

Topics for the 82nd Legislature

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The Texas Legislature will consider a wide variety of topics when it convenes in regular session on January 11, 2011. State budget issues and redistricting are at the top of the agenda, with a variety of other important issues, such as immigration, voter identification, and health care delivery expected to dominate the session. A total of 28 agencies will be under sunset review, involving such areas as transportation, insurance, environmental quality, and energy.

This report highlights many, although by no means all, of the topics that the 82nd Legislature may consider during its 2011 regular session. The House Research Organization has addressed a number of these issues in more detail in Focus Reports and *Interim News* articles since the end of the 81st Legislature's 2009 regular session.

Appropriations and spending

The 82nd Legislature will be writing a state budget for fiscal 2012-13 that will have to close an anticipated multi-billion-dollar gap between state spending demands and expected state revenue. This gap exists because overall state tax revenue is lower than anticipated, some state expenses are more than expected, and federal stimulus funds used in the fiscal 2010-11 budget are not expected to be available.

In January 2010, state agencies were required to identify ways to reduce their fiscal 2010-11 budgets by 5 percent. Agencies identified a total of \$1.8 billion in possible reductions, and \$1.3 billion in reductions were implemented.

At a November 2010 meeting of the Legislative Budget Board, the speaker and the lieutenant governor said that they would ask state agencies to make additional budget cuts of 2 percent to 3 percent for fiscal 2011.

Under the fiscal 2012-13 budget instructions to state agencies, baseline spending requests for general

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revenue and general revenue-dedicated funds had to be no greater than funds expended in 2010 and budgeted for 2011, as adjusted for the 5 percent biennial reductions identified by the LBB. Certain programs were exempted from this baseline restriction. As part of their fiscal 2012-13 appropriations request, agencies also had to submit a plan showing potential general revenue and general revenue-dedicated spending cuts of another 10 percent.

On November 15, the Legislative Budget Board adopted a projected state personal income growth rate of 8.92 percent for fiscal 2012-13. Under the constitutional spending cap, state spending not constitutionally dedicated to particular purposes cannot increase from one biennium to the next beyond the growth limit set by the LBB unless the cap is waived by a majority vote of both houses.

Legislators will be examining state agencies' spending requests for fiscal 2012-13, ideas to increase revenue, and proposals to use part or all of the state's Rainy Day Fund for the fiscal 2012-13 budget.

Beyond agencies' demands for state spending, which are discussed below under specific topic categories, legislators may consider proposals to freeze hiring, cut state employees' salaries, or furlough state employees. Members also may discuss the use of statutorily dedicated accounts in the state budget for purposes other than those to which they were dedicated. Certain spending may be postponed until fiscal 2014 in order to allow a one-time-only spending reduction in fiscal 2012-13.

Spending limits. Legislators may consider proposals to limit tax and expenditure growth. Such proposals may include requiring a two-thirds vote of each house or voter approval, or both, for growth in spending beyond various caps, including the rate of inflation, the rate of inflation plus rate of population growth, or the rate of growth of personal income.

Augmenting Rainy Day Fund. Legislators may consider proposals to augment the Rainy Day Fund by increasing the cap on the total amount in the fund from 10 percent to 15 percent of general revenue received by the state in the previous biennium. Other proposals would add new revenue streams to the Rainy Day Fund,

such as any new revenue resulting from growth in sales taxes collected that exceeds the previous 20-year average rate of growth in sales tax revenue.

Taxes and revenue

Two-thirds vote for tax increases. Legislators may consider proposals to require that all tax rate increases receive a vote of two-thirds of the members of each house. They also may consider two-thirds requirements for specific taxes, such as the franchise tax.

Property appraisals. Lawmakers may consider proposals to lower the cap on increases in the appraised value of a residence homestead. Under the Texas Constitution and state law, an annual increase of appraised taxable value may not exceed 10 percent. Lawmakers may consider constitutional amendments to lower the value-increase cap to 5 or 3 percent. Other proposals would allow local taxing entities to set their own lower caps by local option. The Legislature may consider further limiting how much a local taxing entity may increase its tax rate each year before triggering an automatic or petitioned rollback election.

Homestead exemption. Legislators may consider increasing the homestead exemption above the current \$15,000.

Statewide property tax for school funding. Legislators could consider a constitutional amendment to authorize a statewide property tax that would replace most of the local school property tax.

Sales tax exemptions. Lawmakers may consider proposals to tax goods and services not currently subject to the sales tax. Proposals to end sales-tax exemptions on certain goods or industries may be based on whether the exemptions are still justified in light of market changes that have occurred since the exemptions originally were enacted by the Legislature.

On-line sales tax collections. The Legislature may examine ways to increase the collection of internet sales taxes. Under U.S. Supreme Court case law, states may tax a business and its sales only when the business has sufficient "nexus" or connection with the state levying the taxes. Lawmakers may consider proposals

to define nexus not only in terms of physical presence but also economic presence, such as advertising or web-based sales to customers in Texas.

Replacing property tax with sales taxes.

The Legislature may consider proposals to replace current property taxes with increased sales taxes. One option would be to keep the current sales-tax base while imposing a larger sales tax rate to make up for lost property-tax revenues. Other options would expand the base to include more goods and services.

Small business exemption from margins tax. In 2009, the Legislature temporarily raised the revenue ceiling for a business to qualify for a total exemption from the business margins tax from \$300,000 to \$1 million. The \$1 million exemption will decrease to \$600,000 on January 1, 2012. The Legislature may consider extending the \$1 million exemption or making it permanent.

Business and economic development

Economic development funds. The Texas Enterprise Fund and the Emerging Technology Fund, accounts from which the governor may award grants for economic development and for research and development programs, could face proposals to cut or eliminate their funding. Other proposals may seek to make more transparent and accountable the process for selecting grant recipients and the terms for the grants.

Homeowners associations. Lawmakers may debate the responsibilities and authority of homeowners associations under state law. They may consider proposals to restrict HOA authority to foreclose on homeowners for delinquent assessments, limit the authority of HOAs to execute foreclosures outside of court, or require HOAs to meet certain conditions before foreclosing. The fines HOAs may charge for violation of a restrictive covenant and attorney's fees awarded to HOAs in lawsuits also may be examined.

Lawmakers also may consider changing voting practices used by associations to amend their declarations; requiring alternative dispute resolution before an HOA may take formal legal action against a homeowner; and prohibiting HOAs from enforcing

certain deed restrictions on religious symbols, "green" improvements, and parking.

Insurance. The Legislature is likely to address issues related to windstorm insurance as well as the functions of the Texas Department of Insurance (TDI) and the Office of Public Insurance Counsel (OPIC), both of which are undergoing a limited Sunset review following a more comprehensive review that occurred in 2008. TDI's Division of Workers' Compensation and the Office of Injured Employee Counsel (OIEC), both established in 2005 when the Legislature made major revisions to the workers' compensation system, are undergoing a full Sunset review this session.

TDI and OPIC Sunset review. OPIC, which represents the interests of consumers in insurance matters, and TDI will undergo Sunset review this session. They are among the agencies that underwent review during the 81st Legislature but ultimately had their Sunset dates extended to 2011 when their Sunset bills were not heard during the regular session.

Most property and casualty rates, including homeowners insurance rates, are subject to a file-and-use system of regulation in which insurers may file a rate change, then put the new rate in effect immediately or whenever they choose. TDI may disapprove excessive, inadequate, or unfairly discriminatory rates either before they are implemented or after they are implemented and already in use. The Legislature may consider revising the existing file-and-use system to add more certainty about when rates may be implemented or by establishing a system in which TDI must approve rates before they are implemented.

The Legislature could consider requiring insurers to offer standard, state-promulgated homeowners insurance policy forms in addition to the existing policy forms they offer. Proposals also may emerge to ban credit scoring in determining rates for homeowners and auto insurance and to make the insurance commissioner an elected position.

Texas Windstorm Insurance Association. The Texas Windstorm Insurance Association (TWIA) provides insurance of last resort for windstorm and hail damage along the Texas Gulf Coast. In 2009, the 81st Legislature enacted HB 4409 by Taylor, which revised

TWIA oversight, operation, and funding mechanisms. If insured losses and operating expenses exceed TWIA revenues and any available reserve funds, HB 4409 authorizes issuance of up to \$2.5 billion in bonds, payable by a variety of sources, to pay for TWIA losses.

Lawmakers may revisit whether the funding mechanisms established for TWIA in HB 4409 are adequate and appropriate if Texas faces an extreme hurricane loss. Proposals may emerge to establish ways to pay for TWIA losses in excess of \$2.5 billion since estimates of TWIA losses for an extreme storm that strikes Galveston are up to \$10 billion. Also, HB 4409 authorized TWIA to obtain reinsurance for losses, but TWIA did not opt to obtain reinsurance this storm season. Some propose TWIA should be compelled to obtain reinsurance.

A recent dispute over how Hurricane Ike claims were handled led to a \$189 million settlement with more than 2,000 TWIA policyholders. This case may prompt discussion of proposals to establish an administrative class action procedure for catastrophe claims that would better define who may authorize a TWIA settlement, what funds could be used to pay a settlement, and how compensation, including attorney fees, will be handled. Another consideration for claims handling may be who conducts claims inspections.

Landlord insurance disclosure. Lawmakers may consider a proposal to require landlords to inform tenants that the landlord's insurance does not cover the tenant's personal belongings.

Workers' compensation. The Division of Workers' Compensation in the Department of Insurance was reviewed by the Sunset Advisory Commission during 2009-10. Sunset Commission recommendations include removing eight types of disputes from the division's purview, streamlining and accelerating the dispute resolution process, streamlining the medical quality review process, and clarifying the scope of the division's enforcement authority. The Sunset Commission recommends the Legislature enact stringent qualification requirements for medical review panelists and designated doctors.

The Legislature may consider proposals that would prevent premises owners, such as those who own refineries or chemical plants, from buying workers'

compensation insurance for contract employees in order to avoid liability for injuries to those workers. Some proposals may prohibit a premises owner from being considered a general contractor, while others may include specific criteria by which to determine which premises owners meet the standards of a general contractor. Other proposals may specify that all premises owners may purchase workers' compensation insurance, regardless of circumstance.

Lawmakers may consider whether to include pain and suffering compensation for injured workers. They also may consider whether to provide reimbursement for the loss of an injured worker's career, such as a surgeon who loses the use of a hand. The current workers' compensation system considers the injured employee's ability to return to any job, but not to a chosen trade or profession.

Office of Injured Employee Counsel. The Office of Injured Employee Counsel (OIEC) was reviewed by the Sunset Advisory Commission in 2009-10. The Legislature may consider the Sunset Commission's recommendation to limit OIEC's access to the confidential medical information of injured employees.

Telecommunications. The Public Utility Commission is under Sunset review. Sunset staff suggest that the Legislature, in reformulating the statutory tests for competitiveness in certain local telecom markets, consider the full range of types of voice services, including internet-based services.

Gambling. Legislators could consider authorizing casino gaming in Texas as a way to raise new state revenue. One proposal would allow the state to license and regulate large, resort-style casinos throughout the state that would offer slot machines and traditional casino games. Allowing slot machines at the state's existing pari-mutuel racetracks, bingo halls, and facilities operated by Texas' Native American tribes also is being proposed.

Lawmakers may consider licensing certain types of poker games and taxing the gross receipts. Levying a state tax on gambling on the internet also may be discussed.

Legislators could consider expanding lottery instant ticket games for which proceeds are dedicated

for a specific purpose, like the ticket authorized in 2009 with proceeds dedicated to veterans programs. Proposals could be made to expand the types of places at which lottery tickets may be sold to include bars and restaurants, to allow lottery tickets to be bought with credit cards, and to allow the internet to be used to purchase subscriptions to buy lottery tickets.

The Texas Racing Commission will undergo Sunset Review, and changes to pari-mutuel wagering may be considered. The commission underwent Sunset review in 2009, but the agency's Sunset bill was not enacted during the regular session. The 81st Legislature, in its first called session, extended the Texas Racing Commission until September 1, 2011. The 82nd Legislature, in addition to considering how to handle the licenses of tracks that are inactive, may consider reducing the number of categories of workers licensed by the commission; eliminating uncashed winning tickets as a revenue source for the commission; revising the law on unlawful betting, either to prohibit internet wagering or to regulate and tax it; and abolishing the Equine Research Advisory Committee.

Debt management service companies. The Legislature may consider requiring debt management service providers to register and provide certain information to the Office of Consumer Credit Commissioner. It also may consider requiring debt settlement company employees to explain the debt management process to a consumer, including how fees are calculated, and to inform consumers of their right to cancel service contracts with debt settlement companies before the consumer contracts with the debt settlement provider.

Criminal justice and public safety

Adult prison, probation, and parole. According to June 2010 projections by the LBB, the state's prison capacity will exceed the offender population by almost 3,000 at the end of fiscal 2010 and by about 3,122 at the end of fiscal 2011. This could prompt proposals to save state money by closing a Texas prison.

The number of offenders sent to Texas prisons during the next biennium could be influenced by funding for diversion and treatment programs and beds.

Funding for these programs originally was part of a plan to address a growing adult offender population and a projected need for new state prison beds by expanding both correctional capacity and treatment and diversion programs. Proposals could include cuts or increases to the funding for these programs.

Demands on state prison capacity also could influence the level of state funding for local probation departments and efforts to reduce revocations to prison for technical rule violations.

The rising cost of providing health care to prison inmates could prompt proposals to try saving the state money in this area. Finding ways to reduce the cost to care for chronically ill and elderly inmates could be discussed.

Criminal procedure. In August 2010, the Timothy Cole Advisory Panel on Wrongful Convictions, created in 2009 by the 81st Legislature, released several recommendations on criminal procedure. The recommendations addressed criminal investigations, pre-trial, trial, and post-conviction procedures.

Proposals may emerge to establish state standards or a state model policy for eyewitness identifications and to require written policies, procedures, and training for identifications. The electronic recording of custodial interrogations could be made mandatory, and lawmakers may consider instituting procedures and standards for different types of suspect line-ups. Proposals governing discovery in criminal cases may be considered, including making discovery mandatory, automatic, and reciprocal between the defense and prosecution and requiring access to discovery materials.

Expanded DNA testing could be proposed. Lawmakers also may consider allowing certain types of appeals, called writs of habeas corpus, to include cases based on changing science if the cases meet specific requirements.

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

Scientific evidence in the courtroom.

Legislators may consider changes to how scientific evidence is admitted and used by Texas courts. Investigations of dog-scent lineups and changes in arson investigation and blood spatter and hair analysis have led some defendants to challenge the scientific basis of evidence used to convict them. Legislators may consider proposals to either expand or reduce the ability of defendants to challenge scientific evidence after they are convicted.

The oversight of forensic science labs in Texas also may be examined. Lawmakers may consider proposals to make the labs independent of the law enforcement agencies that submit evidence for testing.

Sex offenders. Legislators could debate proposals to toughen penalties on sex offenders or to increase their supervision. Proposals could include expanding the type of sex crimes that can be punished by life without parole or expanding the monitoring of sex offenders living in the community.

Legislators could consider whether Texas should change its sex offender registry law to comply with the federal Adam Walsh Child Protection and Safety Act. Debate also could occur on whether the state should change who must register under sex offender registry laws and for how long, with a focus on juvenile offenders and young adults who commit offenses with juveniles.

Technology-based offenses. The Legislature could discuss making it a crime to use certain kinds of technology to disseminate information about or to harass others. Debate could include whether new laws should be enacted to deal with cyber bullying and “sexting,” which involves using mobile phones or other devices to send sexually explicit photographs or messages.

Catch and release for misdemeanors.

Proposals could be made to expand the number of offenses eligible for what is sometimes called “catch and release.” Seven offenses currently fall under this policy, which allows law enforcement officers to issue citations with a summons to appear in court, rather than arresting a suspect. Another proposal would prohibit arrests for regulatory Class C misdemeanors.

Drug offenses. Punishments for first-time, low-level, drug offenses committed by non-dangerous

offenders could be debated, with one proposal mandating probation in some of these situations.

Penalties for offenses involving marijuana may be examined, including proposals to lower the penalty for persons caught with small, personal amounts of the drug and to approve the use of marijuana for medical reasons. A proposal to outlaw synthetic marijuana also could be debated.

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

Oversight of municipal jails. Legislators may consider oversight of municipal jails and other detention facilities and whether the state should impose minimum standards.

Human trafficking. Proposals to increase criminal penalties for persons convicted of offenses involving human trafficking could be debated. These could include punishing more human trafficking offenses as first-degree felonies and adding the crime to the list of violent and serious offenses that result in longer prison stays before eligibility to be considered for parole. Changes to what constitutes the offense of trafficking in human persons could be discussed, along with enhanced regulatory authority for state agencies to deal with human trafficking.

Lawmakers also may consider strengthening victim services and protections in human trafficking situations. The treatment by the juvenile justice system and the child protective services systems of prostitutes who are children also may be examined. Other efforts may focus on preventing human trafficking through education, training, and outreach to law enforcement officers, service providers, and the community.

Deferred adjudication. Expanding deferred adjudication to include first-time driving while intoxicated cases could be considered.

A proposal may be made to allow the governor to issue a pardon to those who have successfully completed deferred adjudication. Legislators also could examine the use of and access to database records of those receiving deferred adjudication.

Specialty courts. Proposals could be made to expand or enhance specialty courts, like drug courts and mental health courts currently operated by local governments. Ideas could include trying to ensure that appropriate offenders are routed to these courts. Funding for these courts also could be examined, with proposals made to increase the flexibility of local governments' use of fees to fund them.

Innocence commission. Whether Texas should create an innocence commission could be debated again this session. Lawmakers may address the structure and powers of such a commission, which could include studying wrongful convictions, recommending changes in law, and examining individual claims of innocence.

Indigent defense. Legislators may consider creating another option for counties to provide indigent defense services for those accused of crimes by specifically authorizing managed, assigned-counsel programs. In these programs, management is outsourced to a government office or nonprofit agency independent of the judiciary. Public defender offices also may be examined, with possible proposals to revise the way counties can establish them and to allow oversight boards to oversee them, rather than relying solely on county commissioners courts, especially for offices established jointly by several counties. Lawmakers may consider proposals to make the state's Task Force on Indigent Defense an independent entity separate from the Office of Court Administration.

Juvenile justice. The Texas Youth Commission and the Texas Juvenile Probation Commission will undergo a limited Sunset review during the 2011 session.

Texas Youth Commission facilities. The closing of Texas Youth Commission facilities could be discussed during deliberations on the state budget, as well as moving some youths to smaller, community-based group homes. Another proposal would abolish TYC, send much of its funds to counties to handle youths in the juvenile justice system, and possibly establish one small, state-run facility for the most violent youths.

Diverting youths from the Texas Youth Commission. Legislators may debate the effectiveness of programs and grants to divert youths from TYC. There could be calls for more investment in local, community-based, non-residential juvenile justice programs and discussions

about how to allocate funds between secure confinement and non-residential programs. Lawmakers also may discuss services for juvenile offenders with mental health issues and consider streamlining the 18 separate grants administered by TJPC for local juvenile probation departments.

Border security. Debate on funding for border security will continue in the 82nd Legislature. Proposals may be made to increase or retain the level funding appropriated this biennium. Lawmakers could consider proposals to direct border security funding to be spent in border counties. DPS has requested new funding for a high-altitude aircraft that could fly surveillance missions on the border and use high-definition cameras.

Alcohol. Legislators could debate proposals on driving while intoxicated, including requiring installation of ignition interlock devices after a driver's first DWI offense. Another proposal would establish standards for local law enforcement sobriety checkpoints where officers could check motorists for signs of intoxication. Revising laws on administrative license revocations for DWI offenses and expanding deferred adjudication to include first-time DWI cases also could be considered.

Proposals could be considered to create a new criminal offense that applied to drivers with alcohol in their systems but who were below the current blood-alcohol level of 0.08, as a way to route these drivers into alcohol treatment or impose other restrictions on them.

Handguns. Legislators may debate allowing handgun licensees to carry their weapons onto college campuses, either public or private. Proposals to reduce the required \$125 fee for concealed handgun permits to make them more obtainable by low-income Texans also may be considered.

Drivers Responsibility Program. The Driver Responsibility Program (DRP) imposes a surcharge to be paid every year for three years for driving while intoxicated, driving without insurance, or driving without a license or with an expired license. The program historically has had high non-payment rates, and the Public Safety Commission recently changed rules to reduce surcharges for certain people who qualify. Lawmakers may consider repealing the program, broadening or narrowing the types of offenses

it includes, adjusting the surcharges charged for different offenses, or other measures to increase payment rates.

Health and human services

The budget will dominate much of the discussion in health and human services. Lawmakers may prioritize consideration of proposals designed to make health care delivery more efficient. Other issues may include preparing for changes necessitated by federal health care reform.

Health care reform issues. While most of the broader changes related to federal health care reform legislation will not be implemented until 2014, the Legislature is likely to address some questions to prepare for implementing changes. Federal legislation requires states to establish a health insurance exchange that uninsured people can use to purchase appropriate health coverage. The federal government will conduct a readiness check for these exchanges on January 1, 2013. This session, the Legislature will need to decide if the exchanges will be run by the state or the federal government. If the exchange is state-run, TDI, HHSC, or another entity, such as a nonprofit established for that purpose, could be selected to run the exchange. Many other decisions related to the exchange, including its governance, regulatory authority, and the consumer information and help it will provide, will need to be decided.

People with incomes at or below 400 percent of the federal poverty level will be eligible for subsidies to help buy insurance. The Legislature may consider whether eligibility determination for subsidies should be added to the state's existing eligibility system for programs like Medicaid and CHIP or whether a new eligibility system should be established.

With estimates of about 2 million more enrollees in Medicaid and CHIP by 2014, as well as many more people likely to obtain private insurance, the need for health care providers will increase. Lawmakers may consider increasing the number of graduate medical education slots for physicians and increasing physician student loan repayment rates. Legislators may address scope-of-practice issues that could expand certain primary care services provided by non-physician health care providers. For example, the Legislature could

consider proposals to limit the amount of physician supervision required for advance practice nurses and physician assistants in places like retail health clinics. Finally, legislators could consider changes to the rates at which they reimburse health care providers to encourage more of them to participate in Medicaid and CHIP.

Legislators are likely to consider any necessary changes to existing state statutes to conform to federal health care reform changes that took effect in September 2010. Such changes include the requirement that young adults be allowed to remain covered by their parents' health insurance policy until the age of 26. Federal health care reform also authorized grants for states that propose pilot programs to address issues such as care coordination and improving health outcomes. Lawmakers may consider which, if any, of these pilots should be pursued.

Other legislation may be considered that would seek to allow Texas to opt out of certain parts of federal health care changes, such as mandatory participation, or attempt to nullify application of the federal law in Texas.

Medicaid managed care. The Legislature may consider several options for expanding managed care in the Texas Medicaid program. It could be expanded to 10 counties in South Texas or to counties contiguous to areas that already are under Medicaid capitated managed care, including Lubbock, San Antonio, Austin, Houston, Corpus Christi, and El Paso. The Legislature also may hear proposals to bring particular services, such as the vendor drug program and dental services, under managed care.

Withdrawal from Medicaid. Another proposal being discussed is for the state to opt out of the federal Medicaid program and create its own insurance program. A more specific proposal would be to opt out of acute-care coverage while maintaining participation in long-term care services.

Alternative payment initiatives for Medicaid and CHIP. Legislators may consider a number of payment initiatives intended to improve the quality of care and efficiency of services in the Medicaid program and Children's Health Insurance Program (CHIP). Proposals could include pay-for-performance initiatives that provide incentive payments to health care providers or facilities for services that meet or exceed defined

performance measures. Other initiatives could include providing higher reimbursement rates for providers or entities that provide a better quality of care, such as hospitals with low readmission rates for potentially preventable conditions.

Accountable Care Organizations. Accountable Care Organizations (ACOs) are groups of providers who agree to be accountable for the cost and quality of the health care provided to a given population. Lawmakers may consider whether such organizations need to be licensed and whether they will be able to directly employ doctors. Potential legal concerns in establishing ACOs, such as anti-trust issues or defining possible jury penalties for lawsuits, may be addressed. The state also could consider establishing pilot programs for ACOs for certain Medicaid populations or for state employee group health benefits.

Health information technology. Proposals could emerge to clarify how much control patients can exercise over the use of their electronic health information and how and what information may be exchanged among providers and facilities. Proposals may focus on protecting patient privacy and how patients consent to the use of their information in an electronic health information exchange.

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

Child protective services. Because prevention and early intervention funding for programs to prevent child abuse and neglect is limited, lawmakers may consider proposals about what should be prioritized in a strategic plan to target services areas most in need. Proposals could include targeting funds to counties with a greater share of children in state custody for abuse and neglect or to areas with known predictors of child abuse and neglect, such as high rates of child poverty.

Parental child safety placements are arrangements in which parents determine an alternative caregiver for their child while their family is under investigation, rather than the state's placing the child in foster care.

Legislators may hear proposals to better track the number of children in parental child safety placements and where these children are residing.

Certain federal incentives are provided to states only when their adoption rates for children in foster care increase. Legislators may explore the current structure under which relative caregivers most often opt to be legal guardians for children, rather than adoptive caregivers, and how this affects the potential to receive federal incentive funding.

State-supported living centers. State-supported living centers (SSLCs), formerly called state schools, are state-run facilities that provide residential care and treatment for people with cognitive or developmental disabilities. The 81st Legislature in 2009 made major revisions to these care facilities in response to allegations and incidents of abuse and neglect within them that had prompted investigation by the U.S. Department of Justice. Proposals may emerge to limit admission to SSLCs, citing continued reports of abuse, or to consolidate some SSLCs and move more residents to community care settings.

Public health and wellness. Lawmakers may seek to enhance tobacco prevention and general wellness programs and consider ways to address health problems associated with obesity. Debate may continue on whether to institute a statewide ban on smoking in workplaces and certain public areas.

Public education

State Board of Education. Lawmakers may consider several proposals concerning the authority of the State Board of Education. They may discuss proposals to change the board from an elected body to one whose members are appointed by the governor. Proposals may emerge to transfer the board's education policymaking authority to another entity, either elected or appointed, that is composed of elected officials and educators. Other proposals may seek to transfer the board's education policymaking authority to the commissioner of education and the Texas Education Agency. Some may propose enacting a constitutional amendment to abolish the board and transfer its authority to manage the Permanent School Fund to

another entity. Lawmakers also may consider proposals to place the board under Sunset review at the same time as the Texas Education Agency.

Bullying. Lawmakers may consider proposals to prevent students from harassing one another and to increase the consequences faced by those who do. One proposal would increase student access to mental health services. Others may address prevention of cyber-bullying and inappropriate interactions between teachers and students, including on social networking sites and through text messages.

Class size requirements. The Education Code limits class sizes in elementary schools by requiring a classroom to have one certified teacher for every 22 students. Lawmakers may consider increasing or eliminating the current teacher-to-student ratio requirement or allowing more ways for school districts to obtain waivers.

Accountability. Legislators may revisit the state's public school accountability system. Proposals may include ending the state's reliance on a single test to measure student success, prohibiting use of the value-added statistical model for teacher evaluation, ending punitive sanctions, and implementing supportive interventions for schools whose students fail to meet the state's performance expectations.

Higher education

Funding. Lawmakers may address the effects of aligning formula funding with state higher education goals, including increasing student success and responding to the economic development needs of the state. A portion of formula funding for university undergraduates could be based on measures like how many and what kind of degrees are awarded, rather than on student enrollment on the 12th day of class. A proposal to fund part of the community college formula based on momentum points also may be reviewed. Momentum points are milestones that measure the progress of students towards certificates, degrees, or transfer to four-year institutions. Debate may occur on the merits of increasing incentive funding for institutions that meet state goals, especially the granting of degrees in science, technology, engineering, math, and teaching.

Lawmakers may consider proposals for reducing the cost of instructional materials, including through use of electronic textbooks, open source materials, and other web-based resources.

Financial aid. Proposals could emerge to prioritize TEXAS Grants, the state's primary financial aid program, based on academic preparation as well as financial need in order to increase graduation rates at public universities.

Community college health care benefits. The budgetary principle known as "proportionality" — the cost-sharing between the state and institutions for employee health and retirement benefits — likely will be reviewed. The Legislature could consider whether the state is responsible for providing funding for group health care insurance to all community college employees involved with educational programs.

Additional medical schools. Legislators may debate whether to fund the four-year medical school established by the Legislature in 2009 to address a shortage of health care professionals in South Texas. The Regional Academic Health Center in Harlingen was authorized to convert to a four-year medical school, but no state funding was provided. Other proposals could include establishing a medical school in the Fort Worth area.

In-state tuition. Lawmakers could seek to restrict or repeal the current law that allows certain resident undocumented immigrants to pay in-state college tuition at public universities in Texas.

Immigration

Law enforcement. Lawmakers may debate the role of law enforcement agencies in enforcing federal immigration laws, including proposals to require peace officers to verify the citizenship and immigration status of people they arrest or detain. Other proposals could be made to encourage law enforcement officers to obtain federal authorization to enforce federal immigration law or to prohibit local rules that limit cooperation with federal immigration enforcement, such as adopting policies that create "sanctuary cities." Making it a state criminal offense to enter or remain in the United States illegally also may be considered.

Work place requirements. Proposals on work place requirements may include requiring all employers to use the federal E-Verify system to determine if potential employees have legal authority to work in the United States. Other proposals could include imposing sanctions or penalties on employers who hire illegal immigrants.

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

Money transmission fee. One proposal would require a fee for money transmitted to certain destinations, such as Mexico or Central and South America. The fee could be dedicated for a specific state need.

English as official language. Efforts could be made to make English the official language of Texas and require that official state business be conducted in English.

Access to the courts. Legislators could limit the ability of people in the United States illegally to file civil lawsuits in Texas courts.

Crime victims and witnesses. Another proposal would prohibit law enforcement officers from asking crime victims and witnesses about their nationality or immigration status.

Drivers licenses. Efforts may be made to end the Department of Public Safety's practice of issuing drivers licenses that differ depending on a person's immigration status.

Energy and environment

Texas Railroad Commission. The Texas Railroad Commission (RRC) will be under Sunset review. Lawmakers may propose changing its name to the Texas Oil and Gas Commission and have it be governed by a five-member appointed board rather than by three elected commissioners. Another proposal would modify the RRC's method of finance to rely on industry-paid fees, instead of general revenue.

Lawmakers may seek to expand RRC enforcement of damage prevention to include 80,000 miles of interstate pipelines, rather than just the 160,000 miles of intrastate pipelines for which it has had enforcement authority since 2005. Other proposals may seek to strengthen RRC enforcement, including by giving the RRC express authority to deny permits. Lawmakers may consider transferring responsibilities for regulating gas utilities from the RRC to the Public Utility Commission.

Power generation capacity. The 82nd Legislature may consider how to expand power generation capacity across the state. Proposals may address the proportions required for oil, natural gas, coal, nuclear energy, and renewable sources, such as wind, solar, and geothermal. Some lawmakers may advocate a State Energy Plan modeled after the State Water Plan. Some may propose an increase in energy-efficiency goals, high-performance building standards, and conservation measures to meet energy demand and mitigate effects of climate change.

Renewable Portfolio Standard. Lawmakers may consider expanding the mandates in the renewable portfolio standard (RPS). The RPS seeks to ensure use of renewable energy statewide by requiring a certain number of megawatts of renewable capacity to be incorporated into the electric grid. Discussions may include whether the 500-megawatt RPS target for renewable resources other than wind should be increased and mandated, and if so, whether it should include a carve-out for a particular resource, such as solar energy, and whether it should include energy efficiency goals. Proposals for an energy storage portfolio standard similar to the RPS also may emerge.

Energy efficiency. Financing alternatives may be proposed for energy efficiency measures, such as expressly authorizing retail electric providers to allow energy efficiency loans to be paid back through a customer's utility bill. A coordinating commission may also be proposed to report on energy efficiency efforts so they can be included in the Electric Reliability Council of Texas' long-term planning of the electric grid.

Distributed energy. Lawmakers may consider creating incentives for the use of distributed energy — which is energy created at or near the place it is used — such as residential solar and wind systems. A “homeowner's bill of rights” may be proposed to

address buyback rates for energy produced with solar resources, as well as contract and interconnection standards. Lawmakers may consider prohibiting homeowners association rules that ban solar panels or other distributed energy sources. Financing alternatives also may be proposed for distributed energy systems, such as rooftop solar panels, by allowing a third party to own the systems. Other proposals may include increased goals for solar energy installation and financial incentives, including tax breaks, to make the solar industry more cost-competitive with other energy sources.

Carbon storage. Lawmakers may consider developing clear rules, authority, and permitting limits for sequestering CO₂ for new coal plants and for the ownership of the underground “pore space” where CO₂ is sequestered. They also may address unitization, which can give a producer control over an entire field to maximize oil recovery, but also can be used to more effectively store and sequester CO₂ in underground pore space. Those with mineral interests who may not want to join a unit can be forced to do so under certain circumstances.

Wind turbines. Lawmakers may debate environmental siting regulations for wind turbines and consider permitting guidelines for turbines similar to those for cellular towers.

PUC and ERCOT. The Public Utility Commission (PUC), Electric Reliability Council of Texas (ERCOT), and the Office of Public Utility Counsel will be under Sunset review. Lawmakers may seek to give the PUC restitution authority, stronger registration and renewal authority over market participants, and authority to impose more administrative penalties. Lawmakers may propose requiring the PUC to review and approve ERCOT’s budget and use of debt financing annually. Lawmakers may consider reducing industry representation on the ERCOT board to achieve impartiality.

Electric service. Lawmakers may examine effects on consumer costs and on workers and the utility industry from the full implementation of electric deregulation in 2007. Some may propose more consumer protections, especially for low-income and elderly customers. Some may propose changes to the process for disconnecting electric service and

establishing electric rates. Others may propose repealing electric deregulation altogether. Lawmakers may propose reversing the recent PUC decision prohibiting customers from switching providers if they are on a deferred payment plan or have an outstanding balance.

Some lawmakers may propose fully funding electric discounts and weatherization programs for low-income Texans under initiatives funded through the System Benefit Fund. Others may propose doing away with the System Benefit Fund altogether.

Air quality. The Texas Commission on Environmental Quality (TCEQ) is under Sunset review. Some lawmakers may push to reform permitting, enforcement, and public participation at the TCEQ. Others may propose streamlining the permitting process to ensure that business and industry can comply with environmental laws and to minimize expensive procedural delays.

Lawmakers may propose that a portion of funds generated by the Texas Emissions Reduction Plan be used to pay for eight additional air quality monitors in the Barnett Shale area, where extensive new natural gas exploration and production has occurred. Other proposals may include moving the entire uranium mining permitting process, as well as protection of water quality during oil and gas drilling, from the RRC to the TCEQ.

Water. The Texas Water Development Board will be under Sunset review. Lawmakers may consider additional bond authority for TWDB financial assistance programs to political subdivisions to meet water and wastewater infrastructure needs. They also may consider a proposed constitutional amendment to grant the TWDB “evergreen” authority to re-issue up to \$6 billion in previously authorized Development Fund general obligation bonds at its discretion on a continuing basis.

Changes to the process that determines the groundwater available to meet future demands, known as desired future conditions (DFC), may be considered. Proposals may include more formally including DFC development in state water planning. Lawmakers may consider requiring TWDB to evaluate the state’s progress in meeting its water needs and requiring TWDB and TCEQ, in consultation with the Water

Conservation Advisory Council, to develop gallons per capita daily reporting requirements to help gauge the progress of municipal water conservation methods as part of the State Water Plan.

Lawmakers may consider transferring responsibilities for regulating water and wastewater utilities from the TCEQ to the PUC.

Incentives for promoting technologies that more efficiently use both water and energy, without one draining the other, also may be considered.

Transportation

Highway finance. Lawmakers may consider proposals to secure revenue for state roads and bridges. The Texas Department of Transportation (TxDOT) has estimated that projected levels of funding would leave no funds to authorize new highway construction after fiscal 2012 because available funds would be needed for already committed projects and ongoing highway maintenance. One proposal could be to authorize the Texas Transportation Commission to issue up to \$3 billion in remaining general obligation bonds approved by voters in 2007 for highway improvements. A proposal also may emerge to reduce diversions of motor fuels tax revenue (Fund 6) for purposes other than building and maintaining highways. This could include providing alternative funding for the Department of Public Safety, which received about \$1.1 billion in Fund 6 revenue in fiscal 2010-11.

Lawmakers could consider ways to increase revenue to Fund 6. They may consider a constitutional amendment authorizing a vote to approve an increase in the 20-cent tax on gas and diesel fuel to pay off debt service for previously issued highway bonds. Another proposal could be to allow local-option elections on local increases in the motor fuels tax, with the revenue going to fund local highway improvements. Lawmakers also may consider authorizing an additional sales tax for transit or expanding the number of counties that may impose vehicle-related fees, such as registration fees, within their jurisdictions.

Proposals to fund highway projects by alternative means may be considered. This could include enabling

local entities to establish transportation finance zones by means beyond tolling agreements between a local entity and TxDOT, to which they currently are limited. Lawmakers also may consider adjusting certain transportation-related fees, such as registration fees for special vehicles.

Private participation in road projects.

Lawmakers may examine the roles of public and private entities in building new toll roads and the conditions under which a tolled road could be incorporated into an existing toll-free highway. The general authority of the state to enter into comprehensive development agreements (CDA) with private entities to build toll projects expired in 2009.

Proposals that the 82nd Legislature may consider include extending the state's authority to enter into CDAs, modifying the duration of these agreements, allowing potential projects to be solicited only after an environmental clearance, or further strengthening restrictions on the so-called non-compete clauses sometimes found in these contracts.

The Legislature also could re-examine the right of first refusal granted to local public tolling entities to negotiate for rights to develop and operate toll projects within their jurisdictions. Proposals could emerge to modify or remove the primacy of local public tolling entities or to modify or remove the market evaluation process that precedes an agreement that local tolling entities reach with TxDOT on a toll project. One proposal could include establishing a multi-step process by which local public entities and private tolling authorities have varying windows of opportunity to opt to develop a toll project.

TxDOT Sunset review. TxDOT is undergoing a limited Sunset review to be presented to the 82nd Legislature. In 2009, HB 300 by Isett included Sunset review recommendations but was not enacted. The 81st Legislature, in its first called session in 2009, continued TxDOT until 2011. The newest Sunset staff review evaluates recommendations from the full review of the agency in 2008. TxDOT says it already has implemented some of those recommendations, such as establishing a separate rail division, revising aspects of project planning and development, adopting a public involvement policy, implementing a system for

tracking complaints, and making changes to contract management. Lawmakers may consider proposals for further revisions in these areas.

Lawmakers may consider proposals to restructure the Texas Transportation Commission, including replacing the commission with a single commissioner or electing commission members. They also may revisit previous proposals regarding legislative oversight and agency structure.

Distracted driving. Lawmakers may consider legislation aimed at curbing behaviors thought to contribute to distracted driving, such as text messaging and using cell phones while driving. Proposals may create a criminal offense or a civil penalty for texting while driving, or for texting or using a cell phone without a hands-free device for young drivers or for the population at large.

Red light cameras. Lawmakers may seek to restrict or prohibit municipal use of red light cameras for traffic offenses.

Rail. The 81st Legislature adopted a rider in the General Appropriations Act for fiscal 2010-11 to provide up to \$182 million to the Texas Rail Relocation and Improvement Fund, which has not received funding since its creation in 2005. The comptroller did not authorize the appropriation, which was contingent upon a certain finding of fact about available revenues. Lawmakers may consider allocating money for the fund through a direct appropriation or by dedicating a funding stream, such as the business and sales taxes the railroad industry now pays.

Government organization

Redistricting. The Legislature will consider proposals to redraw district boundaries for state representatives and senators, the Texas congressional delegation, and the State Board of Education to reflect population shifts measured by the 2010 census. Lawmakers will have to follow certain state constitutional requirements, such as avoiding crossing county lines in drawing Texas House districts. They must incorporate equal-population standards, minority voter representation protections required by the federal Voting Rights Act, and prohibitions against racial and

partisan gerrymandering, as outlined in U.S. Supreme Court decisions. The Legislature will have to complete redistricting of Texas House and Senate districts by the end of the regular session or else that task will fall to the five-member Legislative Redistricting Board (House speaker, lieutenant governor, attorney general, comptroller, and land commissioner).

Lawmakers also may consider proposals to shift redistricting authority from the Legislature to an independent commission or to add new requirements, such as adhering to political boundaries, prohibiting use of partisan political data, or counting prison inmates, college students, or other groups as residents of districts other than the one in which they currently reside.

State employee health benefits. Facing a fiscal 2011 shortfall for state employee health benefits, which are administered by the Employees Retirement System (ERS) of Texas, the ERS board in May shifted \$143 million in costs to state employees and their dependents, such as increasing copays for drugs and doctor visits. ERS projects that to maintain the level of benefits provided by the state employee group health benefits program in fiscal 2011 and to replenish a statutorily required reserve fund, the program will require an additional \$887 million from all funding sources for fiscal 2012-13.

To cover the current shortfall, the Legislature could appropriate additional funds for state employee health benefits or could consider changes to those benefits. The Legislature could change the contribution strategy, such as requiring employees to pay a share of the monthly premium for their health coverage, changing the share of premiums employees pay for dependents, changing the retiree contribution for health services based on years of service, or requiring people who make certain lifestyle choices, such as smokers, to pay more. The Legislature also could offer alternative plans, such as having the state contribute to health savings accounts for employees rather than participating in a traditional health plan.

Elections. Legislators may consider requiring all voters to present government-issued photo identification at polling places before being permitted to vote. Proposals may emerge to require proof of U.S. citizenship when registering to vote. Another proposal would establish same-day voter registration at the polls. Some may propose moving the presidential primary

election date from the first Tuesday in March to earlier in the year. A proposal to expand the use of countywide polling places, or “super precincts,” may be considered.

Eminent domain. Some proposals could seek to revise aspects of eminent domain authority in Texas. Lawmakers may revisit whether to allow a property owner damages for diminished access to roads from remaining property when a portion of a lot is taken.

Another theme that could emerge is whether owners whose land is taken through eminent domain should have the right to repurchase the land, and at what price, if the public use is cancelled. Lawmakers also could consider imposing due diligence requirements on condemning entities to make good faith offers to property owners upfront. They may consider limiting the authority to condemn property in so-called slum and blight areas.

Other proposals may include revisions to the eminent domain process, such as when an entity must disclose its authority and intention to take a property, whether to require condemning entities to offer relocation assistance to displaced property owners and to provide documents in a timely way, and how to define who may exercise eminent domain authority.

Local zoning and regulatory powers.

Lawmakers may consider proposals to extend the scope of the Private Real Property Rights Preservation Act by requiring municipalities to compensate a property owner when they enact regulations that substantially reduce the value of the owner’s land. Other proposals could include granting counties authority to execute limited zoning and other land use authority.

Statewide HR department. As the state examines possible cuts to state agencies’ budgets, lawmakers may consider consolidating human resources functions into a single statewide agency. The creation of a Department of Human Resources might be similar to the ongoing consolidation of state information technology functions into the Department of Information Resources.

Texas Public Finance Authority. The Texas Public Finance Authority (TPFA), which manages the state’s debt issuance, was reviewed this year by the Sunset Advisory Commission. The Legislature may consider commission recommendations to eliminate the

requirement to use escrow accounts to hold bond funds for cancer research, which the commission says would save the state at least \$31 million in general revenue funds in fiscal 2011-12. The Sunset Commission recommended that the Legislature allow all universities to access TPFA services, which could lower their bond-related costs. The commission also recommended that the Legislature require the Texas State Technical College to use TPFA services because as a smaller, infrequent issuer of debt, the college lacks the expertise to minimize issuance cost.

Texas Forest Service. The Texas Forest Service is under Sunset review. Sunset staff have proposed creating a commission to oversee the agency. Sunset staff recommend that the commissioners be appointed by the Texas A&M System Board of Regents. The Forest Service currently is under the authority of the Texas A&M University System. Further recommendations are to strengthen the Forest Service’s fire-fighting authority and planning and to eliminate the seven peace officers it employs.

Government efficiency. The privatization of some state services and consolidation of government functions may be discussed. State laws on the procurement and contracting also could be examined.

Judiciary

The Legislature may consider enacting a variety of limits on civil liability during the upcoming legislative session.

Asbestos litigation. Legislators may consider requiring that, before any claims may be filed against existing asbestos companies, litigants resolve all claims against asbestos litigation trusts. These trusts were established by bankrupt companies whose products exposed workers and customers to asbestos. Legislators also may consider examining the 40 percent contingency fees that plaintiff’s attorneys routinely charge in asbestos cases, with proposals to limit such fees to one-third or less.

Medical malpractice. Recent lawsuits over injuries that occurred in a hospital or medical office setting have raised questions about the applicability of premises liability and medical malpractice laws.

The Legislature may consider clarifying in statute the differences between premises liability and medical malpractice.

Frivolous lawsuits. Legislators may consider proposals to require the plaintiff in a frivolous lawsuit to pay the defendant’s attorney’s fees and court costs. Legislators would have to determine what constitutes a frivolous lawsuit and whether a judge, jury, or both would decide when a lawsuit was frivolous.

Lawmakers also may consider granting judges more authority to dismiss frivolous lawsuits. Proposals could focus on allowing judges to dismiss these suits earlier in the litigation process, including through a “motion to dismiss” that defendants could file in response to a plaintiff’s initial pleadings.

Limiting causes of action. Legislators may consider requiring that courts recognize only causes of action that explicitly exist in statute.

Court reorganization. A reorganization of the trial court system and changes in the method of judicial selection in Texas could be considered.

Expedited trials. Lawmakers may consider requiring that lawsuits with claims between \$10,000 and \$100,000 be heard within a year of when they are filed. They also may consider limiting discovery to four to six hours of depositions and 16 to 24 interrogatories.

Banning consideration of Sharia or foreign law. A statutory change or constitutional amendment similar to those in other states to prohibit Texas courts from considering Sharia (Islamic religious) law, international law, or the precepts of other nations could be considered.

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