ISSUES FACING THE 83RD TEXAS LEGISLATURE
The following information is intended to serve as a reference guide to issues facing the 83rd 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.
The Texas Senate does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services.
Table of Contents

AGRICULTURE, RURAL AFFAIRS, AND HOMELAND SECURITY ....................... 1
Access to Nutrition................................................................. 1
Drought and Water Access ...................................................... 2
Horse Slaughter................................................................. 4
Large Animal Veterinarian Shortage .......................................... 6
National School Lunch Program ............................................. 7
Reduction of Farm Land ....................................................... 7
Seafood Testing ............................................................... 8
Wildfire Prevention and Preparedness .................................... 9

BORDER ISSUES ........................................................................ 11
Economic Development Along the Border .................................. 11
Border Security ..................................................................... 12
Military Forces ..................................................................... 13

BUDGET ............................................................................. 15
Fiscal Year 2014-2015 Budget Instructions ................................. 15
H.B. 1, General Appropriations Act, 82nd Legislature, Regular Session .... 15
Factors Affecting Spending .................................................... 16
Pay-As-You-Go Limit ................................................................ 16
Welfare Spending Limit .......................................................... 16
Limit on the Growth of Certain Appropriations (Spending Limits) ....... 16
State Indebtedness ................................................................. 17
Economic Stabilization Fund .................................................. 17

Finance and Revenue ............................................................. 17
State Cash Management Strategies ......................................... 17
Certificates of Obligation ....................................................... 18
Correctional Health Care System ............................................ 19
Efficiency and Transparency in the Budget Process .................... 20
Public Education Funding ...................................................... 20
Financing Capital Projects at Higher Education Institutions .......... 21
Funding for Regional Law Enforcement Training ....................... 22
Statutory Changes to the State’s Current Spending Limits ............. 22

BUSINESS AND COMMERCE ..................................................... 24
Broadband Expansion ............................................................ 24
Drought Conditions and Electric Generation Capacity .................. 24
Economic Impact of Droughts and Wildfires .............................. 25
Economic and Workforce Development Promotion ..................... 26
Licensing and Regulation of Occupations ................................... 28
Payday Lending .................................................................. 29
Public-Private Partnerships .................................................... 30
Smart Meters ...................................................................... 31
Telecommunications Discounts ............................................. 32
The Texas Universal Service Fund ........................................... 33

Senate Research Center
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation of the Telecommunications Market</td>
<td>34</td>
</tr>
<tr>
<td>Workforce Training</td>
<td>35</td>
</tr>
<tr>
<td>Unemployment</td>
<td>36</td>
</tr>
<tr>
<td>Unemployment Compensation Trust Fund</td>
<td>36</td>
</tr>
<tr>
<td><strong>CRIMINAL JUSTICE</strong></td>
<td>38</td>
</tr>
<tr>
<td>Administrative Segregation in the Texas Department of Criminal Justice</td>
<td>38</td>
</tr>
<tr>
<td>Care of Female Prisoners in the Texas Department of Criminal Justice</td>
<td>39</td>
</tr>
<tr>
<td>Crime Victims Compensation Fund</td>
<td>39</td>
</tr>
<tr>
<td>Defining Mental Retardation</td>
<td>40</td>
</tr>
<tr>
<td>Services for Human Trafficking Victims</td>
<td>40</td>
</tr>
<tr>
<td>Transportation and Storage of Certain Firearms or Ammunition</td>
<td>42</td>
</tr>
<tr>
<td>Money Laundering</td>
<td>42</td>
</tr>
<tr>
<td>Prescription Drug Abuse</td>
<td>43</td>
</tr>
<tr>
<td><strong>EDUCATION – HIGHER</strong></td>
<td>45</td>
</tr>
<tr>
<td>Bacterial Meningitis Vaccine</td>
<td>45</td>
</tr>
<tr>
<td>College Affordability</td>
<td>46</td>
</tr>
<tr>
<td>Developmental Education</td>
<td>46</td>
</tr>
<tr>
<td>Financial Aid</td>
<td>47</td>
</tr>
<tr>
<td>Governance</td>
<td>49</td>
</tr>
<tr>
<td>Changes at Health-Related Institutions</td>
<td>51</td>
</tr>
<tr>
<td>In-State Tuition for Undocumented Students</td>
<td>51</td>
</tr>
<tr>
<td>Returned Value Funding Model</td>
<td>52</td>
</tr>
<tr>
<td>Top 10 Percent Rule</td>
<td>53</td>
</tr>
<tr>
<td>Transfer Systems</td>
<td>54</td>
</tr>
<tr>
<td><strong>EDUCATION – PUBLIC</strong></td>
<td>56</td>
</tr>
<tr>
<td>Accountability</td>
<td>56</td>
</tr>
<tr>
<td>Charter Schools</td>
<td>57</td>
</tr>
<tr>
<td>Dropout Prevention Programs</td>
<td>60</td>
</tr>
<tr>
<td>Extended Learning Time</td>
<td>61</td>
</tr>
<tr>
<td>Public School Management</td>
<td>62</td>
</tr>
<tr>
<td>School Choice</td>
<td>63</td>
</tr>
<tr>
<td>School Discipline</td>
<td>64</td>
</tr>
<tr>
<td>Teacher and Principal Quality</td>
<td>66</td>
</tr>
<tr>
<td>Technology</td>
<td>68</td>
</tr>
<tr>
<td><strong>GOVERNMENT ORGANIZATION</strong></td>
<td>71</td>
</tr>
<tr>
<td>Cyber Security for State Agencies</td>
<td>71</td>
</tr>
<tr>
<td><strong>HEALTH AND HUMAN SERVICES</strong></td>
<td>72</td>
</tr>
<tr>
<td>Support for Aging Texans</td>
<td>72</td>
</tr>
<tr>
<td>Affordable Care Act</td>
<td>73</td>
</tr>
<tr>
<td>Alzheimer’s Disease</td>
<td>75</td>
</tr>
<tr>
<td>Child Protective Services</td>
<td>75</td>
</tr>
<tr>
<td>Cost-Containment Strategies</td>
<td>77</td>
</tr>
<tr>
<td>Foster Care Redesign</td>
<td>78</td>
</tr>
<tr>
<td>Interstate Purchase of Health Insurance</td>
<td>79</td>
</tr>
<tr>
<td>State Health Care Quality and Efficiency Improvements</td>
<td>80</td>
</tr>
<tr>
<td>Topic</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Delivery and Financing of Public Health Services</td>
<td>81</td>
</tr>
<tr>
<td>Health Care Innovation and Research</td>
<td>82</td>
</tr>
<tr>
<td>Medicaid Home and Community-based Services Waivers</td>
<td>83</td>
</tr>
<tr>
<td>Fraud, Waste, Abuse, Overutilization, and Inefficiency in Medicaid Programs</td>
<td>84</td>
</tr>
<tr>
<td>Public Mental and Behavioral Health System</td>
<td>86</td>
</tr>
<tr>
<td>State Supported Living Centers</td>
<td>88</td>
</tr>
<tr>
<td>HOMELAND SECURITY</td>
<td>90</td>
</tr>
<tr>
<td>9-1-1 Services</td>
<td>90</td>
</tr>
<tr>
<td>Radio Interoperability</td>
<td>91</td>
</tr>
<tr>
<td>INSURANCE</td>
<td>92</td>
</tr>
<tr>
<td>Homeowners Insurance</td>
<td>92</td>
</tr>
<tr>
<td>Texas Windstorm Insurance Association</td>
<td>93</td>
</tr>
<tr>
<td>INTERGOVERNMENTAL RELATIONS</td>
<td>95</td>
</tr>
<tr>
<td>Regulatory Requirements and Affordable Residential Housing</td>
<td>95</td>
</tr>
<tr>
<td>Coordination of Efforts to Increase Ownership of Affordable Housing</td>
<td>96</td>
</tr>
<tr>
<td>Impediments to Local Government Tools for Affordable Housing Projects</td>
<td>97</td>
</tr>
<tr>
<td>Affordable Housing for Special-Needs Populations</td>
<td>98</td>
</tr>
<tr>
<td>Access to Affordable Housing After Disasters</td>
<td>98</td>
</tr>
<tr>
<td>Bond Issuance by Special Purpose Districts</td>
<td>99</td>
</tr>
<tr>
<td>Building Codes and Public Awareness in Areas Prone to Natural Disasters</td>
<td>100</td>
</tr>
<tr>
<td>Court Rulings and Property Tax Exemptions</td>
<td>101</td>
</tr>
<tr>
<td>Identification of and Services for Homeless and Runaway Youth</td>
<td>103</td>
</tr>
<tr>
<td>Implementation of S.B. 1234 and Municipal Management Districts</td>
<td>104</td>
</tr>
<tr>
<td>Local Government Corporations and Nonprofit Tax Exemptions</td>
<td>105</td>
</tr>
<tr>
<td>Procurement Cost Reduction</td>
<td>106</td>
</tr>
<tr>
<td>JURISPRUDENCE</td>
<td>107</td>
</tr>
<tr>
<td>Child Custody and Adoption Evaluations</td>
<td>107</td>
</tr>
<tr>
<td>Finding of Contempt for Failure to Pay Child Support</td>
<td>107</td>
</tr>
<tr>
<td>Guardianships</td>
<td>108</td>
</tr>
<tr>
<td>Appeal of the Determination that a Dog is Dangerous</td>
<td>108</td>
</tr>
<tr>
<td>Equal Pay</td>
<td>109</td>
</tr>
<tr>
<td>Keeping Certain Information Regarding Municipal Court Judges Confidential</td>
<td>110</td>
</tr>
<tr>
<td>Lawsuit Lending</td>
<td>110</td>
</tr>
<tr>
<td>Private Real Property Rights Preservation Act</td>
<td>111</td>
</tr>
<tr>
<td>State Commission on Judicial Conduct</td>
<td>112</td>
</tr>
<tr>
<td>Statute of Limitations Regarding Open Accounts</td>
<td>112</td>
</tr>
<tr>
<td>Sharia Law</td>
<td>113</td>
</tr>
<tr>
<td>Warning to Noncitizens Regarding Guilty Plea</td>
<td>114</td>
</tr>
<tr>
<td>NATURAL RESOURCES</td>
<td>115</td>
</tr>
<tr>
<td>Air</td>
<td>115</td>
</tr>
<tr>
<td>Water</td>
<td>117</td>
</tr>
<tr>
<td>Drought Conditions and Electric Generation Capacity</td>
<td>121</td>
</tr>
<tr>
<td>STATE AFFAIRS</td>
<td>123</td>
</tr>
<tr>
<td>Liability Protection for Entities and Individuals Assisting in Fighting a Fire</td>
<td>123</td>
</tr>
<tr>
<td>Category</td>
<td>Pages</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Employees Retirement System and Teacher Retirement System Health Care Plans</td>
<td>123</td>
</tr>
<tr>
<td>Retirement Benefits Under ERS and TRS</td>
<td>124</td>
</tr>
<tr>
<td><strong>TRANSPORTATION</strong></td>
<td>126</td>
</tr>
<tr>
<td>Alternative Fuel</td>
<td>126</td>
</tr>
<tr>
<td>Driver’s Licenses</td>
<td>127</td>
</tr>
<tr>
<td>Transportation Finance</td>
<td>127</td>
</tr>
<tr>
<td>Overweight Trucks</td>
<td>129</td>
</tr>
<tr>
<td>Transportation Infrastructure</td>
<td>129</td>
</tr>
<tr>
<td>Metropolitan Planning Organization and Congested Roadways</td>
<td>130</td>
</tr>
<tr>
<td>Panama Canal Expansion</td>
<td>131</td>
</tr>
<tr>
<td>Toll Collection</td>
<td>132</td>
</tr>
<tr>
<td><strong>UTILITIES AND ENERGY PRODUCTION</strong></td>
<td>134</td>
</tr>
<tr>
<td>Renewable Energy</td>
<td>134</td>
</tr>
<tr>
<td>Cross-State Air Pollution Rule</td>
<td>135</td>
</tr>
<tr>
<td>The Keystone XL Pipeline</td>
<td>135</td>
</tr>
<tr>
<td>Common Carriers and Eminent Domain</td>
<td>137</td>
</tr>
<tr>
<td>Electric Reliability Council of Texas Resource Adequacy</td>
<td>138</td>
</tr>
<tr>
<td>Governance Structure of Municipally Owned Electric Utilities</td>
<td>139</td>
</tr>
<tr>
<td><strong>VETERAN AFFAIRS and MILITARY INSTALLATIONS</strong></td>
<td>141</td>
</tr>
<tr>
<td>Veterans’ Benefits Claim Process</td>
<td>141</td>
</tr>
<tr>
<td>Texas Military Forces Commanders’ Council</td>
<td>141</td>
</tr>
<tr>
<td>Veteran Participation in Higher Education</td>
<td>142</td>
</tr>
<tr>
<td>Veterans’ Courts</td>
<td>143</td>
</tr>
<tr>
<td>Veterans’ Employment Rate</td>
<td>144</td>
</tr>
<tr>
<td>Mental Health Services for Texas Veterans</td>
<td>145</td>
</tr>
<tr>
<td><strong>SUNSET REVIEW</strong></td>
<td>146</td>
</tr>
</tbody>
</table>
Access to Nutrition

A recent study by the Centers for Disease Control and Prevention has found that one-third of all adults in the country are obese. According to the Department of State Health Services, Texas is in a tie as the ninth most obese state by population.

The United States Department of Agriculture (USDA) reports that approximately 15 percent of Texans reside in what it terms "food deserts," defined as areas in which residents are more than a mile from a grocery store or supermarket in cities and more than 10 miles in rural areas. Many of these communities also suffer from "food insecurity," meaning that residents frequently worry about how to feed themselves or their families. According to the Centers for Disease Control and Prevention, food deserts are "areas that lack access to affordable fruits, vegetables, whole grains, low-fat milk, and other foods that make up the full range of a healthy diet." Food retailers move out of such areas and residents no longer have close access to fresh, good quality foods. Residents of these areas are more likely to purchase fast food or food available in small corner stores where only grade C or D grade vegetables are sold in small, limited quantities for their families as that is often the most convenient or only option available to them. Many studies have shown that a diet consisting mostly of fast food is a leading contributor to obesity. Access to healthier foods, especially fruits and vegetables, can assist in reversing the obesity trend.

One solution that has been suggested is to allow mobile produce stands in food desert areas so that residents have easier access to fresh fruits and vegetables. There has been an increased interest in enabling small landowners to grow produce for sale, but city ordinances and codes have made it difficult for such urban farms to operate. Urban farm models can be designed to create business owners in communities that are suffering from economic depression and lack of education by working with business organizations to provide financial, business, and career educational programs to economically-disadvantaged youth who reside in low-income households, thus helping to solve the problem of financial illiteracy and encouraging self-reliance and economic independence. Establishing consistent statewide regulations and guidelines regarding urban farms might help to expand urban farming. Incentivizing private landowners who commit to long-term use of their land for community gardens or other urban agriculture uses through tax rebates or other rewards and establishing agricultural valuation property tax rates that
accommodate small and diversified urban farm operations could also assist in the expansion of urban farming.

The Supplemental Nutrition Assistance Program (SNAP) is a federal entitlement program that provides a monthly benefit that assists qualified applicants in purchasing food. SNAP is 100 percent federally funded and the benefit amounts are established at the federal level. The USDA and the Texas Department of Agriculture (TDA) partnered in a pilot program that placed wireless electronic benefit transfer (EBT) devices in farmers markets chosen by TDA. This program increased opportunities and encouraged SNAP users to purchase fresh produce at these markets rather than at stores that tend to have fewer available options for fresh produce.

Another option to expand access to fresh fruits and vegetables and improve nutrition is that the state could request that the federal government require qualified SNAP vendors to provide access to five major food groups rather than three as currently required.

SNAP has had success in assisting needy families in obtaining healthy food choices by allowing farmers markets to accept the SNAP Lone Star Card; however, SNAP fraud, whether through recipients exchanging benefits for cash or falsifying information on an application either to receive benefits or to receive more benefits than the person is entitled to, or through retailers who have been disqualified from the program for past abuse falsifying information on an application in order to be reinstated in the program, is a growing problem.

The 83rd Legislature may consider reforms to promote nutrition and improved access to fresh food, including allowing mobile food markets or food stands in food deserts; establishing consistent urban farm regulations; incentivizing private landowners who commit to long-term use of their land for community gardens or other urban agriculture uses through tax rebates or other rewards; supporting small farms and urban farms through the establishment of agricultural valuation property tax rates that accommodate small and diversified farm operations; restoring state matching funds for the Farmers Market Nutrition Program (FMNP); providing support for outreach and promotions of Farmers’ Market EBT devices for SNAP programs; and addressing fraud issues in the SNAP program.

Drought and Water Access

Texas experienced an unprecedented drought in 2011 that devastated the state's agricultural industry and contributed to destructive wildfires. On July 5, 2011, Governor Rick Perry issued an Emergency Disaster Proclamation, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas. On
November 2, 2012, the governor renewed the disaster proclamation and directed that all necessary measures, both public and private, be implemented to meet that threat.

By October 2011, 97 percent of the state—including all or part of every county—was experiencing extreme or exceptional drought. Although rainfall during the intervening months resulted in some improvement, as of February 21, 2012, the United States Drought Monitor continues to show 37 percent of Texas in extreme or exceptional drought conditions, including all or part of 124 counties. The state climatologist continues to predict that the drought will persist or intensify in many areas of the state. Currently, 90 percent of the state has experienced abnormal dryness and 72 percent of the state is experiencing moderate drought conditions.

During the Senate Committee on Agriculture hearing on September 9, 2012, a representative of the Texas Commission on Environmental Quality (TCEQ) stated that more than 1,000 public water systems currently have some form of outdoor water restrictions. TCEQ staff further stated that 21 water systems either have fewer than 188 days of water or do not know how much water is available to them.

As in permitting, enforcement of water right permits in Texas is guided by the priority doctrine under which domestic and livestock users have superior rights to any permitted surface water right holders. Permit holders who got their authorization first (senior water rights) are entitled to receive water before those permit holders that received authorization later (junior water rights). Water right holders are entitled to call upon TCEQ to take action to enforce the priority doctrine when the permit holder is not receiving the permitted amount.

TCEQ has received at least 15 senior calls from the municipal, industrial, irrigation, recreation, domestic and livestock, and river compact users, including calls on surface water in the Brazos, Guadalupe, Colorado, Sabine, and Neches river basins. Until the current drought, TCEQ had never received senior calls from municipalities, domestic and livestock users, or a river compact. TCEQ has suspended approximately 1,200 water right permits and stopped issuing temporary water right permits in basins affected by the senior calls. According to TCEQ, suspended water rights do not include junior municipal or power generation users because of concerns about public health and safety.

The state’s agricultural sector continues to experience a significant negative impact from drought and many farmers and ranchers have been unable to sustain crops and livestock or replenish lost crops and livestock. Drought also affects power-generation facilities, which need cooling water for proper functioning. With the Texas population increasing at a rapid rate and the potential for drought conditions increasing, the state faces significant challenges in meeting its future water needs. The state must find ways to ensure that every Texas resident has adequate access to water, that the utility sector has
sufficient water to maintain services, and that the agricultural sector has sufficient water resources to enable it to maintain crops and livestock.

According to the Texas Water Development Board, major reservoirs must remain a strong and viable resource if the state is to meet its future water supply needs. The 83rd Legislature may consider legislation to fund and guide the development of 26 major reservoirs, which could provide nearly 1.5 million acre-feet of water annually by 2060.

Additionally, as recommended by the 2012 State Water Plan, the 83rd Legislature may address the development of a long-term affordable and sustainable method of providing funding assistance for the implementation of the state water plan; require all retail public utilities to conduct water loss audits on an annual basis rather than every five years; amend statutory provisions relating to the voluntary transfer of surface water from one basin to another; and provide a mechanism to acquire feasible reservoir sites for development of additional surface water supplies in order to meet the future water supply needs of Texas identified in the Texas Water Development Board's report 2011 Regional Water Plans and water supply needs that will occur beyond the 50-year regional and state water planning horizon.

**Horse Slaughter**

In March 2007, a federal court upheld Chapter 149 (Sale of Horsemeat for Human Consumption), Agriculture Code, which criminalizes horse slaughter for human consumption. The law had been widely ignored until Texas Attorney General Greg Abbott determined that it was still in effect and valid. Additionally, in 2007, Congress withdrew funding from the United States Department of Agriculture horse meat inspection program, placing the financial burden of paying for inspections on slaughterhouses. Horse meat cannot be sold for human consumption in the United States without being inspected, thus when the federal government removed the funding for horse meat inspection, United States slaughterhouses began transporting horses for slaughter to Canada and Mexico. The federal government has recently restored funding for horse meat inspectors and horse slaughter plants are attempting to reopen.

The European Commission Directorate-General for Health and Consumers, a division of the European Union (EU), stated that United States veterinary records are “insufficient” to guarantee the health standards and drug history of horses. Because most Canadian slaughterhouses are EU-certified, the directorate-general's decision will result in the transportation of horses to Mexico for slaughter.

Concern has been raised that horses taken from Texas for slaughter are transported to a facility near Mexico City, Mexico, for processing. Animal rights groups state that the
long-distance transport under difficult circumstances is cruel to the horses. The Texas Animal Health Commission (TAHC) has stated that Mexican veterinary inspectors are rejecting horses at the border, for a number of reasons, and releasing them back to the state. Texas is currently unprepared and unable to care for these horses, some of which have been found to be diseased. Some of these horses are being abandoned on the side of the road near border crossings, thus endangering other stock.

The Texas Association of Equine Practitioners and the American Association of Equine Practitioners have taken the position that while disposing of unwanted horses by slaughter is not the most humane way to dispose of a horse, if the owner is unable to care for or euthanize the animal, then slaughter should be used as a means of disposal. When horse slaughter was permitted in Texas, the state was able to track animals infected with disease but now it is difficult to monitor the spread of horse-borne diseases. According to TAHC, the only means of monitoring horses is via horse racetracks or veterinarians.

The EU is implementing new rules that will take effect in July 2013, requiring every horse to have a complete medical history record or a "passport" that tracks all chemicals that have been given to that horse. Horse meat that does not have such a passport will not be eligible for sale in Europe. Currently, the United States does not have a system in place to address this change or the resources to develop such a system. The development of such a system will place a financial burden on taxpayers and possibly horse owners.

Habitat for Horses has stated that the main purpose of horse slaughter is for the consumption of horse meat in other countries and that horse slaughterhouses are mainly owned and operated by foreign entities. The use of a "captive bolt" as a means of slaughter has also raised concerns. The captive bolt is a device used for stunning animals prior to slaughter, but because of the manner in which the device is used, horses panic because they sense the fear in other horses, and many times the horse is not unconscious when slaughtered.

With the current economic recession, many horse owners are finding it difficult to maintain their horses due to high feed costs and to humanely dispose of them. Additionally concerns have been raised regarding "kill buyers," individuals who buy horses for slaughter or adopt horses from horse rescue organizations and then sell them to slaughterhouses.

The 83rd Legislature may consider legislation to repeal the ban, perhaps on a limited basis, on Texas horse slaughterhouses in order to enable the state to track diseased horses, reduce the number of abandoned horses, and provide an economical and humane method to dispose of horses. The 83rd Legislature may also consider measures to address issues related to the exportation of horses for slaughter and practices related to "kill buying."
Large Animal Veterinarian Shortage

The dearth of rural veterinarians is a nationwide problem. The American Veterinary Medical Association estimates that more than 1,500 counties in the United States are without a single veterinarian to treat animals, leaving 44 states with at least one shortage area, designated annually by the United States Department of Agriculture (USDA). The shortage is most acute in states with the most food-producing animals, such as cows, chickens, and pigs. Recent studies indicate the amount of food-supply veterinarians will likely fall by about five percent every year.

According to the USDA, Texas has a shortage of large animal veterinarians currently encompassing eight designated shortage areas. The shortage of rural veterinarians persists and grows worse each year and the large number of veterinarians who are retiring, particularly in rural areas, further exacerbates that shortage. Such shortages threaten the livelihoods of ranchers and food-supply producers, who may not have access to vital veterinary care for their livestock.

Texas A&M University (TAMU), the state's only veterinary school, graduates an average of 125 veterinarians annually. Of those graduates, 70 percent stay in Texas and 30 percent go elsewhere to practice. Additionally, TAMU veterinary degree graduates have student indebtedness averaging $142,000 and a starting salary averaging $60,000 a year in Texas. Concerns have been raised regarding the ability of starting veterinarians to meet their debt obligations given their probable income and the quality of life for rural veterinarians, particularly those in remote areas. Fewer veterinarians move to rural areas to practice because many believe it is more difficult to make a living in a rural area than in an urban one and many veterinary students from urban or suburban areas are more inclined to work with small animals rather than cattle, pigs, and chickens.

The USDA has initiated a Veterinary Medicine Loan Repayment Program that will pay up to $25,000 per year for students who meet certain conditions, including that the student becomes a veterinarian and promises to work at least three years in an area with a designated veterinary shortage. However, additional incentives may be needed to address the large animal veterinarian shortage in Texas.

The 83rd Legislature may consider legislation to incentivize students to pursue large animal veterinary degrees and may consider developing a task force to address the large animal veterinarian shortage.
National School Lunch Program

The National School Lunch Program (NSLP) is a federally-assisted meal program operating in public and nonprofit private schools and residential child care institutions. According to the United States Department of Agriculture (USDA), "NSLP provides nutritionally balanced, low-cost or free lunches to children each school day." The program was established under the National School Lunch Act, enacted in 1946. Schools that meet the USDA definition of "educationally disadvantaged" are eligible to participate in the national free or reduced-price lunch program.

Concern has been raised regarding underutilization of the NSLP in schools as well as transportation of eligible children to the schools to receive the free or reduced-price lunch. In order to facilitate ease of access to the program it has been proposed to expand the Women, Infants and Children (WIC) pilot program in El Paso to supplement the free and reduced-price lunch program. The pilot program allows WIC debit card users to purchase specific food items. This approach could enhance the existing WIC infrastructure, capacity, and access capability while promoting healthier food choices.

The 83rd Legislature may consider expanding the WIC program to supplement NSLP and provide further access to fresh fruits and vegetables to children in need.

Reduction of Farm Land

Agriculture brings in more than $100 billion in economic benefit to the state every year, providing jobs for both urban and rural citizens, lowering food bills, aiding environmental preservation, fostering and protecting native plants and wildlife, and ensuring food security.

According to the Texas Agricultural Land Trust (TALT), Texas is losing its agricultural lands at an alarming rate. TALT works to conserve land through land or easement acquisition and through stewardship of land or easements. According to TALT, there were approximately 40 land trusts in Texas in 2007. While the land trusts have the potential to protect land usage, TALT states that none of the 40 land trusts had as its sole mission the protection of agricultural lands. Texas has one of the nation’s largest percentages of privately owned lands, with approximately 142 million acres of privately owned farms, ranches, and timberlands. According to the Texas Land Trends Study, Texas loses about 1.5 million acres to development every 10 years and another 3.5 million acres are fragmented into smaller pieces every 10 years. TALT states that as property values increase, families find that their estate tax planning efforts cannot keep pace with the tax burden and a portion or sometimes all of the property must be sold in order to pay the taxes, which reduces the amount of agricultural land. Additionally,
family members are often unwilling or financially unable to return to the farm or ranch, which also reduces the amount of agricultural land.

The United States Department of Agriculture (USDA) reports that owners and operators are aging and an estimated 70 percent of the nation's farmland will change hands over the next 10 to 20 years. Texas is the second-largest agricultural state, accounting for about seven percent of the nation's total agricultural income. The food, horticulture, and fiber industry is the second-largest resource-based industry in the state and generates $100 billion a year for the Texas economy. The declining level of agricultural production land is increasing the state's dependence on foreign agricultural products. The Texas Department of Agriculture has expressed concern that outsourcing food production to other nations will create potential security and health risks.

The 83rd Legislature may consider methods to reduce the declining level of agricultural production land, including creating purchase development rights programs, which are public finance measures to fund the acquisition and retirement of development rights in order to preserve agricultural lands in perpetuity; providing funding for Texas programs that enable better utilization of USDA agricultural land protection programs by providing required non-federal cash matches; encouraging landowners to play a role in the development of any resource protection programs, such as conservation easements, and allowing non-governmental organizations to hold the easements; and acquiring data that quantifies the value of the agricultural resources that are being lost.

**Seafood Testing**

The United States imports 84 percent of its seafood, an estimated one-half of which is farm raised. Asia dominates global aquaculture production and less than two percent of imports to the United States are inspected by the federal Food and Drug Administration (FDA). The FDA is the lead agency for ensuring seafood safety and analyzing seafood for microbes, parasites, decomposition, and chemical contaminants.

A General Accounting Office (GAO) report, *Seafood Safety: FDA Needs to Improve Oversight of Imported Seafood and Better Leverage Limited Resources* (GAO-11-286), compares the FDA’s regulatory approach to that of the European Union and other major seafood importing nations. The GAO report concludes that "because of FDA's limited sampling, some of the more than 2.5 million metric tons [5.5 billion pounds] of shrimp and 156,000 metric tons [344 million pounds] of catfish imports that entered the United States during fiscal years 2006 through 2009 could have contained residues of nitrofurans." Nitrofurans and other chemicals have been found in imports tested in some Southern states, resulting in a ban on imported catfish in Alabama.
Salmonella and other microbes have been found in various types of seafood worldwide, and have been responsible for a large proportion of food-borne illnesses and outbreaks in the United States. Bacteria, viruses, and parasites in seafood can cause illnesses ranging from mild gastroenteritis to life-threatening diseases. Catfish farmers are concerned about imports because Asian fish farmers are allowed to use antibiotics such as nitrofurans, which is banned for use in United States food production because it is a known carcinogen. Concerns have also been raised regarding the overcrowded conditions and poor sanitation at many of these farms.

The recent Government Accountability Office (GAO) report found that the FDA is not doing an adequate job of inspecting imported fish or seafood facilities that raise fish and recommended that the FDA adopt policies to better ensure the safety of imported seafood. According to the GAO report, in 2009, the FDA inspected only one percent of seafood imports, while Canada tested at least five percent of seafood imports; the European Union inspected at least four percent; and Japan inspected at least 11 percent.

The farmed catfish industry is urging the State of Texas to require imported catfish to undergo the same safety testing required of domestic catfish as a matter of consumer protection, and to consider country of origin labeling (COOL) for seafood served in restaurants. The shrimping industry likewise is encouraging more stringent testing of foreign imports.

The 83rd Legislature may consider establishing a program to test imported seafood in order to better protect the public from seafood containing harmful substances. The 83rd Legislature may consider incentivizing the expansion of the aquaculture industry in the state to ensure a safer seafood product for Texas consumers.

**Wildfire Prevention and Preparedness**

In 2011, Texas experienced the driest summer on record, the second warmest summer on record, and the 10 largest and most destructive wildfires on record. While it is unknown whether the state will continue to experience drought conditions as severe as those in 2011, it is projected that there will be drier than normal conditions that will increase the need for wildfire prevention and preparedness.

Concerns have been raised that volunteer fire departments (VFDs), which are often the first responders to fires in rural areas, do not have the resources to adequately equip their vehicles or to purchase protective equipment. Additionally, concern has been raised that VFDs often do not have the required Texas Forest Service training and therefore are not allowed to respond to wildfires. There are also concerns regarding the retention of VFD personnel and the negative impact low retention rates could have on wildfire suppression.
Tree and brush control near suburban and urban areas, and city codes that prohibit land owners from cutting trees have also been identified as challenges in wildfire prevention and preparedness efforts. A related issue is the limited number of licensed prescribed burners available to clear out excessive brush.

Concerns have been raised regarding adequate funding for the Texas National Guard (TNG) to provide training to TNG personnel and to purchase additional equipment such as "Bambi buckets," which drop water on fires from helicopters. TNG has expressed concern about the lack of training resources relating to fighting wildfires, in general, and, more specifically, techniques for fighting fires from the air. Furthermore, concerns have been voiced regarding the possible movement of C-130 aircraft out of Texas due to budget constraints. These aircraft are used to assist in wildfire control efforts and in the evacuation of elderly citizens in the event of natural disasters. Transfer of these aircraft could impair the state's ability to respond to wildfires and other natural disasters.

The 83rd Legislature may consider authorizing counties to establish building codes and fire codes and to develop comprehensive fire management and mitigation policies related to fuel reduction. The 83rd Legislature may also consider increasing the taxing authority of emergency services districts or other measures to ensure that VFDs have adequate resources and training. The 83rd Legislature may also consider developing a cost-sharing program to help offset the financial impact on local governments for hiring contractors to clear tracts of land and consider legislation to incentivize people to become licensed prescribed burners in order to address fuel reduction.

The 83rd Legislature may consider providing additional funding to the Texas National Guard for training to fight wildfires and may petition Congress to keep the National Guard C-130 aircraft in Texas.
Economic Development Along the Border

For the tenth year in a row, Texas has been ranked as the number one state for export revenues, totaling over $251 billion in 2011. More than $87.3 billion of the exports from Texas were sent to neighboring Mexico and Mexico was the top country of origin for Texas imports, accounting for $175.11 billion of Texas imports. Despite these numbers, border communities remain some of the poorest regions of the state and 93 percent of the Texas border region includes rural, unincorporated areas. Recent economic development along the Texas-Mexico border has led policymakers to consider infrastructure needs to meet the future needs of this high-growth region.

Subchapter B (Subdivision Platting Requirements in County Near International Border), Chapter 232 (County Regulation of Subdivisions), Local Government Code, relates to counties that are located along the Texas-Mexico border, which have been mandated to adopt certain land development requirements meant to prevent the proliferation of colonias, or impoverished residential communities that lack access to potable water, water and sewer treatment systems, housing structures, and health care facilities. During the 82nd Legislature, bills were proposed to establish a uniform, statewide standard for development in unincorporated areas but failed to pass. Supporters of such legislation stated that safeguards need to be implemented to ensure that necessary infrastructure is available in border communities. Opponents of statewide standards claim that border counties have been able to prevent the establishment of more colonias by using the existing requirements in Subchapter B. All stakeholders agree that providing decent and safe affordable housing in border area communities is crucial.

Another important economic development issue affecting the border region is the Eagle Ford Shale (EFS) development in South Texas. An economic study of 14 counties within the EFS development area was conducted by the Center for Community and Business Research of the Institute for Economic Development at The University of Texas at San Antonio. The study found that oil production increased by six times, gas production more than doubled, and condensate production tripled from 2010 to 2011 in the 14 counties that are in the EFS development area. The total economic output from EFS in 2011 in those 14 counties was approximately $20 billion, including $2.6 billion in salaries and benefits paid to workers, $211 million in local government revenue, and $312 million in state revenues. It is forecasted that there will be a total economic output impact of $62.3 billion for the state from EFS by 2021.
According to researchers at The University of Texas at San Antonio, as EFS attracts new residents to South Texas, there is a need for long-term planning, improved local governance, and institutional management in the EFS communities. Housing, public services, infrastructure, and public utilities will need to be improved and expanded in order to accommodate the influx of workers and their families to the region. It is also critical that a skilled workforce be developed to serve industry needs in the EFS region. It has been suggested that state agencies, including the Texas Rural Health and Economic Development Advisory Council within the Texas Department of Agriculture and the Texas Workforce Commission, work to promote diversification in the local economy of border communities, identify best practices from other shale communities, and work with local officials to improve infrastructure planning.

The 83rd Legislature may consider incentives and methods to encourage economic development in the border region.

**Border Security**

Between 2006 and 2011, 7.6 million pounds of marijuana, 6,500 pounds of methamphetamines, and 26,000 pounds of cocaine were seized by the Department of Public Safety of the State of Texas (DPS), and since 2009, 241 drug-related cartel members have been arrested. In addition, since the beginning of Operation Border Star in 2007, the Texas Parks and Wildlife Department (TPWD) has seized 24,863 pounds of marijuana valued at $19,890,040, 16 kilograms of cocaine valued at $690,000, 257 boats, 247 automobiles, and $1,198,000 in cash, and has made 171 arrests.

Mexican cartel operatives are located across the state, including in the prison system, on ranches, and in urban and suburban areas. A recent Texas Department of Agriculture study, *Texas Border Security: Strategic Military Assessment*, reports that ranchers have expressed concern about working and producing agriculture along the Texas-Mexico border because of the lack of border security, and that human and drug traffickers are heavily armed and will stop at nothing to transport their cargo.

Although the state and federal governments have provided revenue to local law enforcement agencies along the border to purchase equipment for additional security there are insufficient resources to fully address the varying needs of 254 Texas counties.

Officials have expressed concern that the federal government is not fully reimbursing counties for the costs of detaining and incarcerating offenders or for prosecuting Mexican cartel cases and that obtaining reimbursement from the federal government often is a cumbersome process. Some counties have been unable to prosecute Mexican cartel cases.
because of a lack of resources or questions regarding their statutory authority to prosecute such matters, particularly in cases involving juveniles.

Representatives from the private sector have voiced concerns regarding the negative economic impact of shipping-related delays along the border due to heightened security at border crossing stations.

With a new Mexican president assuming office, it is not known whether or how current state and federal efforts to address the Mexican cartels will be affected.

The 83rd Legislature may consider legislation to authorize southbound checks to prevent guns and drug money from crossing the border. The 83rd Legislature may also consider legislation to increase money seizures, increase the number of personnel in the border region, increase safety at ports of call, and strengthen statutes regarding prosecution of juveniles in Mexican cartel-related cases.

**Military Forces**

Increased border violence has raised concerns about border security for the State of Texas. Communication between Mexican and United States military forces and law enforcement entities is essential in order to coordinate the state's efforts to combat border violence.

Concerns have been raised regarding the lack of communication between federal military installations and the state on certain issues. To address the communications issue, the Texas Commanders' Council, an informal group of commanders representing the 12 major military installations in the state, began meeting. Recommendations have been made that the Commanders' Council be formally established in conjunction with the Office of the Governor's Texas Military Preparedness Commission (TMPC) in order to develop best practices regarding how to improve the military's communications and coordination with state entities.

Another component in ensuring military and state coordination is radio interoperability. Concerns have been raised that law enforcement and military forces have been unable to communicate. In the past, the federal government provided grant funding for public safety communications. However, according to the Department of Public Safety of the State of Texas, federal funding for public safety communications has decreased by more than 70 percent since 2009. This funding reduction has slowed the process of providing adequate radio interoperability.
Finally, concern has been expressed that California and Arizona have been assigned the majority of the 1,200 United States soldiers dedicated to securing the United States-Mexico border even though Texas has more border miles than those states.

The 83rd Legislature may encourage Congress to assign additional troops to Texas to provide better border security and to provide additional funding for better communications between Mexican and United States forces.

The 83rd Legislature may consider providing supplemental funding if the federal government fails to provide funding for radio interoperability. The 83rd Legislature may consider establishing a permanent Texas Commanders' Council in conjunction with Texas Military Preparedness Commission.
Fiscal Year 2014-2015 Budget Instructions

On June 4, 2012, the Legislative Budget Board and the Governor’s Office of Budget, Planning, and Policy issued a memorandum detailing instructions for agency and institution of higher education legislative appropriation requests for the 2014-2015 biennium.

Under the instructions set forth in that memorandum, an agency's baseline request for general revenue-related funds may not exceed the sum of amounts expended in fiscal year 2012 and budgeted in fiscal year 2013. Agencies must also submit a supplemental schedule detailing how they would reduce the baseline request by an additional 10 percent (in five percent increments) in general revenue-related funding.

Exceptions to the baseline request limitation include amounts necessary to maintain funding for the Foundation School Program; satisfy debt service requirements for bond authorizations; maintain benefits and eligibility in Medicaid entitlement programs, the Children's Health Insurance Program, and the foster care program; fund the adoption subsidies program and the permanency care assistance program; and satisfy employer contribution requirements for state pension systems and employee group benefits, although group benefit modifications may be considered. Funding requests for other purposes that exceed the baseline spending level may not be included in the baseline request but may be submitted as exceptional items.

H.B. 1, General Appropriations Act, 82nd Legislature, Regular Session

The 2012–2013 biennial budget includes appropriations for state government operations that total $173.4 billion in All Funds. The 2012–2013 biennial budget includes estimated appropriations of $81.3 billion from general revenue (GR) funds, $6.4 billion from GR–dedicated funds, $54.6 billion from federal funds, and $31.1 billion from other funds. The All Funds Budget represents a total decrease of $14 billion, or 7.5 percent, from the 2010–2011 biennial budget.

The greatest dollar amount decrease in the All Funds budget occurs in the health and human services functions. The $10 billion decrease for health and human services is primarily due to cost containment measures that are expected to reduce Medicaid GR-related costs by $1.8 billion and the 82nd Legislature under-funding GR Medicaid
obligations by $4.3 billion in anticipation of improved revenue collections during the 2012–2013 biennium. The 83rd Legislature will need to make a supplemental appropriation to fund Medicaid spending needs for the last five months of fiscal year 2013. Budgeted amounts for agencies of education were reduced by a total of $3.5 billion and budgeted amounts for public safety and criminal justice agencies were reduced by a total of $565 million for the 2012-2013 biennium.

Factors Affecting Spending

Pay-As-You-Go Limit

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

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

Welfare Spending Limit

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

Limit on the Growth of Certain Appropriations (Spending Limits)

The Texas Constitution, under Article VIII, Section 22, limits the biennial rate of growth of appropriations from state tax revenue not dedicated by the constitution to the estimated rate of growth of the state’s economy. The Legislative Budget Board adopts items of
information, which include the estimated rate of growth of the Texas economy as measured by personal income; the 2012-2013 level of appropriations supported by the state tax revenue not dedicated by the constitution (the base biennium); and the limit on appropriations or the constitutional spending limit for the 2014-2015 biennium. The limit on appropriations for the 2014-2015 biennium is determined by multiplying the 2012-2013 base budget by the growth of Texans’ personal income from the 2012-2013 biennium to the 2014-2015 biennium.

State Indebtedness

Article III, Section 49-j, of the Texas Constitution provides that the maximum annual debt service in any fiscal year on state debt payable from the 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 payment of state debt, for the three immediately preceding fiscal years. Bonds and agreements initially required to be repaid from GR funds would be subject to the debt ceiling provision if GR funds were subsequently needed to repay the obligations.

Economic Stabilization Fund

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 general revenue (GR) in an amount of equal to 75 percent of the amount of oil production tax collections in excess of 1987 levels, and 75 percent of the amount of natural gas tax collections in excess of 1987 levels. The fund also receives one-half of any unencumbered GR funds balance at the end of each biennium. The legislature may also appropriate revenue to the fund. The legislature may appropriate amounts from the ESF at any time and for any purpose by a two-thirds vote of the members present in each house.

Finance and Revenue

State Cash Management Strategies

In the first quarter of each fiscal year the three largest state expenditures are state employee salaries, public assistance payments, and education payments. Though state salaries and public assistance payments are level throughout the fiscal year, state education payments are not. In 1995, the legislature adopted a "front-loaded" payment
schedule for state payments to school districts by providing more state funds to districts in the first quarter of the fiscal year until property taxes are received in December.

The front-loaded nature of state education payments, combined with the fact that two of the major sources of tax revenues, the revised franchise tax and the insurance premium tax, are not received until later in the fiscal year, results in a negative balance in the General Revenue Fund (GR fund) for the month of December. As a result, $9.8 billion in one-year tax and revenue anticipation notes (TRAN) and an additional $500 million in commercial paper were issued to cover the GR fund's temporary cash flow shortfalls for fiscal year (FY) 2011. As the cost of education and property tax relief rises, the state will have to increase the use of TRAN to address increased temporary cash flow needs. It has been suggested that equalizing education expenditures to make them level throughout the fiscal year would have reduced the $9.8 billion TRAN for FY 2011 by approximately $2 billion. It has also been suggested that requiring a November prepayment for the franchise tax would move the receipt of that revenue from May to November without increasing tax liability and would reduce the TRAN, depending on the size of the prepayment required.

The 83rd Legislature may consider issues related to the timing of receipts of state revenues and expenditures during the course of each fiscal year, methods of short-term borrowing and intra-fund borrowing, and estimated cash needs for the coming biennium.

**Certificates of Obligation**

The Certificates of Obligation Act of 1971 authorizes certain municipalities and political subdivisions to issue debt without voter approval. In 1987, that Act was codified as Subchapter C (Certificate of Obligation Act), Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments), Local Government Code. Certificates of Obligation (CO) were created in order to provide a procedure for certain financing that is an alternative to the more cumbersome procedure required by Chapters 252 (Purchasing and Contracting Authority of Municipalities) and 262 (Purchasing and Contracting Authority of Counties), Local Government Code. While the authority to issue COs is limited to certain types of entities, the only usage restriction on the proceeds generated from COs is that those proceeds cannot be used for economic development purposes. From 2005 to 2011, COs accounted for 16.6 percent of all debt issued by cities, counties, and hospital districts while accounting for 7.1 percent of all local government bond debt issuances.

Section 271.049 (Notice of Intention to Issue Certificates; Petition and Election), Local Government Code, requires issuers of COs to post a notice of intent in a local newspaper once per week for two weeks, but there is no requirement that the notice of intent be posted on the Internet. If five percent of the voters sign a petition protesting the issue...
before the CO is authorized, an election must be conducted to acquire voter approval for the proposed debt. Concerns have been raised regarding the amount of debt being issued by local government entities through COs, whether the current taxpayer recourse process for the issuance of COs is appropriate, and whether the process outlined in statute by which municipalities and other political subdivisions provide the required notice of intent prior to issuing COs is sufficient.

The 83rd Legislature may consider issues related to local short-term borrowing and debt issues, specifically certificates of obligation and the process by which they are issued.

**Correctional Health Care System**

Correctional managed health care (CMHC) is a system of health-related actions taken to provide for the physical and mental well-being of offenders incarcerated in the Texas Department of Criminal Justice (TDCJ). Subchapter E (Managed Health Care), Chapter 501 (Inmate Welfare), Government Code, created the correctional managed health care committee and requires that committee to develop a CMHC plan for TDCJ-incarcerated offenders. The statute also requires the integration of Texas' public medical schools into the CMHC network and allows for contracts with other medical care providers. The two primary health care providers for the CMHC network are The University of Texas Medical Branch at Galveston, covering the eastern and southern parts of the state, and the Texas Tech University Health Sciences Center, covering the western part of the state.

S.B. 1, 82nd Legislature, First Called Session, 2011, transferred contracting authority for offender health services from the CMHC committee to TDCJ. In 2012, TDCJ began broadening the offender health care network by contracting with Huntsville Memorial Hospital. The fiscal year (FY) 2012 projected All Funds TDCJ expenditures for offender health care total roughly $477 million. Factors impacting the costs of offender care include the increasing age of offenders and related increasing costs, capital expenses to provide for updated equipment, and hepatitis C vaccines for inmates and staff. The federal Affordable Care Act allows states to expand their Medicaid eligibility standards to include people up to 133 percent of the federal poverty level and receive increased federal funding as a result, amounting to 100 percent reimbursement in 2014-2016 and gradually decreasing in the following years. TDCJ inmates may qualify for Medicaid if the state chooses to expand Medicaid eligibility standards, making newly eligible inmates qualify for 100 percent reimbursement in 2014-2016.

The 83rd Legislature may consider issues related to making changes in the correctional health care system, including changes in the areas of management, cost savings, increased access to federal matching Medicaid reimbursement for prisoner care, and improvements in the efficiency and adequacy of health care delivery throughout the system.
Efficiency and Transparency in the Budget Process

The Texas statewide strategic planning, performance budgeting, and performance monitoring system, the state's results-oriented budgeting process, has been in place since 1991. Section 322.0081 (Budget Documents Online), Government Code, requires that certain Legislative Budget Board (LBB) documents be posted online to make them available to the public.

S.B. 1, 82nd Legislature, First Called Session, 2011, established the intent of the legislature to have LBB place on the Internet information that provides additional program details for items of appropriation in the General Appropriations Act and requires that the specific programs funded, the source of that funding, and the related statutory authorization be included. Those details might include providing issue briefs on key budget and policy information, making improvements to LBB's and the comptroller of public accounts' websites to increase ease of use and efficiencies, creating a staff liaison program designed to provide legislators with better access to LBB staff and resources, and providing details on the use of unexpended GR-Dedicated fund balances for budget certification purposes.

The 83rd Legislature may consider issues related to strategies for greater legislative efficiency and transparency in the budget process, including diversions of dedicated funding streams to alternative uses, increased use of user-friendly budget documents, additional notice of posting of new information, and enhanced access to research and background information.

Public Education Funding

The three main sources of funding for Texas' public schools are local school district property taxes, state funds, and federal funds. The majority of funding comes from local property taxes collected by school districts and state funding. The Foundation School Program (FSP), the state program that establishes the amount of state and local funding due to school districts under Texas school finance law and that provides the state share of that funding to districts, is administered by the Texas Education Agency. The Property Tax Relief Fund, the Instructional Materials Fund, the General Revenue Fund, the Available School Fund, and FSP interact to provide basic state support for educational, maintenance, and operations costs at school facilities in the state.

The 82nd Legislature faced a revenue gap of $27 billion for public education based on the amount needed to fully fund the 2012-2013 state budget and comply with existing Texas school finance laws, population growth estimates, and the available revenues expected. The 82nd Legislature ultimately appropriated $50.8 billion in All Funds for public education for the 2012-2013 biennium, approximately $4 billion less than what
would have fully funded public education based on enrollment growth and current property values. A portion of the $50.8 billion appropriated for public education will not actually be paid to school districts until September 2013, which is in the next state budget period. Public school finance lawsuits have been filed by certain school districts claiming that the legislature has increased academic standards and imposed the State of Texas Assessments of Academic Readiness test to measure student performance, but has not provided sufficient funding to allow students and schools to meet those higher standards and enrollment growth.

The 83rd Legislature may consider issues relating to Texas public education funding to address additional enrollment growth and increased academic standards.

**Financing Capital Projects at Higher Education Institutions**

Section 61.0582 (Campus Master Plan; Deferred Maintenance), Education Code, requires that the Texas Higher Education Coordinating Board (THECB) collect information on the capital expenditure plans of public universities, health-related institutions, state colleges, and technical colleges. This includes information on the institutions’ new construction, major repair, and rehabilitation projects and deferred maintenance needs. Texas institutions of higher education submitted 830 projects in their fiscal year (FY) 2013 capital expenditure plans to THECB, an 11 percent increase from the 747 projects submitted for FY 2012. New construction projects represent the majority, 41.2 percent, of all projects submitted. Planned repair and renovation projects increased from 251 projects submitted for FY 2012 to 309 projects submitted for FY 2013.

The current system for funding capital needs for institutions of higher education (IHE) is reliant on the authorization of tuition revenue bonds (TRB), which do not require voter approval as they are legally backed by institutional revenue. However, they are similar to general obligation (GO) bonds since the legislature has consistently appropriated general revenue (GR) to reimburse the institutions for the associated debt service. TRBs must be authorized in statute and approved by the Texas Bond Review Board, before institutions can issue the bonds and make debt payments. The Senate Committee on Finance's Interim Report to the 82nd Legislature recommended that the system for addressing the capital funding needs of IHEs be improved by adding predictability and allowing for long-term planning and additional scrutiny of project requests. It also recommended that the 82nd Legislature direct THECB to study a more efficient model to address IHE capital funding needs during the next interim and that future bonding authority be in the form of either GO bonds approved by the voters or TRBs that are repaid with tuition. The total 2012-2013 biennial appropriation for TRB debt service to the general academic institutions and system offices centers was $420.7 million in GR funds.
The 83rd Legislature may consider issues related to financing capital projects at higher education institutions, the levels of deferred maintenance, the impact of deferred maintenance on the ability to offer basic instructional services, and the methods used to finance deferred maintenance projects.

**Funding for Regional Law Enforcement Training**

Attaining the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) mandated law enforcement training can be problematic and expensive for law enforcement personnel, particularly those in rural areas of the state. Law enforcement basic certification training demands have steadily increased in recent years along with TCLEOSE-mandated continuing education training. The 106 TCLEOSE-licensed regional training academies across the state, some of which rely on state funding for their continued operation, provide a cost-effective means for law enforcement officers to obtain the mandated training.

Statewide law enforcement training appropriations are derived from multiple sources, including law enforcement training grants provided by the Office of the Governor of Public Accounts-Trusteed Programs; local continuing education grants administered by the Comptroller-Fiscal Programs; law enforcement training provided by the Office of the Attorney General; course development and academy evaluations provided by TCLEOSE; the game warden training academy and park law enforcement programs provided by the Texas Parks and Wildlife Department; and law enforcement training provided by the Department of Public Safety of the State of Texas. For the 2012-2013 biennium, these programs totaled $29.95 million in funding, an overall reduction of approximately $9 million, or 23 percent, from the 2010-2011 funding level. While some law enforcement training appropriations increased slightly, the overall decrease in funding was primarily due to the legislature zero-funding local continuing education grants for the 2012-2013 biennium.

The 83rd Legislature may consider issues related to funding sources for regional law enforcement training and retention of law enforcement officers.

**Statutory Changes to the State's Current Spending Limits**

Article III (Legislative Department) and Article VIII (Taxation and Revenue), Texas Constitution, contain four limitations on state spending: the pay-as-you-go limit, the welfare spending limit, the debt limit, and the limit on the growth of certain appropriations or "spending" limit. The state spending limit requires that the rate of growth of appropriations from state revenue not dedicated by the constitution not exceed the estimated rate of growth of the state's economy. Only appropriations funded with tax
revenue not dedicated by the Texas Constitution, such as revenue derived from the sales tax, motor vehicle sales tax, franchise tax, and cigarette and tobacco taxes, are subject to the spending limit. Section 316.002 (Duties of Legislative Budget Board), Government Code, directs the Legislative Budget Board (LBB) to use Texas personal income growth to measure growth in the state's economy. In most cases, LBB adopts a personal income growth rate which is then used to establish the spending limit for the upcoming legislative session.

The current spending limit has been criticized as not significantly curtailing state expenditures. Alternative growth methodologies have been suggested, including utilizing the gross state product rather than personal income growth, to determine the state spending limit; basing the spending limit on the lesser of personal income growth, population growth, and the inflation rate or gross state product; and setting the state spending limit based on the consumer price index and overall population growth.

The 83rd Legislature may consider issues related to the state's current spending limits and possible statutory changes needed to continue restraint of spending growth below the rate of inflation plus population growth.
BUSINESS AND COMMERCE

Broadband Expansion

In 2012, the Federal Communications Commission (FCC) adopted a national broadband plan that seeks to ensure that "all people of the United States have access to broadband capability" through federal funding for broadband networks. In order to expand broadband services and infrastructure and upgrade telecommunication networks throughout the nation, the FCC announced plans to reform the federal Universal Service Fund (USF). Changes to the USF include transferring money from USF to new funds that support broadband networks, such as the Connect America Fund.

Texas currently ranks 21st in the nation in the availability of broadband services; 48 percent of rural households and 64 percent of non-rural households in Texas have adopted broadband services. As the demand for broadband increases, the need to build broadband infrastructure in high-cost and rural areas of the state is highlighted. Changes to USF may affect how Texas administers the Texas Universal Service Fund (TUSF), which helps telecommunication providers service high-cost, rural areas of the state. According the Public Utility Commission of Texas (PUC), certain telecommunications providers that have lost federal funding from USF are authorized to request funding from TUSF, and PUC is currently charged with determining whether changes should be made to ensure the sustainability of TUSF. The degree to which federal subsidies from USF will interplay with compensation from TUSF might play a role in the consideration of any changes to be made to TUSF in order to ensure that Texas is not working at cross-purposes with federal attempts to ensure universal broadband deployment.

The 83rd Legislature may consider changes relating to TUSF in association with federal plans for broadband deployment.

Drought Conditions and Electric Generation Capacity

Extreme weather in Texas has led state agencies and legislators to consider plans for mitigating the impact of drought conditions on electric generation capacity.

Because electric generation is highly dependent on water, legislators have stated that Texas should plan for the conservation of the state water supply and the adequacy of electric capacity and generation in tandem. Texas currently implements a yearly state water plan that is developed by the Texas Water Development Board and includes water
conservation and reuse, and addresses the needs of all water user groups in the state. However, legislation relating to a state energy plan or statewide goals for energy conservation has failed to pass previous legislatures.

State agencies, including the Public Utility Commission of Texas (PUC), the Electric Reliability Council of Texas (ERCOT), the Texas Commission on Environmental Quality, and the Texas Division of Emergency Management, and electric utility providers, including members of the Association of Electric Companies of Texas and the Texas Public Power Association, have worked together to ensure that preparations are made for electrical generation during drought conditions. Additionally, Calpine Power Corporation, CPS Energy, Luminant Energy, NRG Energy, and the Lower Colorado River Authority have developed best practices that can be used by power generators for water conservation that, among other practices, identify all uses and quantities of water at each plant site and develop a management plan to ensure that water is recycled and reused in order to maximize efficiency. While PUC and ERCOT have encouraged renewable energy infrastructure that uses less water and promotes energy conservation and energy efficiency, certain individuals have suggested that the state implement additional measures for water and energy conservation.

Testimony presented to the Senate Committee on Business and Commerce suggested that diversifying the state energy portfolio and switching to cleaner fuel types, such as wind and solar, will require less water and reduce emissions in the state. It was suggested that the state provide incentives for implementing or retrofitting advanced cooling technologies and consider the availability of water during the permitting process of generation plants. Legislators have expressed the need for statewide planning to ensure that drought and extreme weather conditions do not negatively affect the Texas economy, stating that uncertainty regarding electric generation in the state will discourage economic growth and investment in Texas.

The 83rd Legislature may consider provisions to improve statewide plans for mitigating the effect of drought conditions on electric generation capacity.

**Economic Impact of Droughts and Wildfires**

As noted in the Texas comptroller of public accounts' report, *The Impact of the 2011 Drought and Beyond*, the drought of 2011 was the state's worst single-year drought since recordkeeping began. To further compound the economic toll on the state, 2011 was also a year of devastating wildfires across the state that burned millions of acres. Drought and wildfires, as well as their potential economic effects, will remain a concern for the state.
The Texas AgriLife Extension Service estimates that agricultural losses related to the drought for 2011 totaled $7.62 billion. The Texas Water Development Board’s 2012 State Water Plan estimates that if water supply needs are not met and if drought conditions reach a "drought of record" status, income losses to businesses and workers could reach approximately $116 billion annually by 2060.

Testimony provided during interim legislative hearings highlighted many concerns related to the economic impacts associated with severe drought conditions. Discussion centered on the effects of drought and wildfires on tourism and recreation, noting that many such activities in Texas are dependent on the stability and health of the state’s natural resources. For example, during interim legislative hearings, there was testimony regarding the impact of the drought and wildfires coupled with the downturn in the national economy on the issuance of fishing and hunting licenses and the number of visitors to state parks. Other concerns related to wildfires and the impact of the decimation of timber on the lumber industry; the effect of low lake levels on businesses that rely on water recreation and are adjacent to the lakes; and the impact of drought on the state's fish hatcheries, wildlife, and agricultural production.

Additionally, during a hearing centered on economic development, business representatives emphasized the importance of affordable and reliable water resources, electricity, and infrastructure to attracting and retaining businesses. The comptroller's report noted that drought conditions may increase the cost of water and electrical power, damage infrastructure, and require more water conservation, all of which may impact business decisions.

The 83rd Legislature may consider issues related to addressing the impact of wildfires and long-term drought in various economic sectors and identifying federal, state, and local funding and other assistance to reduce the long-term economic consequences of drought and wildfires.

**Economic and Workforce Development Promotion**

Recently, Texas was ranked the top state for business by both the cable television network CNBC and *Chief Executive* magazine. Texas industries include manufacturing, bio-technology and life sciences, moving image industry, petrochemicals, and technology.

During the interim of the 82nd Legislature, several legislative committees discussed the economic development climate and economic development policy of Texas. For example, the Select Committee on Economic Development at its initial meeting in September 2012 discussed charges related to developing state economic development
policy, evaluating current policies and making recommendations for improvement, considering the benefits of consolidating all Texas economic development incentives under the auspices of a single office, and developing new incentives. Several methods of encouraging economic development were discussed, with many stakeholders providing testimony.

The Texas Enterprise Fund (TEF) is a “deal closing fund” that can be used for a variety of economic development projects including infrastructure and community development, job training programs, and business incentives. TEF is used to attract businesses to the state, especially when a Texas site is being considered along with an out-of-state location. Before TEF funds can be awarded for a specific project, the governor, lieutenant governor, and the speaker of the House of Representatives must unanimously agree to support its use for that project.

To be eligible for TEF support, a project must demonstrate a significant return on the state’s investment and strong local support. The review process considers a variety of factors, including job creation and wages, capital investment, financial strength of the applicant, the applicant’s business history, an analysis of the relevant business sector, and public and private sector financial support.

According to a TEF representative during a January 2012 legislative hearing, TEF awarded over $441 million from 2003 to December 31, 2011, which led to the creation of 50,000 jobs.

The Texas Emerging Technology Fund (TETF) is used to support research and development. According to the January 2012 "Annual Report to the Texas State Legislature on the Texas Emerging Technology Fund," TETF has made a total of 167 awards totaling over $370 million. Concerns regarding transparency and reporting requirements of TETF as well as the fund's areas of investment have been raised. Reports of recent bankruptcies by TETF-supported start-ups may bring further scrutiny to TETF.

The Enterprise Zone Program is a limited economic development incentive that provides state sales and use tax refunds as an incentive to encourage private investment in economically distressed areas and to encourage job creation.

The Skills Development Fund, administered by the Texas Workforce Commission, is a customized job-training program connecting businesses with community and technical colleges to provide specific training needed. Stakeholders have voiced concern regarding the state's lack of a skilled workforce, such as trained craftsman, needed to meet the demands of many industries.
The Texas Moving Image Industry Incentive Program, administered by the Texas Film Commission, Office of the Governor, incentivizes eligible moving image industry production in Texas by providing the opportunity to receive a payment of a percentage of qualifying Texas-related spending or wages paid. The Texas Association of Business has suggested that the fund should be enhanced as a draw for the film industry because neighboring states are now offering more competitive incentives.

Many stakeholders advocate the retention or expansion of economic development tools and tax incentives, including the reauthorization of Chapter 313 (Texas Economic Development Act), Tax Code, allowing school districts to provide tax incentives for certain large-scale capital investment under certain circumstances, and reinstating a franchise tax credit for research and development. The school district tax incentive provision is set to expire December 31, 2014, and the provisions relating to the tax credit were repealed during the 79th Legislature, Third Called Session, 2006.

Several stakeholders have expressed concern about other factors that they believe impede or slow economic development, including the structure of the Texas franchise tax, the burden of taxes on capital intensive industries, high property and sales taxes, regulatory structures, inadequate infrastructure for businesses, and an inadequate or unskilled workforce.

The 83rd Legislature may consider the impact of current economic development incentives, funding related to economic development incentives, changes to existing state economic development programs, changes in tax policy incentives to increase job creation in Texas, the creation of economic incentives and resources that target niche markets or specific industry clusters, the configuration of state and local economic development policy, and issues associated with workforce training and the labor market.

**Licensing and Regulation of Occupations**

The Texas Department of Licensing and Regulation (TDLR) is charged with regulating the licensing structure and regulation of 29 occupations and 149 license types in the state. According to the Texas Public Policy Foundation, one-third of the workforce in Texas is directly licensed by or works for a licensed entity. The Senate Committee on Business and Commerce was charged with studying the state's approach to licensing and regulation of occupations in order to determine whether regulation is necessary or burdensome and restrictive.

On July 6, 2012, TDLR and the Texas Commission of Licensing and Regulation (TCLR), published a strategic plan for the fiscal years 2013 to 2017 that included a list of recommendations for statutory changes necessary to "reduce the size of government,
ISSUES FACING THE 83rd TEXAS LEGISLATURE

streamline regulation, better align resources, and strengthen consumer protection." TDLR recommends that the Rental Agreement Loss Damage Waivers, Temporary Common Worker Employers, and certain Barber and Cosmetology licensing programs be eliminated. TDLR recommends that other licensing programs, such as the licensing and regulation of court interpreters, be transferred to other state agencies that are better aligned with the functions and duties of that program. Additionally, TDLR has asked that the 83rd Legislature consider amending Chapter 51 (Texas Department of Licensing and Regulation), Texas Occupations Code, to authorize TCLR to adopt rules allowing certain military training or experience to qualify as requirements for licensure.

Licensing or registration programs for certain occupations, including automobile mechanics, roofers, sheet metal workers, and lactation consultants, have been considered by but not enacted during previous legislatures. Supporters of such programs claim that licensing or registration would protect consumers; opponents claim that additional regulation would increase costs for consumers and practitioners, and would force skilled workers to move to other states.

In assessing whether certain occupations should be regulated in Texas, the process of licensure for these occupations in other states was reviewed. Colorado, for example, has established a "sunrise review" process to evaluate the necessity for new regulations prior to implementation.

The 83rd Legislature may review the process by which licensing and regulation requirements for businesses and individuals in Texas are established and modified.

Payday Lending

H.B. 2592 and H.B. 2594, 82nd Legislature, Regular Session, 2011, amended Chapter 393 (Credit Services Organizations), Finance Code, to establish new requirements for a credit access business (CAB), a type of credit services organization that provides payday or title loans. H.B. 2592, among other provisions, requires CABs to provide consumers with a disclosure that includes the interest and annual percentage rate (APR) associated with the loan, a comparison of those charges to alternative forms of consumer loans, and fees that the consumer will incur for renewing the loan. H.B. 2594 also requires CABs to obtain a license from the Office of Consumer Credit Commissioner (OCCC) and gave the OCCC examination and investigatory authority over CABs.

Since January 1, 2012, OCCC has licensed 3,329 locations as CABs and has begun an examination process to ensure compliance with OCCC rules. However, OCCC has identified certain policies regarding CABs that need further clarification. Various municipalities have enacted ordinances that place limitations on payday and title loans.
and the Finance Commission of Texas has adopted a resolution urging the legislature to articulate its intent to treat CABs uniformly in all jurisdictions. OCCC has asked that provisions relating to the limits of CAB activity be clearly defined in order to prevent payday and title lenders from disguising their transactions to avoid regulations. Additionally, OCCC has recommended that the legislature clarify its intent that the transaction of the loan must be completed within 180 days.

While many stakeholders have expressed agreement that there is a continuing need for the immediate credit access provided by CABs, others have voiced concern that not enough has been done to address the cycle of debt created by the loan products provided by CABs. The Consumer Service Alliance of Texas, an organization that represents approximately 90 percent of registered CABs in Texas, has subscribed to certain best practices that provide consumers with no-cost extended payment plans, transaction limits based on a person's gross monthly income, and fee reductions with the refinance of single-payment auto title loans. Charitable organizations, interest groups including the American Association of Retired Persons and the Texas Fair Lending Alliance, and leaders from the City of Austin, the City of San Antonio, and the City of Dallas have asked that the legislature consider additional regulation of CABs, including provisions that limit the APR that may be charged on loan products and that mandate that CABs consider a consumer's income when transacting a loan.

The 83rd Legislature may consider legislation to improve the regulation of payday and title lending through CABs.

Public-Private Partnerships

S.B. 1048, 82nd Legislature, Regular Session, 2011, set forth provisions that authorized public-private partnerships (P3s) and that created the Partnership Advisory Commission (PAC). P3s join private expertise, innovation, and financial resources with state agencies to meet demands for new facilities and infrastructure. During the interim of the 82nd Legislature, PAC met to consider guidelines that will be implemented for P3s in Texas.

PAC heard testimony from representatives from the State of Virginia and British Columbia, Canada, regarding best practices for P3s. The Virginia Legislature gives P3 procurement power to the governor's office but plays a consultative role with the governor's office regarding how the proposals affect the state's long-term finances and policies. In British Columbia, best practices when implementing a P3 model include identifying market-catalyzing projects that illustrate the value of the project, standardizing procurement forms and procedures, and determining whether a single-window P3 office is necessary.
The Texas Department of Transportation (TxDOT) currently has a process for comprehensive development agreements (CDAs) that allows private entities to invest in public transportation projects and anticipate a return for their investment with revenue streams gained from the project. The procurement process for CDAs includes a request for qualifications, in which private entities make TxDOT aware that they are looking to enter into a contract for a particular facility, and a request for proposal, in which private entities provide a more detailed design, costs, and investments in the project. Before a CDA contract is executed, third-party reviews are conducted by the Office of the Attorney General and the Legislative Budget Board. Some legislators have expressed support for CDAs as a model for P3s in other agencies.

While some have expressed concern regarding allowing a private entity to gain a return on its investment for the operation of a project through user fees and lease fees, others have stated that not having rules or guidelines impedes the development of projects. Supporters of the P3 model claim that specific guidelines provide certainty to lenders regarding the P3 process and ensure transparency for the public.

The 83rd Legislature may consider additional guidelines for P3s in Texas.

**Smart Meters**

H.B. 2129, 79th Legislature, Regular Session, 2005, requires that the Public Utility Commission of Texas (PUC) establish a surcharge on residential accounts in order to allow an electric utility to recover reasonable and necessary costs incurred by deploying advanced or "smart" metering. H.B. 2129 listed potential benefits of smart metering, including "the potential to increase the reliability of the regional electrical network, encourage dynamic pricing and demand-response, make better use of generation assets and transmission and generation assets, and provide more choices for consumers." H.B. 3693, 80th Legislature, Regular Session, 2007, stated that "it is the intent of the legislature that net metering and advanced meter information networks be deployed as rapidly as possible to allow customers to better manage energy use and control costs, and to facilitate demand response initiatives." Pursuant to these bills, retail electric providers (REPs) have deployed smart meters to their customers. However, concern has been raised that there are health risks associated with radio or electromagnetic frequencies emitted by smart meters.

Smart meters use radio frequencies that are regulated by the Federal Communications Commission and are the same frequencies used by other common household devices, such as wireless telephones and baby monitors. Although studies conducted in California, Maine, and Vermont have concluded that adverse effects from smart meter
devices are nonexistent, some critics have stated that the cumulative effects of numerous devices emitting radio frequencies for extended periods of time are unknown.

Some consumers in Texas have asked that the legislature consider opt-out provisions for smart meter implementation, stating that, unlike other household devices, smart meters are installed at the discretion of REPs and consumers are not given a choice to opt out of smart meter implementation or are being charged a fee for refusing to allow the smart meter installation.

PUC has adopted rules on the use of smart meters and REPs have integrated smart metering systems into their management systems. PUC is currently analyzing what parts of the electric market would need to be adjusted should consumers be given a choice of opting out. Representatives from PUC and REPs have stated that additional costs will be incurred should consumers be allowed to decline the use of smart meters.

The 83rd Legislature may consider provisions relating to the implementation of smart meters.

**Telecommunications Discounts**

H.B. 2128, 74th Legislature, Regular Session, 1995, provides that telecommunications companies are required to offer broadband digital services to certain public entities, such as schools and libraries, at a price of 105 percent of the company’s long-term incremental costs. S.B. 773, 82nd Legislature, Regular Session, 2011, extends that requirement to offer discount services through January 1, 2016, and increases the price to 110 percent of long-term incremental costs.

Testimony provided to the Senate Committee on Business and Commerce indicated that those service discounts are crucial for school districts and public libraries to be able to afford Internet access and broadband services, particularly in rural areas of the state. According to the Houston Public Library System, 64 percent of libraries in Texas report that they are the only source of free Internet access in their communities and many public library systems would not be able to provide services without the discounts for telecommunications services. Proponents state that as bandwidth demand increases every year in order to meet academic, health care, and research needs, the telecommunications discounts are vital in making those services affordable. Many organizations expressed a desire to extend the telecommunications discounts indefinitely. Proponents have also asked that if telecommunications discounts are discontinued in general, that the discounts be continued for carriers in rural areas.
Opponents of telecommunications discounts have stated that the discounts should be allowed to expire in 2016, and that consumers who actually use digital services should be charged for those services. Opponents argue that requiring telecommunications providers to offer steeply discounted prices to schools, libraries, and medical centers results in less competition by local exchange carriers and that the services to which telecommunications discounts apply are rolled into the overall costs of the communications companies and subsequently passed on to residential consumers. Opponents state that the telecommunications discount program was intended to be temporary and should come to an end.

The 83rd Legislature may consider extending or amending discounts for telecommunications services.

**The Texas Universal Service Fund**

The cost of providing telecommunications service is higher in rural areas and the Texas Universal Service Fund (TUSF) was created in 1987 to address long distance telephone rates and ensure that all citizens have access to basic telecommunications services. TUSF assists telecommunications providers to deliver basic local telecommunications services at reasonable rates in high-cost, rural areas and to provide low-income rate discounts and subsidized communications services to consumers with disabilities.

The 82nd Legislature, Regular Session, 2011, through S.B. 980, required that the Public Utility Commission of Texas review and evaluate whether TUSF accomplishes its purposes and whether any changes to TUSF are needed. Some members of the legislature have expressed concern that the legislative intent regarding TUSF is too vague, stating that some areas of the state have unique and costly needs and that telecommunications companies in those areas would not survive without TUSF support.

Although some larger competitive local exchange carriers that serve rural customers are reducing the amount of support they receive from TUSF, smaller and independent local exchange carriers and providers of last resort (POLRs) have stated that support from TUSF is necessary to provide reasonable rates for basic local telecommunications service in rural and high-cost communities. AT&T and Verizon have decided to cease using TUSF by 2016 and to balance their rates over time in order to adjust for the TUSF support reductions.

Increased disbursements from TUSF to small and rural phone companies are continued through September 1, 2013, through H.B. 2603 (Smithee; SP: Hegar), 82nd Legislature, Regular Session, 2011. Small and rural local exchange carriers have expressed support for the continuation of TUSF disbursements beyond 2013.
The 83rd Legislature may consider amending provisions relating to the Texas Universal Service Fund.

**Regulation of the Telecommunications Market**

Telecommunications markets with populations in excess of 100,000 were deregulated through S.B. 5, 79th Legislature, Second Called Session, 2005. The Public Utility Commission of Texas (PUC) is required to approve deregulation of markets with populations between 30,000 and 100,000 where at least three competitors are unaffiliated with an incumbent local exchange carrier (ILEC) with at least one non-facilities-based, one wireless, or one facilities-based competitor. S.B. 980, 82nd Legislature, Regular Session, 2011, provided that, for all markets with populations under 100,000, companies can request deregulation if there are two competitors that are unaffiliated with an ILEC and provide voice service through any technology.

While S.B. 5 provided that an ILEC retain provider-of-last-resort (POLR) obligations after deregulation of the market, S.B. 980 provided that an ILEC does not have POLR obligations after deregulation. The absence of POLR obligations in areas of Texas that have been deregulated has caused concern regarding whether affordable basic and reliable telecommunications services will be available and accessible in those areas. Organizations such as the Texas Legal Services Center and the Texas Statewide Telephone Cooperative, Inc., state that POLR obligations should remain in place for all areas in Texas that are currently not deregulated until it is proven that reliable telecommunications service is accessible in the deregulated areas of the state.

Additionally, Chapter 283 (Management of Public Right-of-Way Used by Telecommunications Provider in Municipality), Local Government Code, establishes a compensation structure through which certified telecommunications providers compensate municipalities for the use of public rights-of-way, including public roadways, highways, streets, public sidewalks, alleys, waterways, or utility easements. Telecommunications providers are asking that the compensation structure be reconsidered, stating that there is no correlation between the costs that a city incurs to manage its public rights-of-way and the amount of the fee that is charged to telecommunications providers under the current compensation scheme. Municipal representatives state that right-of-way fees are rent for the use of public land and that cities are required by statute to receive fair market value for the use of municipal land. Stakeholders have suggested that amending the definition of "access lines" in Chapter 283 may help bridge conflicts over right-of-way fees.
Some organizations, such as the Texas Public Policy Foundation, suggest that further deregulation of the telecommunications market should continue. ILECs are authorized to set prices above their long-run incremental costs for a service but some suggest that this price floor should be removed. Additionally, it has been suggested that rates in rural communities should be allowed to increase in order to encourage competition for customers in those areas and that PUC should be given the authority to deregulate markets on its own initiative.

The 83rd Legislature may consider changes in the regulation of the telecommunications market.

**Workforce Training**

As the state population continues to grow, there is increasing concern about whether career-focused education and workforce training programs in Texas will meet current and future business and workforce needs. The need for a skilled workforce was highlighted in testimony provided to the Senate Committee on Business and Commerce during the interim of the 82nd Legislature. According to the Construction Education Foundation, 20 percent of the skilled workforce in the Texas construction industry will retire within the next four years and skilled workers are not migrating to areas of the state where jobs are available as they previously did. Additionally, it is expected that Texas will need to fill approximately 750,000 jobs in the science, engineering, technology, and mathematics fields by 2018. Representatives of various trades, including members of the automotive, welding and metal, manufacturing, building and construction, and petrochemical industry, stated that there is an immediate need for trained workers in their respective fields.

One of the greatest concerns regarding career and workforce training is whether educational policies regarding career and technical education (CTE) are meeting the needs of Texas employers. Across the state, community colleges have built partnerships with local businesses and state agencies to develop curricula and programs for career training. In 2009, the 81st Legislature, Regular Session, passed H.B. 3, which, among other things, sets forth provisions relating to CTE and requires that institutions of higher education work in partnership with at least one independent school district and business entity in developing a CTE course.

However, CTE courses have declined in public schools as more attention and resources are targeted toward student college readiness. H.B. 3 also sets forth provisions for the state's four-by-four curriculum plan, in which students are required to earn four credits in four core subjects. The four-by-four curriculum plan is now the recommended plan for entrance to the state's public institutions of higher education. Although enrichment
classes such as CTE courses may be substituted for core mathematics or science requirements, there is still some concern that students do not have enough time in their schedules for CTE courses. Some organizations, including the Texas Association of Manufacturers, the Construction Education Foundation, and the Texas Chemical Council, have expressed concern that the differences in student skills and talents are not being addressed by standards that only emphasize preparation for four-year institutions of higher education.

The 83rd Legislature may consider improvements to career and workforce training in public schools to meet business and workforce needs.

Unemployment

According to the United States Department of Labor, Bureau of Labor Statistics, the September 2012 unemployment rate for Texas was 6.8 percent. Although the Texas unemployment rate is below the national average, unemployment will remain an important issue for lawmakers.

Addressing unemployment remains a concern at the local, state, and federal levels. Texas Workforce Solutions, which includes the Texas Workforce Commission (TWC) and local workforce development boards, provides workforce development services, such as job training and job search assistance, to employers and job seekers. In addition to unemployment benefits provided through TWC, examples of programs that have been used to address the unemployment issue include the Texas Back to Work initiative and the Rapid Reemployment Services (RRES) program, a partnership between the federal government, TWC, and other Texas Workforce Solutions entities. The Texas Back to Work initiative is a wage incentive program for employers to hire qualified unemployed persons and RRES targets unemployment benefit claimants most likely to use all of their benefits with employment services to assist them in finding work quickly.

The 83rd Legislature may consider programs to help persons who are unemployed return to work, particularly programs for those facing long-term unemployment, and programs to enhance job training or re-training for the long-term unemployed. The 83rd Legislature may consider how to best utilize federal resources for state programs to assist the unemployed.

Unemployment Compensation Trust Fund

Employers in Texas pay taxes and reimbursements into the Unemployment Compensation Trust Fund (UCTF), which pays for unemployment benefits and is administered by the Texas Workforce Commission (TWC).
According to TWC, state-funded unemployment insurance benefits almost tripled from 2008 to 2009. Title XII (Advances to State Unemployment Funds) of the federal Social Security Act authorizes loans to be made to state unemployment programs from the Federal Unemployment Account. As part of the American Recovery and Reinvestment Act of 2009, these loans were made interest free and would remain interest free through December 1, 2010. In 2009, Texas and other states borrowed from the Federal Unemployment Account. In the latter half of 2010, revenue bonds were sold on behalf of TWC, amounting to $2.1 billion in proceeds. This enabled TWC to repay its federal Title XII advance with no interest charge.

According to TWC, UCTF is currently solvent and the existing projected balance of the trust fund on October 1, 2013, is $1,589.5 million, an amount above UCTF’s floor level.

The 83rd Legislature may consider legislation relating to the current financing structure for UCTF and options to improve its long-term stability.
CRIMINAL JUSTICE

Administrative Segregation in the Texas Department of Criminal Justice

The administrative segregation (Ad Seg) population in the Texas Department of Criminal Justice (TDCJ) includes individuals who are considered members of a security threat group or a gang with a history of violence within the prison system. Ad Seg prisoners are confined in single-occupancy cells for 23 hours a day and there are now approximately 8,150 prisoners in such confinement.

In determining whether someone should be placed in Ad Seg, TDCJ monitors correspondence and uses a variety of assessments during the intake and diagnostic process. Some inmates are classified based on observed behavior or acts committed in the general prison population and on past security threat group or gang associations.

Some stakeholders, although not questioning the need for Ad Seg, question whether it is being overused, whether prisoners remain in Ad Seg too long, and whether the classification review process is adequate. Those who oppose having so many prisoners in Ad Seg are concerned that these offenders are not provided any stimulation to help them develop life skills, change their behavior, and make a successful transition into the general prison population or, upon release, into the general population. During the last fiscal year, 878 prisoners were released from Ad Seg confinement to the streets of Texas.

The Serious and Violent Offender Reentry Initiative (SVORI) began as a collaborative federal and state program to facilitate the reentry and reintegration of offenders. TDCJ reported that the Serious and Violent Offender Reentry Initiative (SVORI) has proven to be effective, but noted that it is currently a small, primarily voluntary program. Currently, SVORI is a 63-bed program housed at the Estelle Unit in Huntsville that provides pre-release and in-cell programming for male offenders releasing directly from administrative segregation. Offenders may be placed in the program by the Board of Pardons and Parole (BPP), or may be selected for participation in the program based on certain eligibility criteria.

The 83rd Legislature may consider expanding SVORI and directing the Board of Pardons and Paroles to work with TDCJ in establishing reentry programs for the Ad Seg population and increasing supervision for inmates who are released directly from Ad Seg.
Care of Female Prisoners in the Texas Department of Criminal Justice

Approximately six percent, or 12,000, of those incarcerated in Texas prisons are women. Although female inmates are less likely to commit violent acts, approximately 80 female inmates are in administrative segregation, confined for 23 hours a day in single-occupancy cells.

The Texas Department of Criminal Justice reported during the interim to the Senate Committee on Criminal Justice that female prisoners are provided with unique medical care, including prenatal care, gender-related programming, and a driving-while-intoxicated program. Currently, 11 female offenders are in the Baby and Mother Bonding Initiative program which is a facility where pregnant inmates give birth and remain with their infants.

Some are concerned that females in the prison population are not given pregnancy tests and are not tested for sexually-transmitted diseases upon entering the prison system. There is also concern that the high number of women who are imprisoned for prostitution need better programs to prepare them for reentry to society.

The 83rd Legislature may consider best practices for the care of female inmates and the establishment of counseling, education, and other services particularly designed for women to assist in their re-entry into society.

Crime Victims Compensation Fund

During the interim, the Office of the Attorney General (OAG) reported to the Senate Committee on Criminal Justice that H.B. 2178, 73rd Legislature, Regular Session, 1993, relating to compensation of victims of certain crimes, increased court costs for misdemeanor crimes in order to fund the Crime Victims Compensation Fund (CVC fund) and that many groups now depend on the fund for grants to provide services for crime victims. Maintaining the viability of the fund has become a challenge.

The OAG reported that court costs collected at the local level for the CVC fund are in decline and that local authorities who collect the fees often hold the money until the end of the quarter before depositing it into the CVC fund.

The Code of Criminal Procedure requires that a certain amount of the money in the CVC fund go to victims of crime and authorizes the use of any remaining funds for other services after OAG certifies that the money is available. Concerns have been expressed that while the CVC fund can compensate crime victims as it was originally intended, funding grants and other services with the CVC fund endangers the fund.
Defining Mental Retardation

In *Yokamon Laneal Hearn v. Rick Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division*, the United States Fifth Circuit Court of Appeals, on January 30, 2012, affirmed the definition of mental retardation used by the Texas Court of Criminal Appeals, which relies primarily on IQ (intelligence quotient) scores. Following the 2002 United States Supreme Court ruling in *Atkins v. Virginia* that the execution of mentally retarded persons is unconstitutional, states were required to develop appropriate ways to enforce this constitutional restriction. The Texas Court of Criminal Appeals has announced that until the Texas Legislature provides an alternate definition of “mental retardation,” it will use the criteria set forth by the American Association of Mental Retardation or in the Texas statutes, which include the individual having an IQ of 70 or below.

Supporters of the decision argue that relying on IQ scores to define mental retardation is widely accepted and that using a more expansive and subjective definition of mental retardation would result in less consistency in determining mental retardation claims. Opponents respond that these scores do not accurately reflect actual mental functioning and that the definition should include neuropsychological measures of intellectual functioning.

The 83rd Legislature may consider legislation related to the definition of mental retardation as applicable in capital cases.

Services for Human Trafficking Victims

Human trafficking continues to be a significant issue within Texas, the United States, and internationally. The Department of Public Safety of the State of Texas (DPS) reported to the Joint Interim Committee to Study Human Trafficking (committee) that human trafficking and enslavement is a crime that is often not reported and is always underreported. According to DPS, the cause of the increasing prevalence of human trafficking is money, along with the demand for the commodity.

Human traffickers often transport individuals from their home countries to unfamiliar destinations, leaving them defenseless and vulnerable. Victims are often forced, through physical violence and psychological threats, to engage in sex acts or to perform work
under slavery-like conditions. Trafficking in persons is a violation of human rights and the United States made human trafficking a federal crime in 2000 with the passage of the Trafficking Victims Protection Act.

Texas has been a leader in combating human trafficking that involves exploitation, abuse, and prostitution. The state has been awarded the highest grade of all states from Shared Hope International, a leader in a worldwide effort to prevent and eradicate sex trafficking and slavery through education and public awareness.

Legislation enacted by the 82nd Legislature provides that if an applicant or license/permit holder with the Texas Alcohol Beverage Commission (TABC) lets his or her application or permit expire or voluntarily cancels the permit while there is a hearing pending regarding a protest involving human trafficking, the applicant cannot get another permit for any location for three years. The legislation also provides that if a license or permit is canceled for an offense involving prostitution or human trafficking, no one can receive an on-premises license or permit for that specific location for 12 months.

Legislation enacted by the 80th Legislature requires that certain TABC license permit holders post a sign advertising the National Human Trafficking Hotline number in English and Spanish. TABC reported that although TABC is not the agency with primary responsibility, the number of calls related to human trafficking to TABC's hotline has almost doubled.

The Texas Legislature attempted to enact legislation providing more time to enable authorities to work with victims, but constitutional issues emerged. Because children can only be kept in custody for a limited time, they often do not receive necessary care and services and there are few places where victims can be referred for follow-up services when they are released.

The Texas Human Trafficking Prevention Task Force reported to the committee that it has established work groups to provide information to the legislature; is increasing data collection; and is working on a human trafficking manual for law enforcement and victim services providers.

In order to establish more effective prosecution, reporting of data, and availability of services, local law enforcement needs to have cross-jurisdictional cooperation. The federal Drug Enforcement Administration, the United States Immigration and Customs Enforcement, and the United States Customs and Border Protection also need to be involved in the coordination of efforts to combat human trafficking and the provision of services for victims.

The 83rd Legislature may consider incentives to encourage county and district courts to comply with the requirement to report the number of cases involving compelling
ISSUES FACING THE 83rd TEXAS LEGISLATURE

prostitution and human trafficking; increase cooperation between all levels of law enforcement; increase training for law enforcement on all levels; and streamline licensing and oversight of victims' shelters through DPS.

Transportation and Storage of Certain Firearms or Ammunition

S.B. 321, relating to an employee's transportation and storage of certain firearms or ammunition while on certain property owned or controlled by the employee's employer, was enacted by the 82nd Legislature in 2011. The bill prohibits a public or private employer from prohibiting an employee who holds a license to carry a concealed handgun under Subchapter H (License to Carry a Concealed Handgun), Chapter 411 (Department of Public Safety of the State of Texas), Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition, from transporting or storing the firearm or ammunition in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees. Under current law there are exceptions for certain types of businesses relating to free trade zones and national security.

The Texas Railroad Commission reported to the Senate Committee on Criminal Justice that its policies have been changed to comply with the requirements of the law.

The Texas State Rifle Association reported that some employees are being given conflicting information from human resources departments and may be discouraged from exercising their rights as established by S.B. 321.

The 83rd Legislature may review issues related to the implementation of and compliance with S.B. 321.

Money Laundering

The Department of Public Safety of the State of Texas (DPS) reported to the Senate Committee on Criminal Justice during the interim that hiding illicit profits, known as money laundering, is a key element in drug smuggling transactions. According to DPS, one common technique used in money laundering involves the smuggling of bulk cash by Mexican drug cartels. Approximately $19 to $39 billion is paid to Mexican cartels annually and DPS has seized $122 million, a small percentage of that total.

The most common method of money laundering is the "black market peso/dollar exchange" in which the exchange is made for a percentage of the cash being laundered. Any business or product of value can be used to allow the money launderers to avoid
bank transactions that are more easily detectable. Money launderers often target members of the population who are particularly vulnerable and use them as "mules" to serve as couriers for the cross-border transport of illegal drugs and money.

The Office of the Attorney General has been involved in combating money laundering for more than a decade, concentrating on the financial end of transactions. Local agencies are also engaged in anti-money-laundering activities. The Harris County District Attorney's (DA) Office reported that it focuses primarily on the points of entry in Harris County such as bus stations and airports where mules are likely to enter the county. According to witness testimony during the interim, although the questioning of some mules leads to admissions regarding money laundering activities, the DA's hands are tied in terms of pursuing a prosecution if there is no presence of drugs.

The 83rd Legislature may consider best practices for law enforcement regarding efforts to curtail money laundering and methods to improve communication and joint response efforts between federal, state, and local authorities.

**Prescription Drug Abuse**

Texas Department of State Health Services officials testified during the interim before the Senate Committee on Criminal Justice, stating that Americans consume 80 percent of the global supply of opiates, 99 percent of the world's hydrocodone, and two-thirds of the world's illegal drugs. The Centers for Disease Control and Prevention reports that deaths from drug overdoses have now eclipsed deaths from firearms and car accidents. The cost to public health of opioid analgesics use includes an increase in treatment admissions, emergency room visits, and workers' compensation claims and payments.

The leading prescribers of opioid analgesics in the United States in 2009 were primary care physicians, internists, dentists, and orthopedic surgeons. The primary demographic cohort for opiate-related deaths is white, male, and middle aged, but the problem is widespread, affecting all socioeconomic and age groups, and incidence levels are rising among youth. Prescription drug abuse is also high among military veterans returning from Iraq and Afghanistan.

Many are concerned that reliance on incarceration, rather than on substance abuse treatment and diversion programs, is an inappropriate and ineffective method of addressing the problem.

The 83rd Legislature may consider increasing funding for substance abuse treatment and diversion programs and community-based treatment options that have proven to be effective and the implementation of uniform screening and assessment tools to identify...
individuals who suffer from prescription drug dependency or addiction prior to sentencing or incarceration.
**Bacterial Meningitis Vaccine**

S.B. 1107 (relating to the vaccination against bacterial meningitis of entering students at public and private or independent institutions of higher education), 82nd Legislature, Regular Session, 2011, required that certain entering college students receive a bacterial meningitis booster vaccination. Certain students are exempt from the requirement, including those who are 30 years of age or older, students enrolled prior to the law's enactment, those pursuing continuing education, and high school students enrolled in dual credit courses. Some have suggested lowering the age exemption to 22 years of age and limiting the vaccine requirement to on-campus students to lessen the impact on community colleges that struggled to implement the new law. However, many victims of bacterial meningitis—including those for whom the bill is named, Nicolis Williams and Jamie Schanbaum—lived off campus.

Many students experienced difficulty complying with the requirement due to the cost of the vaccine, typically between $100 and $300 from private providers. Since the law's effective date, the Department of State Health Services (DSHS) adult safety net program eliminated the bacterial meningitis vaccine from its list of covered vaccines as a result of reduced federal funding for immunizations and higher prices for vaccines. Current policy requires public school students in grade seven to receive a bacterial meningitis booster shot, which remains effective for five years. Officials at DSHS are considering requiring another booster for public high school students between the ages of 16 and 18, which would eliminate the need for a later vaccine at the traditional age of college enrollment and reduce the cost to the student because the children's vaccine program covers the cost of boosters for many minors.

The law allows students to request a waiver from DSHS that would exempt them from the requirement. The waiver process currently takes about two weeks and the Texas Higher Education Coordinating Board indicated that it is working with DSHS on creating an expedited process.

The 83rd Legislature may consider adjusting the requirements for bacterial meningitis vaccinations.
College Affordability

According to Bloomberg L.P., the cost of obtaining a university education in the United States has increased 1,120 percent over the past 35 years. The Institute for College Access and Success reports that 56 percent of 2010 Texas graduates left school carrying student debt, with an average debt of $20,919, indicating that college affordability is a concern for many students. At the same time, time-to-degree has increased, as students receiving bachelor's degrees are doing so in about 5.3 years and the six-year completion rate at Texas universities averages 58.4 percent. To address these concerns, Governor Rick Perry has proposed two approaches to make higher education more affordable for Texas students and incentivize students to complete a bachelor's degree in four years. The governor has proposed moving towards outcome-based funding by basing 10 percent of university appropriations on completion rates. He has also recommended freezing tuition for students at the freshman year rate for four years to enable them to more accurately predict the total cost to obtain a degree and to incentivize them to complete that degree in four years.

The 83rd Legislature may consider the governor's proposals to freeze tuition for freshman students at public institutions of higher education for four years and to base a certain amount of university appropriations on completion rates.

Developmental Education

Developmental courses provide instruction in reading, writing, and mathematics to students who do not meet basic standards on one of several assessments used to determine college readiness. Recent initiatives by the legislature and the Texas Higher Education Coordinating Board (THECB) to increase college readiness has led to a partnership between the Texas Education Agency and THECB with the goal to align curricula from preschool to graduate school. It is estimated that 41 percent of students enrolled at a Texas public institution of higher education in the fall of 2010 required some sort of developmental education. These students tend to be half as likely to complete a degree as students who do not require developmental education.

The 82nd Legislature took steps to improve developmental education in Texas by enacting three bills that revise college readiness assessment and course delivery:

- H.B. 1244 (relating to developmental education and the assessment of student readiness under the Texas Success Initiative and to students enrolled in developmental education at public institutions of higher education), 82nd Legislature, Regular Session, 2011, revised the Texas Success Initiative (TSI) to require all incoming students to be assessed to determine college readiness and to
require all institutions of higher education to develop an academic plan for those students who are not college ready. The bill authorized THECB to prescribe certain standards for TSI assessment instruments, repealed authority for institutions to adopt more stringent standards, and required that non-course based options for developmental education be provided to students;

- H.B. 3468 (relating to the assessment of public school students for college readiness and developmental education courses to prepare students for college-level coursework), 82nd Legislature, Regular Session, 2011, required THECB to study and recommend improvements related to assessments that are used to place students into developmental education and adult basic education; and

- S.B. 162 (relating to developing a developmental education plan for students entering public institutions of higher education), 82nd Legislature, Regular Session, 2011, required THECB to develop a statewide developmental education plan by December 1, 2012.

It is likely that legislators will examine reports submitted by THECB relating to these bills in determining the future direction of developmental education in Texas. Although some data indicate that the number of college-ready students graduating from public elementary and secondary schools is increasing, the number of underprepared students is still significant.

The 83rd Legislature may consider recommendations from THECB related to developmental education that may include requiring institutions of higher education to use a certain assessment instrument to place students into developmental education and to employ certain forms of course delivery to underprepared students.

**Financial Aid**

Interim Charge 1 to the Senate Committee on Higher Education requested recommendations regarding cost-effective funding of financial aid, including ways to restructure financial aid programs to incentivize student success, particularly among low-income students. To meet the ambitious goals set by the Texas Higher Education Coordinating Board (THECB) in *Closing the Gaps by 2015* to improve access to higher education for economically disadvantaged students, legislators have previously committed increasing amounts of funding to programs providing financial assistance to students to attend institutions of higher education. State financial aid programs are funded with state appropriations, private gifts accepted by THECB, and tuition set-asides that institutions of higher education are required to collect for financial aid programs.
During the 82nd Legislature, Regular and First Called Sessions, state financial aid program funding levels were either maintained or decreased as a result of budget shortfalls.

<table>
<thead>
<tr>
<th>Financial Aid Program</th>
<th>2010-2011 Appropriations</th>
<th>2012-2013 Appropriations</th>
<th>Percent Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>TEXAS Grant</td>
<td>$622.0 million</td>
<td>$559.7 million</td>
<td>-10.0%</td>
</tr>
<tr>
<td>Top 10 Percent Scholarship</td>
<td>$51.5 million</td>
<td>$39.6 million</td>
<td>-23.1%</td>
</tr>
<tr>
<td>B-On-time Loan</td>
<td>$157.1 million</td>
<td>$112.0 million</td>
<td>-28.7%</td>
</tr>
<tr>
<td>Texas College Work Study</td>
<td>$15.0 million</td>
<td>$15.0 million</td>
<td>0.0%</td>
</tr>
<tr>
<td>Texas Education Opportunity Grant</td>
<td>$24.0 million</td>
<td>$24.0 million</td>
<td>0.0%</td>
</tr>
<tr>
<td>Texas Equalization Grant</td>
<td>$211.8 million</td>
<td>$168.8 million</td>
<td>-20.3%</td>
</tr>
</tbody>
</table>

The TEXAS grant program was established in 1999 to provide financial aid to high school graduates. The amount of the grant in the current model is based on the average cost of attendance to a four-year institution and a two-year institution, a factor that influences the overall cost of the program over time as tuition and fees increase. Students who demonstrate a financial need are given priority in obtaining this grant. S.B. 28 (relating to eligibility for a TEXAS grant and to administration of the TEXAS grant program), 82nd Legislature, Regular Session, 2011, requires that THECB implement a new priority model to target limited TEXAS grant funds to students who meet certain merit criteria and who demonstrate the most need. According to THECB, the priority model will be implemented beginning with the 2013-2014 academic year. Students must also meet basic academic standards in order to renew the grant for subsequent academic years.

THECB has recommended that legislators provide TEXAS grants that cover only tuition, fees, and books for many economically disadvantaged students rather than target awards to cover the full cost of attendance for fewer students. Other recommendations include capping TEXAS grant eligibility to eight semesters, requiring full-time enrollment of 12 semester credit hours each semester, and eliminating the requirements for an institution of higher education to make up the difference between the TEXAS grant and the cost of attendance. THECB has requested $580.8 million for TEXAS grants during the 2014-2015 academic year and estimates that implementing the proposed recommendations will allow 133,500 students to be served compared to the 72,300 students served in the current biennium.

The B-On-time loan program makes available zero-interest loans to students who graduate in four years with a cumulative grade point average of 3.0 or higher. Many
students who currently receive B-On-time loans are students who meet the criteria for TEXAS grants but did not receive a grant due to funding shortfalls. In order to be eligible to receive a loan, the student must be eligible for federal financial assistance, be enrolled full-time at a public or private university, be a Texas resident, have graduated from high school under the recommended high school program, or have earned an associate's degree no earlier than May 1, 2005.

B-On-time loans were disbursed to 1,287 students in fiscal year 2011. There have been reports of confusion about the program from students regarding whether the award is a grant or a loan. Proponents of the program applaud the effort to encourage retention and completion, reduce the possibility of students taking courses not required by their degree plan, and incentivize students to complete a degree in the prescribed amount of time. However, THECB would like to restructure the program into a rebate program in order to improve the effectiveness and reach of the funds.

The 83rd Legislature may consider adjusting state financial aid programs in order to increase access to higher education to economically disadvantaged students and to encourage students to complete a degree on time.

**Governance**

Each of the state's 10 public university systems or institutions of higher education have a board of regents composed of nine voting members appointed by the governor and confirmed by the senate for six-year terms. They are responsible for providing policy direction, exercising the legal responsibilities of a fiduciary in the management of funds, and adopting a policy to enhance transfer of students from nearby public junior colleges. The boards of regents are also in charge of appointing the presidents of the institutions and the chancellors, if a board governs a system, establishing goals consistent with the institution's mission statement, and setting admissions standards.

Section 51.352, Education Code, provides that each board of regents is:

- expected to preserve institutional independence and to defend its right to manage its own affairs through its chosen administrators and employees;
- required to enhance the public image of each institution under its governance;
- required to interpret the community to the campus and interpret the campus to the community;
- required to nurture each institution under its governance to the end that each institution achieves its full potential within its role and mission; and
- required to insist on clarity of focus and mission of each institution under its governance.
Each board of regents is joined by a nonvoting student regent who is appointed by the governor for a one-year term. The student regent must maintain a minimum 2.5 grade point average during his or her term as regent. Past legislatures have considered giving the student regents voting power, and some have suggested during the interim that the legislature do so.

Lieutenant Governor David Dewhurst and Speaker of the House of Representatives Joe Straus created the Joint Oversight Committee on Higher Education Governance, Excellence, and Transparency (committee) to discuss best practices in transparent policy development and implementation by boards of regents. The committee examined a number of issues relating to governing boards and administrators at university systems and institutions of higher education and received a number of recommendations for improvement.

The committee addressed the way in which boards are appointed and confirmed and some recommended that certain criteria be required to deem a candidate eligible for appointment. Criteria used by other states include limiting alumni members, requiring that certain geographical locations be represented, requiring political party diversity, and requiring certain educational experience and knowledge. Committee members also considered varying recommendations relating to increasing the size of boards, increasing the length of a member's term, and implementing different board membership requirements for flagship universities.

Some committee members expressed concern about possible political interference in policy decisions made by boards. These discussions often focused on certain higher education reforms recommended by think tanks and whether regents were pressured to implement those recommendations at their institutions. In light of these discussions, committee members examined the relationship between university presidents and boards of regents and how to enhance communication and information sharing between the two offices.

Section 61.084, Education Code, requires each regent to attend at least one training program within the first two years of service on the board. H.B. 1206 (relating to training for members of governing boards of public junior college districts), 82nd Legislature, Regular Session, 2011, additionally requires that the training program include the following topics: best practices in campus financial management, financial ratio analysis, and case studies using financial indicators. Committee members received many recommendations that regents would benefit from participating in ongoing education during their terms.

The 83rd Legislature may consider legislation that modifies the appointment and membership of institutional boards of regents, that further defines the role of a regent,
that provides student regent voting power, or that requires that members undergo additional training during their terms.

**Changes at Health-Related Institutions**

Some institutions of higher education and university systems have been examining the possibility of merging their health-related institution with a general academic teaching institution. Stand-alone health-related institutions, although the standard in Texas, are comparatively rare in other states. University officials believe that merging these institutions may provide more opportunities for collaboration, qualify the institutions for more federal research funding, and attract quality faculty. Critics of such mergers question whether cost savings can be realized and are hesitant to modify current funding formulas and state research grant programs. Some programs at health-related institutions, such as nursing and pharmacy programs, are currently funded at levels about 25 percent higher than similar programs at general academic teaching institutions. If such mergers are to occur, current statutes that prescribe how institutions of higher education are funded will need to be modified.

There has also been interest in creating new health-related institutions in Texas to address health professionals shortages and to provide greater access to health care in certain regions of the state. H.B. 2908 (relating to providing graduate medical education positions for Texas medical school graduates), 82nd Legislature, Regular Session, 2011, required the Texas Higher Education Coordinating Board to assess whether there are enough graduate medical education opportunities in the state for medical school graduates. Some opponents of the effort to establish new medical schools suggest that there will not be enough dedicated residency slots for potential students. There is also concern that the state lacks the resources necessary to support additional medical schools, which are much more costly than general academic teaching institutions.

The 83rd Legislature may consider revising higher education funding formulas for merged institutions and may consider supporting efforts to open new medical schools in certain regions of the state.

**In-State Tuition for Undocumented Students**

A portion of Senate Interim Charge 1 to the Senate Committee on Higher Education requested recommendations relating to current state policy that allows certain undocumented youth to qualify for in-state tuition at public institutions of higher education, and, consequently, gives them access to state financial aid programs. H.B. 1403 (relating to the eligibility of certain persons to qualify as residents of this state for
purposes of higher education tuition or to pay tuition at the rate provided to residents of this state), 77th Legislature, Regular Session, 2001, removed federal immigration status as a factor for determining eligibility to pay in-state tuition at Texas public colleges and universities for a student who graduates from a Texas high school or has attended school and received a high school equivalency certificate (commonly called a GED certificate), and who meets the minimum residency, academic, and registration criteria. Texas was one of the first states in the nation to allow undocumented residents to qualify for in-state tuition.

For the purposes of establishing residency for in-state tuition, Section 54.053(3)(B) of the Education Code requires a person who is not a citizen or a permanent resident of the United States to submit an affidavit stating that the person will apply to become a permanent resident of the United States as soon as the person becomes eligible to apply. The Texas Higher Education Coordinating Board (THECB) estimates that 16,476 students filed affidavits in fiscal year (FY) 2010, including 4,403 students at public universities; 12,028 students at public community, technical, and state colleges; and 45 students at public health-related institutions. THECB estimates that 9,984 students utilized financial aid programs in FY 2010, including 2,681 students using state financial aid programs, 4,871 students using institutional financial aid programs, and 2,432 students using other financial aid programs. Based on those figures, THECB estimates that $12.1 million of formula funding from general revenue was appropriated to institutions in FY 2010 for undocumented students and approximately $9.53 million in state financial aid funds was distributed to undocumented students.

Critics of the policy question whether the expense to Texas taxpayers is justified given that many Texas residents are unable to obtain state financial aid. They also point out that these students are not eligible for federal Pell grants. Proponents of the policy state that it enables undocumented youth to become productive members of society, thus reducing their need for state services later in life.

The 83rd Legislature may consider whether to continue the tuition exemption for undocumented students to qualify for in-state tuition and state financial aid.

**Returned Value Funding Model**

Rider 42 from H.B. 1 (General Appropriations Bill), 82nd Legislature, Regular Session, 2011, requires the Texas State Technical College (TSTC) to work with certain state agencies to develop a new administration and instruction (A&I) funding formula to be implemented for the 2014-2015 biennium for TSTC. The main focus of TSTC is on economic development through education; therefore, TSTC officials state that transitioning to a results-based funding model is uniquely appropriate.
TSTC worked with the Texas Higher Education Coordinating Board, the office of the comptroller of public accounts, the Ray Marshall Center at The University of Texas at Austin, and the Legislative Budget Board to develop the proposed returned value funding model. The current A&I funding formula is a cost recovery system that bases funding on contact hours and enrollment. In contrast, the returned value funding model bases A&I funding on whether a student is hired and earns more than the minimum wage. The students' earnings and the imputed economic value that those earnings will have on the Texas economy plus subsequent sales tax revenues determine the amount of funding that TSTC will receive. Programs at TSTC will need to be customized to fit the needs of students and employers and to respond quickly to industry changes. The proposed model will be presented to the legislature for approval with a tentative start date in the 2013-2014 academic year.

The 83rd Legislature may consider approving new results-based A&I funding at TSTC.

**Top 10 Percent Rule**

In 1997, legislation was enacted that guaranteed high school students graduating in the top 10 percent of their class admission to the public university of their choice. This policy was put in place after a federal appeals court decision in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), made the use of affirmative action in Texas college admissions illegal.

By the fall of 2007, 81 percent of freshman enrolled at The University of Texas at Austin (UT-Austin) were admitted through the top 10 percent rule. As a result, S.B. 175 (relating to the automatic admission of undergraduate students to certain general academic teaching institutions and to scholarship and other programs to facilitate enrollment at institutions of higher education), 81st Legislature, Regular Session, 2009, was enacted to cap the percentage of freshman students automatically enrolled under the top 10 percent rule at UT-Austin at 75 percent.

From 1998 to 2011, the number of Hispanic undergraduates at UT-Austin rose by 74.1 percent and the number of African American undergraduates increased by 63.2 percent. Similarly, Hispanic and African American enrollment at Texas A&M University (TAMU) was at its highest level in university history in the fall of 2011.

Critics of the top 10 percent rule argue that a majority of the freshman admitted to UT-Austin and TAMU are automatically enrolled, leaving little room for others, including out-of-state students and students who are most likely to perform well at the state's flagship universities. Detractors have also argued that the system is unfair to well-
prepared students in the top 11-15 percent of their classes at top high schools who are less likely to gain admission to UT-Austin or TAMU, forcing many of these students to seek admission to colleges and universities in other states. Others have suggested that some students admitted under the law would not otherwise have been admitted to certain select universities.

Despite apparent advances in minority enrollment, some have suggested that the law has not fulfilled its initial purpose to increase diversity. A 2012 study by researchers at Princeton University, reported in *Race and Social Problems*, suggests that Hispanic students are more disadvantaged relative to white students under the top 10 percent admission regime at both UT-Austin and TAMU because of changes in the overall demographic configuration in the state.

Defenders of the top 10 percent system argue that it has promoted equity and racial and ethnic diversity in college admissions and encouraged academic performance in high schools. Other supporters argue that the program enables students from rural areas to attend the state's flagship institutions, providing much needed geographical diversity.

The 83rd Legislature may consider modifying the automatic admissions program.

**Transfer Systems**

In light of significant increases in the cost of higher education coupled with increasingly constrained state resources, legislators are looking for ways to improve access to higher education, provide more affordable options to all students, and ensure quality at Texas institutions of higher education. Plans to reduce time-to-degree by encouraging students to earn college credit while in high school, or take their core curriculum courses at a community college and then transfer to a four-year university for advanced coursework have the potential to benefit all stakeholders (i.e., students, institutions, and taxpayers) by decreasing the total resources spent per student in formula funding appropriations and financial aid awards. Students who complete a degree in a shorter amount of time may accrue less student debt, enter the workforce sooner, demonstrate self-discipline to potential employers, and reduce the need and associated costs for developmental education.

In order to streamline the transfer process between two-year institutions and four-year institutions, multiple articulation agreements have been developed that specify which courses will be transferable for certain degree plans. Further simplifying the transfer process also may encourage more students to continue higher education beyond an associate's degree or certificate. Successful existing programs use a variety of articulation agreements, organize faculty on vertical teams to align curricula between
two-year institutions and four-year institutions, offer the option of dual-enrollment, incorporate comprehensive advising services at both institutions, and provide online degree audit services for students.

Some legislators have expressed an interest in establishing statewide articulation agreements that could align degree plans between two-year and four-year institutions, thereby encouraging more community and technical college students to pursue four-year degrees. Critics have expressed concern that enforcing participation in statewide articulation agreements may limit academic freedom and have the potential to erode the rigor of four-year programs.

The introduced version of H.B. 3025 (relating to measures to facilitate the timely completion of degrees by students of public institutions of higher education), 82nd Legislature, Regular Session, 2011, would have required THECB to develop statewide transfer compacts, and although those provisions were not included in the enrolled version of the bill, THECB is in the process of making available the framework for 12 statewide voluntary transfer compacts in certain workforce shortage fields including mechanical engineering, industrial engineering, civil engineering, electrical engineering, biomedical engineering, chemical engineering, biology, chemistry, mathematics, business, computer information systems, and management information systems.

Stakeholders have identified other barriers for transfer students, such as their ineligibility to receive TEXAS grants, the lack of a unified statewide transcript-sharing system, the application of certain provisions targeted at traditional students that cap excessive credit hours to incentivize time-to-degree that unintentionally harm transfer students, and the continued use of certain accountability metrics that do not incentivize four-year institutions to encourage transfer students to apply or complete a degree.

The 83rd Legislature may consider legislation that further streamlines the transfer process.
Accountability

The legislature made sweeping reforms to the public school accountability system when it enacted S.B. 1031 (relating to public school accountability and the administration of certain assessment instruments in public schools; and providing a criminal penalty), 80th Legislature, Regular Session, 2007; and H.B. 3 (relating to public school accountability, curriculum, and promotion requirements), 81st Legislature, Regular Session, 2009. The legislation required the Texas Education Agency (TEA) to develop and implement new assessments that focus on aligning standards with postsecondary readiness and increasing rigor in order to make students more competitive nationally and internationally.

The State of Texas Assessments of Academic Readiness (STAAR) include comprehensive examinations administered in grades three through eight and end-of-course (EOC) examinations administered in high school. The EOCs replaced four Texas Assessment of Knowledge and Skills (TAKS) comprehensive exit-level examinations previously administered to students in secondary schools. Students under the minimum graduation program are required to take 11 EOCs and students under the recommended graduation plan and distinguished achievement graduation plan are required to take 15 EOCs. During this transition period, students are continuing to take TAKS examinations and under the current law, the Class of 2013 and Class of 2014 will be required to pass the eleventh grade TAKS test in order to graduate.

The number of questions on STAAR that students must answer correctly in order to pass will increase at intervals until 2016, to give students and teachers time to adjust to the increased rigor. Results from spring 2012 are as follows: 87 percent of students who took the Biology EOC passed, although only 41 percent would have passed under the final passing standards; 83 percent of students who took the Algebra I EOC passed, although only 39 percent would have passed under the final passing standards; 81 percent of students who took the World Geography EOC passed, although only 40 percent would have passed under the final passing standards; 68 percent of students who took the English I reading EOC passed, although only 46 percent would have passed under the final passing standards; and 55 percent of students who took the English I writing EOC passed, although only 34 percent would have passed under the final passing standards. Students who do not pass or who want to improve their score will have three opportunities each school year to retake the tests.

H.B. 3 required that performance standards be aligned from grade three through high school; therefore, scaled STAAR results from grades three through eight will be available

Senate Research Center   56
in January 2013 after those standards are put in place. Assessments will have two cut-off scores that will indicate whether a student demonstrated unsatisfactory academic performance (Level I), satisfactory academic performance (Level II), or advanced academic performance (Level III). TEA continues to work on the development of academic achievement distinction designations for campuses and districts based on student performance on STAAR. TEA anticipates issuing the first designations on August 8, 2013.

The most controversial aspect of EOCs has been the statutory requirement that student performance on the examination account for 15 percent of the course grade. Legislators did not specify how the grade should apply to course grades, so many districts plan to include the calculation for course grades but not for the purposes of calculating cumulative grade point averages or class rank, which could affect higher education admissions. Former commissioner of education Robert Scott stated that he lacked the authority to issue a uniform grading policy for all school districts. Because the EOCs were administered for the first time during the 2011-2012 school year, Scott deferred implementation of the 15 percent grade requirement for one school year. Many superintendents and parents have testified that they would prefer that the grade-related requirement be removed from EOC requirements. Currently, nine other states base a portion of a student's course or final grade, ranging from 10 to 30 percent, on EOC performance.

Critics of the new assessment and accountability system are wary of the increased number of standardized examinations that students must now take. Additionally, they find that the high-stakes nature of the tests have increased now that student performance affects graduation requirements and course grades. More than 84 percent of Texas school boards have passed a resolution that calls for the scaling back of standardized testing. In particular, they state that rigor should not have been implemented at a time when significant cuts were made to district budgets. Commissioner of Education Michael Williams is reviewing the matter.

The 83rd Legislature may consider amending certain provisions relating to the public school accountability system.

Charter Schools

Minnesota, in 1991, was the first state to enact laws authorizing the creation of charter schools. Since that time, the demand for and popularity of charter schools has risen in the United States. During the 2011-2012 school year, 5,611 charter schools served roughly 2.1 million students in 41 states and Washington, D.C.
State laws relating to charter schools have been continuously amended since initially being enacted during the 1990s. Most often, these amendments relate to a limit on the number of charter schools allowed to operate in a state, the entities responsible for authorizing a charter school, and the strengthening of accountability measures. New federal grant opportunities for charter schools have spurred some states to raise charter school caps and to provide charter schools with more autonomy in order to comply with federal requirements.

The Texas Education Code sets forth the purposes of charter schools as improving student learning, increasing the choice of learning opportunities within the public school system, creating professional opportunities that will attract new teachers to the public school system, establishing a new form of accountability for public schools, and encouraging different and innovative learning methods.

Four types of charter schools may operate in the State of Texas:

- **Home-Rule District Charter:** This charter has the powers and entitlements granted to school districts and school district boards of trustees, including taxing authority. Home-rule charter schools must be approved by a majority vote in an election in which at least 25 percent of a school district’s registered voters participate. At this time, no Texas district has sought home-rule conversion.

- **Campus Charter:** Independent school districts may operate individual charter schools in a variety of ways, including converting existing campuses to charter schools if a majority of the school’s teachers and the parents of a majority of students attending the school sign a petition requesting the conversion; opening a new charter campus operated either by district staff or under contract with an outside source; and operating a campus program charter within an existing traditional public school campus. Authorization of campus charter schools is governed by the local school district rather than the state, but a campus charter school is subject to closure if state and federal requirements are not met.

- **Open-Enrollment Charter:** This category is comprised of new public schools that are privately managed. These schools receive state funding and are eligible for certain federal funding, such as special education and Title I funding for economically disadvantaged students. Currently, a maximum of 215 charter school contracts may be approved by the Texas Education Agency.

- **College, University, or Junior College Charter:** A college, university, or junior college may operate an open-enrollment charter school. This type of charter contract is not counted under the cap on the number of allowed charter school contracts.
Three bills significantly impact the operation and regulation of charter schools in Texas. S.B. 1, 74th Legislature, Regular Session, 1995, authorized the creation of charter schools in Texas, limiting the maximum number of allowed open-enrollment charters to 20. S.B. 1653, 75th Legislature, Regular Session, 1997, expanded the cap on open-enrollment charter schools to 120. H.B. 6, 77th Legislature, Regular Session, 2001, increased the cap to 215 and imposed additional regulations on charter schools in reaction to reports regarding poor-performing charter schools. Efforts have been made to identify ways in which chronically low-performing charter schools can be closed while making it easier for high-performing charter schools to be replicated. During the 2011-2012 school year, Texas had 570 charter school campuses serving 190,726 students, 84.8 percent of whom are ethnic minorities and 72.4 percent of whom are economically disadvantaged. Some charter schools serve specific populations; for example, 16 percent of charter schools are targeted toward dropout recovery, and 28 percent of charter schools focus on college preparation.

Advocates for charter schools have recommended eliminating the cap on the number of open-enrollment charter school contracts, pointing to long waiting lists (more than 70,000 Texas students according to some sources) as demonstrating a demand for more charter schools. Twenty states have partially or entirely lifted their charter school cap since June 2009, in order to be competitive in garnering awards from the Race to the Top federal grant program.

Charter schools do not currently receive direct facility funding support from the state. S.B. 1 (relating to certain state fiscal matters and providing penalties), 82nd Legislature, First Called Session, 2011, allowed charter schools to be included in the permanent school fund bond guarantee. Although this move was applauded by stakeholders, it is pending approval by the Internal Revenue Service and has not yet been implemented.

Charter schools are provided much more latitude than traditional public schools insofar as requirements and accountability measures and are funded at a lower rate than traditional public schools. Due to the reduced oversight and accountability, many poor-performing charter schools have evaded sanction or closure since being initially granted a charter contract. A 2009 study found that charter school students have poorer academic performance than comparison students. To address this problem, some have suggested that new charter schools be issued a three-year provisional license and only be awarded a charter contract at the end of that period if the school demonstrates adequate levels of student achievement. In response to the issue of poor-performing charter schools, some states have established independent authorization boards to manage and evaluate charter schools. In states that have such boards, poor-performing charter schools are closed relatively quickly. In contrast, some high-performing charter schools have encountered barriers when attempting to replicate campuses, leading some to suggest that a more streamlined replication process is necessary.
The 83rd Legislature may consider amending provisions of existing law relating to charter schools.

**Dropout Prevention Programs**

When the 68th Legislature implemented significant reforms to education to address issues related to social promotion, graduation requirements, and school attendance, an estimated one-third of students were dropping out of Texas schools before graduation. Since that time, policies have been enacted to require districts to report completion rates of students and certain subpopulations and to implement programs that target students at risk of dropping out. Based on the most recent data available from the Texas Education Agency, the longitudinal dropout rate for the Class of 2011 across the state was 6.8 percent. Certain subgroups of students fared better than others: the dropout rate was 7.7 percent among economically disadvantaged students, 10.9 percent among African American students, 1.4 percent among Asian students, 8.7 percent among Hispanic students, and 3.4 percent among white students.

There are a number of programs that are in place to provide additional instruction and services to students at risk of dropping out of school. The largest appropriation made for this purpose is through the compensatory education allotment, which totaled $6.5 billion in the 2012-2013 biennium. This allotment entitles a district to the basic allotment multiplied by 0.2 for economically disadvantaged students or students living in a residential placement facility who do not have a disability, and multiplied by 2.41 for students who are pregnant. Other appropriations for dropout prevention are made for programs that provide personalized learning environments ($9.5 million from the state and $6.8 million from the federal government in the 2012-2013 biennium), programs that mentor at-risk students ($25.5 million from the state and $9.7 million from the federal government), programs that provide supplemental academic support ($76.0 million from the state and $236.6 million from the federal government), the high school allotment ($693.5 million from the state), and the Texas Title I Priority Schools grant program ($100.9 million from the federal government).

Although those appropriations exceed $7.2 billion in total funding for the 2012-2013 biennium, they represent a significant reduction from the previous biennium. For example, the Student Success Initiative was cut from $303 million in the 2010-2011 biennium to $41 million in the 2012-2013 biennium. Funding has shifted from targeted district grants to statewide curriculum content in order to take advantage of economy of scale while still providing services for students across the state. The Texas Students Using Curriculum Content to Ensure Sustained Success (SUCCESS), which is a licensed computer-adaptive program for students in grades three through eight who are lagging in
reading and mathematics, is one such service. SUCCESS provides online tutoring by certified teachers at no cost to the district.

An effective method for keeping students in school is ensuring that coursework is relevant. Some districts have accomplished this by encouraging students to obtain college credit while in high school, subsequently take courses at a community college, and then transfer to a four-year university to complete a degree. Some districts, such as Pharr-San Juan-Alamo Independent School District and Houston Independent School District, have significantly improved schools that previously had high dropout rates by implementing innovative programs to meet the specific needs of students. Lawmakers have expressed interest in finding a way to replicate those methods at other low-performing schools and to incentivize schools to encourage high school completion.

The 83rd Legislature may consider amending provisions and funding for dropout prevention programs that provide supplemental instruction and services to at-risk students.

Extended Learning Time

Texas schools are required to provide at least 180 days of instruction per year with each day totaling at least seven hours. The length of a school year varies in the United States from 160 days in Colorado to 186 days in Kansas, and is largely based on tradition rather than any specific policy. The required school day length in Texas is one of the longest in the country. The Education Commission of the States estimates that extending the school year under the current model in Texas would cost $72 million per day. Instead of an across-the-board extension of the school year, some stakeholders suggest targeting extended time to at-risk students; providing non-educational programs, such as after-school, summer school, and weekend programming; and staggering teaching schedules to extend the school day without increasing costs.

In Texas, 15 percent of students participate in after-school programs and 26 percent are responsible for taking care of themselves after school. Studies have found that participation in quality after-school programs yields better school attendance, better grades, improved performance on standardized examinations, and fewer disciplinary incidents. Many programs, however, find it difficult to provide affordable extended time programming because of the costs associated with providing transportation.

Some extended time programs are financed by businesses, such as Dell and J.C. Penney, that see a connection between quality after-school care and a productive workforce. Public schools have also been able to secure grants from the business community, such as the Apollo 20 program in the Houston Independent School District that extends the
school day for certain students. Policymakers have expressed interest in finding ways to incentivize more public-private partnerships to provide quality extended learning time programming for students. After-school program providers have recommended that the legislature establish a task force to examine current extended learning time programs provided in Texas, identify gaps in services to families, and determine how to best target funding for optimal student well-being and achievement.

The 83rd Legislature may consider legislation that relates to extended learning time.

**Public School Management**

Some state requirements for public education may have the potential to reap benefits but also serve as cost drivers for districts. In the present fiscal climate, lawmakers may examine ways to grant school districts flexibility to provide adequate educational services by freeing funds that are currently dedicated to meeting state mandates. School administrators are relying more on regional education service centers (ESC) to provide cost relief in obtaining necessary goods and services.

Twenty ESCs provide a variety of services to public school districts and charter schools: professional development, curriculum audits, technology services, standardized examination training, fiscal management services, shared service cooperatives, and federal funds management. ESCs allow districts to obtain services at a fraction of the cost of acquiring those services individually. ESC funding comes from Texas Education Agency grants, state formula funding, local funds usually in the form of payment for specific services, and federal funding, typically in the form of grants for specific programs. Formula funding was reduced from $42.8 million in the 2010-2011 biennium to $25.0 million in the 2012-2013 biennium and includes three components: base funding, a geographic weight, and a small schools weight. Formulas for each component were shifted from fiscal year 2011 to fiscal year 2012 as follows: from 70 percent to 20 percent for base funding, from 15 percent to 40 percent for the geographic weight, and from 15 percent to 40 percent for the small schools weight.

Shared service cooperatives are crucial for rural districts in providing both special education services and advanced courses. For example, several adjoining rural districts might enter into a shared service agreement to share the time of a full-time reading specialist for their students rather than each district hiring a reading specialist. In that situation, the ESC will help recruit a teacher and negotiate the agreement between the interested districts. ESCs across the state also offer districts the opportunity take advantage of reduced costs from economy of scale through large purchasing cooperatives for certain items.
The 83rd Legislature may consider legislation that further relieves school districts of costly mandates and that incentivizes more opportunities for shared service cooperatives through ESCs.

**School Choice**

"School choice" refers to public education dollars following a student to the school of his or her choice, be it public or private. There are currently 39 voucher and tax credit programs in 29 states and Washington, D.C. Roughly 212,000 American students are using those programs to attend nonpublic schools, predominantly in Arizona, Florida, and Pennsylvania. The largest program, Florida's McKay Scholarship, specifically targets students who have special needs and five percent of eligible students currently take advantage of that program. The Florida Legislature also enacted the Opportunity Scholarship program targeting students at failing public schools, but that program was later declared unconstitutional. There are many programs in other states available only to certain student populations, such as students with special needs or from low-income households. A few of these programs require students to have attended a public school in the previous year to be eligible for participation.

H.B. 33 (relating to providing for efficient government resource allocation), 82nd Legislature, First Called Session, 2011, would have established a taxpayer savings grant program to provide to parents a grant in the amount of 60 percent of the maintenance and operations cost that would have been appropriated to a public school for their student. The grant could have been used at a private school of their choosing, leaving the balance to be paid by the student's family. It was estimated that the program would save the state $2 billion in the 2012-2013 biennium.

Opponents of this type of grant program express concern that students from low-income families would be unable to participate because they would not be able to afford to pay the balance between the amount of the grant and the amount of private school tuition. Additionally, opponents argue that there are limited private school options in rural areas of the state, which makes school choice available only to those who can afford it and who live in urban or suburban areas. Some critics have expressed concern about the lack of accountability and the fact that private schools are not required to hire certified teachers. Proponents of school choice counter that accountability ultimately belongs to parents, and they are free to move their child to any school of their choosing under the plan if they are unhappy with the results.

The 83rd Legislature may consider legislation that will allow certain students to attend a private school using public funds.
School Discipline

Violations

Teachers and school administrators have several options for disciplining students who misbehave on a campus. Student actions that are in violation of laws are considered "mandatory violations," resulting in removal from the classroom to either a disciplinary alternative education program (DAEP) or to a juvenile justice alternative education program (JJAEP). All school districts in Texas are required to have a DAEP and counties with a population over 125,000 are required to have a JJAEP. Districts do not receive additional funding for DAEPs and must maintain a student-to-teacher ratio of 15:1, which can be a significant cost driver.

According to the most recent data from the Legislative Budget Board, districts spent an estimated $232 million statewide on DAEPs during the 2008-2009 school year. The Texas Juvenile Justice Department reported that there were 26 JJAEPs in operation in Texas during the 2010-2011 school year, encompassing 277 school districts at a cost of $31 million. JJAEPs receive roughly 3,900 referrals per school year, 51 percent of which were a result of mandatory violations and 49 percent of which were a result of discretionary violations.

"Discretionary violations" are behaviors that violate a school's code of conduct policy and can result in removal from the classroom to in-school suspension, out-of-school suspension, a DAEP, or a JJAEP. When Chapter 37 (Discipline; Law and Order), Education Code, was amended by the 74th Legislature, discretionary violation provisions were included to ensure that districts had local control in managing discipline on campuses. However, some recent reports show that there is significant variance among districts in how they discipline students.

The Council of State Governments Justice Center reported that only 2.6 percent of disciplinary actions were the result of mandatory violations, and revealed that, after controlling for every variable (e.g., socioeconomic status, type of school, et cetera), African American males were overrepresented in disciplinary incidents. The report also highlighted that one-fourth of students had 11 or more discretionary discipline actions, leading the authors to conclude that the current disciplinary process does not effectively prevent future violations. Although students with disabilities only accounted for 13.2 percent of total study participants, 75 percent of those students were involved in at least one discretionary violation. Districts are required to submit data related to violations to the Texas Education Agency (TEA), but no mechanism is in place to make that data meaningful so that a district can determine whether it has an excessive number of violations compared to other districts or whether there is an overrepresentation of certain minorities involved in disciplinary actions. Additionally, TEA does not have regulatory
authority related to disciplinary practices; the agency is only responsible for monitoring data-reporting as it relates to discipline.

_Citations_

In addition to the tools stated above that are available to districts in disciplining students, some districts also employ campus law enforcement officers who may issue citations to students in certain situations. Some lawmakers are concerned with the practice of issuing citations for violations of a campus code of conduct. Anecdotal reports of tickets being issued for low-level misbehavior include instances where students were ticketed for sleeping in class, chewing gum, and wearing strong perfume. Because TEA does not require districts to report data on ticketing practices, no statewide information is currently available. Texas Appleseed sampled 42 school districts in the state to further examine this issue. Texas Appleseed found that there is significant variance among districts in how they use and fund law enforcement on campus. Similar to information about disciplinary practices, data show that African American students are also overrepresented in the number of students who are ticketed and arrested.

Some lawmakers are concerned with the criminalization of school discipline and truancy. State law mandates that truancy charges be filed after a student has 10 unexcused absences. In some cases, citations are also written for parents of those students, which result in those families being responsible for fines and court costs. If a student does not respond to citations issued in school, then warrants may be issued for their arrest at 17 years of age. Some stakeholders have recommended that data sharing between agencies be encouraged to consolidate case management services and to identify troubling issues before the criminal justice system becomes involved.

According to a Texas Appleseed report, school districts spent more than $327 million on security and monitoring services during the 2010-2011 school year. Some districts employ law enforcement personnel to operate on campuses, some contract with municipalities for law enforcement support, and some do not have law enforcement on campuses at all. Districts differ also in whether they request that officers issue citations for violations of a campus code of conduct. Representatives from the Texas Municipal Police Association testified at a joint hearing of the Senate Committee on Criminal Justice and Senate Committee of Education that they would prefer that law enforcement focus on ensuring public safety and maintaining law and order, rather than enforcing school discipline policies. The Texas Judicial Council's juvenile justice committee has reviewed ticketing practices at schools and recommended that the following be addressed by the 83rd Legislature:

- Authorize local governments to implement "deferred prosecution" measures in Class C misdemeanors to decrease the number of local filings from schools;
ISSUES FACING THE 83rd TEXAS LEGISLATURE

- Ensure that local courts are the last and not the first step in school discipline; for example, to amend provisions of the Penal Code to create a rebuttable presumption that a child younger than age 15 is presumed to not have criminal intent to commit a Class C misdemeanor with the exception of traffic offenses;
- Amend offenses relating to disruption of class, disruption of transportation, and disorderly conduct so that age, rather than grade level, is a prima facie element of the offense; and
- Amend existing criminal law and procedures to increase parity between "criminal juvenile justice in local trial courts" and "civil juvenile justice in juvenile court and juvenile probation."

The 83rd Legislature may consider legislation that amends school disciplinary practices, the authority of law enforcement on school campuses, and TEA's regulatory authority as it relates to school discipline.

Teacher and Principal Quality

Numerous studies conducted in recent decades to identify the educational ingredient vital to raising student achievement scores have pointed repeatedly to one solution: teacher quality. However, clear definition of this attribute has continued to elude researchers and policymakers. Most salary schedules for teachers are based on credentials, experience, and teacher test scores, although none of these characteristics significantly correlate with teacher skill or student achievement. Researchers have noted, however, that certain educator preparation programs (EPP) consistently produce quality teachers. With the goal to improve teacher quality in Texas, the state has spearheaded efforts to evaluate EPPs to ensure that they are adequately preparing teachers for the classroom.

S.B. 174 (relating to accountability of institutions of higher education, including educator preparation programs, and online institutional résumés for public institutions of higher education), 81st Legislature, Regular Session, 2009, overhauled the accountability of EPPs by implementing new standards that increased the minimum passing rates on the state teaching certification examination, acquired feedback from school administrators regarding preparedness of first-year teachers, ensured quality EPP field supervision of new teachers, and tied student performance to EPP evaluation. The last item spurred a partnership between the Texas Education Agency (TEA) and the LBJ School of Public Affairs at The University of Texas at Austin to create the Project on Educator Effectiveness and Quality, a pilot program to study the optimal way to use student performance as a measure of EPP quality. Rather than measuring the effectiveness of an individual teacher, the metric will reflect the aggregate achievement of all students taught by an EPP's beginning teachers. In its initial stages, the metric is based on a principal's observations and assessments of the teacher's influence on student achievement and the...
growth in student achievement based on students' performance on standardized examinations.

Many existing methods that target teacher quality include new teacher induction and mentoring programs. The teaching profession often experiences high turnover rates, chronic shortages of mathematics and science teachers, and the tendency for the highest-performing students at institutions of higher education to not enter the teaching profession. Many school districts implement new teacher induction programs and state law requires that new teachers receive mentoring; however, some stakeholders have suggested that a statewide comprehensive new teacher induction program is needed to ensure that new teachers learn skills for practical application in the classroom and are encouraged to stay in the teaching profession. S.B. 570 (relating to beginning teacher induction and mentoring programs for public schools), 82nd Legislature, Regular Session, 2011, would have required TEA to develop a district-level induction program that school districts could adopt for new teachers and would have set forth requirements of any induction program adopted by a district. Although the bill was passed by the Senate, it died in a House committee near the end of the legislative session.

Currently, 32 percent of beginning teachers in Texas leave the profession within five years. Evaluation and retention of teachers are integral methods of fostering teacher quality. The Professional Development and Appraisal System (PDAS) is the instrument provided by TEA for school districts to evaluate teachers using survey methods and observations. Critics of PDAS cite as weaknesses the lack of performance feedback and lack of adequate professional development provided once issues are discovered. To address those concerns, TEA is currently conducting pilot programs to test possible changes to PDAS to make it a more effective tool for school administrators.

Principal quality also has a significant impact on attracting top-quality teachers to a school and subsequently retaining those teachers. There are currently 70 principal preparation programs in Texas, 34 of which are at public universities. The state annually invests about $44.4 million toward the cost of leadership preparation for principals, producing an average of 1,688 certified principals each year. The turnover rate for principals within the first three years is about 52 percent, as many choose to change jobs, leave the profession, or return to teaching. Some have expressed concern that TEA has no statutory authority to sanction or close poor-performing principal preparation programs. In an effort to improve leadership education for educators in Texas, the 82nd Legislature enacted S.B. 1383 (relating to an appraisal and professional development system for public school principals) during the Regular Session. TEA has partnered with the Alliance to Reform Education Leadership to the create a three-year pilot program to study and make recommendations for a comprehensive appraisal and professional development system for principals.
The 83rd Legislature may consider legislation that will target teacher quality, including provisions relating to teacher training, a statewide new teacher induction program, teacher evaluation, and retention or dismissal of teachers. Additionally, the 83rd Legislature may focus on ways to better prepare and retain quality principals at schools.

**Technology**

The classroom has been evolving in recent years to keep pace with rapidly changing technology as the price of technological devices has decreased and student access to the Internet has increased. Providing online courses and expanding the availability of in-school or one-to-one technological tools allows students in both rural and urban areas to access top-quality content and instruction. Integration of technology in classrooms and assignments prepares students for a workforce that is now heavily reliant on technology. The main hurdle facing Texas school districts is providing economically disadvantaged students with access to technological devices and online materials at a time when districts' costs are increasing and the availability of additional resources is limited.

*The Texas Virtual School Network*

The Texas Virtual School Network (TxVSN) provides opportunities for students to take online courses for Advanced Placement, accelerated study, credit recovery, alternative education, schedule flexibility, and dual credit. There are two components of TxVSN—the statewide course catalog that provides supplemental courses for students, and three full-time virtual schools, one of which is managed by a charter school and two of which are operated by school districts.

Prior to the 82nd Legislature, TxVSN course providers received the TxVSN allotment, $400 for each student who enrolled in the course. The 82nd Legislature eliminated that allotment and shifted to an outcomes-based funding model that fully funds average daily attendance for each student who completes a course. Outcomes-based funding is lauded by many as an effective way to incentivize providers to encourage students to finish courses. In some states, funding is based on completion and growth to encourage achievement among low-performing students.

Virtual school enrollment requires potential students to have attended a public school in the previous school year. Many parents of home-schooled students and students with special needs have encouraged the elimination of this eligibility requirement so that their students can enroll in a virtual school and take courses remotely.
One of the three virtual schools was rated academically unacceptable for the 2011-2012 school year. Some stakeholders have also expressed concern that there is no process in place for closing underperforming virtual schools.

**Blended Courses**

S.B. 6 (relating to the foundation curriculum, the establishment of the instructional materials allotment, and the adoption, review, and purchase of instructional materials and technological equipment for public schools; and providing penalties), 82nd Legislature, First Called Session, 2011, eliminated the technology allotment and replaced the textbook fund with the instructional materials fund that provides a per-student allotment that may be used to purchase certain instructional materials, technology, teacher training, and salaries for individuals who provide technical support. Statutory references to "textbooks" were replaced with "instructional materials" in order to provide flexibility to administrators to pick the materials that best suit the needs of their programs and students. Instructional materials may now include books, supplemental materials, computer software, DVDs, CD-ROMs, and online services.

The changes that were made by S.B. 6 resulted in an expansion of course delivery options. Various models are now being implemented that blend face-to-face interaction with web-based educational technologies, such as incorporating computer labs within class-time or delivering all course material online with teachers on site to provide support and tutoring. Some schools are experimenting with a flipped classroom model, in which a student watches recorded lectures at home and completes assignments and receives support in the classroom. This model is popular because parents are finding it increasingly difficult to help their children with homework assignments.

**Broadband Access**

Some school districts in the state, particularly rural districts, experience lackluster Internet access and cellular telephone coverage, leaving them at a disadvantage in regard to technological opportunities now available to Texas students. Even in districts that provide devices and Internet access at school, some economically disadvantaged students do not have access at home.

H.B. 2128 (relating to the regulation of telecommunications utilities, to the provision of telecommunications and related services, and to the continuation of the Public Utility Commission of Texas), 74th Legislature, Regular Session, 1995, required telecommunications companies to offer broadband services to schools at a cost equivalent to 105 percent of the company's long-term incremental cost. Subsequently, S.B. 773 (relating to telecommunications service discounts for educational institutions, libraries,
hi
SSUES FAC\ING THE 83rd TEXAS LEGISLATURE

hospitals, and telemedicine centers), 82nd Legislature, Regular Session, 2011, extended that requirement through January 1, 2016, and increased the amount to 110 percent.

The federal Schools and Libraries Program of the Universal Service Fund (commonly referred to as E-rate) was developed to provide discounts to schools and libraries, particularly for poor or rural schools. Schools and districts that are trying to obtain bandwidth can apply for E-rate funds to supplement the amount left after the state discount. This is especially important to rural districts that may have only one provider in the area and cannot take advantage of competitive prices that are available to urban districts. Although the National Center for Educational Statistics reported that 97 percent of United States public schools had Internet access in 2005, some question the quality of that access. The federal definition of access is that a minimum of a 768 kilobyte downlink be available in schools, which is very slow by today's standards. Much of the online and digital educational materials available require more bandwidth to download graphics, access videos, and update materials.

Another barrier is the lack of Internet access at home. Transitioning to blended course delivery models and offering TxVSN summer courses requires that students have a technological device and Internet access during evenings and the summer when the school is closed. Some districts have addressed this issue by extending wireless access to school parking lots, but some students lack transportation to go to school grounds after hours. Some rural districts are exploring the possibility of sharing bandwidth with economically disadvantaged families during those times and utilizing the technology lending grant program (established by S.B. 6) to loan equipment to students. The biggest concern to lawmakers is that the number of schools in Texas being left behind in the technological transformation in education is unknown.

The 83rd Legislature may consider ways to provide more flexibility to school districts to incorporate new technology and course delivery. The 83rd Legislature may also address the issue of lack of bandwidth access once the scope of the problem is clear.
GOVERNMENT ORGANIZATION

Cyber Security for State Agencies

The Texas Comptroller of Public Accounts (comptroller) is charged with protecting confidential and sensitive data by leveraging tools and practices common to the financial services industry as well as governmental agencies.

In April 2011, a significant information breach occurred when the personal information of 3.5 million people was disclosed on a publicly accessible computer server belonging to the comptroller. The data, which was left unprotected for one year, included names, addresses, Social Security numbers, and in some cases, dates of birth and driver's license numbers of education employees and retirees from the Teacher Retirement System of Texas, state employees and retirees from the Employees Retirement System of Texas, and records of individuals from the Texas Workforce Commission. The breached data was information required to be sent to the comptroller for purposes of verifying unclaimed property records. The files were located on a server used to transfer files between entities. In response to the data breach, the comptroller's office sealed the information and moved it to a secure server.

The comptroller's office increased its data loss protection (DLP) objectives in response to the breach. DLP objectives include gaining network visibility for relevant protocols to minimize risks of loss and misused or unauthorized access; building an infrastructure capable of monitoring, discovering, and responding to data loss events in accordance with information technology best practices; and building an infrastructure capable of identifying and tagging data and rest and data in motion on relevant platforms and network flows.

The comptroller is also charged with hiring persons to implement DLP solutions that support the identification, storage, and/or disposal of sensitive information.

The 83rd Legislature may examine ways to ensure the protection of information and electronic data from unauthorized access and cyber threats.
Support for Aging Texans

Demographic projections foresee a continuing growth of the aging population in Texas. According to data from the Texas State Data Center at The University of Texas at San Antonio presented by a Department of Aging and Disabilities Services representative, the population of Texans over 85 years of age will triple from 2010 to 2040.

Testimony presented to the Legislative Committee on Aging suggests that there are myriad challenges facing the aging population, many of which the state may be required to address. With the growth in the number of aging Texans, there will be likely be an increasing need for long-term services and supports in traditional nursing facility settings and community-based settings. It will also be imperative to ensure that older Texans are receiving high quality care and are safe in these settings.

Moreover, access to health care for older Texans is an important concern, particularly as fewer physicians are accepting Medicaid and Medicare patients. Tied to this concern for older Texans’ health, it was noted that many physicians, psychiatrists, social workers, and other providers are not trained in the area of geriatrics and are ill-prepared to provide care for older individuals. There are also concerns regarding the availability and increasing demand for direct care workers and informal caregivers for aging individuals and meeting the needs of these support populations.

Additionally, because many older Texans are unable to drive their interactions in the community become limited and they may become socially isolated. Transportation concerns can also limit their ability to access health care.

Meeting the needs of a growing aging population will necessitate innovative responses. Some concepts presented to the committee include implementation of a trained volunteer advocate program for the elderly as provided for in H.B. 4154, 81st Legislature, which was not funded; use of the Green House/Small House model for skilled nursing facilities; and creation of a nonprofit transportation network as proposed by the Independent Transportation Network, which uses a variety of methods to provide transportation for the elderly, including membership fees or volunteers.

The 83rd Legislature may consider innovative changes to service delivery models and models of care, such as the culture change model, in providing long-term care; renovation or replacement of certain older long-term care facilities; at-risk payments and quality-based payments to nursing facilities; practices to improve the quality of care received in
both institutional and community settings; increased supports for individuals desiring to age in the community; increasing the availability of transportation options for aging persons; supports for caregivers and identification of other entities to assist the elderly; staffing and wage concerns related to the direct care workforce; promoting the need for geriatric-trained medical professionals; and funding concerns related to all issues.

**Affordable Care Act**

The federal Affordable Care Act (Act) was passed in March 2010, with the goals of increasing access to health insurance, lowering health care costs, and improving the quality of care. Since its enactment, the Act has faced a number of legal challenges. In June 2012, the United States Supreme Court upheld the Act’s “individual mandate,” which requires most persons to obtain health insurance, and effectively ruled that Medicaid expansion requirements in the Act are optional, enabling states to elect to not participate in the expansion effort without jeopardizing existing Medicaid funding.

Some of the provisions of the Act that have already gone into effect include the extension of dependent coverage to young adults up to age 26, the coverage of certain preventive services without an out-of-pocket cost, the prohibition against excluding children from coverage due to preexisting conditions, and certain restrictions and limitations on the amount and length of coverage provided. Texas has already considered or passed legislation that relates to a number of other provisions in the federal Act intended to lower costs and increase access to health care.

In July 2012, Governor Rick Perry notified the United States Department of Health and Human Services of his opposition to the expansion of Medicaid and the creation of a state insurance exchange as authorized under the Act.

The Texas Department of Insurance, the Texas Health and Human Services Commission, and other health-related state agencies continue to review the Act and work with the federal government to prepare for and implement provisions in the Act.

During an August 2012 interim legislative hearing, agency staff and legislators identified areas that will need to be addressed during the 83rd Legislature. It was noted that in many areas the agencies are awaiting further federal guidance and that cost estimates for the Act will depend on pending state and federal decisions.

Areas identified for consideration include:

- the essential health benefits standards and state-mandated health benefits that exceed those benefits, the costs of which will likely be the state’s responsibility;
ISSUES FACING THE 83rd TEXAS LEGISLATURE

- the state's role in a federal insurance exchange option;
- the expansion of Medicaid to new populations;
- regulatory concerns for insurance markets;
- the purchase of health insurance across state lines and the composition of those multi-state products;
- a rate increase for certain primary care providers and services to the Medicare rate and the potential extension of that increase by the state to specialists who provide primary care and whether it will be extended in future years; and
- the statutory authority needed by state agencies to implement provisions in the federal law.

Discussion also focused on the increase in the Medicaid population of persons currently eligible but not enrolled; the monitoring of insurance rebates provided by insurers who, according to the Act’s 80-20 rule, must spend at least 80 percent of premiums on medical care and quality or rebate the difference if they do not do so; ensuring that the Texas Integrated Eligibility Redesign System can interface with the Act's requirements; uncertainty regarding how many employers will provide health benefits or pay the tax penalty instead and assistance for small employers regarding the Act; and the need for flexibility, efficiency, and reform in Medicaid and the identification of resources and policies to assist with such efforts such as the current Texas Healthcare Transformation and Quality Improvement waiver, seeking additional federal waivers, block grants, cost-sharing, and state legislation.

Issues relating to uncompensated care and the uninsured population and how these concerns interact with and affect federal, state, and, particularly, local entities were also addressed.

Another area of concern as it relates to the Act is the issue of access to care, the increase in the number of persons served due to the Act's provisions, the Act’s health care coverage mandate, and the general cost of health care.

Concerns were raised regarding the ongoing shortages of medical providers. Recommendations for addressing this concern include an increased Medicaid reimbursement rate, greater investment in graduate medical education, and loan forgiveness assistance.

The 83rd Legislature may consider further monitoring implementation of federal health reform Act provisions and take steps necessary to respond to those reforms to meet the health care needs of Texans.
Alzheimer's Disease

According to the Alzheimer's Association’s 2012 *Alzheimer’s Disease Facts and Figures*, Alzheimer's disease, a form of dementia affecting memory, behavior, and eventually daily physical functions, is the sixth-leading cause of death in the United States and currently affects approximately 5.4 million Americans. The estimated number of Texans with the disease in 2010 was 340,000, a figure projected to rise to 470,000 persons by 2025. Many persons with Alzheimer’s disease are cared for by family members. In Texas, the value of unpaid caregiver support for persons with Alzheimer’s and dementia is over $17.5 billion. With an increasing aging population, the impact and burden of the disease on the state, families, and the health care system will continue to grow.

In its 2012 biennial report, the Texas Council on Alzheimer's Disease and Related Disorders (TCADRD), which was created by H.B. 1066, 70th Legislature, Regular Session, 1987, provided a list of priority issues and recommendations for the state relating to ongoing Alzheimer’s research and research collaboration, long-term care services and supports, community-based programs and services, caregiver support, state infrastructure and capacity for dealing with Alzheimer’s, and implementation of the state plan. This state plan, *A Comprehensive Plan for Addressing the Burden of Alzheimer's Disease in Texas: 2010-2015 Texas State Plan on Alzheimer's Disease*, which was a joint effort of TCADRD, the Department of State Health Services, and stakeholders, provides strategies and objectives to broad goals related to research, prevention and cognitive health, health care and disease management, caregiving and caregivers, and infrastructure and capacity. H.B. 1504, 76th Legislature, Regular Session, 1999, created the Texas Consortium of Alzheimer’s Disease Centers, now the Texas Alzheimer’s Research and Care Consortium, which focuses on Alzheimer’s research.

The 83rd Legislature may consider issues relating to the impact of Alzheimer's on the state and its health and human services systems, the need for long-term care services and supports and home-based and community care programs, increased support for caregivers, and additional recommendations provided by TCADRD and the state plan.

Child Protective Services

The Child Protective Services Division (CPS) of the Department of Family and Protective Services (DFPS) investigates child abuse and neglect reports, provides services to children and families, places children in foster care and in adoptive homes, and assists youth who are transitioning out of foster care. In fiscal year (FY) 2011, there were 65,948 confirmed victims of child abuse or neglect, according to the *2011 DFPS Data Book*. 
CPS caseworkers are an important resource in the protection of children who are abused or neglected. However, there are many issues which can impact the quality of care children receive and the ability of caseworkers to successfully do their jobs.

According to the October 2012 DFPS report, *Rider 11–Human Resources Management Plan*, required by H.B. 1, General Appropriations Act, 82nd Legislature, Regular Session, 2011, the overall employee turnover rate for DFPS in FY 2011 was 17.1 percent and the rate has increased in 2012. The report also noted that the highest turnover occurred with CPS investigation caseworkers, Family Based Safety Services caseworkers, and CPS conservatorship caseworkers, and that entry-level CPS caseworkers had a turnover rate of 37.8 percent at the end of FY 2012.

In 2004, Governor Rick Perry issued executive order RP 35 (relating to reforming Child Protective Services), which called for reform in child protective services and areas related to protecting children from abuse, neglect, and exploitation. One of the focus areas was organizational reform and management structure. As presented in a March 2012 legislative hearing, one reform cited was the formalization of specialized functional units dedicated to stage of service for CPS.

During the hearing, legislators heard many concerns associated with CPS caseworker retention, management structure, and supervision. Testimony highlighted concerns such as inadequate pay, high caseloads, low retention, inadequate training, insufficient preparation and education, inexperienced staff and supervisors, low morale and compassion fatigue, lack of recognition, and insufficient support staff as issues that exacerbate the problems at CPS. Witnesses noted that these issues, such as turnover, are costly, can severely impact the quality of casework a child and family receive, affect the investigation timeline and casework efficiency, and lead to the recurrence of abuse or neglect. Exit surveys from DFPS and the Texas State Auditor's Office noted issues of low pay, supervision problems, and working conditions as reasons caseworkers leave CPS employment.

Discussion of challenges for CPS that are specific to rural areas focused on difficulties recruiting staff, long traveling distances, lack of mobile communications coverage, difficulties in using the functional unit structure, infrequent interaction with supervisors because caseworkers are not housed together, lack of peer interaction, difficulties staffing offices, and challenges connecting with outside support agencies.

Initiatives to address these concerns include programs such as the DFPS LEADS project, to assist supervisors to become more effective and knowledgeable managers, and the DFPS GoMobile Project, which is an agency-wide initiative emphasizing the use of technology to enable casework staff to be out in the field more often, reduce travel expenses, and increase job satisfaction and retention. A DFPS representative also noted that some regions, including rural areas, that do not have sufficient workers for
specialized units to function well may request waivers from the required CPS functional unit structure. The Rider 11 report also detailed additional human resources management efforts engaged in by DFPS.

Recommendations for dealing with stressors on CPS caseworkers and supervisors provided during the interim legislative hearing include increasing CPS funding, providing for flexibility in unit management structure, placing a cap on caseloads, improving hiring practices to recruit knowledgeable caseworkers, improving training, implementing pay parity for caseworkers, implementing an internal career path for investigators, utilizing performance-based compensation systems, and focusing on prevention of child abuse and neglect.

Other initiatives aimed at advancing the quality of care for children in CPS custody and improving their permanency outcomes were cited, including forums targeted toward improving the permanency outcome for each child, enhanced family-centered safety decision-making training for staff, and the Permanency Care Assistance program that provides assistance to relatives and other designative caregivers to help provide a permanent home for children under CPS custody.

The 83rd Legislature may consider issues relating to caseworker retention and turnover and recommendations to help improve the management structure, supervision, and support of caseworkers to enhance the quality of the workforce, increase retention, and improve the outcomes for the children served by CPS.

**Cost-Containment Strategies**

The escalating costs of health care paired with the ongoing constraints on the state budget create a difficult situation for policymakers seeking to ensure that Texans have access to health care services. H.B. 1, General Appropriations Act, 82nd Legislature, Regular Session, 2011, combined with S.B. 7 (relating to the administration, quality, and efficiency of health care, health and human services, and health benefits programs in this state; creating an offense; providing penalties), First Called Session, 2011, sought to implement cost-containment strategies for 2012-2013 biennium. According to the Health and Human Services Consolidated Budget for fiscal years (FY) 2014-2015, during the 82nd Legislature health and human services agencies were asked to identify cost-containment strategies equaling approximately $3 billion in general revenue savings, and as of current projections and implementation plans, it is estimated that $2 billion in general revenue savings will be met.

Over 60 cost-containment initiatives were initiated, including expanding managed care statewide, particularly to South Texas and rural areas; implementing a policy of Medicare
equalization, which limits certain Medicare payments for dual eligible clients to no more than what Medicaid would have paid for the same service; instituting provider rate reductions; adjusting the amount, duration, and scope of certain Medicaid benefits; and reducing the Medicaid reimbursement for hospital facility charges for nonemergency services performed by an emergency department.

The health and human services agencies have monitored the cost-containment initiatives to identify concerns and make adjustments when necessary. For example, Medicare equalization rates for certain providers were adjusted due to an access-to-care concern, so that as of May 1, 2012, cost-sharing for psychiatrists, psychologists, and licensed clinical social workers is paid at the Medicare rate.

Several concerns were raised during a legislative hearing on the implementation of cost-containment measures, including concerns that providers may choose to no longer accept Medicaid or Medicare clients due to financial concerns; that access-to-care may be reduced for many clients; that there have been issues with electronic visit verification; and that the implementation of Medicaid copayments, particularly cost-sharing for non-emergent emergency department use, may create concerns at the federal level.

Initiatives for additional cost-containment strategies proposed for the next biennium in the health and human services agencies consolidated appropriations request include: expanding STAR+PLUS, a managed care program for people who have disabilities or are age 65 or older, into rural service areas; carving nursing facilities services into managed care; and implementing a balanced payment program to increase the federal share and decrease the state share for certain community-based services.

The 83rd Legislature may consider issues relating to the expansion of managed care; the impact, benefits, and challenges of cost-containment initiatives on access-to-care, services, consumers, and health care providers; the effectiveness of the cost-containment measures previously implemented; the expansion of cost-containment strategies and the implementation of new cost-containment initiatives to increase efficiencies and reduce waste; and a Medicaid demonstration waiver from the federal government to assist with additional cost-containment.

Foster Care Redesign

In 2010, the Department of Family and Protective Services (DFPS) and various private and public stakeholders were part of a public-private partnership committee (PPP) that developed recommendations for a redesigned foster care system in Texas. The PPP developed eight foundational quality indicators for the foster care system redesign. The PPP also identified certain concerns with the current system, including the wide
The PPP made recommendations to address these issues, including transitioning from an open enrollment process to a competitive procurement process through a single source continuum contractor (SSCC), utilizing performance-based contracts rather than effort-based contracts, and changing payment rates to a single blended rate to remove service levels from rates.

S.B. 218, 82nd Legislature, Regular Session, 2011, requires DFPS to implement foster care redesign in accordance with the recommendations in DFPS’s foster care redesign report. In order to implement the redesign, DFPS began with two catchment areas, one in a metropolitan area and one in a non-metropolitan area. By mid-2012, DFPS was in contract discussions with providers for the two designated pilot areas; however, the tentative offer for the metropolitan area was rescinded in August 2012, due to licensing issues.

Foster care redesign for Texas is still in the early stages of development. DFPS does not anticipate the first child being referred to the SSCC until late spring 2013.

The 83rd Legislature may consider issues relating to oversight and monitoring of the implementation of the foster care redesign.

**Interstate Purchase of Health Insurance**

Current Texas law generally requires that all insurance providers doing business in Texas be licensed in the state, provides that Texas laws apply to policies issued to Texas residents, and requires that all policy forms comply with Texas laws. Some stakeholders argue that Texas residents should be allowed to purchase lower cost health insurance from other states, asserting that mandates imposed by Texas law requiring insurers to provide certain coverage, increase the cost of health insurance in Texas.

Others state that such mandates constitute only a small part of the cost of health insurance and that many other factors, such as the number of different insurance policies, the prevalence of employer coverage, the number of carriers in a state, and the health status of the population, also significantly affect the cost of coverage. Out-of-state providers, opponents argue, would base their rates on factors in Texas. Smaller or less populous states, opponents note, may not have sufficient staff to regulate policies sold across state lines or to respond to complaints from out-of-state consumers. Some contend that permitting the purchase of health insurance across state lines would also require changing
current insurance laws and protections. Opponents assert that permitting interstate purchase of health care would not result in significant savings to consumers and could leave consumers with lower coverage and fewer protections.

Recent changes in federal law would permit the purchase of out-of-state or multistate coverage, but states are still awaiting guidance from the United States Department of Health and Human Services on those changes. Some states are considering or have enacted laws permitting access to products from out-of-state carriers or establishing interstate health care compacts.

The 83rd Legislature may consider legislation related to the interstate purchase of health insurance policies.

**State Health Care Quality and Efficiency Improvements**

To improve patient safety, Texas has implemented and is considering the implementation of several health care quality improvement initiatives.

H.B. 1, General Appropriations Act, 82nd Legislature, Regular Session, 2011; S.B. 7, 82nd Legislature, First Called Session, 2011; and additional legislation focused on several quality improvement initiatives. Initiatives ranged from those relating to health care-associated infections and adverse event reporting to reimbursement reductions in the Medicaid program for preventable events, particularly potentially preventable readmission and potentially preventable complications. Quality-based payment initiatives in Medicaid and the Children’s Health Insurance Program (CHIP) were enacted, as were initiatives converting inpatient hospital payment methodology, the use of best practices by health care providers, the promotion of the use of patient-centered medical homes by managed care, the use of quality assurance and performance monitoring and improvement mechanisms by managed care, the creation of health care collaboratives, and the establishment of advisory committees relating to improving health care quality, efficiency, and costs. The implementation of several of these initiatives was contingent upon feasibility and cost-effectiveness. The Health and Human Services Commission's (HHSC) *Quality-based Payment and Delivery Reforms in Medicaid and the Children’s Health Insurance Program (CHIP) Annual Report* will provide further information regarding implementation of the quality initiatives enacted by the 82nd Legislature.

Advisory committees focusing on health care quality improvements and payment and reimbursement issues were established, including the Medicaid/CHIP Quality-based Payment Advisory Committee established by S.B. 7; the Physician Payment Committee, required by Article II, Health and Human Services Commission, Rider 68, in H.B. 1; and
the Neonatal Intensive Care Unit Council, established by H.B. 2636, 82nd Legislature, Regular Session, 2011. S.B. 7 also established the Texas Institute for Health Care Quality and Efficiency (institute) and authorized the use of certified health care collaboratives. The institute is broadly charged with improving the quality and efficiency of health care delivery; improving reporting and transparency of health care information; and supporting the implementation of innovative health care collaborative payment and delivery systems.

To address concerns regarding late preterm births and infant mortality, $4.1 million in general revenue was appropriated and H.B. 1983, 82nd Legislature, Regular Session, 2011, directed HHSC to adopt and implement initiatives to reduce certain elective, non-medically indicated induced deliveries or cesarean sections before 39 weeks gestation.

The 83rd Legislature may consider methods to monitor the implementation of quality and efficiency improvements. The 83rd Legislature may also consider providing legislative direction to HHSC to investigate further quality-based pay-for-performance quality and efficiency initiatives in both institutional and community settings; to identify federal programs and initiatives that will assist in funding quality and efficiency initiatives; to initiate reporting of additional health care data to enable improved tracking of quality of care; and to identify additional initiatives to reduce infant and maternal mortality.

**Delivery and Financing of Public Health Services**

Duties related to public health encompass a broad range of areas such as regulatory functions, disease control, infectious disease surveillance, maintenance of health statistics, and ensuring food safety. Chapter 121 (Local Public Health Reorganization Act), Health and Safety Code, provides a definition of essential health services and provisions regarding the establishment, powers, and duties of local health departments, public health districts, public health regions, and health authorities. There are currently eight Department of State Health Services (DSHS) regional offices and 60 full-service local health departments, and distribution of noncompetitive funding from DSHS to local health entities is made through three primary methodologies: formulas, allocations, and historical precedence. Some services provided by both regional offices and local health departments are funded by DSHS.

In order to further examine the roles of local and state public health entities, S.B. 969, 82nd Legislature, Regular Session, 2011, created the Public Health Funding and Policy Committee (committee) within DSHS, to define the core public health services that a local health entity should provide, evaluate public health in Texas and identify initiatives for areas of improvement, identify funding sources for local health entities, establish public health priorities for the state, and make recommendations to DSHS regarding
funding allocations for local health entities and in other areas of public health and the relationship between DSHS and local health entities. S.B. 969 also tasked DSHS to develop a plan to transition from contractual agreements to cooperative agreements with local health entities.

The 83rd Legislature may consider issues relating to the composition of the Public Health Funding and Policy Committee, the accreditation of public health entities, the roles and jurisdictions of local and regional health entities, the services provided by local and regional health entities and whether there is duplication, and funding for public health entities.

Health Care Innovation and Research

Chronic diseases and other medical concerns are a significant burden on individuals and governmental entities alike. According to the Texas Cancer Registry's 2012 Texas Selected Cancer Facts, the estimated cost of cancer to the state in 2010 was $25.3 billion and an estimated 110,000 Texans will be diagnosed with cancer each year. Investment in basic research, translational research, clinical research, and commercialization may lead to discoveries that help to address these diseases and improve the overall health of Texans.

In 2007, voters approved a constitutional amendment to create the Cancer Prevention and Research Institute of Texas (CPRIT), authorizing the issuance of up to $3 billion in bonds to fund cancer research and prevention. CPRIT, according to a July 2012 presentation to the Senate Committee on Health and Human Services, has awarded 384 grants, totaling $645 million, in the areas of research, prevention, and company investment. Section 102.203 (Authorized Use of Funds), Health and Safety Code, prohibits more than 10 percent of the cancer prevention and research funds awarded through CPRIT from being used for cancer prevention and control programs during any year. Recently, news outlets reported controversy regarding the scientific review process of one particular award, an incident which may lead to further scrutiny of CPRIT.

In April 2012, CPRIT released the Texas Cancer Plan 2012, which articulates its goals related to primary prevention and risk reduction; screening and early detection; diagnosis, treatment, and palliation; quality of life and survivorship; infrastructure; and research and commercialization.

The Texas Emerging Technology Fund (TETF) is used to support research and development in certain industries. According to TETF, TETF invests in late-stage and translational research and has awarded $220 million for research matching, research acquisition, and commercialization in the areas of biotechnology and life sciences.
Representatives from CPRIT, TETF, and other related entities made several recommendations during a senate committee hearing in July 2012, to improve and expand Texas's medical research initiatives, including incentivizing medical research collaboration; funding information technology, bioinformatics, and statewide biobanks; and creating shared research infrastructure.

The 83rd Legislature may consider the state's continuing investment in medical research; changing allocation restrictions on prevention funding in CPRIT; methods to prevent duplication of research efforts; monitoring and oversight of research entities, and one or more recommendations from the Texas Cancer Plan.

**Medicaid Home and Community-based Services Waivers**

Texas has seven Medicaid community services and support waiver programs that provide long-term services and supports in a home-based or community-based setting for eligible elderly persons and persons with disabilities who would qualify to live in a nursing facility or an intermediate care facility for individuals with intellectual and developmental disabilities. Except for STAR+PLUS, which is administered by the Health and Human Services Commission, the Medicaid waiver programs are administered by the Department of Aging and Disability Services (DADS).

The current Medicaid waiver programs are:

- Community Based Alternatives, which provides services and supports to elderly persons and to adults with disabilities as an alternative to living in a nursing home;
- Community Living Assistance and Support Services, which provides services and supports for individuals with related conditions as an alternative to placement in an intermediate care facility (ICF);
- Deaf Blind with Multiple Disabilities–serves persons with deaf-blindness and another disability as an alternative to ICF placement;
- Medically Dependent Children Program, which provides support to families of children and young persons who are medically dependent as an alternative to placement in a nursing facility;
- Texas Home Living Program, which provides selected essential services and supports to people with intellectual disabilities who live in their own home or in their family home;
- Home and Community-based Services Program, which provides, as an alternative to ICF placement, individualized services and supports to persons with intellectual disabilities who are living in their own home, in
issues facing the 83rd texas legislature

their family home, in a foster care/companion care setting, or in a small group home; and

- STAR+PLUS, which is a managed care program that provides persons with disabilities or those persons age 65 or older with health care and long-term services and support.

The Community First Choice option, under the federal Affordable Care Act, is a new state plan option under Medicaid that incentivizes participating states to provide community-based attendant services through a percentage increase in federal Medicaid matching funds.

Currently, a person can be enrolled in only one waiver program at a time. Consumer interest lists are maintained for the Medicaid waiver programs and, for some waivers, the waiting time may be significant. Medicaid waiver programs may include options for consumer-directed services.

The 83rd Legislature may consider issues related to eligibility, services, and cost-sharing options in Medicaid waiver programs; to additional efforts to streamline the administration and delivery of services; and to ensuring that long-term care services and supports for eligible populations are provided in home and community settings whenever possible.

**Fraud, Waste, Abuse, Overutilization, and Inefficiency in Medicaid Programs**

Issues of fraud, waste, abuse, overutilization, and inefficiency continue to plague Medicaid programs and the agencies that manage these programs. During the interim of the 82nd Legislature, legislators heard testimony regarding these issues, particularly as they relate to the Medical Transportation Program (MTP) and to prior authorization and medical necessity with respect to orthodontic services and nursing homes.

In 2007, in response to a lawsuit, the legislature appropriated funding to increase access to preventive services for certain children's Medicaid services, including dental services. More recently, investigative news reports found that from 2008 to 2010, the state's Medicaid program spent more on orthodontics than all other states combined, prompting reviews of Medicaid orthodontia services. Reviews of prior authorization and medical necessity for Medicaid orthodontia found several areas of concern, including high utilization rates, issues with the Texas Medicaid and Healthcare Partnership (TMHP) prior authorization evaluation process, insufficient qualified staff to conduct prior authorization reviews, and deficient Health and Human Services Commission (HHSC) policies related to orthodontics. Efforts to address these concerns include staffing changes, random sample testing of prior authorizations to ensure accuracy, the creation of
a task force to address dental fraud, the auditing of the TMHP orthodontia prior authorization process, the requirement that dentists submit full-cast dental molds for orthodontia requests, and a review of state policies. On March 1, 2012, children's Medicaid dental and orthodontic services were transitioned to managed care dental plans. Dental plan prior authorization policies were submitted for review and approval.

Issues relating to medical necessity reviews for Department of Aging and Disability Services (DADS) programs were also discussed, particularly for the Medicaid nursing facility program. In order to be eligible for the nursing facility program, medical necessity must be demonstrated. For the process to begin, the nursing facility completes and submits the minimum data set (MDS) assessment. For some conditions, medical necessity is automatically determined, but when that does not happen, manual determination is made by a registered nurse with the state's Medicaid contractor. The MDS assessment must occur at certain intervals or if a significant change occurs in the person's condition. An MDS assessment assists with the determination of daily reimbursement rates to the nursing facility provider through its use of the resource utilization group. Permanent medical necessity is instituted if medical necessity is established for two quarters. Weaknesses identified with medical necessity reviews and determinations include using the same entity to determine medical necessity needs, provide services, and receive reimbursement; insufficient oversight and monitoring; and reliance on self-reported data in monitoring contractors. It was noted that in Medicaid waiver programs, depending upon the program, medical necessity or program eligibility assessments are conducted by provider agencies, DADS, or a local authority. Efforts to address these weaknesses include adding medical necessity to the utilization review for nursing facilities conducted by the Office of the Inspector General (OIG) of HHSC, planning a process for retrospective reviews of manual medical necessity determination in nursing facilities, and administering more aggressive utilization and management review for entitlement and waiver programs.

Another program under scrutiny is MTP, which provides arrangements for non-emergency medical transportation to Medicaid clients and certain other clients who do not have transportation to health appointments. According to an HHSC representative, an internal audit of MTP found many problems, including insufficient monitoring of transportation providers based on the level of program risk; lack of verification that a trip occurred; substantial increase in advanced funds payments from 2008 to 2011; the charging of separate fees rather than the bundling of a series of fees by the advanced funds contractor; and lack of guidance for staff concerning how to address non-compliance or suspected fraud or abuse. HHSC proposes to address these concerns by making changes to the MTP organization structure; transitioning away from the use of advanced funds and utilizing a reimbursement model; implementing monitoring and quality assurance plans for MTP contracts; and initiating efforts to recoup overpayments and fraudulent payments.
During the legislative hearing, in addition to the concerns raised relating to fraud, waste, and abuse in Medicaid orthodontia, concern was voiced regarding the regulation of dental clinics and management service organizations.

The 83rd Legislature may consider issues relating to fraud, waste, abuse, overutilization, and inefficiency in Texas Medicaid programs and the oversight provided by agencies that manage these programs.

**Public Mental and Behavioral Health System**

Mental health and behavioral health needs continue to be a concern for individuals, state hospitals, jails, and local, state, and federal governments. According to the Public Consulting Group (PCG) report, *Analysis of the Texas Public Behavioral Health System* (Phase I report), in fiscal year (FY) 2011, the Department of State Health Services (DSHS) provided 303,618 persons with mental health services and 50,435 persons with substance abuse services.

Many public mental health and behavioral health services are funded and/or managed by DSHS and the Health and Human Services Commission and are provided through various service delivery models based on the oversight entity, the service provided, and the consumer's location. Depending upon eligibility and other criteria, service delivery can occur through such means as local mental health authorities (LMHAs), NorthSTAR (a publicly funded managed care approach to mental health and substance abuse services delivery serving counties located near Dallas/Fort Worth), substance abuse prevention and treatment providers, state mental hospitals and community psychiatric hospitals, Medicaid fee-for-service and managed care programs, and the Children's Health Insurance Program. Types of mental health and behavioral health services that may be provided include services for crisis care, substance abuse, rehabilitation, targeted case management, inpatient acute care, counseling, and transitional care.

Rider 71, H.B. 1, General Appropriations Act, 82nd Legislature, Regular Session, 2011, requires DSHS to contract with an independent entity to review the state's public mental health system and make certain recommendations. The interim charge to the Senate Committee on Health and Human Services (committee) concerning the public mental health system mirrored that rider language; however, the committee broadened the scope of the review to include the more comprehensive focus on the behavioral health system.

In response to the rider, DSHS contracted with PCG, which created two reports with agency and stakeholder input. The Phase I report, cited above, focused on describing the current behavioral health system, identifying its strengths and weaknesses, and reviewing national best practices. The Phase II report, *Analysis of the Texas Public Behavioral*
Health System: Recommendations for System Redesign (Phase II report), focused on public behavioral health system reformation.

Some strengths highlighted in the Phase I report include the increasing integration of behavioral and physical health services by LMHAs, improved services through the increase of transitional service funding, the acceptance of NorthSTAR in the Dallas area, and the sharing of services across geographical regions by the East Texas Behavioral Network as a good model for other LMHAs. Weaknesses identified in the Phase I report include the significant cost variation among LMHAs, inadequate community-based care as identified by the necessity of mental health and substance abuse services expenses in the criminal justice system, the potential conflict of LMHA services as both authorizers and providers, the intense focus on crisis services rather than recovery, mental health funding allocations, the lack of transparency regarding LMHA data, and reduced utilization by NorthSTAR and LMHAs due to insufficient funding.

Testimony provided during a May 2012 interim committee hearing echoed many of the concerns in the Phase I report. Witnesses voiced concerns regarding the lack of sufficient funding to cover all necessary services and persons in need; the increasing demands on the behavioral health system; the shortage of mental health providers and substance abuse providers, particularly in light of the growing need for such services and the anticipated increase in the consumer population and required services under federal health reform; the need for behavioral health specialty providers; and psychiatric hospital recidivism and readmissions. Additional concerns identified are the need for housing and supportive services to reduce recidivism and ensure improved outcomes; the growth of the mental health waiting list and the repercussions for those awaiting services; the insufficient availability of mental health services for children; and the maintenance of an aging mental health services infrastructure.

The toll of mental health needs and costs on other systems was also discussed, particularly the costs to emergency rooms, jails, and local communities; the high rates of persons with mental health issues in jails; the growing maximum security waiting list at the North Texas State Hospital's Vernon campus; the balance of civil commitments and forensic commitments for state hospitals, particularly as it is impacted by the forensic patient capacity lawsuit ruling; the relinquishment of parental rights to Child Protective Services in order to access mental health services; and the growing need for behavioral health services for Texas military services.

Innovative programs in the public behavioral health system have been implemented to help address concerns. One such program named during the legislative hearing is the Certified Peer Specialist Program, a program in which persons who have had mental illness and have gone through recovery receive peer training and then serve as a resource and support to persons currently experiencing mental health issues. The Outpatient Competency Restoration Pilot Program assists with the restoration to competency.
through a community-based or outpatient setting enabling an individual to participate in the criminal justice system. It was noted that the pilot program is more effective in an urban setting than in a rural setting. The practice of purchasing needed bed space in facilities outside of state hospitals through LMHAs or a county for certain forensic and civil commitments was also discussed as a means of reducing certain infrastructure maintenance cost and assisting in expanding capacity.

Recommendations for public behavioral health system redesign provided in the Phase II report focused on three areas: service and delivery system, governance and oversight, and funding and financing.

Stakeholders at the May 2012 legislative hearing also provided suggestions to improve the behavioral health system and the care provided therein. Such recommendations included performance-based funding, the leveraging of dollars at the local level, increasing community-based supports for behavioral health services as alternatives to jails and hospitals, the leveraging of federal funds, and the Texas Healthcare Transformation and Quality Improvement waiver for behavioral health services. Discussion also centered on the need for improved assessment tools for LMHAs using peer support specialists; the integration of substance abuse and mental health services; advanced mental health training for law enforcement personnel; and collaboration with the courts and criminal justice system to identify mental health service alternatives. Suggestions to address the provider shortage included the need to decrease administrative burdens, attract more people into the mental health services field, increase the use of telemedicine, increase the state's investment in graduate medical education, and implement higher provider reimbursement rates for Medicaid.

The 83rd Legislature may consider issues relating to the restructuring of the public behavioral health system and the implementation of one or more recommendations provided in the Rider 71 reports.

**State Supported Living Centers**

State supported living centers (SSLCs) are state-operated residential facilities that provide services to people with intellectual and developmental disabilities who are medically fragile or who have behavioral issues. SSLCs provide behavioral treatment, healthcare, skills training, therapies, and vocational services for residents. In 2009, the Department of Aging and Disability Services and the United States Department of Justice (DOJ) reached a settlement agreement to make system-wide improvements to care and services at all of the state's SSLCs. Monitors continue to inspect the SSLCs in 20 targeted improvement areas, including restraint reduction, quality assurance, clinical care, and physical and nutritional management, to determine compliance. While SSLCs have
demonstrated some improvement in the targeted areas, the SSLC monitors have indicated that further improvement is needed.

The 83rd Legislature may consider issues relating to staffing concerns in SSLCs, changing the model of care at SSLCs, training focusing on caring for individuals with disabilities, the consolidation or closure of SSLCs, achieving compliance with the DOJ settlement agreement, and implementing a pilot program to identify practices to address concerns raised by the monitors and DOJ.
9-1-1 Services

Texans rely on 9-1-1 for assistance in times of crisis. According to the Commission on State Emergency Communications (CSEC), 9-1-1 service is provided through the statewide program administered by CSEC, which operates 24 regional planning commissions (RPCs), and an assortment of 9-1-1 entities in 51 emergency communication districts (districts). Chapter 771 (State Administration of Emergency Communications), Health and Safety Code, is the statutory basis for the CSEC 9-1-1 program. CSEC contracts with RPCs for the provision of 9-1-1 telecommunications service in those areas of the state where 9-1-1 service is not provided by a district. CSEC, RPCs, and districts work together to develop and maintain access to efficient and effective statewide 9-1-1 service.

There are over 500 call centers in the 254 Texas counties and funding for 9-1-1 service is derived from four telecommunications fees: the 9-1-1 equalization surcharge, the emergency service fee, the wireless emergency service fee, and the prepaid wireless emergency service fee. The use of these 9-1-1 funds is limited to the delivery of 9-1-1 calls to call centers.

Chapter 771, Health and Safety Code, defines 9-1-1 service as "a telecommunications service that provides the user of the public telephone system the ability to reach a public safety answering point call center by dialing the digits 9-1-1." Once a 9-1-1 call is delivered to the call center, it is the responsibility of the local or county jurisdiction to fund the operations of the call center and emergency response. While this decentralized governance structure fosters voluntary partnerships and ensures local control of resources in each jurisdiction, little is known about the data maintained by these local centers.

In order to provide an analysis of the call center operation in Texas the state would need to gather information from each of the 500-plus call centers. CSEC has expressed concern that significant time and resources would be required to adequately coordinate, collect, and analyze financial and personnel data from local and county officials regarding the operations of the call centers in Texas.

The 83rd Legislature may consider providing funding to coordinate, collect, and analyze financial and personnel data from local and county officials regarding the operations of the 500-plus call centers in Texas.
Radio Interoperability

The attacks of September 11, 2001, brought awareness to the nation that many state and local entities are unable to communicate with one another during a disaster. Subsequent disasters further highlighted this deficiency. During recent wildfires in Texas, first responders could not adequately communicate with the Texas National Guard. Radio interoperability is challenging because of the size and geographic and demographic diversity of Texas. Stakeholders have suggested that this problem could be addressed if resources were available to purchase a new uniform radio communication system.

In 2005, Texas adopted SAFECOM, an emergency communications program of the United States Department of Homeland Security’s Office for Interoperability and Compatibility that provides emergency response agencies with research, development, guidance, and tools for communications-based issues. One of these tools is the Interoperability Continuum, which is a tool to develop the Texas Radio Communications Interoperability Plan (TRCIP) to facilitate communications in real time across disciplines and jurisdictions via radio communications systems. The state’s initial goal regarding TRCIP was to establish a minimum level of communications interoperability through gateways, Internet Protocol network switches, and shared channels in all 24 planning regions in Texas by 2007.

The federal government in the past has provided grant funding for public safety communications. However, according to the Department of Public Safety of the State of Texas, federal funding for public safety communications has decreased since 2009 by more than 70 percent. Many public safety agencies depend on this funding to sustain their emergency communications systems.

To address the reduction in federal funding the state enacted H.B. 442, 82nd Legislature, Regular Session, 2011, which established the emergency radio infrastructure account in the General Revenue Fund. The legislature appropriated $30,700,000 annually to be used for public safety communications.

While TRCIP has been updated and modified and the legislature has appropriated funds for public safety emergency communications, there is continuing concern that radio interoperability is not occurring in a timely manner.

The 83rd Legislature may consider additional appropriations for state and local communication equipment.
Homeowners Insurance

According to the National Association of Insurance Commissioners, Texas has the highest average homeowners insurance premiums in the nation and rates have increased 21 percent since 2009. The Texas Department of Insurance (TDI) studied numerous variables affecting premium rates in a state-by-state analysis and found that the primary driver of high premiums in Texas is the state's high average loss per policy and high exposure to catastrophes.

Weather-related risk is one explanation for high insurance premiums in Texas, which issued more Federal Emergency Management Agency declarations than any other state during the past six years. Homeowners insurance coverage is determined by the amount that it would cost to completely rebuild a structure following a catastrophic storm and each year since 2000 the average amount of insurance purchased by policyholders in Texas has increased. Ninety-nine percent of Texas residents outside of the tier one counties have homeowners insurance through the voluntary insurance market. Tier one counties are those counties that are covered by the Texas Windstorm Insurance Association. In the voluntary market, the costs of writing insurance is higher in Texas for the amount of risk that is covered than in most other states.

Reinsurance and underwriting costs also add to the prices charged for homeowners insurance and are directly related to loss expenditures attributable to the weather. TDI reviews how reinsurance factors into every rate filing to ensure that the rates are justified, but concern has been raised that reinsurance is being purchased by insurers at unreasonable amounts or to cover losses that are not catastrophe-related losses.

Reducing homeowners insurance rates in a state that faces high natural disaster risks is complex. TDI has recommended measures to mitigate loss ratios in order to reduce homeowners insurance rates in the long term, including the licensing of roofing contractors, authorizing insurance premium credits for the use of impact-resistant building materials, and implementation and enforcement of stronger building codes.

Organizations that represent Texas consumers have suggested additional responses to the challenges facing the Texas homeowners insurance market, including requiring insurance carriers to offer a standard policy, prohibiting insurance companies from raising deductibles, standardizing insurance rate filings, and enhancing policy disclosures to be more transparent for consumers. The Office of Public Insurance Counsel (OPIC) suggested that the purchase of reinsurance should be subject to evaluation in order to
determine whether it diversifies risk and whether the amount of reinsurance purchased is reasonable. OPIC and other organizations, such as Texas Watch, have stated that transparency and consumer education efforts should be improved in order to make it easier for consumers to shop around for different policies and to compare the value of their insurance policies.

The 83rd Legislature may consider improvements to the Texas homeowners insurance market.

**Texas Windstorm Insurance Association**

Despite changes made to the Texas Windstorm Insurance Association (TWIA) by the 82nd Legislature, First Called Session, 2011, through H.B. 3 (Smithee; SP: Carona), concerns remain that TWIA will be unable to pay claims should a major storm hit the Texas coast. TWIA is a quasi-governmental agency that provides windstorm and hail insurance coverage in the 14 coastal counties of Texas. It has been determined by the Texas Department of Insurance (TDI) that the current structure of TWIA is unsustainable under its current configuration as TWIA liabilities increase and the funding capacity, which is capped at $3.5 billion per year, decreases.

Increasing competition within the voluntary insurance market in coastal counties has proven difficult for policymakers. TWIA has become the primary insurance provider instead of the provider of last resort for wind and hail insurance for residents along the Texas coast. Chapter 2210 (Texas Windstorm Insurance Association), Insurance Code, states that TWIA is to be an insurer of last resort and not a competitor with the voluntary market. Provisions that do not apply to other insurance carriers in the state limit increases in TWIA rates. Insurance carriers in the private market are required by law to charge rates based on actuarial soundness and because of this requirement, the voluntary market is unable to compete with current TWIA rates. The commissioner of TDI has stated that, while TWIA rates need to be raised, the solution to TWIA's insolvency is not solely to raise rates for coastal policyholders. Senators who represent the coastal region and the Office of Public Insurance Counsel have suggested that a single adjuster program would increase private carrier participation in coastal areas.

There is also confusion among insurers and policyholders regarding whether there is a statutory obligation for the state to pay claims that cannot be paid by TWIA in the event of a major storm. According to TDI, there is no statutory obligation for the state to pay such claims; however, the legislature is not precluded from enacting measures that would access state funds. TWIA's current reserve capacity is expected to withstand a once-in-60-years storm and 25 percent of TWIA's revenue is currently being used to purchase reinsurance in order to cover the prospect of larger or multiple storms. TWIA currently
has $750 million in funding to pay claims and in the event of a larger storm, post-event bonds of $2.5 billion can be accessed. Calculations by TDI show that a once-in-100-years event striking Galveston or Corpus Christi could result in as much as $5 billion in damages.

Some have suggested that the legislature, when considering ways to improve the funding structure of TWIA, should consider whether to spread risks across the entire state through territorial rating. According to TDI, TWIA is the only coastal wind insurance pool that does not use territorial rating. Organizations such as the Texas Public Policy Foundation support authorizing territorial rating and rate increases in coastal counties in order to depopulate TWIA. Coastal residents state that long-term solutions for TWIA should be statewide and that additional surcharges for coastal policyholders will be detrimental to the business climate of the coastal area.

The 83rd Legislature may consider changes to TWIA in order to ensure that it remains solvent and that policyholder claims are paid.
INTERGOVERNMENTAL RELATIONS

Regulatory Requirements and Affordable Residential Housing

According to the Real Estate Center at Texas A&M University (Real Estate Center), from 1910 to 1969, the Texas population increased by an average of 250 people per day. From 1970 to 2010, that number grew to approximately 1,000 people per day. From 2010 to 2030, the population of Texas will increase by an estimated 14.1 million persons. People are moving primarily to the state's urban areas and the Real Estate Center estimates that by 2040 approximately 34 million people will live in four principal metropolitan areas: Dallas, Houston, San Antonio, and Austin.

A Real Estate Center study quantifying the impact of housing price increases on the ability of Texans to purchase a home showed that the heaviest impact was on lower-income households and that 35 percent of households in Texas cannot afford to buy a home priced higher than $100,000. Because the demand for new housing is increasing, there is a need to find a balance between regulations and affordability and the interaction between the two. A 2011 survey conducted by the National Association of Homebuilders regarding the effect of regulations on the price of a new home indicated that regulations account for 25 percent of the price of a new home. According to James Gaines, research economist for the Real Estate Center, Texas has a competitive advantage in housing affordability due to reasonable production, land costs, and the regulatory environment, so the percentage of the cost of a new home may not be as high as 25 percent, but the Texas Association of Builders (TAB) claims that regulations, mandated fees, and zoning issues have driven up housing costs in the state. TAB also suggests that implementation of regulations should remain a local power because each locale is unique.

Regulatory requirements involving permitting, platting, land development, the construction process, green building and energy conservation programs, zoning, property taxes, maintenance, and public service delivery can impact the price of a home. Regulations and fees add costs to homebuilding that may price some buyers out of the home market. Stakeholders suggest that incentives that encourage developers to build more affordable housing can be effective. They also note that when considering affordability, the cost of being able to stay in a home for the long term must take into account, which can be facilitated by improved construction methods that lower utility and maintenance costs.

The 83rd Legislature may consider legislation to create best practices to minimize regulatory costs and ensure health, safety, and affordability of housing.
Coordinating Efforts to Increase Ownership of Affordable Housing

Since November 2011, the Texas Department of Housing and Community Affairs (TDHCA) has assisted approximately 1,200 new homeowners in Texas. TDHCA oversees four programs that provide down payment assistance (DPA), including the Housing Trust Fund (HTF), the HOME Investment Partnerships Program (HOME), the Neighborhood Stabilization Program (NSP), and residual value in open bond indentures.

HTF provides loans and grants to finance, acquire, rehabilitate, and develop decent and safe affordable housing. HTF administers various single family programs and also provides funds for programs administered by other TDHCA divisions, including the Homeless Housing and Rapid Services Program and Bootstrap Self-Help Housing. All HTF programs are implemented through eligible nonprofits, for-profits, public housing authorities, and local governments that have executed an HTF contract or agreement.

The HOME program is funded by the United States Department of Housing and Urban Development (HUD). Authorized under the Cranston-Gonzalez National Affordable Housing Act, the purpose of the program is to expand the supply of decent, safe, affordable housing and strengthen public-private housing partnerships between units of general local governments, public housing authorities, nonprofits, and for-profit entities.

The Neighborhood Stabilization Program (NSP) is a HUD-funded program authorized by the Housing and Economic Recovery Act of 2008, as a supplemental allocation to the Community Development Block Grant program. The Texas State Affordable Housing Corporation (TSAHC) was created by the legislature to facilitate the acquisition of affordable housing for low-income Texans. TSAHC programs offered first-time homebuyers assistance and DPA using the NSP and the Affordable Communities of Texas Land Bank/Land Trust Program to purchase 300 foreclosed properties which were then banked on behalf of 14 nonprofit partner organizations, allowing the price of those properties to be locked in as the properties are put back into the market. TSAHC's Texas Foundation Fund provides grants to nonprofit housing organizations to specifically serve borrowers who are at or below 50 percent of the area median family income, with an emphasis on individuals with disabilities and/or rural communities.

Bonds are debt instruments issued for a period of more than one year with the purpose of raising capital by borrowing. The federal government, states, cities, corporations, and many other types of institutions sell bonds. A bond indenture is a written agreement between the issuer of a bond and his/her bondholders, usually specifying interest rate, maturity date, convertibility, and other terms. An open bond indenture is a type of clause that is included in the agreement for revenue bonds permitting the issuing of more revenue bonds at a later time, as long as the revenue from the past year was enough to cover the new issue expenses.
The four TDHCA programs have evolved differently and TDHCA's reorganization efforts have focused on coordinating and consolidating the programs to increase efficiency and establishing a single set of processes that TDHCA will use for loan origination to make the programs more user-friendly.

Some are concerned that few entities in the statewide network are signed up to administer the HOME program, which means that some persons cannot directly apply for assistance under TDHCA programs. TDHCA is now using a reservation system for funds rather than the contract approach because the reservation approach promotes efficient providers and ensures that funds do not remain idle.

The 83rd Legislature may consider legislation to provide local governments with maximum flexibility in utilizing federal funding, to encourage partnerships, and to consolidate funding to make more low-income housing projects feasible.

**Impediments to Local Government Tools for Affordable Housing Projects**

Timothy Bray, School of Social Sciences, The University of Texas at Dallas, testified before the Senate Committee on Intergovernmental Relations during the interim regarding the changing social demographics of the state's urban and suburban centers. Bray explained that Texas' metropolitan areas led the nation's growth from 2007 to 2010 and that four of the state's largest metropolitan areas were in the top 10 growth areas of the country. Growth in the suburbs slightly outpaced growth in the central cities. This demographic shift has implications for the delivery of affordable housing to low-income and moderate-income families.

Bray stated that the housing policy environment must balance the need for resources in suburban communities as well as in cities because the geographic footprint of poverty in Texas is growing, particularly in concentrated areas of cities. Bray stated that although it is important that low-income housing be located near mass transportation, higher costs associated with building in inner-city areas force builders of low-income housing, such as Habitat for Humanity of Texas, to build in areas other than inner-city areas. Issues such as the need for infrastructure and the inability to obtain appraisals in some areas also affect inner-city low-income housing development.

The 83rd Legislature may consider legislation to increase the Housing Trust Fund and other methods to encourage the development of and access to low-income housing projects.
Affordable Housing for Special-Needs Populations

Although many of the state's mental health institutions have been closed, housing options in community settings for people with serious mental illnesses has not kept pace with demand. The affordability of the housing and the need for nearby services, particularly transportation, has an impact on the daily challenges confronting persons with disabilities. Community-based housing for persons with disabilities must include services for those residents and service-enriched housing is complex to finance and construct, often requiring operating and service subsidies. Housing for the special needs population also encounters neighborhood resistance in some instances.

The 83rd Legislature may review policy and funding coordination between the Texas Department of Housing and Community Affairs, the Health and Human Services Commission, and the Texas Department of Criminal Justice to address housing options and community-based services for persons with disabilities.

Access to Affordable Housing After Disasters

The State of Texas has endured a number of catastrophic events in recent years. Lessons learned from Hurricane Ike and wildfire recovery efforts have led to a greater understanding of how recovery funding can be more effectively distributed and expended. In July 2011, Governor Rick Perry designated responsibility and oversight for a long-term disaster recovery (DR) program to the General Land Office of Texas (GLO). The jurisdiction of the DR program covers 63,000 square miles or over 22 percent of the land area of Texas, affecting approximately 11 million people, 62 counties, and over 300 communities. The DR program is a consolidation of two previously distinct programs: the housing program, formerly operated by the Texas Department of Housing and Community Affairs, and the non-housing program, formerly operated by the Texas Department of Rural Affairs. The DR program was designed to repair or rebuild over 4,000 infrastructure projects and more than 10,000 single-family homes. DR funds are distributed in three phases or "rounds." Awards during Round 1 are for housing and infrastructure. Awards in Round 2.1 apply to non-housing/infrastructure projects only and those projects must show compliance with Housing and Urban Development's (HUD) fair housing guidance. In Round 2.2, all applicants must complete the Fair Housing Activity Statement-Texas form, intended to demonstrate the commitment by communities to implement action plans for the improvement of fair housing in their area.

The DR program and processes often change, depending on fluctuating circumstances, and GLO has been tasked with creating a more efficient and effective business model. The GLO has made improvements to the program by expediting several processes and reducing bureaucratic barriers. Contracts have been adjusted to improve local program
management and to reduce nonessential administrative requirements. In an effort to improve quality control and equality of customer service, all contracting for Round 2.2 funding will be through direct contracts with the state, as opposed to the grantee/sub recipient model. The GLO is also considering changes for the Round 2 program and a reduction in the number of required housing inspections in hopes of expediting the eligibility determination. The GLO plans to reallocate funds as quickly as possible and remove bureaucratic barriers with systematic and continuous improvements in order to assist communities in completing projects in a timely manner.

The 83rd Legislature may consider issues relating to the restructuring of the long-term disaster recovery program.

**Bond Issuance by Special Purpose Districts**

Currently, the Texas Water Code assigns review authority over the issuance of bonds to the Texas Commission on Environmental Quality (TCEQ). A district is not authorized to issue bonds unless TCEQ determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of bonds.

Feasibility rules were established by TCEQ after numerous water districts experienced major financial hardships during the 1980s and were burdened with large amounts of debt, increased tax rates, and bankruptcy. Under the current bond review program, TCEQ receives and evaluates numerous documents submitted in support of a bond issue application. Considerations for determining economic feasibility include ensuring that the water district has an adequate water supply and wastewater treatment capacity and ensuring that the water district can maintain financial stability given the economic conditions that exist or are anticipated to exist at a specified time in the future.

Some stakeholders have questioned whether the feasibility rules should apply to public improvement districts (PIDs) as well as municipal utility districts (MUDs). The Texas Municipal League has stated that PIDS have become more popular for a broad range of projects, including lighting and graffiti management, and should be under the oversight of elected city officials. Opponents to a broad application of feasibility rules, particularly as the rules apply to PIDs, suggest that MUDs and PIDs are different and that oversight of each should focus on those differences. These opponents also state that there is no single formula that works for economic development and that PIDs have been in existence for years and are effective in their ability to respond to a specific need at a particular time in the economic cycle. Proponents of broader application of feasibility rules indicate that the rules serve to protect the public and public funds, and do not deter development.
The 83rd Legislature may consider whether the oversight authority granted to TCEQ regarding the review of the financial feasibility of bond issuances by special purpose districts and the current feasibility rules should be considered best practices and be made applicable to all special purpose districts.

Building Codes and Public Awareness in Areas Prone to Natural Disasters

Disasters in Texas vary by location and season and the two most prominent natural disasters in the state are hurricanes and wildfires. The state has become increasingly open to danger due to the increase in the overall population and in the number of areas that were previously not populated that are now vulnerable. The Texas Department of Agriculture (TDA) reported that in 2011, the Texas Forest Service (TFS) and local fire departments responded to more than 30,000 individual fires that burned nearly four million acres in Texas. According to TFS, wildland-urban interfaces (WUI) are zones where undeveloped land and urban areas meet. The TFS reports that 80 percent of all wildfires occur within two miles of a community and that preventing and fighting WUI fires is a complicated process that must address fuel sources.

The lack of uniform building codes lowers the state's insurance rating relating to damage from natural disasters. According to the Building Officials Association of Texas, only four Texas cities have adopted the 2012 International Wildland-Urban Interface Code (interface code) published by the International Code Council. Counties have been prohibited from adopting the interface code because of their size. Efforts to build structures designed to withstand devastation from wildfires, high winds, and flooding have been ineffective because building codes exist only in municipalities and not in unincorporated areas.

H.B. 2833, 81st Legislature, Regular Session, 2009, relating to certain building code standards applicable to the unincorporated areas of counties, gave counties the authority to adopt building codes and raised the question of whether the state should mandate the adoption of building codes. Although H.B. 2833 gave counties the authority to adopt building codes, regulatory authority and jurisdiction to enforce such codes remains limited. The Texas Association of Builders (TAB) believes that the adoption of new codes could lead to cost-prohibitive housing and energy issues.

TDA reports that it is important to reduce the threat and mitigate losses from wildfires with controlled burns and that more certified "burn managers" are needed throughout the state to oversee controlled burns. Training for burn managers under the supervision of TDA is expensive, and requires experience and up to $2 million of aggregate liability insurance. TDA plans to continue to work with the legislature to implement
enhancements to the state's certification program for trained and insured prescribed burn managers.

In May 2012, Agriculture Commissioner Todd Staples announced the establishment of the Texas Wildfire Prevention Task Force (TWPTF) "to maximize wildfire prevention and mitigation strategies across the state." Priorities for TWPTF include reducing the cause of wildfires by strategically identifying and targeting priority areas of the state for fuels reduction and working with the Texas Division of Emergency Management, TFS, and the State Soil and Water Conservation Board to facilitate communication with local leaders and landowners in identifying high-risk areas where fire prevention resources are most needed.

The Predictive Services Department of TFS has been charged with assessing risk across the state and the Texas Wildfire Risk Assessment Portal website provides information to anyone with Internet access. TFS plans to establish countywide community wildfire protection plans and increase public awareness through counties and homeowner association meetings. TWPTF will complement new website applications created by TFS and the Texas A&M University System to better assist homeowners and communities in determining wildfire risks and taking measures to mitigate potential hazards. TAB has also expressed an interest in informing the public by partnering with agencies that have educational websites.

The 83rd Legislature may consider changes or enhancements to city, county, and/or statewide building codes. The 83rd Legislature may also consider implementing best practices to educate and enable landowners in preventing and reducing their exposure to and damage from natural disasters.

**Court Rulings and Property Tax Exemptions**

According to the Office of the Texas Comptroller of Public Accounts (comptroller), Section 11.182 (Community Housing Development Organizations), Tax Code, provides a 100 percent exemption for property owned by a community housing development organization (CHDO), and Section 11.1825 (Organizations Constructing or Rehabilitating Low-Income Housing), Tax Code, provides a 100 percent exemption of property that is to be sold and a 50 percent exemption of qualified rental property, except for a local option to change the rental property exemption in counties with a population of at least 1.8 million (Harris, Dallas, and Tarrant counties). Eligibility for the 100 percent exemption requires that entities qualify as charitable organizations and have provisions in their charters prohibiting distribution of profits.
Section 11.182(d), Tax Code, provides exemptions for certain multifamily rental properties owned by an exempted organization. Section 11.182(e), Tax Code, requires adherence to all Internal Revenue Service tax exemption requirements. An exempted organization must control 100 percent of the interest as the general partner; comply with all rules of and laws administered by the Texas Department of Housing and Community Affairs (TDHCA); and submit annually to TDHCA and the governing body of each taxing unit evidence that the organization spent an amount equal to at least 90 percent of the project's cash flow in the preceding fiscal year for eligible persons in the county on social, educational, or economic development services, capital improvements, or rent reductions.

Other provisions in the Tax Code include exemptions for charitable organizations (Section 11.1801); charitable organizations improving property for low-income housing (Section 11.181); and community and land trusts (Section 11.1827). The Local Government Code includes exemptions for public facilities corporations created by specified entities, including housing authorities (Chapter 303); urban land bank demonstration programs (Chapters 379C, 379D, and 379E); homestead preservation districts and reinvestment zones (Chapter 373A); neighborhood empowerment zones (Chapter 378); municipal development corporations (Chapter 379A); housing authorities created by a city or county for low or moderate income housing (Chapter 392); and housing cooperation agreements among cities, counties, and local governments (Chapter 393). The Transportation Code provides exemptions for housing corporations in Section 431.102.

The Texas Association of Appraisal Districts (TAAD), testified before the Senate Committee on Intergovernmental Relations that chief appraisers must work their way through "a tangle of exotic, interlocking business organizations that seem to generate profits for developers and tax loopholes for investors." TAAD stated that Section 11.182, Tax Code, exempts projects built no later than 2003, and has been the subject of 13 reported courts of appeal cases and two supreme court cases in Texas. TAAD claims that cases relating to that section of the Tax Code are still working their way through the courts and that occasional sales of grandfathered projects raise new issues and result in additional litigation. TAAD also claims that projects created with interlocking and tiered ownership are "ambiguously organized" and often protect "shadowy limited partners" and investors.

A CHDO that meets certain statutory requirements is exempt from ad valorem taxation on property it owns. The case of AHF-Arbors at Huntsville I, LLC and AHF-Arbors at Huntsville II, LLC v. Walker County Appraisal District (AHF-Arbors), questioned whether in the two consolidated cases, a CHDO must have legal title to property to qualify for the exemption. The Supreme Court of Texas ruled in June 2012 that equitable title is sufficient and concluded that AHF-Arbors were not required to deliver a copy of their annual audits to TDHCA in order to claim their exemptions.
TAAD asserts that conflicting and ambiguous requirements for exemptions jeopardize the 2003 reform legislation that required that CHDOs undergo an annual audit and submit the results to the chief appraiser and TDHCA. The *AFH-Arbors* case indicates that this requirement means that the CHDO must have the audit prepared but not actually filed. According to TAAD, there is local opposition to exemptions for CHDO projects in Harris and Dallas counties where the exemption is mandatory because local governments have the best information to determine the housing needs in their areas and should not be forced to accept something they do not think they need.

TAAD has also expressed concerns about further erosion of the tax base and the negative impact on the Texas apartment industry. Many critics fear that the combination of federal and local tax subsidies will allow these projects, over time, to drive out competition, which will cause the free market to suffer. In June 2012, in the case of *Gates of Capernum Apts., LP v. Bexar Appraisal District (Gates of Capernum)*, the 224th Judicial District Court, Bexar County, Texas, granted a Section 11.182 tax exemption for tax year 2009. Many believe that this decision resolves the conflict and honors and upholds the original legislative intent.

The 83rd Legislature may consider reviewing statutes to determine whether CHDOs and nonprofits have the same level of access to tax exemptions.

**Identification of and Services for Homeless and Runaway Youth**

According to the Substance Abuse and Mental Health Services Administration, nationally, in 2004, approximately 1.6 million youths age 12 to 17 had run away from home and slept on the street in the course of one year. Approximately 25,000 youth across the nation age out of the foster care system each year and that number has increased by 41 percent since 1998. Studies have shown that serious challenges face those who age out of foster care—one in four youth are incarcerated within two years of leaving the system; 20 percent become homeless; and only half graduate from high school. Recent statistics from the Dallas County Juvenile Justice System show that in Dallas County, over 6,000 teens run away from home each year.

The Texas Department of Housing and Community Affairs (TDHCA) is the lead agency in dealing with the problem of homelessness in Texas and coordinating interagency efforts to address homelessness and associated problems. TDHCA addresses these issues primarily through three programs: the state-funded Homeless Housing and Services Program (HHSP), the federally funded Community Services Block Grant (CSBG), and the Emergency Solutions Grant Program (ESGP).
ISSUES FACING THE 83rd TEXAS LEGISLATURE

HHSP serves the eight largest cities in the state, is the most flexible of the three programs, and is funded at the state level. TDHCA reported during the interim to the Senate Committee on Intergovernmental Relations that HHSP has no more funds and that without an appropriation, the program will be discontinued in the next biennium.

CSBG is funded at approximately $30 million annually and focuses on developing self-sufficient individuals by teaching them life-skills and renewing their roles in the community. CSBG is primarily administered at the local level by community action agencies.

ESGP is solely aimed at homeless persons or those at risk of homelessness. TDHCA receives approximately $5 million annually and administers ESGP through units of local government or nonprofit agencies.

There are currently several national, state, and local data collection methods used to count homeless/runaway youth, including RHYMIS, the federal database used by federally-funded centers, transitional living programs, and street outreach programs; HMIS systems, used by continuums of care funded through the United States Department of Housing and Urban Development; point-in-time homeless counts, conducted annually across the country; homeless student counts, compiled by school districts; and juvenile department runaway arrest data. There is no centralized data collection system that can be used by all programs that serve the homeless population.

The 83rd Legislature may consider continued funding for the Homeless Housing and Services Program and the development of a system that can incorporate current methods of data collection and work in conjunction with current programs to provide a statewide data capture system for all state agencies.

Implementation of S.B. 1234 and Municipal Management Districts

Although municipal management districts (MMDs) may be created through petition at the Texas Commission on Environmental Quality (TCEQ), Chapter 375 (Municipal Management Districts in General), Local Government Code, provides that MMDs are more commonly created through special law. The authority granted to each MMD is determined by the language contained in the bill that creates the MMD and that language often varies according to the purpose for which the MMD is created and its location. S.B. 1234, 82nd Legislature, Regular Session, 2011, relating to municipal management districts, made necessary amendments to better reflect the current use of MMDs, provide greater oversight by the appropriate state agencies, and clarify common administrative procedures.
TCEQ is currently implementing the changes established by S.B. 1234 and the Texas Municipal League has praised S.B. 1234 as legislation with standardized language that updates the statutes and brings clarification to the process and preservation of city management. Among other things, S.B. 1234 defines "disadvantaged business;" authorizes a district to annex land; requires the board of directors to call a hearing on the exclusion of land or other property if a signed petition is filed; deletes provisions authorizing the district to contract and manage for any corporate purpose; and authorizes a district to design, acquire, construct, finance, issue bonds for, improve, operate, and maintain roads, landscaping, lighting, signs, sidewalks, et cetera. Proponents of S.B. 1234 have stated that the common language provided in the bill benefits practitioners and all stakeholders involved in drafting relevant rules and legislation.

The 83rd Legislature may consider whether additional language should to be included in the template created for standardizing the functions, responsibilities, and oversight of MMDs.

**Local Government Corporations and Nonprofit Tax Exemptions**

Prior to the 82nd Legislature, Regular Session, 2011, Ector County stood to lose a considerable amount of money in ad valorem tax revenue due to the impending sale of two power plants. The power plants were determined to fall under the jurisdiction of the Texas Transportation Code and were considered tax exempt. Questions have been raised as to whether local government corporations should be allowed to operate only within their own geographical area.

S.B. 1120, 82nd Legislature, Regular Session, 2011, provides that the property of a local government corporation and a transaction to acquire the property is exempt from taxation in the same manner as a corporation created under Chapter 394 (Housing Finance Corporations in Municipalities and Counties), Local Government Code, but that property of a local government corporation created by a municipal power agency that was created under Subchapter C (Municipal Power Agencies), Chapter 163 (Joint Powers Agencies), Utilities Code, is not exempt from ad valorem taxation if the property is located outside of the boundaries of each of the municipalities that created the municipal power agency.

According to the Texas Municipal League, some cities partner with other cities and some cities partner with counties to create special corporations for water supply and other projects and that these are agreed to by all parties. S.B. 1120 was a bracketed bill that resolved the issue in Ector County, and its provisions do not apply statewide.

The 83rd Legislature may consider legislation to make the tax provisions that were provided for Ector County in S.B. 1120 applicable statewide.
**Procurement Cost Reduction**

According to the Office of the Texas Comptroller of Public Accounts, any state agency that intends to enter a contract with an expected value of $25,000 or more must post the solicitation on the Electronic State Business Daily (ESBD) and allow vendors to search ESBD online or join the centralized Master Bidders List to have e-mail notices sent to them when a solicitation is posted. The posting must include a brief description of the goods or services to be procured, the bidding deadline, the estimated quantity of goods or services to be procured, the previous price (if applicable), the closing date needed, and the contact information for the responsible state agency employee. State agencies do not use newspaper publications and were first required to use electronic notifications in 1997.

Proponents of posting bids in newspaper publications suggest that public notices in newspapers benefit taxpayers and allow the public to see what is happening with taxpayer dollars. These proponents assert that newspapers are an important form of communication and represent the best way to inform the public because two out of five households in Texas do not have Internet access. Others question whether local entities should decide what procedure is more appropriate and economical.

Proponents for the electronic posting of bids argue that the work of procurement agents is now more efficient and transparent, and that businesses, which are electronically connected, rather than homeowners are the primary stakeholders participating in the competitive bidding process. The Texas Municipal League supports reducing the costs associated with procurement by allowing electronic posting of procurement notices.

The 83rd Legislature may consider legislation regarding the issuance of electronic bid notices.
Child Custody and Adoption Evaluations

Chapter 107, Subchapter D, Family Code, authorizes a court to order a social study of the circumstances and conditions of a child and the home of any person requesting conservatorship of, possession of, or access to a child. A social study is an evaluative process through which information and recommendations regarding adoption of a child, conservatorship of a child, or possession of or access to a child may be made to a court, the parties, and the parties' attorneys. Such a study may be made by a private entity, a person appointed by the court, a domestic relations office, or a state agency. Subchapter D sets out the minimum qualifications for a social study evaluator, requires a social study evaluator's actions in conducting a social study to conform with certain professional standards, and sets forth the basic elements of a social study. The social study report is filed with the court and becomes part of the record.

The Family Law Section (FLS) of the State Bar of Texas contends that Subchapter D contains antiquated terminology and provides insufficient guidelines, resulting in inconsistency in custody evaluations across the state and enabling unqualified persons to perform evaluations. FLS has proposed for the legislature's consideration legislation repealing Subchapter D and implementing a subchapter related to child custody evaluations. The proposal extends the use of such evaluations to other issues affecting the best interest of the child, expands provisions concerning conflicts of interest and bias regarding a child custody evaluator, requires such evaluators to have specified specialized knowledge in addition to meeting certain minimum qualifications, and sets forth communications and recordkeeping requirements. The proposal also contains separate provisions regarding adoption evaluations, including requirements for pre-placement and post-placement evaluations, minimum qualifications for evaluators, and the procedures for conducting the evaluation and filing the report.

The 83rd Legislature may consider legislation related to child custody and adoption evaluations.

Finding of Contempt for Failure to Pay Child Support

Under Section 157.162(d), Family Code, a court in a proceeding to enforce court-ordered child support is barred from finding a respondent in contempt of court for failure to pay child support if the respondent appears at the hearing with evidence showing that the respondent is up-to-date in payment of the child support. Section 157.162(e) authorizes the court to award the petitioner court costs and reasonable attorney's fees in such
proceedings if the respondent was not current in the payment of the child support on the date the motion for enforcement was filed and made the child support payments after the respondent was served notice of the motion or otherwise discovered that the motion for enforcement had been filed.

Some argue that these provisions encourage some obligors to withhold paying child support for long periods of time and then pay the child support in arrears just before the enforcement hearing, knowing that they cannot be held in contempt by the court. The Family Law Section of the State Bar of Texas recommends repealing Sections 157.162(d) and (e).

The 83rd Legislature may consider legislation related to the authority of a court to hold a delinquent child support obligor in contempt.

**Guardianships**

Except in cases in which a ward is indigent, under state law, a court in a guardianship case may assess reasonable and equitable fees between the parties. However, some argue that the courts in contested guardianship cases generally assess the fees against the ward's estate, even if the contestant's challenge to the guardianship is groundless and filed in bad faith. The Real Estate, Probate, and Trust Law Section (REPTLS) of the State Bar of Texas recommends amending state law to authorize a court to assess costs against a party who acted in bad faith or without just cause.

Interim *ad litem* fees are available in family law cases, but not in guardianship cases. Some argue that this can place a financial burden on persons acting as guardians *ad litem* when the guardianship case continues for a lengthy period. This may discourage qualified persons from acting as guardians *ad litem* in such cases. REPTLS recommends amending state law to authorize a court to set fees for a guardian *ad litem* in a guardianship proceeding in an amount the court considers equitable and just and to order such fees to be paid at any time during the proceeding.

The 83rd Legislature may consider legislation related to guardianships.

**Appeal of the Determination that a Dog is Dangerous**

Chapter 822, Subchapter D (Dangerous Dogs), Health and Safety Code, imposes certain duties on owners of dangerous dogs and, under Section 822.041, authorizes municipal and justice courts to determine whether a dog is dangerous as defined under this subchapter. This section provides that the owner may appeal the decision of the justice, county, or municipal court in the same manner as an appeal for other cases from the justice, county, or municipal court. However, in *In re Loban*, 243 S.W. 3d 827 (Tex
App. 2008), the Texas Second District Court of Appeals in Fort Worth held that although the Texas Legislature by enacting Section 822.041 had created the right to appeal, it had not given any court jurisdiction to hear the appeal from a justice or municipal court. H.B. 2679, introduced during the 82nd Legislature, Regular Session, 2011, clarified that such appeal was to the county court or county court at law in the county in which the justice or municipal court is located, but the bill failed to pass.

The 83rd Legislature may consider legislation relating to appeals from municipal and justice courts regarding a determination of whether a dog is dangerous.

**Equal Pay**

On August 31, 2012, in *Prairie View A&M University v. Diljit K. Chatha*, the Texas Supreme Court declined to apply the Lilly Ledbetter Fair Pay Act (LLFPA) to a wage discrimination complaint brought under the Texas Commission on Human Rights Act (TCHRA), the state's fair employment act. Under state and federal law, a discrimination complaint must be filed within 180 days after the unlawful employment practice occurred. Congress enacted LLFPA in response to a United States Supreme Court ruling that a compensation discrimination complaint must be filed within 180 days from the date of the initial salary decision. Under LLFPA, a discriminatory compensation practice occurs each time compensation is paid. The Texas Supreme Court held that there is no legislative intent that federal law be automatically incorporated into TCHRA and that it is the province of the Texas Legislature, not the judiciary, to amend TCHRA. Holding that the 180-day filing requirement is a mandatory statutory requirement, the majority ruled that an untimely claim is jurisdictionally barred.

Proponents of changing Texas law to incorporate LLFPA argue that, considering the secrecy regarding compensation, it is often difficult for an employee to discover the initial discriminatory pay policy decision in time to comply with the 180-day limitation period under TCHRA. By adopting LLFPA, the 180-day period would run each time discriminatory compensation is paid, following standard tort law that the statute of limitations begins to run only after the injured party knew or should have known of the injury. Proponents contend that this change will bring TCHRA in line with federal law and discourage discriminatory actions by Texas employers. Opponents assert that the change is unnecessary, will result in more litigation against employers, and will discourage business expansion in Texas.

The 83rd Legislature may consider legislation related to equal pay.
Keeping Certain Information Regarding Municipal Court Judges Confidential

Section 25.025, Tax Code, provides that the home address of specified individuals, including certain judicial officers, maintained in appraisal records is confidential and is available only for the official use of the appraisal district, this state, the comptroller, and taxing units and political subdivisions of this state. Municipal court judges are the only judicial officers not included in this list. The Municipal Judges Section of the State Bar of Texas notes that municipal court judges address local cases impacting many local residents and recommends that Section 25.025 be expanded to include municipal court judges.

The 83rd Legislature may consider legislation protecting the confidentiality of appraisal record information regarding municipal court judges.

Lawsuit Lending

Litigation financing, often referred to as "lawsuit lending," is when a third party provides funding to a plaintiff involved in litigation, even though the lender has no direct interest in the case. The plaintiff agrees to repay the loan out of any settlement or award received by the plaintiff. Over the past decade, lawsuit lending has increased and, according to The New York Times, plaintiffs borrowed more than $100 million from lawsuit lenders in 2011. Most lawsuit lending involves personal injury and class actions lawsuits.

Lawsuit lenders argue that because of the high costs of litigation, many plaintiffs with otherwise meritorious legal claims would be unable to seek full redress through the courts. Because the plaintiffs do not have to repay the money if they lose their cases, lawsuit lenders argue that they are not making loans and therefore are not subject to existing lending laws. Lawsuit lenders also assert that because these may be high risk loans, they have to charge higher fees and interest rates. Opponents of such practices assert that some lenders target vulnerable borrowers, promising plaintiffs quick cash while the plaintiffs await the resolution of their legal action, but do not fully disclose the terms of the loan and fees and charge high interest rates. In some cases, opponents assert, the amount owed by a plaintiff may far exceed the amount of the original loan and plaintiffs ending up paying most or all of any award or settlement to the lender. Others contend that lawsuit lending may actually encourage litigation and discourage settlements, as plaintiffs may be reluctant to settle when they owe substantial amounts to the lender.

In some states, courts have ruled that lenders are not entitled to a portion of any amount awarded to the plaintiff or have held that such practices are illegal. A number of states have passed or considered legislation banning or regulating lawsuit lending. H.B. 2987, introduced in the 79th Legislature, Regular Session, 2005, provided that all funding
advanced to a party to a lawsuit, the repayment of which is contingent upon that party's recovery in the lawsuit, is a loan subject to the Texas law barring usurious interest, but the bill failed to pass.

The 83rd Legislature may consider legislation related to lawsuit lending.

**Private Real Property Rights Preservation Act**

S.B. 14, enacted by the 74th Legislature, Regular Session, 1995, added Chapter 2007, known as the Private Real Property Rights Preservation Act (Act) to the Government Code. Under both the United States and Texas constitutions, a governmental entity may only take private land if the land is for a public use and the property owner receives fair compensation. Such "taking" may be by the actual physical possession of the land by the governmental entity or by the entity enacting a law, ordinance, or regulation that deprives the owner of the use or value of the land.

The Act generally applies to both agencies and other bodies in the executive branch and to political subdivisions of the state. However, the Act applies only to certain actions by a municipality that affect its extraterritorial jurisdiction. Under this Act, a "taking" includes governmental actions affecting private real property in a manner that limits the owner's right to the property and causes a reduction of at least 25 percent in the market value of the affected property. The Act authorizes a private real property owner to bring suit to determine whether a governmental action results in a taking under this chapter or to file a contested case with a state agency to determine whether a governmental action of the state agency results in a taking under this chapter. If it is determined that the governmental action is a taking, the Act provides for the invalidation of the governmental action. The property owner is also entitled to damages. The Act further requires covered governmental entities to evaluate and identify those governmental actions that may result in a taking and to prepare a written takings impact assessment of a proposed governmental action.

Some developers and property owners want the Act to be amended to cover actions taken by a municipality within its borders, such as rezoning or restrictions on land use. They argue that regulatory actions by a municipality can severely affect private property values and the ability of a property owner to use the affected property. Opponents argue that property owners have recourse through the courts and that expanding the Act to cover actions by a municipality within its borders would severely limit a city's ability to make necessary zoning changes or to enact needed land use or environmental protection regulations. Further, opponents assert, such expansion of the Act would impact city budgets and divert tax dollars from city services and improvements.

The 83rd Legislature may consider legislation related to the Private Real Property Rights Preservation Act.
State Commission on Judicial Conduct

The composition, powers, and duties of the State Commission on Judicial Conduct (SCJC) are set out in Article V, Section 1-a, Texas Constitution. SCJC is authorized to investigate complaints against Texas judges, impose private and public sanctions on judges who have engaged in judicial misconduct, and make recommendations for the removal or retirement of a judge based on misconduct or incapacity. Because it is an agency in the judicial branch, SCJC is not subject to state laws regarding administrative procedure, public information, or open meetings. Judges may appeal sanctions to a court of review, consisting of three appellate judges chosen by the chief justice of the Texas Supreme Court, and recommendations regarding removal or retirement are automatically heard by a review tribunal of seven judges or justices chosen by the chief justice.

The Texas Supreme Court promulgates the procedural rules for SCJC, and the Texas Legislature is authorized to promulgate laws to further this judicial oversight system. Because the constitution sets out many provisions regarding SCJC, statutory changes by the legislature must stay within these constitutional boundaries or acquire voter approval of a constitutional amendment. Because the supreme court and the legislature share oversight of SCJC, there is a potential for conflict between the procedural rules promulgated by the supreme court and laws enacted by the legislature.

In June of 2012, the Sunset Advisory Commission (Sunset) issued a report discussing issues concerning SCJC and making recommendations to address these issues.

The 83rd Legislature may consider legislation related to SCJC.

Statute of Limitations Regarding Open Accounts

Under Section 16.004(c), Texas Civil Practice and Remedies Code, a person must bring an action on an open or stated account not later than four years after the day the cause of action accrues, which is defined as the day the dealings between the parties cease. Some argue that the language is vague regarding when the statute of limitations begins to run and that courts have interpreted this provision to mean that the statute of limitations does not begin to run as long as the parties expect to conduct future dealings in the account. They assert that this means that courts must look to when the parties make a conscious decision not to continue dealings on the account, rather than looking at a definite event, such as the date of the last payment by the consumer. They recommend that the legislature set out a definitive event that will trigger the running of the statute of limitations, such as the last payment date or the charge-off date.

Opponents argue that there is no need to clarify the statute because credit card contract language determines when the contract has been breached and they note that many
consumers will try to continue to make minimum payments on an account. They assert that changing the law may benefit debt collection companies and hurt consumers.

The 83rd Legislature may consider legislation related to the statute of limitations regarding open accounts.

**Sharia Law**

Some have expressed concern that United States courts may be applying foreign law, particularly Sharia law, which covers the religious traditions governing the lives of observant Muslims, in decisions involving American citizens, in violation of constitutionally protected due process and religious liberty. They are urging the enactment of laws prohibiting United States courts from applying foreign law or Sharia law. Opponents assert that there is no evidence that American courts are imposing Sharia law and that enacting statutes expressly barring courts from considering international law or Sharia law are discriminatory, unconstitutional, and can undermine the ability of American courts to resolve international cases. In 2011, 10 states proposed or enacted legislation prohibiting courts from looking to the legal precepts of international law or Sharia law. In May 2010, the Oklahoma Legislature enacted H.J.R. 1056, creating the proposed "Save Our State Amendment" (SOSA) to the state's constitution. Following voter approval of SOSA, a United States district court granted a preliminary injunction enjoining Oklahoma from certifying the election on the ground that the law violated the protection of religious expression under the First Amendment to the United States Constitution. In January 2012, the United States Tenth Circuit Court of Appeals affirmed the injunction.

The American Public Policy Alliance issued a paper dated November 8, 2010, entitled "Representative Civil Legal Cases Involving Sharia Law," which contains brief abstracts of 17 cases dating from 1976 through 2010. Supporters of legislation barring courts from applying foreign law or Sharia law argue that the paper demonstrates the need for such laws. Critics of the paper contend that the cases cited in the paper demonstrate that United States courts are protecting the rights of individuals under American law, are balancing the interests of all parties in challenges to foreign court orders or decisions, and are not imposing Sharia or international law.

The 83rd Legislature may consider legislation related to the application of foreign or Sharia Law in Texas courts.
Warning to Noncitizens Regarding Guilty Plea

In Padilla v. Kentucky, 130 S. Ct. 1473 (2010) the United States Supreme Court ruled that criminal defense attorneys must advise noncitizen clients regarding the potential consequences of a guilty plea to the client's immigration status. Some Texas judges are concerned that noncitizens are not being fully informed that a plea of guilty or nolo contendere may affect their residency or immigration status.

The Hispanic Issues Section (HIS) of the State Bar of Texas recommends amending the Texas statutes to require magistrates to inform an arrested person at that person's first court appearance that if the person is not a United States citizen, a plea of guilty or nolo contendere may affect the person's immigration or residency status, may result in deportation, or may result in exclusion from the United States or denial of naturalization. According to HIS, many magistrates already do this, but the proposal would make the practice uniform.

The 83rd Legislature may consider legislation related to informing an arrested person who is not a United States citizen of the possible effect of a plea of guilty or nolo contendere on the person's immigration or residency status.
ISSUES FACING THE 83rd TEXAS LEGISLATURE

★

NATURAL RESOURCES

Air

$NO_x$ Emissions

Nitrous oxide ($NO_x$) is created during fossil fuel combustion when nitrogen and oxygen react with each other. Agricultural soil management, animal manure management, sewage treatment, mobile and stationary fuel combustion, adipic acid production, and nitric acid production are the main sources of human-influenced emissions of $NO_x$. $NO_x$ emissions traveling from some upwind states adversely affects downwind states' eight-hour ozone national ambient air quality standards.

In July 2011, the United States Environmental Protection Agency (EPA) created the Cross-State Air Pollution Rule (CSAPR), which requires states to improve air quality by reducing emissions from power plants that contribute to ozone and fine particle pollution in other states. CSAPR requires 28 states to reduce annual sulfur dioxide emissions, annual $NO_x$ emissions, and ozone season $NO_x$ emissions to aid in attaining the 1997 ozone and fine particle and 2006 fine particle national ambient air quality standards. CSAPR was intended to replace the EPA's Clean Air Interstate Rule (CAIR).

The requirements in CSAPR include strict standards regarding reducing $NO_x$ emissions coming from the state of Texas that travel to downwind states. In August 2012, the United States Court of Appeals for the District of Columbia Circuit (court) struck down EPA's CSAPR. The court found that the EPA exceeded its authority by using the Clean Air Act to "impose massive emissions reduction requirements." Because of the court's ruling regarding CSAPR, CAIR standards will remain in place. Currently, the EPA is reviewing the court's decision.

Proponents of lowering $NO_x$ emissions say that the practice is necessary because of the uncertainty of CSAPR. If the EPA creates a modified rule similar to CSAPR and it is required to be implemented quickly, TCEQ could be forced to require that construction of new coal plants be halted, negatively affecting the reliability of electricity in the state. Opponents of lowering $NO_x$ emissions argue that Texas is below the national average for $NO_x$ emissions from coal power plants and therefore there is no need to take further action to lower emissions.

The 83rd Legislature may examine methods for reducing $NO_x$ emissions.
Air Emissions: Barnett Shale and Eagle Ford Shale

The Barnett Shale in North Texas and the Eagle Ford Shale, which spans parts of South and Central Texas, are natural gas fields. In addition to water usage concerns as a result of natural gas fracturing, concerns about air quality in the surrounding cities, especially the areas surrounding the Barnett Shale, have arisen.

The economic impacts of both the Barnett Shale and the Eagle Ford Shale have been studied and the United States Environmental Protection Agency (EPA) has determined that continued and responsible growth of oil and gas production in the United States is important. A study released by the Center for Community and Business Research at The University of Texas at San Antonio's Institute for Economic Development found that, in 2011, the Eagle Ford Shale contributed $25 billion in economic output to the region surrounding the shale. The study also found that the Eagle Ford Shale supported 47,000 full-time jobs in the area. A report by economist Ray Perryman found that the Barnett Shale has had an economic impact of $65.4 billion in North Texas since 2001. Perryman's report also found that the Barnett Shale directly and indirectly supports 100,268 jobs in the state.

On April 17, 2012, the EPA issued regulations, required by the Clean Air Act, to reduce air pollution from the oil and gas industry. The EPA's final rules encompass the first federal air standards for natural gas wells that are fractured and include requirements for other sources of pollution, such as those generated during the stage of well completion and those emitted from equipment that transports natural gas from wells to distributors, in the oil and gas industry that were not previously regulated at the federal level.

The EPA's final rules are designed to yield a 95 percent reduction in volatile organic compounds (VOC) emitted from more than 11,000 newly fractured wells across the United States each year. The reduction would be accomplished via "green completion," which is a process in which special equipment separates gas and liquid hydrocarbons from flow back, which is the liquid that contains fracking fluids that returns out of a well following fracturing. After the flow back process is completed, the gas and hydrocarbons can be treated and used or sold. Once the final rules are fully implemented, they would reduce air toxics by at least 12,000 tons, reduce VOCs by between 190,000 and 290,000 tons, and reduce methane by 1.0 to 1.7 million short tons (a short ton is a United States unit of weight equivalent to 2,000 pounds). The cities of Fort Worth and Southlake, where the Barnett Shale is located, currently require green completions.

TCEQ stated that the requirements will encourage pipeline infrastructure in areas of South Texas, where the Eagle Ford Shale is located, in order to serve the increasing numbers of wells that are being created in the region.
TCEQ currently has seven automated gas-chromatograph monitors, which are designed to monitor emissions data from a location over a period of time, in the Barnett Shale area. Because the Eagle Ford Shale spans an area that is mostly sparsely populated, specific air quality concerns have not yet been identified by TCEQ. The creation of the EPA's regulations to reduce air pollution from the oil and gas industry has led TCEQ to evaluate the air-monitoring needs in the Eagle Ford Shale, such as installing automated gas-chromatograph monitors.

The 83rd Legislature may examine methods for further reducing air emissions from the Barnett Shale and monitoring and reducing air emissions from the Eagle Ford Shale.

**Water**

*Water Conservation*

According to the Texas Commission on Environmental Quality (TCEQ), 97 percent of the state of Texas was experiencing extreme or exceptional drought at the beginning of October 2011. As of February 21, 2012, the United States Drought Monitor showed that 37 percent of the state was in extreme or exceptional drought conditions, including all or part of 124 counties. John Nielsen-Gammon, Texas state climatologist, stated that seasonal forecasts predict that the drought will persist or intensify in several portions of the state.

According to TCEQ, enforcement of water right permits is guided by the priority doctrine. Domestic and livestock users have superior rights to any permitted surface water right holders. Among permitted water right holders, permit holders who were authorized first, known as senior water right holders, are entitled to receive their water before water right holders who obtained their authorization later, known as junior water right holders. A water right holder who is not getting water the permit holder is entitled to can call TCEQ to take action to enforce the priority doctrine.

In a September *Texas Tribune* column, Texas Speaker of the House of Representatives Joe Straus stated that water will be an important issue during the 83rd Legislature. Straus stated that stewardship of land by private landowners is an important factor in water conservation and that conservation should be balanced by property rights.

Several industries, including farming and ranching, rely on large amounts of water to maintain their operations.
In the spring of 2012, for the first time in its history, the Lower Colorado River Authority (LCRA), the entity that determines which interests receive water in Central Texas, did not release water to rice farmers in three counties in Texas.

LCRA stated that the reason for the cut-off was because rice farmers pay less for water than other sectors of industry, including cities, and therefore their water service is considered "interruptible" during times of severe drought. According to an April 2012 report from LCRA, rice farmers used 367,985 acre-feet of water from the Highland Lakes, which are managed by LCRA. The affected rice farmers in the area maintain that the use of water for farming surpasses the importance of the use of water for golf courses or other recreational uses.

In February 2012, the Texas Supreme Court ruled in *Edwards Aquifer Authority and the State of Texas v. Burrell Day and Joel McDaniel* that farmers and ranchers have a right to the use of water beneath their land. The case was brought after the Edwards Aquifer Authority (EAA) created a regulation for the taking of water based on "historic use," or the amount of a property's groundwater that had been used in the past. Day and McDaniel are ranchers who argued that they had a right to the water under their land and sought a permit from EAA for an increase, but were denied the ability to pump increased amounts of water on the basis of historic use.

The ruling by the Texas Supreme Court was considered a triumph for farmers and ranchers. Environmental groups maintain that the use of water by farmers and ranchers should be carefully balanced with water conservation efforts in order to ensure that groundwater is available for future generations.

The passage of S.B. 332 (relating to the ownership of groundwater below the surface of land, the right to produce that groundwater, and the management of groundwater in this state), 82nd Legislature, Regular Session, 2011, which provides that, if acting without malice or willful waste, property owners have a right to take capture water under their land because they have an ownership interest in the groundwater below their property, further reaffirms the rights of property owners. The issue of allowing water use by property owners while also taking into account the need to conserve water for the future is ongoing.

The 83rd Legislature may consider legislation that balances water conservation with water usage for landowners who have water rights.

*State Water Plan*

The State Water Plan (water plan) is a collaborative effort of regional water planning groups. Each water planning group reviews water projections and availability of water volumes to determine water needs. When a water need is acknowledged, water planning
groups must recommend management strategies to address the problem. When a water planning group adopts a regional water plan, the Texas Water Development Board (TWDB) receives it and grants approval or denial. TWDB then compiles the information it has received from the regional water plans and from experts and creates the water plan.

The 2012 State Water Plan is the ninth water plan created in the state. The 2012 plan includes the following legislative recommendations that TWDB believes are needed to facilitate voluntary water transfers, or the transfer of water use from one use to another:

- The legislature should designate three additional sites—the Turkey Peak Reservoir, Millers Creek Reservoir Augmentation, and the Coryell County Reservoir—that are of unique value for the construction of reservoirs recommended in the 2011 regional water plans for protection under the Texas Water Code.
- The legislature should designate the Pecan Bayou, Black Cypress Creek, Black Cypress Bayou, Alamito Creek, Nueces River, Frio River, Sabinal River, Comal River, and San Marcos River for protection under Section 16.051 (State Water Plan: Drought, Conservation, Development, and Management; Effect of Plan), Texas Water Code.
- The legislature should provide a mechanism to acquire feasible reservoir sites for development of additional surface water supplies to meet the future water supply needs of Texas identified in the 2011 regional water plans and also water supply needs that will occur beyond the 50-year regional and state water planning horizon.
- The legislature should enact statutory provisions that eliminate unreasonable restrictions on the voluntary transfer of surface water from one basin to another.
- The legislature should remove TWDB from the petition process concerning the reasonableness of a desired future condition except for technical review and comment.
- The legislature should require all retail public utilities to conduct water loss audits on an annual basis, rather than every five years.
- The legislature should develop a long-term, affordable, and sustainable method to provide financing assistance for the implementation of state water plan projects.

The state's population is projected to almost double, from 25 million to 46 million, over the next 50 years, and existing water supplies are expected to decrease.

H2O4TexasCoalition, a nonprofit corporation that seeks to mobilize support for the State Water Plan, released a statement that stated that if implementation of the water plan is delayed, 50 percent of Texans would face a significant water need in the event of any future drought of record. The group also stated that if the water plan is not implemented,
water shortages during drought could cost business and workers in the state about $12 billion in income this year and $116 billion in lost income by 2060.

The 83rd Legislature may consider revisions to the State Water Plan to help ensure sufficient water for the future.

Groundwater Resources

United States Geological Survey experts state that nearly all surface-water features interact with groundwater. Overuse of water taken from streams can deplete groundwater and, conversely, the pumping of groundwater can deplete water in streams, lakes, or wetlands.

Groundwater conservation districts (GCD) are created by the legislature or by the Texas Commission on Environmental Quality (TCEQ) through a local petition process. The Texas Water Code requires that GCDs consider groundwater availability models and other data or information for the management area during the development of the desired future conditions (DFC) for certain aquifers within groundwater management areas. The statute provides that GCDs are required to prepare a report that includes a description of each DFC, provides policy and technical justifications for each DFC, and documents consideration of the various factors listed in the Texas Water Code. GCDs are the only entities in the state that are authorized to regulate the creation and spacing of water wells.

TWDB's Groundwater Resources Division studies groundwater throughout the state. Experts in the division have stated that at current use levels, groundwater is diminishing, especially in the Ogallala Aquifer, which is the largest aquifer in the United States and serves much of the High Plains region of Texas, and the Gulf Coast Aquifer, which is a major aquifer paralleling the Gulf of Mexico coastline. TWDB recognizes nine major and 21 minor aquifers in the state. These aquifers are a critical source of water for Texas.

At the 2012 Texas Alliance for Groundwater Summit, Kelly Mills, leader of the TCEQ groundwater planning and assessment team, proposed that more GCDs be created in order to properly manage groundwater in the state.

The 83rd Legislature may consider legislation that would ensure that the state's groundwater resources are effectively managed.

Hydraulic Water Fracturing

The Barnett Shale and the Eagle Ford Shale are natural gas fields that span most of Texas. Hydraulic water fracturing (fracking) is the method most commonly used to extract natural gas from the earth. During the fracturing process, water is used to cool and lubricate the drill bit. A large amount of water is also used during fracking to extract
natural gas from the earth. According to the Texas Water Development Board, the use of water for hydraulic fracturing operations is expected to increase significantly through 2020.

In May 2012, Ohio began experimenting with the use of liquid nitrogen gas (LPG), which is a mixture of propane that is pressurized and turned into a gel. LPG is injected into the earth in a way that is similar to how water is injected during the fracking process, but unlike water, LPG is soluble with natural gas and thus returns to the surface with the oil or gas being extracted, so no flow back water from the fracking process returns and needs disposal. Proponents of LPG state that the technology is worthwhile because no water is used during the extraction portion of fracking when LPG is used. Opponents of the use of LPG stated that LPG's use in fracking is costlier than the use of water.

Desalination is a method used to treat brackish water that removes impurities. Currently, the use of desalination technology on wastewater generated from the fracking process is being studied so that the treated water may be recycled and reused in the fracking process. Critics of desalination say that the technology is expensive and question whether the cost to desalinate water is worth the end product. The waste, predominantly salt, from desalination is also difficult to dispose of properly. Opponents also say that the technology for desalination should be used primarily for drinking water and not to clean water for reuse of wastewater from fracking operations. Proponents of desalination cite the need for technology to reuse wastewater from fracking operations in order to reduce the use of freshwater in those types of operations.

The 83rd Legislature may consider legislation that addresses alternatives to using surface or groundwater for electricity generation and the extraction of fuels.

**Drought Conditions and Electric Generation Capacity**

According to the United States Drought Monitor, approximately 15 percent of Texas faced extreme drought conditions in October 2012, compared to 92 percent of the state estimated to be in extreme drought conditions in October 2011. Extreme weather in Texas has led state agencies and legislators to consider plans for mitigating the impact of drought conditions on electric generation capacity.

Because electric generation is highly dependent on water, legislators have stated that Texas should plan for the conservation of the state water supply and the adequacy of electric capacity and generation in tandem. Texas currently implements a yearly state water plan developed by the Texas Water Development Board that includes water conservation, reuse, and addresses the needs of all water user groups in the state.
However, legislation relating to a state energy plan or statewide goals for energy conservation has failed to pass previous legislatures.

State agencies, including the Public Utility Commission of Texas (PUC), the Electric Reliability Council of Texas (ERCOT), the Texas Commission on Environmental Quality, the Texas Division of Emergency Management, and electric utility providers, including members of the Association of Electric Companies of Texas and the Texas Public Power Association, have worked together to ensure that preparations are made for electrical generation during drought conditions. Additionally, the Lower Colorado River Authority, Calpine Power Corporation, CPS Energy, Luminant Energy, and NRG Energy have developed best practices that can be used by power generators for water conservation that, among other things, identify all uses and quantities of water at each plant site and develop a management plan to ensure that water is recycled and reused in order to maximize efficiency. While PUC and ERCOT have encouraged renewable energy infrastructure that uses less water and promotes energy conservation and energy efficiency, some stakeholders have suggested that the state implement additional measures for water and energy conservation.

Testimony presented to the Senate Committee on Business and Commerce suggested that diversifying the state energy portfolio and switching to cleaner fuel types, such as wind and solar, will require less water and reduce emissions in the state. It was suggested that the state provide incentives for implementing or retrofitting advanced cooling technologies and consider the availability of water during the permitting process of generation plants. Legislators have expressed the need for statewide planning to ensure that drought and extreme weather conditions do not negatively affect the Texas economy, stating that uncertainty regarding electric generation in the state will discourage economic growth and investment in Texas.

The 83rd Legislature may consider legislation to improve statewide plans for mitigating the effect of drought conditions on electric generation capacity.
STATE AFFAIRS

Liability Protection for Entities and Individuals Assisting in Fighting a Fire

Wildfire suppression in Texas depends mainly on local, state, and out-of-state responders. In some areas of the state, large landowners have private resources for wildfire suppression that can assist responders fighting multiple or large wildfires, but these private entities are concerned about liability when they operate outside of their property lines. Section 79.003 (Disaster Assistance), Civil Practice and Remedies Code, provides protection to persons responding to disasters at the request of a local, state, or federal agency. Some assert that there are still some questions regarding the application and extent of such protection and that these concerns regarding liability limit such private entities' ability to work with the Texas Forest Service and other responders. One issue concerns the potential liability of the private entity assisting in wildfire suppression if that entity, as part of the wildfire suppression, must enter onto another's private property. Proponents argue that clarifying the liability of the private entity assisting in wildfire suppression will allow private entities with fire suppression resources to assist responders, easing demands on state resources and making wildfire suppression more effective and efficient. Others express concern that such private entities and their employees may lack the sufficient fire suppression training and skills, potentially endangering their employees and the lives and property of others.

The 83rd Legislature may consider legislation related to the liability of private entities assisting in fighting wildfires outside of their property lines.

Employees Retirement System and Teacher Retirement System Health Care Plans

The Employees Retirement System of Texas (ERS) provides an employee group health insurance program to state employees. The state pays 100 percent of the health insurance for employees and 50 percent for retirees. The Teacher Retirement System of Texas (TRS) provides health care benefits to retired teachers through TRS-Care. The basic health plan, TRS-Care 1, provides catastrophic insurance, and TRS-Care 2 and TRS-Care 3 are optional plans offering more comprehensive benefits, for which participants pay premiums. Both plans are facing situations where costs will outpace revenues because of increasing health care costs. In addition, some lower wage state employees can no longer afford to purchase family or optional coverage. The 82nd Legislature directed ERS and TRS to perform studies regarding the long-term sustainability of these group insurance programs and to report their findings to the legislature.
ERS and TRS have reported that they have made certain internal changes, such as having eligible employees participate in Medicare option programs, which have saved costs, but that more changes will have to be made to keep these group insurance programs sustainable. They report that every option will adversely impact some participants. These options include raising the age of retirement, tightening eligibility requirements, requiring more Medicare participation, establishing health care reimbursement accounts (under which an employee is given a lump sum to purchase his or her own health care), providing a basic health care program with participants having the flexibility to purchase optional insurance, changing deductibles and copayments, providing incentives for healthy behavior, and managing costs, such as using integrated health care delivery groups that share savings when cost and quality targets are met.

It is generally agreed that a good health care benefit plan is important in attracting and retaining qualified employees. The issue is how to change the plans to make them sustainable and save costs while still providing an affordable and comfortable base of benefits to employees and their families.

The 83rd Legislature may consider legislation related to ERS and TRS group insurance health plans.

**Retirement Benefits Under ERS and TRS**

The Employees Retirement System of Texas (ERS) provides retirement benefits to retired state employees, law enforcement officers, and judges and the Teacher Retirement System of Texas (TRS) provides retirement benefits to retired teachers. In both systems, the state and the employees contribute to the pension trust fund and the contributions are professionally invested to fund future retirement benefits. Both are defined benefit plans, meaning that upon retirement the employee receives a specified monthly benefit based on the employee's earning history and duration of employment. The 82nd Legislature directed ERS and TRS to perform pension benefit studies and report their findings to the legislature.

ERS and TRS have reported that both plans are well designed and secure, able to pay benefits for decades to come, and that the return on investments over the short-term and long-term have generally reached the goal of eight percent. However, neither plan is actuarially sound, as defined by statute, which means that the plans cannot increase benefits. ERS and TRS have stated that for the plans to remain sustainable, changes will have to be made. Some internal changes, such as increasing the retirement age, will lower the unfunded liability, but representatives from ERS and TRS have testified that it
may take a combination of changes to benefits and an increase in contributions to make the plans actuarially sound. Both ERS and TRS have reviewed alternative plans, such as changing the current plans from a defined benefit plan to a defined contribution plan, in which the employer sets up an investment account for each employee and makes specified contributions to that account.

It is generally agreed that a good benefit plan is important in attracting and retaining qualified employees and that changes to the plans should be considered while the plans are stable and healthy. Some organizations representing state employees have asserted that state employees are willing to accept lower wages than they might earn in the private sector in exchange for superior pension benefits. These organizations argue that making significant changes to the plans or shifting employees to alternative plans would not necessarily make the plans more actuarially sound, may cost more to provide equivalent benefits, would result in lower benefits to employees, and would make it harder for the state to recruit and retain employees. For example, they argue against changing from defined benefit plans to defined contribution plans, noting that most individuals would not be able to invest as successfully as a large centralized investor and that under a defined contribution plan, the risk falls on the individual.

Some argue that state contributions are lower than the national average and below the constitutional minimum and that the state must increase its contributions. Opponents respond that increasing the state contribution rate alone will not make the plans actuarially sound. They assert that any increase in state contribution would require increasing state revenues and that any increased contribution by the state must be matched by increased contributions from participants.

Some have noted that the vast majority of teachers in Texas do not receive Social Security benefits and therefore are generally dependent on their TRS retirement. They say that the value of these benefits has declined over the years, leaving many retired teachers struggling. Others point out that it is not possible to consider increasing retired teachers' benefits until the TRS plan is actuarially sound and that the state must consider the impact of any increased benefits upon actuarial soundness.

The 83rd Legislature may consider legislation related to ERS and TRS.
TRANSPORTATION

Alternative Fuel

Currently, 49 compressed natural gas (CNG) refueling stations and 19 liquefied natural gas (LNG) stations in the state are licensed by the Railroad Commission of Texas (railroad commission). S.B. 20 and S.B. 385, 82nd Legislature, Regular Session, 2011, allocated about $9.1 million annually from Texas Emissions Reduction Plan (TERP) funds for natural gas vehicles and about $2.3 million annually for public natural gas stations located near the interstate highways connecting the most populous cities of Texas. TERP funds are administered by the Texas Commission on Environmental Quality.

According to the railroad commission, from August 31, 2010, to August 31, 2012, the number of CNG vehicles in Texas increased by 33 percent. The railroad commission predicts that the number of CNG vehicles will continue to increase over the next few years, as more fleets utilize natural gas as an economically and environmentally beneficial alternative transportation fuel.

New technologies may soon provide distributed fueling infrastructure for non-fleet CNG users. In 2012, The University of Texas at Austin was awarded $4.3 million to develop a low-cost (under $2,500) CNG fueling appliance for residential use, with a target commercialization date of 2015. In October 2012, the railroad commission proposed amendments to its CNG safety rules that would allow installation of such appliances in home garages. Nearly half of Texas homes have gas service. The cost differential between natural gas and gasoline, with current prices of $2.37 per gasoline gallon equivalent for CNG and $3.47 per gallon for gasoline, along with a low-cost refueling option, may open a market for home refueling.

The 83rd Legislature may consider providing funding and resources to develop natural gas utilities and pipelines. The legislature may also consider authorizing homeowners to install natural gas fueling equipment in home garages to fuel vehicles powered by natural gas. The 83rd Legislature may consider offering additional incentives for operators of propane and natural gas vehicles, equipment, and refueling infrastructure to encourage the widespread adoption of natural gas vehicles and fueling stations.
**Driver's Licenses**

The Department of Public Safety of the State of Texas (DPS) has made various changes to address long wait times for driver's licenses, including building six mega centers; implementing online scheduling for driver's licenses; and encouraging people to renew driver’s licenses online.

While personal driver's license wait times have improved, there is still room for more efficiency with regard to the issuance and renewal of commercial driver's licenses (CDL). Stakeholders have voiced concern about the limited availability of CDL examinations and confusion among DPS staff as to which examination is required for each type of CDL.

Concerns have also been raised that DPS staff is not fully trained on how to determine the immigration status of applicants and that the documentation requirements for a legal resident to obtain a driver's license are confusing.

The 83rd Legislature may consider authorizing private vendors to administer CDL examinations in order to alleviate some of the confusion and relieve the lack of manpower at DPS driver's license offices.

The 83rd Legislature may consider increasing DPS staff and staff training at driver's license offices; simplifying the documentation process regarding proof of residency; waiving documentation fees for legal residents; adding more mobile driver's license units; and providing an efficient system to appeal adverse decisions regarding the award of identification documents.

**Transportation Finance**

Texas' growing population has made it more difficult for the state to meet transportation infrastructure demand. The Texas Department of Transportation (TxDOT) reported in its *Statewide Long-Range Transportation Plan 2035* that from 2011 to 2035 the state will need $370 billion to maintain existing roads and to alleviate congestion. The state has experienced a decrease in its ability to acquire rights-of-way and methods of financing for new road projects.

Although a slight increase in revenue generated from the motor fuels tax is estimated for fiscal years (FY) 2012 and 2013, a steady decrease in revenue generated from motor fuels taxes has occurred in prior years due to a reduction of individual miles traveled and the development of more fuel-efficient vehicles, such as hybrid, electric, and natural gasoline-powered fleet vehicles. As these vehicles become more readily available to
Consumers, the state can expect an increased impact on motor fuels tax revenue. The increase in fuel-efficient vehicles in combination with motor fuels taxes that have not kept pace with inflation has made the motor fuels tax an unpredictable funding source. Additionally, the debt service requirements of Proposition 12 bonds and Proposition 14 bonds are reaching or nearing voter-approved limits.

Proposition 12 bonds are general obligation (GO) bonds authorized by the Texas Legislature and approved by the Texas voters in 2009 that enabled TxDOT to contract for approximately $2 billion for highway improvements. These bonds are backed by the state’s General Revenue Fund. Proposition 14 bonds are voter-approved bonds that authorize TxDOT to fund transportation construction projects and are payable from revenue deposited to the credit of the State Highway Fund (Fund 6). According to TxDOT, all GO bond revenue authorized by the voters has been assigned to specific projects.

In order to alleviate the anticipated transportation budget shortfall, the state has considered comprehensive development agreements (CDA), pass-through funding mechanisms, indexing the motor fuels tax to inflation, increasing the motor fuels tax, and providing for local option fees.

A CDA is a tool that enables TxDOT to use private investments in the Texas transportation system. Pass-through financing is a partnership between TxDOT and a developer that funds roadway construction with a per-vehicle or per-vehicle-mile fee paid by TxDOT to the developer. Local option fees include the local vehicle registration fee and the local motor fuels tax.

Additional factors that have affected transportation infrastructure funding include the diversion of funds from Fund 6 and the unpredictability of federal funding. Recently, Congress enacted the Moving Ahead for Progress in the 21st Century Act (MAP-21), funding surface transportation legislation that appropriates over $105 billion for FY 2013 and FY 2014. MAP-21 is the first long-term highway authorization enacted since 2005 and replaces the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act-A Legacy for Users (SAFETEA-LU), the former surface funding transportation legislation. SAFETEA-LU has not been consistently reauthorized at the same funding level and states have not been able to accurately predict funding streams for transportation. Furthermore, the instability of construction costs makes it difficult for TxDOT to project the cost of transportation projects.

The 83rd Legislature may consider legislation to index the motor fuels tax to inflation or increase the motor fuels tax in order provide additional funding for transportation infrastructure projects. The 83rd Legislature may also consider legislation to authorize local governments to use voter-approved local options that may include a local vehicle registration tax and a local option motor fuels tax.
**Overweight Trucks**

According to the Texas Department of Motor Vehicles (TxDMV), the state issued 728,281 overweight vehicle permits during the 2011-2012 fiscal year, an increase of 137,301 from the previous fiscal year. Those permits generated $146,994,776 for the state to offset a portion of the cost of repairing the wear and tear on Texas highways.

In August 2012, Texas launched a Texas permitting and routing optimization system (TxPROS) that allows issuance of overweight permits around the clock, and more than 60 percent of overweight permits are now being issued through TxPROS. TxDMV recently stated that the number of permits may be on the rise because the new system is quick and easy for haulers to use and gives them less motivation to cheat. In the past, haulers would have to wait hours to obtain a permit and, if the hauler decided to go without a permit, the only way the violation would be known was if the hauler was stopped by a peace officer.

Section 621.201 (Maximum Weight of Vehicle of Combination), Transportation Code, contains the state's permissible weight table, which requires all trucks in excess of 80,000 pounds gross weight to obtain a permit and prohibits trucks exceeding 180,000 pounds gross weight from being permitted. The state provides permit exemptions for vehicles that transport certain commodities, including milk, solid waste, recyclable materials, cotton, and chili pepper seedlings.

The Coalition for Transportation Productivity, with a membership of 200 shippers, advocates that Congress raise the interstate weight limits for six-axle tractor-trailers, which would reduce shipping costs and result in decreased cost of goods. While such a change might lower the cost of goods, it could increase the wear and tear on state roadways and bridges.

The 83rd Legislature may consider this issue if Congress increases the interstate weight limit and may consider increased funding for transportation infrastructure in order to address the wear and tear that would result from such a weight limit increase.

**Transportation Infrastructure**

Between 1990 and 2008, the Texas population grew by 39 percent. By 2035 the state's population is projected to exceed 33 million, an increase of more than 30 percent from 2010. In Texas, 50 percent of the workforce currently travels to neighboring counties to work. The Texas economy is outpacing the national economy, which makes transportation infrastructure even more important to the future and the growth of the
ISSUES FACING THE 83rd TEXAS LEGISLATURE

Texas workforce and economy. However, there are concerns that these challenges might be difficult to meet.

The state's bridges are aging and Texas will need to review, retrofit, and update 51,000 bridges. According to the Texas Department of Transportation (TxDOT), there are a substantial number of bridges that have reached or will soon reach the end of their lifespan.

There are concerns regarding the decline in transportation funding and its potential impact on pavement ratings. TxDOT projects that, at current funding levels, by 2035 less than 10 percent of the state's pavement will be rated as good or better.

Due to better technology, such as global positioning system devices and fleet management systems, vehicle operators are more likely to take the most efficient route, thus reducing the number of refueling stops. At the same time, vehicles are being designed to consume less fuel and electric cars and natural-gas-powered fleet vehicles are beginning to gain access to the market. The increasing costs of motor fuels is leading some people to seek other modes of transportation, and adjustments to the motor fuels tax have not kept pace with inflation, making that source of tax revenue less reliable. As the motor fuels tax becomes less reliable as a stable revenue source, the state must find alternative sources of revenue for building and maintaining roads.

The 83rd Legislature may consider shifting the focus from building new roads to expanding existing roads and incentivizing and funding mass transit options, such as high-speed rail and commuter rail systems. The 83rd Legislature may also consider increasing the freight system capacity; indexing the motor fuels tax to inflation; expanding local options such as a local vehicle registration tax or a local motor fuels tax for local highway projects; and implementing active traffic management by using variable speed limits and utilizing shoulders during high traffic hours.

Metropolitan Planning Organization and Congested Roadways

According to the Office of the State Demographer, Texas gained more population than any other state in the last federal census, adding 4,293,741 people between April 1, 2000, and April 1, 2010. The Texas Department of Transportation (TxDOT) is projecting that Texas will have 33 million residents by 2035. The most congested metropolitan highways in Texas are costing Texans $10 billion per year through lost time and wasted fuel, an estimated $800 annually for the average Texas household. The Texas Transportation Institute (TTI) states that two-thirds of Texas residents live in urban areas and that Houston, Dallas-Fort Worth, and Austin rank among the 15 most congested metropolitan areas in the country. However, funding for many of the state's large
metropolitan regions is not scheduled to increase and these areas will only continue to get more congested.

A metropolitan planning organization (MPO) provides a continuous, cooperative, and comprehensive transportation planning process that considers all transportation modes in addressing transportation infrastructure needs. Federal law requires that an MPO be designated for each urban area with a population of 50,000 or more. There are 25 MPOs in Texas, each receiving federal funding for transportation planning. Many Texas MPOs also receive state and local funds to carry out federally mandated planning activities.

The 81st Legislature, Regular Session, 2009, required TxDOT to issue a list of the 100 most congested roadways in the state. This list is issued annually by TxDOT with the help of TTI.

TTI is working with MPOs to target the state's most congested areas and to develop recommendations to cost-effectively address transportation needs for those areas. A final report will be issued to the legislature in August 2013. TTI recently issued an early recommendations report entitled **Mobility Investment Priorities Project Early Recommendations Report**.

The 83rd Legislature may consider recommendations proposed by the Texas Transportation Institute relating to future funding for transportation needs.

**Panama Canal Expansion**

The current expansion of the Panama Canal, which will add a third ship lane, is the biggest project at the canal since the original construction was completed in 1914. The canal originally could handle ships up to 106 feet wide, 965 feet long, and 39 feet deep. The expansion will allow the canal to handle ships up to 161 feet wide, 1,200 feet long, and 49 feet deep. Today's larger ships can carry nearly triple the amount of cargo as older ships using the canal today, transporting new cargo containers that are significantly larger. The lane expansion is projected to be completed by August 2014, and will double the current capacity of the canal.

It is anticipated that the larger ships carrying the additional tonnage of cargo will begin arriving at the Port of Houston and at ports along the Gulf Coast shortly after the completion of the Panama Canal expansion project. Modes of freight transportation in Texas may need to be upgraded to meet this demand, especially on Interstate 35, Interstate 45, and Interstate 69. The increased demand could place additional stress on some of most congested highways and rail systems in the state.
The Port of Houston has invested $150 million to dredge ship channels to prepare for the arrival of these larger ships but other ports may not be as prepared.

In 1986, Congress enacted the Harbor Maintenance Tax Fund (HMTF), which assesses taxes against shippers importing products to the United States and funds the work that maintains the shipping channels at the nation's ports. However, harbor tax revenues have exceeded the amount appropriated by Congress for harbor maintenance. As a result, according to the United States Government Accountability Office, HMTF has a surplus of $6.4 billion that is expected to grow to $8.3 billion by 2013. If Congress does not apportion funding to address this influx of freight to Texas, the state will need to take action.

The Texas Department of Transportation has created a Panama Canal stakeholder work group to provide input into the state's planning for roads, rail, and other components of transportation infrastructure. The work group includes representatives from the Burlington Northern and Santa Fe Railway, the Texas Farm Bureau, the Texas Motor Transportation Association, and the Texas Association of Manufacturers.

The 83rd Legislature may consider mechanisms to fund and manage transportation needs related to the influx of freight from the Panama Canal expansion.

**Toll Collection**

The North Texas Toll Authority (NTTA) is seeking to partner with the Department of Public Safety of the State of Texas (DPS) to create a pilot program to effectively ban the drivers of the 25,000-plus vehicles who repeatedly fail to pay tolls; the worst offender currently owes $180,000 in unpaid toll fees. There are two remedies for toll operators to collect tolls—the operator can assess a fine against the offender and send the matter to a collections entity, or a DPS trooper can issue a citation to a toll-road user found to have a delinquent toll.

Section 366.033 (General Powers), Transportation Code, authorizes a toll authority to adopt rules for the regulation of its affairs and the conduct of its business and authorizes the toll authority to adopt and enforce rules governing the use of its roadways. Section 366.178 (Failure or Refusal to Pay Toll), Transportation Code, provides that the registered owner of a vehicle is responsible for tolls and administrative fees incurred when the vehicle is operated on toll highways. Furthermore, Section 366.180 (Controlled Access to Turnpike Projects), Transportation Code, authorizes a toll authority to prohibit the use of or access to or from a turnpike by a motor vehicle. Section 284.202 (Order Prohibiting Operation of Motor Vehicle on Toll Project), Transportation Code, expressly allows the Harris County Toll Road Authority (HCTRA) to issue an order prohibiting the
use of a motor vehicle on an HCTRA turnpike because of unpaid tolls. NTTA is seeking legislative authority to create a vehicle ban similar to that currently authorized for HCTRA.

NTTA has proposed a pilot toll collection effort. Under the proposed pilot program, an offender will be notified of an administrative hearing, at which point the offender will be given an opportunity to pay what he or she owes. The pilot program will target offenders with more than 100 outstanding violations, and those who have had six months to pay outstanding fees and received mailed warnings for their failure to pay. A DPS trooper who stops an individual with outstanding fees will have the authority to immediately tow and impound the individual’s vehicle.

Stakeholders have suggested that to further reduce the incidence of delinquent toll users the state could restrict toll violators from obtaining motor vehicle registrations and allow local toll entities, in collaboration with local governments, to "boot" or use a device to immobilize the vehicles of delinquent toll violators.

The 83rd Legislature may consider legislation that would provide specific statutory authority for the NTTA pilot program, ensuring that the program could continue or be expanded statewide. The 83rd Legislature may also consider legislation authorizing local toll entities, in collaboration with local governments, to use vehicle immobilization devices on the vehicles of chronic toll violators. The 83rd Legislature may consider legislation restricting delinquent toll violators from obtaining or renewing vehicle registrations.
Renewable Energy

According to the State Energy Conservation Office (SECO), a renewable portfolio standard (RPS) requires that, as electricity markets become more competitive, electric companies that sell electricity to retail customers support renewable energy generation.

When S.B. 7 (relating to electric utility restructuring and to the powers and duties of the Public Utility Commission of Texas, Office of Public Utility Counsel, and Texas Natural Resource Conservation Commission; providing penalties) was passed in 1999, it mandated the construction of certain amounts of renewable energy and prompted the renewable energy industry to accelerate its production in Texas. According to SECO, qualifying renewable energy sources include solar, wind, geothermal, hydroelectric, tidal energy, and biomass, including landfill gas. Also eligible are renewable energy sources that customers can install, such as photovoltaic panels and solar water heating.

The RPS in S.B. 7 mandated that electricity providers, including competitive retailers, municipal electric utilities, and electric cooperatives, collectively generate 2,000 megawatts of additional renewable energy by 2009. In 2005, the legislature increased the state's total renewable energy mandate to 5,880 megawatts by 2015 and 10,000 megawatts by 2025. Providers are required to obtain new renewable energy capacity based on their market share of energy sales multiplied by the renewable capacity goal.

Since the RPS was established, wind power development in the state has more than quadrupled.

In an interim Senate Committee on Natural Resources hearing, a representative from the Solar Energy Industries Association testified that solar energy uses little to no water, has no fuel cost, and can be used in load pockets, or areas where there is insufficient transmission capability. When coupled with storage, solar plants can provide firm capacity to the power system. Roadblocks faced by the solar industry include high up-front costs to build solar assets, such as solar panels, and the limited lifetime of an asset, which is about 30 years.

The director of SECO has testified that capital costs for renewable energy plants are higher than for any other type of plant, yet the variable costs of those plants are lower.

The 83rd Legislature may consider legislation that will encourage varied forms of renewable energy to be addressed in the renewable portfolio standard.
Cross-State Air Pollution Rule

In July 2011, the United States Environmental Protection Agency (EPA) created the Cross-State Air Pollution Rule (CSAPR), which requires states to improve air quality by reducing power plant emissions that contribute to ozone and fine particle pollution in other states. In August 2012, the United States Court of Appeals for the District of Columbia Circuit (court) struck down EPA's CSAPR. The court found that the EPA exceeded its authority by using the Clean Air Act to "impose massive emissions reduction requirements."

Currently, the EPA is reviewing the court's decision.

Opponents of CSAPR maintain that the uncertainty surrounding the rule's implementation negatively affects the electricity market in Texas because new coal projects will not be built until the rules are firmly in place and clearly defined so that the interests of the owners of coal plants are secure. As a result, reliability and affordability of electricity are negatively affected, because fewer sources of electricity are available when projects are not brought to fruition.

Proponents of CSAPR state that the rule will improve air quality both in Texas and across the United States, and that CSAPR, and any rule EPA creates that targets lower emissions, is necessary for the health of the residents of the nation.

In October 2012, following the court's decision, the Electric Reliability Council of Texas released a forecast that found that with several new power project announcements, the outlook for reliability of electricity is much brighter than when its May 2012 report was released. The May 2012 report forecasted that by 2014 the reserve margin for electricity would fall below 10 percent. It is the goal of the state to keep the reserve margin for electricity above 13.75 percent in order to decrease the chance of blackouts when the state is experiencing extreme weather or when power plants are shut down unexpectedly, which is a possibility any time the EPA revises its rules.

The 83rd Legislature may consider legislation in response to EPA rules that affect electric reliability, affordability, and competitiveness.

The Keystone XL Pipeline

The Keystone XL Pipeline (pipeline) is a proposed addition of 1,700 miles to the Keystone Pipeline, which currently stretches from Canada to Oklahoma. The additional
pipeline is in two sections of expansion. The southern section would affect Texas by connecting the existing pipeline in Oklahoma to the Gulf Coast of Texas.

In late February 2012, TransCanada, the Canadian energy company that is behind the project, announced that it would begin construction on the southern section of the pipeline. TransCanada expects that portion of the pipeline to be completed in 2013.

Proponents of the pipeline say that the Gulf Coast portion of the pipeline would help alleviate an excess of oil supply in Cushing, Oklahoma, that is bottle-necked because of a lack of pipelines that can transport the oil easily. Because of the lack of oil leaving Cushing, the reliability of its supply was called into question by refineries, which led to Gulf Coast refineries buying oil from competitors. Proponents say that price discounts would occur once the pipeline is in place because Cushing would be able to alleviate the glut of oil it previously held.

TransCanada has projected that the project will bring 20,000 new jobs to the United States, although the numbers the company has issued have been contested because of variables such as short-term versus long-term job creation and direct versus indirect employment. Opponents of the pipeline maintain that more than one pipeline would have to be built out of Cushing in order to meet market demand and drive the price of oil down significantly.

Opponents of the pipeline cite potential environmental dangers, such as corroded lines that can lead to leaks. The oil that will be transported in the pipeline is tar sands oil, which is made fluid when mixed with a chemical while in a pipeline, but quickly becomes thick, putty-like, and malleable as it leaves a pipeline, which could occur when a corroded line leaks. Leaked oil would pollute the environment and could lead to costly and time-consuming clean-up efforts. TransCanada wrote in a document to the United States Department of State that it predicted two spills every 10 years over the length of the Keystone XL Pipeline. A representative for TransCanada maintains that the pipelines are the safest ever built in America.

A concern for the loss of private property rights as a result of eminent domain is another issue opponents cite. Eminent domain forces landowners to give companies right-of-way through private property for certain uses, including those that are considered in the best interest of the general public. Opponents have expressed concern that the use of eminent domain would allow the pipeline to be built on their land even when they do not sanction that use and that could ultimately mar the landscape and potentially cause pollution because of cracked pipelines that leak oil onto property.

The 83rd Legislature may consider legislation that will examine the Keystone XL Pipeline's impact on the economy, any negative environmental impacts that could occur as a result of the pipeline, and how the pipeline would affect private property rights.
Common Carriers and Eminent Domain

Under current Texas law, a common carrier has the statutory power of eminent domain to condemn private land needed for a pipeline. A common carrier owns the pipeline, but transports gas and other substances owned by others for a fee. To operate a pipeline in Texas, the pipeline company must apply for a T-4 permit issued by the Texas Railroad Commission. On the one-page application, the company checks a box to indicate that it will operate the pipeline as a common carrier.

On March 2, 2012, the Texas Supreme Court, in Texas Rice Land Partners, Ltd, et al. v. Denbury Green Pipeline-Texas, LLC, reaffirmed that landowners may challenge a common-carrier permit holder's exercise of eminent domain to condemn private land. The court explained that to qualify as a common carrier with the power of eminent domain, the pipeline company must establish that its pipeline will serve the public. The Texas Constitution, the court declared, permits the taking of private property by eminent domain only for public use. Any legislative grant of eminent domain power to private entities, the court stated, is limited by the constitution and subject to court scrutiny. The court held that the permit process was clerical, rather than adjudicative, as it imposed only minimal requirements, no notice was given to affected parties, and there was no hearing or investigation regarding whether an applicant qualifies as a common carrier. Nothing, declared the court, established that the legislature intended that the granting of a permit would bar a landowner from challenging the permit holder's eminent domain power.

Both property owners and the pipeline industry have claimed that, following Texas Rice Land Partners, the law regarding private property rights and the exercise of eminent domain by common carriers is unclear. The pipeline industry asserts that it is facing a multitude of lawsuits by landowners challenging the exercise of eminent domain and that this may adversely affect oil and gas development in Texas. Property owners contend that under the current law, the T-4 permit application process is too simple and does not require that a company substantiate that it qualifies as a common carrier. They argue that there must be a more rigorous process before a pipeline company is granted the power of eminent domain over private land. However, the pipeline industry responds that making the application process too stringent will discourage the development of oil and gas resources in the state.

The 83rd Legislature may consider legislation related to common carriers and the exercise of eminent domain.
Electric Reliability Council of Texas Resource Adequacy

The Electric Reliability Council of Texas (ERCOT) represents 85 percent of the state's electric load and according to the Public Utility Commission of Texas (PUC), generation resource adequacy in the ERCOT region is one of its highest priorities for the electric market in Texas. Currently, the wholesale market in ERCOT is an "energy only" market in which generation companies are paid when they generate electricity, and not a "capacity" market in which generators are paid to install generation capacity as well as to generate electricity. ERCOT has projected that its reserve margins will fall below its current reserve margin target of 13.75 percent to 9.8 percent by 2014. The reserve margin is a percentage by which available generation capacity is expected to exceed forecasted peak demand on the electric market. Reserve margins are intended to account for electric resources that are unexpectedly unavailable at a time of peak demand or for times when demand for electricity exceeds forecasted demands.

To address the decreasing reserve margin, ERCOT commissioned the Brattle Group to study and make recommendations regarding investment incentives and resource adequacy within ERCOT. The Brattle Group published its report in June 2012, after soliciting and considering input from market participants and stakeholders to determine recommendations and issues that affect investment in electric generation within ERCOT. The Brattle Group report concludes that either ERCOT’s market design should be adjusted or reliability objectives should be revised in order to meet the target reserve margin. Among these recommendations, the Brattle Group suggests that ERCOT:

- institute an administrative scarcity pricing function for pricing during shortage conditions;
- adjust high and low systemwide offer caps;
- enable demand response to play a larger role in efficient price formation during shortage conditions by introducing a more gradually increasing scarcity pricing function;
- adjust scarcity pricing mechanisms to ensure that they provide locational scarcity pricing signals;
- address pricing inefficiencies related to units that commit to be on standby in case of emergencies; and
- clarify offer mitigation rules and provisions to ensure that retail electric providers are able to cover their positions as reserve margins tighten and price caps increase.

Representatives from PUC and ERCOT have expressed support for the recommendations and conclusions derived by the Brattle Group report. As of June 2012, ERCOT has
implemented measures to address resource adequacy concerns. ERCOT has changed how it deploys and sets prices for standby units so they do not artificially reduce market prices when resources are scarce. ERCOT representatives have stated that more work is necessary to ensure the resource adequacy of ERCOT. However, critics have stated that the Brattle Group report is too narrow in scope and does not take into consideration how renewable energy resources, demand response, storage, and energy efficiency can help assure resource adequacy in the long term. Organizations including Public Citizen and the Sierra Club have stated that alternative energy resources could play a larger role in resource adequacy. Others have expressed caution that the Brattle Group report is biased in favor of ERCOT adopting some form of capacity market, in which generators would be paid to install capacity and generate electricity. There are concerns that capacity markets cost more than energy-only markets and that they do not attract new generation. Those concerns were addressed by the Brattle Group report and the chief executive officer of ERCOT has stated that the Brattle Group report provides a framework for policymakers to address the tightening reserve margin within ERCOT.

The 83rd Legislature may consider legislation relating to ERCOT protocols aimed at maintaining reserve margin and ensuring the resource adequacy of ERCOT.

Governance Structure of Municipally Owned Electric Utilities

Municipally owned electric utilities (MOEUs) in Texas provide power to approximately 4.1 million Texans, representing 15 percent of the state's electricity market. Some MOEUs, like CPS Energy in San Antonio, are governed by appointed boards of trustees that includes the mayor as an ex officio member and four members representing each quadrant of the utility’s service area. Other MOEUs, like Austin Energy, are governed by city councils. These local authorities set MOEU rates and policies and almost all MOEUs make payments or transfers to their local government to fund municipal services and local economic development. The governance structure of certain MOEUs has been problematic for ratepayers who reside outside the city limits (outside ratepayers). While the majority of MOEUs serve outside ratepayers, those outside ratepayers cannot vote for city council members who are charged with setting their electric rates. Outside ratepayers have access to local public processes regarding utility policies and rates and have the authority to appeal rates to the Public Utility Commission of Texas but there is concern that certain MOEUs that are governed by city councils are not geographically representative of all ratepayers and that the governing entity does not include outside ratepayers. Homeowners United for Rate Fairness has suggested that certain benchmarks be required by which the governance structure and performance of MOEUs can be periodically evaluated and compared to other MOEUs.
Concerns have also been raised regarding the transfer of MOUE revenue to local government funds. For example, 14 percent of CPS Energy's gross revenue is transferred to the City of San Antonio every month, which provides nearly 30 percent of the city's general operating budget, and 9.1 percent ($105 million) of Austin Energy's gross revenue is transferred to the City of Austin's general fund to support city services including public safety, roads, parks, and libraries. While city leaders contend that the general funds transfer is essential for municipal services and economic development, some ratepayers have raised concerns that MOEUs spend money on projects that are not related to the operations of the utility and result in rate increases.

The 83rd Legislature may consider issues relating to the governance structure and operations of MOEUs.
ISSUES FACING THE 83rd TEXAS LEGISLATURE

★

VETERAN AFFAIRS and MILITARY INSTALLATIONS

Veterans' Benefits Claim Process

There are currently 108 counselors and assistants in 37 Texas Veterans Commission (TVC) facilities across the state assisting veterans in filing disability and pension benefit claims and approximately 500 veterans benefit claims are filed per day. In January 2010, the total pending veterans benefit claims caseload in Texas was approximately 50,934 claims and 15,644 appeals and by July 9, 2012, those numbers had grown to over 107,279 claims and 28,183 appeals. The average time frame for getting a decision on a United States Department of Veterans Affairs (VA) claim is 18 to 24 months and even the “quick start” claims process, which is a special initiative where the service member files a VA claim prior to discharge, is currently backlogged.

Texas veterans currently receive more than $2.2 billion in total compensation and pension payments from the VA with assistance from TVC. However, according to TVC, 10,936 veterans left TVC offices statewide in 2011 without being seen due to excessive wait times. It has been suggested that additional staff could provide additional and higher quality representation to Texas veterans and help stem VA backlogs by filing “fully developed claims,” which are processed faster by VA claims processing assistance teams. The aging veteran population entitled to benefit increases and the influx of new veterans from a decade-long period of war are the primary drivers for the perceived need to increase TVC's available resources.

The 83rd Legislature may consider issues relating to the benefits claims process for filing with the VA through TVC's Claims Representation and Counseling program to improve the quality of life for veterans and their families.

The 83rd Legislature may also consider issues relating to identifying and maximizing funding options, reducing claims backlogs, and increasing the benefits received by Texas veterans.

Texas Military Forces Commanders' Council

Concerns have been raised regarding the lack of communication between military installations and the state on certain issues. Established in 2011, the Texas Commanders' Council is an informal group of commanders representing the 12 major military installations in the state who have been meeting to address how to better communicate
with state legislators on issues of importance to their respective military facilities and to facilitate intergovernmental dialogue between all military branches of service in Texas.

It has been suggested that the Commanders' Council be formally established in conjunction with the Office of the Governor's Texas Military Preparedness Commission (TMPC) to provide commanding officers from installations located within Texas the opportunity to communicate goals and challenges facing those installations directly to TMPC and assist in developing innovative solutions aimed at improving the military climate in Texas. TMPC would act as a clearinghouse of information and data provided by the Commanders' Council, and a clear line of communication between TMPC and the council would assist in addressing certain issues such as the vetting process for potential development and land use in unincorporated land near military installations and affected airspace.

The 83rd Legislature may consider issues relating to establishing a Commanders' Council in conjunction with TMPC, to allow commanders of Texas' military forces and installations to better coordinate and communicate with the Texas Legislature and state leadership.

The 83rd Legislature may also consider issues relating to developing a comprehensive communication plan with Texas military installations and legislative initiatives necessary to support those installations, active-duty service members, and their families associated with those installations, and partnerships between the defense community and the military installation community.

**Veteran Participation in Higher Education**

Increasing veteran participation in higher education programs could have a positive impact on the veteran employment rate in Texas and veteran participation in those programs can be significantly increased through facilitating the provision of available benefits and services. The Texas Veterans Commission's Veterans Education Program administers veterans' educational benefit programs and the associated qualification requirements. The three benefit programs that are available to Texas veterans are the Montgomery G.I. Bill, Post 9/11 G.I. Bill, and the Hazlewood Legacy Act. Veteran participation in federal benefit programs in Texas grew from 42,173 in 2007 to 76,878 in 2011. United States Department of Veterans Affairs education benefits to Texas veterans increased from $311.97 million in 2007 to $986.46 million for 2011. Veteran participation in Texas' Hazlewood Legacy Act benefits increased from 9,113 in 2007 to 22,585 in 2011.
Veterans have specific needs when making the transition from military service to becoming a student, particularly in the case of combat veterans. Veteran resource centers can help to integrate veterans on college campuses; provide assistance to veterans in determining the essential services available to them and their families during the course of acquiring their education; and foster veterans' successful completion of a degree program. Encouraging institutions of higher education to establish physical space for campus veterans resource centers designed to facilitate the provision of services to veterans and their family members has been identified as an important step in increasing the number of veterans who participate in and complete higher education programs. Though some veteran resource centers have been established at certain universities and college campuses in the state, the services provided by those centers can vary significantly.

The 83rd Legislature may consider issues relating to supporting veteran participation in higher education, including the use of the Hazlewood Act and the Montgomery GI Bill by Texas veterans to maximize programs to effectively serve veterans and their families. The 83rd Legislature may also consider issues relating to establishing veteran resource centers at institutions of higher education to assist in student veteran academic achievement and better integrate veterans on college campuses.

**Veterans' Courts**

Texas' veterans' courts are pre-trial diversion programs. S.B. 1940, 81st Legislature, Regular Session, 2009, authorized county commissioners courts to establish a veterans' court program for persons arrested for or charged with any misdemeanor or felony offense. The legislation requires prosecutors to agree to the defendant's participation in the pre-trial program, a medical diagnosis of combat-related mental illness, and the veteran to agree to a treatment plan. Veterans who are approved to have their cases handled by a veterans' court are assessed for post-traumatic stress disorder (PTSD), traumatic brain injury, and mental illness. Veterans' courts rely on the United States Department of Veterans Affairs to complete the veteran's assessment. If trauma exists as a result of the defendant’s military service, and that trauma was a contributing factor in the crime committed, the prosecutor can agree to allow the veteran into the program.

Once the veteran is approved for the veterans' court program, the veteran pleads guilty to the charge, reports to the court once every two weeks, and completes a treatment program that includes substance abuse and PTSD counseling, anger management counseling, and attendance at regular support group meetings. Upon completion of the veterans' court program, the charges against the defendant are dismissed. As of January 2012, the statewide recidivism rate for the three dozen veterans who had completed the veterans' court program was zero.
There are currently eight veterans' courts operating in the state located in Harris, Tarrant, Travis, El Paso, Dallas, Denton, Guadalupe, and Bexar counties. Veterans' courts do not receive revenue from the state’s general revenue fund. They are funded by the counties in which they operate and through grants from the Texas Veterans Commission and the Office of the Governor-Criminal Justice Division. The number of veterans a court admits depends on that court's staffing capacity and, at their current funding levels, veterans' courts in certain Texas counties will not be able to meet increased demand for participation in their programs.

The 83rd Legislature may consider issues relating to the use, impact, funding, and possible expansion of veterans' courts throughout Texas.

**Veterans' Employment Rate**

According to the annual Veteran Workforce Summary Report published by the Office of the Comptroller of Public Accounts (comptroller), a low percentage rate of veterans are employed by state agencies and institutions of higher learning. Chapter 657 (Veteran's Employment Preferences), Section 657.004 (Preference Required for Public Entities and Public Works), Government Code, requires that public entities or public works of the state exercise veterans' employment preference practices until at least 40 percent of the employees of the public entity are veterans.

According to the Texas Veterans Commission (TVC), the employment of veterans by state agencies could be elevated by providing education and training for state agencies on the value of hiring and developing qualified veterans for positions within state entities; educating prospective veteran employees regarding the state hiring process, including how to translate their military skills into skills valuable to state agencies; educating state agency executives and human resource personnel regarding how to most effectively implement the state’s veteran employment preference laws; and training and sharing best practices for promoting engagement with and among veteran employees already serving within the state agency would be critical to increasing the overall veterans' employment rate.

The 83rd Legislature may consider issues related to the employment rate of Texas veterans; ways to better coordinate federal, state, local and private resources to enhance employment services; and the impact on Texas veterans and their families of the transfer of Veteran Employment Services from the Texas Workforce Commission to TVC.

The 83rd Legislature may also consider issues related to improving employment services and possible expansion of those services for potential additional returning veterans of Operation Iraqi Freedom and Operation Enduring Freedom.
Mental Health Services for Texas Veterans

While approximately eight percent of Texans are veterans, those veterans account for 22 percent of suicides in the state. The Texas Army National Guard (TxANG) is the largest national guard force in the United States and leads all other states in the number of combat deployments. Since 2001, 31,000 TxANG personnel have been deployed to Afghanistan and Iraq and approximately 22 percent of those returning TxANG service members exhibit mental health issues or would likely benefit from psychological health care.

According to the Texas Coordinating Council for Veterans' Services (TCCVS), deployments to Iraq or Afghanistan significantly increase the risk that a veteran will return home exhibiting symptoms of post-traumatic stress disorder (PTSD), a traumatic brain injury, or major depression. Since returning from deployment, 37 percent of veterans receiving services from the United States Department of Veterans Affairs (VA) who were surveyed acknowledged using increased levels of drugs or alcohol, 57 percent were experiencing anger control problems, 25 percent had been diagnosed with PTSD, and roughly one-third reported they had engaged in behaviors that put themselves or those around them at risk, including experiencing suicidal thoughts or tendencies. Statistics show that military units that experience the suicide of a member of that unit have an increased likelihood of additional suicides within that unit. TCCVS states that ongoing support for programs such as peer-to-peer support groups is needed to sustain the improvements made to date and to continue to improve the state’s ability to effectively provide health and mental health services to veterans with complex injuries before they are in crisis.

The 83rd Legislature may consider issues relating to the status of mental health services for veterans and Texas military forces, including peer counseling programs, "aftercare" units within local communities, and efforts to address secondary mental health and substance abuse issues caused by PTSD and other combat-related disorders.
SUNSET REVIEW

The Sunset Advisory Commission (Sunset) reviewed 24 entities scheduled for consideration by the 83rd Legislature. The Sunset process provides for the examination of state boards, agencies, and commissions in order to determine their efficacy in carrying out their missions. Sunset legislation for the following entities may be considered:

- Texas Board of Architectural Examiners
- Texas Commission on the Arts
- Correctional Managed Health Care Committee
- Texas Board of Criminal Justice/Texas Department of Criminal Justice
- Texas Education Agency
- Texas Board of Professional Engineers
- Texas Ethics Commission
- Texas Facilities Commission
- Office of Fire Fighters’ Pension Commissioner
- Texas Higher Education Coordinating Board
- Texas Department of Housing and Community Affairs*
- Department of Information Resources
- State Commission on Judicial Conduct
- Texas Lottery Commission
- Board of Pardons and Paroles
- State Pension Review Board
- Port of Houston Authority
- State Preservation Board
- Procurement and Support Services Division, Office of the Comptroller of Public Accounts*
- Public Utility Commission of Texas*
ISSUES FACING THE 83rd TEXAS LEGISLATURE

Railroad Commission of Texas
Self-Directed Semi-Independent Agency Project Act
State Employee Charitable Campaign Policy Committee
Windham School District within Texas Department of Criminal Justice*

*Subject to a limited scope or special purpose review.