with more than 125,000 residents to establish alternative education programs for students who have committed serious offenses or who have been expelled from school-based alternative education. TJPC requested an increase of $13.4 million for funding JJAEPs.

CSHB 1 would provide continued funding for school-based alternative programs only. Article 11 contains a provision to earmark $7 million annually to county juvenile boards to operate JJAEPs.

In May 1996, $7 million was allocated to eligible counties to pay for JJAEP start-up costs and $18 million to school districts for school-based alternative education programs (AEPs). Local school boards are required to fund AEPs and JJAEPs under a “dollar following the student” formula based on the number of students transferred into the programs using the average student cost per day. Counties have complained that more funding is needed to cover daily overhead and teacher costs — expenses that must be maintained regardless of the number of students transferred into JJAEPs — and that teaching serious juvenile offenders is more costly per day than teaching regular students. It is estimated that by August 31, 1997, 3,500 students will have been served in JJAEPs.

Additional funding for the Services to At-Risk Youth (STAR) program was requested by the Department of Protective and Regulatory Services (PRS) to provide more comprehensive services in the 175 counties now participating in the program (Option 1, at $6.5 million for the biennium) or to expand the STAR program into 79 additional counties (Option 2, at $8.5 million for the biennium). CSHB 1 would appropriate an increase of about $20 million in federal funds to the STAR program.

Under the STAR program, the Department of Protective and Regulatory Services contracts with local agencies and communities to provide family crisis intervention, emergency shelter services, and follow-up counseling to runaway and at-risk youth and their families.

Other Government Funding

Other provisions in CSHB 1 cover funding for general government functions, the judiciary, natural resources, business and economic development, regulatory activities, and the Legislature. These appropriations would comprise about 17 percent of the total state budget.

Table 8

Other Government Functions
all funds
(*millions of dollars*)

	1996-97	CSHB 1	change from 1996-97
General government	$ 2,017.4	$ 1,886.6	(6.5%)
Judiciary	$ 272.6	$ 278.0	2.0%
Natural resources	$ 1,589.7	$ 1,456.2	(8.4%)
Business/economic development	$ 9,751.8	$10,132.4	3.9%
Regulatory	$ 397.0	$ 409.1	3.1%
Legislature	$ 242.2	$ 241.2	(0.4%)*

** due primarily to an estimated drop in appropriated receipts to the State Auditor's Office*
Source: LBB, Summary of CSHB 1, March 11, 1997

General government

Funding for the Commission for the Arts was maintained despite an anticipated drop in federal funding of almost $1.6 million. CSHB 1 would appropriate $2 million, the same amount that was appropriated in fiscal 1996-97, to the Cultural Endowment Fund through general revenue appropriations and transfer $1.5 million from the Texas Department of Transportation to promote tourism by showcasing Texas arts and cultural diversity. The governor's budget proposal did not recommend general revenue appropriations for the fund. The Cultural Endowment Fund was created in 1993 to provide a stable source of funding for the arts, with the goal of obtaining a fund corpus of $200 million by the year 2005

The need for continued emergency communications funding was scrutinized by the Appropriations Committee due to near-completion of the 911 system and reported instances of funds mismanagement by some local councils of government. The development and implementation of emergency communications are financed by fees and surcharges imposed on customers of intrastate long-distance service and allocated through a dedicated account to councils of government, poison control networks, the Texas Department of Health, and the Advisory Commission on State Emergency Communications. Only one county, Crockett, still lacks 911 service.

CSHB 1 would decrease funding for the advisory commission by $13.7 million for the biennium since the 911 system is nearly complete and the poison control network is established. The bill also would eliminate the agency's authority to carry forward unexpended balances.

CSHB 1 also would direct the State Auditor to conduct audits of 911 fees and surcharges collected by the agency and councils of government and to report findings to the Legislature by September 1, 1998 (rider 2). The governor's budget proposed reducing the commission's budget by $14.9 million, or roughly one-half of its fiscal 1996-97 budget.

Supporters of the commission said continued funding is needed to improve the 911 system with newly available technology, such as "caller ID," and that the costs of the system are expected to start decreasing by the end of the next biennium.

Natural resources

Superfund activities and financing were scrutinized by Appropriations Committee members, who questioned whether dedicated hazardous and solid waste fee revenues that fund these activities were being spent effectively. HB 1 as filed would have appropriated about $22 million per year, a reduction of $61.5 million from fiscal 1996-97.

Officials from the Texas Natural Resource Conservation Commission (TNRCC) testified that the proposed appropriation would not give the agency sufficient funds to proceed with investigations or construction at approximately 20 state Superfund sites and would limit the agency's ability to match funds for cleaning up federal Superfund sites in Texas. TNRCC requested an additional $67 million for the biennium to clean up sites contaminated with hazardous materials.

CSHB 1 would reduce appropriation of revenues from hazardous and solid waste remediation fees by $44.9 million. Funding for TNRCC would be reduced by a net $82.5 million from fiscal 1996-97. In addition to the reduction of hazardous and solid waste fee appropriations, the agency would lose $43.5 million in waste tire receipts due to the sunset of the waste tire recycling program in 1998 and $5.9 million in used oil receipt appropriations. The governor's budget proposal would increase funding over HB 1 filed levels for Superfund and other hazardous material regulatory activities by a total of $21.7 million for the biennium.

TNRCC also told the committee that the House Joint Committee on TNRCC Funding concurred that "the TNRCC does not possess the funding resources to capably administer all water activities mandated by the Legislature." TNRCC requested increased funds to inspect wastewater and drinking water facilities and enforce water rights by increasing staff and resources, primarily in field offices, and improving data management.

Article 11 contains several TNRCC provisions that total $49.444 million. They include $22.5 million for the biennium to increase hazardous and solid waste remediation receipts, $2 million per year for waste assessment and planning, $300,000 for the biennium for a Laredo field office, $3 million for the biennium for public drinking water activities, $3.83 million per year for water quality programs, $2.5 million per year for other water programs, and $5 million for the biennium from unexpended balances in the Solid Waste Disposal Fee Account to provide for emergency clean-up of closed landfills.

The Low-Level Radioactive Waste Disposal Authority would not be funded by CSHB 1, which would halt the authority's efforts to obtain a license from TNRCC and construct the proposed disposal facility in Hudspeth County. Committee members criticized the authority for delays in construction and budget expenditures.

The authority was appropriated $44.3 million for fiscal 1996-97, of which about $39 million was for construction of the facility. The agency spent about $19 million in fiscal 1996-97. It testified that of the $12 million spent out of construction appropriations, only about $1.3 million actually went for construction activities, and the rest was spent on administration and environmental and engineering services. Officials from the authority said that the licensing and construction delays were often beyond their control and that environmental and engineering services are required for federal and state approval.

The authority was established in 1981 to select, construct, operate and finance a low-level radioactive waste facility in the state. The site selection process began in 1983, but due to changing legislative directives, public opposition, and a court injunction, the present location in Hudspeth County was not finalized until 1992. A license application for the facility was filed in 1992, but the review process has not been completed. The U.S. Congress has not ratified the compact providing for the disposal of waste from Maine and Vermont in Texas due to continuing opposition from some residents in West Texas counties. Without an approved compact, any facility built in Texas could be forced to accept waste from other states or else violate interstate commerce laws, and could lose $50 million in construction support from Maine and Vermont.

HB 1 as filed would have funded the authority at $14.8 million for the biennium. Some committee members proposed funding the agency but adding a rider that would appropriate $40.8 million for fiscal 1999 facility construction contingent upon the issuance of a license by TNRCC, ratification of the compact agreement by Congress, and receipt of funding from Maine and Vermont. The governor's budget proposal would fund construction and related costs, also contingent upon compact ratification and license issuance.

Economic development

The Lottery Commission's administrative appropriations would be increased by $51.5 million by CSHB 1, due to forecasted growth in lottery receipts. CSHB 1 would appropriate about $523 million for administrative expenses allocated into five new strategies: lottery operations; marketing, research and promotion; advertising; security; and central administration. CSHB 1 would limit spending for advertising; the advertising appropriation reflects about a $8 million decrease from amounts budgeted in fiscal 1996-97.

Committee members questioned the appropriateness of commission marketing expenditures and tactics, specifically citing the "Scratchman" character as detrimentally appealing to children, and the need to advertise the lottery when it is already popular and well known. The agency responded that it carefully develops marketing strategies to appeal to various segments of the adult population only and monitors strategies for cost-effectiveness and impact, eliminating those that do not seem to increase sales. The agency also told the committee that experiences in other states have shown decreased marketing expenditures result in reduced lottery revenues.

Almost all of the commission's funding comes from a statutory dedication of lottery receipts (Government Code, sec. 466.355). Administrative costs may not exceed 15 percent of gross ticket revenue for the biennium, and of that amount not less than 5 percent must go to retailers. CSHB 1 would appropriate to lottery administration a total of $371 million in fiscal 1998 and $390 million in fiscal 1999, amounts that equal 10 percent of expected gross lottery receipts. However, CSHB 1 also would transfer to the general revenue fund $238 million for the biennium out of lottery administration, which would leave a net amount equal to less than 7 percent of gross revenues.

CSHB 1 also would require the lottery commission to transfer $375,000 annually to the Texas Commission on Alcohol and Drug Abuse to pay for the operations of the state's gambling hotline, an amount formerly paid by the Racing Commission. Bingo operations would be funded at fiscal 1996-97 levels.

Program funding for the Texas Workforce Commission (TWC) reflects the agency's first complete biennial funding cycle and would be revised by CSHB 1 from previous spending patterns to accommodate new federal funds and requirements. TWC was created by the Legislature in 1995 to implement a new comprehensive workforce delivery system of programs transferred from 10 agencies, including the Texas Employment Commission, Department of Human Services, and Texas Education Agency.

CSHB 1 would increase TWC appropriations by $135.8 million, or 9.2 percent, primarily from increases in federal funding. Federal funds increases include $25.6 million from a recently awarded School-to-Careers grant, $17.5 million from Job Training Partnership Act (JTPA) funding, $43.7 million from the new Temporary Assistance for Needy Families (TANF) block grant, and $78.7 million from the Child Care and Development Block Grant, which includes some transferred TANF funds. CSHB 1 would reduce general revenue-related appropriations to TWC by $30 million, reflecting in large part the elimination of a one-time fiscal 1996-97 $25 million appropriation to the Skills Development Fund.

The Article 11 wish list contains provisions to increase funding for the biennium by $10 million for early child care, $6 million for communities in schools programs, $25 million for skills development programs, $419,000 for labor law program, and $11 million for Project RIO, a program for reintegrating offenders into the workforce. The Senate Finance Committee is considering increasing Project RIO general revenue appropriations by $11.2 million for the biennium.

The governor's budget proposal used a different combination of state, local and federal funds to increase Local Workforce Services strategy by

$82.7 million, the Early Child Care strategy by $90.9 million, Project RIO by $1.5 million, and other business services and skills development programs by $25 million over appropriations in HB 1 as filed.

Regulatory agencies

Regulators of financial institutions would receive additional funds contingent upon possible federal actions that could increase the number of state-chartered institutions. Federal regulators are considering reducing federal bank regulation responsibilities and eliminating the federal charter for savings and loan institutions. Meanwhile, a pending U.S. Supreme Court case could affect membership in credit unions.

CSHB 1 would increase appropriations over fiscal 1996-97 by $5.4 million for the Department of Banking and $1.9 million for the Savings and Loan Department, contingent upon supported findings that additional state resources are needed to maintain adequate regulation of the industry. The budget for the Credit Union Department contains a rider that would appropriate $1.2 million for up to 17 FTEs to respond to potential conversions from federally chartered credit unions.

Racing Commission debt received attention this session when the executive director told the committee that HB 1 as filed would adequately fund all commission activities but leave insufficient funds to meet the commission's annual debt obligation of $675,000, a result of an $8.4 million loan from state general revenue funds used to finance start-up costs for the commission in fiscal 1988-91. The commission has paid back a total of $4.2 million to the state, but it still owes $9.5 million. Due to statutory interest charges and the pay-back schedule, the commission must make loan payments for another 38 years. One suggestion to pay off the debt has been to reappropriate some or all of the $900,000 the commission now used to fund the state's gambling hotline.

Critics say the loan from the state is a "sleight of hand" because the monies all involve state expenditures and revenues regardless of how they are accounted for and that no other state agency has been established in this way. Supporters of the loan say the debt obligation should be paid because racing was "sold" in Texas as a way for the state to raise revenue and racing advocates promised that racing would pay for itself.

CSHB 1 would require the commission to make the annual $675,000 loan payment. It would also use increased revenues for simulcast wagering to raise agency appropriations by $1.4 million in order to fund the Texas Bred Incentive Program, aimed at encouraging Texas horse breeding. CSHB 1 would not transfer funds from the Racing Commission to fund the gambling hotline, although the agency remains statutorily required to set

The gambling hotline, run by the Texas Commission on Alcohol and Drug Abuse, receives 0.25 percent of simulcast pari-mutuel betting revenues. Almost all the calls received by the hotline concern the lottery, which has not contributed funds to hotline operations since fiscal 1994-95. Dedicated revenues are placed in a suspense account; because only about $375,000 is appropriated annually to the hotline, most of the funds become general revenue available for other uses at the end of each biennium.

aside funds for this purpose. CSHB 1 would continue to fund the gambling hotline at fiscal 1996-97 levels, but with money from *lottery* operations.

The committee also discussed options to transfer lottery revenues to pay off the racing commission debt. Racing commission debt and hotline funding obligations may be revised in sunset legislation this session.

Budget increases in many licensing agencies would be limited by riders allowing an agency to receive additional appropriations for specified strategies only if the agency raised sufficient fee revenues to pay for the added amount. Such riders are added to ensure the fee increases will be included in the comptroller's certification of available revenues when a budget is approved by both houses.

Many agencies testified that fee revenues already exceed amounts appropriated, and that most funding requests could be funded through current fee revenue levels. Some professionals view license and other fee increases as a tax that is used to fund activities not related to professional regulation.

Cross-agency provisions

A Contingency General Revenue Fund of $200 million would be established by CSHB 1 to cover emergency expenditures related to caseload growth or the foundation school program, subject to prior approval by the governor and the LBB (Comptroller budget — Fiscal Programs, rider 4).

Funding from this account could be tapped by the Texas Education Agency to cover cost increases due to higher enrollment, local tax effort and property values; by the Texas Department of Health and the Texas Department of Human Services for Medicaid purposes; by the Texas Youth Commission and the Texas Department of Criminal Justice for changes in population; and by the Department of Protective and Regulatory Services for foster care/adoption payments.

Supporters of the fund say it would be a cost-efficient method to provide for higher than anticipated caseload or enrollment growth without tying up state dollars in direct appropriations that state agencies may not have to use. For example, TEA enrollment projections for fiscal 1998-99 are higher than LBB projections by 15,000 students, which could require additional appropriations of $100 million. On the other hand, Medicaid caseload projections for fiscal 1996-97 were higher than actual numbers, resulting in an unspent balance of almost $350 million in general revenue and other funds in the Health Department budget.

Opponents of the contingency fund say that the $200 million in reserve should be allocated toward meeting unfunded or underfunded state priorities. As done in this and previous biennia, agency appropriations can be re-allocated through budget execution or other measures if emergency expenditures are warranted.

A contingency TANF reserve of $140 million unappropriated federal funds from the Temporary Assistance for Needy Families (TANF) block grant would be established for emergency appropriations related to caseload growth or fiscal penalties for the Texas Workforce Commission, Department of Human Services, and Department of Protective and Regulatory Services (Article 9, sec. 166).

Supporters say that the contingency reserve is a good strategy in case extra funds are needed to meet higher than anticipated welfare caseloads; to pay federal penalties if the state does not meet requirements relating to employment of welfare recipients; or to fund any program changes that are enacted by the Legislature. TANF funds may be carried over from one year to the next, they say, so state decisions do not need to be made right away.

Critics say too much money has been allocated for the reserve instead of being used to improve or expand upon welfare services. Most welfare recipients will only be able to receive benefits for a maximum of five years, so spending available money now on program improvements or expansions will help welfare recipients successfully move off welfare when benefits are curtailed. They also say that "sitting on" $140 million in federal funds would send the wrong message to Washington and that the existence of such a large reserve could be used as justification to reduce funds to Texas in the future.

State employee pay could be increased by an Article 11 "place-holding" provision for across-the-board salary increases. The provision does not specify an amount. Merit raises may continue to be granted by agency administrators under certain conditions. The Senate Finance Committee is considering an Article 11 provision to increase employee pay by at least $100 per month.

Article 9 would replace with three classified salary schedules the one classification schedule that in the past has covered about 90 percent of the state's workforce.

Schedule A would function in a manner similar to the current classification schedule and cover administrative support, maintenance, service, technical and paraprofessional jobs. Schedule B would cover non-traditional ranges of pay to give agency heads flexibility in hiring and promoting employees. It would include most professional and managerial jobs. Schedule C would provide a law enforcement schedule and apply to employees in the Department of Public Safety, Texas Parks and Wildlife Department, Texas Alcoholic Beverage Commission and Texas Department of Criminal Justice.

The changes to the classification schedule reflect recommendations of an interim subcommittee of the House Appropriation Committee (see the *Interim Report to the 75th Legislature*, December 1996). The subcommittee was told that overall state-classified salaries tend to be lower than those in private industry and lag behind private sector cost-of-living increases but that large disparities between public and private sector salaries occur mostly in professional and technical positions. One consultant found some private sector entry-level salaries to be higher than the state maximum salary. The State Auditor's Office also recommended increasing the salary schedule.

The subcommittee was told that one salary schedule for all state employees can be problematic because adjustments to one area of the schedule have a ripple effect throughout the whole schedule. For example, raising professional salaries at the higher end of the schedule to compete with private sector salaries would result in raising salaries at every level.

Additional amendments relating to the salary schedules and eliminating exempt positions except for those listed by agency budget may be introduced on the House floor.

The number of state employees would be reduced by about 2,849 full-time equivalent (FTE) positions from fiscal 1997 target levels. LBB analyses found that for fiscal 1997 state agencies reported 5,591 fewer budgeted positions than the target amount established in fiscal 1996-97 appropriations bill. State agency budgets in CSHB 1 have been adjusted to reflect the target level reductions.

In addition, Section 167, article 9, would reduce state funding by $470.6 million for the biennium by directing the comptroller to reduce state agency appropriations by amounts based on a TPR analysis of long-standing vacant positions (*Disturbing the Peace*, recommendation EI-1). The section would make available about $322.8 million in additional general revenue for fiscal 1998-99 spending.

Section 170 would reduce state spending by about $15.2 million for the biennium through early retirement incentives recommended by the Texas Performance Review, contingent upon enactment of authorizing legislation.

The Legislature established state employment target levels for fiscal 1996-97 for most agencies with the intent to limit state employment growth and directed the comptroller to reduce appropriations by at least $300 million to meet these target levels (74th Legislature, HB 1, Article 9, sec. 153). In addition, the 74th Legislature reduced state contributions to retirement systems and social security liability for certain employees, limited executive director and exempt salary levels, and eliminated agency authority to award achievement bonuses.

Employee travel would be capped or reduced by several provisions in Article 9. The Appropriations Committee scrutinized agency travel expenses, finding examples of trips to such questionable locales as Anchorage, Las Vegas and New Orleans, and questioned why it was necessary for some agencies to send more than one employee or commissioner to training or professional seminars.

Article 9, sec. 14 would provide specific criteria and require comptroller and state auditor oversight to determine whether agency travel expenses are justified. If the state auditor determined that travel was not justified, the comptroller would reduce appropriations by the amount of the travel expenditures.

Section 168 would reduce fiscal 1998-99 appropriations by an amount equal to 10 percent of each agency's fiscal 1997 travel expenditures.

Contingent upon enactment of implementing legislation, Section 169 would reduce agency budgets by amounts equal to the savings achieved by purchasing lower-cost, nonrefundable airline tickets.

Agencies could not promulgate rules until they reviewed and considered for readoption rules already in place (Article 9, sec. 154). Agencies would be required to file with the governor and the Legislative Budget Board a plan to review all rules that became final prior to September 1, 1997, and would have until August 31, 2001, to complete the review.