The following information is intended to serve as a reference guide to issues facing the 82nd Legislature. It is not a comprehensive list of issues, but rather an outline of broad categories and topics of concern that have arisen during the interim. This is not intended to function as an endorsement of any issue by the Senate Research Center.
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Feral Hogs and Predator Eradication

The state's feral hog population is currently at more than two million and rising. Feral hogs cause widespread damage to rural and urban areas. Female feral hogs birth 1.5 litters per year, with each litter consisting of an average of six hogs. The Texas Department of Agriculture was appropriated $1 million for feral hog abatement programs in both the 2008-2009 and 2010-2011 fiscal bienniums. Several steps, such as issuing aerial hunting permits, administering oral contraceptives to hogs, and permitting hunting without a permit for landowners that are experiencing land degradation as a result of feral hogs, have been taken to abate feral hogs in Texas. Since March 2008, 47,000 feral hogs have been removed from the state.

Section 825.001 (Cooperation Between State and Federal Agencies in Controlling Predatory Animals and Rodents), Health and Safety Code, states that the state is required to cooperate through The Texas A&M University System with the appropriate federal officers and agencies in controlling coyotes, mountain lions, bobcats, Russian boars, and other predatory animals and in controlling prairie dogs, pocket gophers, jackrabbits, ground squirrels, rats, and other rodent pests to protect livestock, food and feed supplies, crops, and ranges. The statute does not specifically name feral hogs as animals that are to be controlled.

Critics of abatement programs have testified that other predators, such as coyotes, must also be controlled by the state.

The 82nd Legislature may consider new techniques to abate the feral hog population using methods such as species-specific toxant.

The 82nd Legislature may consider adding "feral hogs" to Section 825.001 (Cooperation Between State and Federal Agencies in Controlling Predatory Animals and Rodents), Health and Safety Code, to clarify the statute and allow feral hogs to be listed as an animal that is allowed to be controlled.

The 82nd Legislature may consider creating abatement programs for other predators, such as coyotes.
Food Safety

The Texas Department of Agriculture (TDA) is the lead agency for food safety education and training in the state. TDA works in conjunction with the United States Department of Agriculture and the Department of State Health Services (DSHS) to ensure that the food supply in Texas is safe.

In the past four years, recalls of spinach, peanuts, and eggs have threatened the national food supply because of \textit{E. coli} contamination. \textit{E. coli} is a group of bacteria that can cause diarrhea, urinary tract infections, respiratory illness, pneumonia, and other illnesses. In most traditional farming practices, produce is shipped from many areas and sent to one central processing plant from which it is distributed. It is at such plants that the produce is most likely to become contaminated.

Foods imported from other countries, such as Mexico and China, into Texas are regulated by DSHS. The Texas Association of Local Health Officials holds seminars to inform food inspectors and handlers of imported foods of potential terrorist threats targeted at the state's food supply.

The 82nd Legislature may consider methods to help some small agricultural producers create a decentralized processing method for shipping produce.

The 82nd Legislature may consider requiring that people who handle foods that are imported from other countries attend seminars to discuss contingencies for outbreaks of food-borne diseases.

Herbicides

Phenoxy-type herbicides such as the 2,4D herbicide (2,4D) are used to control weeds in pastures and rangeland, residential lawns, wheat fields, cornfields, soybean fields, and roadways. The 2,4D herbicide is also used as a growth regulator in citrus plants. When 2,4D, which is toxic to cotton fields and vineyards, drifts into those areas, the damage it causes is severe. Slight amounts of 2,4D can permanently weaken grapevines.

The 82nd Legislature may consider restricting the spray permits of 2,4D users.

The 82nd Legislature may consider creating a 2,4D user database that details the counties in which commercial vineyards are located and the counties that are adjacent to vineyards.
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BORDER ISSUES

Colonias

Colonias are unincorporated distressed residential neighborhoods that lack sufficient potable water, sewage facilities, and health services. Texas has both the largest number of colonias and the largest colonia population among the four states where colonias exist. Approximately 400,000 Texans live in colonias and, according to the Texas secretary of state, the colonia population is predominately Hispanic; 64.4 percent of all colonia residents and 85 percent of those residents under 18 were born in the United States; and there are more than 2,294 Texas colonias, located primarily along the Texas-Mexico border.

Unemployment and substandard housing construction are prevalent in the colonias. "Contracts for deed" are the most frequently used mechanism for financing home construction in the colonias because high unemployment rates and a lack of established credit make traditional mortgage financing impossible. Under a contract for deed, the seller maintains ownership of the home until the total mortgage is paid. Because contract for deed arrangements are not recorded by the county clerk, high interest rates and expedited repossessions of property with no legal recourse are common.

The 82nd Legislature may consider issues related to addressing abusive lending practices in distressed areas across the state and fair housing violations in the colonias; changing the Texas Bootstrap Loan Program to increase the state's ability to expedite the allocation of housing purchase and renovation funds to the colonias; facilitating contract for deeds conversions in the colonias within 150 miles of the Texas-Mexico border; providing local units of government the necessary local control to reduce the number of colonias in their jurisdictions; and ensuring protective mechanisms for a county that has adopted Model Subdivision Rules and is receiving Economically Distressed Areas Program assistance.

Immigration

In response to concerns over illegal immigration, state and local governments have implemented or are considering immigration-related laws and ordinances. Earlier this year, Arizona enacted a comprehensive immigration law that included provisions:

- prohibiting state and local law enforcement from restricting enforcement of federal immigration laws;
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- requiring state and local law enforcement to determine the immigration status of anyone stopped, detained, or arrested in the enforcement of any local or state law or ordinance when there is reasonable suspicion that the person is an illegal immigrant;
- permitting legal residents to sue the state or localities that restrict enforcement of federal law immigration law;
- making it an offense for an adult immigrant to fail to carry his or her certificate of alien registration;
- barring the solicitation of day laborers; and
- authorizing peace officers to lawfully stop a person who is in violation of any civil traffic law and to arrest the person without a warrant if the officer has probable cause to believe the person has committed an offense that makes the person removable from the United States.

Other states and local entities have enacted or considered statutes or ordinances denying licenses or contracts to employers who hire undocumented immigrants, imposing fines on landlords who rent to such immigrants, and requiring officials to verify the legal status of individuals seeking public benefits. Opponents of those laws argue that such laws encourage racial or ethnic discrimination, impact ethnic communities and their relationship with local law enforcement agencies, discourage ethnic minorities from reporting criminal acts to and cooperating with law enforcement, divert limited local resources to enforce federal law, and require training local law enforcement officers in the complexities of federal immigration law.

The 82nd Legislature may consider legislation related to the enforcement of immigration laws.

International Trade-Related Displaced Workers

Texas has a gross state product of $1.23 trillion, ranking Texas as the 11th largest global economy. Texas ports account for one million state jobs, amounting to $30 million in personal income and $178 million in sales. Texas ranked number one in exports for the United States for the eighth year in a row with $168 billion in exports in 2009. The state's largest trading partner is Mexico, followed by Canada and China.

Since 2008, 165 layoffs in Texas have been certified by the United States Department of Labor as "trade-related." Those layoffs affected over 17,300 workers; 29 of those layoffs were in the Texas-Mexico border region, which affected 2,070 workers. The trade adjustment assistance program provides employment and training services and assistance to individuals who lose their manufacturing jobs due to the demand for foreign imports or due to the relocation of production to foreign countries under a free trade agreement with
the United States. Programs that will build regional development and capacity to better facilitate trade, commerce, and tourism in distressed areas, coastal regions, and rural communities along the Texas-Mexico border region are needed.

The 82nd Legislature may consider issues related to economic incentive programs that increase the accessibility of workforce training programs and capacity building in more rural regions of the state, particularly along the Texas-Mexico border.

Texas-Mexico Border Efficiency and Security

More than one-third of Texas' total exports in 2009 went to Mexico and Mexico was the top country of origin for Texas imports, accounting for 48 percent of all Texas imports. For eight consecutive years Texas has led the nation in export revenue, totaling $192 billion in 2008, which was a 14 percent increase from the previous year. In 2009, Texas saw $164 billion in exports. Texas exports represented 41 percent of total United States exports to Mexico and an estimated 90 percent of all surface trade between the United States and Mexico crosses through the 26 Texas-Mexico border crossing points. From January to March 2010, Texas saw double-digit increases in the number of Texas-Mexico border crossings.

A substantial portion of recommendations for increasing border security and for speeding commerce over the Texas-Mexico border depend upon effective working relationships with federal entities involved in border matters. Minimizing dual inspection stations, streamlining the inspection process, co-locating federal and state inspections, and implementing demand management techniques, such as providing value pricing incentives to cross the border during off-peak periods, could reduce wait times at Texas-Mexico border crossing points.

The 82nd Legislature may consider issues related to increasing efficiency and reducing the wait times associated with crossing the Texas-Mexico border. The 82nd Legislature may also consider measures aimed at maximizing Texas-Mexico border crossing revenue and obtaining increased federal aid for border security and efficiency.
Fiscal Year 2012-2013 Budget Instructions

On May 27, 2010, the Legislative Budget Board (LBB) and the Governor’s Office of Budget, Planning, and Policy (GOBPP) issued a memorandum detailing instructions for agency and institution of higher education (IHE) legislative appropriation requests (LARs) for the 2012-2013 biennium.

Under the instructions set forth in that memorandum, an agency's baseline request for general revenue-related (GR and GR-dedicated) funds may not exceed the sum of amounts expended in fiscal year 2010 and budgeted in fiscal year 2011 adjusted to reflect the full five percent reduction target identified by LBB and GOBPP for each agency. 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 (CHIP), and the foster care program, maintain health and human services eligibility staffing, 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.

S.B. 1, General Appropriations Act, 81st Legislature, Regular Session

The 2010–2011 biennial budget includes appropriations for state government operations that total $182.2 billion in All Funds. The 2010–2011 biennial budget includes estimated appropriations of $80.6 billion from general revenue (GR) funds, $6.4 billion from GR–dedicated funds, $65.5 billion from federal funds, and $29.7 billion from other funds. The All Funds Budget represents a total increase of $10.1 billion, or 5.8 percent, from the 2008–2009 biennial budget.

The two greatest dollar amount increases in the All Funds budget occur in the health and human services and higher education functions. The $4.4 billion increase for health and human services is primarily due to increased funding for the state’s Medicaid program.
The $1.2 billion increase for higher education is primarily due to an increase in formula funding, student financial aid, higher education group insurance, and patient income. Appropriations for the business and economic development function were reduced by $795.7 million, or 3.7 percent, from the 2008–2009 biennium due to federal funds for disaster relief for Hurricanes Katrina and Rita no longer being available, in addition to reductions in bond proceeds and federal reimbursements for transportation projects.

Factors Affecting Spending

Economic Stabilization Fund

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

Limit on the Growth of Certain Appropriations (Spending Limits)

The Texas Constitution, under Article VIII, Section 22, limits the biennial rate of growth of appropriations from state tax revenue not dedicated by the constitution to the estimated rate of growth of the state’s economy. The LBB adopts items of information, which include the estimated rate of growth of the Texas economy as measured by personal income; the 2010-2011 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 2012-2013 biennium. The limit on appropriations for the 2012-2013 biennium is determined by multiplying the 2010-2011 base budget by the growth of Texans’ personal income from the 2010-2011 biennium to the 2012-2013 biennium.

State Indebtedness

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

The “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 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.

Finance and Revenue

Hurricane Disaster Relief Funding

When a federally declared disaster occurs, Texas can obtain reimbursement for a percentage of the state's disaster recovery expenditures from the federal government. Hurricane Rita, Hurricane Dolly, and Hurricane Ike were all federally declared disasters for which the state is still in the process of obtaining reimbursement. The federal funding
allocation process for each hurricane recovery effort occurs in two rounds, totaling six allocations for the three hurricane recovery efforts. Texas has encountered slow federal reimbursement funding acquisition, disbursement, and issues in complying with United States Department of Housing and Urban Development (HUD) and Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) regulations in a timely manner during the course of recovery efforts. Stafford Act funding for public assistance is administered by the Federal Emergency Management Agency (FEMA).

The Texas Department of Rural Affairs (TDRA) and the Texas Department of Housing and Community Affairs (TDHCA) have experienced complications with the HUD application process when attempting to acquire federal funding for housing-related recovery efforts. Emergency appropriations were made by the state totaling approximately $145 million, but federal reimbursement of those funds has been slow to arrive. The state's Disaster Contingency Fund does not have the necessary funds to complete housing recovery efforts without being reimbursed for expenditures already made, leaving approximately $86.5 million worth of housing projects, primarily as a result of Hurricane Ike, on hold. While the state's efficiency has increased in regard to the federal funding allocation and disbursement process, future disaster recovery efforts may demand a faster response.

The 82nd Legislature may consider issues relating to ensuring that the system of distribution for federally declared disaster relief funds is effectively addressing the needs of the various regions of the state and that the state works with the federal government to obtain federal disaster-related funding efficiently. The 82nd Legislature may also consider increased funding to the state's Disaster Contingency Fund.

**Nursing School Programs**

Texas is facing a critical shortage of registered nurses (RNs). The Texas Center for Nursing Workforce Studies reported that schools are unable to produce sufficient RNs to meet the healthcare demands through 2020. Between 2005 and 2020, demand for RNs is expected to increase by 86 percent while supply is expected to increase by only 53 percent. In 2008, Texas’ 86 initial RN licensure programs denied admission to 8,964 qualified applicants, mainly due to a lack of budgeted faculty positions and available clinical space.

In 2007, the 80th Legislature appropriated funds to the Texas Higher Education Coordinating Board (THECB) for the Professional Nursing Shortage Reduction Program (NSRP). NSRP funds were given to public and private nursing programs that showed an increase in the total number of nursing graduates at all degree levels between September 2005 and August 2007. Funding for NSRP in the 2010-2011 biennium increased to $44.7 million from the 2008–2009 biennium funding level of $9.7 million, including $14.7
million to institutions with nursing programs based on increases in the number of nursing students graduating; $20.5 million to institutions with graduation rates of 70 percent or above and increases in new enrollees funded at a rate of $10,000 for each additional nursing student enrolled; and an estimated $9.5 million to programs with graduation rates below 70 percent, hospital-based programs, or new programs with graduation rates not determined, with $20,000 allocated for each additional registered nurse graduate in two-year programs and $10,000 for each additional graduate in a one-year program. Despite this increased funding, the Texas Tech Health Sciences Center School of Nursing predicts that Texas will not graduate the 24,870 practicing nurses needed by 2020.

The 82nd Legislature may consider issues related to increased funding for nursing programs to meet the workforce goals established by *Closing the Gaps by 2015*.

**Property Tax Rate-Setting**

Article VIII (Taxation and Revenue), Texas Constitution, sets out five standards for setting the property tax. The standards require that taxation be equal and uniform; with some exceptions, that all tangible property be taxed on its January 1 market value; that all property be taxable unless federal or state law provides an exemption for it; that property owners have a right to reasonable notice of increases in appraised property values; and that each property in a given appraisal district has one appraised value. Local taxing units, including counties, cities, school districts, and special districts, decide how much money they will spend each year and this determines the tax rate that is set.

Once an appraisal roll is formulated by the chief appraiser, the first step toward adopting a tax rate is calculating and publishing the effective and rollback tax rates calculated by the local taxing units. If taxpayers believe that the taxing unit has not calculated and published the rates or other required information in good faith, they can ask a district court to stop the taxing unit from adopting a tax rate until it complies with the law. Promoting increased public participation in tax rate-setting is difficult due to the opacity and complexity of the tax rate-setting process. During the interim, legislators have discussed creating more opportunities for the public to participate in the tax rate-setting process.

The 82nd Legislature may consider issues relating to increasing public participation in tax rate-setting and ensuring fairness in appraisal protests and appeals.

**Rural Hospitals and Nursing Facilities**

For many rural hospitals it is difficult, and in certain counties impossible, to generate enough tax dollars to fund replacement facilities or repairs. Forty-two Texas counties
with a rural hospital have a tax base of less than $750 million, with 22 of those counties having a tax base of less than $400 million, and six of those counties having a tax base of less than $250 million. Seventy percent of treatment in rural hospitals is done on an outpatient basis in order to keep costs low and one-third of the 76 nursing home facilities that have shut down since 2006 have been in rural communities. Rural hospitals and nursing home facilities are required to comply with state and federal safety codes in order to receive Medicaid and Medicare reimbursements. In the future any new substantial renovation requirements could cost more than the hospital's county tax base can supply. The Texas Organization of Rural and Community Hospitals (TORCH) has proposed that the state allocate $50 million from the general fund to renovate or replace hospitals in the 42 poorest counties. Recipient hospitals would have to be at least 25 years old, operate an emergency room, and match state money with local funds. Concerns exist as to whether hospitals could continue to pay operating and maintenance costs after receiving state renovation money.

The 82nd Legislature may consider issues relating to the creation of a rural hospital infrastructure support program, the possible benefits of offering subsidies to rural hospitals, and other funding options to help communities that do not have adequate resources replace aging rural hospital infrastructure. State Supported Living Centers

State-supported living centers (SSLC) are intensive care facilities for persons with mental retardation (IFC-MR) operated by the state. SSLCs provide residential and behavioral treatment, healthcare, skills training, therapies, and vocational services for residents, most of whom function in the severe to profound range of mental retardation. Appropriations for the state's 12 SSLCs totaled approximately $1.3 billion for the 2010-2011 biennium. H.B 4586, 81st Legislature, Regular Session, 2009, included additional funding contingent on the State of Texas and the United States Department of Justice (DOJ) reaching a settlement agreement on a comprehensive action plan to improve care and coordination of services for persons who reside at SSLCs. S.C.R. 77, 81st Legislature, Regular Session, 2009, provided legislative approval of the state's settlement agreement with the DOJ. S.B. 643, 81st Legislature, Regular Session, 2009, made an additional appropriation of $38 million, available to SSLCs to install video surveillance equipment and hire staff to monitor video across shifts to detect and prevent abuse and exploitation of residents and clients. According to the Legislative Budget Board, the average monthly number of SSLC residents is projected to decrease from 4,512 in fiscal year 2010 to 4,354 in fiscal year...
2011, but the average monthly cost per living center resident is projected to increase from $10,581 in fiscal year 2010 to $10,944 in fiscal year 2011.

The 82nd Legislature may consider issues relating to additional funding for SSLCs to remain in compliance with the settlement agreement between the state and DOJ.

The Texas Guaranteed Tuition Plan

The Texas Guaranteed Tuition Plan (TGTP) began in 1996. TGTP is administered by the Texas Prepaid Higher Education Tuition Board and gives future students the chance to prepay tomorrow's college tuition and required fees at Texas institutions of higher education (IHE). Participant contributions are invested and investment earnings are used to cover the full cost of college tuition and required fees at Texas IHEs for enrolled students.

There are currently 96,996 active TGTP contracts and the fund was closed in 2003 to new participants. Total assets in the fund as of August 31, 2009, reached $1.9 billion and the fund is backed by the full faith and credit of the state. Texas had low tuition increases and significant returns on investment in the late 1990s and contracts were written when the legislature regulated tuition. Tuition deregulation has resulted in fund investments that are insufficient to meet tuition increases. The unfunded liability of TGTP is projected to be over $630 million at the end of 2010 and TGTP is estimated to deplete its funds in 2018-2019. The depletion date assumes that tuition will rise 6.8 percent per year.

Tuition has increased 8.9 percent per year on average, while the return on fund investments has been 4.9 percent per year. The TGTP depletion date assumes that tuition will rise 6.8 percent per year but there is a possibility that unfunded liabilities, totaling $2.2 million, will peak earlier than the projected date. More than 7,400 people have dropped out of TGTP out of a total 103,000 and no earnings are paid if a contract is cancelled before the beneficiary turns 18. Refunds are equal to contributions paid minus any fees. New funding mechanisms to cover the unfunded liability of TGTP will be required to fulfill the remaining contracts.

The 82nd Legislature may consider issues related to determining additional TGTP funding mechanisms with the least expense to the state, while fulfilling the contract with TGTP participants.

Transportation Funding

According to the Texas Transportation Institute, Texas is likely to grow from its current population of 26 million residents to 37 million residents by 2030. Increased population
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will lead to more vehicles on Texas roadways and more vehicle miles traveled on those roadways. Even with an increase in vehicle miles traveled, due to increased fuel efficiency, the state can expect fuel tax revenues to decrease by an estimated 22 percent by 2030. Roadway congestion due to the increase in population has recently been added into the formula that determines where funding for roadway maintenance and new construction is directed, but due to the projected population increase in Texas in comparison to other states, the issue of increased funding for transportation projects is compounded.

The Texas Department of Transportation’s (TxDOT) 2010–2011 biennial appropriations included funding from State Highway Fund No. 006; federal funds; general revenue (GR) funds; Texas Highway Beautification Account No. 071; a special account within the GR Fund; Texas Mobility Fund No. 365; and General Obligation bond proceeds, for a total appropriation of $18.6 billion, including an estimated $1.6 billion in federal economic stimulus funds from the American Recovery and Reinvestment Act of 2009. TxDOT has been able to develop new mobility projects in recent years by using nontraditional procurement methods and funding sources, including comprehensive development agreements, and Proposition 12 general obligation bonds authorized by the legislature in 2009. Transportation funding options that provide for a balance between maintenance and new construction will be needed to meet the future demands on Texas' transportation infrastructure.

The 82nd Legislature may consider issues relating to prioritization of existing transportation revenues and alternative state and local transportation funding strategies.

formula funding for institutions of higher education

The Texas Higher Education Coordinating Board (THECB) is required to devise, establish, and periodically review and revise formulas for use by the governor and the Legislative Budget Board in making appropriations recommendations to the legislature for all institutions of higher education (IHE), including the funding of postsecondary vocational-technical programs. Texas' formula funding model is to meet the goals of the state’s higher education plan, Closing the Gaps by 2015, and thereby provide the people of Texas the widest possible access to higher education.

During the interim, legislators have discussed the incentive-based formula funding model compared to an outcome-based formula funding, which would focus on graduation rates rather than student enrollment. THECB is recommending a four-year phased-in funding of universities based on course completion rather than student enrollment; partially funding two-year colleges based on milestones of student progression towards completion of a certificate or degree or transfer to a four-year institution; providing institutional performance funding to recognize achievement in meeting student success
goals, such as increasing the number of degrees and certificates awarded and increasing
the number of transfers from two-year institutions to universities; and funding the
formula at fiscal year 2010–2011 amounts with an additional amount to fund 100 percent
growth.

The 82nd Legislature may consider issues relating to modifying funding formulas for
IHEs to increase course completion and student success while reducing costs to the state,
and to students and their families; and meeting the success goal of Closing the Gaps by
2015.

Interest Rate Swap Agreements

An interest rate swap agreement is an agreement between two parties to exchange
different interest payments on a specific notional amount over a set period of time.
Typically one party's payments are based on a fixed rate, while the other party's payments
are based on a floating rate. Initially, a swap has zero net value to both parties, but may
take on positive or negative value during the life of the agreement. A party may enter
into an interest rate swap agreement in conjunction with debt issuance to hedge or
otherwise manage its interest rate exposure, or for borrowers to achieve low interest rates,
asset or liability matching, and pre-bond issuance hedging. The authority to enter into
interest rate swap agreements by state entities, institutions of higher education (IHE),
certain home rule municipalities, and certain independent school districts is found in
Chapter 1371 (Obligations for Certain Public Improvements), Government Code.

As the swap market has developed, interest rate swaps have allowed for lower fixed
interest rates. However the risks of interest rate swap agreements can include one party
to the agreement not performing under the terms of the swap; a counterparty being unable
to pay what is owed at expiration; "mark-to-market" risks; collateral risks; and early
termination risks.

The 82nd Legislature may consider issues relating to increasing oversight, reducing risks,
and increasing the transparency of interest rate swap agreements involving state entities,
IHEs, certain home rule municipalities, and certain independent school districts.
Economic Development Programs

During the interim of the 81st Legislature, the Senate Committee on Economic Development (committee) studied the effectiveness of economic development programs in the state. In September 2010, the Office of the Governor (governor's office) proposed cutting $38.7 million from the Texas Enterprise Fund (TEF) and the Emerging Technology Fund (ETF) in order to help close the state's budget shortfall. Legislators have also expressed intentions of cutting funds to economic development programs.

TEF is used to attract new businesses to the state and to assist with the expansion of existing businesses. TEF projects must demonstrate a significant return on the state's investment and have local support in the communities they intend to serve. According to the Economic Development and Tourism Division, governor's office, as of April 2010, $392 million has been awarded through TEF resulting in approximately 53,000 direct jobs and combined capital investment of more than $14 billion. However, some concern has been raised over clawback provisions of TEF when a company does not meet the job creation requirements or other contractual obligations. Although TEF projects are vetted by local economic development professionals, legislators discussed the need for an independent audit of TEF or an advisory committee to TEF.

ETF is used to support research and development in certain technologies. Supporters of ETF have said that the partnerships among local economic development agencies, communities, and universities would be slow to happen should appropriations to ETF be minimized.

Concern has been expressed that TEF and ETF have mostly benefited urban areas of the state and legislators have expressed the need to improve the state's approach to economic development to ensure geographic diversity.

The Enterprise Zone (EZ) program is an economic development sales tax incentive that is used to encourage private investment in distressed areas and to create and retain high-quality jobs. According to the Texas Comptroller of Public Accounts, legislation limits EZ program allocations to the state and local communities per biennium. The 81st Legislature, Regular Session, 2009, approved allocations for 105 EZ projects in addition to 25 projects that were carried over from the previous session. According to the Economic Development Bank, in the governor's office, all allocations are expected be utilized after the final quarterly round (filed by September 1, 2010) of applications are approved.
Numerous witnesses testified before a legislative committee in support of reinstating a franchise tax credit for research and development (R&D). Provisions relating to R&D tax credits were repealed by H.B. 3 (Keffer et al.; SP: Ogden), 79th Legislature, Third Called Session, 2006. Supporters of this tax credit say that R&D generates high-quality jobs and that reinstating a franchise tax credit would benefit businesses in the state. Legislators have stated that the state budgeting process has created limitations on the state's ability to reexamine R&D tax credits.

The 82nd Legislature may consider changes to existing state economic development programs or changes in tax policy incentives that increase job creation in Texas.

**Municipally Owned Electric Utilities**

Municipally owned electric utilities (MOEUs) provide power to more than four million individuals in Texas and represent approximately 15 percent of the electric industry in the state. MOEUs have more diverse generation portfolios for renewable energy and are less reliant on natural gas than the Electric Reliability Council of Texas.

Garland Power and Light (GPL), City of Garland, is the only MOEU of the 72 MOEUs in Texas that has opted to participate in the retail market. GPL intends to partner with the South Texas Electric Cooperative (STEC) in order to obtain a certificate of convenience and necessity through the Public Utility Commission (PUC) to build transmission lines outside of its service territory. While the city contends that the project will reduce costs of utilities for the city, legislators expressed concern that the city is using tax dollars for a speculative investment that will have little effect on the delivery of electric service to the community it serves.

Additional concern has been raised regarding transparency and accountability of MOEUs. MOEU rates and policies are determined solely by local governmental authorities and are subject to limited regulation by PUC. Currently, 10 percent of ratepayers within a municipality or five percent of ratepayers outside of the municipality but within the MOEU service area may petition to appeal an MOEU rate decision to PUC.

The 82nd Legislature may consider issues relating to MOEUs' planned electric generation portfolios.
Small Business Assistance

According to the latest statistics provided by United States Small Business Administration (SBA) and the United States Census Bureau, 386,422 business firms in Texas employed fewer than 500 employees in 2006, accounting for 98.7 percent of employers and 46.8 percent of private-sector employment in the state. During the interim of the 81st Legislature, the Senate Committee on Economic Development studied the effectiveness of state programs aimed at assisting small business growth and development.

One of the challenges facing small firm employers in the state is the lack of readily available funds to help develop and sustain their business. The Economic Development and Tourism Division, Office of the Governor (governor's office), is required by statute to employ a small business advocate to ensure that small businesses have access to information regarding available resources at the federal, state, and local level. Additionally, the governor's office has collaborated with the Texas Workforce Commission and local communities to host small business forums to provide information to small business employers. Small Business Development Centers are located in 44 communities in the state and over 600 local economic development corporations in the state that focus on small businesses and entrepreneurship. The Texas Comptroller of Public Accounts facilitates state procurement for historically underutilized businesses (HUBs) to ensure that state agencies make good faith efforts. Some organizations, including the Texas Economic Development Council, hold the position that no drastic changes should be made in how these state and local entities deliver assistance to small businesses.

Legislators may consider developing a Small Business Commission to balance the various needs of small businesses across the state. Some employers have expressed the need for assistance to expand their businesses, stating that helping small and medium-sized businesses expand into the global market will result in growth in the number of jobs and productivity in the state. Other employers have stated that they enjoy the degree of control they have by managing their small enterprises and have little interest in growing larger but need help sustaining their local businesses.

The 82nd Legislature may consider changes in state policies aimed at assisting small and minority-owned businesses, including whether the development of a Small Business Commission could lead to a more efficient use of state resources.
Texas Windstorm Insurance Association

Provisions relating to the Texas Windstorm Insurance Association (TWIA) were enacted by the 81st Legislature, Regular Session, through H.B. 4409 (Taylor et al.; SP: Jackson). Among other provisions, H.B. 4409 requires TWIA to provide windstorm and hail insurance coverage to persons who are unable to obtain such insurance through the private market.

During the interim, legislators stated that the issue of insurance companies refusing to write wind policies in catastrophe areas needs to be addressed. The low insurance rates provided by TWIA make it difficult for private insurance companies to write competing insurance policies, and TWIA is often consumers' first choice for insurance rather than the choice of last resort. Given the extent of property losses related to hurricanes in recent years, insurance companies do not write windstorm policies in the Texas coastal areas because the risk is too high. Some have suggested that TWIA increase its insurance rates in order to attract other insurance companies to compete. Others have recommended that the state provide tax credits to incentivize insurance companies to write wind insurance policies and to minimize the use of TWIA insurance. While TDI has the authority to issue such incentives, TDI representatives contend that insurance companies will not write wind insurance policies because the risk is too high no matter the incentives that are given.

H.B. 4409 also amended provisions relating to the use of the Catastrophe Reserve Trust Fund (CRTF), which is maintained by the Texas Department of Insurance (TDI) and is to be used by TWIA for expenses associated with a designated catastrophe area. H.B. 4409 required losses that are not paid from TWIA reserves or CRTF to be paid with proceeds from public securities or reinsurance.

According to TWIA, CRTF had a balance of $74 million as of September 2010, not including premiums that will be paid to CRTF at the end of the year. It was estimated that the fund will have $324 million by the end of 2010. Legislators expressed concern that TWIA coverage is not sufficient to cover all losses following a catastrophic event. Mike Geeslin, commissioner, TDI, testified before the Senate Committee on Business and Commerce that the funding mechanisms provided by H.B. 4409 will be sufficient to deal with losses from storms such as Hurricane Ike, which struck the Texas coast in September of 2008 and generated an estimated loss of $1.9 billion, but insufficient to cover losses from a larger storm or a 100-year loss equal to $3.75 billion. The Texas Public Finance Authority and TWIA contend that there is adequate funding in CRTF to back an issuance of bonds in an amount ranging from $600 million to $700 million if a natural disaster occurs.
Reinsurance is another option to pay for TWIA insurance claims and some legislators have suggested that purchasing reinsurance is preferable to and less expensive than issuing bonds. Reinsurance is additional wholesale insurance that insurance companies can purchase to help ease the costs of a natural disaster.

Legislators also discussed the need to ease the burden of high insurance rates on policyholders along the coast. According to TDI, windstorm insurance premiums increased by 43.1 percent for residential customers and 90.7 percent for commercial customers in the coastal areas since 2003. Representatives from the Texas Coalition for Affordable Insurance Solutions and TDI have suggested that the state consider ways to regionalize insurance rates in order to even out the risk over a larger area, if not statewide.

The 82nd Legislature may consider ways to improve TWIA policies in order to enhance services to clients.

**Unemployment Compensation Insurance System**

The Texas unemployment compensation insurance system provides 10 to 20 weeks of assistance to eligible claimants based on their wages prior to being unemployed.

According to the Texas Workforce Commission (TWC), 83,980 claimants in Texas exhausted their state and federal unemployment benefits as of September 2010. The Emergency Unemployment Compensation and Extended Benefits programs are federally funded and are available for claimants who have exhausted all available benefits. These benefits are set to expire at the end of November 2010, pending congressional action.

Representatives from TWC have stated that TWC has improved the capacity and efficiency of unemployment claims and the delivery of unemployment benefits. According to TWC, more claimants are submitting applications via the Internet. TWC suggested that improvements could be made to extend Internet applications to include claimants from other states, military claimants, and ex-federal employees. Additionally, TWC has proposed using federal funds to initiate an unemployment information technology improvement project that would include improvements to fraud prevention, the benefits system user interface, and the tele-center call handling for claimants.

The 82nd Legislature may consider legislation to improve the Texas unemployment compensation insurance system.
Unemployment Compensation Trust Fund

Employers in Texas pay taxes and reimbursements into the Unemployment Compensation Trust Fund (trust fund), which pays for unemployment benefits and is administered by the Texas Workforce Commission (TWC).

As of October 2010, the trust fund has a zero balance and is estimated to be approximately $2.4 billion below the floor set by statute of one percent of the state's payroll. 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. In 2009, Texas and 35 other states borrowed from the Federal Unemployment Account, but when the interest-free period on the federal loans expires on December 30, 2010, Texas will have an outstanding balance of approximately $2 billion, according to TWC. Unless Congress extends the time period for interest-free federal loans, TWC will consider issuing bonds in order to continue to pay unemployment benefits and to ensure the solvency of the trust fund.

The taxing structure of the trust fund allows TWC to charge taxes to employers but also authorizes TWC to issue bonds in order to mitigate taxes to employers. TWC is required by statute to issue rebates to employers from the trust fund if the trust fund has a surplus. However, the tax rate that is charged to employers when there is a trust fund deficit is determined by TWC commissioners. According to TWC, TWC commissioners use this discretion to avoid charging higher rates in the years following a significant downturn in the economy and the business community supports the current structure. However, legislators have expressed concern that TWC discretion could be used for political purposes rather than to ensure the stability of the trust fund.

The 82nd Legislature may consider legislation to improve the current financing structure for the Unemployment Compensation Trust Fund and options to improve the long-term stability of the fund.

Workforce Development Programs

Workforce development programs in Texas include the initiatives of the Office of the Governor, the Texas Workforce Commission (TWC), and the Texas Comptroller of Public Accounts (comptroller). Workforce development programs are collaborations among state and federal agencies, local workforce development boards, institutions of higher education and vocational training, and local communities. The network of state and local agencies use federal and state grants to offer services such as job placement assistance, career counseling, and student workforce preparation.
The comptroller's office administers the Jobs and Education for Texas (JET) program that awards grants to programs that prepare students for careers in high demand occupations, new career and technical programs at public junior colleges and technical institutions, and scholarships for students in technical and career education programs. While some concern has been raised whether JET grant distribution is fair to both urban and rural areas of the state, a representative from the comptroller's office has stated that JET grants have been targeted to areas of the state that were underserved.

TWC administers the Skills Development Fund program that provides grants to support job training projects across the state. During the interim, legislators discussed the importance of creating high quality jobs. Underemployment, a term signifying that individuals are not employed at their capacity, skill, or wage level, is also an issue facing workforce development programs. Critics of current workforce development programs state that individuals are encouraged to accept the first job that is available to them, rather than jobs for which they are more qualified. A representative of TWC stated that the Skills Development Fund program prioritizes resources to developing the workforce for high-demand and high-wage jobs.

According to TWC, an estimated 25,000 jobs will have been added to the state between 2010 and 2012. However, agencies sometimes have conflicting internal policies regarding workforce programs that hinder collaborations among workforce development agencies and boards, and the need for better alignment among the agencies has been discussed.

The 82nd Legislature may consider ways to improve and enhance workforce development programs in Texas.

**Workforce Training**

As the state population continues to grow, there is increasing concern regarding whether career-focused education and workforce training programs in Texas will meet current and future business and workforce needs, particularly in high-quality occupations. Across the state, community colleges have built partnerships with local businesses and state agencies to develop curriculum and programs for career training and to meet local workforce needs. During the interim of the 81st Legislature, the Senate Committee on Business and Commerce heard testimony regarding state and local initiatives to provide workforce education and training.

The skills development fund program (SDF), administered by the Texas Workforce Commission (TWC), provides funding to businesses, community colleges, and workers in the state for workforce training and education. In 2009, SDF served 170 businesses,
supported the creation of 3,567 new jobs, and upgraded the skills of 15,949 workers in the existing occupations. According to Larry Temple, executive director, TWC, SDF prioritizes resources to developing high demand and high quality jobs, as determined by local workforce development boards. While the majority of TWC programs are federally funded, SDF is one of the few TWC programs that uses state general revenue and is subject to budget cuts in the next legislative session.

The comptroller's office administers the Jobs and Education for Texas (JET) program that awards grants to develop or expand programs of nonprofit organizations that prepare low-income students for careers in high-demand occupations; to defray start-up costs for new career and technical programs at public junior colleges and technical institutions; and to provide scholarships for students in technical and career education programs. However, some concerns were raised that students are not prepared to enter the workforce after high school. According to the Texas Chamber of Commerce Executives, vocational and technical education programs in public schools have declined and emphasis on such programs should be encouraged in early grades in Texas public schools.

The 82nd Legislature may consider legislation to improve career and workforce training to meet business and worker needs.
DRIVING WHILE INTOXICATED

The constitutionality of sobriety checkpoints has been upheld by the United States Supreme Court, but the Texas Court of Criminal Appeals has ruled that sobriety checkpoints are unconstitutional in Texas because there are no legislatively authorized, statewide administrative policies and guidelines for checkpoints. Thirty-eight states currently have laws authorizing such checkpoints and setting out guidelines for sobriety checkpoints. Law enforcement agencies generally support the use of such checkpoints, but others assert that they are intrusive and violate individual privacy.

The 82nd Legislature may consider whether to authorize such checkpoints.

Some law enforcement officers, judges, and defense counsel state that Texas laws regarding driver's license suspensions, occupational license suspensions, and imposing surcharges have created a convoluted and complex system. They assert that the high statutory surcharges attached to DWI convictions, ranging from $3,000 to $4,500, have resulted in more requests for jury trials by defendants, adversely impacting the courts and creating a case backlog, but that there is no evidence that the surcharges reduce DWI offenses. Others claim that the stricter laws have taken away the incentives for first-time and other minor offenders to seek treatment or probation, because it is difficult to comply with all the requisite conditions of probation and offenders still face tough sanctions even if they do successfully complete probation. For example, DWI offenses are the only misdemeanor offenses not eligible for deferred adjudication and offenders may still face suspensions of driver's and occupational licenses for substantial lengths of time that exceed federal requirements. Suspending licenses may affect the ability of the person to earn a living and rehabilitate. There is evidence that diversion programs and special courts provide effective motivation to first-time offenders to rehabilitate and are more cost effective than incarceration.

The 82nd Legislature may review the state's laws regarding DWI. The legislature may also consider further oversight and funding of diversion programs for DWI offenders.

CRIME LABORATORIES

Forensic testing is important in identifying and eliminating suspects and preventing crimes by serial offenders. Forensic science laboratories can be an important, cost-effective way to protect public safety. To be effective, forensic laboratories need highly...
trained personnel, state-of-the-art equipment, effective and accurate processing, accountability and accreditation, oversight, and funding in order to process evidence in a timely manner. However, many forensic laboratories have backlogs that are delaying timely testing of evidence. Local communities say that a lack of capacity, funding difficulties, an increasing demand for forensic testing, and problems attracting and training qualified personnel are contributing to these backlogs. Some have recommended establishing regional forensic laboratories, which allow for the sharing of the costs and workload, more use of accredited private laboratories for some of the testing, and creating central training centers.

The 82nd Legislature may examine current issues faced by forensic testing laboratories in Texas and consider possible legislation addressing those issues.

**Handguns**

On June 28, 2010, in *McDonald v. Chicago*, the United States Supreme Court overturned a city ordinance banning handguns on the grounds that the right of an individual to "keep and bear arms" was protected by the Second Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment. This decision has resulted in numerous challenges to state and local laws and ordinances regarding handguns. Recent shootings on college campuses, including a September 28, 2010, incident at The University of Texas at Austin, have caused some to argue that holders of concealed carry licenses in Texas should be allowed to bring their weapons on college campuses.

The 82nd Legislature may consider changes to the state's laws regarding handguns.

**Human trafficking**

Human trafficking is the recruitment, harboring, transporting, or obtaining of a person for coerced labor or sexual exploitation. Human trafficking is an enormous criminal industry and the majority of its victims are women and children. Texas, with its long international border, is considered a major hub for human trafficking in the United States.

In 2003, Texas enacted Chapter 20A of the Texas Penal Code, which makes it an offense for a person to knowingly traffic another person or to benefit from participating in a venture that involves trafficking. Generally an offense is a second degree felony, but is enhanced to a first degree felony if the person is trafficked for purposes of prostitution and is younger than 18 years of age or the offense results in the death of the person who is trafficked. However, combatting human trafficking and identifying victims is very
difficult. Law enforcement agencies investigating criminal activity may not recognize potential human trafficking cases, and victims are often so traumatized by their experience or intimidated by their traffickers that they are reluctant to contact or cooperate with law enforcement. Jurisdiction in trafficking cases may involve federal, state, and local law enforcement and other agencies. Locating, coordinating, and providing services to victims of trafficking, who may need long-term monitoring and care, can be a complex problem.

H.B. 4009, enacted by the 81st Legislature, Regular Session, 2009, requires the Office of the Attorney General (OAG) to establish the human trafficking prevention task force (task force) to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes. The task force, not later than December 1 of every even-numbered year, must submit a report regarding the task force's activities, findings, and recommendations, including any proposed legislation, to the governor, the lieutenant governor, and the legislature.

The 82nd Legislature may consider legislation enacting recommended statutory changes related to human trafficking.

Indigent Defense

S.B. 7, 77th Legislature, Regular Session, 2001, called the “Texas Fair Defense Act” imposes uniform statewide indigent defense standards and ensures that indigent defendants are represented promptly by competent counsel. The Fair Defense Act also creates the Task Force on Indigent Defense (TFID), which develops polices and standards for providing legal services to indigent defendants, implements reporting requirements for counties, and monitors the effectiveness of a county’s indigent defense plan. TFID provides state funding through grants.

Although there is general agreement that, since the passage of the Fair Defense Act, Texas has made great progress in indigent defense, some stakeholders have recommended the creation of more public defender offices, which they state are an effective, cost-efficient way to provide indigent defense, particularly in rural areas. Public defender offices, supporters claim, can provide higher quality of representation and case management, more budget predictability for counties, and a reduction in the jail population. Reliance on the appointment of private lawyers by courts can result in higher costs to the counties and the perception that such attorneys are not independent from the appointing court. Other recommendations include making TFID, which is part of the Office of Court Administration, a more independent body; expanding TFID's membership to include two criminal defense attorneys or public defenders; providing more consistent appointment of counsel for misdemeanor offenders; providing
JUVENILE JUSTICE

One of the greatest indicators of future incarceration is a history of school disciplinary actions. Schools, by taking prompt and effective disciplinary action, may help divert children from the juvenile justice system. School discipline begins with an in-school suspension, which can range from a couple of hours to many days. The next step is an out-of-school suspension. The next tier of discipline is referral to a disciplinary alternative education program (DAEP), which is mandated by law for every school district. Referrals may be discretionary or mandatory, which means that under state law, known as zero tolerance, students committing certain acts must be referred. The final step is expulsion. Any county with a population of more than 125,000 is required to implement juvenile justice alternative education programs (JJAEPs) operated by the county juvenile probation system for such students, while smaller counties may expel children to the street or to a DAEP. Students can also be ticketed or arrested on school campuses.

Some persons who have studied the current disciplinary system state that minorities and special education students are overrepresented regarding referrals to DAEPs or the juvenile justice system. Some say that there is a lack of state oversight regarding DAEPs, which exacerbates problems. Another problem cited is the ability to collect accurate data on school discipline, as there is no statewide repository. Recommendations include reforming zero tolerance policies; creating uniform policies and standards; establishing a centralized data depository; ensuring that DAEPs provide the quality of education and services designed to meet students’ behavioral and educational needs; increasing state oversight and monitoring of DAEPs; removing "serious and persistent misbehavior" from the definition of a "child in need of supervision" offense under the juvenile justice system; requiring that the Texas Education Agency (TEA) share the data it collects with the school districts to highlight possible problems; encouraging school districts to implement evidence-based intervention models that use effective assistance and strategies to change behaviors; requiring that students expelled in counties with populations of fewer than 125,000 be placed in an educational program; and granting TEA a more prominent role in addressing and supervising disciplinary actions.

The 82nd Legislature may review the current school disciplinary system and consider possible reforms.
Juvenile probation pilot programs seek to divert youths from Texas Youth Commission (TYC) facilities and provide rehabilitation services within the community. During the 81st Legislature, Regular Session, 2009, funding for the Community Corrections Division Program (Grant C) was appropriated under Rider 21. The purpose of the funding was to divert youths from TYC into community-based programs by helping local juvenile probation departments (departments) to create and enhance local resources and thereby reduce commitments to TYC. However, according to Vicki Spriggs, executive director, Texas Juvenile Probation Commission (TJPC), some departments chose not to accept funds because of the extensive amount of paperwork compared to the small amount of funding, concerns that contracting with TJPC might create ethical conflict with the juvenile judges who also sit on the juvenile probation boards, or that the department was not capable of reducing commitments. Spriggs also testified that some departments were unable to negotiate mental health contracts with local providers, because the local mental health providers lacked the staff or resources or the cost of providing services would exceed the amount of the grant the department would receive. Spriggs stated that because of the language of Rider 21, which required that the funds be used to reduce commitments, TJPC was prevented from rewarding departments that already had good diversion programs. Spriggs testified that even though this is a new program, TYC has seen a decrease in juveniles committed to TYC. Rehabilitating children in the community and reducing recidivism can present significant savings to the state.

Local departments have expressed concern that mandatory budget cuts will hurt these diversion programs, which are already struggling to find local resources and staff. Some have testified that the cost of increased commitments to TYC that would result from reduced funding would exceed the amount saved by the budget cuts. Recommendations from stakeholders include permitting more flexibility in the use of these funds because counties have very diverse populations and needs, streamlining the funding process, retaining current funding, and increasing funding.

The 82nd Legislature may review juvenile probation pilot programs and consider ways to retain, streamline, and expand such diversion programs.

**Mentally Ill Defendants**

S.B. 839, 80th Legislature, Regular Session, 2007, requires the matching of mental health records between agencies regarding whether the offender being booked into jail has previously received mental health services. S.B.1557, enacted by the 81st Legislature, Regular Session, 2009, requires that the appropriate magistrate be notified when a defendant in custody has mental illness or is a person with mental retardation. However, although Texas has laws for identifying inmates with mental illness or mental retardation, local government entities state that there are not enough beds available for such
defendants. Because of the lack of adequate mental health services in local communities, many persons do not receive substance abuse or mental health services until they enter the criminal justice system. Defendants found to have mental illness or mental retardation may stay in jail because there are no available mental health beds. Police officers may be required to transport persons needing mental health services outside of the county to obtain those services, using limited law enforcement time and resources. Proposed budget cuts may further limit the availability of mental health services. Some mental health professionals and law enforcement officials, in addition to requesting additional funding or asking that existing funding not be cut, have recommended creating and expanding regional clinical facilities and community services; creating crisis intervention teams consisting of local professionals as first responders; and allowing cities, counties, and the state to contract with private entities for transportation of persons to mental health facilities. Other recommendations include establishing and providing state funding for mental health courts to divert mentally ill persons from the criminal justice system. Some stakeholders state that cutting the budget for an already underfunded system will put more pressure on local law enforcement, jails, and other community resources, may result in higher costs for law enforcement and communities, and ultimately will not save the state money.

The 82nd Legislature may consider ways to preserve the current level of mental health services or to expand the availability of such services.

Municipal Jails

The Texas Commission on Jail Standards (TCJS) sets the standards for county jails and oversees these facilities. Municipalities are authorized to operate jails, but TCJS has no jurisdiction over these jails and currently there is no oversight agency for such jails in Texas. The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) licenses people who work in county jails, but not in municipal jails. There are over 300 municipal holding or detention facilities in the state. Municipal jails generally are holding facilities that keep persons only for short periods of time. Some jails are large facilities handling hundreds of persons, while in smaller municipalities, there may be only one or two cells. In many smaller jails, there is no trained full-time jail staff. However, any time a person is in custody, there are safety and care issues, from hygiene facilities and meals to emergency medical care and suicide prevention.

Municipalities and local police departments assert that such local holding facilities are necessary and that placing municipal jails under TCJS supervision and standards would be extremely expensive and cost-prohibitive. They state that unlike county jails, which house many inmates for long periods of time, municipal jails generally hold only a few persons at a time and hold them for only a few hours.
Some law enforcement personnel, however, agree that oversight of municipal facilities is necessary. Recommendations include creating best practice standards for municipal jails tailored to the size of the facility, providing independent outside inspections, setting a maximum number of hours a person may be held in a municipal jail, and auditing of facilities and operations.

The 82nd Legislature may review issues regarding municipal jails and whether oversight or minimum standards are needed.

**Sex Offenders**

Under the Texas Sex Offender Registration Act (SORA), persons convicted of certain sexual offenses must register as sex offenders. In some cases, a person may be required to register as a sex offender for consensual or nonviolent sexual activity. Requiring persons to register as sex offenders negatively impacts them and their families, as well as employment, and housing, factors that are important to rehabilitating offenders. The register has grown substantially, and some, including members of the law enforcement community, assert that the expanding list is preventing law enforcement from focusing on the most dangerous offenders and is increasing enforcement costs. Some claim that requiring low-risk or nonviolent offenders to register does not contribute to public safety and is not a cost-effective use of law enforcement resources. Others have recommended amending SORA to provide for risk assessment of offenders, require periodic review regarding whether a person should continue to be required to register, and allow the deregistration of low-risk and rehabilitated offenders.

The 82nd Legislature may consider changes to SORA to ensure that the registry promotes public safety and is an efficient, cost-effective use of law enforcement resources.

The federal Adam Walsh Child Protection and Safety Act of 2006 (AWA) was signed into law on July 27, 2006. AWA made extensive changes to federal law regarding the registering and tracking of sex offenders and required states to enact certain requirements regarding the registration of sex offenders. The purpose of AWA is to establish a national baseline for sex offender registration and notification programs. Failure by a state to enact the requisite laws within the time period set out in AWA will result in the denial of certain federal funds. There are a number of differences between the requirements set out in AWA and SORA. For example, AWA requires that a state must classify offenders as Tier I, Tier II, or Tier III, depending on the severity of the offense. Texas does not use a tier system. The Justice Policy Institute, a nonprofit organization that promotes alternatives to incarceration, has estimated that it would cost Texas $38,771,924 in 2009 for implementation of AWA, while failure to comply with AWA
would cost the state approximately $1,400,000 in federal funds. The Texas Council on Sex Offender Treatment recommends that Texas not implement AWA.

The 82nd Legislature may consider the cost of compliance with AWA and the potential loss of federal funds for noncompliance, the numerous changes to SORA that would be necessary in order to bring Texas into compliance, and whether such changes are in Texas' best interest. If the 82nd Legislature determines that it is in Texas' best interest not to comply with AWA, it may be necessary to amend SORA to remove certain references to compliance with federal law.

Texas Forensic Science Commission

H.B. 1068, 79th Legislature, Regular Session, 2005, established the Texas Forensic Science Commission (TFSC). Under statute, TFSC is charged with:

- implementing a reporting system through which accredited laboratories, facilities, or entities report professional negligence or misconduct;
- requiring all laboratories, facilities, or entities that conduct forensic analyses to report professional negligence or misconduct to the commission; and
- investigating, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity.

Over the past year, TFSC has been involved in continuing controversy regarding the extent of its powers, duties, and obligations in investigating claims of professional negligence or misconduct. Some assert that this controversy has marred TFSC’s image as a professional and unbiased investigative body.

The 82nd Legislature may review the role of TFSC and consider amending or clarifying the statutes establishing TFSC and setting out its powers and duties.

Wrongful Convictions

The Timothy Cole Advisory Commission (commission), created by H.B. 498, 81st Legislature, Regular Session, 2009, was established to study the causes of wrongful convictions in Texas and to issue recommendations to the Task Force on Indigent Defense (task force). In August of 2010, the commission issued its recommendations. These include the creation of a model procedure for live and photo lineups, requiring training in eyewitness identification procedures as part of the required curriculum for law enforcement officers; requiring the recording of all custodial interrogations;
amending current state law to allow the treating of previously untested biological evidence; allowing writs of habeas corpus based on changing scientific evidence standards; and giving the task force more support and authority to work with and monitor innocence projects that receive state funding.

The 82nd Legislature may consider legislation relating to preventing wrongful convictions.
Advising Services

In many instances, advisors at institutions of higher education (IHE) are faculty members with very little guidance and instruction on a variety of issues associated with advising students to complete a degree plan in an efficient manner. Effective advising services have the potential to encourage a student to persist in higher education, avoid taking excessive credit hours, reduce the time-to-degree, and enhance a student's higher education experience.

Some institutions may have hundreds of articulation agreements with other institutions in order to simplify the process through which students transfer from a two-year IHE to a four-year IHE, but this results in a number of students operating on one of many different degree plans, further confusing the process of making a sound degree plan. Some IHEs have implemented programs to provide peer mentors to students to help guide them through the process. In order to streamline the transfer process, advisors at two-year IHEs and four-year IHEs must collaborate to adequately prepare students and ensure their success.

The 82nd Legislature may consider requiring students file degree plans by a certain time, requiring certain advising services to be provided to students, and allocating funding targeted to enhancing advising services to students.

Community Colleges

Public two-year institutions of higher education play a vital role in educating Texans and in meeting the goals of the Texas Higher Education Coordinating Board’s (THECB) Closing the Gaps by 2015. Total enrollment at community colleges in the state in 2009 was 692,845, which was a 12 percent increase from enrollment in 2008, compared to only four percent growth at public four-year institutions. Community college enrollment has increased 52 percent since 2001 and accounts for 50.2 percent of total higher education enrollment in Texas in 2009. Community colleges continue to be the most affordable higher education option for students with tuition and fees for the 2008-2009 academic year averaging $1,750 compared to the national average of $2,793.

THECB recommends aligning formula funding to the mission of the institution and focusing on outcomes that are measurements of student success rather than basing funding primarily on enrollment growth.
The 82nd Legislature may consider altering the way in which community college funding is determined.

**TEXAS Grants and B-On-time Loans**

Senate Interim Charge 1 for the Senate Committee on Higher Education requested recommendations for ways to expand the TEXAS grant and B-On-time loan programs, and legislators heard testimony related to these financial aid programs that aim to increase the likelihood that students in Texas earn diplomas, certificates, and degrees in order to create a strong and educated future workforce. Currently, the Brookings Institution ranks Texas last in the nation for the percentage of adults age 25 and older who have a high school diploma (79.9 percent). To address this concern and meet the ambitious goals set by the Texas Higher Education Coordinating Board's (THECB) *Closing the Gaps by 2015*, legislators have previously committed increasing amounts of funding to programs providing financial assistance to students to attend institutions of higher education. Students who demonstrate a financial need are given priority in obtaining most state grants and loans. 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.

The TEXAS grant program was established in 1999 to provide financial aid to high school graduates. The amount of the grant is based on the average cost of attendance at 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. The 81st Legislature increased TEXAS grant funding by 43.5 percent, but demand is still not being met. In order to qualify for the grant, students must demonstrate financial need, graduate from high school under the recommended high school program, enter public higher education within 16 months of graduation, or enroll at a public university within 12 months of earning an associate's degree from a public technical, state, or community college. Students must meet basic academic standards in order to renew the grant for subsequent academic years. During fiscal year 2008, 54,448 students were awarded TEXAS grants, and THECB estimates that an additional 16,600 students will receive grants during the 2010-2011 academic year as a result of funding increases enacted by the 81st Legislature.

THECB has recommended that legislators adopt a priority model for TEXAS grants that will consider some merit criteria when deciding which economically disadvantaged students receive assistance. The model proposes to maintain current levels of funding to each institution of higher education. To receive priority designation, a student must demonstrate financial need and meet two of the following four criteria: participate in an advanced academic program such as Advanced Placement, the Distinguished Achievement Program, or dual credit courses; meet thresholds on college readiness.
assessments authorized under the Texas Success Initiative; earn at least a 3.0 grade point average on a 4.0 scale; and rank in the top one-third of his or her class. Critics have expressed concern that introducing merit criteria in the TEXAS grant program may limit access to higher education for some at-risk students.

The B-On-time Loan program, a zero-interest loan program encourages students to graduate in four years by completely forgiving loans upon graduation in four years if the student has a cumulative grade point average of 3.0 or higher. Many students who currently receive B-On-time loans are those 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 earned an associate's degree no earlier than May 1, 2005.

B-On-time loans were disbursed to 4,142 students in fiscal year 2009, less than half the number of loans provided in fiscal year 2007. There have been reports of confusion about the program from students regarding whether the award is a grant or loan. Due to unsteady participation over the years of B-On-time program implementation, THECB has limited information on the effectiveness of the program. More than 32 percent of the total number of students who have received a loan since the inception of the program (22,998 students) have had a loan forgiven. 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.

The 82nd Legislature may consider maintaining current levels of funding or expanding state financial aid programs such as TEXAS grants and B-On-time loans that increase access to higher education to economically disadvantaged students and encourage students to complete a degree on time.

**Online Course Expansion**

Online courses are removing geographic barriers in higher education and opening the door for students in rural areas of the state to take courses that would likely never have been offered before online courses were available. Some rural and small institutions of higher education (IHE) have had difficulty attracting high-level faculty necessary for advanced courses. Additionally, the Texas Higher Education Coordinating Board (THECB) recommendations to the 82nd Legislature include requiring IHEs to provide at least 10 percent of courses off-campus as a cost-efficiency measure. Most online course programs have high initial start-up costs, but require relatively less funds than traditional
courses require to maintain programs, making online courses attractive to institutions searching for ways to reduce costs.

The Virtual College of Texas (VCT), governed by the Texas Association of Community Colleges, aims to increase access to higher education and improve student success by sharing resources (e.g., faculty, courses, support services, and technology) among Texas's two-year colleges. Students pay in-district tuition for VCT courses. In fiscal year 2010, 2,806 students enrolled in a total of 4,118 courses. Some courses are provided in collaboration with the Texas Virtual School Network for dual credit course delivery.

Developmental education accounts for an estimated $100 million in state appropriations each year. These 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. An IHE is authorized to determine what scores are acceptable in order for students to be admitted to its program. Recent actions by the legislature and THECB to increase college readiness has fostered a closer relationship between the Texas Education Agency and THECB and a goal to align curricula from preschool to graduate school. However, students taking developmental education courses do not perform well and are half as likely to complete a degree as students who do not require developmental education. Some have recommended establishing a statewide delivery system of online developmental education courses to provide instruction rooted in best practices to boost student achievement and increase student retention. Such programs could include competency-based online courses that are able to gauge content mastery, allowing a student to progress once he or she demonstrates college readiness.

The 82nd Legislature may consider allocating funds to programs that promote online course delivery in order to provide access to quality educational resources to all students in Texas and target at-risk students who are not college ready.

Reducing Time-to-Degree

In light of the current fiscal climate, legislators are looking for ways for institutions of higher education (IHEs) to maintain quality, encourage more students to pursue higher education, and provide students effective instruction and support that leads to degree completion. Instead of cutting programs and services, some institutions have begun initiatives to reduce a student's time-to-degree. These plans have the potential to benefit the state and IHEs by decreasing the total amount of resources spent per student in formula funding appropriations and financial aid awards. Students graduating in a shorter amount of time can accrue less student debt, enter the workforce sooner, demonstrate self-discipline to potential employers, and reduce the need and associated costs for developmental education. Examples of programs that reduce time-to-degree are
three-year baccalaureate programs, two-plus-two programs, dual credit courses, and competency-based advancement.

**Three-Year Baccalaureate Degrees**

Several programs are currently available at certain IHEs in Texas that allow students to complete a baccalaureate degree in three years. The three-year degrees do not differ from traditional degree plans in course requirements, credit hours needed, or academic standards. Instead, students are provided a structured schedule typically requiring completion of a minimum of 15 hours each fall and spring semester and 10 hours each summer semester.

**Two-Plus-Two Programs**

Some four-year public universities have created partnerships with nearby community college districts to encourage community college students to transfer to the university after earning an associate's degree. Two or more IHEs can enter into articulation agreements to allow all courses from specific programs to transfer to certain degree plans.

A Texas Higher Education Coordinating Board (THECB) report required by the 81st Legislature, which was released in October 2010, surveyed each general academic teaching institution on issues related to transfer students and found that only 29 percent of degree-seeking community college students transferred to a university within six years, but noted that those transfer students tend to do well. Streamlining the transfer process may encourage more students to continue education beyond an associate's degree or certificate. Successful existing programs, among other things, have a variety of articulation agreements, organization of faculty on vertical teams to align curricula between two-year institutions and four-year institutions, the option for dual-enrollment, comprehensive advising services at both institutions, and online degree audit services for students.

Some legislators have taken an interest in establishing statewide articulation agreements that could align degree plans between two-year IHEs and four-year IHEs. Doing so could further streamline the transfer process, thereby encouraging more community and technical college students to pursue four-year degrees at any public university in the state. Critics of such a proposal 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.

**Dual Credit Courses**

Section 28.009, Education Code, requires each school district to provide at least 12 semester credit hours of college credit to high school juniors and seniors, and requires a
public IHE, on request, to assist a school district to develop and implement such a program. The credits can be earned through international baccalaureate courses, Advanced Placement courses, dual credit courses, or certain articulated postsecondary courses. Students are allowed to enroll in a maximum of two dual course credits each semester while in high school.

Studies have shown that enrollment in dual-credit courses increases the likelihood that a student will complete high school and continue in postsecondary education. When examining high school graduates who enrolled in dual credit courses, 30.6 percent were economically disadvantaged in 2009 compared to only 18.8 percent of graduates in 2003, indicating that dual credit courses increase at-risk students' access to higher education. Participation in dual credit courses is likely to continue to increase now that the Texas Virtual School Network, which began offering online courses to high school students in the spring of 2009, can now provide dual credit course options to students.

Public schools that earn designation as an Early College High School target at-risk students and are exempt from dual credit course restrictions, allowing students to begin taking courses in grade nine with the option to earn a maximum of 60 college credit hours. Depending on the student's chosen degree plan, he or she could potentially enroll at an institution of higher education with half the required credits for a baccalaureate degree.

Currently, both IHEs and school districts receive funding when a student enrolls in a dual credit course. Section 28.009(a-2) provides that a school district is not required to pay tuition or other costs associated with dual credit course enrollment depending on the specific program, although this provision expires on September 1, 2011. IHEs are authorized to waive tuition and fees for students enrolled in dual credit courses. Results from study of the cost of dual credit course delivery, required by H.B. 3646, 81st Legislature, Regular Session, 2009, administered by THECB and the Texas Education Agency (TEA), and conducted by the Texas A&M University Education Research Center, is scheduled to be delivered to TEA on January 1, 2011.

**Competency-Based Advancement**

Competency-based advancement is typically used by for-profit universities to provide students with credit for prior learning. In lieu of a traditional class that spans a whole semester, competency-based advancement provides students with the option of advancing through courses once they have demonstrated content mastery. This method has been shown to be successful especially for non-traditional students who may be pursuing a second career or veterans who have gained critical skills while in service.

The 82nd Legislature may consider enacting incentives for IHEs to offer more programs that encourage students to complete a baccalaureate degree in a shorter amount of time.
The Texas Research Incentive Program

The 81st Legislature enacted H.B. 51, which, among other things, requires each research university and emerging research university to develop a long-term strategic plan detailing how the institution will enhance its reputation as a research university and established the Texas Research Incentive Program (TRIP). TRIP funds provide matching funds for gifts and endowments given to an institution for the purpose of enhancing research activities. The 81st Legislature allocated $25 million per year of the 2010-2011 biennium for TRIP matching funds; however, agency budget reductions decreased the amount available in 2011 to $22.5 million. According to the Texas Higher Education Coordinating Board (THECB), a university must have at least $14 million in research expenditures each year and have a strong doctoral program (defined as awarding at least 20 doctoral degrees per year, offer at least 10 doctoral program, or enroll at least 150 doctoral students) to be classified as an emerging research university.

Currently, seven institutions of higher education meet THECB criteria as an emerging research university and each of those institutions competed for TRIP funds. The following represents the total amount of research gifts and endowments collected by each institution, the potential amount of matching funds according to statutory and THECB rules, and the actual amount of funds disbursed in fiscal years 2010 and 2011:

<table>
<thead>
<tr>
<th>University</th>
<th>Gifts/Endowments</th>
<th>Potential Match</th>
<th>Actual Match FY2010</th>
<th>Actual Match FY2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas Tech</td>
<td>$23.8 million</td>
<td>$21.2 million</td>
<td>$10.8 million</td>
<td>$9.7 million</td>
</tr>
<tr>
<td>UT-Arlington</td>
<td>$1.1 million</td>
<td>$550,000</td>
<td>$281,000</td>
<td>$253,000</td>
</tr>
<tr>
<td>UT-Dallas</td>
<td>$16.8 million</td>
<td>$15.1 million</td>
<td>$7.7 million</td>
<td>$7.0 million</td>
</tr>
<tr>
<td>UT-El Paso</td>
<td>$4.2 million</td>
<td>$3.0 million</td>
<td>$1.5 million</td>
<td>$1.4 million</td>
</tr>
<tr>
<td>UT-San Antonio</td>
<td>$3.1 million</td>
<td>$2.8 million</td>
<td>$1.4 million</td>
<td>$1.3 million</td>
</tr>
<tr>
<td>University of Houston</td>
<td>$6.2 million</td>
<td>$4.7 million</td>
<td>$2.4 million</td>
<td>$2.1 million</td>
</tr>
<tr>
<td>University of North Texas</td>
<td>$2.8 million</td>
<td>$1.7 million</td>
<td>$858,000</td>
<td>$772,000</td>
</tr>
</tbody>
</table>

University officials have stated that the competitive nature of TRIP worked well to encourage alumni to contribute to the institutions, resulting in record amounts of gifts and endowments raised, especially while the nation was experiencing an economic recession.
This program may also have a trickle-down effect of encouraging universities in other categories to pursue "emerging research university" status in order to compete for TRIP funds.

The 82nd Legislature may consider maintaining or increasing allocations to the TRIP fund in order to encourage emerging research universities to collect more private research dollars while bolstering the reputation of their research programs.

**Tuition Waivers and Exemptions**

Institutions of higher education in Texas provide tuition waivers and exemptions to certain students; many of these are mandated by the state and some are optional. Exemptions allow certain non-resident students to pay a reduced amount of tuition and fees, and waivers allow certain students to pay a reduced tuition rate. Exemptions and waivers are not funded directly by the state, requiring institutions to cover the cost of the foregone tuition and fees. Many of these programs target students who are teaching and research assistants; faculty members and their dependents; military personnel, veterans, and their dependents; residents of bordering states and Mexico; enrolled in dual-credit courses; former foster care youths; deaf and blind students; enrolled in distance learning; awarded competitive scholarships; or participants of the Texas Tomorrow Fund.

In fiscal year 2009, 209,200 students received exemptions or waivers, totaling $359 million in foregone tuition and fees. Legislators have stated that the lack of monitoring, evaluation, accountability, and uniform guidelines for these programs may necessitate further review of each exemption or waiver. Some legislators have suggested placing exemptions and waivers through a sunset process to ensure that they continue to be necessary to the educational goals of the state and worth the amount of funds foregone by institutions of higher education.

THECB recommends including satisfactory academic progress requirements, closing the loophole allowing students who receive exemptions or waivers to take repeated courses or excessive hours, allowing institutions to deny funds to students who do not provide proof of eligibility in a timely manner, and consolidating requirements and administration of duplicative programs.

The 82nd Legislature may consider consolidating, altering, or eliminating certain tuition exemptions and waivers.
Charter Schools

There were 5,042 charter schools serving more than 1.5 million students in 39 states and Washington, D.C., during the 2009-2010 school year. Minnesota, in 1991, was the first state to enact laws authorizing the creation of charter schools. Since that time, the demand for and the popularity of charter schools has risen in the United States. In addition, state laws relating to charter schools have been continuously amended since most were initially enacted during the 1990s. Most often, these amendments relate to a cap on the number of charter schools allowed to operate in the state, the entities responsible for authorizing a charter school to open, and the strengthening of accountability measures. New federal grant opportunities for charter schools have spurred some states to raise charter school caps and provide more autonomy in order to comply with federal requirements.

The Texas Education Code sets forth the purpose 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 be operated in the State of Texas:

- **Home-Rule District Charters:** This category of charters has the powers and entitlements granted to school districts and school district boards of trustees, including taxing authority. Home-rule charters 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 Charters:** 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 charters is governed by the local school district rather than the state, but are subject to closure if state and federal requirements are not met.
• Open-Enrollment Charters: This category is comprised of new public schools created by nonprofit organizations, universities, or local government groups. These schools receive state funding and are eligible for certain federal funding, such as special education and Title 1 funding for economically disadvantaged students. Currently, only 215 charter school contracts may be approved by the Texas Education Agency (TEA).

• College, University, or Junior College Charters: 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 main legislative acts 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. According to the TEA website, as of November 2010, Texas has 215 open-enrollment charter school contracts and 531 charter school campuses. Charter school students, 83 percent of whom are ethnic minorities and 70 percent of whom are economically disadvantaged, make up three percent of all public school students in the state.

Advocates for charter schools have recommended eliminating the cap on the number of allowed open-enrollment charter school contracts, pointing to long waiting lists (up to 40,000 students according to some sources) as demonstrating a demand for more charter schools. Nine states have partially or entirely lifted charter school caps since June 2009 in order to be competitive in consideration for awards from the Race to the Top federal grant program.

The 82nd Legislature may consider amending provisions of existing law relating to charter schools.

Class Size

Currently, Section 25.111, Education Code, requires each school district to employ a certain number of teachers to maintain a ratio of at least one teacher to 20 students in average daily attendance. Additionally, Section 25.112 prohibits a district from enrolling more than 22 students per class in grades kindergarten through four. The Texas
Legislature passed its first law relating to student-to-teacher ratios in 1975, requiring districts to maintain a 25-to-one ratio at all grade levels. Since that time, the ratio was reduced and set to current levels in 1988. Many states enacted similar class size limit and student-to-teacher ratio initiatives with the intention of allowing for adequate one-on-one time between a teacher and each of his or her pupils. Thirty-six states have at least one policy limiting the number of a students in the classroom and most laws target students in grades kindergarten through three: 27 states have a hard cap in place; seven states have semi-hard caps allowing districts to use average class sizes to meet policy requirements; and 15 states, including Texas, allow a waiver process to exempt certain schools from the policy.

Numerous research studies exist that tout the benefits and failures of class size and student-to-teacher ratio policies. Although most studies show some benefit, particularly for economically disadvantaged or at-risk students, some say that the minimal improvement in student achievement is not worth the price tag. Enrollment in Texas public schools has grown 20.1 percent from the 1998-1999 school year to the 2008-2009 school year. Enrollment growth in certain regions of the state is so rapid that school districts are finding difficulty in keeping up with the growth by building new classrooms and hiring new teachers. Superintendents, in particular, have recommended that current class size and student-to-teacher ratio policies be softened to provide flexibility to districts that are facing local budget crises in addition the state budget shortfall expected this biennium that may affect current levels of state funding to school districts.

The 82nd Legislature may consider increasing or eliminating the maximum number of students permitted in a classroom and per teacher.

Educating Students with Limited English Proficiency

The Fifth Circuit Court of Appeals recently reversed and remanded a ruling made during the summer of 2008 by the United States District Court for the Eastern District of Texas. This litigation was the most recent in a series of cases relating to the role of the state in providing an equitable education to students with limited English proficiency (LEP). The district court found that the State of Texas, the Texas Education Agency (TEA), and the commissioner of education had denied LEP students equal educational opportunities in Texas by failing to identify such students and to sufficiently monitor their academic performance. Secondary LEP students performed 35 to 45 percentage points below their non-LEP peers on the Texas Assessment of Knowledge and Skills (TAKS) examination; a performance gap considered too large by the district court. The court of appeals acknowledged the substantial achievement gap between LEP students and their peers, but disagreed with the district court's finding that the failure to monitor LEP programs directly caused LEP students to underperform.
Section 29.053, Education Code, requires each district with an enrollment of at least 20 LEP students in the same grade level to offer some form of bilingual education. These provisions acknowledge a variety of instruction methods used to educate LEP students:

- **Transitional Bilingual/Early Exit:** This bilingual program serves LEP students in both English and Spanish and transfers a student to English-only instruction not earlier than two or later than five years after the student enrolls in school.

- **Transitional Bilingual/Late Exit:** This bilingual program serves LEP students in both English and Spanish and transfers a student to English-only instruction not earlier than six or later than seven years after the student enrolls in school.

- **Dual Language Immersion/Two-Way:** This biliteracy program integrates students proficient in English and LEP students in both English and Spanish and transfers a LEP to English-only instruction not earlier than six or later than seven years after the student enrolls in school.

- **Dual Language Immersion/One-Way:** This biliteracy program serves only LEP students in both English and Spanish and transfers a student to English-only instruction not earlier than six or later than seven years after the student enrolls in school.

- **English as a Second Language/Content-Based:** This English program serves LEP students in English only by providing a full-time teacher certified in bilingual education to provide supplementary instruction for all content area instruction.

- **English as a Second Language/Pull-Out:** This English program serves LEP students in English only by providing a part-time teacher certified in bilingual education to provide English language arts instruction exclusively, while the student remains in a mainstream instructional arrangement in the remaining content areas.

- **No Bilingual Education or Special Language Services Provided:** This is the case if the school district has received a waiver and is not required to offer a bilingual education or special language program in a student's native language or if the student's parents have refused to approve the student's entry into a program.

Policymakers have long debated the effectiveness of each type of instruction method and how each affects LEP students with native languages other than Spanish. Currently, the weight in the state public school finance system assigned to LEP students is 0.1, though the actual cost of delivering educational services to LEP students varies according to the instruction method deemed necessary. By providing a variety of allowable instruction methods for LEP students, districts can tailor programs to meet the needs of their students rather than relying on a one-size-fits-all approach. Although the achievement gap between non-LEP students and LEP students has narrowed, the gap is still substantial. In the 2008 graduating class, only 44.2 percent of LEP students graduated, compared to 79.1 percent of the general student population, 88.8 percent of white students, 70.8 percent of...
Latino students, 71.8 percent of African American students, and 70.4 percent of economically disadvantaged students.

The 82nd Legislature may consider changing the way in which programs for LEP students are implemented and monitored.

**Educator Preparation Programs**

There are 175 educator preparation programs (EPP) in the state, utilizing a variety of routes to certification. There are 71 university-based programs, including 36 that are at public institutions of higher education and 35 that are at private institutions of higher education. Seventy EPPs host post-baccalaureate programs that provide teacher training by colleges and universities for individuals who already have a baccalaureate degree. Alternative or accelerated programs are offered by 120 of the 175 EPPs in the state for individuals who already have a baccalaureate degree.

Chapter 21 and Chapter 61 of the Education Code contain certain provisions related to EPPs, most of which were added or amended by S.B. 174, 81st Legislature, Regular Session, 2009. In general, these provisions require the State Board for Educator Certification (SBEC) to propose rules for EPP accountability based on certification examination results, beginning teacher performance, student achievement, and program compliance with SBEC requirements; annually assess EPPs, propose rules for assigning certain accreditation statuses, impose certain sanctions for low-performing programs, and revoke approval under certain circumstances; make available certain information about EPPs on SBEC’s website for prospective teachers and hiring school districts; and require EPPs to distribute an exit survey to program participants before receiving certification.

The Texas Education Agency (TEA) has begun implementation of the provisions of S.B. 174 by conducting webinar training regarding data collection and data reporting requirements, and by completing a new consumer information website available through TEA’s website. TEA staff members have indicated that full implementation will not be complete until the 2013-2014 school year, particularly relating to aligning student performance to teacher performance. Certain legislators have expressed concern that implementation of these provisions is taking too long.

The 82nd Legislature may consider amending certain provisions relating to EPPs to reduce the time it will take to implement existing requirements.
Eliminating Cost-Driving Mandates

Some state requirements may reap benefits, but also drive costs. In the present climate, with the 82nd Legislature facing a record budget shortfall estimated to total between $11 billion and $24 billion, lawmakers may examine ways to grant school district superintendents flexibility to provide adequate educational services by freeing funds that are currently dedicated to meeting state mandates. Appropriations to school districts may not increase this biennium or the next, and at the same time, utilities, fuel costs, and insurance premiums are steadily rising. Well-intentioned programs may represent ideal educational resources and services that every student in the state may access, but limited dollars may require that certain sacrifices be made.

Among requirements that have already been recommended for the chopping block are reporting requirements and related administrative costs, the requirement for high schools to maintain science laboratories, and the 22-to-one student-to-teacher ratio requirement for grades kindergarten through four.

Many legislators have formally asked superintendents to submit to the 82nd Legislature recommendations of state regulations that could be eliminated to allow superintendents to increase productivity and efficiency at schools while saving costs. Similarly, the commissioner of education has also been asked to provide recommendations from the Texas Education Agency.

The 82nd Legislature may consider repealing certain provisions of the Education Code for cost-saving purposes.

Middle Schools

Many landmark legislative initiatives in public education tend to focus on students in secondary schools to prepare students for higher education, prevent students from dropping out of school, and raise achievement levels in a variety of subject areas. However, researchers have found that the strongest predictor of success in high school is eighth grade student achievement, indicating that it may be advantageous to target resources to middle school students before any impediments to success run the risk of becoming insurmountable in high school.

The transitional periods from elementary school to middle school and from middle school to high school are challenging. Students need adequate support and guidance through these times for optimal development and academic success. Certain in-school programs are demonstrating positive results at preparing students for high school and beyond, such as AVID, Communities in Schools, and Citizen Schools. These programs target
underperforming and at-risk students by providing them with tutoring, one-on-one attention, and additional resources to meet basic needs.

The alignment of college readiness standards into curriculum for grades kindergarten through 12 has led some districts to create vertical team initiatives that encourage regular meetings between teachers from various grade levels to further align instruction and material. Such strategies help to prevent content loss during grade transitions and allow students to adequately prepare for the next grade level.

The 82nd Legislature may consider legislation targeted at middle school student achievement.

Public School Finance

Annual state aid and local taxes for public education exceed $48.7 billion, including $17.23 billion in local maintenance and operations (M&O) taxes, $16.67 billion in state foundation funds, $7.19 billion in federal aid, and $3.94 billion in local interest and sinking fund (I&S) taxes. The way the system is structured, higher property values save the state general revenue because additional revenue generated by higher property values serve to reduce the amount of aid the state is obligated to pay towards the amount allocated to each district. Conversely, lower property values increase the state obligation to formula funding, as the state must provide the difference between local tax revenues and the amount of funding a district receives. This effect is especially important to the 82nd Legislature due to shortfalls between projected and actual property value growth used in formulas for the 2010-2011 biennium.

Many of the tenets of the current public school finance system were enacted as a result of a series of court decisions regarding whether public education in Texas is provided equitably as required by Section 1, Article VII, Texas Constitution.

The Foundation School Program is comprised of Tier 1 (eight allotments), Tier 2 (equalized enrichment of M&O tax effort), facilities funding (equalized enrichment of I&S tax effort), and additional state aid for tax reduction. Other state aid for public education includes textbook funding, teacher retirement, and technology allotments. Additional federal resources include funds for child nutrition, funds allocated according to the No Child Left Behind Act guidelines, and dollars from the American Recovery and Reinvestment Act of 2009.

The adjusted allotment under Tier 1 is the product of the basic allotment (currently set at $4,765 per student), the cost of education index, and the small-size and mid-size school adjustment. The adjusted allotment is then used to determine additional amounts
generated for certain populations of students who require more funds to educate, such as students needing special education services, students enrolled in career and technology education programs, students needing compensatory education, students with limited English proficiency, and gifted and talented students.

Hold harmless provisions provide funding for tax revenue lost to tax rate compression, mandated teacher salary increases, the high school allotment, and an across-the-board minimum increase of $120 per weighted student for the 2009-2010 school year. Target revenue is based on a number of figures to make adjustments for salaries and mandated increases, transportation, revenue per weighted average daily attendance, the New Instructional Facilities Allotment program, and the high school allotment. A district with wealth per weighted student exceeding the equalized wealth level may find that excess revenue is subject to recapture by the state.

The Select Committee on Public School Finance Weights, Allotments, and Adjustments (committee) met during the interim to review the current system structure and recommend to the 82nd Legislature ways that the system can be reformed to meet the requirement in the Texas Constitution to provide education equitably to all students in Texas. Consideration was given to the projected composition of the student body of the state's future. Enrollment continues to grow rapidly in Texas, requiring additional classrooms and staff to meet mandated staffing guidelines. Because personnel costs account for approximately 75 percent of school district budgets, enrollment is the primary budget cost driver. One of the fastest growing populations of students in Texas schools is students with limited English proficiency who require some type of bilingual education or English as a Second Language program to ensure that students master appropriate grade-level content while mastering the English language in order to ensure future success.

Committee members grappled with complex issues, such as how to determine fair and adequate funding levels for weights and allotments (e.g., special education, transportation, students with limited English proficiency, et cetera). Adjustments, such as the small-size and mid-size school adjustment and the cost of education index were examined from a variety of perspectives. For example, salary adjustments currently based on the cost of living in areas surrounding school districts do not take into account the difficulty that some rural districts experience in attracting teachers, particularly in subject areas such as upper-level science and mathematics. Texas is a large state with a variety of populations with varying needs. Committee members agreed that a one-size-fits-all approach to education is impossible, but they also acknowledged that the current public school finance system remains vulnerable to litigation challenging the equity of the system.

Legislators ideally would like for all districts to be on a formula-based system, thereby eliminating the need for hold harmless provisions. Texas Education Agency officials estimate that such a system would cost the state an additional $1.9 billion to $4.8 billion
in fiscal years 2012 and 2013 in order to restore formula-based funding for 90 percent of the students in the state. This strategy is unlikely to be pursued due to the probability that the state will have a budget shortfall estimated to be between $11 billion and $24 billion.

Many proposals were presented to the committee to restructure the state tax system to generate additional revenue for public education. However, members seemed to favor efforts to increase school productivity, alter the system to be based on outcomes rather than enrollment and student characteristics, strengthen financial accountability of districts to reduce waste, eliminate unsuccessful existing programs to free up funds for effective initiatives, and provide flexibility to superintendents to reduce costs by eliminating or softening certain state regulations (e.g., class size guidelines, teacher pay, data reporting requirements, et cetera).

The 82nd Legislature may consider changing the structure of the public school finance system in order to equitably educate Texas schoolchildren while eliminating existing cost inefficiencies.

**State Board of Education**

The State Board of Education (SBOE) was first created by the 1866 Constitution of Texas and was comprised of the governor, the comptroller of public accounts, and the superintendent of public instruction. The Constitution of the State of Texas adopted in 1876 provides the framework for the current Texas Constitution and set forth the composition of the board as including the governor, comptroller of public accounts, and secretary of state. The 18th Legislature established an elective office of state superintendent of public instruction. Nearly two decades later, the 29th Legislature added the state superintendent of public instruction as an ex-officio secretary to SBOE. The 40th Legislature proposed a constitutional amendment, which was adopted at the November 1928 election, to give authority to the legislature to prescribe the structure of SBOE during the following legislative session. The 41st Legislature created the new SBOE to replace the ex-officio board, consisting of nine members to be appointed by the governor, and gave SBOE the authority to adopt textbooks for the state.

The Gilmer-Aikin bills (Senate Bills 115, 116, and 117, 51st Legislature, Regular Session, 1949) constituted major educational reform in the state. The Gilmer-Aikin committee, formed during the interim between the 50th and 51st Legislatures, was tasked to examine ways in which the educational system of Texas could be streamlined to be more effective, be more rigorous, and address increasing costs relating to teacher salaries. The final report of the committee acknowledged that:
"Selecting teachers, ensuring attendance, deciding upon teaching methods, organizing individual schools—these things should be done by local administration. Texas has a long-standing tradition of local autonomy in managing school programs; this tradition should be safeguarded.

"Yet, the state has important management functions also. The state provides a large share of the funds which operate schools, establishes a minimum foundation program of education to be attained universally, certifies to the competence of would-be teachers, furnishes textbooks, and so on. At one time the part played by the state in education was relatively minor. In the future it will, by necessity, be of major consequence."

The committee made 30 proposals, including that SBOE should be an elective board and that it "should be a policy-forming, reviewing, and planning body, without executive responsibilities." The result of the Gilmer-Aikin bills was consolidation of more than 4,500 school districts into about 2,900 school districts. The bills were finally passed after days of stalemates, contentious debates on the floor and in the public arena, and logjamming of many senate bills in the house of representatives. The final version of the bills created a 21-member board elected from each congressional district in the state and required SBOE members to be nominated during the primaries and elected at the same time as other state officials. As the number of congressional districts apportioned to Texas increased over the years, the number of SBOE members rose.

The 68th Legislature changed the composition of SBOE to be elected from 15 newly established educational districts. The 70th Legislature called for a referendum on the November 3, 1987, general election ballot to allow the public to vote for or against the following proposition:

The State Board of Education shall be composed of members who are appointed from districts instead of elected, with equal representation from throughout the State of Texas.

Voters rejected this proposal. Therefore, the plan put in place by the 68th Legislature to elect SBOE members from educational districts was followed through in 1989 when the transitional board member terms expired and has been the method of electing SBOE members to the present time. S.B. 1 (relating to the education system, including the operation and administration of schools; making conforming amendments; providing penalties), 74th Legislature, Regular Session, 1995, further defined the powers and duties of SBOE, the Texas Education Agency, and the commissioner of education. The bill also created the State Board for Educator Certification.
Recent SBOE actions caught the attention of national press throughout 2010. Members debated and voted on more than 100 changes to social studies curriculum standards, some of which were viewed as partisan attempts to further certain political ideology, including emphasizing the conservative resurgence of the 1980s and 1990s, replacing any mention of "capitalism" with "free-market enterprise system," expanding the study of Confederacy leaders, removing Thomas Jefferson from a list of writers who inspired revolutions, replacing any reference to the United States as "democratic" with the term "constitutional republic," and removing certain passages regarding the founding fathers as being proponents of the separation of church and state. SBOE members in favor of these and other curriculum amendments stated that they were reversing a long-standing liberal bias in school curriculum. Critics claim that SBOE's actions in effect were rewriting history. Members will next review Texas Essential Knowledge and Skills for fine arts and mathematics curriculum.

The 82nd Legislature may consider changes relating to the scope and duties of SBOE.

Teacher Compensation

Section 21.402, Education Code, sets forth the formula used to calculate the minimum salary for teachers in the state based on the number of years of experience and the amount of state and local funds per weighted student available to districts. Many states adopted single salary schedules for teachers near the middle of the 20th century to combat cases of nepotism, subjective pay determined by principals, and discriminatory pay differences based on gender.

Currently, more than 75 percent of an average school district's budget is dedicated to compensation. Salary schedules adopted by the state and local districts tend to base standardized pay increases on years of experience, advanced degrees, and certification levels; however, critics of the single salary schedule have pointed to numerous studies that show no direct link between these characteristics and teacher performance, and a recent Gallup poll reported that more than 70 percent of Americans believe that teachers should be paid based on merit rather than a salary schedule.

Researchers are still not in agreement regarding which measure should be used as a factor of determining merit-based pay. Many pilot programs rely on standardized student test scores or student improvement on standardized tests. Results from recently completed pilot programs that base pay on student test score improvement have had mixed results. The Project on Incentives in Teaching in Nashville, Tennessee, paid bonuses between $5,000 and $15,000 to certain teachers whose students demonstrated improved achievement on standardized tests. Although a slight effect was noted during the fifth grade, the effect did not continue in grades six through eight. Along with the effort to
correctly define characteristics of a quality teacher, some small-scale merit-based pay systems implemented in certain pilot programs and charter schools have sought to differentiate teacher compensation based on acquisition of knowledge and skills, effectiveness demonstrated through value-based measures, evidence of certain market factors such as teaching at high-needs schools or in difficult subject areas, and adoption of leadership roles and responsibilities.

The most widely known merit-based pay program implemented today is the Teacher Incentive Fund, which is a discretionary federal grant program to implement performance-based compensation systems based on student achievement and classroom observations at high-need schools. In addition to this federal program, the Obama Administration's 2011 budget request includes $950 million for a new Teacher and Leader Innovation Fund that supports implementation of incentive pay systems.

H.B. 1, 79th Legislature, Third Called Session, created two non-competitive grant programs (The Texas Educator Excellence Grant (TEEG) and the District Awards for Teacher Excellence (DATE)) to award grants to qualifying campuses for the purpose of providing bonuses to teachers who demonstrate an improvement in their students' achievement. TEEG was eventually discontinued after no significant increases in student achievement were found. DATE continues and allows local campuses to decide details of the program to be implemented.

The 82nd Legislature may consider changing the way that teacher salaries are determined.

Teacher Quality

Countless studies conducted over the past few decades to find the educational ingredient necessary to raise student achievement scores have pointed repeatedly to one solution: teacher quality. However, this attribute tends to elude researchers and policymakers, as there are no set distinguishable characteristics present in quality teachers when compared to ineffective teachers. Most salary schedules for teachers are based on credentials, experience, and teacher test scores, although none of these characteristics correlate positively with teacher skill or student achievement.

The first area to examine relating to teacher quality is the rigor and effectiveness of educator preparation programs that provide training to prospective teachers. S.B. 174, 81st Legislature, Regular Session, 2009, overhauled the accountability of educator preparation programs in the state, requiring student performance in classrooms of program completers, graduates' certification examination scores, and principal
evaluations of completers during the first three years of teaching to be used to determine the effectiveness of an educator preparation program.

Many existing methods that target teacher quality include new teacher induction and mentoring programs. The teaching profession is often plagued with 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. Only 89 percent of individuals in the United States who completed an educator preparation program in the 2004-2005 school year took a certification examination, and fewer actually entered the teaching profession. Many school districts implement new teacher induction programs and state law requires that new teachers receive mentoring; however, some have suggested that a statewide comprehensive new teacher induction program is needed to ensure that new teachers learn effective teaching skills and are encouraged to stay in the teaching profession.

Evaluation and retention of teachers are also 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 an observation. PDAS does not lack its critics, largely regarding the lack of feedback of performance and lack of adequate professional development provided once issues are discovered.

The 82nd Legislature may consider legislation that will target teacher quality, including provisions relating to teacher training, new teacher induction programs, teacher evaluations, and retention or dismissal of teachers.

Technology

The delivery of educational services has been undergoing a makeover during the past decade, as the relative price of technology 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 allow students both in rural and urban areas to access top-quality information and instruction. Integration of technology in classrooms and assignments prepare students for a workforce that is now heavily reliant on technology. The main hurdle facing Texas school districts is providing students access to expensive technological tools at a time when districts' costs are increasing and the availability of additional resources is limited.

The legislature has made educational technology a priority in the past, requiring the State Board of Education to adopt a long-term plan for integrating technology in public education. The Long-Range Plan for Technology, 2006-2020, set ambitious technology-
related goals for lawmakers, school officials, and teachers, such as increasing the technology allotment to $50 per student per year, providing learning materials in digital formats, and aligning curriculum content standards with the needs of the workforce and higher education. The Texas Education Agency (TEA) has been working to align curriculum to college readiness standards, implement the Technology Immersion Project to provide individual computing devices to teachers and students and to integrate the use of technology into every aspect of learning, and provide professional development opportunities for teachers to learn how to integrate such technology in the classroom.

The 81st Legislature enacted legislation allowing school districts to use textbook funds to purchase electronic textbooks and requiring the commissioner of education to create a list of acceptable digital materials for use in public schools. Some districts that have used electronic textbooks in past years as supplemental materials found that digital materials were cheaper than purchasing traditional textbooks for each student, and the ability to update material instantly is advantageous compared to a 10-year minimum cycle for traditional textbooks.

Another way the legislature has shown a commitment to technology in education is with the creation of the Texas Virtual School Network (TxVSN) in 2007. TxVSN provides opportunities for students to take courses for Advanced Placement, accelerated study, credit recovery, alternative education, schedule flexibility, and dual-credit. Every high school in Texas is required to provide at least 12 dual-credit hours, which are courses that count towards a high school diploma and can be used towards a degree at an institution of higher education after graduation. TxVSN offers a cost-effective way for those high schools to provide dual-credit courses to students. The first TxVSN courses were offered in the spring of 2009 and the popularity and use of the network has grown since that time. Governor Rick Perry stated in an October 20, 2010, press release that he intends to work with legislators during the 82nd regular session to expand TxVSN in order to create the Texas Virtual High School to encourage students who have dropped out of school to earn a high school diploma.

The 82nd Legislature may consider legislation to bolster access to and use of technology in public school classrooms.
Advisory Committees

In 1993, the Office of the Comptroller of Public Accounts issued a report entitled *Against the Grain* that provided recommendations for making state government more efficient and less costly to taxpayers. Chapter 2110 (State Agency Advisory Committees), Government Code, was enacted following issuance of this report and the provisions of Chapter 2110 now govern state agency advisory committees and set parameters for the operation of these committees. Concern has been raised because advisory committees are a part of the Sunset Advisory Commission (SAC) review process and SAC’s time is limited when reviewing agencies. Finding an alternative method to review advisory committees would enable SAC to use that time to review other agencies.

The Health and Human Services Commission (HHSC) reports that it has the greatest number of advisory committees, which cost $268,000 in 2009 and are projected to cost $1 million in 2010. According to the Office of the Governor, individual advisory committees do not expend a significant amount of funds, but in aggregate they represent a significant funding expenditure. HHSC is collecting information about proposed advisory committees and is analyzing this information to identify whether certain committees can be consolidated; that information is expected to be given to the legislators during 82nd Legislature.

The 82nd Legislature may seek to develop a method to review advisory committees in order to consolidate or eliminate unnecessary committees and reduce associated costs. The 82nd Legislature may eliminate, with HHSC guidance, certain advisory committees under HHSC’s jurisdiction.

Judicial E-File

Electronic filing of court documents can increase transparency; reduce environmental damage, such as paper waste; provide remote access; and make the filing process more efficient. Currently, 25 states and the District of Columbia have adopted some form of electronic filing for the judiciary. Several Texas county, district, probate, and justice courts have established electronic filing through the Texas website portal, Texas.gov. The portal allows various judicial matters to be filed electronically, including civil, family, probate, and justice of the peace cases and original petitions, pleadings, and motions in new and established cases for participating counties.
According to Texas NICUSA LLC (NIC), the vendor that provides the state's official government portal and eGovernment activities, the cost of the electronic filing system would be lower if the state mandated that all counties use judicial electronic filing. NIC would make the initial state investment and recoup the cost over time through electronic filing fees. Currently, NIC e-filing costs range from $6 to $16 for each filing.

Recently, Harris County has shown interest in offering its own free judicial e-filing system, which it estimates could produce savings of $1.5 million annually. This has raised concern because a county system does not foster statewide uniformity and could make the statewide portal unsustainable. Mandating the use of the state portal could provide a uniform electronic interface and allow the creation of uniform filing standards needed to make e-filing convenient, cost-effective, and available to every county and attorney.

The 82nd Legislature may consider requiring all counties to offer judicial electronic filing and to use the statewide portal when filing judicial documents electronically to ensure uniformity in the state's judicial e-filing system. Furthermore, the 82nd Legislature may consider authorizing certain counties to require that all family and civil district court filings in their jurisdictions be done electronically.

Open Records

In 1973, the 63rd Legislature, Regular Session, enacted the Texas Open Records Act, which states that all information collected, assembled, or maintained by a governmental body is public information and is available for inspection unless specifically exempted by law. Concern has arisen that the law has not kept pace with technological advances such as personal digital assistants (PDAs) and the Internet. Additionally, concern has been raised that there is no standard for local and state entities to retain e-mail messages and regarding whether government information sent from a governmental entity to personal devices and retained on personal devices is subject to an open records request; whether private companies that are conducting state business should retain that information or be required to submit that information in response to an open records request; and whether there is adequate funding to process the high volume of open records requests, which are handled by the Office of the Attorney General.

The 82nd Legislature may consider amending the open records statutes, which would move the state into open records compliance in an advanced technological climate. These changes could include standardizing the e-mail retention policy for state and local governmental entities; authorizing the retrieval of government information from personal devices if appropriate in certain circumstances; and authorizing the retrieval of information from private contract companies that conduct state business. The 82nd
Legislature may consider funding to support additional staff to address the growing number of open records requests or reform the Texas Open Records Act to make the process more efficient.
Mental Health Services for Abused and Neglected Children

Children who have been abused or neglected are at risk for developing behavioral problems, performing poorly in school, and perpetuating the cycle of abuse and neglect when they reach adulthood.

During a Child Protective Services (CPS) investigation, abused and neglected children may receive a behavioral health evaluation performed by a Children's Advocacy Center (CAC), a local mental health authority, or another evaluation center to identify needs for mental health services. All children who enter foster care will receive an evaluation for mental health services, and if it is determined that such services are required, arrangements for the services will be made through STAR Health, a managed health care system. These services may include outpatient individual therapy, group therapy, or family therapy; inpatient therapies at a mental hospital; or partial hospitalization.

From April 1, 2008, to February 1, 2010, approximately 11,000 foster care children received mental health services through STAR Health. Of the 40,000 children who were referred to CAC for mental health services from CPS or law enforcement in 2009, 74 percent were involved in cases of sexual abuse and nine percent were involved in cases of physical abuse. Many children receive trauma-focused cognitive behavior therapy (TF-CBT), which usually lasts 16 weeks, involves the child and the parents, and provides the child with components that help him or her cope with the experienced trauma on a daily basis.

S.B. 2080, 81st Legislature, Regular Session, 2009, creates a temporary task force to establish a strategy for reducing child abuse and neglect and improving child welfare; requires the Department of Family and Protective Services to extend foster care payments to certain children; and requires the Department of State Health Services to establish the Texas Medical Child Abuse Resources and Education System (MEDCARES) program to award grants for developing and supporting regional programs that improve the assessment, diagnosis, and treatment of child abuse and neglect.

H.B. 1041, 81st Legislature, Regular Session, 2009, requires each school district to adopt and implement a policy addressing sexual abuse of children to be included in the district improvement plan and requires that the policy address methods for increasing teacher, student, and parent awareness of issues regarding sexual abuse of children, including knowledge of likely warning signs of such abuse.
The 82nd Legislature may consider issues relating to studying the impact of trauma on children and enhancing therapeutic services available to children who have been abused or neglected in an effort to eliminate the cycle of abuse and neglect.

**Health Professions Shortage**

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

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

H.B. 4353, 81st Legislature, Regular Session, 2009, authorizes the Texas Board of Nursing (BON) to issue a license to a person who is licensed to practice nursing in Mexico if that person meets certain qualifications, including receiving a score of at least 475 on a Test of English as a Foreign Language examination and receiving a score acceptable to BON on an English language version of the appropriate National Council Licensure Examination.

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

H.B. 2154, 81st Legislature, Regular Session, 2009, creates a new health care access fund and a consolidated loan repayment program to expand access to health care by increasing the provider workforce and expanding the Federally Qualified Healthcare Centers infrastructure in underserved areas. The bill requires that money for the health care access fund derive from a tax on tobacco products.
H.B. 4471, 81st Legislature, Regular Session, 2009, requires THECB to establish a procedure to allow a public or private institution of higher education that offers a professional nursing program to apply for certain state grants to increase the number of students enrolled in and graduating from the program.

S.B. 98, 81st Legislature, Regular Session, 2009, establishes The University of Texas Health Science Center-South Texas to increase medical research specific to the United States/Mexico border area, to allow local residents to receive a complete medical education without having to travel to another part of the state, and to help address the current medical provider shortage in the area through new faculty and residency positions.

H.B. 1924, 81st Legislature, Regular Session, 2009, authorizes a nurse or practitioner who orders a prescription drug or device for a patient in a rural hospital when the hospital pharmacist is not on duty or when the institutional pharmacy is closed to withdraw the drug or device from the pharmacy in sufficient quantity to fill the order. The bill authorizes trained and registered pharmacy technicians to perform certain duties in the pharmacy without the direct supervision of a pharmacist.

S.B. 202, 81st Legislature, Regular Session, 2009, requires the Texas Medical Board (TMB) to grant a provisional license to practice medicine in a location with a health professional shortage or that is medically underserved to an applicant for a license who is licensed in good standing as a physician in another state.

S.B. 455, 81st Legislature, Regular Session, 2009, authorizes a licensed dentist to delegate to a qualified and trained dental assistant acting under the dentist's supervision any dental act that a reasonable and prudent dentist would find is within the scope of sound dental judgment to delegate if the dental assistant holds the appropriate certificate.

The 82nd Legislature may consider issues relating to health professionals' scope of practice; expanding programs that graduate nurses for faculty positions in nursing schools; reviewing funding streams for graduate medical education; enhancing public education campaigns in kindergarten through 12th grade for preventative care and health care professional career opportunities; reviewing ways to encourage health care professionals to defer retirement; increasing ethnic diversity in health care professions; and implementing new loan forgiveness programs and other incentives to recruit and retain more primary care and long-term care health professionals.
Identification and Treatment of Dyslexia and Related Disorders

According to the Texas Education Agency's State Dyslexia Handbook, persons who are dyslexic have difficulty reading, writing, and spelling "despite conventional instruction, adequate intelligence, and sociocultural opportunity." The identification and treatment of dyslexia has improved in Texas. However, of all school-age children in Texas, 15 to 20 percent will experience reading failure because school administrators, teachers, and others have not identified and treated their disorder. Persons with untreated dyslexia will likely have difficulty succeeding in school and may later struggle to complete tasks at their jobs.

School districts across Texas vary in their approach to identification and treatment of dyslexia in children. While some school districts employ trained dyslexia specialists and seek the early identification of dyslexia, other school districts do not attempt to identify dyslexia until the child is older and treatment is less effective. Children in rural areas and older adults face additional barriers to obtaining a diagnosis of and treatment for dyslexia.

H.B. 461, 81st Legislature, Regular Session, 2009, requires the Department of State Health Services (DSHS) to issue a licensed dyslexia practitioner license or licensed dyslexia therapist license to an applicant who meets the Academic Language Therapy Association (ALTA) standards. The bill requires an applicant for a licensed dyslexia therapist license to have, among other qualifications, earned at least a master's degree from an institution of higher education.

The 82nd Legislature may consider issues relating to increasing access to dyslexia treatments in rural areas of the state, preparing preservice teachers in college to identify and treat dyslexia, improving treatment for older students and adults, and reducing any barriers related to accommodations for individuals with dyslexia and related disorders.

Medicaid HCBS Waivers

Texas has eight Medicaid waiver programs that allow eligible persons to receive Medicaid benefits for long-term services in a home-based or community-based setting rather than in a nursing facility or other institutional setting. Except for STAR+PLUS, which is administered by the Health and Human Services Commission (HHSC), the Texas Medicaid waiver programs are administered by the Department of Aging and Disability Services (DADS) and serve aging persons and persons with disabilities. A person can be enrolled in only one waiver program. These programs and their services are:

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Community Based Alternatives (CBA) provides home-based and community-based services (HCBS) to elderly persons and to adults with disabilities as an alternative to living in a nursing home.

Community Living and Support Services (CLASS) provides HCBS to people with a condition other than mental retardation as an alternative to placement in an intermediate care facility for persons with mental retardation or a related condition (ICF-MR/RC).

Deaf Blind with Multiple Disabilities (DBMD) provides HCBS to persons who are deaf-blind with another disability.

The Medically Dependent Children Program (MDCP) provides HCBS to children and young persons who are medically dependent as an alternative to placement in a nursing facility.

The Texas Home Living Program (TxHmL) provides selected essential services and supports to people with mental retardation who live in their family homes or their own homes.

The Home and Community-based Services Program (HCS) provides individualized services and supports to persons with mental retardation who are living with their family, in their own home, or in other community settings, such as small group homes.

The Consolidated Waiver Program (CWP) provides HCBS to persons who are eligible for care in a nursing facility or intermediate care facility for persons with mental retardation or a related condition (ICF/MR-RC). CWP was discontinued by S.B. 705, 81st Legislature, Regular Session, 2009.

STAR+PLUS is a managed care program designed to provide health care, acute and long-term services, and support through a managed care system. HHSC is currently expanding STAR+PLUS to other parts of the state, including Dallas County and Tarrant County.

S.B. 37, 81st Legislature, Regular Session, 2009, requires DADS, subject to the availability of funds, to provide HCBS under the DBMD waiver program, regardless of age, if the person applies for and is eligible to receive services.

S.B. 63, 81st Legislature, Regular Session, 2009, requires HHSC to adopt a career ladder for persons who provide intervener services under the DBMD waiver program based on credentialing standards for interveners.
S.B. 705, 81st Legislature, Regular Session, 2009, requires DADS and HHSC to streamline the administration of and delivery of services through Section 1915(c) waiver programs. The bill also requires DADS to discontinue CWP.

Article II, Rider 39, S.B. 1, 81st Legislature, Regular Session, 2009, requires DADS to submit an annual report to the Legislative Budget Board and the governor regarding efforts planned or implemented to streamline the administration and delivery of Medicaid long-term care waiver programs. DADS submitted a report in November 2009, regarding streamlining efforts, including physician signature requirements, interest list closure codes, and a single service authorization system.

The 82nd Legislature may consider issues relating to ensuring that aging persons and persons with disabilities are able to receive long-term services and supports in home-based and community-based settings rather than in institutional settings whenever possible and to consolidating existing Medicaid waiver programs and streamlining services.

**Obesity**

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

The prevalence of overweight children was greater in Texas in 2005 than was the prevalence nationwide. Children who are overweight are at greater risk for developing serious health conditions, including Type 2 diabetes, risk factors for heart disease, asthma and sleep apnea, and psychosocial effects such as decreased self-esteem. In August 2008, the *Washington Post* reported that there will be an additional 100,000 cases of coronary heart disease by 2035 in the United States due to childhood obesity. As adults, the obese and overweight are at risk for developing chronic diseases, such as heart disease, cancer, stroke, and diabetes, which are leading causes of death in the United States and account for billions of dollars in medical treatment costs.

In a 2004 document entitled *The Burden of Overweight and Obesity in Texas 2000-2040*, the Texas Department of Health (now DSHS) reported that health problems attributed to obesity and being overweight will cost Texas $39 billion by 2040 if current trends do not change. Obesity costs Texas businesses billions of dollars every year in lost productivity, absenteeism, health care, and disability. Obesity has also led to higher insurance premiums. Since 2001, insurance rates have risen 68.2 percent and businesses pay approximately 74.4 percent of insurance costs.
Although it is well established that fitness is essential, more than 60 percent of American adults do not get enough physical activity, and 25 percent are not active at all, according to the National Conference of State Legislatures. Many states are passing legislation to promote fitness and wellness in the workplace.

S.B. 870, 81st Legislature, Regular Session, 2009, creates the Interagency Obesity Council to produce an evidence-based public health awareness plan, explore past successful public health awareness efforts when creating the plan, and solicit input on the plan from the private sector. It also established the two-year Obesity Prevention Pilot Program to decrease obesity in child health plan program enrollees and Medicaid recipients, improve the nutritional choices and increase physical activity levels of child health plan program enrollees and Medicaid recipients, and achieve long-term reductions in child health plan and Medicaid program costs incurred by the state as a result of obesity.

H.B. 1622, 81st Legislature, Regular Session, 2009, establishes a grant program to provide children who are not yet enrolled in school access to healthy foods that are essential for proper development. S.B. 395, 81st Legislature, Regular Session, 2009, establishes the Early Childhood Health and Nutrition Interagency Council to develop an early childhood nutrition and physical activity plan with a recommended timeline for implementation over a six-year period. These initiatives; the *Strategic Plan for the Prevention of Obesity in Texas: 2005-2010*, a study demonstrating how to fight obesity; and previous legislation that mandated school health and activity reports all promote childhood wellness in Texas.

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

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

In 2007, the federal government amended the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to cover fruits, vegetables, and whole grains. The program also encourages breast-feeding, which has been shown to reduce the risk of obesity. The Federal Obesity Prevention Act of 2008 was introduced in Congress in 2008 and, if passed, will amend the Public Health Service Act to create a Federal Task Force on Obesity.

The 82nd Legislature may consider options to improve the overall health of Texans by focusing on programs that complement individually based prevention with community-based prevention to reduce obesity rates by increasing physical activity, improving nutrition, and improving self-management of chronic diseases and reducing obesity-related health disparities between different ethnic groups.

**Pandemic Influenza**

The first case of H1N1 influenza in Texas occurred in April 2009. The spread of the virus occurred rapidly, with approximately 5,200 reported cases in Texas by June 2009. By December of 2009, the number of H1N1 influenza cases dropped significantly, and the threat of the H1N1 influenza pandemic in Texas diminished. To prepare for a potential reemergence of H1N1 influenza, officials are currently coordinating statewide emergency plans and stockpiling antiviral medications.

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

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

H.B. 1409, 81st Legislature, Regular Session, 2009, authorizes pharmacists to administer influenza vaccinations to patients over seven years of age without an established physician-patient relationship.
The 82nd Legislature may consider issues relating to the state's preparedness for a pandemic influenza outbreak, including the state's limited health care capacity; shortages and delays in vaccine administration; potential infrastructure disruption as a result of a pandemic; the establishment of standardized protocols for vaccine administration, absenteeism, and the cancellation of school and other school-related events; increasing the effectiveness and efficiency of ImmTrac; and resource allocation and laws pertaining to social distancing, activity restrictions, and quarantine.

**Prevention and Early Intervention Programs**

Prevention and early intervention programs attempt to eliminate or reduce the negative effects of mental illness, substance abuse, child abuse and neglect, domestic violence, single-parent families, absentee fathers, early pregnancy, and unemployment. These programs break cycles of abuse and illness, improve lives, and save the state significant amounts of money by eliminating the need for future treatments and services.

Several state agencies, including the Department of Family and Protective Services (DFPS), the Office of the Attorney General (OAG), the Texas Youth Commission (TYC), and the Texas Workforce Commission (TWC), administer prevention and early intervention programs.

DFPS' Prevention and Early Intervention division (PEI) was created to consolidate state prevention and early intervention programs that target the prevention of the abuse, neglect, delinquency, and truancy of Texas children. PEI administers programs such as Community-Based Child Abuse Prevention, Community-Based Family Services, Family Strengthening, Services to At-Risk Youth (STAR), and Community Youth Development (CYD). OAG administers the Parenting and Paternity Awareness program, No Kidding: Straight Talk From Teen Parents, Non-Custodial Parent (NCP) Choices, and Shared Parenting. TYC provides general, individualized intervention services and specialized treatment to those who are in its custody. TWC administers the Temporary Assistance for Needy Families (TANF) Employment and Training (Choices) and Supplemental Nutrition Assistance Program Employment & Training (SNAP E&T).

To improve the efficiency and effectiveness of prevention and early intervention programs, the 82nd Legislature may consider options to administer the programs through a merged prevention department and increase data-sharing capabilities between state agencies.
Routine HIV Screenings

Each year, 4,000 to 5,000 persons in Texas are diagnosed with the human immunodeficiency virus (HIV). Although new drugs have allowed persons with HIV to live longer and to have higher quality lives, many are not diagnosed until the virus has advanced and drug treatments are less effective. In Texas, one in four persons will receive a diagnosis of acquired immune deficiency syndrome (AIDS) within one month of receiving an HIV diagnosis. One in 378, or 60,000, Texans live with HIV or AIDS; one-quarter of those who have HIV do not know that they are infected.

In 2006, the Centers for Disease Control and Prevention (CDC) issued a revised set of recommendations regarding who should be tested for HIV. The CDC recommended that all patients in health care settings be screened for HIV after the patient is informed of the screening and does not opt out. The CDC also recommended that all pregnant women be screened for HIV unless the woman opts out. The CDC has noted that the number of new HIV cases could decrease by 30 percent if certain persons were screened for HIV in health care settings. According to the Institute for Health Policy at The University of Texas School of Public Health, studies show that voluntary screenings for HIV done in all health care settings are cost-effective and supported by many insurance providers.

The 82nd Legislature may consider issues relating to adopting the CDC-revised recommendations for screening for HIV in health care patients.

State Health Care Quality Improvements

The state Medicaid program is currently the most costly item in the state budget and is expected to grow in the future. To help contain future costs and improve patient safety, Texas is considering the implementation of several health care quality improvement initiatives.

Quality improvement initiatives include statewide health care-associated infection and adverse event reporting, reimbursement reductions in the Texas Medicaid program for preventable adverse events, a statewide exchange of health care information, pay-for-performance programs, and the use of best practices by health care providers.

H.B. 1362, 81st Legislature, Regular Session, 2009, extends the electronic Methicillin-resistant Staphylococcus Aureus (MRSA) registry pilot program, which researches and implements procedures for reporting MRSA infections, to September 1, 2011. MRSA is a bacteria that is often contracted during hospital stays and is resistant to treatment with antibiotics.
Hospital-acquired infections (HAIs) cause 90,000 deaths and $4.5 billion in health care costs in the United States each year. S.B. 203, 81st Legislature, Regular Session, 2009, requires certain health care facilities to report the incidence of surgical site infections to the Department of State Health Services (DSHS) and requires DSHS to create the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System. The reporting of HAI will begin in 2011. The bill also directs the Health and Human Services Commission (HHSC) to establish the ability to deny or reduce reimbursements in Medicaid when a preventable adverse event (PAE) occurs in a hospital setting. A PAE occurs when a medical procedure causes unintentional harm to a patient and includes such events as surgery on the wrong patient or on the wrong body part.

H.B. 1218, 81st Legislature, Regular Session, 2009, requires HHSC to adopt rules for the identification of potentially preventable readmissions (PPR) of Medicaid recipients and the exchange of confidential data with each hospital regarding the hospital’s performance with respect to PPR. A PPR occurs when a patient is readmitted to a hospital for a PAE.

Rider 45 of the General Appropriations Act and H.B. 1218, 81st Legislature, Regular Session, 2009, requires HHSC to establish a quality of care health information exchange (HIE) with nursing facilities that choose to participate in a program designed to improve the quality of care and services provided to Medicaid recipients.

H.B. 1218 also requires HHSC to establish a pilot project in at least one urban area of Texas to determine the feasibility, costs, and benefits of exchanging secure electronic health information between HHSC and at least two local or regional HIEs. The bill established the Medicaid HIE Advisory Committee to provide input regarding the Medicaid HIE System, the Medicaid electronic health record (EHR) incentive program, and Medicaid medical privacy and security policies. Funding from the Office of the National Coordinator (ONC) for Health Information Technology and the American Recovery and Reinvestment Act to expand HIE initiatives.

The 82nd Legislature may consider issues relating to improving the efficiency, safety, and quality of health care in Texas and issues relating to containing costs.

**Stem Cell Research**

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

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

Currently, information regarding human stem cell research projects is not reported in the Texas Higher Education Coordinating Board's annual report on research expenditures.

The 82nd Legislature may consider options to establish appropriate data collection and funding protocols relating to stem cell research.

**Support for Aging Texans**

According to the United States Census Bureau, the percentage of Texans who are age 65 and older is expected to increase from 9.9 percent in 2006 to 11.7 percent in 2015. From 2020 to 2040, the number of aging Texans is expected to triple from 2.1 million to 6.3 million. Texas is also the destination for a growing number of retirees from other states and for temporary residents who seek the state's temperate climate in the colder months of the year.

Texas faces many challenges to ensure that aging Texans will maintain a high quality of life and will have access to necessary health care and transportation services. According to testimony presented to the Legislative Committee on Aging, many aging persons struggle to locate physicians who accept Medicare or Medicaid payments. Patients who do have access to health care services may no longer be able to drive a vehicle or have access to public transportation services in order to reach their health care provider for important medical appointments. Shortages of health care providers and transportation services are especially acute in rural Texas. Texas must also ensure that as many persons as possible receive support through community-living arrangements rather than in institutional settings. To meet the growing needs of the aging population, state agencies and other service providers will need to educate the public about the availability of beneficial services.

H.B. 610, 81st Legislature, Regular Session, 2009, establishes the Legislative Committee on Aging to study issues relating to the aging population of Texas.
H.B. 703, 81st Legislature, Regular Session, 2009, authorizes the Department of Aging and Disability Services (DADS) to develop recommendations for raising public awareness about preventing the risk of falls among older adults.

H.B. 802, 81st Legislature, Regular Session, 2009, requires DADS to implement the lifespan respite services program to promote the provision of respite services through contracts with eligible community-based organizations or local governmental entities.

H.B. 1081, 81st Legislature, Regular Session, 2009, requires DADS to post on its website detailed compliance information regarding each nursing facility institution licensed by DADS.

H.B. 3112, 81st Legislature, Regular Session, 2009, requires DADS to conduct a thorough assessment of the conditions and circumstances of an elderly or disabled person referred to DADS for guardianship services to determine whether a guardianship is appropriate for the individual or whether a less restrictive alternative is available for the individual. The DADS Guardianship program allows a court-appointed individual or entity to make decisions related to health care and estate management for a person who is incapacitated.

S.B. 806, 81st Legislature, Regular Session, 2009, authorizes DADS to revoke, suspend, or refuse to renew a nursing facility administrator's license; assess an administrative penalty; issue a written reprimand; require participation in continuing education; or place an administrator on probation, on proof that the license holder has been convicted of an offense in a court of competent jurisdiction.

The 82nd Legislature may consider issues relating to reducing the shortage of health care providers, increasing the availability of transportation options for aging persons, increasing nursing home diversion practices, improving the nursing home complaint investigation process, expediting aging persons’ access to community services, and supporting programs to assist aging persons and their families in navigating the long-term care system with the goal of helping aging persons remain in the community.

Texas Medical Board Complaint Process

The Texas Medical Board (TMB) is responsible for ensuring the safety of Texas patients through the licensure and regulation of Texas physicians. The Medical Practice Act (Act) governs TMB practices. The Act allows a complaint to be made against a physician and allows the complainant to remain anonymous, unknown to TMB and the physician, during and following the investigation of the physician. Of all complaints made against physicians each year, two percent to three percent are anonymous.
Witnesses at a Senate Health and Human Services Committee hearing in 2009 testified that persons should be required to identify themselves when making a complaint against a physician and that allowing anonymous complaints encourages harassment of physicians. After receiving notification of the complaint, the physician has 30 days in which to respond to TMB.

The 82nd Legislature may consider options to change how complaints made against physicians are disclosed.

Texas Integrated Eligibility Redesign System

The Texas Integrated Eligibility Redesign System (TIERS) is the Health and Human Service Commission's browser-based application process that determines whether a person is eligible for any of the state's 50 health and human services programs, including Medicaid and the Supplemental Nutrition Assistance Program (SNAP). TIERS was launched in 2003 in Travis and Hays counties to replace the former eligibility system, System of Application, Verification, Eligibility, Referral and Reporting (SAVERR). The technology used to develop SAVERR was developed in the 1960s and 1970s and is therefore no longer efficient or effective.

The conversion from SAVERR to TIERS was completed in Lubbock and El Paso in the summer of 2010, and will take place in Beaumont, Tyler, and Abilene in the winter of 2010. The plans for conversion in Dallas, Fort Worth, Edinburg, Houston, and San Antonio are currently being reviewed. Statewide conversion to TIERS is scheduled to be completed by the end of 2011.

In August 2009, HHSC distributed $343.92 million in SNAP benefits to 2.8 million recipients. As more regions of the state converted to TIERS, more benefits were distributed to more recipients. In August 2010, over 3.47 million recipients received $433.49 million in SNAP benefits. The percentage of applications that were completed in a timely manner using TIERS initially decreased following the conversion; however, hiring of additional TIERS staff members and increased experience of existing staff members with TIERS has increased the timeliness of TIERS applications. For example, the timeliness of SNAP applications increased from 76.2 percent in March 2009 to 93.5 percent in August 2010.

H.B. 3859, 81st Legislature, Regular Session, 2009, requires HHSC to conduct a thorough analysis of staffing needs to ensure that TIERS remains fully functional and that no lapses in the provision of HHSC benefits occur.
H.B. 583, 81st Legislature, Regular Session, 2009, requires HHSC to expand a project in which regional indigent care networks interface with HHSC through TIERS to automatically share electronic applications for indigent care created by the care network with HHSC with minimal human intervention in order to eliminate potential errors.

The 82nd Legislature may consider issues related to improving the efficiency and effectiveness of TIERS, including utilizing community-based and faith-based organizations in determining program eligibility.
100 Most Congested Roads

According to the United States Census Bureau, between 2000 and 2030 Texas will grow by nearly 12.4 million people. This projected increase coupled with a transportation funding shortfall has increased the concern among legislators regarding how to address vehicular congestion relief. When these concerns were raised during the 81st Legislature, Regular Session, 2009, legislators mandated through a rider to the appropriations bill that TxDOT conduct a study to determine Texas 100 most congested roadways.

The TxDOT study examined the number of vehicles on the state roads and used private-sector traffic data to assist with calculating the annual costs and delays experienced by Texas motorists. TxDOT received assistance from Texas A&M University’s Texas Transportation Institute, which helped assess the congestion levels for ranking the 100 most congested roadways. The study found that the majority of congested roads are located in the major metropolitan areas, such as Harris, Dallas, Bexar, Tarrant, and Travis counties.

TxDOT's focus in the past was constructing roads. However, as traffic corridors are no longer available in high-traffic congested areas, other modes of transportation may be needed to relieve traffic congestion.

The 82nd Legislature may consider requiring TxDOT to place a high priority on the 100 most congested roadways in its project selection process. The 82nd Legislature may consider requiring TxDOT to consider alternate modes of transportation such as mass-transit and intelligent transportation systems across the state. Furthermore, the 82nd Legislature may consider encouraging the use of managed tollway lanes to provide congestion relief.

Comprehensive Development Agreements

Comprehensive development agreements (CDAs) are tools used by the Texas Department of Transportation (TxDOT) to expand funding for the Texas transportation system through private investment that creates public-private partnerships. A public-private partnership can accelerate the financing, design, construction, and operation and maintenance of a project. The use of CDAs was intended to provide alternatives to traditional funding for highway projects as state and federal resources became more scarce.
H.B. 749, 72nd Legislature, Regular Session, 1991, created the first version of a Texas CDA, called an "exclusive development agreement." Those were later replaced with CDAs, which were viewed as being more comprehensive and more competitive. H.B. 3588, 78th Legislature, Regular Session, 2003, authorized the Texas Department of Transportation (TxDOT) to use a CDA to fund a turnpike.

CDAs have not operated without problems. Concerns have been raised regarding CDA term lengths, the complex method of establishing a market value, and the need to build supporting transportation infrastructure for toll roads. The market evaluation process used by CDAs has become expensive, contentious, and time-consuming, which adds to the costs of CDA projects. Additionally, CDAs are authorized to enter a total contract term up to 52 years. Opponents of toll roads have said that such a contract length is too long and may lead to excessive revenue gains for the private sector to the detriment of taxpayers. Local governmental entities, such as regional mobility authorities, have shown interest on having a right of first refusal regarding CDAs and concern has been raised regarding CDA non-compete clauses, which restrict the state from building roads near a private toll project.

As a result of these concerns the 80th Legislature, Regular Session, 2007, after extensive debate, enacted S.B. 792, which placed a moratorium on most CDA projects beginning May 1, 2007, but exempted certain projects and certain tolling entities. The moratorium was established to enable the legislature to review and modify the CDA process. CDA authority under S.B. 792 expires on August 31, 2011, with exceptions for regional tollway authorities and county toll road authorities.

The 82nd Legislature may readdress CDAs and may consider certain actions, including lifting or altering the moratorium or reauthorizing a limited number of CDAs; defining business terms regarding CDAs in order for the state to facilitate such agreements; modifying contract term lengths for CDAs; and allowing the state to have a buyout option every 10 years. Additionally, the 82nd Legislature may consider redefining CDAs as public-private partnerships to reflect the true nature of such agreements. Furthermore, the 82nd Legislature may consider authorizing a local right of first refusal regarding CDAs. Finally, the 82nd Legislature may consider prohibiting the use of non-compete clauses in CDAs.

Driver Responsibility Program

H.B. 3588, 78th Legislature, Regular Session, 2003, created the Driver Responsibility Program (DRP), which assigns points to moving violations classified as Class C misdemeanors and applies surcharges to offenders based on the type of offense and the time period in which the citation was received. DRP assigns points for moving traffic
violation convictions, which are added to the driver's record for a period of three years. The points can result in punitive actions, including license revocation. A surcharge is an administrative fee charged to a driver based on convictions reported to the driver's record.

Drivers who are convicted of driving while intoxicated (DWI) or a DWI-related offense, driving while a license is invalid, or failure to maintain financial responsibility are required to pay an annual surcharge for a period of three years.

Two points are assigned for a Texas or out-of-state moving violation conviction and three points are assigned for a Texas or out-of-state moving violation conviction that resulted in a crash. A surcharge is assessed when a driver accumulates a total of six points or more on the driver's record. The surcharge must be paid within 30 days or the driver's license will be suspended and will remain suspended until the person establishes an installment agreement or pays all surcharges and related costs in full.

In addition to the punitive nature of DRP, the revenue generated by the program is used by the state to fund trauma care. Trauma/EMS Account No. 5111 (Trauma Account) in the General Revenue Fund receives 99 percent of the revenue collected from DRP and the Department of Public Safety (DPS) receives the remaining one percent to cover the cost of administering the program. The Trauma Account has distributed $373.4 million to 280 hospitals for trauma care and had a balance of $331.3 million as of October 2010.

A person who is in default under DRP may be unable to get to work or to obtain work because of a driving requirement. Those individuals may tend to drive regardless of the license suspension and without insurance because their license is suspended.

Recently, DPS approved by rule, indigent and amnesty programs to assist people who may be in default under DRP. The amnesty program, which began on January 1, 2011, will allow drivers who have been in DRP default to reduce the surcharge amount to 10 percent of the total owed not exceeding $250. The indigency program, which begins on April 1, 2011, will allow DRP offenders whose income is 125 percent of the poverty level or less to reduce the surcharge amount to 10 percent of the total owed not exceeding $250. If individuals meet these qualifications their license suspensions will be rescinded. Another indigency program under Section 708.158 (Indigent Status and Reduction of Surcharges), Transportation Code, provides for the waiver of a surcharge if a court determines an individual is indigent at the time of the conviction. All of these measures could have an impact on the punitive nature of the penalty and impact the funding for the Trauma Account.

Concern has been raised regarding the effectiveness of DRP. An estimated 1.2 million drivers adjudicated under DRP have had their license suspended and 60 percent of the fines have not been collected. Additionally, there has been speculation that the Trauma Account funds are not being distributed in a timely manner or that they are being used for
unintended purposes. These factors have led some to conclude that DRP is not working as intended.

The 82nd Legislature may consider amending or abolishing DRP. The legislature may consider amending DRP by reducing surcharges, amending the payment plans, or repealing the license suspension provision. If DRP is significantly altered or abolished, the 82nd Legislature may consider establishing a new funding source to support trauma care.

**Environmental Review**

The required project environmental review process for transportation construction projects is complex and lengthy. In recent years the environmental review process has received scrutiny for taking too long, covering too large of an area, and being too complex.

The National Environmental Policy Act (NEPA) of 1969 requires federal agencies to conduct an environmental review prior to taking "major federal action," including the approval of federal funds for constructing a highway. According to rules by the federal Council on Environmental Quality, and the Federal Highway Administration (FHA), a written report is required for analysis of project alternatives and direct and indirect effects of a transportation construction project. Public participation is required and must be completed before the project can be approved. The Texas Transportation Code sets forth the environmental review process.

Many of the smaller Texas Department of Transportation (TxDOT) districts have one person responsible for all the environmental planning and studies. There are various complex project types of which the most complex is the Environmental Impact Statement (EIS) that has to be approved by either the FHA or the Environmental Affairs division of TxDOT. EIS tends to take five years on average to process. Changes to the EIS may require a supplemental EIS, which, on average, takes 12 additional months to complete.

Additionally, TxDOT may be required to re-evaluate the environmental document for any project that addresses new requirements and design changes or changes in the project area that may take on average 60 to 180 days to complete depending on the complexity of the issues.

Furthermore, there is a shortage of staff members at federal agencies who assess the project reviews, including the Fish and Wildlife Service and the FHA, which makes review approval longer.
The 82nd Legislature may consider authorizing TxDOT to enter into agreements to provide funds to a federal agency for the purpose of assigning specific staff members for the environmental review of transportation projects. The 82nd Legislature may consider developing a comprehensive environmental project review process in an attempt to streamline that process and may consider limiting the size and scope of the environmental review process.

Finance

Texas's growing population has made it more difficult for the state to meet transportation infrastructure demand. The Texas Department of Transportation (TxDOT) 2030 Committee projects that from 2010 to 2030, the state will need to invest $315 billion to maintain existing roads and to alleviate congestion. TxDOT has stated that if the current transportation funding level remains the same, by 2012 it will only cover funding for maintenance and operation. TxDOT has transferred funding for transportation infrastructure maintenance and operation to mobility projects, which could reduce the quality of the state highway system.

Additionally, there has been a steady decrease in the revenue generated from motor fuels taxes due to a reduction of “individual miles traveled” caused by the development of more fuel-efficient vehicles, such as hybrid and electric vehicles. With hybrid and electric vehicles increasingly available to consumers the state can expect an even more drastic drop in motor fuels tax revenue. These vehicle efficiencies in combination with motor fuels taxes that have not kept pace with inflation have made the motor fuels tax an increasingly unstable funding source. Additionally, Proposition 12 and Proposition 14 bonds debt service requirements have further limited the amount of funding available for transportation infrastructure.

Proposition 12 bonds are general obligation bonds that were authorized by the Texas Legislature in 2009 and approved by the Texas voters to enable TxDOT to go to contract on approximately $2 billion for highway improvements. These bonds are backed by the state’s general revenue. Proposition 14 bonds are voter-approved bonds that authorize TxDOT to fund transportation construction and are payable from revenue deposited to the credit of the State Highway Fund (Fund 6).

There have been several options that the state has used or is considering using to provide additional funding to alleviate the transportation budget shortfall, including comprehensive development agreements (CDA), pass-though 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 a developer and TxDOT 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.

In addition to declining revenue, other factors have affected transportation infrastructure funding, including a TxDOT accounting error that counted $1.1 billion from bond proceeds sales twice, the diversion of funds from Fund 6, and the possibility of the federal government not funding the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act-A Legacy for Users (SAFETEA-LU), or not reauthorizing SAFETEA-LU at the same funding level. SAFETEA-LU is the federal government funding and authorization bill that governs United States federal transportation spending.

Furthermore, the instability of construction costs make it difficult for TxDOT to project the cost of transportation projects.

The 82nd Legislature may consider indexing the motor fuels tax to inflation or increasing the motor fuels tax in order to fund for the increased demand for transportation infrastructure. The 82nd Legislature may also consider authorizing 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**

There is a growing concern regarding overweight truck loads on Texas highways. Pavement performance is significantly impacted by these vehicles and overweight trucks speed up the deterioration of bridges and roadways and accelerate the end of pavement service life.

The Federal-Aid Highway Amendments of 1974 required vehicles traveling on federal-aid highways to comply with the Federal Bridge Gross Weight Formula (FBGWF). The FBGWF is codified under Section 621.201 (Maximum Weight of Vehicle or Combination), Transportation Code, and was used to develop TxDOT’s Permissible Weight Table. Texas adopted FBGWF to determine the axle weights for overweight vehicles on publicly-owned bridges. However, vehicles transporting certain commodities, including concrete, milk, solid waste, recyclable materials, cotton, and chile pepper seedlings, can receive a weight tolerance permit that exempts those vehicles from weight restrictions but those vehicles are not allowed to travel on the interstate system or exceed posted weights on bridges unless the bridge provides the only vehicular access to or from the transporter’s origin or destination. All other trucks are required to
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apply for an overweight permit if the vehicle weighs more than 80,000 pounds. TxDOT reports that overweight vehicle damage on pavements is primarily attributed to axle weight distribution rather than gross weight because the weight is distributed over the number of axles. However, for bridges, overweight damage can be from gross weight rather than over axle weight, depending on the bridge span length and the vehicle’s axle configuration.

Concern has been raised regarding the impact on state roads of truck weight associated with the natural gas industry, particularly in the Barnett Shale area in North Central Texas. This area has seen increased and repetitious truck traffic due to the hydraulic fracturing process that involves salt water disposal. Saltwater haulers apply for the annual weight tolerance permits and, according to TxDOT, Johnson County has almost 10 percent of the 30,600 total Weight Tolerance permits issued by TxDOT. TxDOT stated that it is difficult to assign individual responsibility to one operator or well or to assess damages caused by gas operations versus all other commercial carriers that use TxDOT roadways.

The 82nd Legislature may consider allocating resources to require DPS to operate weigh stations at certain times other than standard times. The legislature may consider increasing the fee for weight tolerance permits and allocating that additional revenue to repair roads impacted by saltwater shipments.

Rail Relocation Fund

In 2005, Texas voters approved the creation of the Texas Rail Relocation and Improvement Fund (fund) to finance the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of public and privately owned passenger and freight rail facilities. The fund was created to help relieve traffic and rail congestion but five years after the creation of the fund it has remained empty. The 81st Legislature, Regular Session, 2009, passed an appropriations rider that secured $182 million in financing for the fund for the 2010-2011 fiscal biennium, which was contingent upon a finding by the comptroller of public accounts (comptroller) that there was at least as much money available for the fund in the current 2010-2011 fiscal biennium budget as was available in the 2009-2010 fiscal biennium budget. After the 81st Legislature adjourned, TxDOT concluded that funding to create the Department of Motor Vehicles was funding diverted from TxDOT and should count against certification of the budget rider. In May 2010, the Office of the Attorney General (OAG) issued an opinion on that funding that ruled funding was not diverted from TxDOT to create the new Department of Motor Vehicles. However, the OAG opinion leaves to the comptroller the final decision regarding whether TxDOT should be given credit for two other financial transfers to other state agencies before deciding how much money should
be transferred to the rail relocation fund. As of December 14, 2010, the comptroller had
not released any money to the fund.

Proponents of the fund say that there are many rail lines that go through the middle of
towns, which disconnects travel from one side of the town to the other side. With the
increased population growth placing demand on the need for more roads, an even greater
need exists to move some of the freight and commuter congestion to rail lines.

The 82nd Legislature may consider dedicating a stable source of funding for the fund or
establishing alternate funding sources.
Border Security

A July 2010 report from the Office of the Attorney General of Mexico stated that there have been 24,826 deaths attributable to Mexican gang and cartel violence since 2006. This significant number of reported deaths in Mexico has raised concern among Texas legislators regarding the safety of the Texas/Mexico border. The majority of this violence has been drug cartel-related and has been occurring along the border, particularly in Juarez, Mexico, and has many officials concerned that Texans also may be at risk of harm.

Recent murders along the Texas/Mexico border have raised specific concerns regarding safety in this area. The incidents include the killing of a United States consulate worker and her husband in Mexico; the murder of a United States Immigration and Customs Enforcement informant in front of his home; the kidnapping and murder of an American citizen from Horizon City, Texas; and most recently, an incident in which a man was killed by pirates while skiing on Falcon Lake with his wife. Such incidents have heightened the concerns of legislators and law enforcement officials.

In response to these incidents, the Texas Department of Public Safety (DPS) has made combating Mexican gangs and cartels and other gang activity a priority for the agency. DPS has identified over 3,000 gangs that have the potential to become linked to Mexican cartels. Some of the larger transnational gangs and cartels include the Juarez, Gulf, and Los Zeta Cartels and the Barrios Azteca, Hermanos de Pistoleros Latinos, Mexican Mafia, Texas Syndicate, Bloods, and MS-13 gangs.

DPS has stated that to combat gangs and cartels, the state needs cooperation among all branches and levels of government to share resources and information. This cooperative approach includes district attorneys, federal law enforcement officials, DPS, local law enforcement officials, prison system officials, and sheriff's departments.

Recent cooperative approaches have achieved some success. These efforts include an increased law enforcement and military presence in the Mexico/United States border region through Operation Linebacker, Operation Rio Grande, Operation Del Rio, and Operation Border Star. The Office of the Governor has reported that since these operations have been implemented, crime has been reduced by 65 percent in the unincorporated areas of the Texas/Mexico border and the number of immigrants crossing illegally into Texas has been reduced by 45 percent.
The 81st Legislature, Regular Session, 2009, attempted to address the increased gang activity by enacting H.B. 2086, which includes the establishment of gang free zones; authorizes the forfeiture of property seized through organized crime offenses; directs that activities of certain criminal street gangs be punishable as first-degree felonies; requires a child to attend a gang intervention program if convicted of a gang-related charge; and adopts several other provisions aimed to thwart gang activity. In an attempt to coordinate sharing information efforts the state created fusion centers to provide central locations where local, state, and federal agencies work together and share information that has been gathered about different crimes or threats, including transnational gangs.

Even with the additional focus provided by the 81st Legislature, testimony provided to interim legislative committees indicated that more needs to be done.

The 82nd Legislature may consider additional funding for border areas to increase law enforcement efforts, targeted to combat transnational gangs, support local prosecutors, provide public outreach, and support multi-jurisdictional gang intelligence fusion centers.

**Hurricane Response**

Texas has experienced many severe and devastating hurricanes such as the Galveston hurricane in 1900, Hurricane Carla in 1961, Hurricane Rita in 2005, and Hurricanes Ike and Dolly in 2008. Recent hurricanes have prompted changes to the Texas hurricane response plan. Texas has implemented the National Incident Management System (NIMS) to provide a standard operational process to manage incidents for local, state, and federal governments. The state created a multi-agency command structure to improve communication and coordination among communities during a disaster; established a system to identify special needs populations, including patients who require medical attention and assistance during an evacuation, and to provide shelter for such patients; encouraged cooperation between the state and private sector to provide ice, water, prescription medicine, food, clothing, and emergency materials; created contra-flow plans for major highways; created a fuel team that provides fuel along evacuation routes; and provided for comfort stations along evacuation routes. Additionally, Texas created the Rapid Response Task Force that assists local jurisdictions with continuity of operations and the Public Works Strike Team that supports an impacted jurisdiction, providing assistance with assessments of critical infrastructure.

The Texas Division of Emergency Management (TDEM) is charged with developing and administering a comprehensive all-hazard emergency management program for the state to assist cities, counties, and state agencies in planning and implementing emergency management programs.
Local emergency management directors have testified that there are specific critical needs regarding hurricane response in the areas of electric supply, debris removal, points of distribution, and emergency training. Concern has been raised regarding the need for shelters to have power during disaster events in order to support the needs of shelter occupants, particularly to support occupants' medical needs. Additionally, there is a need for immediate road debris removal following a disaster in order for emergency responders to enter and provide assistance in a disaster area. Furthermore, concern has been raised regarding the need for a process for local governments to relocate a point of distribution (POD) in the event the previous area designated for a POD is compromised. PODs are sites at which residents of a disaster area can receive ice, water, meals and other emergency supplies. Lastly, recent concern has been raised that the state does not require emergency management directors to take the emergency management training course administered by the National Emergency Response and Rescue Training Center. This additional training could further prepare emergency management directors to respond to disaster events.

Additional concerns were raised regarding the inability to locate persons in the disaster area and the inability of emergency response agencies to communicate because the technology and instruments used for communication are not compatible.

The 82nd Legislature may consider funding for or may direct participating state agencies to take certain actions, including clearing debris from roadways immediately following a disaster; providing a method to track individuals who reside in a disaster area; authorizing local emergency management directors to control points of distribution within their area; or requiring emergency management directors to take additional training, possibly with the National Emergency Response and Rescue Training Center. The 82nd Legislature may also consider funding for interoperable statewide emergency radio infrastructure so that the various emergency responders are able to communicate with each other in times of crisis.
INTERGOVERNMENTAL RELATIONS

Local Government Transparency

Comptroller of Public Accounts Susan Combs stated during an interim committee hearing that government transparency is important for three reasons: it engages and empowers citizens to be involved in government; it allows citizens to hold the government accountable; and it provides governments with information regarding how to save money. Certain review and reporting requirements are expected of states agencies to provide more transparency in their operations and spending patterns. However, such requirements generally do not apply to local governments, and local governments cite a lack of funds necessary to make information available online.

The 82nd Legislature may consider ways to encourage local governments to provide more transparency, including the comptroller's experience with transparency and her offer to assist local governments, and penalties for entities that fail to comply with the online requirement.

Hospitals Hiring Physicians

Most states allow for direct hospital employment of physicians. Texas and California are among the few states that generally prohibit hospitals from employing doctors, in an attempt to prevent corporate interference with the practice of medicine. Some hospitals have advocated for the ability to hire physicians, citing the need to recruit doctors to address physician shortages in underserved areas. Some physicians have supported the hospital employment because it would relieve them of administrative oversight of a private practice or practice group. S.B. 1500, 81st Legislature, Regular Session, 2009, attempted to allow hospitals in certain rural areas to employ physicians; however, the bill failed in the House of Representatives.

The 82nd Legislature may consider the impact of hospitals directly hiring physicians and the practices of hospitals hiring physicians in other states.

Local Government Consolidation

Counties and cities often provide some of the same or similar services to residents, which can be inefficient both economically and administratively. Texas enacted the Interlocal
Cooperation Act (Chapter 791, Government Code), which allows local and county governments to consolidate their programs and services by contract; however, the length of the contract is limited by a constitutional provision relating to the creation of public debt.

The 82nd Legislature may consider ways the state government can support local and county government consolidations and the appropriateness of such consolidations for the purpose of eliminating duplicity and providing cost savings.

**Property Owners' Associations**

The Texas Residential Property Owners Protection Act was enacted in 2001 to provide guidelines for the operation of property owners' associations, as well as specific protections for Texas homeowners living in association-managed communities. With the reporting of increased abuse by property owners' associations, amendments to the Act have been passed further increasing transparency in the operation of the association and providing increased protections to homeowners.

One of the most controversial powers of a property owners' association is the association's right to foreclose on property for unpaid assessments. Current law provides certain notice requirements and a 180-day right of redemption for property owners once an action to foreclose has been conducted. Legislation has been introduced in previous sessions providing more stringent prerequisites to foreclosure by an association and more transparency requirements, but such legislation has failed passage, often by a very small margin.

The 82nd Legislature may consider current law governing property owners' associations with respect to the association's right to foreclose for unpaid assessments while ensuring that property owners are given adequate protections and proper channels for redress when an association institutes an unfair or abusive foreclosure action.

**Property Ownership for Federal Funding Purposes**

After the hurricanes in recent years, owners of property damaged by the storms applied to the Texas Department of Housing and Community Affairs (TDHCA) to receive federal funding under the Community Development Block Grant Disaster Recovery Assistance to repair or rebuild their homes or structures. Qualifying for receiving such funds required that property owners prove record title to the property. However, many of the low-income homeowners seeking assistance have acquired their property by informal purchase or inheritance, and therefore, do not have the documents necessary to prove
clear title. H.B. 2450, 81st Legislature, Regular Session, was passed to specifically address this issue by allowing TDHCA to accept certain documents, such as affidavits and tax records, as proof of title; however, problems with proving title by low-income homeowners still exist for other similar federal programs.

The 82nd Legislature may consider ways to facilitate property ownership registration to better enable individuals to participate in federal programs and ways to improve processing times to provide improved access to funds.

Development in Rural and Unincorporated Areas

Since the passage of the Municipal Annexation Act in 1963, landowners in unincorporated areas have attacked the authority of municipalities to expand without the consent of the property owners because of the increased regulatory and zoning authority of municipalities in the annexed area. S.B. 89, 76th Legislature, Regular Session, 1999, set forth more stringent procedures for municipalities wishing to annex an area and set time limitations on municipalities for the provision of services to the annexed areas. H.B. 568 and H.B. 662, 78th Legislature, Regular Session, 2003, would have provided property owners the right to vote for approval of annexations; however, neither bill passed.

Current law provides municipalities with zoning authority within their corporate limits, but not within their extraterritorial jurisdiction (ETJ). Municipalities also have the power to regulate subdivisions, including the platting of land into lots and streets, both within their corporate limits and ETJ. Counties, on the other hand, have more limited regulatory authority relating to development. Only certain counties listed in statute have zoning authority, while most counties have authority to regulate the subdivision of land, but only under certain circumstances and for limited purposes, such as water supply and drainage, transportation, and other purposes related to health and safety.

The 82nd Legislature may consider state and local policies related to annexation and zoning authority with a focus on private property rights to determine the appropriateness of existing extraterritorial jurisdiction authority for development purposes.

Special Purpose Districts

Currently, there are over 1,500 active water districts and almost 500 inactive water districts in Texas that are registered with the Texas Commission on Environmental Quality (TCEQ). Of those districts, there are over 800 active municipal utility districts (MUDs) and over 300 inactive MUDs. These numbers do not include the different types
of districts that are created under special laws enacted through legislation, which generally require approval by the city or county in which the district is created. However, the city and county are not necessarily required to oversee the operations of these districts, and the powers and authority granted to special purpose districts under special laws vary.

There have been efforts in past legislative sessions to try to streamline the process for the creation of special purpose districts, including the adoption of a template to create a MUD through legislation. TCEQ currently uses the template in the creation of MUDs; however, there are no templates for the creation of other special purpose districts, such as municipal management districts, emergency service districts, and public improvement districts.

The 82nd Legislature may consider whether special purpose districts need increased oversight, whether the authority granted to special purpose districts is appropriate to accomplish the goals of the different types of districts, and whether the adoption of a template for the creation of each type of special purpose district would be feasible and effective.

**Improvements to Drainage Systems to Prevent Flooding**

As with state and national governments, city and local governments are experiencing major budget shortfalls, making it difficult to fund needed repairs and improvements to local infrastructure, such as drainage, sewer, and water systems. Without the drainage improvements, the risk of flooding remains a significant problem, especially in the coastal regions of the state. Routine improvements, however, are continuously made to such water systems, which would seem to be an ideal time to consider the possibility of flooding and any upgrades that could prevent future flooding.

The 82nd Legislature may consider the benefit of legislation that would require coastal regions, when making routine improvements to drainage systems and other infrastructure, to take into account the probability of future flooding and any upgrades necessary to prevent future flooding.

**Emergency Notifications**

The current 9-1-1 system used in Texas and across the nation is designed around telephone technology and is not equipped to handle current wireless and Internet-based technology. Limitations in the current 9-1-1 system include the inability to receive caller-generated data, such as the location and identification of the caller, and the
inability to transfer calls to another call center out of the region in which they originate, such as when the center is overloaded with calls or when call center personnel are forced to evacuate the facility.

The United States Department of Transportation completed the Next Generation 9-1-1 System Initiative in September 2009, which is aimed at updating the 9-1-1 system infrastructure and enabling the transmission of text, images, video, and other data to 9-1-1 call centers. Implementation of the new system in Texas will require increased funding, policies, regulations, and coordination at all levels of government.

The 82nd Legislature may consider methods of emergency notification, including alternative systems and new technologies to address current issues in emergency notification.

**Emergency Shelters**

Designated public shelters provide temporary housing for evacuees during an emergency or natural disaster. During the recent hurricanes and related evacuations the need for more shelters and updated facilities became apparent, but such construction and improvements can be costly.

The 82nd Legislature may consider cost-effective options to either retrofit or require new building structures to be built as shelters for use during future evacuations.
Asset Forfeiture

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

Some news outlets have reported that Texas law enforcement agencies had used forfeiture funds for non-law enforcement purposes. Another issue is that the monetary incentive may entice local law enforcement to focus on more lucrative drug crimes or to abuse the power of forfeiture. In 2009, a federal civil rights lawsuit was filed against officials in Shelby County and Tenaha, Texas, alleging that that motorists, many of whom were minorities, were stopped by law enforcement officials on the highway near Tenaha and threatened with charges of money laundering or other serious felony offenses unless the motorists signed waivers allowing the officials to seize cash and jewelry carried by the motorists. Ultimately, these motorists were never charged with a crime. It is claimed that over a two-year period, approximately 140 motorists had property seized during such traffic stops.

The 82nd Legislature may review the asset forfeiture law and consider whether changes are necessary to provide more oversight and discourage possible abuse.

At-risk Children and Youths

The Texas Juvenile Probation Commission, juvenile probation departments, the Texas Department of Family and Protective Services, public schools, and the Texas Education Agency, as well as the courts, serve a common core of at-risk children and youths. The ability of such entities to share confidential information can reduce the costly duplication or delay of services and can help provide comprehensive and effective services to children, youths, and their families. However, there are technological, legal, and fiscal barriers that prevent information sharing among these entities. Under Texas law, certain records concerning youths, such as juvenile justice records, are considered confidential
and are generally only accessible to certain statutorily authorized entities. Federal laws, such as the Family Educational Rights and Privacy Act, the Health Insurance Portability and Accountability Act, and the Juvenile Justice and Delinquency Prevention Act also impose certain confidentiality requirements. There may be confusion regarding what information is confidential and whether it can be shared with another entity. Currently, under Texas law, state agencies are required to enter into supplemental memorandums of understanding (MOU) to establish protocols for the exchange of information, but this can be a slow process. There are also complex technological issues that make it difficult for entities to cost-effectively and quickly exchange relevant data in order to coordinate services for at-risk children and youths. Differences in the way data is collected and recorded by each agency or entity may prevent the electronic sharing of data, and there are no centralized information sources permitting easy access to information regarding children and youths. Creating compatible data systems that comply with state and federal security and confidentiality requirements will require time and resources. S.B. 861, introduced during the 81st Legislature, Regular Session, 2009, provided for the exchange of information among certain governmental entities concerning at-risk youths, but was not enacted.

The 82nd Legislature may consider ways to encourage and streamline the sharing of data regarding at-risk children and youths among different agencies.

Credit Service Organizations

Rising consumer debt has resulted in many more consumers seeking assistance from debt-relief companies. Debt management service providers (DMSP) are nonprofit or for-profit organizations that offer debt management plans (DMP) to consumers and are regulated under Chapter 394, Finance Code, by the Office of Consumer Credit Commissioner (CCC). Debt-settlement companies (DSCs) are generally governed by Chapter 393, Finance Code, and CCC has no statutory jurisdiction under this chapter. Depending on the degree of a consumer's financial distress, the consumer may enter into a DMP, under which the consumer must pay off the full balance, or a debt settlement plan (DSP), which is the discharge of a debt for less than the full balance owed.

Texas has seen a rise in DSCs. Typically, a consumer will enter into a DSP agreement with a DSC and will make a monthly payment into a limited-purpose deposit account. When a sufficient amount has accumulated in this account, the DSC will negotiate with the creditors to settle the consumer's debt for less than the full amount owed. The consumer pays the DSC a fee, often through an automatic debit from the account. Typically a consumer does not pay the creditors while accumulating funds in the account, so that the consumer continues to accrue finance charges and penalties and this significantly impacts the consumer's credit report. There are allegations that some DSCs entice consumers to enter into DSPs, even when such plans may not be in the best interests of a consumer, with promises to drastically reduce or eliminate debt, to stop...
collection actions, that there will be no substantial upfront fees, that the provider will
induce creditors to grant concessions, that the consumer will be given a refund if the
provider is unsuccessful, and that the consumer's credit report will not be affected.
Consumer complaints regarding DSCs include:

- the failure to adequately disclose consumer rights and obligations under the DSP;
- the failure to disclose the risks of participating in the DSP, such as continuing fees
and charges on delinquent accounts, that the consumer may be subject to legal
action by the creditors, the effect on the consumer's credit score, or that there may be
tax consequences for a forgiven consumer debt;
- substantial DSC charges or fees upfront or as a percentage of a consumer's debt or
savings; and
- the failure of the DSC to provide promised products or services.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) has
drafted a model Uniform Debt Management Services Act (Act) that creates a uniform
regulatory plan for debt management companies, credit counseling providers, and DSCs.
S.B. 2233, introduced during the 81st Legislature, Regular Session, 2009, would have
incorporated the Act into Texas law, but the bill died in the House.

The 82nd Legislature may consider further regulation of DSCs.

**Cyberbullying and Sexting**

The Internet and technologies such as e-mail, cell phones, and social networking websites
allow bullies to harass their victims through cyberspace. There have been a number of
news stories of young people who have committed suicide after becoming victims of
cyberbullies. Cyberstalking statutes, which prohibit threatening or obscene electronic
communications, often do not encompass cyberbullying, which is aimed at embarrassing
the victim. Some states have adopted statutes addressing cyberbullying, but such laws
raise issues regarding the authority of schools to control student behavior outside of
school property and whether these laws interfere with a student's constitutionally
protected right of free expression.

Mobile phone technology allows teens to instantly send messages and photographs to
their friends. Some minors have used their cell phones to send sexually suggestive
pictures of themselves to other minors, a phenomena the media has dubbed "sexting."
However, such minors may find themselves charged with the distribution or possession
of child pornography. Some states have enacted laws specifically addressing "sexting"
by exempting minors who engage in certain acts from being prosecuted as sex offenders.

The 82nd Legislature may consider issues regarding cyberbullying and sexting.
Deferred Adjudication

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

The 82nd Legislature may review provisions in Texas law that allow deferred adjudication to be treated as a conviction or consider changing the law to allow expunction of the record for certain offenses.

Diversion and Treatment Programs

Drug court and other specialty court programs create special courts where first-time and other nonviolent offenders participate in a court-supervised treatment program in lieu of prosecution and incarceration. Typically, in such programs, the offender appears regularly before a judge who actively oversees the participant's compliance in the court-ordered treatment program and has discretion to impose a graduated list of sanctions if the participant fails to comply. H.B. 1287, 77th Legislature, Regular Session, 2001, added Chapter 469 to the Texas Health and Safety Code, which authorizes the establishment of drug and alcohol court programs. Evaluations of such programs show that participants in these programs have significantly lower recidivism rates. Such programs, by diverting first-time and nonviolent offenders from the criminal justice system, can save local and state resources. The courts receive funding through fees collected from participants, court costs, and state appropriations. However, counties and supporters of specialty court programs argue that the demand for such programs exceeds their capacity and lack of adequate funding prevents the expansion of these programs.

In past sessions, the legislature has provided funding for new and expanded programs in TDCJ in an attempt to impact the criminal justice population. This included new substance abuse residential treatment and sanctions beds. The concept behind these programs is to provide treatment to inmates either in prison or through the community, to
lower revocation and recidivism rates, therefore increasing public safety, and, by decreasing prison population, saving state resources. Such programs include the Substance Abuse Felony Punishment Facilities program, which provides treatment beds in lieu of revocation to prison for probationers whose crimes are related to substance abuse and the In-Prison Therapeutic Community program, an intensive treatment program for eligible offenders identified as needing substance abuse treatment. The demand for such programs often exceeds their capacity, creating waiting lists and, in some cases, even extending an inmate's period of incarceration.

Another issue is the aging of the prison population. Elderly inmates require specialized programs and care and the cost of housing an elderly inmate is approximately three times that of a younger one. Releasing elderly inmates to community care through Medically Recommended Intensive Supervision (MRIS), special needs parole, or diversion programs for elderly inmates could relieve the financial burden on the state because these offenders would be eligible for Medicaid and Medicare benefits and could relieve prison overcrowding. Studies show that elderly inmates have the lowest recidivism rates.

The 82nd Legislature may consider whether projected savings to the state from diversion and treatment programs warrant the current level of funding and whether to provide funding to expand such programs. The 82nd Legislature may consider more cost-effective ways to deal with the aging prison population, including expanding release or diversion programs.

Guardianship

Guardianship is a legal method to protect an incapacitated individual by appointing a guardian to oversee the ward's care and protect the ward's interests. The Probate Code sets out the procedure for appointing a guardian and sets out the duties and powers of a guardian. During the guardianship proceeding, the court may appoint a guardian ad litem to act on the potential ward's behalf, and an attorney ad litem to protect the person's legal interests. The probate court may also appoint a doctor or psychiatrist to examine the ward. Some probate attorneys and family members of wards assert that some probate courts are appointing friends and associates to act as ad litem or medical experts during guardianship proceedings and that these appointees are awarded disproportionally high fees, which are paid out of the ward's estate. These fees are paid even if the court decides that guardianship is not warranted, and some allege that there are cases where the ward's estate was substantially depleted by such fees. Another complaint is that some probate courts, instead of appointing a qualified family member as a guardian, give preference to professional guardianship services, which may have a relationship or connection with the court. One concern is that any individual can apply for guardianship over another. Family members who have been appointed as guardians for relatives have complained that their guardianships have been arbitrarily taken away by probate courts in ex parte hearings, sometimes as form of retaliation, and that they have been isolated from the
process and deprived of access to the family member. Recommendations include limiting who is eligible to seek a guardianship to the same degree as those persons authorized to apply for custody of a child under the Family Code; placing limits on the amounts that may be charged to a ward's estate and providing oversight regarding the amount of fees that can be awarded; requiring a showing that there are no less restrictive alternatives or no relatives available to serve as the guardian before a professional guardian may be appointed; requiring more oversight for private guardianship programs, giving family member more rights to review documents or other information regarding a ward; and limiting the use of *ex parte* hearings to remove a guardian.

The 82nd Legislature may consider possible reforms regarding the guardianship system in Texas.

**Medical Malpractice**

On March 12, 2010, the Texas Supreme Court issued opinions in two malpractice claims concerning surgical sponges left in patients after an operation and not discovered until many years after the surgery. Both cases concerned the open courts provision of the Texas Constitution and Section 74.251 of the Texas Civil Practice and Remedies Act. Article I, Section 13, of the Texas Constitution provides that all courts must be open and that every person will have remedy by due course of law for injuries to person or property. This is known as the open courts provision. Section 74.251 generally requires health care liability claims to be filed within two years from the date the claim arose, but it also provides that a claimant must bring a health care liability claim not later than 10 years after the date of the act or omission giving rise to the claim. This subsection also states that it is intended as a statute of repose, barring all claims not brought within the 10-year period. The issue in these cases was whether the statute of limitation or the statute of repose as set out in Section 74.251 violated the open courts provision by prohibiting a plaintiff from bringing a malpractice action when the plaintiff, through no fault of his or her own, did not discover the injury until after either the two-year or 10-year periods had run.

In *Tangie Walters v. Cleveland Regional Medical Center, et al.*, the plaintiff discovered a surgical sponge had been left in her body more than two years after the operation, but within the 10-year statute of repose. The Supreme Court cited a 1985 decision, in which it ruled that the absolute two-year statute of limitations for medical malpractice violated the Open Courts Provision to the extent that the statute barred a plaintiff from bringing a medical malpractice claim before the injured party had a reasonable opportunity to discover the injury. In *Walters*, Supreme Court also held that the repose provision implicitly provides an exception to the limitations statute, as there would have been no need for the legislature to have enacted the 10-year repose provision, unless there is an implicit narrow class of exceptions to the two-year limitations period.
However, in *Methodist Healthcare System of San Antonio, et al. v. Emmalene Rankin*, the surgical sponge was discovered in the plaintiff after the 10-year repose period had run. The Supreme Court held that the statute of repose, which bars all medical malpractice suits after 10 years from the time the cause of action arose, regardless of whether the plaintiff was able to reasonably discover the injury, did not violate the open courts provision of the Texas Constitution. The Supreme Court held that the legislature could have reasonably concluded that the benefits of a definitive cut-off date for malpractice actions was more beneficial to the public welfare than the right of a small group of possible plaintiffs to bring malpractice claims more than 10 years after the claim arose.

On August 27, 2010, in *Marks v. St. Luke's Episcopal Hospital*, the Texas Supreme Court, in a plurality opinion, ruled that a claim by a patient who fell when his hospital bed collapsed must be filed under the Texas Medical Liability and Insurance Improvement Act (MLIIA). Under MLIIA, any health liability claim not accompanied by an expert report addressing liability and causation may be dismissed with prejudice. The court withdrew its previous August 28, 2009, opinion in the case.

Irving Marks, while recovering from surgery at St. Luke's Episcopal Hospital, fell when the footboard of his bed collapsed. His subsequent suit claimed in part that the bed had been negligently assembled and maintained. The trial court dismissed this claim, holding that it was a health care liability claim covered under MLIIA and that Marks had failed to timely file an expert report. The appellate court reversed, ruling that the claim regarding the bed was related to premises liability, not health care.

The plurality opinion stated that under MLIIA, a health care liability claim must concern a patient's treatment or some departure from accepted standards of care or safety. Noting that the legislature did not interpret "safety," the opinion asserted that the term must be interpreted in the context of the statute, and that therefore there must be a substantial relationship between the safety risk and the patient's care or treatment. Citing an earlier decision, in which the Texas Supreme Court had ruled that MLIIA applied to a suit against a nursing home regarding the sexual assault of a patient, the opinion concluded that a safe hospital bed was inseparable from Marks' treatment, that the claim was therefore a health care liability claim under MLIIA, and that the trial court did not abuse its discretion in dismissing the claim.

The 82nd Legislature may review the possible impact of these cases and consider whether to clarify the state's malpractice laws in response to these decisions.
Air

In November 2009, the federal Environmental Protection Agency (EPA) notified the Texas Commission on Environmental Quality (TCEQ) that its flexible permit program was unacceptable because of changes made by the EPA to the Federal Clean Air Act (act).

TCEQ's flexible permit program allows an operator of a facility that emits air contaminants into the atmosphere more flexibility in managing operations by staying under an overall emissions cap or individual emissions limitation. The applicant is allowed to structure the flexible permit to best serve his or her needs.

TCEQ and the Office of the Attorney General filed suit against the EPA for failing to follow federal mandates necessary for changing portions of the act.

Nitrous Oxide (NOx) is created during fossil fuel combustion when nitrogen and oxygen react with one another. 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 NOx.

The EPA has proposed a change to the ozone standard that would decrease the current standard of 85 parts per billion to a range of 60 parts per billion to 70 parts per billion. According to TCEQ experts, the new ozone standard would classify the entire eastern portion of Interstate 35, including any area with an ozone monitor and Big Bend National Park, as a nonattainment zone. A nonattainment zone is defined by the EPA as an area where air pollution levels persistently exceed national ambient air quality standards.

The Barnett Shale is a natural gas field in North Texas. In addition to water usage concerns as a result of natural gas fracturing (fracing), concerns about air quality have arisen.

The 82nd Legislature may review the state's flexible permit program in light of the EPA's revised rules.

The 82nd Legislature may review methods, such as limiting the number of factories that produce air pollution that may be built and requiring existing factories that produce air pollution to lower their emissions, that would aid the state in reaching the revised ozone standard.
The 82nd Legislature may consider requiring air quality monitoring in the Barnett Shale area.

**State Energy Plan**

Lieutenant Governor David Dewhurst charged the Senate Committee on Natural Resources to create a State Energy Plan to address the issues of energy generation and controlling the environmental impacts associated with creating energy.

The 82nd Legislature may consider legislation that will create a State Energy Plan that will:

- utilize an assortment of energy types;
- balance energy creation with the transmission of energy;
- carefully consider placement of new power plants; and
- control the environmental impacts of power plants.

**Water**

The State 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 State Water Plan.

The Senate Committee on Natural Resources was charged with analyzing and comparing the differences in cost between immediate implementation of the State Water Plan compared to staged development over time.

A groundwater conservation district (GCD) is a district created under the Texas Constitution that has the authority to regulate the spacing of water wells, the production of water from wells, or both. GCDs must meet desired future conditions (DFC), which are defined as the desired, quantified conditions of groundwater resources at a specified time, at times in the future, or in perpetuity.

United States Geological Survey experts state that nearly all surface-water features interact with groundwater. Overuse of water from streams can deplete ground water and, conversely, pumpage of ground water can deplete water in streams, lakes, or wetlands.
TWDB experts have stated that at current use levels, groundwater, especially in the Ogallala Aquifer and the Gulf Coast Aquifer, is diminishing.

The Barnett Shale is a natural gas field in North Texas. Hydraulic water fracturing (fracing) is the method most commonly used to extract natural gas from the earth. During the fracing process, water is used to cool and lubricate the drill bit. During fracing, water is used to extract natural gas from the earth. The amount of water used during the fracing process is increasing as natural gas demands increase.

The 82nd Legislature may choose the staged development method of implementing the State Water Plan to maintain cost-effectiveness.

The 82nd Legislature may consider adoption of TWDB’s policy recommendations relating to setting DFCs for GCDs, making stakeholders aware of how DFCs affect stakeholders, creating a newsletter to disperse news regarding voting information for DFCs, and altering the petition process for a DFC that is not accepted by TWDB.

The 82nd Legislature may consider legislation that addresses balancing the relationship of groundwater to surface water.

The 82nd Legislature may consider legislation that would monitor water usage in the Barnett Shale.
Elections and Voting

The Secretary of State's Office established the Texas Election Administration Management (TEAM) system in response to the federal Help America Vote Act, passed in 2002, that required all states to implement a computerized statewide voter registration list. It has been an ongoing challenge to find ways to improve the efficiency and accuracy of the voter registration list, including ensuring that ineligible voters are not included on the rolls while also ensuring that all eligible applicants are efficiently registered. There have been allegations that deceased persons were listed on the voter registration lists, evidencing the difficulty in updating the system without access to current information in other state and federal agency databases.

Technology may improve the efficiency and effectiveness in maintaining the voter registration lists, while also providing opportunities for evaluating the security of online voter registration and the electronic delivery of ballots by members of the military.

The United States Constitution provides for the apportioning of congressional representatives every decade. Under the laws encoded in the United States Code, every 10 years the United States must undertake a decennial census of population for the apportionment of the seats in the United States House of Representatives. This process is called reapportionment. When the number of representatives apportioned to a state increases or decreases, based on this census, states must adjust their congressional districts through redistricting. States also use the census figures to redraw state legislative districts.

There are many legal issues regarding redistricting. The United States Supreme Court has held that the federal constitution requires that the population of congressional districts within a state be as nearly equal in population as possible, and any variance must be either unavoidable or justified by a specific legitimate state objective, such as respecting municipal boundaries.

Although the Fifteenth Amendment to the United States Constitution, ratified in 1870, provides that the right of citizens to vote could not be abridged or denied on account of race, color, or previous condition of servitude, a number of states sought to circumvent its provisions. These states often used voter qualification methods, such as literacy tests or grandfather clauses, that effectively barred most Blacks from voting. Another subterfuge was racial gerrymandering, in which electoral boundaries were purposely drawn to exclude Black voters or minimize or cancel out their voting strength. The Voting Rights
Act of 1965 (VRA) was a response to these attacks on the Fifteenth Amendment, effectively barring these methods and placing areas of known violations under federal oversight. Any redistricting plan, whether on the state or federal level, cannot violate the VRA, and under the VRA all or parts of 16 states, including all of Texas, must obtain preapproval of any redistricting plan from the federal government. The United States Supreme Court has also held that the purpose of the VRA is to ensure that no new voting procedures would lead to retrogression or reversal in the voting rights of minorities. The United States Supreme Court has ruled that race may be a factor, but not a predominant factor, in drawing districts.

The VRA also prohibits practices which result in a denial or abridgement of a language minority group. This becomes more significant with the growth of the Hispanic population. One issue is whether, in creating a redistricting plan, drafters must consider the voting-age population of a language minority group as a whole, or the number of the voting age population who are citizens and therefore have a right to vote.

Traditional redistricting principles (TRP) are race-neutral factors traditionally used by states to draw and justify districts. These include compactness, contiguity, preservation of political subdivisions, such as counties, preservation of communities of interest, and protection of incumbents. Compactness and communities of interest are the most important, and probably the most litigated, principles.

When the final census figures are released next year, it is predicted that Texas will gain three to four additional congressional seats. Texas will also have to redraw state legislative districts to reflect shifts in its population. Figures released so far establish that much of the state's growth has been in its minority populations, especially in the Hispanic population. Because redistricting can affect the balance of political power for the next decade, it can be a highly partisan and divisive process.

The 82nd Legislature will undertake the complex process of redistricting and reapportionment.

Voter Identification

On April 28, 2008, in Crawford, et al. v. Marion County Election Board, et al., a fragmented United States Supreme Court upheld an Indiana election law requiring individuals voting in person to present government-issued identification. Proponents of such laws argue that they promote government interests in deterring voter fraud and safeguarding voter confidence. Opponents of such laws assert that there is little evidence that in-person voter impersonation is a problem and that such laws risk discouraging or disenfranchising large numbers of legitimate voters rather than addressing legitimate
election fraud issues. Those opposed to such laws argue that they unfairly burden qualified voters who lack the necessary identification, generally poor, elderly, and disabled voters. Such persons, opponents assert, lack the resources, time, and money required to obtain the documentation necessary to apply for government identification, such as a certified copy of a birth certificate, and to travel to governmental offices to obtain the requisite photo identification.

The 82nd Legislature may review the current system in Texas for registering voters and consider reforms to ensure the validity of the voter rolls.

The 82nd Legislature may consider ways to improve the efficiency and accuracy of the voter registration rolls and the feasibility of electronic delivery of ballots for members of the military.

Financial Institutions

Home Mortgage Servicing

Home mortgage servicers (servicers) have gained attention as home foreclosures have soared in recent years. Servicers manage mortgage loan payments and provide secondary loans that can include traditional and non-traditional mortgage loans and subprime loans. Homeowners make payments to servicers who then credit that payment to the original loan. In some cases, servicers are also the loan originators. Issues with the collection of payments from homeowners can result in fees and penalties or foreclosures.

Servicers are currently under limited jurisdiction by state agencies in Texas. The Department of Savings and Mortgage Lending (SML) regulates state savings banks and savings and loans, mortgage companies or brokers, and mortgage bankers. According to SML, the residential mortgage servicers that control the majority of the servicing market are depository institutions and are not subject to state oversight. According to complaint data compiled by the Office of Consumer Credit Commissioner (CCC), the majority of mortgage complaints in 2009 and 2010 relate to first-lien mortgages, over which the CCC has limited jurisdiction. In 2010, over 300 homeowners filed complaints with the Office of the Attorney General (OAG) against certain servicers. While the OAG has taken legal action to investigate claims and seek civil penalties against servicers pursuant to the Texas Deceptive Trade Practice Act, OAG is not a regulatory agency and litigation takes a longer period of time to resolve issues with servicers. A representative from OAG has suggested that a regulatory agency can adopt and enforce rules to address servicer violations in a more timely manner.
Homeowners and organizations advocate for additional regulation under an agency within the Finance Commission of Texas, which is the oversight body of the Texas Department of Banking, SML, and CCC. They state that Texas homeowners currently do not have the ability to appeal to a regulatory agency and that a regulatory system could be funded by fees and penalties charged to servicers for violations. Other organizations, such as the Independent Bankers Association of Texas, assert that federal and state laws currently provide adequate protection for consumers and will become more rigorous in the future. National lending laws that apply to servicers include the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the Mortgage Reform and Anti-Predatory Lending Act, which establishes the Bureau of Consumer Financial Protection to regulate various financial entities including servicers. During the interim, legislators discussed the need to solve issues relating to servicers with as little damage to the industry as possible.

The 82nd Legislature may consider improvements to the regulation of home mortgage servicers.

**Insured Property Subject to Security Interest**

Chapter 557 (Insured Property Subject to Security Interest), Insurance Code, outlines the procedures that a lender must follow for the repair of residential property, including the requirements for the release of insurance proceeds and rules for the endorsement of claim checks by lenders. In most cases, homeowner insurance policy checks are issued jointly to the homeowner and the mortgage lender. The homeowner endorses the check to the mortgage lender and the lender uses the insurance check to pay contractors for the home repair.

Mortgage lenders claim that this process allows lenders to ensure that repairs are actually being made to the property. According to the Mortgage Bankers Association, lenders hold the insurance money in order to protect homeowners from being swindled by contractors who ask for a large amount of cash upfront but fail to repair the property. However, many homeowners have stated that the withholding of insurance proceeds delays the process of repairing homes, especially those damaged by a natural disaster. In the aftermath of Hurricane Ike, which hit the Texas coast in 2008, homeowners claimed that mortgage companies were slow to send insurance funds for their home repair.

Provisions enacted by the 78th Legislature, Regular Session, 2003, amended Chapter 557 to require that lenders pay insured persons interest on insurance proceeds that are not released within 10 days after the insured person requests their release. For an insurance claim payment that requires approval of a lienholder, a lienholder must approve or deny payment of an insurance claim within 14 days or face a civil penalty.
The 82nd Legislature may consider any needed refinements of Chapter 557, Insurance Code.

**Payday Loans**

A deferred presentment transaction (DPT), also known as a payday loan, is a lending practice that makes small short-term loans available to a person with a checking account and a steady income. In a DPT, in exchange for a loan, typically of only a few hundred dollars, the consumer writes the lender a check for the amount of the advance and an additional fee, and the lender agrees not to deposit or cash the check before a designated date. Such loans are often referred to as payday loans as they often loan the consumer cash until the consumer's next pay check. A variation of a DPT is an auto title loan, in which, instead of a check, the consumer uses the title to his or her vehicle as collateral. A consumer may "rollover" the loan for another short period of time by taking out another loan and paying additional fees. Considering the short length of the loan, the small amount of the loan, and the size of the fees, consumers are effectively paying interest rates in excess of the state's usury rate. Providing DPTs has become a multi-billion dollar industry. Critics of such loans assert that they prey on poor and low-income consumers who often become trapped into taking out multiple loans and end up paying exorbitant interest rates. Opponents of DPTs also argue that there is not sufficient regulation and oversight of such loans. Businesses providing DPTs assert that they are providing a badly needed service to consumers who lack credit or access to a bank loans and need small loans of cash to tide them over until their next paycheck. Such businesses assert that the fees or interest rates charged are fair considering the risk of such loans.

Although the Texas Constitution deems interest rates of more than 10 percent usurious, it also authorizes the legislature to fix maximum rates of interest. The legislature has enacted statutes permitting interest rates exceeding the usury rate in certain transactions. Chapter 342, Finance Code, sets out the applicable interest rates for consumer loans, including the maximum interest rate that may be charged on loans. This chapter also authorizes loan contracts for cash advances, in lieu of such interest, to provide for an acquisition charge, and sets out the maximum amounts for such charges.

Some payday lenders circumvent Texas laws regulating interest by operating as credit service organizations (CSOs). A CSO acts as a broker for the loan, obtaining loans through another company that is usually closely linked to the CSO. Although the underlying loan complies with Texas laws limiting interest on consumer loans, the CSO charges a brokerage fee that increases the overall cost of the loan far in excess of the interest allowable under Texas law. Chapter 393, Finance Code, imposes certain filing, contract disclosure, and other requirements on CSOs, but there are no licensing requirements or regulations regarding these companies.
The 82nd Legislature may consider legislation related to the regulation of DPTs.

**Health Insurance**

**Health Care and Health Insurance**

The federal Affordable Care Act (Act), which will be implemented through 2014, was passed in March 2010, with the goals of increasing access to health insurance, lowering the costs of health care, and improving the quality of care. The Texas Department of Insurance, the Texas Department of State Health Services, the Texas Health and Human Services Commission, and other related state agencies will review and report the possible impact of the federal Act on Texas insurance regulations and health-related programs and provide recommendations to the 82nd Legislature on how to address the implications of the federal Act.

Some of the important provisions of the federal Act that have already gone into effect include the extension of dependent coverage to young adults through age 26, the prohibition against excluding children from coverage due to preexisting conditions, the creation of a temporary federal health insurance risk pool, and certain restrictions and limitations on the amount and length of coverage provided. Other important provisions that will go into effect over the next several years include required health care coverage for all United States citizens and legal residents; the prohibition against denying anyone coverage due to a preexisting condition; and requirements on insurers to spend a certain percentage of revenue from premiums on medical services and programs related to improving health care quality.

Several provisions of the federal Act that will most likely have a direct impact on Texas legislation and programs include new funding and expanded eligibility requirements for Medicaid and CHIP; the establishment of state health insurance exchanges through which individuals may compare and enroll in insurance coverage; and disclosure and transparency requirements in health insurance policies and organizational structures.

The federal Act also provides tax credits and premium subsidies for certain small businesses and individuals. These tax credits and the creation of state exchanges may supplement the Healthy Texas program created during the 81st Legislature, Regular Session, 2009. The Healthy Texas program was established with the purposes of providing access to quality small employer health benefit plans at an affordable price, encouraging small employers to offer health benefit plan coverage to employees, and maximizing reliance on proven managed care strategies and procedures. The Healthy Texas program is expected to be fully operational in January 2011.
Texas has already considered or passed legislation that relates to a number of other provisions in the federal Act intended to address lowering costs and increasing access to health care, such as value-based purchasing programs, bundling of payments, coverage for clinical trials, and pilot programs relating to accountable care organizations and integrated or coordinated care.

The 82nd Legislature may consider possible implications of federal health reform on Texas and ways to improve the quality of health care services and reduce health care costs.

**Pensions**

**Public Retirement Systems**

The Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS) are expected to have significant shortfalls when the 82nd Legislature meets to consider and monitor the actuarial and financial condition of the state's pension and health care programs. One method of addressing the decreased funding is to find ways to cut costs in the health care programs administered by these systems. The 81st Legislature passed legislation instituting pilot programs designed to encourage the use of clinical integration, payments for good outcomes, use of best practices, focus on wellness and prevention, bundling of costs for episodes of care, and other health care savings initiatives. Some of these programs include the creation of alternative care organizations and the use of integrated care, which focus on coordinated, patient-centered care and have often proven successful in health care savings.

The 82nd Legislature may consider the actuarial and financial conditions of TRS and ERS, the effectiveness of the pilot programs designed to provide health care savings, and whether the pilot programs should be expanded for use across all private and state-sponsored health care plans.

**Annuities**

In recent years, there has been a shift from the purchase of life insurance policies to the purchase of annuities. This could be due in part to the fact that pension funds are dwindling, retirement payments do not support lifetime income needs, and the life expectancy rate is increasing. However, there have also been allegations that the increase in the sale of annuities is due in part to the high commissions paid from the sale of such products, which provide incentives to agents and brokers to push the purchase of the
product on consumers and increases the opportunity for fraud, especially to seniors entering retirement.

The 82nd Legislature may consider the sale of annuities in Texas and whether the commissioner of insurance should by rule limit an agent's commission and provide more regulation over the sale of such products.

**Public Information**

**The Public Information and Open Meetings Acts**

With advances in technology and the emergence of various forms of social media, communication and the dissemination of information by and within governmental bodies has changed dramatically. Public officials and employees communicate via public and personal electronic mail accounts and through blogs and social media websites, such as Facebook and Twitter. Such communications draw concerns regarding which communications and information are public versus private, whether a quorum for the purpose of the Open Meetings Act has been established based on the number of officials participating on a blog or social media website, and the length of time that records of such communications and information are required to be retained.

The 82nd Legislature may consider whether legislation amending the Public Information Act and the Open Meetings Act is needed to address the implications of the use of advanced technology and social media websites by public officials and employees.

**Workers' Compensation**

**Workers' Compensation**

The current workers' compensation system caps benefit payments to injured workers, regardless of their salary prior to the incident causing the injury, and limits the duration of payments based on the severity of the injury. Under certain circumstances, an injured worker may be able to sue a premises owner for negligence. However, the Texas Supreme Court in *Entergy Gulf States v. Summers*, 282 S.W.3d 433 (2009), limited this right by holding that premises owners may be a general contractor for workers' compensation purposes if the premises owner provides workers' compensation, thereby subjecting the injured worker to the exclusive remedy of workers' compensation, as provided by law. Because of these limitations on workers' compensation benefits and the
injured worker's right to recover from third parties, there has been evidence that some injured workers who have suffered from catastrophic injuries have not been adequately compensated.

The 82nd Legislature may consider the adequacy of workers' compensation benefits and limitations on subrogation claims by writers of workers' compensation policies.

**Division of Workers' Compensation**

In July 2010, the Sunset Advisory Commission (SAC) completed its review and issued its recommendations regarding the Texas Department of Insurance Division of Workers' Compensation (division) and the Office of Injured Employee Counsel (OIEC). Regarding the division, SAC found that:

- the complicated dispute resolution process was confusing, costly, inconsistent, and deprived participants of a quick, accessible means to a fair resolution;
- the medical quality review process needed to be streamlined and improvements made in transparency, guidelines, and qualification and training requirements for Medical Quality Review Panel members;
- the division did not have sufficient enforcement tools;
- additional guidance is needed to strengthen the processes for selecting, training, and assigning designated doctors;
- the statute charging the division with making certain individual claims decisions was unnecessary and conflicted with the division's regulatory role; and
- Texas employers outside of the workers’ compensation system were failing to report information regarding workplace injuries, illnesses, or deaths.

SAC also found that OIEC had inappropriate access to information held by the division not available to other parties, placing OIEC in a potentially more favorable position.

The 82nd Legislature may consider legislation enacting some or all of these recommendations into law.
Demand for Electricity

The record for electricity demand in Texas was broken four times in August 2010, according to the Electric Reliability Council of Texas (ERCOT). The newest peak record of 65,776 megawatts, 2,376 megawatts more than the 2009 peak record, indicates the need for various strategies to handle the demand for electricity in Texas.

During the interim of the 82nd Legislature, the Senate Committee on Business and Commerce heard testimony advocating a diverse energy portfolio to reduce electric costs in the state. According to the Public Utility Commission (PUC), natural gas provides 62 percent of electric generation in Texas, and electric rates are dependent on the volatility of natural gas prices. Solar energy was discussed as a long-term source of energy, but legislators expressed concern that the cost to generate solar energy is higher than the cost of current types of electric generation. Wind energy has been a successful power source in Texas, and legislators discussed the role of wind energy in the future, noting that wind accounts for approximately half of the future planned electricity generation. Biomass and geothermal sources of energy were also proposed by organizations as plentiful resources in Texas that could be generated at the source of consumption to reduce congestion in electric transmission lines.

The energy efficiency rating and the reliability of ERCOT, which accounts for 85 percent of the state's electric load, also affects electric rates for consumers. On December 1, 2010, ERCOT will transition from a regional, four-zoned market to a multi-nodal market, which would provide ERCOT a more accurate management of electricity and is projected to save customers $5.6 billion over a 10-year period. While PUC has implemented a 45-day cap on prices after transition and an independent market monitor to prevent market manipulation, the legislature may need to address any unforeseen consequences of the transition. Additionally, PUC commissioners have requested that the legislature provide PUC with instruction on how to properly run ERCOT's energy efficiency programs.

Consumer education programs that inform Texas customers of new technologies and energy efficiency plans have been discussed as key to reducing energy demand. Some organizations have called for a statewide campaign modeled after the "Click it or Ticket" and "Don't Mess with Texas" campaigns to educate the public about energy efficiency and conservation.

Demand-side management and behavioral response strategies include innovative pricing options, the installation of smart meters, and weatherization. According to PUC,
customers with direct feedback of their electric consumption save between five and 14 percent of energy costs. Utility companies can offer variable rate and prepayment plans to help electric customers manage electric costs during peak times. Smart meters allow customers to better monitor their energy consumption in a more timely manner and curtail their energy usage accordingly. Weatherization is the process of modifying a residence or building to withstand natural elements more efficiently and is considered to be one of the most effective options for low-income customers to save on electric costs. PUC has encouraged a coordination of these strategies in order to lower electricity usage, and legislators have discussed the possibility of providing state incentives to consumers and utility companies to promote demand-side management practices.

Organizations have urged legislators to consider business needs when implementing energy policies. The Texas Association of Manufacturers (TAM) contends that energy usage is the largest cost driver for TAM members and that any cost drivers associated with energy efficiency could limit the state's ability to attract new businesses. Representatives from the Texas Public Policy Foundation have said that the state's energy efficiency programs are flawed and that the Texas electric market can handle the increased demand for electricity.

The 82nd Legislature may consider options to meet the state's demand for electricity.

**Texas Bioenergy Policy Council**

The purpose of the Texas Bioenergy Policy Council (council) is to develop a successful bioenergy industry in the state. Todd Staples, Texas commissioner of agriculture, asked the council to address the challenges that the bioenergy industry faces, which include fostering the development of cellulosic-based and bio-based fuels; working to procure federal and other funding to aid the state in becoming a bioenergy leader; and studying the feasibility and economic development of the requirements for pipeline-quality, renewable natural gas, with equitable, sustainable, and defensible strategies.

The 82nd Legislature may charge the council with continuing its work in launching a successful cellulosic biofuel and bioenergy industry.

**Wind Energy**

The 76th Legislature, Regular Session, 1999, set goals of producing energy generating capacity from renewable energy sources. Texas has since become the largest producer of wind power in the nation and the wind industry has exceeded expectations for generation capacity. Advocates have said that the use of wind power improves air quality, adds to
the local tax base, creates local jobs, and provides income to landowners for the lease of their lands. Opponents claim that wind power is an inefficient source of power, particularly when wind is not blowing at peak load times. Some counties have objected to the siting of wind turbines in their vicinity and claim that wind farms result in the devaluation of land and decline in tourism for their communities.

According to the State Energy Conservation Office, the fact that wind farms can be built more quickly than transmission lines is one of the greatest challenges facing the wind industry. Insufficient transmission lines lead to a level of curtailment in which wind operators reduce their output. A 2009 report by the United States Department of Energy stated that 17 percent of potential wind energy within the Electric Reliability Council of Texas was curtailed in 2009, compared to eight percent in 2008. In 2008, the Public Utility Commission (PUC) assigned $4.93 billion to transmit 18,465 megawatts of wind power from West Texas and the Panhandle to highly populated areas of the state. According to PUC, the lack of transmission lines contributes to the inefficiency of wind-generated electricity, but investment in transmission lines will result in electricity cost savings for customers.

The 82nd Legislature may consider recommendations relating to the development of wind energy.
ISSUES FACING THE 82nd TEXAS LEGISLATURE

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VETERANS AFFAIRS and MILITARY INSTALLATIONS

Base Realignment and Closure

In August 2005, the United States Defense Base Realignment and Closure Commission made the decision to realign Fort Sam Houston in San Antonio, Fort Bliss in El Paso, and Red River Army Depot in Texarkana (RRAD) and close Naval Station Ingleside (NSI), Brooks Air Force City-Base (Brooks City-Base) in San Antonio, and the Lone Star Army Ammunition Plant (LSAAP) near Texarkana.

The redevelopment of NSI, Brooks City-Base, and LSAAP in order to create opportunities for employment in the community is ongoing. Efforts to develop long-term financially stable infrastructure in preparation for the departure of military personnel and efforts to revitalize and market existing facilities for nonmilitary use continue to be top priorities.

The base realignment process for Fort Sam Houston, Fort Bliss, and RRAD is also ongoing. By 2012, Fort Bliss will have tripled its population from approximately 9,000 military personnel, 15,000 family members, and 6,500 school-age children to 34,000 military personnel, 48,000 family members, and 18,000 school-age children. Health care, education, housing, and transportation infrastructure will all have to be expanded in order to meet the needs of an increased military population.

The 82nd Legislature may consider issues related to infrastructure and capacity building to accommodate increased population due to base realignment; making grants available for job retention in areas of the state where military installations are being realigned or closed; and coordinating state and local efforts to minimize the adverse effect that large-scale industrial wind energy projects can have on United States Navy aviation, radar, and navigational systems.

The 82nd Legislature may also consider issues related to a state constitutional amendment to allow voters to increase the motor fuels tax at the local level to generate revenue for transportation construction projects that expand transportation infrastructure in response to the projected increase in the military population from base realignments.

Call Center Consolidation

Texas veterans often need assistance in accessing critical care and employment services that are available to them. The federal government has assigned the 2-1-1 telephone

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dialing code for access to health and human services information and referral. Twenty-seven states provide 2-1-1 services for 100 percent of their populations and since 2004, 100 percent of the population of Texas has had access to 2-1-1. The 2-1-1 Texas Network has the ability to connect veterans to services provided by state agencies that have integrated their services with the 2-1-1 Texas Network.

The Texas Veterans Land Board operates a call center that provides priority of services to veterans, but the Texas Veterans Commission has closed its call center as a result of a Sunset Advisory Commission recommendation. The Department of State Health Services, TexVet, the Texas Veterans Commission, and the Texas Workforce Commission all provide service delivery models that could benefit from a partnership with a widely accessible call center.

The 82nd Legislature may consider issues related to centralizing call center activities for referral to veteran's benefits providers in an effort to streamline the process for veterans to obtain resources and benefits; making adjustments due to decreased funding and increased call volumes; and identifying federal funds and state cost savings resulting from call center consolidation.

Female-Specific Counseling Services

Although women veterans represent less than six percent of veterans accessing United States Department of Veterans Affairs (VA) healthcare, 71 percent of the women who do use the VA System have a mental health concern. Offering VA services to women by providing accessible gender-responsive and trauma-informed care at all locations is still a challenge. As of September, 2009, there are an estimated 152,571 women veterans living in Texas, making it the state with the second-largest female veteran population in the United States.

Grace After Fire is a social network serving women veterans from all eras and branches of military service that is preparing to meet the high numbers of women currently serving in the military. The Texas Veterans' Commission, TexVet, the Department of State Health Services, the Texas Workforce Commission, and a number of private entities have partnered with Grace After Fire to provide crisis support services to women veterans who chronically use alcohol and drugs as a means of coping or self-medicating their symptoms of post traumatic stress disorder, who have suffered traumatic brain injury, or who have suffered military sexual assault.

The 82nd Legislature may consider issues related to building the capacity of programs that provide female peer-to-peer support to address the specific needs of female veterans and service members.
Veterans' Nursing Home Facilities

Texas veterans' nursing home facilities (facilities) are evaluated by two rating systems, the federal Centers for Medicaid and Medicare Systems and the Texas Department of Aging and Disability Services' (DADS) Quality Reporting System. Certain facilities have recently received lower than average ratings and in a few instances, allegations of abuse have been investigated by DADS. If a facility service provider disagrees with a deficiency cited by DADS it may request a review of the deficiencies via the informal dispute resolution (IDR) process. The Texas Legislature has authorized the Health and Human Services Commission to utilize the IDR process. IDR decisions are final unless the decision violates a federal statute or regulation.

Complications have arisen regarding alleged abuse cases at certain facilities in terms of the documentation of the events and in the IDR process. Additional staff training, training directed toward abuse allegations at the facilities for local law enforcement officials, and the hiring of more incident investigators have been proposed as possible solutions.

The 82nd Legislature may consider issues related to improving the IDR process to ensure proper documentation of alleged abuse and cooperation and communication between investigating agencies. The 82nd Legislature may also consider issues related to coordination with and training for local law enforcement in regards to alleged abuse cases at the facilities.

Post-Traumatic Stress Disorder Counseling Services

According to the Congressional Research Service, there were 9,162 diagnosed cases of post-traumatic stress disorder (PTSD) amongst United States military personnel in the first nine months of 2010. Of those diagnosed PTSD cases, 7,739 were among deployed military personnel. PTSD can cause sufferers to seek isolation, withdraw from society, be easily angered, and engage in acts of family violence. Employers can be reluctant to hire younger returning veterans because of the possibility of PTSD, making it difficult for returning veterans to reintegrate into society when returning home from active duty.

An estimated five million people suffer from PTSD at any given time in the United States. The Texas Veterans' Commission (TVC) assists and encourages military service members suffering from PTSD to find support services and TVC provides grants for services to mental health entities through the Texas Fund for Veterans Assistance. Efforts to educate employers on PTSD in order to eliminate misconceptions are ongoing.
The 82nd Legislature may consider issues related to increasing PTSD-specific counseling services for returning service members, provided by military personnel or veterans, to decrease suicide rates and homelessness in the veteran population.

**Hazlewood Act and Post-9/11 GI Bill Benefits**

The state's Hazlewood Act provides qualified veterans, spouses, and children with an education benefit of tuition and fee exemptions at state-supported colleges or universities. In fiscal year 2009, more than 9,500 veterans received exemptions under the Hazlewood Act totaling $24.2 million. The new federal Post-9/11 GI Bill states that the United States Department of Veterans Affairs (VA) will pay up to $1,471 per credit hour for tuition and up to $12,130 for fees per semester and a yearly textbook stipend among other benefits.

Programs and benefits that were included in the federal Montgomery GI Bill that are not yet part of the Post-9/11 GI Bill, such as a provision for on-the-job training and entrepreneur training outside of an accredited institution, could cause gaps in coverage for veterans. Efforts to facilitate the use of the Post-9/11 GI Bill, in conjunction with Hazlewood Act benefits, can eliminate certain gaps in coverage for veterans and their families.

The 82nd Legislature may consider issues related to facilitating the use of the new Post-9/11 GI Bill by veterans and their families in conjunction with the changes made to the Hazlewood Act by the 81st Legislature.

**Veterans Workforce Programs**

Section 302.152, Labor Code, establishes priority of service in obtaining training or assistance under a job training or employment assistance program or service that is funded wholly or partly with state money for "covered persons." This includes not only veterans, but the spouse of any member who died while serving on active military, naval, or air service. The Texas Veterans Commission helped more than 47,500 veterans find employment in 2009, making Texas the top-ranked state in veteran employment.

The Texas Workforce Commission (TWC) assists veterans with finding employment by providing veteran-specific employment opportunities with the Work In Texas system, which provides links to the Job Central National Labor Exchange and Vet Central. TWC also operates the Texas Veterans Leadership Program, the Hard to Serve Veterans Initiative, the Military Warriors Support Foundation, the Comprehensive Veterans Initiative, the disbursement of Base Realignment and Closure National Emergency Grant
funds, and a summer employment program that provides information on summer employment opportunities for children of veterans.

The 82nd Legislature may consider issues relating to creating a veteran-specific employment database with a strong link to employers to target job openings tailored to the skill sets of Texas' returning veterans and their spouses.
SUNSET REVIEW

The Sunset Advisory Commission (Sunset) reviewed 28 entities scheduled for consideration by the 82nd 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:

Capital Metropolitan Transportation Authority*
Coastal Coordination Council
Electric Reliability Council of Texas (ERCOT)*
Electronic Government Program Management Office of the Department of Information Resources
Emergency Communications, Commission on State Environmental Quality, Texas Commission on
Equine Research Account Advisory Committee*
Forest Service, Texas
Hearing Instruments, State Committee of Examiners in the Fitting and Dispensing of Housing and Community Affairs, Texas Department of Housing Corporation, Texas State Affordable*
Information Resources, Department of
Injured Employee Counsel, Office of Insurance Counsel, Office of Public*
Insurance, Texas Department of*
Juvenile Probation Commission, Texas*
On-site Wastewater Treatment Research Council
Public Finance Authority, Texas
Public Utility Commission of Texas
Public Utility Counsel, Office of Racing Commission, Texas*
Railroad Commission of Texas
Soil and Water Conservation Board, State
Speech-Language Pathology and Audiology, State Board of Examiners for Transportation, Texas Department of*
Water Development Board, Texas
Workers' Compensation, Texas Department of Insurance Division of Youth Commission, Texas*

*Subject to a focused, limited scope, or special purpose review.