

## *Topics for the 85th Legislature*

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The Texas Legislature will consider a wide variety of topics when it convenes in regular session on January 10, 2017. Among other prominent issues, lawmakers are expected to consider proposals to reduce property taxes, revise criminal offenses and penalties, reform Child Protective Services and the foster care system, address abortion issues, expand school choice, revise public school testing and accountability programs, address college affordability, review voter identification requirements, address water needs, and revise regulations and fees for those carrying handguns. This report highlights many, although by no means all, of the issues the 85th Legislature may consider during its 2017 regular session.

A total of 24 agencies are under review this session by the Sunset Advisory Commission in areas that include the Employees Retirement System, the Railroad Commission, the Department of Transportation, four river authorities, and boards that govern physicians, nurses, and other health professionals. During each regular legislative session, the commission reviews state agencies based on a schedule established in law and provides recommendations to the Legislature on whether to continue each agency and how to improve its functions.

### **Appropriations and spending**

When the 85th Legislature writes the state budget for fiscal 2018-19, it will consider agency spending requests in the context of expected state revenue. Some of the requests for state spending are discussed in this report under specific topic categories.

In January 2017, the comptroller's *Biennial Revenue Estimate, 2018-19* will report the amount of revenue available for appropriation by the Legislature. In October 2015, the comptroller estimated that the state would end fiscal 2016-17 with a cash balance of about \$4.1 billion. That estimate will be updated in January.

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State agencies were instructed to submit spending requests for general revenue and general revenue dedicated funds that were 4 percent less than their appropriations for fiscal 2016-17. Funds for certain programs

were exempted from these reduction requirements, including amounts necessary to maintain funding for the Foundation School Program and Child Protective Services and to maintain public safety resources in the state's border region. The instructions also exempt from the 4 percent reduction the money used to maintain funding for behavioral health services programs, which could apply to several state agencies. Also exempt from the reduction were funds needed to maintain current benefits and eligibility in Medicaid, the Children's Health Insurance Program, the foster care program, the adoption subsidies program, and the permanency care assistance program, which provides financial support under certain circumstances to relatives and others who become foster parents.

Under the Texas constitutional spending cap, state spending not constitutionally dedicated to particular purposes may not increase from one biennium to the next beyond the rate of growth in statewide personal income adopted by the Legislative Budget Board (LBB) unless the cap is waived by a majority vote of both houses of the Legislature. On December 1, the LBB adopted a projected state personal income growth rate of 8 percent from fiscal 2016-17 to fiscal 2018-19. Subject to revisions in the revenue forecasts and subsequent appropriations, this limits spending from non-dedicated tax revenue in fiscal 2018-19 to \$99.9 billion, up from \$94.6 billion.

Legislators may consider proposals to use the state's Economic Stabilization Fund ("rainy day fund") for fiscal 2017 spending. As required by Government Code, sec. 316.092, the Select Committee to Determine a Sufficient Balance of the Economic Stabilization Fund recently determined \$7.5 billion to be a sufficient minimum balance for the fund for fiscal 2018-19.

Lawmakers could debate whether to revise how the state's budget is developed and formatted, including using programs, rather than strategies, for listing agency appropriations and implementing "zero-based budgeting," in which each item within an agency's budget is set at zero at the beginning of the budget-writing process.

#### **Strategic fiscal review of certain agencies.**

Sixteen agencies will undergo Strategic Fiscal Review during this budget cycle, which is a process designed to examine the performance and cost-effectiveness of state agency operations. As part of the process, the LBB will collect detailed data on each agency's programs and

examine alternative program funding levels and methods. It will also study the relationship of each agency's programs to its mission and statutes, as well as each agency's implementation of directives and use of certain funds for programs. The 16 agencies listed below represent seven budget articles.

- Facilities Commission
- Department of Family and Protective Services
- Department of State Health Services
- School for the Deaf
- School for the Blind and Visually Impaired
- University of Texas at Austin
- Texas A&M University at College Station
- Texas Tech University
- University of Houston
- University of North Texas
- Texas State University
- Texas A&M AgriLife Extension
- Texas A&M AgriLife Research
- Texas Department of Criminal Justice – Correctional Managed Health Care
- Department of Agriculture
- Lottery Commission

Lawmakers may consider legislation to place requirements for the strategic fiscal review into statute.

#### **Supplemental appropriations for fiscal 2017.**

The 85th Legislature will consider additional spending for the current fiscal year. General revenue funding for Medicaid-related entitlement programs is expected to run out in 2017. The most recent estimate available for the Medicaid-related shortfall in the budget is \$1.6 billion in general revenue and \$3.4 billion in all funds. Other supplemental appropriations could be considered, including funding for critical needs requests at the Department of Family and Protective Services, including more funding for Child Protective Services.

**Dedicated revenue.** Lawmakers may discuss the use of statutorily dedicated accounts in the state budget. Government Code, sec. 403.095 requires the comptroller to include in the estimate of funds available for general-purpose spending the amounts in general revenue dedicated accounts expected to exceed appropriations from those accounts. The 84th Legislature appropriated \$7.8 billion in general revenue dedicated funds for fiscal 2016-17, an increase of \$422.5 million from fiscal 2014-15. The LBB reports estimated balances of about \$3.5 billion in general

revenue dedicated accounts available to be counted toward budget certification for 2016-17 general revenue fund appropriations.

Lawmakers may consider proposals to stop using dedicated accounts to certify the budget or for purposes other than those for which they originally were intended. Other proposals could include reducing revenue collection in these accounts by lowering or suspending fees.

**Rainy day fund.** Lawmakers could debate revisions to the purpose and uses of the rainy day fund. They may consider proposals to use part of the fund for debt relief, infrastructure projects, or unmet state needs or to reduce taxes, as well as proposals to reduce the “sufficient balance” in the fund.

**Spending limits.** Legislators may consider revising the current limits on state expenditure growth or imposing new ones. This could include proposals to limit the rate of expenditure growth to a measure based on population and inflation or another similar measure, as well as proposals to impose statutory limits in addition to the existing constitutional limits.

## Taxes and revenue

The 85th Legislature may consider a number of proposals to reduce the tax burden on property owners, as well as to exempt certain products from the sales tax.

**Property appraisals.** Lawmakers may debate bills aimed at increasing transparency in local property appraisal districts. When a property taxpayer disagrees with a county appraiser’s valuation of a property, the taxpayer may appeal it, first to the appraisal district and then to an independent appraisal review board (ARB). The Legislature may consider proposals to establish standards or a funding source for ARBs to maintain their independence from appraisal districts. Proposals also may include making the chief appraiser of a local taxing district an elected position.

Lawmakers also may consider setting a limit on the amount by which a property’s appraised value may increase in a year.

**Truth in taxation.** Current law requires certain taxing districts to receive voter approval before increasing the effective tax rate by more than 8 percent and when more than a certain percentage of residents petition the district. Lawmakers may examine proposals relating to these “rollback elections” or other local elections, including legislation that would require bond elections to be held on the uniform election date in November or require the ballot proposition to appear in a certain form.

**Bond election ballot language.** Lawmakers may discuss requiring more disclosure of the impact on property taxes from local bond propositions. Proposals could include requiring local jurisdictions, such as cities, counties, and school districts, to state how much total debt the governmental entity has assumed and how much property tax an average homeowner would have to pay to defray existing debt and repay the proposed bonds.

**Commercial property appraisal.** Lawmakers may consider ways to address concerns about differences between the appraised value and market value of commercial properties. Proposals could emerge to modify the appeals process by narrowing the definition of what constitutes a comparable commercial property. Other proposals could involve requiring price disclosures on all real estate sales.

**Agricultural valuation.** Lawmakers in 2017 may again consider proposals on agricultural valuation for property tax assessment. Land used for agricultural purposes may be appraised based on its capacity to produce income from those activities, rather than on market value. Bills considered but not enacted during the 84th Legislature in 2015 included one that would have allowed certain sustainable farms and community gardens to receive the agricultural valuation and another that would have expanded the circumstances under which rollback taxes applied following a change in use of the land. Similar proposals may emerge during the regular session of the 85th Legislature.

**Sales tax exemptions for certain products.** Current law levies a 6.25 percent sales tax on retail sales on most non-essential products. Legislators may consider exempting certain products, including diapers, feminine hygiene products, or certain marine vehicles. Lawmakers also may consider creating a sales tax holiday for students buying textbooks.

## Business and economic development

The 85th Legislature may consider proposals on business regulations and incentives and on occupational licensing.

**Texas Economic Development Act.** Lawmakers may consider proposals in 2017 to increase state oversight of agreements reached under the Texas Economic Development Act. Tax Code, ch. 313 allows school districts in Texas to enter into agreements with businesses for projects in the state that would create a certain number of qualifying jobs. In exchange, the company's property tax burden is temporarily reduced. The House Ways and Means Committee has studied ch. 313 following the release of a State Auditor's Office report that noted that Texas did not verify certain information submitted by school districts and businesses.

**Criminal history and job applications.** The Legislature may consider proposals regarding "banning the box," which refers to a question on employment applications asking about criminal convictions. Proposals may include restricting the ability of municipalities to enact "banning-the-box" ordinances that apply to certain businesses operating within the municipality or, conversely, prohibiting state agencies from asking about criminal history at certain stages of the hiring process.

**E-Verify.** Lawmakers may consider statutorily requiring state contractors to use the federal E-Verify system to check whether potential employees are allowed by law to work in the United States. The Texas attorney general issued an opinion holding that a December 2014 executive order issued by the governor requires state contractors to use E-Verify, and the Legislature may consider codifying that requirement.

**Designated doctors.** Proposals may emerge to revise training and certification requirements for doctors who are designated by the Texas Department of Insurance (TDI) to answer questions about work-related injury or occupational illness. TDI's Division of Workers' Compensation requires that designated doctors undergo specific training and receive a special certificate from the state, subject to renewal every two years. The Legislature may consider proposals to reduce training requirements or frequency of recertification.

**Minority shareholder rights.** Minority shareholders may be entitled to a fair-market value buyout of their position if a court finds that they have been oppressed by the majority shareholders. In its 2014 opinion in the matter of *Ritchie v. Rupe*, the Texas Supreme Court modified the criteria used to determine if a minority shareholder has been oppressed. Lawmakers may consider proposals to place in statute a definition or set of criteria for making such a determination.

**Occupational licensing.** The 85th Legislature may consider proposals to reduce certain education and training requirements for occupational licensing or to streamline the process for obtaining licenses. Lawmakers also may consider requiring licensing regimes to undergo review by the Sunset Advisory Commission.

**Union dues.** Current law allows employees of state and local governments, including school districts, to request the automatic deduction of union membership fees from their paychecks. The political subdivision pays the union directly after the deduction. Lawmakers may consider proposals to limit or eliminate these automatic deductions.

## Criminal justice and public safety

Lawmakers may consider new criminal offenses and changes to the state's criminal procedures. Criminal offenses outside the Penal Code could be examined to determine if they are too broad, would be better handled by civil law, or are unnecessary because they involve actions covered by other criminal laws. Proposals may emerge to prohibit arrests for low-level, class C misdemeanors or to expand use of the current cite-and-summons law, which allows peace officers to issue a citation and a summons to appear in court, rather than arrest and take a suspect to jail. Increases in criminal penalties could be debated, including penalties for intoxication offenses such as manslaughter and assault.

**Law enforcement.** Lawmakers could consider amending a law on the reporting of peace officer-involved shootings. In 2015, the 84th Legislature required law enforcement agencies to report to the attorney general on certain of these shootings. The attorney general's office has posted on its website the reports on individual shooting incidents and an annual report for 2015. Lawmakers could

consider requiring the reporting of more information about the officers and information on incidents in which other types of injuries occur. They also might debate whether to create a penalty for law enforcement agencies that are not complying with the 2015 law.

Increasing punishments for killing or injuring peace officers could be a topic for debate by the 85th Legislature. Calls to examine penalties for such crimes followed the recent killing of peace officers in Texas and other states. Under current Texas law, murder of a peace officer is a capital crime punishable by death or life without parole if the officer was acting in an official capacity and the person committing the crime knew the victim was a peace officer. Legislators could consider increasing penalties for other crimes in which peace officers are the victims or expanding the state's hate crime law to include crimes committed against peace officers.

The 84th Legislature established requirements for body-camera policies and a grant program to help local law enforcement agencies defray the cost of body cameras worn by officers. Lawmakers in 2017 may debate proposals about storing the data and records from body cameras and presenting digital evidence in court.

**Adult prison, probation, and parole.** According to June 2016 projections by the LBB, the state's prison capacity will exceed offender population by about 5,000 during fiscal 2017 and 2018, which could prompt proposals to save the state money by closing a Texas correctional facility. Since 2011, the Texas Department of Criminal Justice (TDCJ) has closed three facilities, and the agency's budget request includes the proposed closing of a 450-bed facility and the repurposing of another 667-bed facility, both in Houston. Proposals to close other state and private facilities also could emerge.

TDCJ's use of administrative segregation, also known as solitary confinement, could be debated by the 85th Legislature. Texas held 4,193 offenders in solitary confinement at the end of October 2016, which constitutes about 2.9 percent of the total population incarcerated by TDCJ. This is a decrease from the 6,564 held in administrative segregation at the end of fiscal 2014 and the 9,542 held at the end of fiscal 2006. Proposals could emerge to limit the use of administrative segregation. The Legislature might require TDCJ to create a type of high-security housing as an alternative to placing inmates in either administrative segregation or the general population.

Other proposals could address how administrative segregation is structured, including statutorily prohibiting release to the community directly from administrative segregation and requiring more activities for those housed there.

Lawmakers may discuss expanding the state's system for transitioning offenders from prison to society. TDCJ has requested \$1.5 million for 30 more reentry coordinators to work with offenders sentenced to state jails. These coordinators would supplement those already working in state jails by assessing new inmates, referring them to appropriate programs, and providing other reentry services, such as help with applications for state and federal benefits. Legislators also could debate expanding mental health and substance abuse treatment in prisons and after incarceration.

**Age of criminal responsibility.** Lawmakers may consider whether 17-year-olds should be subject to the adult or juvenile criminal justice systems. Texas is one of seven states in which 17-year-olds accused of committing crimes enter the adult criminal justice system, rather than the juvenile system. Legislation to change this threshold so that 17-year-old defendants would be under the jurisdiction of the juvenile rather than the adult justice system failed in the 2015 legislative session but could be renewed in 2017.

**Juvenile justice.** Legislators could evaluate the Texas Juvenile Justice Department's progress on a regionalization plan required in 2015 by the 84th Legislature to keep children closer to home in lieu of commitment to the department's secure facilities. In August 2016, the department issued a report on the progress of the plan and the diversion of juveniles from state facilities. Funding for the program could be debated, including proposals to increase funding based on the satisfaction of performance standards.

**Indigent defense.** Lawmakers may consider whether the state should increase general revenue funding for indigent defense grants to counties to provide attorneys for criminal defendants who cannot afford to hire their own. The state currently appropriates dedicated funds and general revenue to pay for about 12 percent of criminal indigent defense costs, while Texas counties cover the remaining cost. The Texas Indigent Defense Commission and the counties have proposed that the state increase general revenue spending for grants to counties as part of a proposal to move to full state funding of criminal

indigent defense in fiscal 2022-23. A proposal that might be debated by the 85th Legislature would increase state general revenue spending from \$7.5 million during the current biennium to \$212 million in fiscal 2018-19, which is estimated to be half of the indigent defense costs during that budget period.

**Bail and pre-trial detention.** Lawmakers may discuss pre-trial detention and bail for those accused of crimes. Almost 75 percent of those in local jails in June 2016 were being held before their trials, excluding some federal inmates and parole violators, many because they could not post bail, according to a recent Texas Judicial Council report on pretrial practices.

Debate may include issues such as using risk assessments to give judges information for bail decisions, how to best supervise those released into the community pre-trial, the use of personal bonds that do not require cash or other sureties, and restrictions on who may be released on bail. Providing indigent criminal defendants with representation early in the process after an arrest could be a part of the discussions. Other proposals could include increased training on screening inmates after an arrest when making bail and supervision decisions.

**Jail safety and oversight, mental health care.** Legislators may consider oversight, requirements, and standards for local jails. Proposals could address the health and safety of inmates, including medical care, physical safety, use of force, detoxification, and preventing jail suicides and deaths in custody. Discussions could include whether the authority of the Texas Commission on Jail Standards should be expanded, as well as proposals for independent oversight of inmate complaints, similar to the authority of the independent ombudsman in the juvenile system.

Other proposals could focus on mental health care in jails. Topics could include treatment in jails and after release, along with more mental health training for jail staff, revised screening methods of those arrested, and more state funding for mental health services. Proposals may emerge to divert jail-bound individuals with mental illness to mental health or addiction treatment settings and, under certain circumstances, to release more criminal defendants with mental illness on personal bond as they await trial. Expanding the use of specialty courts focused on substance abuse or mental health could be proposed.

**Marijuana.** The Legislature could consider reducing penalties for possession of small amounts of marijuana or other drugs. Proposals relating to marijuana possession could include reducing the penalty in some possession cases to a class C misdemeanor, replacing criminal penalties with civil fines, and requiring probation, treatment, or education programs in some cases. These changes could be limited to younger defendants or to those considered nonviolent. Proposals also could emerge to legalize marijuana following the Colorado model, where the drug is taxed and regulated in a manner similar to alcohol.

**Asset forfeiture.** Lawmakers may consider revising laws on asset forfeiture related to alleged crimes, which might include a proposal, similar to a 2015 New Mexico law, that would require a criminal conviction before property could be forfeited to a law enforcement agency. Legislators may discuss requiring that assets or their proceeds be sent to a fund outside the control of the local law enforcement agencies involved in the alleged crime and increasing the burden-of-proof requirements prosecutors must meet in forfeiture hearings. Other proposals could focus on requiring information about charges filed in each case to appear in a currently required audit report.

**Border security.** The 85th Legislature may discuss the appropriate level of funding for border security operations. Total state funding for border security for fiscal 2016-17 was \$800 million, according to the LBB. The funds were appropriated to six state agencies, with the Department of Public Safety (DPS) receiving \$749.8 million. A portion of that went to recruit, train, and equip 250 more troopers. In its 2018-19 budget request, DPS asked for an increase in that amount of almost \$300 million for border security efforts. The new funds would pay for 250 more troopers and several other items, including 5,000 more cameras and other equipment and technology, and to replace two helicopters and four planes.

**Enforcement of immigration law.** Lawmakers may debate the role of state and local law enforcement in enforcing federal immigration laws, including proposals to prohibit local entities from preventing peace officers from inquiring into the immigration status of individuals they arrest. Another proposal may be to prohibit local rules that limit cooperation with federal immigration enforcement, creating what are commonly known as sanctuary cities.

**Criminal procedure.** Proposals for revising criminal procedures may be considered, including recommendations from the Timothy Cole Exoneration Review Commission established in 2015 by the 84th Legislature. These could include requiring electronic recording of custodial interrogations and creating regulations for the use of testimony from jailhouse informants.

## Health and human services

Proposals to reform Child Protective Services (CPS) and the foster care system could dominate the discussion on health and human services by the 85th Legislature. Lawmakers also could prioritize consideration of proposals addressing access to health care and abortion issues.

**Mental health.** Lawmakers may consider proposals to address mental health treatment in Texas, including proposals to address shortages of psychiatric treatment beds for both civil and forensic patients and to expand community treatment options, such as diverting individuals with mental health diagnoses from the criminal justice system and increasing access to licensed professional counselors.

**Child Protective Services.** Lawmakers may consider proposals to reform CPS at the Department of Family and Protective Services, continuing efforts in previous sessions to reduce worker turnover and prevent child abuse and fatalities. Proposals may focus on increasing the state's foster care capacity by expanding foster care redesign and reducing barriers to adoption, while increasing salaries and training for CPS staff.

**Medicaid managed care.** As most of the state's Medicaid programs continue transitioning to managed care, lawmakers may consider proposals to encourage health provider participation in the Medicaid network and to address provider reimbursement rates under managed care. Other proposals may include increasing transparency in the rate-setting process and protecting consumers from the negative impacts of disputes over out-of-network services.

**Sunset review of professional boards.** Several state health professional boards will undergo review by the Sunset Advisory Commission this session, including the Texas Medical Board, the Texas Board of Nursing,

and the Texas State Board of Pharmacy. Lawmakers may consider recommendations to authorize in statute the medical board's authority to inspect an unregistered pain management clinic and to adopt the Interstate Medical Licensure Compact. They also may consider tools needed to ensure safe dispensing of dangerous, highly addictive drugs to patients. A proposal may emerge to transfer the regulation of marriage and family therapists, professional counselors, and social workers from the Department of State Health Services to the Texas Department of Licensing and Regulation's newly created health professions division.

**Telemedicine.** The 85th Legislature may consider proposals to expand access to telemedicine in rural areas and to address issues with health insurance reimbursement for this treatment modality, which uses advanced telecommunications technology to connect a health care provider with a patient in a distant location. Proposals could include increasing access to telemonitoring for patients with chronic conditions and those in correctional facilities, addressing provider network adequacy issues in rural areas using telemedicine, and changing the way Texas regulates physicians' use of the technology.

**Fetal remains.** Lawmakers may consider proposals to limit the use of fetal tissue for research purposes. They also may consider proposals to place into statute agency rules requiring the burial or cremation of fetal remains.

**Kinship placements and adoption.** The Legislature could discuss proposals to increase adoption of foster children, including faith-based initiatives. Lawmakers also may consider increasing the use of kinship care, in which a foster child is placed with a relative.

**Human trafficking.** Lawmakers could discuss trafficking of children in the state's foster care system. They may consider ways to increase services for trafficking victims and to help the Department of Family and Protective Services identify, recover, serve, or care for children and youth who are victims of trafficking before placing them into foster care.

**Abortion.** The Legislature could consider proposals to regulate abortion. This could include prohibiting a person from performing a third-trimester abortion, including in cases in which the fetus has a severe and irreversible abnormality. Other proposals could include requiring abortion facilities to submit monthly, rather than

annual, reports to the Department of State Health Services and to establish a secure electronic reporting system for those reports.

**“Wrongful birth” lawsuits.** Lawmakers may consider proposals to limit lawsuits in which parents claim that a doctor failed to properly warn of the risk of conceiving or giving birth to a child with certain birth defects.

**Freestanding emergency rooms.** As freestanding emergency rooms become more common in Texas, legislators may consider proposals to address related billing and advertising issues. Proposals may include prohibiting these facilities from charging an emergency room fee unless the treatment goes beyond a doctor’s office visit. Legislators also may consider proposals to add freestanding emergency rooms to the balance billing mediation statute and to require these facilities to display signs distinguishing them from urgent care clinics.

## Public education

A 2016 ruling by the Texas Supreme Court that upheld the constitutionality of the school finance system means that the 85th Legislature will not be under a court order to change funding mechanisms for public education. Lawmakers, however, have been studying the funding system during the interim and could discuss changing the formulas used to distribute funds to local districts. Proposals also could arise to increase revenue for specific programs, such as pre-kindergarten and school facilities.

Proposals to address student testing and school accountability could be discussed, including whether the state should continue to provide an alternate pathway to graduation for certain students who have failed to pass all of their required state exams. The Legislature may consider proposals to expand school choice, including state-funded accounts that parents could use to pay for private school tuition and other authorized expenses. Proposals also may emerge to address improper relationships between educators and students.

**School finance.** The Texas Supreme Court in May 2016 ruled that the school finance system meets requirements in the Texas Constitution for an efficient, free public school system and does not function as

an unconstitutional property tax. The court said in its opinion that the Legislature is responsible for education policymaking but also that Texas students “deserve transformational, top-to-bottom reforms.” The 85th Legislature may consider revisions to various aspects of school finance formulas.

Proposals could emerge to reduce reliance on a system known as recapture that redistributes local taxes collected by certain property-wealthy districts to lower-wealth districts. Recapture could receive further attention after a recent decision by voters in Houston ISD to reject sending local property tax revenue to the state for redistribution. As a result, the Texas Education Agency (TEA) instead will permanently remove pieces of commercial property from the district’s tax rolls.

Lawmakers could consider revising or eliminating another feature of the current school finance system known as the Cost of Education Index, which was designed more than 20 years ago to help districts adjust for varying economic conditions across the state. Lawmakers also may debate budget increases for specific programs, such as high-speed internet access and pre-kindergarten.

Facilities funding could be another topic for discussion. Fast-growth school districts point to the increasing debt burden on their local taxpayers. Meanwhile, charter schools, which lack taxing authority and receive no state funding for facilities, are seeking funding to provide facilities for more students.

**Testing and accountability.** Lawmakers could consider extending a 2015 law that offers an alternate pathway to satisfy graduation requirements for high school students who have failed to pass one or two of their five required STAAR end-of-course exams. The law, SB 149 by Seliger, is scheduled to expire September 1, 2017. For eligible students, schools must establish an individual graduation committee (IGC) composed of educators and the student’s parent to determine whether students who have passed all of their required courses are able to demonstrate content mastery through their coursework and other measurements. TEA data indicate that 2 percent of the class of 2015 graduates received their degrees through an IGC. Extending this law was among the recommendations to the 85th Legislature from the legislatively created Commission on Next Generation Assessments and Accountability.



Proposals also may emerge to further reduce state-mandated testing and to repeal the soon-to-be implemented A-F rating system for school districts and campuses.

**School choice.** The 85th Legislature could debate proposals to provide state funding for education opportunities outside the traditional public school system. This could include a program to establish education savings accounts as a mechanism to pay for authorized expenses such as tutoring, private school tuition, or other education services. Another proposed program could involve providing tax credits for businesses that contribute scholarships for certain students to attend qualifying private schools.

**Educator misconduct.** Lawmakers may act to address cases involving allegations of improper teacher-student relationships. Proposals could include additional funding and greater investigative authority for TEA, which investigates reports of educator misconduct. Legislators also could consider establishing criminal penalties for superintendents and principals who failed to report educators suspected of engaging in inappropriate relationships with students.

**Special education.** With questions raised about the availability of special education services for all qualifying students, lawmakers may consider an indicator used by TEA to monitor the percentage of students designated by a district for such services. They could debate whether such an indicator is needed and other proposals to ensure the appropriate use of special education programs.

**Retired teachers' health care.** For the second session in a row, the state's health insurance program for retired teachers is facing a major shortfall. The Teacher Retirement System of Texas estimates that TRS-Care will need between \$1.3 billion and \$1.5 billion to remain solvent through fiscal 2018-19. In addition to making budgetary decisions related to the shortfall, lawmakers may consider proposals to change the statutory contribution rates that provide funding for the program, revise eligibility requirements, or otherwise restructure the program.

The 84th Legislature in 2015 created a joint interim committee to study TRS-Care and make recommendations to sustain the plan. The committee's report recommends changing coverage for retirees under the age of 65, who the report says are driving up costs because they are not eligible for Medicare. Recommended options for those

younger retirees include state-funded health reimbursement accounts and high-deductible insurance plans in lieu of the current group health insurance.

## Higher education

Proposals related to higher education funding, including tuition and financial aid, likely will be considered by the 85th Legislature. Lawmakers may debate proposals to limit tuition increases, restructure financial aid programs, and address rising expenses from the Hazlewood tuition exemption program. Proposals also could emerge to expand community college baccalaureate degrees.

**Higher education tuition.** The 85th Legislature may consider proposals to address college affordability by reducing or limiting growth in tuition costs. They could consider eliminating a state requirement that public universities set aside 20 percent of the tuition they collect to provide financial assistance to students enrolled in the institution. Another proposal could be to limit the ability of the state's public universities to raise tuition unless they meet certain performance-based metrics, such as four-year graduation rates.

**Financial aid.** Proposals could emerge to restructure financial aid programs to support more students while providing incentives for students to graduate in less time. For instance, lawmakers could discuss limiting TEXAS Grants, the state's primary financial aid program, to the 120 hours required for most four-year degrees in order to discourage students from enrolling in unnecessary coursework. The Legislature also may consider awarding financial aid based on merit as well as financial need.

**Hazlewood exemption.** The Legislature may debate proposals on rising expenses to the state's public higher education institutions from the Hazlewood tuition exemption for Texas veterans and their families. The increasing cost has been attributed largely to the Hazlewood Legacy Program, which since 2009 has allowed veterans to pass any unused portion of the benefit to their children. Proposals may seek to limit students' eligibility for the Legacy Program based on various factors, such as the length of time a parent served in the military, or may reduce the number of hours that veterans may pass on to their children. Options also may include increasing state funding to institutions to cover the costs of the exemption.

**Adding or expanding campuses.** The 85th Legislature may consider requiring higher education institutions to gain approval from the Texas Higher Education Coordinating Board before creating or expanding a campus to a new physical location. Some have expressed concerns about the potential duplication of academic offerings or services by institutions in a given geographic area.

**Community college baccalaureate degrees.** Legislators in 2017 may consider expanding community college baccalaureate degrees in areas such as applied science and nursing. HB 1134 by S. Davis, considered but not enacted in 2015, would have allowed the coordinating board to authorize certain baccalaureate degree programs at public junior colleges if specific criteria were met. The 85th Legislature may review similar proposals.

**Texas Dream Act.** Lawmakers may discuss revising the Texas Dream Act, which allows certain undocumented high school graduates to pay in-state tuition rates to attend public institutions of higher education in Texas. The law has been in place since 2001.

**Sexual assault on campus.** The Legislature may consider proposals designed to curb sexual assault at the state's colleges and universities. Lawmakers in 2015 enacted HB 699 by Nevárez, which required higher education institutions to adopt a policy on campus sexual assault. Legislation considered in 2017 could address the definition of sexual assault in state law or establish an online portal for reporting incidents. Options also could include implementing education about dating violence in Texas middle or high schools.

## Energy, environment, and natural resources

Prominent topics in energy, environment, and natural resources may include proposals to manage the state's water resources and increase its water supply. Lawmakers also may consider proposals for continued support of the Alamo Complex master plan. Other proposals may address using unspent funds from programs designed to reduce emissions from vehicles and power plants.

**Water.** Lawmakers may consider proposals to address the water needs of the state's growing population. They could reexamine the benefits of establishing a state water

market, including ways to transport water from areas with abundant resources to water-insecure communities.

Lawmakers are expected to continue monitoring the performance of groundwater conservation districts. Proposals designed to improve district performance could address their permitting authority, discretion, or decision-making. One proposal could be to modify the regulatory authority of local districts and require state review and confirmation of districts' decisions on planning. Another proposal could involve statutory changes to require districts to consider the amount of water owned by the landowner when issuing permits.

**River authorities Sunset review.** The Central Colorado River Authority, Upper Colorado River Authority, Palo Duro River Authority of Texas, and Sulphur River Basin Authority is undergoing review this session by the Sunset Advisory Commission. The review will focus on the authorities' governance, management, operational structure, and compliance with legislative requirements.

While the authorities are not subject to being abolished, lawmakers may consider a recommendation to transfer the Central Colorado River Authority's functions and jurisdiction to the Upper Colorado River Authority. They also may debate recommendations applicable to all river authorities, such as requiring opportunities for public testimony at board meetings and other practices to improve accountability, openness, and transparency.

**Railroad Commission Sunset review.** The Texas Railroad Commission, which regulates the oil and gas industries, also is undergoing review this session by the Sunset Advisory Commission. This is the agency's third Sunset review since 2010. Review of the agency will include examining alternative organizational structures and assessing whether other state agencies could perform the commission's functions. Lawmakers could consider recommendations that include transferring contested hearings and gas utility oversight to other agencies, revising oil and gas monitoring to ensure public safety and environmental protection, and changing the agency's name to better reflect its functions.

**Vehicle emissions.** Lawmakers may consider proposals on how to use unspent funds from the Texas Emissions Reduction Plan (TERP) and the Low Income Repair and Assistance Program (LIRAP). Some fees collected that are dedicated to TERP and LIRAP have not

been appropriated to either program in recent years, and proposals may emerge to dedicate the unspent funds for their intended purpose of reducing vehicular emissions.

**Electric grid security.** Legislators may consider proposals to secure the state's electrical grid. These could include developing a disaster preparedness plan, implementing threat protection, and setting recovery requirements to secure the grid from the threat of man-made electromagnetic pulse attacks, geomagnetic solar storms, and radio frequency weapons.

**Oil and gas royalty payments.** Lawmakers may consider requiring an operator drilling allocation wells to negotiate leases specifically designed for allocation wells. They also may consider whether the state should mandate a specific method of calculating royalty payments in such circumstances. Proposals also may emerge to require that severance tax refunds be passed on to the royalty owner.

**Alamo improvements.** Lawmakers may consider proposals for continued support of the master plan for the Alamo Complex in San Antonio, including preservation, operation, and maintenance needs. Proposals may include making adjustments to an Alamo account that currently exists in the treasury, as well as providing additional state funding.

**Chronic wasting disease.** The Legislature may consider proposals on regulation or ownership of breeder deer in Texas after chronic wasting disease was detected last year in white-tail deer bred at a facility in the state. Since identifying the disease in the breeder deer last year, the Texas Parks and Wildlife Department has adopted different iterations of rules limiting the movement and release of breeder deer and setting testing requirements for breeding facilities. Lawmakers may consider proposals to revise those rules in statute. Another proposal could be to establish that deer born in a facility or purchased by a breeder are the personal property of the breeder, rather than the property of the people of Texas as stipulated in the Public Trust Doctrine.

## Transportation

The 85th Legislature may consider options to improve mobility in Texas, including proposals addressing state contracting practices for road construction and

maintenance, the regulation of different modes of transportation, and the enforcement of traffic laws.

**TxDOT Sunset review.** The Texas Department of Transportation (TxDOT) is undergoing review this session by the Sunset Advisory Commission. Proposals in this area may relate to increasing transparency in project selection and changing oversight of TxDOT's 25 districts. Lawmakers also could consider contracting issues, such as whether to prefer disadvantaged businesses or create incentives for contractors to shorten construction time.

**Toll roads.** Lawmakers may consider ways to reduce reliance on toll roads to meet Texas' transportation needs. In 2015, the Legislature enacted HB 2612 by Pickett, which required the Texas Department of Transportation to publish a report on the feasibility of eliminating toll roads in Texas. The Legislature could consider dedicating additional portions of the motor vehicle sales tax or the gasoline tax to the highway fund in conjunction with proposals limiting toll roads.

**Transportation network companies.** The Legislature may consider regulating transportation network companies (TNCs) at the state level. TNCs, such as Uber and Lyft, are businesses that provide platforms, often through a website or smartphone app, to connect paying riders to drivers using personal vehicles. These companies are predominantly regulated by the municipalities where they operate, which set standards for drivers and require TNCs to use certain measures intended to increase public safety. Proposals may emerge to enact a state law preempting such municipal regulations.

**Photo-enforcement of traffic violations.** The Legislature may consider limiting the authority of local governments to levy penalties on tickets issued without a law enforcement officer present. Proposals could relate to red-light cameras or photo enforcement of school bus stop-arm violations.

**Texting while driving.** Legislators may consider banning certain uses of cell phones while driving, such as texting, to reduce distracted driving, and proposals could include criminal or civil penalties.

**Driver Responsibility Program.** Lawmakers may consider changes to the state's Driver Responsibility Program, which authorizes DPS to impose surcharges on

drivers who commit certain traffic offenses. The surcharges are in addition to other fees or penalties for the offense, and a driver's license can be suspended for failing to pay surcharges. Revenue from the program goes into the Designated Trauma Facility and EMS Fund and the general revenue fund. Proposals could include:

- reducing surcharges or limiting the time frame during which they could be applied;
- requiring DPS to increase or expand amnesty programs;
- requiring DPS to increase or expand programs that reduce surcharges for low-income drivers;
- changing how drivers are notified of surcharges;
- revising which offenses are subject to the surcharges;
- giving DPS more ways to increase compliance; or
- eliminating the program.

**High-speed rail.** Lawmakers may consider proposals concerning the construction of a high-speed passenger rail system between certain major metroplexes in the state. Proposals may address a railroad's power to exercise eminent domain or prohibitions on state funding for high-speed passenger rail.

## Government organization

The 85th Legislature may consider proposals to change the items that may be presented for purposes of voter identification, as well as proposals for online voter registration, campaign finance disclosure, and cybersecurity.

**Voter ID.** Lawmakers in 2017 may revisit what constitutes acceptable voter identification following a recent U.S. appeals court finding that the state's voter ID law has a racially discriminatory effect. Temporary rules agreed upon by both parties in the voter ID lawsuit expanded the credentials Texans could show to cast a ballot in the November 2016 general election, but the issue remains under consideration by the courts. Proposals could emerge on what qualifies as approved voter ID in the state to address concerns by some about in-person voter fraud.

**Online voter registration.** Legislators may debate proposals that would allow eligible Texans to register to vote electronically. Currently, applicants must register in

person, by mail, or through a combination of faxing and mailing. HB 76 by Israel, considered but not enacted by the 84th Legislature in 2015, would have required the secretary of state to implement an online voter registration program. Lawmakers may consider similar legislation in the upcoming session.

**Public information.** The 85th Legislature may address concerns about the effects of a 2015 Texas Supreme Court decision in *Boeing Co. v. Paxton*. The decision changed the way a portion of the Public Information Act is interpreted by broadening the applicability of an exemption. Following the opinion, certain information that previously could have been considered public may be withheld under Government Code, sec. 552.104, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Proposals could seek to limit or clarify this exception to disclosure.

**Constitutional convention.** Lawmakers may consider proposals to seek a constitutional convention to amend the U.S. Constitution. Gov. Greg Abbott has called for Texas to help initiate such a convention, authorized under Article 5 of the U.S. Constitution upon application of the legislatures of two-thirds of the states. Proposed issues for an Article 5 convention could include requiring a balanced federal budget and granting more authority for states to override a federal law, federal regulation, or U.S. Supreme Court decision. Any amendments adopted by an Article 5 convention would have to be ratified by the legislatures of three-fourths of the states.

**Advertising public notices.** Lawmakers may consider proposals to address how certain government notices are advertised to the public. Current law requires public notice of certain government activity to be published in local newspapers. The 84th Legislature created a committee to study the issue. The committee recommended retaining for now the requirement that government entities place notices in print media. To allow for further study, proposals may emerge in 2017 to require political subdivisions to report specifically on the amount they spend publishing public notices because they often aggregate that amount with other advertising expenditures for reporting purposes. Legislation also may emerge that would create a central website where public notices appeared online in addition to being printed in a newspaper.

**Cybersecurity.** Lawmakers may consider proposals on cybersecurity and the protection of personal and financial information held by the state, local governments, financial institutions, and businesses. Proposals could emerge to require agencies to include in their agency security plans an acknowledgement that the agency heads have been made aware of risks revealed during their plans' preparation. Other options could include ensuring that funding is available to replace outdated information systems, also called "legacy systems," and investing in higher education cybersecurity programs to increase the number of cybersecurity practitioners in Texas.

**Public employees.** Legislators may debate whether the state of Texas and other governmental entities should continue voluntary withholding from public employees' salaries for payment of union dues. Another issue that could be discussed involves the inconsistent use by state agencies of emergency and administrative leave for state employees. The State Auditor's Office found that some agencies have granted the leave for reasons other than those stated in statute, including as severance payments to fired workers, and has recommended that the Legislature clarify statutory provisions for the use of emergency and administrative leave.

**Campaign finance.** Changes to laws on information contained in campaign finance and personal finance statements for elected officials and candidates for public office could be discussed during the 2017 regular legislative session. Lawmakers may debate the requirements for disclosing when elected officials have a substantial interest in an entity doing business with the state, the extent to which officeholders must disclose the personal finances of their spouses and other close family members, and the process for reviewing complaints.

**Public pensions.** The stability of certain municipal pension systems that are subject to joint administration by the Legislature and local officials could be discussed during the upcoming session. Lawmakers could debate plan design changes for certain municipal retirement systems that are facing major funding shortfalls, including public pension systems in Dallas and Houston. To ensure long-term funding of municipal pension systems subject to joint state and local administration, the 85th Legislature also could consider proposals to limit local authority to decide on plan designs.

## Regulatory issues

Proposals in the regulatory arena that might come before the 85th Legislature include those to change gun regulation and licensing fees, to combat financial exploitation of the elderly, to change the regulation of short-term lending, and to restrict the use of public bathrooms and other facilities to persons based on their biological sex.

**Gun regulation.** Legislators could debate changes to the laws governing where individuals with licenses may carry handguns. In 2015, the 84th Legislature created a process to challenge handgun bans by state agencies and local governments on certain government premises. The attorney general received authority to investigate citizen complaints about these bans and to sue local governments if a ban was believed to be unlawfully restrictive. The process has been used to challenge bans on various types of government premises, including buildings with courtrooms. At least two of these disputes have resulted in the attorney general's office filing lawsuits against local governments. Legislators could consider proposals that would address the questions raised in these lawsuits by explicitly allowing gun bans in buildings that contain courtrooms.

Legislators also could consider proposals to examine the fees for handgun licenses, as well as those allowing people to carry handguns without a state license, sometimes referred to as "constitutional carry."

**Multiple occupancy bathrooms.** The use of multiple occupancy bathroom and changing facilities by transgender individuals may be a topic for debate during the 2017 legislative session. Proposals could include requirements that public entities such as cities, counties, and school boards restrict the use of such facilities to persons based on their biological sex.

**Religious liberty.** The Legislature may discuss targeted proposals on religious liberty that could help individuals, businesses, and organizations avoid litigation. Debates could include those on proposals to allow faith-based adoption and foster care agencies to make placement decisions based on their religious beliefs or to allow small businesses and privately owned corporations to avoid providing goods and services for same-sex weddings.

**Payday and auto title lending.** State lawmakers in 2017 may review legislation related to short-term lending, including payday and auto title lending. Proposals could include applying statewide a local ordinance adopted by various Texas cities that limits a loan amount based on the borrower's income, among other provisions. Other proposals may require documents provided by short-term lenders to consumers to be available in both English and Spanish. Debate about short-term lending legislation could be affected by uncertainty about federal rules proposed by the Consumer Financial Protection Bureau on payday and auto title lending and potential discrepancies among federal, state, and local policies.

**Elder financial exploitation.** With the state's aging population projected to increase substantially over the next 10 to 20 years, lawmakers may consider proposals to target financial exploitation of elderly Texans. These proposals could include providing mechanisms for financial institutions and securities broker-dealers to make a report and hold a senior's funds without liability if exploitation of the client was suspected. Options also may include expanding statewide a program by the Office of Court Administration that monitors guardianships in several counties and that aims, in part, to protect wards from financial abuse.

**Alcohol regulation.** Lawmakers could explore several proposals on regulating and selling alcohol, including the repeal of laws that restrict alcohol sales on Sunday. They also could consider changes to the current three-tier system that regulates and separates the manufacturing, distributing, and selling of alcohol. Proposals could include those to allow big-box retail chains to sell liquor, which currently is restricted to liquor package stores.

Lawmakers may revisit the issue of powdered alcohol, which can be added to water to make alcoholic beverages, such as vodka or rum, or a mixed drink, such as a margarita or mojito. Texas law does not mention powdered alcohol, and in 2015, lawmakers considered, but did not approve, a ban on the product. In 2017, legislators may debate proposals to explicitly legalize, tax, and regulate powdered alcohol, as well as calls to ban it.

**Fantasy sports.** Legislators may examine the state's approach to daily fantasy sports wagering. Fantasy sports leagues such as DraftKings and FanDuel allow players to form fantasy teams of professional or collegiate athletes

and wager on them as they compete based on performance statistics. In January 2016, the attorney general issued an opinion (KP-0057) stating that a court likely would determine that participating in daily fantasy sports leagues betting is illegal gambling under Texas law. Lawmakers may debate whether the wagering should be defined explicitly as legal or illegal gambling under Texas law or brought under state regulation. Proposals to legalize daily fantasy sports betting could involve designating the activities as games of skill, rather than chance.

## Judiciary and civil jurisprudence

In the areas of judiciary and civil jurisprudence, lawmakers could consider the issue of lawsuits relating to hailstorm insurance claims. Proposals also could emerge to increase compensation for judges, with the 2016 report of the Judicial Compensation Commission recommending such a change. In addition, legislators may debate measures designed to improve court security and revise the system for selecting grand jurors.

**Hailstorm lawsuit reform.** Lawmakers may consider issues relating to lawsuits over insurance claims for property loss due to hailstorms. Proposals could address notifications to insurers before a lawsuit is filed, limiting the personal liability of agents or others as individuals involved in claims, and restrictions on or penalties for certain actions to solicit clients for lawsuits.

**Court security.** While local officials generally are responsible for court security, the Texas Judicial Council in October 2016 issued recommendations on the topic that could prompt state action. These include revising current statutory requirements on reporting courthouse security incidents, requiring local court security committees and training for those involved in court security, and funding court security partially through state general revenue. Other recommendations include revising current laws that allow judges to have their personal information delisted from some public records, including extending some delisting to spouses and making some delisting automatic. Still others involve allocating state resources to the Department of Public Safety to provide security at the department's discretion to threatened or attacked judges.

**Jury selection.** In 2015, the 84th Legislature revised the state's system for selecting grand jurors to require that grand jurors be selected and summoned in the same way as

panels for civil trials in district courts. The 85th Legislature could evaluate how the revised system has been operating and debate changes to the grand juror selection process and grand jury operations.

**Guardianship.** The Legislature this session may again consider bills related to guardianship. Proposals may emerge that would require all guardians that are not required to be certified to register with the Judicial Branch Certification Commission, and this registration could include an online training component. Other proposals may establish a registry of persons under guardianship and their guardians that certain individuals such as law enforcement could use to determine whom to reach if they came into contact with a ward. Lawmakers also may consider establishing a statewide public guardianship office.

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