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Interim Digest

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A Compilation of Legislative Interim Committee Action

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FOREWORD

The Senate Research Center publishes the Interim Digest, which is a compilation of interim committee action. Senate, House, and Special committees were given interim charges and have reported their findings and recommendations to the 79th Legislature. The Interim Digest summarizes these findings and recommendations of the committees’ reports.

The Interim Digest is a collective effort of the staff of the Senate Research Center, with valuable assistance from other offices and staff. Appreciation goes to Senate and House staff members for providing their interim reports, particularly House Committee Services. A special note of thanks to Senate Publications and Printing for assistance in producing this document, and Patsy Spaw for her continuing guidance.
The following interim committee reports were not released at the time this document was compiled and printed:

**Senate Interim Committee:**

Senate Committee on Finance  
Subcommittee on State Contracting Practices

**House Interim Committees:**

Appropriations  
Border and International Affairs  
Select Interim Committee on Construction Industry-Related Workers' Compensation Issues  
Financial Institutions  
Government Reform  
Higher Education  
Judicial Affairs  
Juvenile Justice and Family Issues  
Local Government Ways and Means  
State Cultural and Recreational Resources

**Joint and Special Committees:**

Legislative Oversight Committee on Higher Education  
Joint Committee on Permits Processing at TCEQ  
Legislative Oversight Committee on Edwards Aquifer  
Electric Utility Restructuring Legislative Oversight Committee  
Committee on Electronic Government Projects
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Senate Committee Reports
Electric Utility Restructuring and Renewables

**Charge**

Study and make recommendations on improving the on-going implementation of S.B.7 (76th Legislature) with particular emphasis on evaluation of the following:

- "price to beat," and the implementation of "claw-back" provisions for residential and small commercial customers, including on-going requests to adjust fuel factors;
- adequacy and effectiveness of the Electric Reliability Council of Texas (ERCOT) and its management structure;
- cost-effectiveness and fairness of congestion management mechanisms;
- delivery of power in areas outside of the ERCOT network;
- stability of the System Benefit Fund; and
- final calculation of stranded costs under the "true-up" provisions.

**Background**

The Public Utility Commission of Texas (PUC) is the state agency responsible for, among other things, overseeing the function and operation of the electricity market in Texas.

Because the state's electric grid, operated by the Electric Reliability Council of Texas (ERCOT), is located entirely within state boundaries, the PUC is able to exercise jurisdiction over the competitive market without extensive interference from federal regulatory agencies.

After the passage of S.B. 7 by the 76th Legislature, Regular Session, PUC was extremely active—responsible for unbundling utilities and helping structure a competitive market. During the past interim, the PUC has continued projects and rulemaking proceedings to further the market and finalize concepts that began with the onset of competition.

**Recommendations**

- Focus on needed changes and improvements to management and board structure as ERCOT continues to evolve from a start-up organization to a matured system operator. As the evolution progresses, the legislature should also focus on the budget and fee process at ERCOT and help facilitate communication between ERCOT and PUC, the
state agency with oversight authority. The committee recommends that PUC have additional budgetary discretion and authority when it comes to approving the ERCOT administrative fee. PUC should have all necessary information on the operating expenses and debt management procedures at ERCOT to make an informed decision regarding the appropriate fee rate.

◆ Consider how to structure market oversight within ERCOT. While there is a market oversight division at PUC, there is no real oversight agency at ERCOT to examine market data and transactions to ensure the market and market participants operate as intended and act when there are problems. The committee recommends working with the PUC and ERCOT to create an entity responsible for overseeing market transactions and data to ensure the electric market in Texas operates as intended.

◆ Consider the feasibility of whether areas outside of ERCOT but still within the state should move to competition. The committee recommends that areas outside of ERCOT but still within the state borders be opened to competition as expeditiously as possible but not until the areas are sufficiently ready to move forward.

◆ Maintain support for strong customer protection rules to ensure customers will continue to see the benefits of competition.

**Charge**

Study and make recommendations relating to improving the potential for further renewable energy development in Texas and the effectiveness of current policies encouraging the use of renewable energy sources. This study should focus on the state's capacity for wind generation, current efforts by the General Land Office to commercialize wind generation on state lands, and solutions to the constraints on utilizing wind potential to its fullest. Include an analysis of state and federal mandates, federal tax credits, wind potential, transmission constraints, economics of electricity production and delivery, and environmental considerations.

**Background**

Renewable energy comes from harnessing various naturally occurring processes: sunshine, wind, the flow of water; and converting them to energy. Texas, of all 50 states, has the greatest potential to harness and utilize renewable energy, with significantly more days of sun than most other states and large wind resources in the western part of the state. These two renewable energies combined could contribute substantially to the state's overall energy supply.

While Texas has significant potential to utilize renewable energy resources, the requirements set forth in S.B. 7, 76th Legislature, Regular Session, established mandates that ensured the use of renewable energy would be a part of Texas' energy future. Provisions in that bill required that an additional 2,000 MW of renewable energy be installed in Texas by 2009.
The bill also required PUC to implement a Renewable Energy Credit (REC) trading program. In order to facilitate the use of and reliance on renewable energy, the program requires municipally owned utilities and electric cooperatives that do not own or purchase capacity from renewable energy to purchase and hold RECs that meet a certain percentage of their retail sales. Since the inception of S.B. 7, 1187 MW of renewable energy capacity have been installed in Texas, with another 194 MW of capacity announced to begin operation in 2005. This represents over half of the 2009 goal established by the bill.

Approximately 88 percent of the renewable energy capacity in Texas is from wind generation. The vast majority of the installed and announced capacity growth has taken place in West Texas, predominantly due to the wind speed and consistency.

Federal tax credits and the Texas renewable energy credits make wind generation projects much more competitive when compared to established, fossil-fueled energy sources. Recent increases in the cost of natural gas also make wind generation more competitive, but without the tax credit, wind generators would be unable to compete in a competitive market.

One of the biggest obstacles facing the development of wind generation in Texas is the lack of sufficient transmission to move the power from where it is produced to where it is needed.

ERCOT has done extensive transmission planning to lessen constraints on the electric grid. Due to the rapidly expanding wind generation in West Texas, significant congestion has arisen. As a result, ERCOT has done extensive planning to increase the transmission in the area and the PUC has approved additional transmission lines to the West Texas area to improve congestion and to help move generation from west to east.

H.B. 2548, 78th Legislature, Regular Session, gave PUC broader authority to site transmission as necessary to help solve transmission congestion and permitted it to consider the renewable energy mandate in assessing the need for new transmission facilities. Any future wind development could increase congestion in West Texas and result in demands for significant additional transmission there.

With the price of natural gas now significantly higher than it was when S.B. 7 was initially drafted, the price of wind power has moved toward being much more competitive. Natural gas generation can normally be built with a smaller transmission investment because it can be built closer to major urban areas. While cost is one factor, the ability to call on a resource when there is demand for electricity is also important. The availability of wind-generated electricity is dependent on the availability of wind, while natural gas generation has, for the most part, not been at risk due to fuel availability.

**Recommendations**

- Consider the important public policy goals associated with renewable energy goals and achieving those goals. Explore the idea of increasing the renewable goal established by S.B. 7. Consider the costs associated with a substantial increase in transmission and the
market benefits received from siting new wind generation. Consider ways to improve the use of other forms of renewable energy.

Property and Casualty and Automobile Insurance

Charges

Study the implementation of S.B. 14, 78th Legislature, Regular Session, as it relates to the automobile insurance market to ensure that the legislation meets the legislature's goals of ensuring a stable market. Make recommendations for improving consumer satisfaction and expanding the market. Coordinate activities with the Joint Property and Casualty Insurance Legislative Oversight Committee.

Study the implementation of S.B. 14, S.B. 127, and H.B. 329, the property and casualty insurance reform and mold remediation measures passed by the 78th Legislature, Regular Session, to determine whether the legislation meets the legislature's goals of reducing homeowners' insurance costs and stabilizing the market. If not, make recommendations for reducing homeowners' insurance costs. Examine implementation of new policies relating to the use of credit scoring and its impact on consumers and the market. Coordinate activities with the Joint Property and Casualty Insurance Legislative Oversight Committee.

Background

In recent years dramatic losses and premium increases were occurring in the private passenger automobile market, with insurers writing an ever-increasing amount of business for their non-rate-regulated affiliates. While on average, the rate increases for auto insurance were significant, they were not of the magnitude of the increases in homeowners' insurance rates.

Based on Texas Department of Insurance (TDI) estimates, some 34 percent of the private passenger auto insurance market was not subject to these rate standards. According to TDI's 2002 rate guide, almost all insurers were charging more than the benchmark rate promulgated annually by the commissioner. Factors affecting the increase in auto rates included rising costs of medical expenses and auto repair.

The new law, contained in S.B. 14, 78th Legislature, Regular Session, requires all automobile insurers to file their rates with TDI, along with justification for the rates. It also requires all insurers to file their credit scoring models with TDI to ensure that no unfair discrimination is taking place.

Other provisions of the new law include:

- All rates, including county mutuals' auto rates, must be reasonable, not excessive, adequate and not unfairly discriminatory.
Special filing provisions for small county mutuals serving high-risk, nonstandard auto markets.

Prior approval of forms with approval by law if no objection is raised by TDI, beginning in 2004.

Companies may file their own forms for approval; TDI will review filed forms and may disapprove any that violate state requirements.

Credit scoring as sole criteria for adverse action is prohibited.

Insurers must file credit scoring models with TDI, which are public information.

Disclosure is required when credit scoring contributes to adverse action.

Insurer must reconsider adverse action when consumer appeals.

TDI, by rule, may limit rate impact of credit scoring.

Underwriting guidelines are subject to the Public Information Act.

Guidelines must be sound and not unfairly discriminatory.

Rate standards apply to all previously unregulated carriers such as Lloyds carriers, reciprocal exchanges, and county mutuals.

Prior to the 78th Legislature, insurance premiums for homeowners' insurance policies increased from 14 percent to 200 percent for many homeowners. Complaints to TDI regarding rate increases for residential property insurance increased from 283 in 2001 to more than 2,400 through the end of 2002.

A combination of elements led to the increasing rates. Those elements included such factors as a weakened economy, investment losses by insurers, large legal settlements, lack of policy and coverage options for consumers, certain underwriting practices, allegations of fraud in remediation, and the emergence of unexpected claims, such as mold.

Additionally, Texas has had more catastrophic events than any other state over the past 50 years. Hurricanes, hail storms, floods, tornadoes, and high winds all cause significant damage—and all occur regularly in Texas. In 2001, insurers paid more for claims than they collected in premiums, plus investment earnings.

Because of a loophole in state law that allowed insurance companies to move business from a regulated company to an unregulated company, the commissioner of insurance did not have control over the vast majority of insurance rates. By late 2002, 95 percent of Texas homeowners' policies were sold under these non-rate-regulated companies, thus allowing the insurers to charge rates higher than those approved by TDI.

One primary factor in rising insurance rates was the rising frequency and cost of mold and water-related claims. TDI data shows that the total number of mold-related water claims...
filed with the top five homeowners' insurance writers in Texas in 2000 was 7,083. In 2001, the number of claims filed with the top five homeowners' insurance writers increased to 37,202 claims, a jump of 425 percent.

S.B. 310, 78th Legislature, Regular Session, became effective on February 25, 2003, and required TDI to provide a summary report to the legislature on homeowners’ rates. Among the several findings of the S.B. 310 report were that a portion of the rate increases occurring in Texas during 2001-2003 were excessive.

In response, S.B. 14 required TDI to review insurers’ homeowners’ rates. If the rates were deemed to be in violation of the statutory rating standards, the commissioner was authorized to modify an insurer’s rates accordingly. This initial review and modification was designed to restore rates to a level that could be justified to provide immediate consumer relief.

TDI reviewed 61 insurance company group filings, a total of 90 companies, and ordered 30 company groups to lower their rates. Ordered rate reductions varied, with a maximum reduction of 31 percent and an average reduction of 12.5 percent. The resulting savings to policyholders was estimated to be over $500 million during the 12 months following the rate reductions. Twenty-two companies took a one-time reduction of the ordered rate reductions and six companies took a partial phase-in approach. Two company groups appealed their rate orders to state district court.

In November, 2004, District Judge Suzanne Covington granted the motions for summary judgment requested by those two companies, State Farm and Farmers Insurance Exchange. In that summary judgment, Judge Covington declared the procedural appeals process unconstitutional. The ruling did not address the assertion by Commissioner of Insurance Jose Montemayor that both Farmers and State Farm are charging excessive rates.

On November 19, 2004, TDI initiated administrative actions to demonstrate that the rates charged by both State Farm and Farmers are excessive and that refunds of the excessive premiums should be issued directly to policyholders. TDI will seek a refund of the excessive premiums plus 10 percent interest. These actions by TDI represent new rate actions, separate from the September 2003 reduction orders in which 30 insurers were ordered to reduce rates.

Based on presentations by Commissioner Montemayor and the Office of Public Insurance Council, personal lines insurance markets in Texas are improving in terms of availability and price competition. The actions taken pursuant to S.B. 14 have accelerated market improvements, bringing about initial rate reductions in homeowners’ insurance and implementing more modern market regulation that is consistent with other states.

**Recommendations**

♦ Enact legislation to address the recommendations submitted by TDI. As mentioned earlier in this report, S.B. 14 required TDI to do an extensive report on the use of credit
information by insurers. TDI was instructed to use information obtained from insurer filings and other information obtained by TDI.

♦ Include the following in the report and present [it] in a non-attributable manner to protect the identity of the individual insurers:

- a summary of the use of credit information by insurers;
- a description of insurer practices and the effect of different credit models;
- the number of consumer complaints submitted to TDI;
- a description of favorable and unfavorable effects on consumers;
- any disproportionate impact on any class of people;
- legislative recommendations; and
- any other information considered important by TDI.

♦ Approve stricter interest penalties for insurers found to have been overcharging homeowners’ and auto policyholders, to further discourage insurers from overcharging policyholders and to promote consumer protection.

♦ Continue to monitor the implementation of the reforms regarding automobile insurance as major changes to automobile insurance statutes take effect on December 1, 2004.

Texas Residential Construction Commission

Charge

Study the creation of the Texas Residential Construction Commission (TRCC) established by H.B. 730, 78th Legislature, Regular Session, to determine its effectiveness in reducing lawsuits and improving consumer satisfaction with residential construction services. Issues to be covered shall include, but not be limited to, the:

- registration of homebuilders, including the Texas Star Builder designation;
- state-sponsored inspection and dispute resolution process;
- preparation and adoption of new building performance standards;
- voluntary certification of arbitrators and filing of arbitration awards; and
- consumer complaint procedures and public information efforts.

In addition to those issues, the committee shall study and make recommendations on improving the activities of the three task forces for which the TRCC has oversight responsibilities: The Mold Reduction and Remediation Task Force, the Task Force for Rainwater Harvesting and Water Recycling, and the Task Force for Residential Construction Arbitration.
Background

H.B. 730, 78th Legislature, Regular Session, created the Texas Residential Construction Commission (TRCC) to administer the registration of builders and remodelers; to administer a state-sponsored inspection and dispute resolution process; and to create and administer limited statutory warranty and building and performance standards.

TRCC has adopted rules regarding the registration of new homes and large renovation projects; the registration of builders; and the state-sponsored inspection and dispute resolution process (SIRP) as required by H.B. 730.

The registration of homes is the first step in allowing newly constructed or remodeled homes to fall under the warranty and building performance standards that are being developed by TRCC. The rules require all home builders in the state to register new homes and certain large renovations and to remit a $30 registration fee. Through the end of October 2004, TRCC had received over 86,000 home registrations.

Rules regarding the registration of builders required all existing home builders, contractors, and remodelers to register with TRCC and remit a filing fee of $125 on or before March 1, 2004. Under the law, no person or company can operate as a builder in Texas without a certificate of registration from TRCC. Through the end of April 2004, TRCC received over 12,000 builder registrations, with an additional 4,484 registrations between April and November 2004.

The state-sponsored inspection and dispute resolution process (SIRP) allows a homeowner and a homebuilder to have a neutral third-party inspector review a construction defect dispute and determine whether the home was built in accordance with the applicable building and performance standards. Either the homeowner or the homebuilder can initiate the process to have TRCC appoint a TRCC-certified third-party inspector to conduct an investigation and report whether the home performs in accordance with the performance standards established by TRCC. The decision may be appealed to an independent three-person panel that is also appointed by TRCC. After this process, either party may seek redress in court under the provisions established by the Residential Construction Liability Act.

TRCC began accepting applications for third-party inspectors in February 2004, and through the end of October 2004, 63 people had been certified as third-party inspectors. According to TRCC, the registration of third-party inspectors has been slow, and TRCC has contracted with private third-party inspectors to insure statewide coverage.

H.B. 730 also requires TRCC to create a statutory warranty, through its rule-making authority, that will apply to each new home and significant remodel in Texas. Additionally, TRCC is required to adopt unified building and performance standards to apply throughout the state.
In May 2004, TRCC released a rough working draft of the statutory warranty and the building and performance standards rules as a way to allow all interested parties to participate from the first stage to the final product. TRCC has entered into an interagency agreement with the construction sciences department of Texas A&M University to help develop the construction standards and warranties, which were scheduled to be effective by January 1, 2005.

H.B. 730 requires a party who files an arbitration award in a dispute between a homeowner and a homebuilder that involves a construction defect, a state district court to also file the award with TRCC. TRCC rules regarding eligibility requirements and procedures for a person to be certified as a residential construction arbitrator require that an applicant must demonstrate that he or she is knowledgeable and experienced in the field of residential construction litigation, especially with respect to construction defects. The rules provide that the applicant must allow the public to file written comments on such person’s suitability to be a certified residential construction arbitrator. As of October 2004, TRCC had issued four certificates of registration and had received no arbitration award filings.

As required by H.B. 730, TRCC established three task forces to study issues related to the homebuilding industry.

The Mold Reduction and Remediation Task Force is advising TRCC regarding the adoption of standards to reduce the general population’s exposure to mold formed in indoor environments. The Task Force for Rainwater Harvesting and Water Recycling is developing design recommendations for residential construction that encourage rain harvesting and water recycling. The Task Force for Residential Construction Arbitration is advising TRCC on residential arbitration and arbitrators. Also, this last task force must report its recommendations to the 79th and 80th Legislatures.

**Recommendation**

♦ Continue to monitor the ongoing implementation of H.B. 730, but make no legislative recommendations on this interim charge at this time.

**Texas Unemployment Compensation Insurance Program**

**Charge**

Study and make recommendations relating to the Texas unemployment compensation insurance program, including, but not limited to, the following:

♦ trends in benefit fraud and claim overpayments;

♦ effectiveness of Texas Workforce Commission (TWC) management and operational practices;
♦ development and implementation of innovative unemployment fraud detection and collection strategies by TWC;
♦ other governmental research on misclassification of workers resulting in underpayments to the Unemployment Insurance Trust Fund;
♦ options for leveraging federal funds; and
♦ the feasibility of targeted audits to detect fraud.

Include recommendations to improve the transition of individuals off unemployment insurance, such as enhancing claimant job search programs and placement strategies.

**Background**

The United States Department of Labor (DOL) and the TWC jointly administer the Texas Unemployment Insurance (UI) program. The UI program provides temporary, partial income replacement to workers who lose their jobs through no fault of their own. The dual purpose of UI is to maintain a minimal safety net so qualified unemployed workers can meet their most essential financial needs and to stabilize the local economy in times of economic recession.

Eligibility, benefit amounts, and length of time benefits are available. Disqualification provisions and tax structure are determined by the state law under which the UI claims are established. While UI programs vary significantly from state to state, each state’s administration of UI must conform to guidelines established by federal law.

TWC is the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas. TWC distributes approximately $1.9 billion annually in total benefits paid to claimants, and processed 1,006,257 initial unemployment claims in fiscal year 2004. State law requires that not later than October 1 of each year, TWC compute a maximum and minimum benefit amount based upon a formula, prescribed in law, which uses the average weekly wage in covered employment. Annually for 2003, the maximum amount of weekly benefit in Texas was $330 and the minimum amount was $53; in 2004, the maximum and minimum benefit amounts were $336 and $54, respectively. The maximum term to receive benefits in Texas is 26 weeks and the average duration is just under 17 weeks.

Payroll taxes levied against employers provide the funding for UI. TWC assesses and collects state UI payroll taxes from employers quarterly. For 2004, TWC data show an actual effective tax rate ranging from 0.67 percent to 8.26 percent, with an effective average tax rate of 1.74 percent. Additionally, the total cost per employee per year ranged from $60 to $743, with an average of $156.

After TWC assesses and collects state UI payroll taxes from Texas employers, those funds are deposited into the UI Trust Fund from which benefits are paid to unemployed workers.
The federal government collects a separate employer tax, called the Federal Unemployment Tax Act (FUTA) tax. FUTA taxes are paid annually to the Internal Revenue Service by employers to fund state and federal UI administrative expenses and other program costs.

TWC has historically received only a fraction, 37 percent in 2002, of FUTA tax dollars that Texas employers remitted for UI administration. The balance of FUTA tax funds has been redistributed to other states to subsidize their UI administration, or remained in federal coffers. In 2002, $531 million was collected from Texas employers, but only $196 million was returned to Texas in the form of administrative grants. Texas had one of the lowest federal UI administration allotments per unemployed person of any administering entity in 2002; Texas’ allotment per unemployed person was $129, compared to an average of $240.

The 2002 Benefit Accuracy Measurement (BAM) statistics compiled by DOL indicate that Texas may be lagging behind other states in UI fraud and overpayment detection and prevention. BAM statistics show that 20.71 percent of the UI funds spent in benefits to claimants are in fact overpayment errors; within this amount 2.5 percent are classified as fraudulent overpayment errors and 18.2 percent are classified as non-fraudulent overpayment errors. The national average overpayment error rate is 9.1 percent.

In striving to increase the integrity of the UI program, a UI Performance Integrity Plan was developed by TWC in 2003 to reduce overpayments. TWC created a new Program Integrity Division to aggressively address overpayment and fraud in UI, as well as to ensure integrity in other TWC programs.

The agency has strengthened its work search requirements to require a minimum of three work search contacts weekly. Claimants are automatically disqualified if the work search requirement is not met. An innovative way the agency is ensuring program integrity is through random work search verifications; one thousand claimant work logs are verified weekly by TWC staff. Also, the agency expects that improvements made to TWC’s Work in Texas program should reduce UI rates in general, by facilitating employee to employer matches, thus returning UI recipients to work faster and reducing the duration of UI benefits.

TWC is also enlisting the help of employers to reduce overpayments. According to TWC, $43 million is lost annually to overpayments that arise when decisions initially made in favor of UI claimants are later reversed. Those claimants can collect benefits for weeks or months pending the outcome of employer appeals. Many employers have adopted the strategy of presenting little or no information during the initial claims investigation. When they fail to provide timely information, employers lose otherwise winnable UI cases at the initial level. Employers may appeal, but if employers win the appeal, the benefits already dispersed are very difficult to recover. TWC is asking employers to cooperate in preventing this type of overpayment. Additionally, the agency is asking for more employer participation in reporting new hires so that TWC has better data for crossmatching UI claimants.
Recommendations

◆ Enact legislation that would require TWC to seek an outside audit and study of the UI program. This outside audit and study would provide a complement to TWC’s existing internal auditing procedures. The Texas UI program serves a critical function in our economy. It is imperative that this program is run efficiently and with integrity. Although TWC has made a strong effort to reduce fraud and overpayments, there continues to be room for improvement. TWC should seek additional ways to improve operations and management of the UI program.

◆ Draft contingency legislation in light of a possible federal pilot study proposal which, if adopted, would provide Texas the option of primary funding [of] the state’s UI program administration. Only 37 percent of FUTA taxes collected by the federal government from Texas employers are returned to this state for UI administration. Efforts should be made to ensure that Texas is returned a higher percentage of FUTA tax dollars. This includes supporting the consideration of alternatives to the current UI administration funding system. TWC estimates that implementation of this program would result in Texas employers annually saving 56 percent of their current FUTA taxes. Contingency legislation should allow TWC to collect employer taxes for the administration of UI, and provide the necessary statutory framework for TWC to become the administrator of these funds.

Texas Usury Laws and Credit Counseling Services

Charge

Study the current structure of Texas’ usury laws in order to determine how they are affected by federal law and how state law impacts new economic development and job production in the state. Pay particular attention to the relationship between the constitutional limits on commercial and consumer lending and the location of new financial services companies within Texas. Make recommendations for improving the structure while increasing economic development and enhancing consumer protections. A thorough assessment of the credit counseling and debt management industry should accompany the committee's examination of this subject, including recommendations for improving services.

Background

The Texas Constitution addresses the issue of usury:

◆ The legislature shall have authority to define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious; provided, further, that in
contracts where no rate of interest is agreed upon, the rate shall not exceed six per centum (6%) per annum.

In reality, very few credit transactions are actively constrained by the constitutional interest rate limits of ten percent and six percent because the state statute provides higher interest limits for most lenders and loans. Most usury laws are codified in Title Four of the Texas Finance Code, also called the Texas Credit Title. Consumer and commercial loan transactions are governed by separate credit law provisions in the Credit Title. Subtitle A typically applies to commercial loans, as well as consumer loans with interest not exceeding ten percent annually. In general, Subtitle B regulates consumer loans with interest in excess of ten percent annually.

The statutory definition of interest in Texas is broad, covering all compensation for the use, forbearance, or detention of money. This is true both for commercial and consumer loans. Texas is one of very few states that regulates interest rates for commercial loans among sophisticated parties. Most states have no effective commercial usury laws for large commercial loans; only five states other than Texas cap interest rates for these loans.

Relatively few large banks and other financial institutions headquarter in Texas. For example, the largest bank headquartered in Texas is Frost Bank in San Antonio, which is the 78th largest commercial bank in the United States.

Restrictive usury laws have perhaps contributed to the dearth of major financial institutions headquartered in Texas. Because lenders can only export rate ceilings from the headquarter jurisdiction, Texas is not a practical location for major financial institutions to headquarter. Other factors, such as additional costs to comply with usury statutes and harsh penalties for noncompliance, may also contribute to a reluctance to locate headquarters in Texas. The disinclination of major financial institutions to headquarter in Texas affects the number and quality of jobs in the finance industry.

In addition to concern that Texas' usury laws discourage bank headquarters and economic development, financial industry observers assert that the state's usury provisions are out of step with modern banking practices; place Texas banks at a competitive disadvantage; are ineffective at protecting consumers; and are ambiguous at allowing equity participation in large commercial loans.

Consumer debt has more than doubled to record levels in the past decade. Recent figures from the Federal Reserve calculate the outstanding consumer credit in the United States, excluding debt secured by real estate, to be over two trillion dollars. This figure is based on $743 billion in revolving credit debt (primarily credit card debt), with the remaining $1,285 billion in non-revolving consumer credit debt (such as automobile, mobile home, or vacation loans).

Consumer demand for credit counseling and debt management services grows as Americans incur increasing amounts of debt. Many legitimate credit counseling and debt management
companies offer services to consumers, including financial education, credit counseling, and assistance in developing a plan to get their clients out of debt.

In addition to the essential counseling and education components, these organizations can, when appropriate, assist with a debt management plan (DMP). Under a DMP, the consumer sends a single check to the debt management business, which disperses the money among its client's creditors. Many credit counseling and debt management companies may also negotiate with creditors to obtain lower interest rates and lower monthly payments, to stop collection calls, and potentially to forgive past late fees.

Traditionally, creditors funded much of the work of the credit counseling and debt management companies. Credit card companies returned a percentage of each monthly payment to the credit counseling and debt management companies to fund their services; this was considered a form of a debt collection fee. Recently, however, as the industry has changed form, credit counseling and debt management companies expect individuals to cover more of the cost of their services.

During the last decade, credit counseling/debt management has become a billion-dollar industry. The growth of non-National Foundation for Credit Counseling (NFCC) certified businesses engaging in debt management services has been rapid. Between 1994 and 2003, 1,215 credit counseling agencies applied to the Internal Revenue Service (IRS) for tax exempt status, with over 810 of these applicants during the period of 2000-2003.

Deceptive practices have become widespread in the credit counseling and debt management industry. In spite of the for-profit business model of many companies, Texas credit counseling and debt management companies must be certified as 501(c)(3) non-profits by the IRS. Unfortunately, the non-profit status often conveys a level of trust to unsuspecting consumers who mistakenly believe non-profit certification provides a level of consumer protection.

Additionally, there are outdated laws on the state level that do not adequately address the current character of the credit counseling and debt management industry. Relevant Texas statutes have not been changed since 1967, well before the current shape of the industry emerged. Other states have recently modernized their statutes to regulate the industry and to require fair dealings.

States also are beginning to take a renewed interest in unscrupulous companies within the industry through attorney general lawsuits for fraud against consumers. In November 2003, Texas Attorney General Abbott filed suit against AmeriDebt, a credit counseling and debt management company, for violating the Deceptive Trade Practices Act.

Among the concerns about the credit counseling industry are: the growth in the number of aggressive debt management companies and consumer complaints about those companies; deceptive trade practices; abuse of non-profit status and aggressive marketing; high cost to consumers; scant regulation at the federal level; and outdated state statutes.
Recommendations

♦ Allow sophisticated commercial parties to contract for any rate of interest to which the parties agree, which would permit the free market to function, would provide additional flexibility in structuring large commercial loans, and would enable Texas headquartered banks to be more competitive in commercial lending. S.J.R. 22 and S.B. 417, 78th Legislature, Regular Session, sought to remove the commercial loan usury cap for large commercial loans. This bill and joint resolution passed the senate but failed to pass the house of representatives. Therefore, the committee recommends that the 79th Legislature pass legislation that achieves the goals of S.J.R. 22 and S.B. 417.

♦ Enact legislation addressing current problems regarding deceptive practices within the growing credit counseling and debt management industry. Texas should modernize its laws concerning credit counseling and debt management organizations by enhancing the regulatory structure and promulgating uniform standards of consumer protection in this industry. Regulations should be created with input from the Office of Consumer Credit Commissioner, along with members of the credit counseling industry, specifically members of the National Foundation for Consumer Credit, to protect consumers from unscrupulous counseling services, and misleading, deceptive, and harmful practices, as well as to ensure the integrity of the industry.
SENATE COMMITTEE ON CRIMINAL JUSTICE

Charge

Study identity theft and its effects and the impact of recent legislation addressing the issue (H.B. 2138, S.B. 473, and S.B. 566, 78th Legislature). Make recommendations for enhancing Texas' ability to implement effective programs to prevent identity theft. Monitor federal legislation regarding identity theft to ensure that state and federal laws are complementary and make recommendations for improvements.

Background

With the passage by the United States Congress of the Identity Theft and Assumption Deterrence Act, future laws governing this issue will come primarily from the federal level. However, there are areas that remain in which the Texas Legislature needs to continue efforts to safeguard the citizens of Texas from identity theft.

Recommendations

♦ Ensure that the Texas Department of Public Safety (DPS) system, which issues Texas drivers' licenses and Texas identification cards, is protected from abuse and only issues documents and assigns proper numbers to positively verified individuals.

♦ Clarify an individual's ability to place a freeze on the disbursement of their credit information if they believe they have been a victim of identity theft.

♦ Monitor the new Department of Public Safety Driver License Division Fraud Unit to determine its ability and effectiveness in pursuing alleged identity theft perpetrators.

Charge

Study and identify best practices for probation and community supervision programs including: the Community Justice Assistance Division; local probation management structure; the use of drug courts and the courts' impact on recidivism; programs to reduce underage drinking; mental health issues and continuity of care; use of the Community Supervision Tracking System (CSTS) and other data issues related to criminal justice information system components; and the implementation of H.B. 2668. Make recommendations for legislative changes to achieve best practices.
Background

H.B. 2668, 78th Legislature, Regular Session, establishes a model of progressive sanctions for drug offenders convicted of certain state jail felony offenses involving possession of small amounts of certain controlled substances and requires treatment for those offenders.

Texas Department of Criminal Justice (TDCJ) correctional facility population trends reveal that the budget decisions made in the 78th Legislature which were based on different population projections are no longer viable. Based on known fiscal year 2005 budget shortfalls, reductions in federal funds to TDCJ, and increasing medical costs, current resources will not support the increasing prison population as projected by the Legislative Budget Board (LBB). Additionally, by fiscal year 2006, the prison population is expected to exceed the operational capacity of TDCJ, unless new policy initiatives are implemented.

Recommendations

♦ Strengthen judicial confidence in Community Supervision Programs.
♦ Address the growing revocation rate of felons on community supervision to prison and state jail.
♦ Reduce the growing population of non-United States citizens housed within TDCJ.
♦ Reduce the growing geriatric population housed within TDCJ and their ever increasing medical costs.
♦ Resolve the barriers to the successful completion of the Texas Computerized Criminal History System Project by requiring that court judgment documents contain both the state identification number for the individual defendant and the appropriate transaction numbers assigned to the individual's arrest event.

Charge

Study the management efficiency and organizational structure of the TDCJ, including implementation of recent restructuring by the TDCJ Board, and make recommendations on additional improvements, including possible consolidation of agency functions and other cost-saving measures.

Background

Utilizing the legislative authority granted to TDCJ and the TDCJ Board, TDCJ consolidated four divisions and created the new Correctional Institution Division.
Recommendation

♦ Continue to monitor the TDCJ organizational structure and encourage a similar review of the 16 non-impacted divisions to identify possible additional savings and efficiencies.

Charge

Study the use and effectiveness of current parole guideline policies and make recommendations for changes to improve the policies. Develop innovative options that improve efficiency and enhance safe and effective correctional policy.

Background

Decisions made by the Texas Board of Pardons and Parole (BPP) have a major impact on prison capacity and directly affect resources the legislature must provide for the operation and maintenance of state-run penal facilities. Under the current environment, a lowering of BPP approval numbers will be reflected in expedited prison crowding, costing the state an estimated $63 million dollars for temporary housing of state inmates in county jails or private facilities.

Current statutes continue mandated parole guidelines as the basic criteria for release decisions.

Recommendations

♦ Require the BPP to clearly state the reason for a denial in a written format that the inmate and others can readily understand (the current form is very confusing).

♦ Distribute monthly reports [to the legislature] on release decisions, including the special statutorily mandated panels.

♦ Expedite the Medically Recommended Intensive Supervision (MRIS) process to prevent inmate deaths during consideration.

Charge

Study and make recommendations relating to improving the use of specialized police agencies and officers, specifically, the necessity, accountability, qualifications, and jurisdictions of such police agencies.
Background

Expanding the list of Texas peace officers has diluted the meaning of the title, "peace officer," and added to the confusion over the duties and responsibilities of such a title.

Recommendation

♦ Resist and cease the ad hoc inclusion of naming new agencies, districts and organizations as peace officers and consider a reorganization of specialized police agencies into a separate category that provides clarity to their duties, responsibilities, and privileges.

Charge

Review the Crime Victims' Compensation Fund (fund), including state and local competition, use in state agency methods of finance, evaluation of grant programs, possible diversion of funds from crime victims as a result of prior legislation, and whether the fund meets the objectives of its authorizing legislation.

Background

The Crime Victims' Compensation (CVC) Program was established in 1979 by the 66th Legislature, Regular Session, to assist victims of violent crime in Texas. Last year, 204 grants were awarded to public and non-profit agencies that assist victims.

In an April 13, 2004, letter to the Senate Criminal Justice Committee, Attorney General Abbott stated that appropriations of compensation funds to other agencies have increased from $13 million in the 2000-2001 biennium to almost $114 million in the 2004-2005 biennium, with some appropriations going to programs not directly related to crime victims.

Additionally, Abbott stated that by the 2006-2007 biennium, the CVC Fund will not have enough money available to meet the current level of appropriations and will be headed toward insolvency. Under current law, the state will be unable to certify adequate funds in the next biennium to meet demands, and continuing the diversions of money from the fund will cripple its ability to provide compensation for the legally intended beneficiaries.

Recommendations

♦ Repeal the Office of the Attorney General's authority to certify excess monies to be appropriated out of the CVC Fund.

♦ Clarify the governing statutes which state that CVC funds may only be used to compensate actual crime victims, to operate the CVC program, and to fund the crime victims' institution.
Charge

Study the number of foreign citizens serving sentences in Texas prisons, including information relating to prison terms, recidivism, and types of offenses. Make recommendations for reducing the costs of providing prison services for this population, including leveraging of federal immigration funds and possible international agreements to pay home countries to transfer the prisoners to their respective countries to serve the remainder of their terms.

Background

A November 2003 report to the Senate Criminal Justice Committee by the TDCJ, entitled *Offenders with Foreign Place of Birth and Citizenship* stated that 9,777 Texas inmates were identified as having foreign birth and citizenship. Additionally, 3,510 inmates had been served with a final order for deportation through the United States Immigration and Naturalization Service (INS). Of the 3,510 inmates, 2,290 were parole eligible, exemplifying a pool of inmates for whom release to parole for deportation represents significant incarceration cost savings.

Recommendations

- Release parole-eligible foreign citizen inmates to the United States Immigration and Naturalization Service (INS) under a detainer issued by the INS for deportation.
- Designate a working group charged with developing an acceptable process for utilizing federal prisoner transfer treaties, to be named by the lieutenant governor.

Charge

Study and make recommendations concerning the cost effectiveness and efficiency of private prisons, including private services performed at state-owned prisons.

Background

TDCJ has utilized a contract development, award, and monitoring system that has provided the state with assured delivery of services and accountability of expenditures.

Recommendation

- Continue to monitor TDCJ activities and ensure that similar success is obtained with any expansion of their contracts involving temporary housing or expanded intermediate sanction facilities.
SENATE COMMITTEE ON EDUCATION

Charge

Study the implementation of S.B. 186 (relating to the computation of public school dropout and completion rates) and make recommendations for improvements to current statutes and programs. Explore opportunities for maximizing current resources and identifying additional state, federal, and privately-sponsored programs for at-risk students that offer innovative delivery of educational services that encourage students to finish school. Focus on mentoring programs, including Communities in Schools, and the use of technology to provide instruction.

Background

Inaccuracy and falsification of dropout records has plagued the state accountability system. Factors contributing to the problem include too many leaver codes and the manual transfer of more than 430,000 student records costing more than $9 million in employee time and postage.

Individual school districts have created innovative online programs, such as developing an individual academic plan for each student that allows parents online-access to real-time student information, and an eSchool to provide high school coursework through independent Internet-based study that allows students to enhance or to make up credits.

Internet-based instruction often covers coursework that is not measured by state assessment. Some believe that when state funding is used for virtual instruction, the state should have an accountability measure for those courses.

In fiscal year 2004, approximately $3.9 billion in state, federal, and local funds were spent on programs for at-risk students. Almost $557 million was spent on 25 competitive grant programs that provide tutoring, computer-assisted instruction, teacher training, instructional materials, smaller class sizes, diagnostics, and mentoring. The programs often provide the same types of services. Often, schools receive multiple grants and pool the funds; as a result, there is no performance data for analyses of particular programs. Shifting from program-based services to a strategy oriented to service delivery would allow state grants to focus on a category of service at the school level allowing school districts to purchase the services best suited to meet their educational needs. It would be possible to transfer all compensatory education and at-risk funding to block grants.

Many adolescents do not read at grade level and reading instruction is not available in secondary schools. Literacy is necessary for school performance and most students who drop out cite bad grades as the primary reason.
Recommendations

♦ Require TEA to develop a menu of three or four adolescent literacy instruction models to be used by the schools.

♦ Establish a statewide records exchange system that allows for automatic exchange of student records to allow for accurate tracking of student transfers and leavers.

♦ Establish state standards that require electronic record systems to allow access by students’ parents.

♦ Combine funding streams for duplicative at-risk programs that provide the same services to the same population of students in order to cut down on administrative burden.

♦ Transfer full-time-equivalent (FTE) employees at Texas Education Agency (TEA) used to manage paperwork for duplicative programs to FTE positions that provide support and guidance to districts in how to administer programs that serve at-risk populations.

♦ Develop electronic courses to be made available to local districts to save on local course development costs.

♦ Direct TEA to adopt state guidelines for the provision of virtual instruction by school districts.

♦ Provide additional resources at the middle school level by creating a program that aggressively attacks poor literacy skills in identified students to promote graduation and prevent dropouts, especially for at-risk students.

♦ Make use of the Texas Assessment of Knowledge and Skills (TAKS) in the fourth through sixth grades as a diagnostic [tool] to identify students in need of literacy help. For the approximately 30 percent of students identified, administer a more sophisticated diagnostic assessment of skills.

♦ Establish a statewide grant program to provide funding for adolescent literacy programs that possess the following instructional qualities: 1) intensive, direct, explicit instruction in literacy skills, 2) concerted school wide approach with support from a majority of the teachers in the school who help by identifying the critical content in their subject area that is difficult to learn and repackage it in a learner-friendly way, 3) books tailored to the student's ability, and 4) continuous measure of progress so adjustments can be made.

♦ Qualifying programs must have the following structural qualities: 1) extended time for literacy instruction, 2) alignment of instruction within the schools, and 3) strong professional development to ensure fidelity of implementation.

Charge

Study the performance of high school students on TAKS, the new state assessment instrument. Make recommendations to improve any performance deficiencies that are
identified by the review, including alternative school schedules, mentoring programs, technology-based applications, and other innovative solutions.

Background

Texas students score below the national average on SAT and ACT assessments, showing, some believe, that many high school graduates are not prepared for college. There is a general agreement that detecting and correcting student deficiencies should occur before taking college entrance examinations. Both SAT and ACT have college preparation tests administered in eighth, ninth, or tenth grade that provide a diagnostic evaluation of readiness.

TEA and The University of Texas at Austin developed a free, online diagnostic assessment and intervention to promote success on the exit-level TAKS. While only one diagnostic instrument exists, improvement cannot be measured. If multiple test forms were available for students who receive accelerated instruction, teachers could use them to evaluate improvement and identify weaknesses that still exist.

A 2004 evaluation of public school technological infrastructure showed that 58 percent of the state’s 7,800 campuses had the capability of providing computer-based assessments online.

Recommendations

♦ Provide state funding for districts to administer college readiness and diagnostic tests such as SAT/ACT.

♦ Expand the online TAKS Readiness and Core Knowledge (TRACK) to offer diagnostic tests and develop alternative forms of the test so that students can retest if needed (per report).

♦ Require TEA to evaluate technological capabilities in all schools and then formulate a statewide plan to bring all assessments online in the next five years.

Charge

Study progress of implementation of S.B. 76 (relating to the provision of subsidized childcare services). Evaluate and make recommendations on opportunities for Texas to increase the educational component of the Head Start program. Examine and make recommendations relating to access to quality early education, including estimated costs, teacher availability, learning requirements, and access to services for students with special needs.

Background

School accountability is based on educational outcomes but there are no assessments for providers of early childhood care. The State Center for Early Childhood Development
Advisory Committee on S.B. 76 (advisory committee) recommended measuring the strongest predictors of school readiness: letter knowledge, phonological awareness, and vocabulary. That advisory committee found that students in classrooms that used the Texas Early Education Model were more proficient. The advisory committee recommended a standardized statewide assessment instrument that includes early reading and literacy assessment, a brief social skills screener, and an early math skills assessment for diagnostic purposes to provide a measure of accountability for early childhood education providers.

No system currently collects information on early childhood education programs. The Public Education Information Management System (PEIMS) collects data on enrollment, student performance, staff, and school spending. This data collection system could be expanded to include the results of kindergarten screenings and link those to early childhood education providers. The need for early childhood education programs could be overestimated because some children are enrolled in both a morning prekindergarten and an afternoon subsidized childcare program.

State law requires districts to provide prekindergarten when 15 or more eligible children live in the district, and 136 districts do not offer prekindergarten. Another 276 districts have fewer than 23 students, and distance between home and school may be an additional barrier to service for the children. Eligible children who could be better served by another program in a closer location should be allowed to enroll in a neighboring district, a subsidized childcare program, or a privately operated program.

**Recommendations**

♦ Direct TEA to adopt uniform school readiness standards for early childhood education programs, based on research findings that allow for local flexibility, including key predictors of school readiness such as literacy, math, and social skills.

♦ Screen students upon entry to kindergarten for school readiness according to state standards. Link those results to providers and rate them for their ability to produce students who meet the school readiness standard.

♦ Expand the use of PEIMS statewide data system to link early childhood programs with kindergarten programs.

♦ Allow funding to follow eligible students to the early childhood education program of choice that meets school readiness standards, whether that program is prekindergarten, subsidized childcare, or a private program.

**Charge**

Evaluate opportunities and make recommendations on increasing the supply of qualified teachers and improving their working conditions. The evaluation and recommendations should focus on preparation, recruitment, certification, and retention of qualified teachers, while not restricting alternative certification. Conduct an assessment of the impact of teacher
incentives, including mentoring programs and other creative options for retaining teachers, and develop recommendations for implementing incentive programs.

**Background**

Effective, experienced teachers usually do not work in schools with the most challenging students or those located in rural areas, and general salary increases do not attract such teachers to those positions. Teacher attrition, not production, is the primary cause of teacher shortages, according to witness testimony presented to the Senate Education Committee. Some research indicates that differential pay of $1,000 may reduce attrition by 2.9 percent to six percent in high-risk districts. Some cities and business organizations have programs that target bonuses for teachers and principals at low-performing inner city schools whose students' performance increased by a measurable percent and for overall campus improvement.

With the increasing diversity and needs of students, all teachers need to be able to provide instruction to all students. Currently, 80 percent of students with special needs are placed in regular classrooms for at least half the day.

The State Board for Educator Certification (SBEC) developed the Texas Beginning Educator Support System (TxBESS) to provide systematic support for beginning teachers in their first two years in the classroom. First implemented in 1999, TxBESS has received a total of $13 million in grants and supported 20 percent of new teachers, approximately 10,000. SBEC entered into a Memorandum of Understanding with TEA to receive $700,000 during the 2004-2005 biennium for TxBESS. TxBESS participants stay in the classroom at higher rates (85 percent) than do novice teachers without the support (75 percent). Among first-year Hispanic teachers, 91.4 percent return for their second year compared to 73 percent of new Hispanic teachers who do not receive services. New African-American teachers' retention rate is 87.4 percent of TxBESS participants compared to 76.8 percent among others. TxBESS costs approximately $2,700 per teacher per year of support. Some estimate that attrition costs Texas schools between $329 million to $2.1 billion per year.

Online, high quality professional development courses have been used in other states and may be less costly than TxBESS. Early research has found that online programs are at least as effective as traditional in-person sessions as well as being accessible at all times and in all areas of the state. In addition, online courses provide an alternative route to certification and development that experienced teachers can use.

SBEC has identified five states and several national credentialing agencies that have similar rigorous certification process standards. Military spouses certified by another state may be highly qualified but cannot teach in Texas because the certification process provides barriers. Many military personnel have instructional backgrounds, but those who transition into teaching begin at the first-year salary level.
The National Board for Professional Teaching Standards (NBPTS) provides a voluntary system for teachers who want national certification at a cost of $2,300. Congress provides federal subsidies for teachers seeking national board certification, which covers 50 percent of the cost. Last year, the state received $555,000, enough to serve 482 teachers, but only 60 teachers applied for those funds. The unused $486,000 went to other states. More educators might pursue certification if they were not required to cover the $1,150 cost.

A teacher's salary increases with each year of experience under the minimum salary schedule. Providing a significant increase after each of the first five years could entice more teachers to stay in the classroom.

**Recommendations**

- Award differential premium pay for shortage subjects and hard-to-staff schools. Provide funds based on campus need as determined by turnover rates and the number teaching out-of-field.
- Provide training to all certification candidates for how to instruct second language learners and exceptional learners.
- Provide training on reading instruction at all levels to all candidates for certification.
- Continue TxBESS.
- Streamline certification process for military spouses by speeding up the comparability study for certification exams from states with military bases.
- Allow service credit for salary purposes for veterans who have been honorably discharged from military service depending on the amount of service spent in the military related to instruction.
- Provide state reimbursement of fees once the candidate graduates from the National Board for Professional Teaching Standards (NBPTS) program ($1,150 per teacher in an amount equal to the federal matching funds).
- Restructure the teacher salary schedule to provide a bump in pay following years one, three, and five to help retain teachers in the profession.
- Provide online pedagogy/curriculum based directly on the Texas Essential Knowledge and Skills (TEKS).

**Charge**

Study and make recommendations relating to the effectiveness of the current process of selecting, funding, and distributing textbooks. Identify areas where the current process can be made more cost efficient, including recommendations relating to innovative methods of providing instruction such as online distance learning, and the use of interactive software to address the specific challenges of remedial students and advanced readers. Identify costs and
benefits of using technology to provide current and innovative instructional materials, including staffing and hardware requirements.

**Background**

The process for acquiring new textbooks requires a State Board of Education (SBOE) proclamation, a three-year development period, concluding with textbook use for six to nine years. To address the need for up-to-date materials, a vendor could provide online updates in the form of teacher toolkits, which would undergo the same quality-review process as textbooks.

The 77th Legislature created a Textbook Credit Pilot Project that gave districts credits when they purchased textbooks costing less than the SBOE-approved maximum cost. Witnesses said the requirements are too restrictive. Districts may use credits only for instructional material in the same subject area, barring a district from using credits to offset materials that cost more than the state maximum in another subject.

Under the textbook review process, publishers do not provide the final corrected content to textbook panels after a publisher submits a textbook for review and adoption. If an error is found, SBOE is required to impose a reasonable administrative penalty against the publisher or manufacturer who knowingly attempts to sell a textbook that is not free from factual error. The amount of the administrative penalty is based on several factors. When an error is found in a student edition that has been distributed statewide, the fine can be as high as $30,000 plus one percent of the sales.

The textbook process prohibits any changes to a state-adopted textbook without going through the review process. Because textbooks are used for several years, some textbooks, especially those for social studies and science, become outdated.

Some districts have growth rates above 10 percent each year. Each district projects its fall enrollment in the previous spring and is allowed to have 103 percent of its projected textbook needs. Fast-growth districts often do not have enough textbooks on hand for the opening of the school year. Prior to the 2004-2005 biennium, districts could order 110 percent of their anticipated textbook need.

Current law allows only public schools to receive free textbooks. Students expelled from school and receiving education services in one of 26 juvenile justice alternative education programs (JJAEPs) do not receive free textbooks. Each JJAEP has students from several districts and therefore, is in need of copies of textbooks used in each student's classroom.

Standards developed to identify conforming textbooks do not clearly state what constitutes meeting the TEKS curricula.
Recommendations

♦ Invest in subscription-based online instructional materials to update textbooks.
♦ Modify the Textbook Credit Pilot Program by: 1) expanding the credits for use by all districts, and 2) allowing credits to be used to pay the difference between the state maximum cost and the actual price of a textbook (when the textbook costs more than the maximum cost).
♦ Require the SBOE to improve the efficiency of the error-correction process by using “page proofs” or drafts of textbooks.
♦ Direct the SBOE to require harsher sanctions and penalties when a publisher fails to correct all textbook errors depending upon the stage of the textbook process.
♦ Provide the option to contract with an independent contractor, vendor, and/or publisher to update an adopted textbook for each subject.
♦ Require TEA to develop and gather data using district growth trends over a three year period to determine textbook needs in both fast growth and declining enrollment districts.
♦ Restore eligibility for JJAEPs to receive free textbooks.
♦ Develop criteria on what constitutes fulfilling a curriculum point or objective, allowing textbook review panel members to determine if the textbooks conform to curriculum standards.
♦ Require that publishers send their textbook samples to the reviewer’s home for evaluation.

Charge

Study the TEA’s implementation of the state’s new accountability system and make recommendations to resolve any problems found. Examine the impact of the federal No Child Left Behind law on the state’s accountability system and make recommendations for changes to state law to meet the federal legislation. Examine the ability of the current Public Education Information Management System (PEIMS) database to meet future information needs and recommend changes, if necessary.

Background

The state accountability system, begun in 1993, is the basis for improvements in public education. Sanctions have been the primary enforcement tool and schools now have to meet NCLB requirements. The Senate Education Committee found that the system has not provided enough rewards for excellence. Beginning in 1997, the state encouraged Advanced Placement (AP) studies by paying for teacher training, student test fees, and campus rewards. Enrollment in AP courses and successful completion has increased with minority and low-income students closing the performance gap with white students.
In 2005, fifth grade students must pass TAKS to be promoted. State appropriations for reading and mathematics initiatives that provided teachers' training in the two subjects was reduced during the 78th Legislature and thus the training that was available was limited.

State law provides for a state-developed alternative assessment (SDAA) and a locally-determined alternative assessment (LDAA) for special education students for whom the TAKS is not an appropriate measure of achievement. The Texas assessments are unique because they evaluate data specific to each student's goals.

TEKS, developed by the SBOE, identifies necessary information that every student should learn and prepares all students for postsecondary education, training, or employment. TEKS is not aligned with the achievement level needed for college readiness, and in 2002-2003, the state spent $184.8 million on remedial courses.

PEIMS, begun in 1986, provides detailed public education information that has been used for research and accountability. The number of data items collected through PEIMS continues to expand. PEIMS needs renovation to keep pace with federal and state information requirements. Student transcripts continue to be done manually for public education and college applications. One automated system is used in 30 percent of school districts.

PEIMS does not include information that links specific students and teachers, but these additional data requirements most likely would overload the current system.

Four times a year, superintendents are required to submit reports used in school districts to regional education service centers and TEA. Manually processing these submissions totals $70,000 in state-wide costs.

Initially, PEIMS items were limited to 80 characters by punch-card technology. Even with more advanced technology, the character limit remains. Removing the limit could reduce the duplicate reports and editing needed for data submission, improve data quality, and provide more flexibility in data specifications.

Recommendations

♦ Continue progress on the accountability system, making adjustments when necessary.
♦ Follow through on the commitment and initiatives for third grade students and extend those services to the fifth and eighth grade students who are held to that same standard.
♦ Establish reasonable goals to incrementally meet the federal expectation regarding special education and limited English proficient student performance on alternative assessments.
♦ Require increased oversight by TEA of districts that fail annual yearly progress or are low-performing under the accountability system. Ensure that consequences for consistent low performers are applied in a meaningful manner.
♦ Require teachers at low performing schools to take the online pedagogy/curriculum courses based on TEKS.
♦ Provide incentives for campuses that show growth in student performance aligned to the school accountability system.
♦ Require TEA to review TEKS for alignment consistent with post-secondary success.
♦ Require student information systems and curriculum management systems used in Texas schools to be compliant with state standards that allow information to be translated to a statewide database.
♦ Establish a classroom data link between individual students and teachers in PEIMS.
♦ Automate the submission of superintendent approval forms with PEIMS data submissions.
♦ Redesign the PEIMS record layout and eliminate the 80-character record length limitation.

Charge

Study successful partnerships between school districts and the business community and make recommendations for maximizing the use of effective partnerships, improving the delivery of education services, and enhancing educational opportunities for Texas students, especially at-risk students.

Background

Texas businesses have developed programs and partnerships for public school students. The partnerships provide knowledge and expertise to districts. Opportunities for collaboration may not be widely known.

Recommendation

Require TEA [to] provide a clearinghouse on their website to list the various partnership programs with a brief description and contact information of each.

Subcommittee on Higher Education

♦ ♦ ♦

Charge

Study the impact of admissions policies on enrollment in Texas public institutions and make recommendations for improving the admissions procedures, as necessary. The study should
include, but not be limited to, a review of recent court decisions on college admissions policies, and an evaluation of the impact of the Top 10 Percent Law on college admissions.

**Background**

The college admissions and financial aid processes for all students are complicated and should be simplified to improve access as well as efficiency. Numerous state, federal, and institutional aid sources require parents and students to endure a complicated system requiring persistence over many months. Financial aid officers then assemble aid packages by identifying specific programs and awarding financial aid to eligible students.

The Top 10 Percent Law provides automatic admission to public universities for students who graduate in the top 10 percent of their high school classes. Enacted by the 75th Legislature, the law addressed the issue of access to higher education for all students. The law contributed to an increase in the diversity of enrollment both ethnically and regionally. At The University of Texas at Austin, over 60 percent of the 2004 freshman class was top 10 percent students; at Texas A&M University, just under 50 percent of undergraduates are admitted under the Top 10 Percent Law.

**Recommendations**

- Direct the Texas Education Agency (TEA) to develop standard models for the calculation of high school grade point averages. To encourage academic excellence and college-readiness, the model should include weights for advanced placement, honors, and dual credit courses.
- Direct TEA to develop a single format for electronic high school transcripts. The format should include a standard method of reporting a high school's available advanced placement and honors classes, so that admissions officers can easily determine whether a student has taken full advantage of available resources related to academic excellence.
- Continue to support the College for Texans Campaign.
- Direct TEA to ensure that the annual directors of guidance/student services meeting and the TEA professional growth conferences for school counselors provide sufficient training related to college admissions to all public high school counselors and to ensure that all counselors are aware of the College for Texans online "Preparing for College" training resources.
- Provide funding to reduce counselor-to-student ratios in public high schools.
- Direct TEA to determine the feasibility of providing high school seniors with an elective class period to work with guidance counselors to prepare college applications, essays, and financial aid applications, to research colleges and majors, and to search for scholarships and other financial aid options.
Direct the Texas Higher Education Coordinating Board (THECB) to continue to expand the common admissions application initiative started in 1997 to include a form for community colleges.

Continue the Top 10 Percent Law, but require that a student must have completed the recommended high school curriculum to be admitted under the Top 10 Percent Law, effective beginning with the 2008-2009 academic year. The recommended curriculum requirement should not apply if a student did not fulfill the recommended curriculum for circumstances beyond the student's control.

Enact a cap on the percentage of applicants that an institution must admit under the Top 10 Percent Law. Students graduating in the top 10 percent of under-represented high schools should be prioritized under the cap, and automatic admission under the Top 10 Percent Law should be contingent upon a student's having completed the recommended high school curriculum, effective beginning with the 2008-2009 academic year. The recommended curriculum requirement should not apply if the student did not fulfill the recommended curriculum for circumstances beyond the student's control.

**Charge**

Study and make recommendations on the proper role, scope, and mission of community colleges. Develop innovative approaches to incorporating the community college system into the delivery of Kindergarten through 16 education (K-16). Study the feasibility of allowing community college districts to expand their service areas for taxing purposes.

**Background**

Community colleges (CCs) serve the majority of college students, providing academic credit courses, associate degrees, vocational and technical education, and accelerated instruction needed by students accommodated by the enrollment policy, as well as adult education, compensatory education, workforce development, and basic skills programs. CC enrollment has grown as a result of the low cost, accessibility, and availability. CCs have a growing role in meeting state needs, but state funds declined from 46 percent of costs in 1994 to only 31 percent in 2003. Further, the property tax base is inadequate to meet the demand; state funding would have to increase 95 percent ($1.5 billion) to meet projected growth.

CCs serve 27,000 high school students in dual enrollment courses earning both high school and college credit, and other innovative programs are in place that address the K-16 continuum. More than 90 percent of students who earn an associate's degree go on to complete a bachelor’s degree on-time.

CCs’ service areas often include parts of the state not included in the taxing district. State law requires all property to be in a CC’s service area; while 95 percent of the state’s population lives in a taxing district, only 65 percent of the state’s property is included. In addition, the lowest wealth districts often have much higher tax rates than other districts.
Florida and Illinois give areas outside CC tax districts the choice of joining or creating a new CC district, and those areas most often choose to join an existing district.

** Recommendations **

- Establish a formula-funding model for CCs that uses the 2002-2003 biennium as the base, adjusts for known growth between the 2002-2003 and 2004-2005 biennial periods, and adjusts for projected inflation. The projected biennial cost of this model is $340 million.
- Consider policies to expand and fund dual credit programs to make them more accessible and attractive to colleges and students, thereby reducing time to degree. Such policies could include encouraging school districts to provide grade point weights for dual credit courses, similar to those provided for Advanced Placement courses, and making dual credit courses more attractive to students competing for top 10 percent ranking in their graduating classes.
- Support the Early College High School Initiative to make higher education more accessible, affordable, and attractive to high school students.
- Provide financial incentives for students at CCs to complete either the associate's degree or the core curriculum before transferring to a four-year institution.
- Include transfer students as a part of four-year university performance measures to increase articulation agreements between two-year and four-year IHE institutions.
- Place all property in the state into defined community college taxing districts, consistent with the Illinois model. Those colleges receiving additional taxing jurisdiction under the new model should have an added "service expectation." The legislature should charge the THECB with adopting rules to resolve potential conflicts between existing districts and annexed taxing districts.
- Direct THECB to provide a biennial analysis of major sources of revenue and expenditures for each community college district, beginning with the 2004-2005 biennium. The THECB should develop a reporting format that takes into consideration the unique circumstances of CCs.
- Study the feasibility of funding facilities for CCs.

** Charge **

Study developmental education programs in public higher education institutions. Identify alternative means of assessing the need for developmental education, the effectiveness of delivery of developmental education programs, and the appropriate role of developmental education.
Background

Developmental education provides assistance to students entering state higher education institutions with insufficient skills to succeed in college level coursework in mathematics, reading, and writing. In 2004, THECB set minimum scores in those three subjects to determine a student’s readiness for college level work; students not meeting the standards had the opportunity to eliminate deficiencies before graduation. Many students in developmental courses are returning older students, but recent high school graduates outnumber those in other age groups. In the first 11th grade TAKS administration in 2003, 28 percent of students met the minimum college-readiness score in English language arts and 42 percent met the math standard.

The P-16 Council is composed of the commissioner of education, the commissioner of higher education, the executive director of the Texas Workforce Commission, and the executive director of the State Board for Educator Certification. The council’s general responsibility is to coordinate plans, programs, and actions among these four agencies as well as other educational organizations, and to ensure the success of students from pre-kindergarten to postsecondary education throughout the educational system of Texas.

The P-16 Council was codified by the 78th Texas Legislature, Regular Session, in the THECB's Sunset Bill, S.B. 286 (see Sections 61.076 - 61.077, Education Code).

Recommendations

♦ Adopt policies to encourage high school students not meeting the 11th grade Texas Assessment of Knowledge and Skills (TAKS) college-readiness standards to address deficiencies before graduation. This should not be a requirement for graduation. Policies should include, but not be limited to:
  ♦ directing the Texas Education Agency to allow students who have used the first semester of their senior year to address college-readiness deficiencies to re-take the TAKS at no or low cost; and
  ♦ directing the P-16 Council to study and develop partnerships between high schools and higher education institutions to encourage, but not require, developmental education prior to graduation.

♦ Require the P-16 Council to develop a college-readiness program for 8th through 12th graders in all public schools by 2008.

Charge

Study and make recommendations to modify the student financial assistance programs to provide better incentives for students to graduate on-time with better grades, such as the B-
On-Time (BOT) program and work-study programs, and to simplify the application process for financial aid programs.

**Background**

BOT, created by the 78th Legislature, was funded by savings realized from refinancing the Hinson-Hazelwood College Student Loan Program bonds, which provided $56 million for the 2004-2005 biennium. Witnesses expressed concern that funding will not be available for students in the near future because of high demand and limited appropriations. In addition, the BOT allows loan forgiveness in some circumstances, but recipients would pay federal taxes on the amount forgiven. The report identified and discussed numerous financial aid and grant sources.

**Recommendations**

- Encourage the Texas congressional delegation to support federal efforts to simplify the Free Application for Federal Student Aid, especially for low income students.
- Encourage the Texas congressional delegation to support the provisions of H.R. 4283, the College Access and Opportunity Act, or similar legislation, that require the use of a new formula for distributing federal campus-based funds among institutions.
- Direct the THECB to develop and provide comprehensive financial aid training for public school counselors, community-based organizations and others, so there is a reliable and consistent source of information.
- Direct THECB to continue and expand the Higher Education Assistance Program and First Generation College Student Initiative so more students will learn of financial aid through these outreach programs.
- Require institutions to allow students who are waiting for disbursement of financial aid to register on an accounts-receivable basis.
- Make state financial aid funds available at the start of the academic year in August.
- Expand the state’s emergency tuition and fee loan program to allow awards to students for books and supplies. If funding in the emergency tuition and fee loan program is limited, allow institutions to give priority to needy students.
- Adjust the state’s tuition and fee installment plan to provide more payment options to all families.
- Retain and fully fund the major state financial aid programs.
- Apply TEXAS Grant and BOT Loan Programs in tandem, if the legislature cannot fully fund them, with students receiving TEXAS Grants during their first two years of college (first three years, if they acquire an associate’s degree), and then receiving BOT loans for the balance of their studies.
Limit eligibility to five years if the legislature cannot fully fund the TEXAS Grant and BOT Loan Programs.

Direct the THECB to base TEXAS Grant award amounts based on tuition and fee projections for the upcoming academic year.

Allow students who enter the TEXAS Grant Program based on seventh semester high school transcripts to continue in the program if they then meet the program’s college academic progress requirements.

Change the academic progress requirement for the TEXAS Grant II Program to conform with those of the TEXAS Grant and BOT Loan Programs.

Change the employer contribution requirements of the Texas College Work-Study Program to match those of the much larger Federal Work-Study Program.

Provide the same hardship provisions for students receiving awards through the TEXAS Grant II Program as are available for students in the TEXAS Grant Program.

Rename the TEXAS Grant II Program to be the Texas Educational Opportunity Grant (TEOG) to eliminate confusion with the TEXAS Grant Program.

Expand the state’s tuition rebate program to include students who graduate on time as defined by the calendar as well as by the number of hours attempted, increase the value of the rebate, and appropriate funds to meet program costs.

Direct THECB to conduct an additional study to identify potential improvements in state exemption and waiver programs.

**Charge**

Review and make recommendations relating to the adequacy of funding for graduate medical education, including funding required for professors, facilities, research programs, and students. Review and make recommendations relating to increasing the number of health professionals.

**Background**

Graduate medical education (GME) is a partnership between medical schools and teaching hospitals to train resident physicians. One day each year, hospitals select their residents for the upcoming cycle; Texas' graduate medical teaching hospitals fill about 90 percent of the positions. GME funding is a "patchwork" of state, federal, and local funding streams that provide Texas medical schools on average of $51,388 per resident compared to $161,000 average per resident in other teaching hospitals. The committee found that the current system is not able to supply all the physicians needed for the growing population.
Recommendations

♦ Prioritize THECB's recommendation to restore state graduate medical education (GME) funding to 2002-2003 biennium levels and provide additional state funds for federal Medicaid match.

♦ Prioritize THECB’s recommendation to adopt formula allocations for faculty costs and resident support.

♦ Prioritize THECB’s recommendation to provide state funding to allow for the addition of 300 additional residency positions.

♦ Consider evaluating and prioritizing requests for additional GME funds, whether the applications for additional funding accomplish the following goals:
  ♦ increase services to either non-insured or under-insured Texans;
  ♦ increase the number of Medicare and/or Medicaid funded GME residency positions in the state;
  ♦ increase ambulatory experiences and improve the quality of care to the underserved through programs such as disease management;
  ♦ increase the geographic equity of Medicaid and Medicare GME funding in the state; and
  ♦ ensure continued GME programs in all areas of the state including rural, small, and urban areas of the state.

♦ Direct THECB and the Health and Human Services Commission to work together to pursue opportunities with the Centers for Medicare and Medicaid Services to allow innovations in training of medical residents. These combined efforts should include, but not be limited to, waivers and/or programs that:
  ♦ increase services to either non-insured or under-insured Texans;
  ♦ increase the number of Medicare and/or Medicaid funded GME residency positions in the state;
  ♦ increase ambulatory experiences and improve the quality of care to the underserved through programs such as disease management; and
  ♦ increase the geographic equity of Medicaid and Medicare GME funding in the state.

♦ Study the availability and use of the trauma funds from the Trauma Facility and Emergency Medical Services Account as a source of funding for additional residency positions with the added benefit of drawing down additional federal matching dollars and protecting the disproportionate share dollars currently received by hospitals for unfunded care.
Note: The joint interim charges with the Senate Committee on Finance are addressed in the Senate Committee on Finance section of this publication.
Senate Committee on Finance

General Budget and Tax Issues

Charge

Track the history of appropriations out of and deposits of revenue into the Texas rainy day fund. Monitor FY 2004-2005 deposits of revenue to the fund. As needed, make recommendations on how to improve revenue sources and the manner in which the fund can be spent.

Background

The Economic Stabilization Fund (ESF), also known as the “Rainy Day Fund,” was ratified by voters in 1988. The Texas Constitution designates three sources of transfers into the fund: excess oil tax revenues ("excess" is defined as 75 percent of revenues that exceed the amount collected in 1987), excess natural gas tax revenues (see previous definition of "excess"), and half of any unencumbered balance left in the General Revenue Fund at the end of the biennium.

Three legislatures have appropriated funds from the ESF totaling $1,487.3 million, with the most recent appropriation totaling $1,260.5 million by the 78th Legislature in fiscal year (FY) 2003. After a transfer of $595 million on September 3, 2004, and the appropriation out of the fund for FY 2005, the balance is projected by the Comptroller of Public Accounts to reach $709.4 million by the end of FY 2005.

Recommendation

♦ Encourage the growth of the Economic Stabilization Fund to a level that responsibly anticipates the possibility of future emergency needs of the state, allows the state to achieve AAA bond rating status, and does not unnecessarily withhold large balances from the citizens and taxpayers of this state.

Charge

Report on the current condition of the states' pension systems, including an analysis of unfunded liabilities. Make recommendations, as necessary, to ensure Texas meets its financial obligations in the future.
Background

Texas has charged two state agencies with the responsibility to oversee and review public retirement systems in the state. The Pension Review Board (PRB) is designed to oversee and review state and local public retirement systems in Texas. The Office of the Fire Fighters' Pension Commissioner (Commissioner) administers the Texas Local Fire Fighter Retirement Act (TLFFRA) and the Texas Statewide Emergency Services Personnel Retirement Act (TSESPRA) and its respective fund, the Statewide Emergency Services Personnel Retirement Fund (Fund).

In order to assess the health of public pensions in the state, the Senate Finance Committee, at the direction of the lieutenant governor, spoke with representatives of the PRB and TSESPRA, and representatives of the state's two pension funds, Employees Retirement System (ERS) and Teachers Retirement System (TRS). The overall concerns of the committee focused on strengthening and better equipping the agencies tasked with oversight of public pensions and on addressing current unfunded actuarial liabilities within state funds.

Recommendations

♦ Consider alternative methods of funding the PRB.
♦ Consider requiring the PRB to initiate an "early warning" report system to identify troubled plans and to release these reports on a regular basis.
♦ Receive additional funding to improve the quality of the actuarial audit process.
♦ Require the PRB to adopt rules requiring at least one member of the board of directors of a pension [fund] to have financial experience related to the management of pensions.
♦ Study alternative methods of funding the TSESPRA's unfunded liability.
♦ Consider charging Texas Local Fire Fighter Retirement Act members a fee to cover the administration and support of the Office of the Fire Fighters' Pension Commissioner oversight.
♦ Consider a more standardized investment approach for the ERS.
♦ Raise both the state and employee contributions to the ERS pension plan from the current level of 6 percent to 6.4 percent.
♦ Eliminate the early retirement program created by H.B. 3208 (78th Legislature).
♦ Review the impact on the ERS of increasing the Rule of 80.
♦ Review the impact of requiring retire/rehire members of the ERS to contribute to the pension plan after being rehired.
♦ Study the best method to meet the future funding needs of the Law Enforcement and Custodial Officer Supplemental Retirement Fund.
Consider providing the TRS with the flexibility to pursue downside risk protection to protect the pension funds.

Increase the state's contribution to the TRS pension fund to match the teachers' contribution rate.

Review the impact on the TRS of increasing the Rule of 80.

Review the impact of requiring retire/rehire members of the TRS to contribute to the pension plan after being rehired.

**Charge**

Review the role of the Texas Public Finance Authority (TPFA) and the Bond Review Board (BRB) in the issuance of state bonds, and make recommendations, as necessary, for improvements.

**Background**

The state's portion of debt is broken down into two categories—General Obligation Bonds and Revenue Bonds. Local Debt Bonds are any obligations assumed by a city, county, or district, such as school, water, community college, or any other designated type of district.

There are two agencies that are directly involved in issuing bonds. The role of the BRB is: to approve all state bond issues and lease purchases with an initial amount greater than $250,000 or a term longer than five years; to collect, analyze and report information on the debt of local political subdivisions in Texas; and to administer the state’s private activity bond program. The TPFA issues all debt for the State of Texas, except when the bonds are for housing loans, local water projects, or projects at an institution of higher education (except for Texas Southern University, Stephen F. Austin University, and Midwestern State University).

Based on evaluations and projections supplied by the BRB for the years 2001 through 2009, the state will have to closely evaluate its outstanding debt as it considers additional requests for bond authority in the upcoming legislative session.

**Recommendations**

Require the BRB, in coordination with TPFA, to make recommendations regarding actions to improve the state’s bond rating. These recommendations should be reported to the legislature prior to the start of each regular session.

Consider requiring the BRB to collect data on the amount of Maintenance and Operation (M&O) tax that is being used to service debt. The legislature should also clarify M&O tax collection rules to disallow usage for the support of lease purchase payments.
♦ Require all Tax Increment Financing boards across Texas to report all financial data, including, but not limited to, principal and interest due on all outstanding debt. This information would be required to be delivered to the BRB in addition to the Texas Office of the Attorney General and the Texas Comptroller of Public Accounts (comptroller).

**Charge**

Study the budget certification process. Make recommendations to improve the process of certifying the state budget by the comptroller.

**Background**

The Texas Constitution requires that the comptroller certify that the general appropriations bill is within the amount estimated to be available within the affected funds.

**Recommendation**

♦ Awaiting further action.

**Charge**

Review effectiveness of current and past bill patterns, and make recommendations, as necessary, for improvements.

**Background**

The LBB defines the bill pattern for the General Appropriations bill, in conjunction with the Senate Finance Committee and the House Appropriations Committee. Related agencies periodically review bill patterns and make recommendations for improvements.

**Recommendation**

♦ Continue to review and make recommendations for improvement to bill patterns.

**Charge**

At the direction of Chairman Ogden, the Senate Finance committee was instructed to review management and investment strategies of the Permanent School Fund (PSF) and the Permanent University Fund (PUF) and make recommendations.
Background

The State of Texas has two major endowment funds for the support of public education—the PSF and the PUF. The management strategies for these funds are dramatically different. While the PSF is highly indexed, the PUF is actively and aggressively managed. Distributions from both funds are based upon total return to the fund, but the constitutional restrictions on distribution decisions differ. Both funds adhere to a principal of intergenerational equity, but each fund effectively defines this concept uniquely.

Recommendations

Permanent School Fund

♦ Review the impact of endowment fund decisions made by various boards, including state policy goals and money management, and make recommendations on a regular basis.

♦ Provide guidance on investment policy and broad policy goals for the state and make recommendations of how best to achieve these goals.

Permanent University Fund

♦ Review the appropriateness of maintaining large fund balances to obtain a preferred bond rating and make recommendations concerning methods to maintain [a preferred] bond rating without large fund balances.

♦ Direct some alternative uses of bonding capacity, including, but not limited to, the performance of maintenance in order to avoid automatic tuition increases.

♦ Review the sufficiency of The University of Texas System accountability report and commissioned efficiency study.

♦ Consider the use of an independent consulting agency or board to help universities achieve efficiencies and to guide the decisions regarding the distribution of large amounts of un-obligated money.

♦ Require The University of Texas and Texas A&M University Systems to provide a detailed report of the excellence programs supported by the Available University Fund funding.

♦ Determine the feasibility of expanding The University of Texas Investment Management Company management strategies to the ERS, the TRS, and the PSF, and, if favorable, make recommendations on how best to accomplish this.

♦ Review the growth in the management group at The University of Texas Investment Management Company and make recommendations.
General Government, Public Safety, and Economic Development

Charge

Monitor and report on the amount and uses of federal homeland security dollars in Texas appropriated through the governor's office and directly to local governments.

Background

In order to ensure that homeland security dollars are spent in a manner that best provides local response capability in the event of a disaster or terrorist event, Texas' structure of addressing homeland security preparedness is built upon the existing system of Councils of Government and existing regional networks.

In past years, several Texas state agencies, including the Texas Engineering Extension Service, the Texas Department of State Health Services, state universities and health science centers, the Adjutant General's Department, the Texas Workforce Commission, the Texas Commission on Environmental Quality, the Texas Department of Agriculture, and the Texas Animal Health Commission have received direct grant funding from the various federal agencies to respond to events relating to homeland security. These funds are usually one-time funding for a specific purpose.

Recommendations

♦ Require each agency to include in its Legislative Appropriations Request, submitted to the Legislative Budget Board (LBB), a separate line item in the method of finance showing the amount of homeland security funds received by the agency.

♦ Require that each agency and university submit to the LBB the types of grants applied for and the matching requirements for those grants and report the findings to the legislature before the start of each session.

♦ Establish procedures within the governor's office to identify all federal homeland security funding and ensure that this funding is expended in a manner that supports the state and national strategic plans, with special emphasis on funds that flow directly to entities not overseen by the state administrative agencies.

♦ Assess internal controls by the governor's office used by the state's administrative agencies for homeland security funding to ensure appropriate safeguards are in place to minimize the potential for waste, fraud, and abuse.

♦ Spend homeland security dollars in a manner that ensures that the state receives maximum collateral benefit.

♦ Consider legislative appropriation of all homeland security funds that are directed to any state agency or sub-division of the state government in order to ensure greater accountability.
**Charge**

Conduct a comprehensive review of and report on fees at state regulatory agencies, including historical information on fee amount, expenditures, appropriations, populations affected and general impact to the state budget.

**Background**

Article VIII agencies are the primary regulatory agencies of the state. The nature of the services these agencies provide to Texas businesses and individuals enables them to charge a variety of fees, fines, and penalties to support their own functions and possibly to contribute revenue to the state. These 36 agencies are funded through various arrangements, with some agencies making a net contribution to the state, others requiring additional state funds, and still others costing the state no net revenue.

**Recommendations**

♦ Consider any Sunset Advisory Commission recommendation to merge additional agencies under the Texas Department of Licensing and Regulation to achieve efficiencies for licensees.

♦ Include an Article IX rider that requires each regulatory entity to report the amount of fees, fines, and penalties assessed and collected to the LBB on an annual basis.

♦ Give agencies the incentive to collect fines and penalties in an efficient manner by allowing each agency to retain a portion of the money collected.

**Charge**

Monitor population trends in the adult and juvenile correction facilities and determine if budget decisions made in the 78th Legislature remain viable. Make recommendations for improvement, as necessary.

**Background**

Based on projections by the LBB, the adult and youth populations overseen by the Texas Department of Criminal Justice (TDCJ) and the Texas Youth Commission (TYC) are projected to increase. There are two primary forces driving the increase in the adult population—the first due to an increase in direct sentences to prison, and the second a result of a decline in adult community supervision caseloads. The juvenile population increase warrants attention as actual commitments are exceeding estimated commitments.

Based on the most recent population projections, budget decisions made for the 2004-2005 biennium need to be revisited in order to accommodate the projected increases in TDCJ and TYC populations.
Recommendations

Adult Population

♦ Provide increased funding and implement the use of intermediate sanction facilities for probation revocations to strengthen judicial confidence in community supervision programs.

♦ Address the growing revocation rate of felons on community supervision to prison and state jail.

♦ Reduce the growing population of non-United States citizens housed within TDCJ and ensure that those individuals released to foreign governments do not immediately return to Texas and subsequently to TDCJ.

♦ Continue with efforts to reduce the growing geriatric population housed within TDCJ and their ever-increasing medical cost.

Youth Population

♦ Maintain the TYC contract facility resources and the usable, innovative capacity they provide at a level that is both cost-effective and best meets specialized needs.

♦ Provide additional emphasis and resources to the juvenile probation system to encourage the management of juvenile offenders at the local level.

♦ Improve reading levels of youths committed to TYC facilities.

Charge

Review revenue sources into and appropriations out of Fund 006 [the State Highway Fund]. Review policy decisions by the 78th Legislature that will impact the future of the fund. Make recommendations for improvement, as needed.

Background

With a growing statewide population and a goal of moving people and goods efficiently across our cities and our state, transportation funding continues to be an important issue for the State of Texas. Historically, Fund 006 has been the major source of revenue for improving our state's highway system. Portions of revenue from the state motor fuels tax and vehicle registration fees, and reimbursements from the federal government are all deposited in the Fund 006. These specific revenues then become constitutionally dedicated to promoting public road construction, acquisition, maintenance, and policing of the state highway system.

Considering the potential impact of changes mandated by the Texas Legislature, as well as upcoming changes mandated by federal reauthorization legislation, and the large amounts of
money that flow into and out of the fund on a monthly basis, it is essential that all available resources are used in an efficient and appropriate manner.

**Recommendations**

♦ Appropriate and monitor Fund 006, carefully, to ensure expenditures by the legislature and the state are constitutionally appropriate.

♦ Ensure that the federal highway fund reauthorization legislation is maximized to solve our state's most pressing highway transportation needs. The legislature should strongly encourage the federal government to increase the state's share of transportation dollars to make it more equitable as compared to the amount of gasoline taxes paid by Texas taxpayers.

♦ Consider alternate funding for the Texas Department of Public Safety from a portion of the fine, license, and weight revenues collected.

♦ Consider improvements to the Texas Department of Transportation's (TxDOT) financial reporting, due to the sheer size of the budget coupled with the significant new financial authority granted to the agency during the 78th Legislative Session.

♦ Continue to legislatively monitor the implementation and effects of H.B. 3588 and its impact on the future of Fund 006. The sweeping changes created by H.B. 3588, 78th Legislature, Regular Session, are still being tested as to their impact on Fund 006 and the state's ability to better meet the transportation needs of the State of Texas and its communities.

♦ Review the appropriateness of TxDOT maintaining large fund balances outside the state's treasury and outside the appropriations process.

**Charge**

Monitor and report on current and potential future uses of the Enterprise Fund. Study and develop recommendations for using economic development funds and assessing potential projects, including, but not limited to, establishing criteria for investment, developing standards for cost-benefit analyses, leveraging local participation, and incorporating clawback provisions if goals are not met.

**Background**

The creation and funding of the Texas Enterprise Fund (fund) by the 78th Legislature has enabled Texas to attract businesses to the state that are projected to create approximately 14,000 new jobs over the next 20 years. While the results are positive, a look at how some other states are managing their job creation funds provides insight to possible ways Texas could further leverage its fund and ensure that the intended purpose is achieved.
Recommendations

♦ Prepare statewide economic and fiscal impact models for all projects being considered for funding from the Texas Enterprise Fund. Impact models should include the direct and indirect impact on Texas from the project, including outputs, employment, earnings, tax revenue, etc.

♦ Consider a set of criteria for investment including a project cost-benefit analysis system based on return-on-investment, local participation, etc.

♦ Submit annual updates to the legislature on each project currently under an Economic Agreement with the state.

♦ Structure the Texas Enterprise Fund so that disbursements are based on meeting certain performance measures or similar criteria rather than up-front disbursements of the entire grant amount.

♦ Offer low interest, state bonds in lieu of, or in conjunction with, Enterprise Fund grants, particularly in funding of manufacturing projects where start-up costs are significant. The state should explore using the Enterprise Fund to buy down interest rates or to provide bonds for start-up costs like equipment.

♦ Require claw-back provisions in all agreements for grants from the Texas Enterprise Fund.

♦ Set state goals to achieve broad geographic disbursements from the Enterprise Fund, including rural areas and areas of high unemployment.

♦ Base enterprise grants/disbursements on criteria that are easier to measure and are a suitable proxy for future job creation, such as capital investments or production levels because calculating and determining future job growth is highly subjective and unpredictable.

Health and Human Services

Charge

Study the sources of and means by which state agencies track and report on budget-driving caseload and health care cost increases submitted to the legislature. Make recommendations for improvement, as needed.

Background

Health and human service caseloads and their accompanying cost estimates drive a significant portion of the state budget. Growth in spending for health and human services (HHS) agencies has risen steadily in recent years, despite cutbacks in many areas during the
78th Regular Session. While grants for Temporary Assistance for Needy Families (TANF) peaked in the middle 1990s, largely because of federal and state welfare reform, costs associated with items such as Medicaid, children's protective services, mental health and retardation, and programs for other disabled Texans have, in some cases, grown at double-digit rates.

**Recommendations**

♦ Continue to refine caseload and cost estimates within HHS agencies through the coordination of resources between the various HHS departments and the expertise and staff of the Health and Human Services Commission (HHSC).

♦ Continue to implement and expand the use of Federally Qualified Health Centers (FQHCs) as a method of controlling health care costs, Medicaid expenditures, and identifying clients eligible for Medicaid services so that more accurate caseload estimates may be used for appropriation purposes.

♦ Require HHSC to track and report on the effectiveness of FQHCs in serving currently unmet health care needs and Medicaid clients, including how much is expended on Medicaid clients and the number of clients served.

**Charge**

Monitor the budget elements of the Health and Human Services Commission reorganization. Coordinate work with the Legislative Oversight Committee and the Senate Committee on Health and Human Services.

**Background**

When the 78th Legislature, Regular Session, convened in January of 2003, it faced a large shortfall of available funds. Finding greater efficiencies within the twelve former HHS agencies in order to enable a larger percentage of dollars to be directed toward service provision, rather than administration, was seen as critical in balancing the budget. The largest providers of social services in Texas are the HHS agencies that are charged with administering critical programs such as Medicaid, the Children's Health Insurance Program, food stamps, and TANF. H.B. 2292, 78th Legislature, Regular Session, consolidated 12 HHS agencies into four departments overseen by HHSC.

**Recommendations**

♦ Consider enhancing the state and local partnerships to expand the 2-1-1 infrastructure, if the 2-1-1 Information & Referral system is to serve as the gateway to health and human service programs.
Set forth clearly the private company's responsibilities, penalties for non-compliance, mechanisms for identifying failures to fulfill obligations, remedies that compel compliance, and remedies available for clients and the state during contract negotiations, in the event the state decides to outsource certain functions to private companies.

Monitor reductions in expenditures and savings with HHS administrative restructuring, including reductions in FTEs. This estimate should be separate from those savings achieved through benefit changes.

Provide performance measures aimed at maximizing efficiencies in delivering client services.

Provide authorization and appropriate approval mechanisms for HHSC to expand the use of front-end fraud reduction methods statewide if indicated as successful by the results of an assessment of the current pilot.

Provide authorization for HHSC to assess the feasibility and cost-effectiveness of using a Universal Services Card or another method of consolidating recipient identification and benefits issuance to replace multiple forms and cards used by various HHS programs.

Strengthen the powers and authority of the Transition Legislative Oversight Committee to oversee the ongoing reorganization of HHS agencies.

Charge

Develop comprehensive tables of information on programs at each agency that convey historical information about method of finance, appropriations, program description, performance highlights, numbers of FTEs, and date of last audit in a manner that is conducive to the legislature's decision-making.

Background

The State of Texas offers hundreds of specific programs each with its own client base. In some cases, programs serve thousands of individuals at the cost of billions of dollars. In others, only a very small number of clients are served, sometimes at a very minimal cost.

Recommendations

Require the HHSC to provide and update, on an annual basis, a uniform and complete listing of HHSC programs that includes which agencies offer which programs, contact information, historical expenditures, total program budget, average cost per client, description of average client, numbers served and waiting/interest list size. Such a list should be made available by electronic means to reduce costs. Hard copies could be produced upon request for members of the legislature or for a small fee to the public to cover printing/copy costs.
 Require the HHSC to work with each department and interested parties to develop a basic guideline for cost per client based on acuity, available providers, geographic area, [input from the] Committee on Senate Finance, Interim Report on the Health and Human Services Charges, etc. in those programs providing long-term services to individuals. These guidelines would not be used to determine actual appropriations but, to identify programs with similar clients that are too costly or inefficient.

Charge

Review the cost study and determine which cost elements of the study have not been controlled and make recommendations to the 79th Legislature to address bringing them under control. Examine the budget impact of policy decisions of the 78th Legislature and make recommendations for improvement.

Background

The 77th Legislature's Senate Finance Subcommittee on Rising Medical Costs issued its interim report in January of 2003. It included summaries of the major health care programs operated by the state as well as synopses of past cost increases in each program and projections for future appropriation needs. Detailed information on each health care program's financing, most utilized pharmaceuticals, and procedures were also included. Additionally, agencies provided a list of options to the 78th Legislature to reduce expected cost increases.

The 78th Legislature implemented a number of options designed to reduce expected cost increases. Many of these actions were done in the face of a revenue shortfall approaching $9.9 billion. The combination of these program changes offset the substantial cost increases projected at the beginning of the legislative session. As medical costs continue to become a larger portion of the state budget, however, important decisions will have to be made as to the level of benefits offered under each program and who (state, client, member, or other) pays for those increases.

Recommendations

♦ Continue to explore methods of reducing pharmaceutical costs among state-financed health care programs, possibly through the continued use of bulk purchasing and treatment plans developed in conjunction with provider groups and other interested parties.

♦ Provide incentives for exercise classes and other preventive health programs that reduce the risk of obesity and other diseases in persons insured through the state who would possibly require future prescription medication and other medical care.

♦ Require the appropriate state agencies to explore methods of increasing the market penetration of long-term care insurance in an effort to encourage prudent planning for
long-term care needs, thus decreasing reliance on Medicaid long-term care services now and in the future, and protecting the assets of seniors who would otherwise become indigent long-term care clients.

♦ Require each agency administering a state health insurance program to provide to legislative leadership and the appropriate committees at the beginning of each legislative session a comprehensive list of options to reduce health care costs and to provide care in the most cost-effective and efficient manner possible.

♦ Continue to implement and expand the use of FQHCs as a method of reducing local health care costs and, possibly, Medicaid expenditures. This recommendation and background was outlined under a previous charge.

♦ Reduce financial barriers to the adoption of special needs children by increasing the monthly adoption subsidy ceiling from $545 to $700 for those in the moderate service level and from $545 to $900 for those in the intense service level.

♦ Increase the number of qualified foster parents and continue to recruit foster care families in churches and other faith based organizations in keeping with the new initiative Congregations Helping in Love & Devotion (CHILD) [program], created by the 78th Legislature.

♦ Establish Legislative Budget Board (LBB) performance measures for foster family recruitment and retention to motivate Child Protective Services (CPS) and private agencies to make this a priority.

♦ Provide financial support for kinship care providers who do not want to and/or cannot become licensed foster homes. Last session, the legislature appropriated $250,000 for a pilot project in one region of the state to provide a $1,000 one-time payment plus day care, counseling, and other support services to relatives. Expanding the pilot program may enable more kinship placements, resulting in significant cost savings to the state.

♦ Restore funding and provide additional funding for early intervention services, including additional risk assessment training for CPS investigators so they can catch abuse before it escalates to the point of necessitating traumatic and costly removal.

♦ Increase funding to address waiting lists for family-based services such as counseling and parenting classes.

♦ Create an automated system to track openings in foster homes, emergency shelters, and residential treatment centers. Added efficiencies in the system can ultimately lead to better protection of children, as well as cost avoidance for the state.

♦ Investigate the need for further law enforcement involvement in child and adult protective cases where a parent, guardian, or care provider chooses not to cooperate with agency personnel. Such involvement may decrease the need for serious and costly care in the future and improve the quality of life for abused children and adults.

♦ Continue to develop new accelerated and alternate degree programs to speed up the graduation of nurses and to help attract students from underrepresented groups to the profession.
♦ Establish further incentives, such as loan repayment programs and financial aid, for undergraduate and graduate nursing students who are interested in careers in nursing education.

♦ Set statewide goals for increasing the number of initial registered nurse licensure graduates and identify funding required to meet those goals, especially for nursing faculty.

♦ Extend the expiration date for redirecting the Tobacco Settlement Funds under the Nursing, Allied Health and Other Health-Related Education Grant Program to nursing from August 2007 to August 2011.

♦ Employ part-time faculty to help masters-level nurses remain in clinical practice and retain their licenses.

♦ Support initiatives that promote supportive workplace environments for nursing personnel, such as offering flexible schedules for beginning nurses and creating mentor roles for experienced nurses.

♦ Increase nursing faculty salaries at community and four-year programs to be more competitive with nurse practice salaries.

♦ Encourage colleges to allow nursing departments greater flexibility in faculty compensation packages.

♦ Provide a portion of health science center formula resources to the education of resident physicians if proven necessary by other interim studies regarding Graduate Medical Education.

♦ Encourage experienced physicians to serve as mentors for resident physicians to augment the training received as part of their actual residency.

### Higher Education

#### Charge

Study and make recommendations, in conjunction with the Senate Higher Education Subcommittee, relating to the development of a statewide accountability system for higher education that is consistent with funding strategies for higher education.

#### Background

In January 2004, Lieutenant Governor Dewhurst charged the Senate Subcommittee on Higher Education and the Senate Finance Committee with studying and making recommendations relating to the development of a statewide accountability system for higher education that is consistent with funding strategies for higher education.
Also in January, Governor Perry issued an executive order requiring the Texas Higher Education Coordinating Board (THECB) and institutions of higher education to work together to determine the effectiveness and quality of the education students receive. In response, THECB developed the following four keys to creating a transparent accountability system that promotes excellence: establishing groupings of institutions with similar types and missions; determining for each group appropriate measures that reflect institutional performance; determining benchmarks against which to measure success; and assessing progress annually and taking steps to improve performance.

**Charge**

Develop a representative sample profile of local funds at various types of agencies and institutions of higher education and report on amounts, revenue sources, expenditures, and how these funds impact the use of General Revenue appropriated in the General Appropriations Act.

**Background**

In Texas, the legislature makes direct appropriations to institutions of higher education. THECB, boards of regents, boards of trustees, and the general public present funding recommendations to the legislature. Institutions receive funds from a variety of sources. Appropriated general revenue (GR) funds constitute only a portion of institutions’ overall funding. Some funding does not flow through the appropriation process.

**Charge**

Review recent history and beneficiaries of Tuition Revenue Bond (TRB) authorization by previous legislatures. Recommend procedures, criteria and priorities for potential new TRB authorizations and funding sources for the 79th Legislature.

**Background**

TRBs have emerged as a major source of construction funds. While legislative authorization is needed prior to the issuance of TRBs, such authority is not provided with a guarantee of a corresponding appropriation for related debt service. Despite this fact, legislative practice has been to use GR to reimburse institutions for the cost related to debt service. During the 78th legislative session, the legislature reimbursed interest-only payments on those TRB debt obligations. For the coming 2006-07 biennium, the LBB estimates an additional $369 million will be needed to pay both principal and interest for all currently issued TRB debt. In addition, $3.1 billion in new authorizations have been requested.
Charge

Study all funding of institutions of higher education in conjunction with the Senate Higher Education Subcommittee. Assess the cost and requirements of increasing the number of Tier 1 universities in Texas. Reexamine current and alternative methods for funding regional universities, health science centers and their reimbursement for the provision of indigent health care, community colleges, and universities.

Background

Tier 1 status is not formally defined, but is generally interpreted to reflect excellence at an institution of higher education. Common characteristics of Tier 1 institutions include: high research expenditures and a large number of doctoral degrees awarded in various fields. Higher Education Commissioner Raymund Paredes urged the legislature to define Tier 1 broadly and in a way that makes the most sense for the greatest number of institutions in Texas.

Charge

Study the budgetary impact of legislation to deregulate tuition at institutions of higher education. This study should include, but not be limited to, a review of recent tuition increases authorized by this Act, their impact on affordability of higher education, and an evaluation of the expenditure of these funds.

Background

As institutions of higher education have only had the authority to set tuition since the spring 2004 semester, the legislature does not have sufficient data to conduct a complete analysis of the impact of tuition deregulation on the affordability of higher education. Factual statements can be made regarding those institutions that have changed their general tuition pricing strategies, but this does not answer questions regarding the full impact on students. Financial aid variables, including the required tuition set-aside, should be examined in conjunction with the cost of education to determine if the variation in tuition charges is facilitating or inhibiting the mandates of Closing the Gaps.

Charge

Provide support for the Joint Select Committee on the revenue and property tax relief portion of public school finance. Also, examine ad valorem taxation in Texas, focusing on the establishment of growth caps and the impact of caps on local government finances.
Background

The Senate Finance Committee provided support to the Joint Select Committee on Public School Finance. Currently, Texas' public school finance system is heavily reliant on ad valorem taxes for its method of finance.

Recommendations

♦ Adopt a statewide accountability system for institutions of higher education to promote transparency and excellence.

♦ Review and consider incorporating in its statewide accountability system the institutional groupings, performance measures, and benchmarks developed by the THECB and the Council of Public University Presidents and Chancellors (CPUPC) in response to the Governor's Executive Order RP 31.

♦ Review annually the groupings, performance measures, and benchmarks to determine their effectiveness in assisting the state in reaching its goals of Closing the Gaps by 2015.

♦ Evaluate, in consultation with the THECB and the CPUPC, an appropriate mechanism for linking future excellence funding to performance, as measured by the accountability system. The mechanism should take into consideration the various missions and circumstances of institutions. This evaluation should include, but not be limited to, a consideration of restricting an institution's right to deregulate tuition based on performance, as measured by the accountability system.

♦ Prioritize undergraduate excellence in determining the system's performance measures and benchmarks.

♦ Continue to pursue a uniform definition of a Tier 1 institution utilizing the criteria developed in the statewide accountability system by THECB.

♦ Avoid confusion by legislatively adopting new language distinguishing the Higher Education Fund and the Higher Education Assistance Fund. An option would be to continue to refer to the annual appropriation itself as the Higher Education Fund (HEF) and refer to the endowment established by Article VII of the Constitution as the Permanent Higher Education Fund (P-HEF). The legislature should eliminate reference to the Higher Education Assistance Fund (HEAF).

♦ Ensure the HEF endowment continues to develop as intended, by legislatively continuing to provide annual funding as currently directed by statute and consider transfers of Rainy Day Funds in order to reach the $2 billion trigger before the end of the decade.

♦ Increase funding for the HEF. Such increases should be based either on general inflation trends or to match the purchasing power of the AUF. To account for inflation, the allocation should be increased by $50 million; or to match the purchasing power of the AUF, $87.5 million should be added.
Consider discontinuing the practice of using TRBs to fund capital projects. Instead, HEF and AUF should be used as the primary sources of funding for such projects. Such a change would require adequate funding of the HEF, and possibly a greater commitment from the AUF to funding capital projects.

Direct the legislature to fully fund the Research Development Fund as provided for in H.B. 3526 (78th Legislature, Regular Session). These dollars will help in the development of more nationally competitive research institutions in Texas by providing a predictable and stable source of funding for research infrastructure. This includes recruiting and retaining faculty members and graduate students, as well as constructing and equipping appropriate laboratory space.

Create, legislatively, mechanisms such as public/private partnerships, matching funds programs, etc., to increase the number of flagship institutions in Texas, after fully funding the Research Development Fund.

Consider the consolidation of the various financial aid programs with similar goals that are funded with tuition and state appropriations and make recommendations on future funding streams for these programs.

Continue to look for ways to provide financial assistance to students who demonstrated a financial hardship, but do not otherwise qualify for financial aid under current state gift or grant programs.

Increase legislative tuition oversight authority to allow legislative disapproval of excessive or inappropriate increases in tuition.

Establish an enforcement mechanism to limit the amount of designated tuition increases that may be used to fund deferred maintenance.

No recommendations were made by the Senate Finance Committee regarding ad valorem taxes.
SENATE COMMITTEE ON GOVERNMENT ORGANIZATION

Charge

Study the consolidation of those agencies related to the arts, cultural, and library services; consolidation of certain agricultural-related agencies; and consolidation of certain licensing agencies or their administrative functions.

Background

In the state of Texas, three agencies handle matters relating to arts, cultural, and library services: the Texas Commission on the Arts, the Texas Historical Commission, and the Texas State Library and Archives Commission.

Four state agencies handle agricultural matters: the Texas Department of Agriculture, the Texas Animal Health Commission, the Texas Food and Fibers Commission, and the Texas Soil and Water Conservation Board.

Numerous agencies in the state have licensing functions. The largest of these agencies is the Texas Department of Licensing and Regulation (TDLR), which is responsible for licensing in 21 different industries. TDLR has a seven-member commission responsible for adopting licensing, regulation, and enforcement procedures for the 21 industries. Advisory boards provide the commissioners with technical expertise in each of the industries.

According to a report released by the State Auditor's Office in October 2003, the Board of Barber Examiners "lack[ed] key information necessary to support its financial records" and had incomplete financial statements for fiscal year 2003. The Cosmetology Commission was also cited for gross fiscal mismanagement. Out of the five largest states in the United States, Texas is the only one that has two separate, independent boards for the licensure of barbers and cosmetologists.

Recommendations

♦ Maintain the independence of the state's arts, cultural, and library agencies.
♦ Abolish the Texas Food and Fibers Commission and transfer its duties to the Texas Department of Agriculture.
♦ Consider the abolition of state licensing agencies that consistently demonstrate poor performance in licensing, regulation, and enforcement and transfer their duties to the TDLR.
Abolish the Texas Board of Barber Examiners and the Texas Cosmetology Commission and transfer their duties to the TDLR, or as recommended by the Sunset Advisory Commission, merge them into one licensing agency under the consistent review by the State Auditor's Office.

Charge

Study the management of state assets and leases, including real estate, leased space, inventory and other assets by the General Land Office (GLO), the Texas Building and Procurement Commission (TBPC), as well as other agencies. Explore and make recommendations on the possible use of sale-leaseback opportunities for properties that the state now owns. Review allegations of theft of state property and make recommendations on enhancing security of state assets.

Background

Other states have innovative programs that could be replicated in Texas to achieve better use of state resources in the management of state lands, inventory, and real estate. The Iowa Facilities Improvement Corporation uses private sector lending institutions to facilitate lease-purchase financing for the installation of all cost-effective improvements. Idaho has created a Purchasing Modernization Initiative that seeks to improve government purchasing, and state employees and vendors who want to sell goods and services to state agencies can conduct business online.

A sale-leaseback agreement (also called a tax-exempt lease or lease-purchase agreement) is an installment purchase, conditional sale, or lease with an option to purchase for nominal value. Many states are beginning to consider the use and expanded use of sale-leaseback opportunities as a way to better manage state assets and state lands. Sale-leaseback opportunities can be used for a variety of real property purposes including schools, courthouses, correctional facilities, central offices, recreational facilities, and environmental facilities.

The Texas Department of Transportation conducts an annual review of inventory for any theft or security issues. The GLO is primarily concerned with timber theft, but does not have an adequate staff to do a thorough analysis of timber theft.

Recommendations

Direct the GLO and the TBPC to develop a method for determining when the state should enter into "lease with the option to purchase" agreements. The agencies should consider the benefits to the state, the benefits to state agencies that might enter into these agreements, and any other factors that might improve state land management.
Direct the GLO and the TBPC to develop a method for determining when the state should enter into "sale-leaseback" agreements. The committee recommends that the GLO have the ability to look beyond the "highest and best use" in determining if state land is being utilized to the maximum extent possible.

Require all agencies that manage state lands and properties to prepare an annual review of its measures taken to ensure against the theft of state property.

**Charge**

Review the use of inventory management in transportation and other programs. Explore the cost efficiencies and economic benefits of colocating agencies in small, mid-size, and large cities around the state.

**Background**

In 2000, the state of Texas began using the FleetAnywhere fleet data management system. This system, which reports on fleet inventories of approximately 100 state agencies, is administered by the TBPC.

H.B. 3125, 76th Legislature, Regular Session, established a statewide fleet management plan (plan) to improve the administration and operation of the state's vehicle fleet. All state agencies and institutions of higher education are required to act in accordance with the rules, regulations, and reporting procedures in this plan and report vehicle usage numbers to the TBPC's Office of Vehicle Fleet Management (OVFM).

The OVFM manages a surplus vehicle identification process and oversees the proper disposal of surplus vehicles. Vehicles failing to meet minimum usage criteria are disposed of as surplus, and if a surplus is identified at a state agency, excess vehicles are auctioned through the State Surplus Property Program.

Most efforts to consolidate state inventories (excluding transportation inventories) have involved more efficient storage and warehousing of state agency materials and resources. The centralized warehousing of various materials used by state agencies with multiple locations is one way larger state agencies have attempted to manage their inventories more cost-effectively.

State-owned buildings currently average 264 square feet per full-time employee (FTE), containing over one million square feet of office space in excess of statutory allocation limits. TBPC has determined that 6,760 FTEs can be housed in the excess square footage and performed preliminary analysis of real estate market conditions in areas where agencies occupy at least 50,000 square feet of office space. Evaluation supports buying and renovating buildings in Dallas, Houston, Arlington, and Fort Worth and moving employees into state-owned facilities.
The Texas Government Code requires TBPC to pursue leasing consolidation in counties with populations of 75,000 or more when it is in the state's best economic or operational interest.

**Recommendations**

- Review individual agency fleets for opportunities for licensed road vehicles to be replaced with electric utility vehicles, primarily in campus or complex bound locations.
- Reevaluate the need for interagency consolidation and pooling of vehicles used for administrative purposes in the Capitol Complex.
- Remove the minimum use criteria exemption for vehicles purchased with local or federal funds or received through donations or seizure.
- Research opportunities for further consolidation of inter-agency fleet management operations.
- Encourage state agencies to be more aggressive in seeking vehicle pooling or sharing options at an inter-agency level.
- Distinguish between "asset" and "inventory" management in future research, committee charges, and proposed reforms in inventory management practices.
- Consider adopting a system similar to its [the state's] fleet management tracking system to track designated inventories in agencies across the state and incorporate a systematic way to identify where and when inventory system and data sharing makes sense.
- Provide a more active role for the State Auditor in reviewing certain areas of inventory or asset management practices.
- Improve state-owned office building efficiency by enforcing statutory square foot requirements by renovating 16 state-owned office buildings by fiscal year 2009.
- Consolidate agencies from leased into new owned facilities when [an] agency occupies at least 50,000 square feet of office space (when it has been determined local real estate conditions would allow the state to recover full costs of this purchase within five years).
- Consolidate agencies into centralized lease sites when it is in the state's best financial and operational interests.
- Amend statutes to clearly direct agencies to share defined office space amenities.

**Charge**

Study the effectiveness and make recommendations on improving debt collection strategies across all state programs and the identification of uncollectible state receivables.
Background

According to the State Auditor's Office (SAO), many agencies lack adequate policies and procedures for accounts receivable management. The SAO has also found that several licensing agencies fail to use the full spectrum of enforcement mechanisms that they are allowed under law in order to collect on delinquent obligations.

Under Government Code 2107, Section 2107.005, agencies are required to report annual debt collection reports to the attorney general. According to Texas Administrative Code, Rule 59.3, agencies must report information on their total debt, total accounts, amount of delinquent loans, accounts in bankruptcy and accounts in judgment. They may report additional information as they deem appropriate.

Currently, state agencies are required to report uncollected and delinquent obligations to the Office of the Attorney General (OAG) no later than the 120th day after the obligations become delinquent. The current OAG-established referral threshold for individual delinquent accounts ranges from $1,000 to $2,500 for state agencies. An agency remains responsible for collecting delinquent obligations that fall below these amounts until it determines that all of its collection efforts have been exhausted.

Agencies are similarly required to report debtor information to the Comptroller of Public Accounts (comptroller) after they determine that their collection efforts have been exhausted. However, state law prohibits the comptroller from verifying an agency's compliance with this requirement.

In the 1998 State Collection of Receivables and Delinquent Obligations report, the study group recommended that "licensing authorities be prohibited from issuing or renewing, and have the ability to suspend or revoke, a license, including a driver's license, certificate, registration, or permit if the applicant or license holder is delinquent in paying any type of state debt."

In 1995, state law authorized the Child Support Division of the OAG to suspend licenses, certificates, registrations, and permits of individuals who are delinquent in child support payments.

Under current state law, the OAG is authorized to file suit against an individual or entity to recover money that is owed to the state. There are several costs associated with this process, including the costs to obtain a writ of execution, to cover the service fees for law enforcement officials who serve the writs, and to refile the abstract.

Recommendations

♦ Direct all state agencies and institutions of higher education, to the greatest extent possible, to implement and follow the debt collection procedures found in the Best Practices for Effective Accounts Receivable Management study conducted by the SAO.
Direct state agencies to seek out contracts with private collections agencies for delinquent accounts that fall below the threshold for referral to the OAG.

Require state agencies and institutions of higher education to report debtor information to the comptroller no later than 120 days after the obligation of the debtor becomes delinquent.

Direct the comptroller, in conjunction with the OAG, to study the feasibility of prohibiting licensing authorities from issuing or renewing any licenses, certificates, or permits, to any individuals or entities that have delinquent state debt and the consolidation of debtor information into a statewide debtor database.

Modify state law to make judgment liens in favor of the state or state agency continual.
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Charge

Study and make recommendations on structural reform, efficiency improvements, and cost savings in the state Medicaid and CHIP [Children's Health Insurance Program], with a goal of changing the method and delivery of service to reduce costs while providing the intended services. The committee should examine and make recommendations to:

♦ lower institutional costs;
♦ subsidize private insurance in lieu of Medicaid and CHIP where possible;
♦ use consumer-directed care models;
♦ reimburse health care providers based upon outcomes where feasible;
♦ match currently unmatched local funds with federal funds;
♦ alter Texas' current method of finance and distribution of DSH [disproportionate hospital share funding];
♦ develop possible HIFA [Health Insurance Flexibility and Accountability] waiver options that incorporate premium subsidization;
♦ develop accountability and incentive measures for outcomes within Medicaid managed care and CHIP;
♦ seek flexibility from the federal government to allow options and waivers and enhance federal funds;
♦ examine local models for delivery of Medicaid while maintaining best practices; and
♦ expand access to mental health services through expansion of the behavioral health organization model.

Background

Healthcare-related expenditures, both publicly and privately funded, have increased dramatically across the country. Increased costs of public health care have coincided with state budget shortfalls and many states have been forced to make difficult choices and adopt aggressive cost containment strategies.

Texas has already taken a fairly aggressive stance toward cost containment in Medicaid and CHIP.
Recommendations

- Increase funding for Medicaid fraud and abuse prevention and detection.
- Ensure that limitation on brand name drugs is cost-effective.
- Require Medicaid beneficiaries to participate in a course on the proper use of the health care system including which types of care are appropriate for which types of symptoms.
- Require that Medicaid HMOs [health maintenance organizations] and the state's PCCM [primary care case management] system have nurse triage lines to direct their enrollees to the lowest-cost source of medically-appropriate care.
- Evaluate the logistics and cost-effectiveness of centralized, inter-agency procurement for durable medical equipment (DME).
- Establish standard Medicaid rates for DME.
- Fund a study on interagency purchasing of pharmaceuticals.
- Add the medically indigent as a Medicaid expansion population.
- Exempt contracting positions from the state pay scale.
- Direct HHSC [Health and Human Services Commission] to proactively monitor Medicaid HMO network adequacy and take strong action to enforce network adequacy contract requirements.
- Establish online tracking for Medicaid HMO network adequacy and monitoring of contract requirements.
- Expand community-based alternative (CBA) waiver programs for the elderly and disabled.
- Expand Intermediate Care Facilities for the Mentally Retarded (ICF/MR) waiver programs.
- Develop a "cash and counseling" waiver program for delivery of home and community based services to elderly and disabled Medicaid beneficiaries.
- Direct HHSC to apply for an additional waiver to incorporate Medicare funding directly into the STAR+Plus program.
- Develop a "team delivery model" waiver concept paper and apply for a waiver.
- Ensure that all appropriate funding streams are integrated for NorthSTAR.
- Establish differential Medicaid reimbursement for adoption of new technologies and quality assurance initiatives.
- Make Medicaid claims data publicly available without identifying information.
- Augment PCCM payments with outcome-based bonuses.
♦ Change the distribution formula for DSH payments to mitigate the inpatient bias.

Charge

Monitor implementation and make recommendations to improve H.B. 2292. Include reviews of implementation of the preferred drug list and prior authorization and the new call center for determination of program and service eligibility. The committee will coordinate activities with the Health and Human Services Transition Legislative Oversight Committee.

Background

In 2003, the 78th Legislature, Regular Session, faced a $9.9 billion budget shortfall and limited acceptable tax options for generating additional revenues. Cuts in state spending were necessary to reduce the deficit, balance the budget, and still maintain service levels.

The state's health and human service (HHS) agencies which are charged with administering critical programs such as Medicaid, CHIP, Food Stamps, and Temporary Assistance to Needy Families (TANF), represent a significant proportion of the state budget. The 78th Legislature, Regular Session, enacted H.B. 2292 in an effort to find greater efficiencies within the twelve HHS agencies. The bill consolidated the organizational structures and functions, eliminated duplicative administrative systems, and streamlined processes and procedures that guide the HHSC and the other HHS agencies. The bill also attempted to create mechanisms to contain rising healthcare costs, improve client services, and strengthen accountability. Implementation of H.B. 2292 began in 2003 and continues to the present.

Recommendations

♦ Bolster current 2-1-1 Information & Referral infrastructure to accommodate anticipated increases in call volume when 2-1-1 is marketed as the gateway to HHSC programs and more people become aware of its services.

♦ Require that, in the event that the state decides to outsource certain functions to private companies, contract negotiations should clearly set forth the private companies' responsibilities, penalties for non-compliance, mechanisms for identifying when contractors are failing to fulfill their obligations, remedies that compel compliance, and remedies available for clients.

♦ Ensure the independence of the Office of Inspector General from the HHSC.

♦ Repeal Section 2.14(b)(1) of H.B. 2292, which requires HHSC to establish prior authorization procedures that ensure that: “a prior authorization requirement is not imposed for a drug before the drug has been considered at a meeting of the Pharmaceutical and Therapeutics Committee [PT Committee] established under Section 531.074.” This will allow HHSC flexibility to require prior authorization for drugs that the PT Committee has not yet reviewed.
♦ Repeal H.B. 3486, 78th Legislature, Regular Session, and the following sections of H.B. 2292: 2.71, 2.102, 2.126, 2.147, 2.148, which require recycling unused nursing home prescription drugs.

♦ Reinstate the School Health Advisory Committee.

♦ Reinstate the Indigent Health Care Advisory Committee.

♦ Prevent public disclosure of persons who have defrauded Medicaid until completion of investigations.

♦ Reinstate continuing education requirements.

Charge

Study and make recommendations on improving Texas' county and local indigent health care system. Consider whether the system should be regionalized to reflect usage and gain efficiencies, so that one or more counties are not paying for regional health care.

Background

The state's indigent health care system attempts to provide medical care to persons who are poor and uninsured or underinsured. The Senate Committee on Health and Human Services was charged with studying whether the system of indigent care, as currently organized under the Indigent Health Care and Treatment Act (Act), affords medical care in the most cost-effective manner without relying heavily on counties with large safety-net hospitals.

Under the Act, counties have the option of meeting the medical needs of the indigent through county indigent health care programs, hospital districts, or public hospitals. The Act requires the provision of certain basic medical care, but other services such as emergency medical services are optional. Access and availability barriers to healthcare services in some counties are also a growing concern, as are the non-urgent use of emergency rooms and avoidable hospital stays resulting in higher hospitalization rates and chronic care costs.

Rural and suburban indigent residents are increasingly seeking care from urban safety-net hospitals. Under the federal Emergency Medical Treatment and Active Labor Act (EMTALA), hospitals are required to provide medical screening to persons appearing at an emergency department requesting treatment. If the patient has an emergency medical condition, the hospital is required to provide stabilization examinations and treatment.

In Texas and other border states, the safety-net system also provides care to undocumented persons who may be unable to pay for the medical care received. EMTALA requires hospitals to stabilize patients with emergency medical conditions without regard to citizenship status. A recent Attorney General opinion (GA-0219) states that the Texas statute permits, "but does not require a hospital district to provide non-emergency public health
services to undocumented persons who are otherwise ineligible for those benefits under federal law."

There is general disagreement among rural, suburban, and urban counties as to what structure best serves the needs of local taxpayers and the indigent.

**Recommendation**

♦ Reinstate the Indigent Health Care Advisory Committee.

**Charge**

Monitor the implementation and make recommendations to enhance the effectiveness of legislation relating to the Board of Medical Examiners, legislation relating to childhood immunizations, legislation relating to the pilot front end Medicaid fraud reduction systems, federal developments related to TANF reauthorization and related programs, expansion and new construction of Federally Qualified Health Centers [FQHCs], federal developments related to prescription drugs in Medicare and the effect on Medicaid. Also, monitor and report on the use of new federal Medicare funds allocated for Texas.

**Background**

The 78th Legislature and prior legislatures have attempted to address a host of health and human services issues that require ongoing monitoring, including oversight of the Texas State Board of Medical Examiners (TSBME), immunization programs, Medicaid fraud reduction systems, prescription drugs in Medicare and the effect on Medicaid, and the use of federal funds.

**Recommendations**

♦ Instruct the TSBME to provide an updated report regarding the timeliness of completing their investigations and prosecutions, including a review of cases filed prior to November 1, 2003, as well as those filed on or after November 1, 2003.

♦ Consider the imposition of a penalty on insurance companies that do not comply with the provisions regarding reporting the filing and settling of lawsuits with the TSBME.

♦ Support continued funding of the FQHC Incubator Grant Program to coincide with the President’s Initiative for FQHC Expansion.
Charge

Study and make recommendations on increasing electronic transactions in health care. Review the use and make recommendations on improving technology in health care administration, including expediting pre-authorizations and increasing the efficiency of claims processing so that medical providers are paid once procedures are pre-authorized and performed, and administrative costs lowered, benefiting both the consumer and the managed health care organizations.

Background

The Senate Health and Human Services committee (committee) considered ways that information technology is currently being used and could be used in the future to achieve both lower costs and better outcomes throughout the health care system. Whether the use of electronic transactions for transmitting information between health care providers and health insurance carriers could be increased in order to help contain administrative and overall health care costs was an issue of particular interest. The committee also considered other applications of information technology within the realm of health care administration, such as whether the use of electronic medical records, computerized order entry, or computer-aided decision support, may also be able to contribute to more effective and efficient delivery of health care services.

The committee noted that applications of information technology vary by sector, as do the solutions that might contribute to increased efficiency or effectiveness in the health care system. Applications of information technology in the health care sector are significantly affected by state and federal laws.

Recommendations

♦ Require all health care claims to be electronically filed by 2008.
♦ Establish a taskforce to create a road map for Texas health care information technology.
♦ Establish an office of health care information technology and appoint a director of state health care information technology initiatives.
♦ Promote the adoption of new technologies by hospitals, physicians, and other health care providers by paying higher Medicaid reimbursement rates for adopters.
♦ Encourage the electronic filing of Medicaid and CHIP claims with higher payment rates.
♦ Use federal homeland security funding for the establishment of regional data sharing interchanges for health care information.
♦ Remove the 30-day grace period that employers have for paying health insurance premiums for their employees.
♦ Explicitly allow (but do not require) hospitals and providers to include language in their contracts with health plans prohibiting batch rejection of claims and assessing penalties.

♦ Create penalties for the unnecessary and excessive submission of duplicate claims.

♦ Grant the Texas Department of Insurance (TDI) authority to make rules to enforce the prohibition of duplicate claims.

♦ Create an online repository for carrier verification protocols through TDI.

♦ Require clearinghouses and third-party billing administrators to meet certain already-existing certifications and minimum standards.

♦ Require workers' compensation insurance carriers to accept electronic claims and comply with prompt-pay deadlines for providers who submit claims electronically.

**Charge**

Study health facility regulation in Texas and make recommendations that facilitate innovation and patient safety. Concentrate studies on hospitals, including niche hospitals, FQHCs and long-term care facilities, and make recommendations for improving patient choice, facility competition, indigent health care, and for maintaining a competitive, patient-oriented health care industry.

**Background**

Concerns regarding medical errors and patient safety became a priority topic in health policy following publication of the National Institute of Medicine's 1999 report entitled, "To Err is Human: Building a Safer Health System." Among the report's recommendations was that a nationwide system of error reporting be established.

The 78th Legislature, Regular Session, in response to ongoing public concerns regarding patient safety, enacted H.B. 1614. The bill directed the Texas Department of State Health Services (DSHS), to enact a patient safety program for hospitals, ambulatory surgery centers, and mental hospitals.

Licensed entities must provide an annual report to DSHS listing all occurrences of certain adverse events. These reports are confidential and are not available to the public. Facilities must conduct a root cause analysis to determine the factors leading to the adverse event and identify improvements to processes or systems to prevent future problems, and submit at least one report to DSHS regarding a best practice implemented by the facility to prevent medical errors.

An annual report summarizing data received from all entities is issued by DSHS and is available to the public. DSHS must evaluate the program and report to the legislature by December 1, 2006. The program is currently scheduled to sunset on September 1, 2007.
Other hospital-related issues include the expansion of niche hospitals and their impact on general hospitals and providers and the quality of care being provided to patients.

**Recommendations**

♦ Direct DSHS to study the current state of niche hospitals in Texas, including:
  ♦ the number of such facilities currently in operation;
  ♦ the number of facilities currently under development;
  ♦ the location of such facilities particularly with respect to their proximity to general hospitals;
  ♦ the financial impact of niche facilities upon general hospitals;
  ♦ the referral patterns of physician-owners as compared to those of physicians with privileges at the niche hospital who are not owners or investors therein; and
  ♦ the range of services provided by niche hospitals in Texas, with particular emphasis on the provision of emergency and charity care services.

♦ Establish a Competitive Innovation Grant Program.

♦ Enhance the ability of DSHS to ensure grantee adherence to program goals.

♦ Ensure consumers have access to complete information when evaluating the quality of long-term care services in a particular area or offered by a provider.

**Charge**

Study and make recommendations on improving the Protective and Regulatory Services [now DFPS] service levels payment system and tiered adoption subsidy program. Study and make recommendations on improving the recruitment and retention of foster care families.

**Background**

DFPS was created with the passage of H.B. 2292, 78th Legislature, Regular Session. DFPS' charges include protecting children, protecting adults who are elderly or have disabilities living at home or in state facilities, and licensing group day-care homes, day-care centers, and registered family homes. The agency is also charged with managing community-based programs that prevent delinquency, abuse, neglect and exploitation of Texas children, and elderly and disabled adults.

DFPS has come under intense scrutiny for its handling of abuse and neglect investigations by Adult Protective Services (APS) and Child Protective Services (CPS). The governor, via executive order, directed the systematic reform of the APS and CPS programs on April 14,
2004, and on July 2, 2004, respectively. HHSC initiated a systemwide review of CPS and APS and has begun reform efforts to address the problems identified in the review.

Recommendations

♦ Make the reporting of child abuse or neglect by persons who know it is false or lacks factual foundation subject to a state jail felony on the first conviction.
♦ Direct CPS to report all cases of suspected false reports to law enforcement.
♦ Require independent corroboration of suspected abuse in cases where the reporter is in a divorce or custody proceeding with the alleged abuser before a full investigation is performed.
♦ Restore and increase funding for early intervention services.
♦ Create a prevention services taskforce to create a strategic plan for providing prevention services across the state.
♦ Restore and increase funding for family preservation services.
♦ Increase funding for drug and alcohol abuse treatment.
♦ Ensure that parents participating in family-based services, especially those required to meet a reunification service plan, demonstrate that new skills, knowledge, and child care abilities have been learned or acquired.
♦ Bring CPS caseworkers' caseloads down to the national average so that staff can conduct thorough investigations and make good case decisions.
♦ Direct CPS to explore the use of a more generic caseworker approach.
♦ Consider utilizing a supervising caseworker when a child must be placed out of region, instead of having the primary caseworker travel to make home visits.
♦ Limit the number of court hearings a supervisor must attend.
♦ Transition all on-going foster home management and recruitment to private child placing agencies.
♦ Transition all on-going adoption services to private child placing agencies.
♦ Transition all case management of foster children in the state's permanent managing conservatorship to private child placing agencies.
♦ Establish a network of faith and community-based organizations to respond to reports of abuse/neglect that CPS classifies as "Priority none."
♦ Reiterate the legislature's intent to resolve cases involving children brought into foster care within 12 months.
♦ Enhance technology available to caseworkers to increase productivity.
Evaluate CPS job functions to ensure appropriate staff are conducting appropriate functions.

Direct CPS to hire just-in-time replacements in recognition and in anticipation of high turnover rates.

Improve initial caseworker training and require continuing education training to more tenured workers.

Co-locate CPS investigators with law enforcement detectives.

Require joint investigations involving both CPS and law enforcement on investigations that are criminal in nature.

Establish that law enforcement should be the lead agency in joint criminal investigations of child abuse.

Establish joint training programs for law enforcement and CPS caseworkers to facilitate joint investigations of criminal cases of child abuse.

Put civil arrest warrants (capiases) pursuant to non-cooperation in CPS investigations on the Department of Public Safety crime information database.

Establish a legislative oversight committee to monitor the reform of DFPS.

Require DFPS to report to the legislature [its] performance on Child and Family Services Review measures for safety, permanency, and well-being every quarter.

Ensure compliance with policies and procedures by using a quality assurance program with strong staff performance measures and a comprehensive tracking system to ensure accountability at all levels of staff.

Establish a priority level that necessitates an immediate response by CPS and law enforcement.

Direct DFPS to carefully monitor the placement of child sex offenders, sexual predators, and children with violent criminal histories.

Direct CPS caseworkers to consider foster children’s educational needs and the education services available from each foster care facility when making placement decisions.

Direct HHSC to implement a Medicaid catastrophic case management program for medically fragile foster children in DFPS care.

Direct HHSC to design an assessment system that ensures that children with developmental disabilities are properly identified.

Direct HHSC to appoint a task force on foster care children with developmental disabilities to obtain input from experts on the development of a more comprehensive and “seamless” service system for such children.
♦ Require foster care caseworkers, foster parents and parents (if they have not lost or surrendered their parental rights) to sign authorizations for psychotropic medications to be given to foster children.

♦ Direct DFPS to develop “Medical Passports” for foster children.

♦ Direct DFPS to develop a page on its website providing the names and photographs of missing foster children.

♦ Direct DFPS to develop a page on its website providing the names and photographs of missing foster children.

♦ Direct DFPS to upgrade licensing standards to include requirements that foster care providers notify the agency and law enforcement immediately of missing children and notify the intake center of incidents involving runaways, missing children, arrests of children and all potential licensing violations.

♦ Direct DFPS to work with other states to develop agreements to check central registries of abuse and neglect in states where applicants have lived previously.

♦ Direct DFPS to assure the places of prior foster care employment are available in its database to facilities as part of the background check for prospective foster caregivers.

♦ Direct CPS and TEA to share information regarding TEA unique identifying numbers used to track children in the public school system for use in finding children whose families have disappeared in order to avoid CPS investigation or cooperation.

♦ Enable Child Care Licensing to rigidly enforce minimum standards for the health and safety of children and establish meaningful civil and administrative penalties for violation of Child Care Licensing standards.

♦ Direct DFPS to develop a quality assurance system that performs sample audits of reports, investigations and inspections to ensure their completeness and validity.

♦ Direct DFPS to revise the outcome measures used in its residential care contracts to reflect outcomes in the control of contractors that reflect quality service delivery.

♦ Revise payment methods to create financial incentives for reducing length of stay and institutionalization of children in foster care.

♦ Direct DFPS to cap funds for administration and require recovery of funds expended above the cap.

♦ Direct DFPS to consider enabling providers to go online to view their reimbursement accounts or provide detailed data so that providers can reconcile their accounts.

♦ Request that the State Auditor's Office conduct a management review of HHSC and DFPS to improve contract administration and management systems.

♦ Direct CPS to repair its damaged relationship with the community. CPS needs to develop a culture of openness that invites opposing viewpoints, is open to different perspectives,
and recognizes that the consequences of errors are far too great for the agency to be trying to deal with the problems alone.

✧ Direct DFPS to partner with volunteer and advocacy organizations to develop a Texas Foster Grandmas and Grandpas program.

✧ Keep foster care rates at FY 2004/2005 levels.

✧ Establish Legislative Budget Board performance measures for foster family recruitment and retention.

✧ Pilot a program in one region of the state that requires all children entering CPS' care via a CPS foster home to have a service level assessment. CPS shall compare the service level needs of this cohort to a similar group not in the pilot and determine whether the difference in the service level distribution is statistically significant.

✧ Expand the pilot program created in S.B. 58, 78 Legislature, Regular Session, to include all regions of the state, thus enabling more placements with relatives.

✧ Remove financial barriers to adoption of special needs children (those in the moderate, specialized and intense level of care categories) by increasing the monthly adoption subsidy ceiling from $545 to $700 for those in the moderate service level and from $545 to $900 for those in the specialized and intense service levels.

✧ Expedite the appeals process for adoption subsidies.

✧ Ensure that every order appointing DFPS as temporary managing conservator contains child support and medical support orders. Child support collected should go directly to DFPS without the Office of the Attorney General keeping any portion.

✧ Develop uniform standards for ad litems appointed to represent the interest of children or parents in action brought on behalf of the state.

✧ Establish a legislative oversight committee to monitor reform measures.

✧ Require DFPS to report to the legislature performance on APS outcomes measures for each APS function and findings of comprehensive quality assurance performance reviews on a quarterly basis.

✧ Revise the APS Quality Assurance Program to establish a minimum level of performance and maintain meaningful outcome measures. Failures to meet performance targets should result in disciplinary actions.

✧ Ensure all staff members receive a performance evaluation on an annual basis and take corrective action against management if this does not occur.

✧ Hire additional caseworkers in order to reduce caseload.

✧ Provide caseworkers with technology to enable them to more efficiently complete casework.

✧ Strengthen training requirements for new staff and ensure that all staff members receive standardized training before working in the field.
♦ Develop and implement a mandatory continuing education program, including a comprehensive training program for supervisors.

♦ Create staff specialist positions based on particular types of abuse, such as self-neglect and financial exploitation.

♦ Train all staff on Texas Family Code, Chapter 48, procedures.

♦ Establish a formal review process for intake of reports to ensure that cases are appropriately prioritized and are screened for any special issues or requirements.

♦ Establish a procedure for intake of reports at local APS offices.

♦ Assign cases to staff based on level of difficulty.

♦ Develop and implement a risk assessment tool.

♦ Ensure allegations are fully investigated before closing.

♦ Establish standards for case closures and transfers between departments.

♦ Change the funding mechanism to eliminate incentives to close cases before they have been fully investigated and all needed services have been provided.

♦ Ensure that all criminal allegations of abuse or neglect are reported to law enforcement upon suspicion of criminal activity.

♦ Create a process by which APS will provide feedback on case status to those who reported the potential abuse or those who referred the case to APS when these parties request information.

♦ Establish an APS investigator position that is distinct from a caseworker position to provide service delivery.

♦ Establish positions for Administrative and Criminal Investigators within the Investigations Unit. Criminal Investigators would have the responsibilities of Administrative Investigators but would also file criminal charges where appropriate.

♦ Establish multi-disciplinary teams to review difficult cases and develop service plans. Teams should include APS personnel, law enforcement personnel, representatives of community-based providers, healthcare providers, and other key stakeholders.

♦ Allow APS to use licensed psychologists, as well as medical doctors and psychiatrists, to determine mental capacity.

♦ Clarify who is guardian of last resort.

♦ Establish a statewide guardianship program.

♦ Contract all guardianship services to community service providers.

♦ Expand APS' authority to share information with community organizations and local governments for the specific purpose of addressing an elderly or disabled adult's medical, housing, or social service needs. Regulate the use of the information.
Charge

On July 27, 2004, the lieutenant governor called on all Senate committee chairs to evaluate state agency contracting practices and to develop recommendations to ensure greater accountability and stricter oversight of state dollars spent on outsourcing.

Background

Recent State Auditor's Office (SAO) audit findings have called into question the ability of the state's health and human services agencies to safeguard state funds due to systemic deficiencies throughout the contracting process. SAO concluded that deficiencies exist in every aspect of the contracting process including planning, procurement, rate and price establishment, contract formation, and monitoring.

The health and human services agencies maintain approximately 936,689 contracts for client services, information technology, consulting, professional services, and other services worth an estimated $14,845,203,907 as of fiscal year 2004.

The Senate Committee on Health and Human Services, in cooperation with the Senate Finance Subcommittee on State Contracting, is exploring recommendations to improve agency accountability over state contracts. The subcommittee has developed a set of options for consideration in coordination with the SAO, the Office of the Comptroller of Public Accounts, and the Texas Building and Procurement Commission.

Recommendation

♦ At the time of publication of the Senate Committee on Health and Human Services interim report, these recommendations had not yet been adopted. The Senate Committee on Health and Human Services will continue to evaluate recommendations to improve HHS contracting practices during the 79th Legislative Session.
Senate Committee on Infrastructure Development and Security

Homeland Security

Charge

Study and report on the distribution of federal funds to Texas through the governor's office, state agencies, and directly to local units of government for homeland security measures, including but not limited to, public health and welfare, safety, awareness, and the subsequent use of any funds that might be awarded. Make recommendations relating to the development of a method for tracking this information across jurisdictions and state programs. Evaluate the allocation and efficient use of future federal funds to the state and local governments and identify opportunities to enhance current state funding for homeland security and other measures.

Background

Three lead agencies at the federal level are charged with homeland security responsibilities: the United States Department of Homeland Security, Office of Domestic Preparedness (ODP); the Centers for Disease Control and Prevention (CDC); and the Health Resources and Services Administration (HRSA).

Due to mandates from these federal agencies issuing grants to states, Texas is required to name a state administering agency in order that local entities can receive grant funding for homeland security. In other instances, the grants are allocated directly from the federal agency to the local entity.

The two state agencies receiving and administering a majority of the federal grants are: the Texas Engineering Extension Service (TEEX) and the Texas Department of State Health Services (DSHS).

Recommendations

♦ Direct the Governor's Office of Homeland Security [GOHS] to monitor federal funding received in Texas for emergency management planning and to aid the state in detecting, deterring, and responding to acts of terrorism.

♦ Ensure that in the event that federal funding for any area of security or emergency planning is diminished, curtailed, or eliminated, the legislature will take appropriate steps to ensure the state is able to maintain high levels of security and preparedness to respond to disasters.
♦ Establish procedures so that the GOHS identifies all federal homeland security funding received by state, local, and private entities within Texas and ensures that all funding is expended in a manner that supports state and national strategic plans.

♦ Require that all state agencies and entities include in their biennial legislative appropriations requests [for] all funds received from federal agencies.

♦ Require that the GOHS assess internal controls used by the state administrative agencies for any homeland security funding to ensure appropriate safeguards are in place to minimize the potential for waste, fraud, and abuse in the expenditure of homeland security funds.

♦ Require that state administering agencies report to the GOHS all purchases of equipment by state and local units of government to ensure appropriate safeguards are in place to minimize the potential for waste, fraud, and abuse in the expenditure of homeland security funds.

♦ Allow exceptions to the FTE cap in limited instances where federal dollars are available to implement programs at the state level, with requirements for reporting to and approval by the Legislative Budget Board.

♦ Direct the GOHS to monitor federal funding used to protect critical infrastructure in the State of Texas to ensure that funding is closely coordinated to support the state and national strategic plans and that a future cessation of federal funding does not diminish the security of critical infrastructure.

**Charge**

Evaluate state and local efforts to enhance the security of Texans and make recommendations for improving Texas' ability to detect, deter, and respond to acts of terrorism, including state plans and programs for addressing bioterrorism.

Regarding bioterrorism events, the committee shall focus on early detection of an incident, reporting of information from local health entities, and ability to organize and administer a mass vaccination. Make recommendations relating to improvements to state and local communications networks and develop innovative methods for sharing federal, state, and local information.

**Background**

H.B. 9, 78th Legislature, Regular Session, improved the state's ability to detect, deter, and respond to acts of terrorism. The bill addressed civil liability and immunity; funding allocations; and state and local reporting requirements to the governor on revenue, grants, and other funding.

Additionally, the Critical Infrastructure Protection Council (CIPC) was created to serve as the operational advisory group for homeland security at the state level and as the central
point of coordinated and efficient flow of information, response, and recovery throughout the governor's office and the various state agencies. In addition to advising the governor on strategies for protection regarding homeland security, CIPC coordinates with the 24 regional councils of government (COGs) and other local officials to better implement emergency planning.

The GOHS models the United States Department of Homeland Security as an "all-hazards" agency emphasizing the prevention of terrorism attacks and minimizing the damage when such attacks do occur.

Personnel from the Texas Department of Public Safety (DPS) are charged with detecting, disrupting, and dismantling terrorist sleeper cells before they act, and improving the capacity to disseminate relevant information to local, state, and federal agencies and the private sector as needed, among certain provisions.

The Adjutant General's Office reports directly to the governor and provides Texas military forces from the Army, Air, and State Guard.

The Governor's Division of Emergency Management (GDEM) runs a communications center that serves as the focal point for planning, coordinating, and integrating government communications regarding the state's homeland defense strategy and is the central location for the State Operations Center and Texas Security Alert and Analysis Center (TSACC), in conjunction with DPS, to analyze information and coordinate responses to emergencies, whether hurricane, bioterrorism incident, or food safety.

The Texas Engineering Extension Service (TEEX) is developing the workforce necessary to handle emergency services regarding first responder training and advanced training, including coordinated response to disasters in different environments for hazardous materials (HazMAT), weapons of mass destruction (WMD), or search and rescue victims in urban areas.

The Department of Information Resources (DIR) works to protect government networks in the midst of complications to the system in emergency planning for computers in the event of terrorist threats.

The Texas Commission on Environmental Quality (TCEQ) is a member of CIPC providing communication between GOHS and companies they regulate, with particular concern regarding dams, producers and purchasers of public drinking water, refineries, fuel terminals, and petrochemical manufacturers, and the facilities that treat, store, or dispose of hazardous water and wastewater treatment plants.

The 24 statewide COGs are responsible for coordinating the priorities of the state with regional and local concerns, including local emergency management plans, with some 928 jurisdictions completing qualifying assessments as last quantified in the Federal 2003 Program.
DSHS is in charge of managing disease outbreaks, natural disasters, and threats to bioterrorism. Through the Center for Public Health Preparedness and Response (CPHRR), DSHS provides strategic leadership and direction so that the public health is properly prepared with the necessary response for bioterrorism and other outbreaks of infectious disease.

The Texas Health Alert Network (HAN) was modeled after the national HAN to combat bioterrorism, promote public health preparedness, and facilitate daily real-time disease reporting. The Texas Association of Local Health Officials (TALHO) maintains the Texas HAN. It provides, among several services, access to the Centers for Disease Control prevention recommendations via secure Internet connections.

**Recommendations**

- Monitor information sharing to ensure effective communication between different agencies and entities.
- Direct the CIPC to conduct an assessment of existing operations centers to determine the cost/benefit of maintaining a single center versus multiple centers to support information needs of multiple state agencies.
- Require that all emergency management officials in all jurisdictions in the state adopt the National Incident Management System (NIMS) as established by the Department of Homeland Security.
- Increase penalties associated with trespassing on critical infrastructure sites within the state.
- Continue to support the state's request for a second civil support team.
- Strive to create a uniform system of assistance for all disciplines and all hazards within the state.
- Direct DSHS to continue to work as diligently as possible to bring the highest level of communication and coordination between Texas and Mexico with respect to bio-terror hazards and preparedness.
- Memorialize Congress to enact legislation to allow for the movement of the Strategic National Stockpile across the Texas-Mexico border when a bioterrorist emergency occurs along the border.
- Require that each public health region coordinate with local stakeholders to test and refine Strategic National Stockpile deployment plans to make sure each has a plan in place that can be used effectively.
- Expand the HAN to include Community Health Centers and Rural Community Hospitals.
♦ Require that DSHS coordinate all health entities that participate in the Health Alert Network to ensure they are using the network's existing infrastructure to the fullest extent in the areas of training, education, and communication.

♦ Require that the HAN maintain a connection to TSAAC allowing TSAAC to use the network's capabilities to receive and analyze information and alert the general public as quickly as possible when necessary.

♦ Support efforts by federal, state, and local agencies to ensure that Texas drinking water supplies are safe and secure, including the assurance that security measures are in place, and the business practices of state agencies involved in the process provide for the utmost protection.

♦ Direct the GOHS to establish procedures to ensure infrastructure protection grants for the state's agriculture industry are coordinated to support the state and national strategic plans. Ensure that the procedures also ensure coordination with the Texas Animal Health Commission, the Texas Department of Agriculture, and the U. S. Department of Homeland Security designated Center for Excellence for Foreign Animal and Zoonotic Disease Defense located at Texas A&M University to update the state plan for agricultural bio-security, develop and use a common communication framework, before, during, and after events, and link the research agenda to the needs of emergency responders.

♦ Establish permanent Texas Department of Agriculture road stations to alleviate artificial introduction of damaging pests into Texas.

♦ Require that the GDEM, the GOHS, and the TEEX to work together to ensure that training includes the necessary coordination of local, state, and federal plans and expenditure of funds.

♦ Enact legislation to require all public schools in Texas to perform at least one emergency preparedness drill every fall and spring semester. Require public schools to maintain records of completion of emergency preparedness drills in the same fashion as records for fire drills.

**Charge**

Study the issue of interoperable communications for first responders. The committee shall assess the status of this capability and evaluate available technology and costs. In addition, the committee shall explore pilot programs and proposals by entities such as DPS and the Sheriff's Association, who have been working to assess new technologies and the cost of implementation of systems to assist in effective communication between all parts of the state.

**Background**

Plans for a statewide interoperable communications system for state agencies and other public safety entities came to fruition in H.B. 2650, 78th Legislature, Regular Session, which
created the Public Safety Radio Communications Council (PSRCC). The charge includes identifying necessary equipment to facilitate interoperability within and between local, state, and federal agencies. The PSRCC consists of DPS, the Texas Department of Transportation, the Texas Department of Criminal Justice, the Texas Parks & Wildlife Department, the Texas Forest Service, the Texas Youth Commission, the Texas Alcoholic Beverage Commission, and the Sheriffs' Association of Texas.

At the same time, the United States General Accounting Office (GAO) has stated that achieving interoperability poses challenges to local, state, and federal agencies, requiring different agencies working on disparate systems in a multitude of configurations. (Report to the Legislature, Public Safety Radio Communications Council, September 1, 2004.)

In October, the opening of the Office of Interoperability and Compatibility (OIC) was announced by the United States Department of Homeland Security to strengthen emergency response interoperability at all levels: local, state, and federal.

**Recommendations**

♦ Disband the PSRCC and require the GOHS to ensure the interoperability of public safety radio communications, stressing this for first responders.

♦ Require the State Administering Agency to specifically report to the GOHS all funds spent in the state by local entities for interoperability infrastructure and radio equipment and include the type and amount of infrastructure and equipment purchased.

♦ Direct GOHS to continue to assist local jurisdictions in obtaining federal homeland security grants for radio interoperability.

♦ Require GOHS to consult with TEEX in order to bring the most effective short-term and long-term interoperable solutions to Texas.

**Charge**

Study the issues associated with consular identification cards ("matricula consular"), with particular attention to security and verifiability, banking access, local law enforcement relations, and driver's license issuance. Review current FBI reports on security and verifiability. Consider the implications that acceptance of the card on a state or local level would have on federal immigration policy and homeland security.

**Background**

The Mexican government through its consular offices has issued the matricula consular card (MCC) as a form of identification to Mexican nationals; there are ten Mexican consular offices in Texas.
S.B. 965, 78th Legislature, Regular Session, allowed pawnbrokers to use the MCC as identification in their transactions, but other legislation that would have required DPS to accept foreign consular identification cards did not pass.

The White House Homeland Security Council is examining MCCs, among certain issues regarding identification cards, driver's licenses, and standards due to heightened concerns regarding terrorism.

Acceptance of the MCC in Texas is not uniform between varying local law enforcement officials. In addition, some banks allow the use of the card to open bank accounts while others do not.

**Recommendations**

- Direct DPS to continue their current standards for identification when accepting applications for a state issued driver's license and that municipalities form their own levels of acceptance for the MCC at their own risk.

- Monitor federal legislation regarding national standards for state issuance of drivers' licenses.

**Security and Reliability of the Electric System in Texas**

**Charge**

Study the possibility of whether a system failure in Texas could occur in a manner similar to the blackout that occurred in the northeastern United States. Include a review of the Texas electric system and make recommendations on ways to enhance the security and stability of the system. Review industry plans and procedures and determine their effectiveness in responding to system disruption. Study the transmission and distribution system in Texas and make recommendations on the policies to plan for and promote investment in future transmission needs. Coordinate Texas activities with those of the federal government, neighboring states and Mexico to ensure consistent system planning and responses. This study shall include non-ERCOT areas of Texas.

**Background**

All areas of Texas and the contiguous United States fall within one of ten electric reliability regions in North America. Electric power in each region is managed by regional reliability councils consisting of investor-owned utilities; rural elective cooperatives; state and municipal utilities; independent power producers; power marketers; and end-use customers.
These councils operate under standards set by the North American Electric Reliability Council (NERC), and each is responsible for facilitating reliable power grid operations in their region by working with the electric utility industry organizations operating there.

To fulfill their mission, NERC ensures "that the bulk electric system in North America is reliable, adequate, and secure" by coordinating with ten regional reliability councils, monitoring and enforcing compliance with reliability standards, and coordinating critical infrastructure protection for the electric system.

The United States Department of Energy (DOE) designated NERC to serve as the sector coordinator for the electricity sector protection of critical infrastructure. NERC also is required to work with the United States Department of Homeland Security, DOE, and public and private entities, whose purpose is to coordinate efforts to protect the grid from terrorist attacks.

In August 2003, NERC adopted a cyber security standard that outlines minimum requirements needed to ensure the security of electronic information necessary to support grid reliability. The standard has been extended until August 2005.

The Federal Energy Regulatory Commission (FERC), an independent agency with DOE that regulates the interstate transmission of electricity, currently has no oversight relative to NERC. There is legislation pending in Congress that would give FERC authority over the reliability of the power grid.

The Public Utility Commission of Texas (PUC) has a role in electric reliability that includes the activation of an emergency management response team during natural disasters and homeland security events. The PUC also provides information regarding utility outage and restoration to the State Operations Center.

H.B. 9, 78th Legislature, Regular Session, included the PUC as a member of the Critical Infrastructure Protection Council (CIPS) which advises the governor on homeland security issues and the progress of the statewide critical infrastructure protection strategy. To that end, the PUC has participated in numerous exercises in preparation for the eventuality of a blackout, including:

- a cyber-terrorism exercise with Texas Department of Information Resources;
- a joint federal state terrorism exercise;
- a blackout workshop as part of a conference addressing the August 2003 northeast blackout; and
- a South Texas project exercise, a federal regulatory review of state response to nuclear incident.

ERCOT is the only reliability region in North America that does not fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC). ERCOT does not report
to the PUC regarding its compliance with NERC standards. In an effort to ensure communication between ERCOT and its oversight agency, the PUC proposed a rule that would require ERCOT to notify the PUC executive director of circumstances that present threats to reliability or other ERCOT responsibilities.

ERCOT maintains two control centers, a primary center located in Taylor and a backup center in Austin.

Allegations of improprieties at ERCOT raised concerns about the security of the power grid within the ERCOT region. The allegations, as reported by the media, concerned three ERCOT managers and at least two firms that were hired to handle information and physical security. Allegations relating to security of the grid included lack of background checks for contractors hired to work inside ERCOT and the possible creation of the firms by the ERCOT managers for the purpose of obtaining ERCOT security and technology contracts. Both internal and external audits as well as investigations by the Department of Public Safety were conducted.

**Recommendations**

- Direct the PUC to be responsible for coordinating, facilitating, and overseeing communication with independent organizations, electric utilities, municipal utilities, cooperatives, retail electric providers, power marketers, scheduling agents, and power generation companies with respect to security of the electric network and management of emergencies relating to electric service, in coordination with appropriate federal and state agencies and may adopt rules to carry out this responsibility.

- Direct PUC to conduct a study to determine whether the agency should have the authority to suspend competitive market rules and require retail electric providers and power generation companies to provide cost-based electric service in the event of an energy emergency, as declared by the governor.

**Transportation**

**Charge**

Study the implementation and make recommendations to enhance the effectiveness of H.B. 3588 relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities including, but not limited to, multimodal transportation and the progress, improvement, policing, and safety of transportation in Texas. Monitor and report on the adequacy and use of the trauma care funds generated as a result of the legislation and make recommendations for improving the funding of trauma care services.
Background

New challenges face legislators in implementing H.B. 3588, 78th Legislature, Regular Session, relating to its impact on the State Highway Fund (Fund 006) and the Texas Mobility Fund. Innovative financing tools and planning in conjunction with multiple authorities in a region to build a seamless infrastructure for a comprehensive, multimodal transportation system will require review.

Recommendations

♦ Continue to monitor the implementation and effects of H.B. 3588 and its impact on the future of Fund 006 and the Texas Mobility Fund.

♦ Examine all regions of the state for an assessment of comprehensive, multimodal transportation systems and their structures by the Texas Transportation Commission, with a focus on multiple authorities in a region in order to provide a seamless, efficient system for mobility throughout the region.

♦ Allow counties to borrow state transportation funds for start up costs associated with the creation of an RMA [regional mobility authority] and require rules regarding the amount that may be extended for this purpose and the requirements for repayment.

♦ Develop an administrative business model for RMAs for consistency in functioning throughout the state.

♦ Limit the percentage of an RMA's funding to be used for administrative functions.

♦ Maintain the current limits placed on the issuance of bonds backed by the State Highway Fund (Fund 006).

♦ Continue monitoring the issuance of bonds and other public securities secured by Fund 006.

♦ Scrutinize all non-highway diversions from Fund 006 to ensure that future projects are adequately funded.

♦ Examine whether the amounts currently remitted to the general revenue fund could be dedicated to the Texas Mobility Fund, including:
  ♦ motor carrier permit fees;
  ♦ motor carrier registration fees;
  ♦ single state registration fees;
  ♦ motor carrier proof of insurance fees;
  ♦ salvage dealers license fees; and
  ♦ personalized license plate fees.
♦ Raise the annual cap on [the Texas Department of Transportation] TxDOT's ability for rail and certain rail-related activities and require that the Texas Transportation Commission enter into business agreements with the public and private sector to provide funding for rail line relocation.

♦ Establish and capitalize a revolving fund for rail relocations.

♦ Examine projects using advanced acquisition and submit a report to the governor, lieutenant governor, speaker, and chairs of the Senate Infrastructure Development and Security Committee and the House Transportation Committee in order to ensure that the state is getting the most efficient use of its dollars.

**Charge**

Study the proof of financial responsibility verification program administered by the Texas Department of Insurance (TDI) and DPS and make recommendations for improving compliance by drivers in Texas.

**Background**

An estimated 20 percent of motorists in Texas drive without insurance in spite of the requirement that they be insured; however, identification and tracking of these uninsured motorists remains a problem for enforcement authorities. DPS and TDI recently issued a report stating that Texas should not implement a database software interface system at this time so that additional consideration could be given to alternatives that would provide the maximum reduction in the uninsured motorist rate in Texas. The most effective system would consolidate a database interface software system with a liability insurance cancellation reporting system.

**Recommendations**

♦ Review the order issued by DPS/TDI regarding an insurance verification program and monitor subsequent proposed actions to ensure increased compliance with Texas' financial responsibility requirements is being achieved through the chosen program.

♦ Clarify the funding allocations in place enabling DPS and TDI to fulfill obligations set forth by H.B. 3588 pertaining to a financial responsibility verification program.

**Charge**

Study and make recommendations for innovative approaches to highway construction and maintenance. Focus on recommendations for streamlining TxDOT operations including methods of expediting permitting procedures while maintaining environmental safeguards. Examine and make recommendations for regional options for increasing financing, including, but not limited to, the creation of a local option motor fuels tax.
Background

As envisioned in H.B. 3588, RMAs have allowed new projects in the state to be tolled, moved start dates forward, and decreased construction costs. The steady revenue stream maintains roads more efficiently and keeps maintenance costs low. Tolling allows TxDOT to address projects critical to state connectivity.

Recommendations

♦ Allow local governments to form RMAs in an effort to increase transportation regionally, if the use of toll roads is being considered for an area. TxDOT should work with regions to identify the best practices for moving projects forward and increasing financing options for that specific area.

♦ Expand or remove the $800 million cap on toll equity.

♦ Identify the best policy to differentiate between projects critical to statewide connectivity and projects critical to regional mobility.

♦ Expand the pass-through toll provisions established in H.B. 3588, 78th Legislature, Regular Session, allowing TxDOT to fund projects and have the cost of those projects repaid by local and private entities.

♦ Direct TxDOT to take the necessary steps to ensure its vehicle title registration system accurately reflects vehicle owners and their addresses.

♦ Link DPS's driver's license database with TxDOT's vehicle registration database through an interagency agreement to create a seamless record of an individual driver and vehicle.

♦ Direct Team Texas, a consortium of all toll authorities in Texas promoting interoperability between all toll facilities, to study and report to the legislature methods to distribute and increase use of electronic toll tags focusing on safety, congestion, cost, and administration.

♦ Enact legislation regarding toll conversion as follows:
  ♦ define the point in time at which a transportation project is considered a part of the state system;
  ♦ clarify what constitutes a necessary "free alternative" when non-toll facilities are converted to toll facilities; and
  ♦ require revenue derived from tolling a previously non-tolled facility to be reinvested to directly benefit users of the now-tolled facility, regardless of the operator of the now-tolled facility.

♦ Examine efforts to find an alternative source of dollars allocated to the Permanent School Fund from gas tax revenues.
Direct the formation of a task force to study the use of motor fuels taxes to finance transportation infrastructure. The study should include the impact of diminishing motor vehicle tax receipts on the ability of the state to finance transportation projects, the relationship between motor fuel taxes paid and use of the system, and alternative options for financing transportation projects.

Require that revenues from the sale of TxDOT and DPS surplus property be deposited to Fund 006.

**Charge**

Evaluate and make recommendations relating to funding allocations for Trans-Texas Corridor (TTC) projects. Monitor and report on the status of the projects, including their impact on local, regional, and state transportation.

**Background**

The TTC is a long-term vision of connective corridors, consisting of separate passenger and truck lanes, freight and passenger rail, and a dedicated utility zone. The multimodal approach to building new transportation infrastructure will include corridors with right-of-way adequate to include passenger highway lanes, separate truck highway lanes, high speed passenger rail, high speed freight rail, commuter rail, and a dedicated utility zone which requires a corridor width of 1,200 feet.

Funding for this project is estimated at $145 billion over a period of 50 to 70 years. The estimate does not include the collection of bonds, loans, grants, right-of-way acquisition agreements, private sector involvement, or any other additional sources of funding for the project.

**Recommendations**

- Continue monitoring funding allocations for Trans-Texas Corridor (TTC) projects.
- Continue monitoring TTC's impact on local, regional, and state transportation systems.
- Develop a new east-west route for the TTC Plan in conjunction with TxDOT, the Federal Highway Administration, the states of Louisiana, Mississippi, Alabama, and Georgia.
- Direct TxDOT to monitor the impact of the location and design of TTC routes and their impact on economic development as projects which provide relief routes around metropolitan areas are completed.
Charge

Study the federal re-authorization of the Transportation Equity Act (TEA-21). Analyze and make recommendations relating to the impact of re-authorization on transportation in Texas, including an assessment of state plans and programs for implementing any required changes.

Background

TEA-21 expired on September 30, 2003, but there have been a series of six short-term extensions to ensure a steady stream of funding to the states.

Texas continues to send more motor fuels tax receipts to the federal government than it receives. Congress continues to debate the reauthorization bill set to expire on May 31, 2005.

Recommendations

♦ Direct the 79th Legislature to memorialize Congress to ensure that Texas receives its fair share of federal transportation funding by increasing the rate of return on federal transportation dollars, with an optimum overall 95 percent rate of return by 2009 favored by the IDS Committee.

♦ Direct the 79th legislature to memorialize Congress to include in the reauthorization legislation eight specific provisions for flexibility in funding and project delivery.
SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

Charge

Study and make recommendations on the need for statutory language relating to fees charged for copies of documents filed electronically or in paper format with a county clerk. Examine all state and local policies relating to document fees and analyze the impact of any recommended changes on local and state revenues.

Background

County clerks receive numerous requests for copies of documents involving interests in deeds and titles. Generally, persons requesting this information are individuals seeking a manageable amount of customized information or a business, such as a title company, seeking large volumes of information.

County clerks maintain public records in one of three manners: paper copy storage, microfilm storage, or electronic storage. Fees charged for reproduction of public records are deposited in the county's general revenue fund. Many small and rural counties do not have the resources to provide information in any format other than paper.

Three different sections of law govern the charges assessed and collected for providing copies of public records. Chapter 118 (Fees Charged by County Officers), Local Government Code, provides a fee schedule for county clerks to use when providing paper copies of public records. Chapter 552 (Public Information), Government Code, addresses the calculation of charges for non-paper copies of public records. Title 1, Part 5, Chapter 111, Subchapter C (Cost of Copies of Public Information), Texas Administrative Code, contains similar instructions. In addition, the Texas Building and Procurement Commission (TBPC) provides county clerks with a mathematical formula on the calculation of charges incurred by the county clerk for time spent retrieving and reproducing the information via electronic format. However, the complexity of calculating charges for non-paper copies when using the formula provided by the TBPC and the guidelines in Chapter 552 often yields inconsistent results.

The County and District Clerks Association of Texas (CDCAT) recommended a fee not to exceed $.02 for each image of a recorded document issued in a non-paper format. However, some county clerks and interested stakeholders worried that a fixed amount would not be appropriate or sufficient to cover the costs incurred by every county for each request. CDCAT also requested that the rules established by the TBPC be revised to produce greater consistency.
Currently, Section 51.605 (Clerks), Government Code, requires county clerks to complete twenty hours of continuing education courses, including at least one hour dedicated to registry funds and one hour dedicated to fraudulent court documents. By also including at least one hour of training on the method established by the TBPC to calculate charges for electronic formatted data, county clerks would acquire an effective working knowledge of the use of this formula and properly assess fees when information is requested from their office.

Recommendation

♦ Amend Section 51.605, Government Code, to require all county clerks, or their designated appointee, to include, as part of their continuing education, one hour of instruction on the rules established by the Texas Building and Procurement Commission (TBPC) for calculating charges to fulfill requests for public information.

Charge

As required by S.B. 264 78th Legislature, Regular Session, jointly study with the House Urban Affairs Committee the effect of subdividing uniform state service regions into urban/exurban areas and rural areas and upon the provision of state and federal financial assistance to meet housing needs of rural areas.

Background

S.B. 264 required the Texas Department of Housing and Community Affairs (TDHCA) to allocate housing funds to both urban/exurban and rural areas in the state. Currently, no definition of exurban exists in statute nor is there a commonly-accepted definition in academic or public policy fields. The United States Bureau of the Census defines both urban and rural areas but does not define exurban.

A mandate to TDHCA to split its allocations into urban/exurban and rural would increase the number of service regions from 26 to 39. This increase could affect the financial assistance available to meet housing needs in rural areas. Information provided by TDHCA noted both positive and negative implications of further subdividing the state. Positive implications suggest that urban, exurban, and rural areas would no longer have to compete for funds because there would be a reserve for each service region area. Negative implications suggest that three distinct funding pools would minimize allocations to each service region and reduce funding for development.

Recommendation

♦ Direct the TDHCA, in conjunction with appropriate stakeholders, to conduct, for presentation to the Senate Committee on Intergovernmental Relations and the House
Committee on Urban Affairs by January 1, 2006, a needs-assessment study to determine whether establishment of an urban/exurban region is necessary for the purpose of allocating housing funds. If deemed necessary, the study shall:

- clearly define the category of urban/exurban based on the most current geographical and demographical information available;
- identify programs that will be administered by TDHCA for the purpose of funding urban/exurban, and rural housing projects; and
- recommend safeguards, if necessary, to ensure funding for rural housing projects will not have to compete with urban/exurban projects.

**Charge**

Study the unique challenges and opportunities in rural areas from an economic development standpoint. Study the future and unmet needs of rural communities, residents and businesses and examine the quality of infrastructure, housing, health care, and community involvement. Make recommendations for promoting investment in growth industries in rural areas.

**Background**

According to the Office of Rural Community Affairs (ORCA), there are currently three million Texas residents living in rural areas. Of Texas' 254 counties, over 68 percent are classified as rural according to the United States Office of Management and Budget.

The following agencies and programs provide a variety of services to rural communities in Texas:

- The United States Department of Agriculture (USDA) Office of Rural Development;
- The Texas Department of Agriculture (TDA);
- The Texas Water Development Board (TWDB);
- The Texas Department of Housing and Community Affairs (TDHCA);
- Office of Rural and Community Affairs (ORCA);
- The Texas Department of State Health Services (DSHS);
- Area Health Education Centers (AHEC); and
- The Texas Department of Transportation (TxDOT).
Recommendations

♦ Amend Section 487.051, Government Code, to require the ORCA to develop programs to assist rural businesses.

♦ Amend Section 487.051, Government Code, to require ORCA to develop an easily accessible resource guide detailing available state and federal resources dedicated to rural communities.

♦ Amend Subchapter I, Chapter 487, Government Code, to require ORCA to set aside four percent of Community Development Block Grant program funds for rural housing.

♦ Direct, by concurrent resolution, TDHCA's Office of Colonia Initiatives and ORCA to assess the current status and needs of non-border colonias and report their findings to the legislature by January 1, 2007.

♦ Increase appropriations to the state's AHECs to better utilize and leverage their existing infrastructure.

♦ Amend the Health and Safety Code to require the DSHS, in conjunction with stakeholders, to:
  ♦ research and report on the current and potential use of non-physician healthcare practitioners in medically underserved areas and health professional shortage areas where efforts to recruit physicians have been unsuccessful; and
  ♦ determine which practitioners could, within the scope of their license or certification, augment physician services.

♦ Amend the Development Corporation Act of 1979 to clarify that certain healthcare services are qualified for infrastructure and job training funding as allowable under the 4A/4B Economic Development Sales Tax.

♦ Amend Chapter 487, Government Code, to require the governor's state grant writing team, in conjunction with the State Office of Rural Health, to establish an easily accessible information resource to assist rural communities with research and basic grant writing instruction.

♦ Amend the Health and Safety Code to require the DSHS to evaluate and update health data reporting mechanisms in a manner that distinguishes rural health dynamics from urban health dynamics.

♦ Amend Subchapter F, Chapter 2308, Government Code, to require workforce development boards to have representation from the healthcare industry. Additionally, local chambers of commerce should be encouraged to have representation from the healthcare industry.
Charge

Study and make recommendations relating to development of the Texas wine producing industry. Assess the impact of state and federal laws on the shipment and delivery of wine and make recommendations for increasing the economic impact of the wine producing industry in Texas.

Background

As with many other states, the modern commercial wine era effectively began in Texas in the late 1970s. However, throughout the last two decades the development of the Texas wine producing industry has not kept pace with the growth in other states with similar or equal potentials. Industry reports by Motto Kryla & Fischer LLP (MKF) attribute a $2.4 billion impact on Washington state’s economy from its wine business in 1999 and a $45.4 billion impact for the state of California in 2002. The Texas wine industry’s impact on the state’s economy, while significant, was substantially lower at $133 million in 2002 and $170 million in 2003. In addition, states that have been proactive in removing barriers to their respective industries’ growth are quickly approaching Texas’ wine production levels. The 2004 MKF report indicates that Texas has fallen from its long-standing national rank of fifth in production to ninth. Compounding concerns is the fact that while Texas ranks fourth in consumption, only five percent of the wine consumed in Texas is manufactured within the state.

Recommendations

♦ Adopt, by concurrent resolution or statement in statutory amendment, that development of world-class wine grape-growing and wine-making industries is important to Texas as a whole; the vitality of the wine grape and wine producing industries affects the well-being of Texans and Texas economies; it is in the public interest to encourage the orderly growth and development of sustainable, labor intensive, value-added agricultural industries, such as the wine grape-growing and wine-making; and that it is the policy of this state to support growth and development of Texas' wine grape-growing and wine-making industries.

♦ Amend the Alcoholic Beverage Code to specifically authorize Texas wineries to utilize all delivery mechanisms, legally available to out-of-state and international wineries, to get their products to customers and grow their businesses.

♦ Repeal Section 16.08(c), Alcoholic Beverage Code, to remove the four event annual limit currently imposed on the number of wine festivals that can be held on the winery premises by the holder of a winery permit.

♦ Amend Section 16.011, Alcoholic Beverage Code, to grant the commissioner of agriculture the authority, under certain conditions, to issue a variance to the requirement that wineries, located in an area in which the sale of wine has not been authorized by a
local option election, utilize at least 75 percent by volume fermented juice of grapes or other fruit grown in this state in order to sell or dispense wine.

♦ Amend the Alcoholic Beverage Code to establish operating hours for wineries that enable them to maximize revenues for themselves and the state by taking full advantage of the agri-tourism generated by the Texas wine and grape industries.

♦ Amend Section 16.01(a)(4)(B), Alcoholic Beverage Code, to eliminate the 35,000 gallon limit imposed on the sale of wine from winery tasting rooms to consumers.

♦ Amend Section 102.07, Alcoholic Beverage Code, to allow wineries to post or otherwise publicize where their products can be purchased in the retail sector.

♦ Amend the Alcoholic Beverage Code to expand the hours for receipt and delivery of wine between permit holders.

♦ Amend the Alcoholic Beverage Code to authorize the creation of multi-winery [sic] co-ops.

♦ Amend Section 109.53, Alcoholic Beverage Code, to exempt winery permits from the 51 percent ownership requirement to allow for out-of-state investment in Texas wineries.

♦ Amend the Alcoholic Beverage Code to allow the holder of a winery permit to establish and directly provide the winery’s product through a full-service restaurant on the winery premises and serve other alcoholic beverages for the sole purpose of providing an alternative beverage selection for the customers of that restaurant.

♦ Amend the Alcoholic Beverage Code to eliminate label approval and testing for wine and, instead, authorize TABC [Texas Alcoholic Beverage Commission] to register federal certificates of approval for these products.

♦ Amend the Alcoholic Beverage Code to update TABC’s mission and to better reflect today’s alcoholic beverage regulatory environment and its role in public safety issues.

♦ Request, by concurrent resolution, a study of the use of the herbicide 2,4-D in Texas for the purpose of developing a plan to minimize or eliminate the negative impact of that chemical and increase the use of less harmful herbicides in Texas agriculture.

♦ Create a Texas Wine and Grape Growers’ board, commission, task force, departmental division, or other appropriate entity [composed of certain members] to:
  ♦ develop a long-term vision and marketable identity (Brand Texas) for the Texas wine industry;
  ♦ plan and coordinate future industry development, funding, research, educational programming, risk-management; and marketing; and
  ♦ make recommendations to future legislatures regarding funding, statutory changes, and state policies to benefit Texas grape and wine production.

♦ Enact legislation that will, for not less than ten years, dedicate, for development of the Texas wine-producing industry, no less than 90 percent of all new sales and excise tax revenues generated by the Texas wine and grape industries after August 31, 2005.
Consider legislation to authorize collection of a voluntary fee or tax on every bottle or gallon of Texas wine sold, to be used for the sole purpose of developing the Texas grape and wine industries.

Enact legislation that will, for not less than five years, dedicate, for use towards the elimination and eradication of Pierce’s Disease and its vector, the Glassywinged Sharpshooter and other pests, parasites, diseases and other factors that impact the viability of grape and wine production in Texas and other states, no less than 75 percent of all new sales and excise tax revenues generated by the sale of non-Texas wine after August 31, 2005.

Direct the Texas A&M and Texas Tech University Systems, by concurrent resolution or statutory provision, to develop a long-term strategy for expanding our current wine-related educational resources, including the T.V. Munson Viticulture and Enology Center at Grayson Community College, into a comprehensive system of education, training, research, and degree programs to facilitate the development of the Texas wine industry into a world-class competitor. A report on the strategy should be submitted for review and action by the 80th Legislature.

Provide funding sufficient to fully support and enhance existing programs within the state to facilitate growth of the Texas wine-producing industry, to include [specified] new monies.

Encourage, by concurrent resolution, continuing research through the Texas Wine Marketing Research Institute, to include, as funding and information resources allow, a basic comparison of the economic impacts of the Texas, California, New York, North Carolina, Oregon, Virginia, Washington, and other closely competitive wine industries. The data to be compared should be published annually and include [certain information] for each state.

Recognize, by concurrent resolution, the importance of the emerging Texas wine industry and request of all relevant agencies of the state and institutions of higher education their best effort to secure, from the federal government or other appropriate resource, any funding or other assistance that might be available to support the protection and growth of the Texas wine industry and to serve Texas wines at all state dinners, meetings, conferences and other events and in all state or university facilities where wine or other alcoholic beverages are served.

Memorialize, by concurrent resolution, a request to the members of the Texas congressional delegation to recognize the importance of the emerging Texas wine industry and work to secure funding and other assistance available at the federal level to support its protection and growth.

Memorialize, by concurrent resolution, a request to the members of the Texas congressional delegation to seek amounts of $2 million for a five-year period for grant funding through the United States Department of Agriculture and the Animal Plant and Health Inspection Service for Pierce’s Disease research.
Charges

Study the activities of the United States-Mexico Border Environmental Program: Border 2012, particularly in reference to the grant program. The committee shall also monitor the distribution of funds from the North American Development Bank (NADB) and the Border Environment Cooperation Commission (BECC), as well as monitor the activities of the International Boundary and Water Commission. The committee should make recommendations for efficient use, tracking, and leverage of funds and for effective coordination of state policies relating to the Border region.

Study and make recommendations for improving colonias infrastructure, including water services, wastewater services, and transportation infrastructure. All recommendations should include an analysis of cost effective alternatives for achieving results and an assessment of current efforts to improve infrastructure.

Background

NADB is an international financial institution capitalized and governed equally by the United States and Mexico. NADB assists communities on both sides of the border in addressing their water and wastewater needs by providing financial assistance to both public and private entities. NADB provided Texas $614 million for a total of 30 projects between 1997 and 2003, helping more than 510 colonias.

BECC is an international organization established to develop and certify sustainable infrastructure projects to promote conservation, protection, and improvement of the environment along the Border.

The two agencies complement each other in developing environmental infrastructure projects particularly the areas of potable water, wastewater treatment, and municipal solid waste located within 62 miles north and south of the United States-Mexico Border. Certain conditions must be met during a certification process before projects receive funding.

The Border Environment Infrastructure Fund (BEIF) was created by NADB to help communities receive and administer grants from other institutions that can be combined with loans and guaranties to facilitate project financing. These grants can be applied directly to construction costs, including residential hookups and construction management, allowing user fees to be increased gradually over time, thus providing transition assistance. Of the ten United States and Mexican Border states, Texas received more than 30 percent of all BEIF funds.
A shortfall of federal funds has significantly impacted these programs and resulted in prioritization of programs based on the degree of human health, environmental impact, and greatest need along the Border. There is a need to develop additional state initiatives to address the shortfall of federal funds. Certain federal agencies' regulations have created other difficulties in obtaining federal funding for these already economically distressed communities.

Created in 1957, the Texas Water Development Board (TWDB) works to plan and finance projects to meet the water needs of the state. The agency administers the Economically Distressed Areas Program (EDAP) which was created to address significant health inadequacies in certain economically distressed areas. EDAP funds colonias in "affected counties" along the border that meet specific income and unemployment levels. The data is calculated annually with counties falling in and out of this definition. A 2003 EDAP Study commissioned by TWDB indicated that water and wastewater needs exist in 1,409 economically distressed communities in approximately 42 counties.

The passage of S.B. 1296 and S.J.R. 37, 77th Legislature, Regular Session, resulted in the issuance of $175 million in general obligation bonds. In accordance with the enabling legislation, the Texas Transportation Commission issued the first $50 million program out of the original aggregate $175 million in January, 2002; the second $50 million was issued on July 23, 2004.

The colonias, which are characterized by substandard housing, inadequate plumbing, poor sewage disposal and wastewater systems, lack of paved streets and drainage, and limited access to clean water, pose a serious threat to residents and the general public. Other economic factors add to the desultory portrait of the region: an inadequate tax base; low average pay per job; low per capita income; a high number of families living in poverty; and high unemployment rates. The region will be further strained by projected population growth rates.

The International Boundary Water Commission (IBWC) has been responsible for applying the boundary and water treaties between the United States and Mexico for more than a century, as well as settling differences that arise in the application of the international water treaties. The 1944 Water Treaty requires that Mexico deliver water to the United States from six of its tributaries to the Rio Grande, with two-thirds allocated to Mexico and one-third to the United States. Deficits in delivery from Mexico have negatively affected farmers in the Rio Grande Valley who are seeking recovery from damages from the Mexican government. This issue must be resolved at the federal level.

**Recommendations**

♦ Address the shortfall of federal water and wastewater funds by more aggressively supplying the needed resources for distressed communities by enhancing, strengthening, and refinancing Texas' Economically Distressed Areas Program (EDAP).
♦ Provide Texans the opportunity to approve the issuance of $430 million to $500 million in enhanced EDAP II Bonds.

♦ Provide that half the funds of the enhanced EDAP II program be used for traditional EDAP communities and the other half for non-EDAP distressed communities in Texas.

♦ Provide a mechanism by which to support the issuance of bonds by the TWDB. Accordingly, provide TWDB the necessary additional bonding authority and rule-making authority to make the most of the enhanced EDAP II Bonds through grants and low-interest loans.

♦ Simplify and standardize the enhanced EDAP II program's statutory county eligibility determination by ensuring certainty in program eligibility requirements, using the guidelines of the Colonia Wastewater Treatment Assistance Program (which was set up by the federal government to complement Texas' EDAP program).

♦ Simplify the income eligibility criteria and streamline the application requirements of the enhanced EDAP II program by changing the current EDAP per capita income requirements for a project area to reflect median household income, which is the standard used by three TWDB disadvantaged community programs (Drinking Water State Revolving Fund-Disadvantaged Communities program, Clean Water State Revolving Fund-Disadvantaged Communities program, and the Small Community Hardship program).

♦ Continue to require the adoption of the Model Subdivision Rules for communities and counties participating in the expanded EDAP program to increase the effectiveness of the enhanced EDAP II program by assisting Texas communities curtail the proliferation of future colonias.

♦ Require the Colonia Coordinator to provide briefing meetings concerning the importance of the rules in order to assist new counties/participants of the expanded EDAP II program to understand the Model Subdivision Rules.

♦ Provide the needed corresponding resources for the enforcement of rules.

♦ Address the current lack of capacity in distressed communities to meet all program requirements by supplying the necessary managerial and technical resources needed to build capacity. Strengthen the available resources to communities through TWDB in the form of additional field personnel and associated expenses to assist in the building of capacity by providing financial, managerial and technical assessments, training and follow-up assistance.

♦ Support TWDB's request of $6.5 million in General Revenue to cover the servicing of a $37 million EDAP bond issuance for the biennium. Support an additional $25 million in General Revenue to further assist TWDB to finish EDAP projects which have been designed, are being constructed or are in final planning stages.

♦ Maximize federal matching funds for water needs of disadvantaged communities to strengthen the enhanced EDAP II program by providing $1,413,662 in General Revenue
to match and maximize $7,068,310 in federal funds for disadvantaged communities under the Drinking Water State Revolving Fund Program.

♦ Improve the coordination among agencies in their efforts to address the needs of colonia residents by amending Government Code, Section 775.002, and requiring mandatory coordination of colonia initiatives.

♦ Strengthen the use of colonia-related infrastructure funds through the sharing of data and information among agencies to improve the Border Activity Tracker (BAT) database.

♦ Provide that appropriate procedures be developed for the inputting of project information and require that agencies collaborate to develop a single point of contact for water and wastewater related projects.

♦ Require joint interagency funding of resources to maintain the BAT, which can be managed by the Borderlands Information Center.

♦ Provide Border counties with limited land use and development control (limited ordinance-making authority) to increase the state's efforts to eliminate the expansion of colonia developments. Such a measure would provide local communities the necessary tools to combat and prevent the proliferation of colonias.

♦ Strengthen the efforts of the Colonia Coordinator by assisting in the modification of the program's existing culture by amending Government Code, Section 775.002, and creating a Colonia Advisory Oversight Committee.

♦ Direct this Advisory Committee to provide guidance and input to the Coordinator regarding initiatives and endeavors that can increase the effectiveness of the office.

♦ Provide that this committee develop strategies and make recommendations to address the needs of colonia residents.

♦ Increase the local participation of Border county officials and colonia residents by providing that the committee be composed of Border county judges, or their representative, and colonia residents.

♦ Provide that this committee be appointed by the Governor.

♦ Increase the effectiveness of the Colonia Coordinator by requiring the coordinator to develop a quarterly report for the legislature documenting the coordinator's efforts to address the needs of colonia residents. Provide that the coordinator include the recommendations and comments provided by the Oversight Advisory Committee.

♦ Improve the efforts of the Colonia Coordinator by requiring, rather than permissively allowing, the coordination of programs with state agencies outlined in Government Code, Section 775.002.

♦ Amend Section 775.002, to include the Texas Commission on Environmental Quality, Office of Rural Community Affairs, the Texas Department of Transportation (TxDOT), and the Office of State and Federal Relations, to the
agencies that are involved in the coordination of colonia initiatives (and make appropriate confirming changes).

♦ Provide that Section 775.002 agencies work with TxDOT to offer the necessary resources to comprehensively address the infrastructure needs of colonia residents.

♦ Increase the available resources for newly elected Border county elected officials, and new participants of the enhanced EDAP II program by strengthening the relationship between the Colonia Coordinator and the aforementioned officials, by requiring the coordinator to hold public briefings on the significance of the Model Subdivision Rules.

♦ Strengthen TxDOT's efforts in addressing the needs of colonia residents by increasing the bonding authority amount for the Colonia Road Bond Access program from $175 million to $425.90 million.

♦ Improve the effectiveness of the Colonia Access program by addressing the delay-associated factors during the program's implementation. Provide TxDOT the necessary authority and resources to manage the colonia road projects (consultant work-plan, design and construct) in-house or through interagency contracting with [Texas A&M University System] components (School of Architecture, Extension Service, etc.)

♦ Improve the targeting of the effectiveness of the Colonia Access funds and increase the effectiveness of the funds by directing TxDOT to revisit the program's set-aside to ensure that the funds are used in communities with the greatest need.

♦ Increase the capacity of development resources in colonias by funding university programs that promote enterprise development.

♦ Direct the Texas Department of Housing and Community Affairs (TDHCA) to use 10 percent of their mortgage revenue bonds, or at least $10 million, to increase affordable housing opportunities for low-income individuals and families by creating new financing programs.

♦ Require that TDHCA create a "secondary housing finance market" program to enable non-profits, or interested private sector parties, to originate loans for low-income families.

   ♦ Provide that TDHCA service and season the loans for 24 to 36 months in order to sell them to Fannie Mae, or other interested parties, to recycle the funds.

♦ Require TDHCA to create another alternative lending product that would amount to a mortgage product with a "three-year balloon".

   ♦ Require, that under such a lending alternative ["three-year balloon"], after the initial three-year period, TDHCA provide the necessary assistance for borrowers to graduate/move to more conventional/traditional financing.
♦ Provide that TDHCA "recycle" the funds of this program to assist additional low-income families.

♦ Provide that TDHCA use relaxed underwriting guidelines under this program and require TDHCA to accept alternative credit information such as rent, and utility payments for program eligibility. Also, as part of the participation in the alternative credit information, direct TDHCA to require that the borrower have a depository relationship with a financial institution and complete a home-buyer education program.

♦ Direct TDHCA to create a loan loss reserve, or guaranty housing pool, to assist low-income families and to entice the private sector or non-profit organizations to originate loans to help more low-income families realize home ownership along the Texas-Mexico Border region.

♦ Require TDHCA to develop credit enhancements and guarantees to keep the same bond ratings.

♦ Direct TDHCA to develop a "rent-to-own" single family option using federal housing tax credits and featuring a sale between the lien holder and occupant at the 15-year period.

♦ Require TDHCA to fund and broaden financial literacy and education outreach along the Texas-Mexico border.

♦ Require that TDHCA work with non-profits and other public institutions, such as community colleges and school districts, to help educate low-income families about the importance of establishing good credit, as well as starting a savings account by creating a banking relationship.

♦ Require that TDHCA develop a pilot project to help fight predatory lending along the Texas-Mexico Border region by funding non-profit organizations to address discriminatory practices that exist in the colonias and the border region to ensure greater compliance with federal, state, and local laws through a multifaceted fair housing program.

♦ Ensure continuity of TDHCA's efforts in addressing the housing needs of low-income individuals by codifying and updating existing budget rider #3 in TDHCA's budget (Fiscal Years [sic] 2005), which was originally authored in 1999 by the border members of the IRT Committee, to reflect legislative intent. The codification of the rider would provide statutory direction, rather than rider direction, that TDHCA expend $30,000,000 of its housing programs (HOME funds, Housing Trust Fund, Housing Tax Credits, Section 8, Single/Multi Family Bond, etc.) to ensure meaningful home ownership opportunities.

♦ Support TDHCA's rider revision request for contract-for-deed conversions (current rider #10) that would expand TDHCA's efforts in the conversion of contract-for-deeds to conventional mortgages with transfer of title.
♦ Consider providing more flexibility under the necessary statutes by allowing TDHCA to use its Community Housing Development Organization (CHDO) set-aside dollars in the HOME program to fund non-profits in urban areas to help develop quality affordable housing for colonia residents. Provide necessary technical assistance and capacity building funds.

♦ Direct the appropriate overseeing agencies to lift the residency caps in areas of the state that are designated physician-shortage areas.

♦ Increase the available resources to those communities who are medically underserved by developing an initiative that assists hospitals and communities in underserved regions to address the lack of resources [necessary] to set up and maintain medical training programs and related cost-recovery issues.

♦ Provide incentives and financial support to educational institutions to recruit, retain, and grow the nursing faculty pool in nurse training programs. Consider increasing formula funding to all nursing schools and create an incentive formula initiative for graduate nursing study.

♦ Develop initiatives to assist in paying nurse faculty more appropriately, according to their contributions, and making faculty salaries more competitive in the marketplace.

♦ Direct the Board of Nursing Examiners to re-focus state regulation to address current nursing shortages in Texas with the goal of creating the potential for additional applicants to be accepted into nursing programs. Particular attention should be given to the current stringent ratio of clinical faculty-to-students that impedes the growth of existing programs, including the admission capacity standards of nursing programs.

♦ Develop a series of initiatives and pilot programs that have a goal of increasing the number of faculty and students recruited and retained in the nursing profession in regions of the state that are in need of health care infrastructure. Among these initiatives, the state should:
  ♦ Create a pilot program that targets critical health shortage areas.
  ♦ Create a loan repayment program for nurses in critical nurse shortage areas.
  ♦ Create a pilot project that specifically supports and encompasses accelerated and alternate entry programs for regions with a high degree of nurse shortages.
  ♦ Create a project that focuses on regions of the state that have a high number of displaced workers and with goals to retain trade-affected workers.
  ♦ Direct the nursing schools in the state to develop key initiatives that will comprehensively address the nursing shortage in Texas.

♦ Address the lack of equitable distribution of resources across nursing programs with the greatest need—Dramatic Growth Funds.

♦ Address the lack of healthcare infrastructure along the border region by continuing to support the expanding efforts and effectiveness of the El Paso Medical School, the
Regional Academic Health Center in the Lower Rio Grande Valley and similar initiatives in the Laredo region.

♦ Address the physician and medical service shortages in certain needy regions of the state by providing for the expansion of residency programs in medically underserved regions.

♦ Address the curriculum needs of trade-affected workers and increase the effectiveness of Texas' training program by transferring the responsibility for adult education and literacy programs from the Texas Education Agency (TEA) to the Texas Workforce Commission (TWC) as outlined in the Sunset [Advisory Commission] Staff Report.
  ♦ Provide for the creation of an adult education and literacy advisory committee at TWC.
  ♦ Provide that the committee be appointed by the Workforce Commission.
  ♦ Provide that the committee advise the TWC on the development of policies and program priorities that support adult education and literacy programs in order to create an educated and skilled workforce.

♦ Require that TWC and TEA develop a transition plan for the transfer of adult education and literacy programs and provide that transition planning include a timetable with specific steps and deadlines needed to carry out the transfer in compliance with the effective date of the transfer provision. Steps should include a method to transfer all program and personnel records to TWC; ensure against any unnecessary disruption to services at the local level; and specify other measures necessary to complete the transition of programs.

♦ Require that TWC report on adult education and literacy program outcomes related to employment and educational achievement. Require TWC to continue TEA's practice of reporting on demonstrated student improvement in education and literacy levels.

♦ Require TWC to develop a statewide curriculum for those with limited English skills by creating guidelines and standards for adult education and literacy services to ensure a balance of education and workforce skill development. Provide that the expense for the development of the curriculum come from the budget of TEA as provided by existing state legislative and budget mandates.

♦ Require that TWC work with community colleges in the five regions of the state with the highest disproportionate amount of trade-affected workers and implement their existing Limited English pilot program.

♦ Strengthen the competitiveness of the state in the recruitment and [retention] of jobs by investing in training of Texans by increasing the amount of funding available to TWC by nearly $100 million for the biennium and train an additional estimated 95,000 Texans. Specifically:
  ♦ Develop additional skills training resources in TWC by earmarking $65 million of the new Texas Enterprise Fund appropriations to establish a Skills Development Local Job Training Incentive Program and train an additional 62,000 Texans.
Support TWC's effort to train an additional 24,000 Texans by supporting TWC's exceptional item of $12.5 million per year in Skills Development funding.

Support TWC's effort to train an additional 8,600 Texans through the exceptional item of a one-time funding of $4.5 million per year from the Smart Jobs' Holding Fund ($10 million is currently available under the fund).

Strengthen the effectiveness and use of the Texas Enterprise Fund (TEF) by supporting an additional appropriation of $365 million.

Transfer $65 million of new TEF funds to TWC for the purpose of increasing Texas' workforce training programs.

Increase the focus of "capital company investment" in TEF's eligibility participation requirement. A greater amount of funds could be used to reward companies that move into specific locations (such as rural and distressed regions), as well as those who meet and surpass specific payroll requirements.

Develop appropriate reforms to allow the program administrators in the Texas Economic Development Division in the governor's office to have a greater interaction with legislative committees.

Provide that the use of the TEF better support initiatives that will make it easier for companies to grow and develop in regions where the workforce is located.

Provide that the use of the TEF better assist in development of industry clusters that capitalize on regional resources found within Texas' Border communities and bordering northern Mexican states.

Develop a statewide response to the opening of the border by directing TxDOT to work with the United States Department of Transportation, the Federal Motor Carrier Safety Administration (FMCSA), and the Border Commerce Coordinator to receive a copy of the Environmental Impact Study that was begun by FMCSA, including:

Provide that TxDOT forward copies of this information to the office of the governor and the Texas Commission on Environmental Quality.

Provide that the state of Texas memorialize Congress in directing FMCSA to address the likely pollution and safety risks associated with the opening of the border to Mexico-domiciled trucks.

Direct TxDOT to continue to work with the appropriate local, state, and federal authorities (United States and Mexico) to research and develop an initiative that would mitigate traffic congestion at Texas' ports-of-entry through an initiative that would begin northbound truck inspections on the Mexican side of the international boundary.
♦ Improve and strengthen Texas' ports-of-entry by appropriating TxDOT the required $30 million to complement federal funds for the eight inspection stations along the Texas border region.

♦ Provide the communities that bear the brunt of NAFTA-related trade and TxDOT some flexibility in planning and capacity development by directing TxDOT to develop a trade-capacity fund that will assist communities in the three border transportation districts in addressing the cost of environmental studies and engineering work for off-system projects. Provide that TxDOT use its district discretionary funding to complete right-of-way acquisition, engineering, and environmental assessments for off-system projects.

♦ Increase the effectiveness of the Border Trade Advisory Committee by strengthening its membership.

  ♦ Provide that membership expansion include key transportation and trade leaders of the region, including, but not limited to the chairs of the local Metropolitan Planning Organizations; the directors of the Texas' ports-of-entry (including those of marine/water ports); trade and transportation researchers (those from educational institutions like Texas A&M International's Texas Center for Border and Economic Development, the Texas Transportation Institute, and others alike); and Texas Border Commerce Coordinator.

  ♦ Provide that once the expanded Border Trade Advisory Committee develops subsequent trade and transportation recommendations that are aimed at increasing Texas' trade, that TxDOT consider implementing those recommendations in a subsequent update of the International Trade Corridor Plan.

♦ Increase the use of intelligent information systems to expedite truck inspections at the border's ports-of-entry by directing TxDOT to continue to work with DPS and private industry to develop appropriate initiatives.

♦ Support Texas' communities that have been negatively impacted by existing transit funding by providing "toll credits" for transit systems who have seen reduced allocations.

♦ Increase Texas' ability to expand trade, in the spirit of NAFTA, by directing TxDOT to create a growth fund to strengthen the infrastructure of the transportation districts bordering Mexico.

♦ Require DPS to continue to work with the appropriate state and federal entities to ensure for the opening of the border to Mexico-domiciled trucks.

♦ Increase bilateral relations with Mexico and provide additional resources to help expedite the flow of NAFTA-truck related traffic, by directing DPS to develop an incentive that provides a stipend for Spanish-speaking DPS staff stationed in the Border Transportation Districts who are involved in the inspection of Mexico-domiciled trucks in order to increase bilateral relations with Mexico and provide additional resources to help expedite the flow of NAFTA-truck related traffic.
♦ Increase bilateral relations with Mexico in the spirit of NAFTA, by enhancing the effectiveness of the Mexico domiciled truck inspections near Texas' ports-of-entry, through expanding opportunities for local border communities and those involved in truck inspections to provide their input and concerns to an Oversight Community Outreach Committee.

♦ Provide that the committee act like an ombudsman between border communities/residents and DPS administration.

♦ Provide that the committee document and report to the DPS administration trade-related incidents and occurrences involving DPS personnel, including appropriate recommendations to improve the truck inspection process.

♦ Provide that the committee be appointed by the governor and be composed of: bridge owners, port directors, community leaders, and planning developers.

♦ Increase the effectiveness of DPS, in the spirit of NAFTA, to require DPS to develop a report for the legislature documenting the recommendation and comments provided by the oversight committee.

♦ Direct DPS to develop increased safety measures to more appropriately inspect hazardous waste material cargo/trucks that cross into Texas from Mexico.

♦ Mitigate the foreseen increase of truck-related emissions in Texas by directing DPS to more extensively use evolving technologies and develop an emission testing can occur at Texas' ports-of-entry. Provide that DPS develop a corresponding program with the goal of reducing idling at border ports and freight yards.

♦ Create a Border Inspection, Trade and Transportation Advisory Group to increase the effectiveness of the Border Commerce Coordinator.

♦ Provide that the advisory group be composed of major state and federal agencies involved in border crossings, along with key members of the legislature that represent border crossing communities.

♦ Provide that the group identify and develop recommendations to address the persisting issues involved with border truck inspections, as well as trade and transportation infrastructure issues.

♦ Provide that his group specifically undertake truck inspections on the Mexican side of the border.

♦ Increase the accessibility of the border commerce coordinator by directing the coordinator to work with the Metropolitan Planning Organizations and the Metropolitan Statistical Areas of the border transportation districts to address their unique planning and capacity needs.

♦ Provide that the coordinator assist border communities, along with the help of their counterparts in the Mexican states, in identifying and developing initiatives that would address their planning and capacity needs.
Increase Texas' competitive edge with other states would require by directing the coordinator to hold binational meetings with Mexican states bordering Texas.

- Provide that the coordinator direct a discussion with the leaders of each state's transportation, economic development, workforce training, and public safety agencies to develop and design state/binational initiatives that would increase trade and commerce flow between the adjoining states.

- Provide that the coordinator work with the appropriate entities to address Texas' response to the opening of the Border to Mexico-domiciled trucks.

Strengthen Texas' competitive edge by directing the border commerce coordinator to work with the border chambers of commerce and local area councils of government, as well as private industry leaders, to develop a five-year, 10-year, and 15-year comprehensive trade and commerce plan for Texas.

- Provide that the plan be aimed at increasing commerce and trade through the attraction of new business ventures, supporting the expansion of existing industries, as well as through the development of key partnerships which address the specific workforce training needs of border corridor regions.

- Direct the coordinator to work with communities on both sides of the border, and private industry, to develop an international cluster initiative to capitalize on the resources available between border "sister" cities.

- Provide that the coordinator unveil the plan in a border commerce summit and that the coordinator continue having yearly summits.

Mitigate the foreseen increase in pollution by working with industry, and the necessary state and federal entities, to require low sulfur fuel be sold along the NAFTA highway and work with Mexico to increase the use of low sulfur fuel.

Increase the effectiveness of the border coordinator by setting some minimum performance outcome measures.

Direct the secretary of state, in conjunction with the appropriate state and federal agencies, to develop an initiative that assesses the impact of Mexico's non-compliance.

Provide that the secretary of state commission a study concerning the impact to the agricultural community.

Provide that the findings of the study be used by the state of Texas to memorialize Congress to create an account to fund communities who are negatively impacted by Mexico's non-compliance.

Provide that the findings of the study be sent as official correspondence from the state of Texas to the United States Ambassador to Mexico, the country of Mexico, the International Boundary Water Commission, and other appropriate state and federal entities.
Provide that the secretary of state work with the appropriate state agencies to develop an intermediate state fund to temporarily assist Texas' farmers negatively impacted by Mexico's non-compliance.

**Charge**

Study the implementation of H.B. 109 and make recommendations for improvement of the import/export and certification system and for maximization of the tax dollars collected.

**Background**

H.B. 109, 78th Legislature, Regular Session, directs the Comptroller of Public Accounts to maintain a password-protected website for customs brokers to document and show the exemption of export tangible personal property from state taxation. The bill has been an effective tool toward eliminating false claims of export, according to a broker from United States Customs. Drawbacks of the legislation include the enforcement of visual requirements, the stamp fee of $1.60 (too high for the small consumer), and the power given to the comptroller which limits due process, according to customs brokers.

**Recommendations**

- Create a Citizens Advisory Board to assist the Texas comptroller of public accounts in the development and implementation of international trade legislation.
- Strengthen the program by allowing Texas border cities to assist the comptroller with the necessary personnel to audit Texas customs brokers involved in export certification process.

**Charge**

Study trends and issues concerning trade, immigration, and employment along the Border, including the impact of ten years of NAFTA, and make recommendations to enhance economic development and growth. Examine the impact of the US-VISIT program and the Trade Adjustment Act of 2002, and the current transition of oversight of the Border to the Department of Homeland Security and make recommendations for improvement in state law as necessary.

**Background**

The North American Free Trade Agreement (NAFTA) established a preferential tariff schedule for North American production with the objectives of attracting investment in manufacturing to North America and reducing the total cost of business for North American producers. In the last seven years, Texas has exported more than $272 billion to Mexico, and according to data from the Texas Workforce Commission, Mexico is our state's number one
trading partner with more than $41.5 billion in exports in 2003, double the pre-NAFTA figure. Texas' exports to Mexico were up 22 percent in the first quarter of 2004.

From 1990 to 2000, population in the Border area increased 40 percent compared to the state average of 23 percent; 79 percent of all Mexico/United States truck traffic enters through a Texas Border point of entry.

Border residents constitute a younger, less educated, and poorer populace than other Texas residents. The area leads the state in the number of uninsured, the number living in poverty, and the unemployed.

In order that there will be a labor pool with needed skill sets, the large, primarily young workforce must be trained for the workforce.

The Skills Development Fund and the Self-Sufficiency Fund provide grants to community colleges and technical schools to fund training programs tailored to jobs with local employers. Currently, Texas is not competitive with other states in this area.

Between 1994 and 2003, NAFTA's economic integration resulted in a 335.13 percent increase of northbound truck crossings and southbound crossings increased by 122.33 percent. Vehicle and pedestrian crossings have increased as well.

The Border Trade Advisory Committee (BTAC) established in 2001 with the passage of S.B. 195, requires in Section 201.114, Transportation Code, that consideration be given to trade with the United Mexican States, potential sources of infrastructure at Border ports, and that trade activity in TxDOT's districts adjacent to the Border with the United Mexican States be evaluated. In 2003, the legislature directed TxDOT to coordinate and develop an international trade corridor plan, but there has been no integral role by the BTAC in this plan.

The US-VISIT program is a "continuum of security measures that begins before an individual enters the United States and continues through arrival and departure from the United States." It incorporates eligibility determinations made by both the Department of Homeland Security and the Department of State. There was consensus among witnesses who testified before the IRT Committee that the impact on Texas' economy by the US-VISIT program will be negative as it impedes traffic, both commercial and tourist, from Mexico into the United States.

**Recommendations**

♦ Request that the federal government set up a tax relief fund for local businesses adversely affected by the US-VISIT program.

♦ Direct the secretary of state to conduct a Texas economic assessment in conjunction with the office of the comptroller and the office of the governor of the US-VISIT's impact on the Texas' economy.
♦ Create an US-VISIT Texas Ombudsman Office to address concerns voiced by local officials and community leaders.
  ♦ Provide that the ombudsman be housed in the Office of the State Director of Homeland Security.
  ♦ Provide that the Ombudsman's Office address concerns relating to the treatment of travelers in Texas' airports and provide appropriate recommendations to the Texas Homeland Security Director and the legislature to remedy any problems that are identified.

♦ Develop a more user-friendly, information based website for the state of Texas Homeland Security Office with certain requirements.

♦ Direct the State Office of Homeland Security to develop public service announcements in English and Spanish regarding the implementation of US-VISIT and its directives to visitors to the United States and Texas.

♦ Provide for greater coordination communication between the Texas Department of Public Safety and Texas Homeland Security.

♦ Request from Congress certain actions relating to visa and cross-border traffic issues.
SENATE COMMITTEE ON JURISPRUDENCE

Charge

Study the jurisdiction of all local and state courts, including civil and criminal justice courts. Make recommendations for changes to any court's jurisdiction to improve the efficiency or effectiveness of the judicial system. Review and make recommendations relating to concurrent jurisdiction of county courts at law and district courts over eminent domain proceedings.

Background

Texas is one of two states that has two courts of last resort. In Texas, the highest courts are the Texas Supreme Court and the Texas Court of Criminal Appeals. The current court system includes 14 intermediate appellate courts, 424 district courts, 254 county courts, 211 statutory county courts, 17 statutory probate courts, 827 justice courts, and 894 municipal courts.

There are numerous overlaps in the jurisdiction of the intermediate appellate courts, which present difficulties to litigants. This same problem exists among the district courts, and there has been no reapportionment of the judicial districts since 1876. Instead, the legislature considers requests for additional district courts each legislative session and there is no objective framework established to evaluate these requests. There is currently no methodology to make a weighted caseload study to evaluate a court's caseload. In 1985, amendments to the Texas Constitution and the Government Code deleted the reference to a $500 lower limit of the amount in controversy for the district court.

The jurisdictional limits of the statutory county courts vary widely across the state, thus there is no uniformity.

Recommendations

♦ Require the Texas Judicial Council (council) to conduct a study of the issue of statutory county court jurisdiction. This study shall focus on the goal of making the jurisdiction of all statutory county courts uniform and the potential effect of any jurisdictional changes to the caseload of the district courts and statutory county courts. The council shall complete its study and report back to the legislature by December 1, 2006.

♦ Do not approve any jurisdictional changes to the enabling statutes of existing statutory county courts, pending the study of statutory county court jurisdiction. If new statutory county courts are created by the 79th Legislature, the jurisdiction of the newly created courts should be identical to that of other existing courts in that county.
Enact legislation that specifies [that] the minimum amount in controversy in the district courts is $500.

Require the Office of Court Administration to contract with an independent, non-profit organization that specializes in providing technical assistance and consulting services to courts, such as the National Center for State Courts, to conduct a weighted caseload study of district courts in Texas.

**Charge**

Study judicial salaries, supplements, retirement, and benefit issues for sitting, visiting and retired judges.

**Background**

In Texas, the salaries of the judges on the Texas Supreme Court, Court of Criminal Appeals, the intermediate courts of appeals, and the district courts are paid by the state according to a statutory formula. The last time the judges serving in the state courts received a pay raise was in 1997. Texas judges are underpaid compared to their counterparts in most states and many federal judges. The level of compensation makes it difficult to recruit and retain qualified judges.

**Recommendations**

- Improve state judicial salaries substantially by increasing the salaries of the justices of the Texas Supreme Court and the Court of Criminal Appeals to an amount ranging from $150,000 to $160,000; the salaries of the justices of the courts of appeals to an amount ranging from $145,000 to $150,000; and the salaries of district court judges to an amount ranging from $135,000 to $140,000. The committee believes this judicial pay raise should be a priority for the 79th Legislature.

- Enact legislation to provide for a judicial salary structure that ensures that the justices of the Texas Supreme Court and the Court of Criminal Appeals are the highest paid judges in the state.

**Charge**

Study arbitration statutes, and the role of the American Arbitration Association. Specifically, the committee shall make recommendations to improve and ensure the efficiency, effectiveness, and fairness of arbitrators and arbitrations.
Background

Arbitration is a method of dispute resolution in which the proceeding is administered by a neutral third-party arbitrator or arbitrators who hear the arguments and evidence and issue a decision. Arbitration can allow parties to work through legal disputes in a timely, cost-effective manner. Mandatory pre-dispute arbitration agreements specify how arbitration will be implemented in the event of a dispute, such as which arbitration entity will be used and whether the arbitration will be binding. The use of such mandatory pre-dispute arbitration clauses can present serious problems for consumers, who are often in a weaker bargaining position and may unknowingly be forced into arbitration. There is currently no method to obtain reliable data on the cost, time, and outcome of consumer arbitration cases and no public records on arbitrators are available to consumers.

Recommendations

♦ Enact legislation requiring any business that includes a mandatory pre-dispute arbitration clause in their contracts to provide their consumers with certain upfront information. The information provided to the consumer shall specify which rights are being waived, who will arbitrate the dispute, who will cover the costs of arbitration, whether the rules of discovery will be followed, what laws are applicable, what information will be public, and what recourse is available after an award is issued.

♦ Enact legislation to require the State Bar of Texas to produce an informational pamphlet that will be distributed to businesses that would require consumers to sign binding arbitration agreements.

♦ Enact legislation regarding reporting requirements for arbitrators participating in business/consumer arbitrations. These requirements should outline the type of information to be reported and to whom it should be submitted. At a minimum, arbitrations in cases involving a business/consumer dispute shall be required to report the nature of the dispute and the final decision issued.

♦ Enact legislation, if reporting requirements are adopted, requiring any business that includes a mandatory arbitration pre-dispute arbitration clause in their contracts to inform its consumers of the availability and the location of the reported information.

Charge

Study insanity defense laws, specifically evaluating the impact of changing the defense of "not guilty by reason of insanity" (NGRI) to "guilty, but insane."

Background

In Texas, insanity is an affirmative defense if, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that the conduct was wrong. To
be found NGRI of a crime in Texas, the defendant must prove that he was insane at the time of the crime. The popularly held conception of the insanity defense has been that of overuse and abuse. However, statistics show that the insanity defense is used in only one percent of all felony cases and is seldom successful.

In Texas, the Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation), accumulates the records of individuals found NGRI, but the data does not allow easy identification and tracking of a NGRI patient. Entering and updating pertinent information, such as a patient's location and crime committed, would keep the data current and make tracking possible.

Article 46.03 of the Texas Code of Criminal Procedure sets out the examination and disposition of individuals found NGRI, but this article is confusing and difficult to understand. This article should set out the qualifications of experts employed in the examination of a defendant. Further, provisions dealing with the conditional release and outpatient supervision need to be clarified.

Currently, juries are prohibited from receiving any information about the consequences of a NGRI verdict. The committee believes the legislature should examine the pros and cons of revealing to juries knowledge of consequences and procedures following the verdict of NGRI.

**Recommendations**

♦ Enact legislation to require the DSHS to improve the collection of the commitment records of persons found Not Guilty By Reason of Insanity (NGRI).

♦ Enact legislation to conform the standards for experts used in an insanity case to the standards for experts used to determine the competency of a defendant to stand trial.

♦ Rewrite Article 46.03 of the Code of Criminal Procedure to make the language more concise and easier for attorneys, judges, and mental health professionals to follow. Specifically, the provisions concerning release standards and post-release monitoring should be made explicit.

♦ Make no change in the current defense of NGRI.
SENATE COMMITTEE ON NATURAL RESOURCES

Charge

Study the ongoing efforts, and make recommendations, as needed, to achieve cleaner air in Texas including:

♦ Implementation of H.B. 1365, 78th Legislature, Regular Session;
♦ State Implementation Plan revisions;
♦ Texas Commission on Environmental Quality (TCEQ) implementation of the eight-hour air quality standard;
♦ Early action compacts and other innovative air quality planning tools;
♦ Emissions transport issues, including recent court decisions and federal legislation implementing transport policy;
♦ Transition of the Texas Council on Environmental Technology to TCEQ; and
♦ Regional air quality challenges.

Background

In 1997, the Environmental Protection Agency (EPA) adopted a new, more strict National Ambient Air Quality Standard (NAAQS) for ground-level ozone, noting that the one-hour standard was "inadequate for protecting public health." The new standard is referred to as the eight-hour ozone standard, as it changes the averaging period of the ozone standard from one to eight hours, but lowers the amount of ozone that can be detected in an area.

EPA proposed rules for the eight-hour plan in the spring of 2003, requiring states to designate each county within the state as unclassifiable, attainment, or nonattainment, by July 15, 2003. The rules, called a State Implementation Plan (SIP), and its revisions are being completed for the state's three nonattainment areas.

The Texas Emissions Reduction Plan (TERP) was established by S.B. 5, 77th Legislature, Regular Session, to improve and maintain good air quality in areas throughout the state. One of the primary TERP programs administered by TCEQ is the Emissions Reduction Incentive Grants Program. Eligible projects include new purchases, replacements, and repowers for vehicles, equipment, locomotives, and marine vessels; retrofit technologies; infrastructures for idle reduction technologies and alternative fueling stations; and qualifying fuels. In 2003, TCEQ implemented the Small Business Grants Program for businesses that own and operate not more than two vehicles or equipment.
Recommendations

♦ Continue to invest in research in collaboration with business, academic, and other stakeholders to obtain objective data for decision making based on sound science.

♦ Improve emissions inventory information. Support an air quality field study by TCEQ that includes the quantification and impact of federally exempted emission sources from seaports, railyards, and airports.

♦ Provide full funding for the next biennium for the Texas Emissions Reduction Plan (TERP) and maintain the integrity of the program, including funding for air quality research to the Texas Environmental Research Consortium.

♦ Extend the revenue sources for TERP beyond the current expiration dates in 2008, in order for the state to fund emission reductions to meet State Implementation Plan (SIP) attainment for the eight-hour standard. Find a replacement fund for the vehicle title fee that transfers to the Texas Mobility Fund on September 1, 2008.

♦ Broaden the applicability and participation in TERP to more classes of vehicles and engines in order to achieve greater cost-effective reductions in emissions. TERP needs to be improved to allow for retrofit or replacement of high emissions engines such as shuttles and taxis. Additional emissions reductions must be obtained from mobile sources with upgraded requirements to reduce vehicle fleet emissions.

♦ Instruct TCEQ enforcement to include consideration of upset emissions, deterrence, economic benefit, and timeliness of enforcement measures.

♦ Support improvements to the Low Income Repair and Replacement Assistance Program (LIRAP) to allow local governments to continue to repair and retire the dirtiest cars on the road in nonattainment and near nonattainment areas. Establish an emission standard for replacement vehicles in order to maximize the benefit of LIRAP.

Charge

Study long-term funding and planning solutions to combat erosion along the Texas coast with particular attention to: the National Flood Insurance Program, secure matching and additional federal dollars, and alternative funding approaches.

Background

The Coastal Erosion Planning and Response Act (CEPRA) was enacted in 1999 to preserve, restore, and protect the Texas coastline. CEPRA funds consist of general revenue appropriated by the legislature and interest accrued in the Oil-Spill Account. In 2003, CEPRA reported that 229 miles of the 367-mile Texas gulf shoreline is in critical erosion condition and that substantial portions of the state's 3,300 miles of bay shoreline are eroding.
Recommendations

♦ Continue funding of the CEPRA.
♦ Continue efforts to identify long-term, non-general revenue funding sources for CEPRA, ensuring that such funding sources benefit Texas' coastal natural resources and the coastal economy.

Charge

Study and make recommendations regarding current state and federal laws relating to the permitting and operation of landfills. Issues to be considered include the generation and transportation of waste; the selection, approval, and regulation of treatment and storage facilities; the projected demand for new facilities; and the adequacy of existing technology to safely dispose of waste.

Background

The management of solid waste in Texas is a cooperative effort among a variety of federal, state, regional, and local entities. TCEQ has some jurisdiction under the Texas Solid Waste Disposal Act, Chapter 361, Health and Safety Code. The state does not directly provide solid waste management services, but some financial assistance programs are available at the state level. The provision of solid waste management services in Texas is primarily the activity of private companies and local governments.

TCEQ's role, through programs that it administers, is to help ensure that the generation and management of these wastes are conducted in a way that protects human health and the environment, through permitting and monitoring certain waste generation and management activities. TCEQ also administers programs to encourage reductions in wastes generated and disposed of in Texas.

Municipal solid wastes (MSW) are defined in Title 30, Chapter 330, Subchapter A, Texas Administrative Code, as "solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste." Nonhazardous industrial waste may be accepted at certain permitted MSW facilities in Texas, although it is not defined as MSW under the Texas Administrative Code. Further, the Texas definition includes construction and demolition debris and municipal sludge; consequently, per capita MSW disposal and generation rates for Texas appear to be significantly higher than those of other states and the nation as a whole.
Recommendations

♦ Continue to monitor the rules revision process at the TCEQ as they begin their comprehensive rewrite of Title 30, Part 1, Chapter 330, Texas Administrative Code.

Charge

Study the consistent implementation of federal and state air and water quality standards by local governments and make recommendations for improving the consistency and effectiveness of the requirements.

Background

TCEQ contracts with five Local Air Programs (LAPs) which receive state and federal grants to conduct air investigations within their jurisdictions. These include the El Paso County Health District, City of Dallas, City of Fort Worth, City of Houston, and Galveston County Health District.

TCEQ Field Operations Division participates each fiscal year in the development of the statewide coordinated water monitoring schedule. This effort involves all monitoring entities in the state, including local entities such as the Houston-Galveston Area Council, all state river authorities and many of their subcontractors, TCEQ, Texas Parks and Wildlife Department, and the United States Geological Survey, to ensure that monitoring activities are targeted for efficiency and coverage for compliance with the federal requirement to assess the state's waters.

Recommendations

♦ Continue oversight of enforcement standards utilized between state agencies and units of local governments for consistency and uniform application.

Subcommittee on Agriculture

♦ ♦ ♦

Charge

Study and make recommendations to enhance current efforts for the early detection, exclusion, and treatment of diseased plants and animals.
Background

Texas and Wyoming are the only two states not bovine brucellosis-free, and Texas, California, New Mexico, and Michigan are the only four states that have not been declared tuberculosis-free.

The Texas Department of Agriculture (TDA) oversees the regulatory program for plant disease by surveying for pests, conducting road station inspections, enforcing quarantines, and monitoring eradication efforts when feasible. TDA also monitors nurseries, floral greenhouses, and retail outlets to ensure that quarantined plants are not sold. If a diseased plant is introduced, the United States Department of Agriculture (USDA) has primary jurisdiction and TDA assists in the efforts to quarantine.

Pierce's Disease, among the plant diseases monitored by TDA, is a potentially fatal bacterial disease of the grapevine that could seriously threaten the growing Texas wine industry.

Recommendations

♦ Appropriate funding for more TAHC full-time employees to adequately fulfill the requirements of testing animals, preventing and eradicating disease, implementing the new animal identification plan, and protecting the state from the intentional threats of disease.

♦ Appropriate additional funding for the protection of plants, response to diseases, and education and technological assistance to farmers and ranchers for agricultural diversification.

♦ Pass a resolution memorializing the United States Congress to appropriate funding for more border inspections on crops entering the United States from bordering countries.

♦ Work to restore the state's portion of funding received by USDA and investigate ways to aid the Texas wine industry through education for new growers in the state.

Charge

Explore new technologies and business opportunities in agriculture and make recommendations to enhance and develop agriculture.

Background

In September 2004, the Texas Water Development Board (TWDB) authorized the use of $10 million in grants to fund agricultural water conservation demonstration projects in South Texas and the Southern High Plains as comprehensive steps in implementing the 2002 State Water Plan. The primary goal of both projects is to determine the best demonstration and
transfer of technology of agricultural water conservation strategies with the most potential production of water savings.

During the interim, the subcommittee heard testimony indicating that bio-based products have a large potential market in Texas and that bio-based fuels have proven to be a sustainable energy source for transportation, but that bio-based products are not currently utilized to their maximum profitability in Texas.

Recommendations

♦ Continue to support TWDB's Agricultural Water Conservation Demonstration Initiatives as well as look for more cost-effective methods to conserve agricultural water resources.

♦ Look for ways to boost the market for bio-based production and combine the use of science with food production to promote business development; provide all bio-fuels the same tax credit as fuel ethanol liability protection for companies that use bio-wastes; and support research in bio-fuels and high-efficiency engines.

♦ Utilize the capabilities of organizations, such as the North American Development Bank, to help farmers and ranchers produce new efficiencies, revenue streams, and more sustainable approaches for the future.

Other Issues

Coastal Issues

Background

The Texas coast faces many growing environmental challenges and threats, including freshwater inflows, habitat destruction, water quality, commercial trawling, and pressure from user groups. Texas 2007 was formed to promote legislation and public policy that improves coastal conservation and economic opportunity over the next three years.

Recommendations

♦ Support the efforts of Texas 2007 by passing legislation that will allow for increased funding of the shrimp buy-back program.

♦ Pursue better regulation and protection of the oyster industry.
Fire Ant Control

Background

During the interim preceding the 78th Legislature, the Senate Subcommittee on Agriculture studied the feasibility of eradicating fire ants in the state of Texas, but due to budget constraints the effort was not pursued.

Recommendation

♦ Review the current efforts to study fire ant eradication and implement a systematic plan for eradication across the state.

Texas Food and Fiber Commission (TFFC)

Background

Over the past year, TFFC commissioners and staff met with the Texas Department of Agriculture and the Texas Agricultural Experiment Station in pursuit of the possibility of merging with a larger state agency.

Recommendation

♦ Place the TFFC under the Texas Department of Agriculture.
SENATE COMMITTEE ON STATE AFFAIRS

Charge

Study the implementation of changes made to the state group health insurance plans and identify additional cost-saving measures. Study the feasibility and practicality of offering health reimbursement accounts as an alternate health insurance plan for those insured in ERS (Employees Retirement System), TRS (Teacher Retirement System), and university plans. Provide recommendations regarding whether the current method of administering these programs is in the best interest of the State of Texas and the various insured populations, or whether such programs might be more efficiently administered in another fashion.

Background

The Employees Retirement System Group Benefit Program (ERS-GBP) provides health insurance to state employees, retirees, and their eligible dependents. In 1993, Texas colleges and universities were given the option to join ERS-GBP through the ERS Higher Education Group Insurance Program (ERS-HEGI). The University of Texas System and the Texas A&M University System opted to maintain their own insurance systems, the University of Texas System Employee Group Insurance Program (UT-EGIP) and Texas A&M University System Employee Group Insurance Program (A&M-EGIP), respectively.

The Teacher Retirement System-Care (TRS-Care) provides basic health insurance for eligible retired teachers. The TRS-Active Care was created by the 77th Legislature to provide a statewide health care benefit to active employees of state schools districts, charter schools, regional service centers, and other educational districts.

All of the plans have seen costs escalate in recent years and have implemented various cost containment measures. However, medical costs continue to rise, which may make further cost containment measures necessary.

Recommendations

♦ Create a three-tiered provider network to encourage participants to utilize providers with histories of efficient care. Currently, state group health plans only offer in-network and out-of-network medical benefits without provisions to encourage patients to seek care from efficient in-network providers. Lower co-payments, coinsurance rates and deductibles are all tools that could be utilized to entice patients to desirable providers.

♦ Require disease management programs to be implemented in all state group health insurance plans. At present, only UT-EGIP and A&M-EGIP have broad disease management programs in place. Health conditions such as heart disease, asthma,
diabetes, obesity, and smoking-related conditions should be targets of any program implemented. While short-term cost savings may be minimal, long-term benefits should be significant.

♦ Require all state-administered health plans to conduct regular audits of all claim payments made in a fiscal year. Such audits could be done in-house or by third-party auditors, but should be performed independent of the general claims administrators. The audits should focus on overpayments, payment errors, eligibility qualifications, and fraud.

♦ Clarify legislative intent regarding retiree eligibility for health insurance coverage within the higher education population to achieve equity among employees of all institutions. This could be accomplished in one of two ways:
  ♦ allow ERS-HEGI institutions to fund some portion of health coverage for retirees employed by the institution on or before August 31, 2003, or eligible to retire on or before January 1, 2003, from non-General Revenue-related appropriations. Participating institutions could be required to pay either the normal or full-actuarial cost of this coverage; or
  ♦ eliminate the provision that allowed employees of the UT and A&M systems employed on or before August 31, 2003, or eligible to retire on or before January 1, 2003, to be grandfathered from new eligibility requirements.

♦ Implement an incentive plan where employees and retirees with alternate health care options are allowed to opt out of state health care coverage. This same type of program has been implemented for several years within UT-EGIP and A&M-EGIP with great success.

♦ Amend certain provisions within TRS-Care that limit the application of out-of-state service credit purchases in qualifying for health insurance eligibility.

♦ Clarify legislative intent to require all groups accessing health insurance benefits through ERS to meet the same eligibility standards required of general state employees. Consider specifically designating ERS as the sole authority to determine questions relating to an individual’s eligibility to receive group benefits including those associated with retiree eligibility.

♦ Implement a broad consumer-directed care initiative for all state group health insurance plans. Consider utilizing either a Health Reimbursement Account (HRA) or a Health Savings Account (HSA).

♦ Merge A&M-EGIP, UT-EGIP and ERS-GBP into one consolidated program.

♦ Continue the 90-day waiting period for TRS.

♦ Require all state group health plans to quarterly update the legislature on state health expenditure trends. Such reports should be provided in a standardized format and compare actual trends to projected trends.

♦ Direct ERS, UT, A&M and TRS health care experts to meet regularly to discuss and compare cost containment strategies and discuss provider contract provisions and rates.
Charge

Monitor the implementation of H.B. 1549, 78th Legislature, the Federal Help America Vote Act of 2002, to assure that Texas meets the criteria to secure the proposed federal funding. Make recommendations for statutory changes required to implement federal legislation and improve the efficiency of the process.

Background

The 2000 presidential election illustrated significant problems with voting machines and ballots across the nation. In response, Congress enacted the Help America Vote Act (HAVA) of 2002, designed to ensure that no eligible voter is denied the right to vote or have that vote counted. The 78th Legislature enacted H.B. 1549, implementing provisions of HAVA, including the implementation of a statewide voter registration list and a provisional voting system.

The increasing use of computerized voting systems (Direct Recording Electronic voting system or DRE) has raised the issue of whether such systems should be outfitted with the ability to print out a paper ballot after a vote has been cast electronically, which would allow the voter to review his or her ballot and verify that it properly reflects his or her vote. Proponents of a voter-verified paper trail cite problems with computerized systems and assert that a paper ballot is necessary to ensure the integrity of such systems and detect errors. Those opposed to implementing a paper trail argue that it is unnecessary and would be complex and costly.

HAVA requires that all polling places be equipped with at least one DRE by January 1, 2006. There is federal funding available under HAVA to help counties comply, but in order to draw on these funds, Texas must put up matching funds in the amount of five percent. The Texas secretary of state has requested an emergency appropriation for a portion of these matching funds in order to draw down the remaining federal funds.

Recommendations

♦ Continue to monitor the progress of all provisions of H.B. 1549, keeping in mind that unforeseen problems requiring additional legislative action could potentially arise as new voting systems are put into use statewide.

♦ Proceed with caution regarding whether to require a voter-verified paper trail with electronic voting machines until sufficient electronically-administered election history exists in Texas and other states to assess the level of assurance in the integrity of voting systems. Monitor the successes and problems encountered in other states and be fully prepared to implement a Texas system should federal legislation mandate such measures. Consider legislation providing a penalty for false claims of voting system errors if state or federal legislation is enacted requiring a voter-verified paper trail.
Approve an appropriation for matching funds requested by the secretary of state's office in order to draw down all possible federal dollars available through HAVA. This includes the approval of an emergency appropriation as requested by the secretary.

**Charge**

Study the implementation of S.B. 10 and S.B. 541, and make recommendations, as needed, to make health insurance more accessible and affordable for all Texans.

**Background**

H.B. 2055, as enacted by the 73rd Texas Legislature, authorized employers to join together in private purchasing cooperatives to obtain group health insurance coverage. However, utilization of such cooperatives was sparse. The 78th Legislature, Regular Session, enacted S.B. 10, which created a new type of private purchasing cooperative, the health group cooperative, which allows multiple employers to group together to purchase coverage and be treated collectively as a small employer, thereby enjoying the protections granted to small employers under Chapter 26 of the Texas Insurance Code. Once a health group cooperative is formed and activates purchasing coverage, any employer in the cooperative’s service area may join. Large employers may also participate, at the discretion of the cooperative and the carrier. The Texas Department of Insurance (TDI) has adopted rules for implementing S.B. 10.

S.B. 541, as enacted by the 78th Legislature, Regular Session, amended the Insurance Code to increase the availability of health care coverage by giving employer groups and individuals the opportunity to purchase Consumer Choice Plans. These are health benefit plans that, in total or in part, do not offer or provide state-mandated health benefits. For small employers, the bill also deleted the requirement that small employer carriers offer the promulgated catastrophic care and basic service plans; instead, the new law requires those carriers to offer small employers the opportunity to purchase a Consumer Choice Plan in addition to a plan that contains all state-mandated benefits. It also changed the definition of basic health care services for purposes of Health Maintenance Organization (HMO) benefits. TDI has adopted rules implementing this act.

**Recommendations**

**S.B. 10:**

♦ Consider dividing health group cooperatives into small employers and large employers. This option would allow employers of all sizes to purchase coverage through a health group cooperative while resolving concerns about administering groups from both markets in a single entity;
Consider excluding small businesses within a health care cooperative from the "small business regulations" (TDI rules set out regulations relating to small employer health insurance). The restrictions of small business regulations could negatively impact the benefits of S.B. 10; and

Clarify by statute whether carriers' participation is voluntary with a health care cooperative.

S.B. 541:

Ensure [that] the coverage for supplies and services associated with the treatment of diabetes is included in the HMO portion of the statutory provisions for Consumer Choice Plans.

Provide that dialysis is a treatment associated with the care of diabetes.

Ensure the HMO requirement for coverage of referral to a non-network provider when medically necessary, covered services are not available through network providers is included in the statutory provisions for Consumer Choice Plans.

Charge

Study the April 2003 United States Supreme Court decision in Kentucky Association of Health Plans v. Miller to determine its impact on Texas laws regulating health insurance plans under the Employee Retirement Income Security Act of 1974 (ERISA) and make recommendations to changes in state law to conform with recent federal court decisions.

Background

The committee examined two recent decisions by the United States Supreme Court relating to health insurance plans governed by ERISA. In Miller, HMOs in Kentucky challenged a provision in the Kentucky statutes prohibiting an HMO from discriminating against any provider within the relevant geographic area willing to meet the terms and conditions for participation in the HMO network (such a provision is known as "any willing provider" or AWP). The HMOs asserted that the AWP law was preempted by ERISA. ERISA seeks to provide a uniform body of laws regarding benefit plans and, to achieve this goal, ERISA preempts state laws regulating such plans. However, a “savings clause” provides that ERISA does not pre-exempt any state law regulating insurance. The United States Supreme Court ruled in Miller that AWP laws regulate insurance and are therefore not pre-empted by ERISA. Texas has an AWP statute, Article 21.52B, Section 2, of the Texas Insurance Code, relating to pharmacists and pharmacies. The United States Fifth Circuit Court of Appeals, in a challenge to the Texas AWP law, held that the statute was pre-empted under ERISA. This Texas law also had a nonseverability clause, which stated that if any portion of the act was held invalid, the entire act was invalid. Accordingly, the Fifth Circuit held the entire Texas
AWP statute invalid. The United State Supreme Court decision in Miller means that the Texas AWP provisions are, arguably, not preempted by ERISA and are enforceable.

In the second case considered by the committee, Aetna Health Inc. v. Davila, the United States Supreme Court struck down the Texas Health Care Liability Act (THCLA) provisions that create a private cause of action against health insurance carriers, HMOs, and other managed care entities for failure to exercise ordinary care when making health treatment decisions. The United States Supreme Court ruled that this provision was preempted by ERISA. ERISA includes comprehensive civil enforcement procedures and the court declared that the purposes of ERISA would be undermined if ERISA-plan participants and beneficiaries could obtain remedies under state law. Therefore, the court concluded, any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with congressional intent to make the ERISA remedy exclusive and is therefore preempted. The court ruled that if an individual could have brought a claim under the enforcement procedures of ERISA, then the individual’s cause of action is completely preempted. The court therefore struck down the THCLA provisions creating a private cause of action against health plans covered by ERISA.

Recommendations

♦ Reconsider whether the public policy considerations underlying Article 21.52B are still valid. If these considerations are still valid and appropriate, the provision should be reenacted in accordance with the holding in Miller. If the public policy considerations are no longer appropriate, the statute should be repealed.

♦ Re-examine the non-severability clause included in the 1991 Session Laws.

♦ Revise the THCLA to accurately reflect the sections affected by the Davila ruling.

Charge

Study the reimbursement methodology of health care plans operating in Texas for out-of-network claims, specifically focusing upon the reimbursement of "usual and customary" charges, and make recommendations on how to improve their effectiveness. The study and recommendations should encompass all plans, including those participating in Texas' Medicaid managed care program and should consider federal and state laws as well as Health and Human Services Commission rules relating to the reimbursement of out-of-network claims.

Background

HMOs and Preferred Provider Organizations (PPOs) set up their plans to create incentives for those covered to use the facilities within the plan's network as much as possible. HMO plans typically require enrollees to use network providers and hospitals only, requiring referrals for treatment by a specialist or provider outside the HMO's network. PPO plans
provide higher levels or percentages of reimbursement if the patient goes to PPO network providers and hospitals. The plan and carrier agree to a contractual rate that is often less than the billed charges rate in exchange for the patient volume experienced as the exclusive or preferred plan provider. These incentives help the plans manage costs of health care.

However, there are instances when an individual enrolled in a managed care plan may need or seek out-of-network services. After an individual accesses an out-of-network service, the plan and provider must agree to a rate of reimbursement. In certain circumstances, that rate of reimbursement is dictated by the Texas Insurance Code, but in other circumstances out-of-network reimbursements are paid through negotiations between providers and health plans. These rates, and some of the above provisions, are based on the "usual and customary" rate for the service provided. "Usual and customary" rates are not defined in the Texas Insurance Code, but are set by the health plan carriers. Due to the lack of statutory definition, the policy language concerning "usual and customary" varies between carriers and makes it difficult for providers and patients to determine costs that may be billed. The 77th Legislature passed a measure requiring that, upon written request, a managed care entity must provide to an out-of-network provider the methodology used in determining the "usual and customary" reimbursement. As a result of this out-of-network reimbursement process, providers claim to be paid a rate that is less than their billed charges and health plans claim to often pay more than their comparable, in-network rate, which the parties assert results in increased health care costs.

Facility based balance billing occurs when a health plan enrollee receives out-of-network services and is billed for the difference between the provider's billed charges and the amount paid by the carrier. It commonly occurs when an insured seeks services from an in-network facility, but receives some or all of the care from a provider that has not contracted with the carrier (for example, the insured goes to an in-network hospital but receives treatment for a hospital-based physician who has not contracted with the insured's carrier). The insured, who believed he or she was using an in-network provider, may not know he or she will be subject to such billing, and there are currently no requirements to disclose this to the insured. Enrollees who knowingly choose an out-of-network provider can also be affected. In this case, the insured may believe his or her out-of-pocket expenses will be only for the out-of-network percentage of the bill. However, the expenses may be more if the provider balance bills the difference between the reimbursement of billed charges.

Some out-of-network facilities are enticing patients by offering to waive the patient's out-of-pocket expenses that would normally be incurred by using an out-of-network provider. This affects in-network hospitals, who negotiate a lower payment rate from health plans in exchange for receiving the volume of patient care from the plan enrollees. Waivers by out-of-network facilities may decrease this volume and network facilities may respond by decreasing the discounts they give to the plans, which will increase the cost of health care.
Recommendations

♦ Encourage stricter enforcement of current restrictions for out-of-network facilities’ waiver of co-payments, co-insurance, and deductibles. The consequences associated with this prohibition should result in enforceable, state regulatory sanctions and licensure penalties.

♦ Enhance, through adequate disclosure, the transparency of medical costs for both health plans and providers.

♦ Consider the following options regarding the complex issue of facility based balanced billing:
  ♦ require full disclosure by facilities that their physicians may or may not be included in the same network structures as the facility;
  ♦ prohibit balanced billing in all circumstances or, at minimum, when a patient exerted a "good faith effort" to stay within network;
  ♦ authorize state regulations on contract negotiations between facilities and their physicians which would require all physicians at the facility to also negotiate to be part of the same network structures; and
  ♦ alter reimbursement processes to allow the patients to receive funds from the health plan for out-of-network payments, therefore empowering the patients to negotiate on their own behalf for out-of-network payments.

Charge

Study the implementation of H.B. 4 and Proposition 12 in achieving lower medical malpractice rates and providing more access to affordable health care. Monitor and report on trends in medical malpractice insurance rates and the effect of tort reform on access to health care and provider shortages in certain regions, particularly along the border.

Background

The 78th Legislature, Regular Session, adopted H.B. 4, a tort reform bill which included a statutory cap on noneconomic damages in medical malpractice lawsuits. During the H.B. 4 debate, insurers assured both the legislature and the public that such damage caps would allow them to lower the rates charged to health care providers. Lower rates would reduce the overall rate at which medical costs were rising and would allow more providers to practice in high risk specialties and in rural or low-population areas of the state. The noneconomic damage caps in H.B. 4 became effective for lawsuits filed on or after September 1, 2003. Proposition 12, enacted by the voters, amended the Texas Constitution to authorize the legislature to set the maximum award for non-economic damages in medical malpractice lawsuits and for other types of lawsuits.
Graduate Medical Education (GME) is the portion of a physician's education after medical school, often referred to as "residency." Typically, physicians who train in Texas remain in Texas. Public funding for GME, both through the federal Medicare program and on the state level, has been cut in recent years.

Telemedicine is the practice of medicine over distance through the use of specialized telecommunications equipment. Its aim is to make medical care available to residents in remote areas of the state.

**Recommendations**

♦ Strive to find the appropriate balance between market forces and regulation that will provide assurances to insurers, physicians and patients that access to health care will remain open for all Texans, in all areas of the state.

♦ Require TDI to develop a model to provide for an "apples-to-apples" comparison of insurance rates, given the differences in types of policies provided and the legislative need to accurately track and analyze insurance premium costs in health care.

♦ Monitor the situation and look for other methods of addressing provider shortages and access to health care.

♦ Reevaluate funding for Graduate Medical Education and work with the Texas congressional delegation to enhance federal funding for GME, specifically, to make Medicare funding more geographically equitable.

♦ Promote the use of telemedicine in rural areas.

♦ Establish public policy that encourages all doctors to come to, and stay in, Texas.

**Charge**

Study and report on the affordability, reasonableness, and impact of mandatory liability insurance on the nursing home industry. Assess and report on the effects of the admissibility of quality reports.

**Background**

S.B. 1839 was passed by the 77th Legislature, Regular Session, to address numerous bankruptcies, diminished quality of care, frequent legal challenges, and insurance coverage shortfalls facing the nursing home industry. One component of S.B. 1839 required long-term care facilities to carry liability insurance. Professional liability insurance may be provided by the Texas Medical Liability Insurance Joint Underwriting Association (JUA), any admitted carriers, or surplus-lines carriers. Self-insurance was not an acceptable method for meeting this mandatory insurance requirement. Originally, S.B. 1839 set September 1, 2003, as the implementation date for mandatory insurance. Prior to the 78th legislative session, it was
determined that the long-term care liability insurance market had not recovered and instituting the mandatory provision would result in unintended harm to the long-term care industry. S.B. 588, introduced during the 78th Legislature, Regular Session, would have postponed the implementation of the mandatory coverage; this bill was later rolled into H.B 4. However, H.B. 2292, enacted during the same session, repealed the mandatory insurance provision.

Quality reports are survey documents used by the Department for Aging and Disability Services to regulate long-term care institutions. Some have claimed the admissibility of these documents unfairly prejudiced nursing homes defending liability claims. H.B. 4 mandated that the survey reports are admissible only under specific conditions.

Recommendations

◆ Re-enact the mandatory liability insurance provision.

◆ Redefine what is considered insurance. Allowing a variety of definitions of what qualifies as insurance will include a wider spectrum of varieties, such as self-insurance, which facilities are currently accessing.

◆ Reduce the mandatory limits to lower levels. The original amounts were set prior to H.B. 4 passage and the limits may need to be lower now that H.B. 4 provisions are in effect. Lowering these limits would significantly help the affordability of mandatory insurance.

◆ Consider increasing the reimbursement rate for the insurance portion of the nursing home payments to better cover the actual cost of liability insurance payments, if funds are available.
Charge

Study the impact of recent state and federal legislation with regard to protecting the personal privacy of veterans' discharge records.

Background

Upon discharge from the military, an individual's military discharge form (called a DD-214) is regularly filed with the district or county clerk of the person's primary residence, and is thereafter public record. The form, however, includes information that the individual might wish to keep confidential. H.B. 545, 78th Legislature, Regular Session, was enacted to protect this private information from public access. The discharge records are used primarily by veterans to prove their discharge status in the attainment of veteran benefits.

County and district clerks can provide veterans and certain members of their family with certified copies of the form to prove their discharge status. Accessing this record from a local clerk is often the most convenient manner in which a veteran can obtain this information.

Additionally, the passage of H.B. 545, provided that military discharge forms filed with a county clerk or other governmental body after September 1, 2003, would remain sealed for 75 years. The bill authorized certain people to access a DD-214 form, and authorized a veteran to direct the county clerk holding the file to destroy all copies within the clerk's control.

Recommendation

♦ Continue to monitor compliance with the standards set forth in H.B. 545. No further changes in the law are currently needed regarding this issue.

Charge

Study existing language of the Hazlewood Act (Section 54.203, Education Code), which entitles wartime veterans and their children to a waiver of tuition and fees at some state supported-colleges and universities, and make recommendations, including cost estimates, on possible amendments to this Act to permit veterans who have not fully used their entitlement under the Act to pass on residual benefits to their children.
Background

The Hazlewood Act entitles eligible veterans, and the children of service members who die during or directly due to their service in the armed forces, to free tuition and free or reduced fees for up to 150 college credit hours at public (state-supported) colleges and universities. The law does not provide free tuition to private or independent institutions. The state supported college or university absorbs the cost, as Hazlewood exemptions are not directly funded by the state. Persons using Hazlewood benefits are required to first exhaust all federal educational benefits, fulfill the 12-month in-state educational residency requirement, and be a legal resident of Texas at the time of enlistment in the service.

Expanding the Hazlewood Act to allow veterans to pass their unused benefits to their children ("legacy hours") was considered by legislators late in the 78th Legislature, Regular Session. The idea received a positive reception, but due to insufficient time to develop and pass such legislation, the Senate Committee on Veteran Affairs and Military Installations was charged with studying the feasibility of the expansion during the interim for introduction in the 79th Legislature.

Recommendations

♦ Establish and fund a database, housed either in the Texas Higher Education Coordinating Board or Texas Veterans Commission, as appropriate, to track the usage of Hazlewood benefits by veterans. The database should keep both aggregate statistics to maintain a clear idea of the cost of the Hazlewood benefits, and individual statistics, to better manage the program. The database should be accessible to institutions that need to check a veteran's Hazlewood eligibility and status. The database should also be accessible to individual veterans involved in planning their educational careers.

♦ Establish parameters [through a designated administrator] for a possible legacy program in the future, including evaluating the administrative and financial feasibility of such a program, and the Committee should continue to monitor this issue.

♦ Consider proactively addressing the problem of the expense of Hazlewood to institutions. Possible measures could include a specialized license plate, the proceeds of which would benefit the colleges, or an adjustment to the higher education formula funding that would count a Hazlewood user as two students for funding purposes. The latter measure would make it more advantageous for institutions to recruit veterans and publicize the benefits because they would not be hurting themselves financially in doing so.

♦ Consider amending the Hazlewood Act to allow it to better serve the veterans returning from the current war. Consider granting rulemaking authority to the Texas Higher Education Coordinating Board, Texas Veterans Commission, or some other governmental entity to allow more flexibility in administering the benefit and address specific questions and problems as they arise.
Charge

Monitor the Texas Education Agency’s (TEA) implementation of H.B. 591, 78th Texas Legislature, Regular Session, relating to reciprocity agreements between states concerning admissions of military personnel, and H.B. 261, relating to in-state tuition levels for military personnel.

H. B. 591 Background

H.B. 591 was enacted during the 78th Texas Legislature, Regular Session, to address the educational disruptions often experienced by dependents of military personnel due to frequent moves. These disruptions can include difficulty transferring records and credits and having to take repetitive tests, thereby lengthening the educational experience. Prior to passage of H.B. 591, the TEA was authorized, but not required, to negotiate reciprocity agreements with other states to govern the terms of school transfers.

H.B. 591 Recommendations

◊ Direct TEA to invigorate its efforts to establish reciprocity agreements with the states enumerated in H.B. 591, and require TEA to pursue reciprocity agreements with Louisiana, Maryland, New York, and South Carolina. The Committee should continue to monitor the formulation and implementation of the agreements.

◊ Amend Section 25.002, Education Code, to require a school district sending records to another district to send the records not later than the 15th day after the date the child is enrolled and to notify parents that the parent can request and receive an unofficial copy of the records for delivery in person to the new school.

◊ Ensure that these provisions apply to all mobile students and not only to military-connected students.

◊ Evaluate the possibility of offering alternatives to the Texas exit-level assessments for recent transfers from other states. Possible alternatives include Advanced Placement exams, International Baccalaureate exams, ACT, or SATII.

H.B. 261 Background

H. B. 261 was enacted during the 78th Texas Legislature, Regular Session, to clarify and ensure that dependents, spouses, and members of the armed forces remain eligible to pay in-state tuition and fees while continuously enrolled in a degree or certificate program, even if the service member moves out of state or terminates service in the armed forces.
H.B. 261 Recommendations

◆ Continue monitoring by the Senate Committee on Veteran Affairs and Military Installations for compliance with the standards set forth in H.B. 261. No further changes in the law are currently needed regarding this issue.

Subcommittee on Base Realignment and Closure

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Charge

Study and evaluate the implementation of S.B. 652, S.B. 1295, and S.J.R. 55, 78th Legislature, Regular Session. Address the defense community use of loan programs created by these bills and make recommendations on how to best use the loan proceeds to maintain Texas bases. Study the effects of urban encroachment upon Texas military installations.

Background

During the 78th Legislature, Regular Session, efforts to protect Texas' military bases culminated with the enactment of S.B. 652 (relating to economic development, strategic planning, and other issues regarding military facilities, and the merger of certain state agencies with military responsibilities; granting authority to issue bonds); S.B. 1295 (relating to providing financial assistance to defense communities); and S.J.R. 55 (proposing a constitutional amendment authorizing the issuance of general obligation bonds or notes to provide loans to defense-related communities for economic development projects, including projects that enhance military value of military installations). This legislation, coupled with subsequent efforts by leaders across the state, have well positioned Texas' defense communities in the face of the 2005 Base Realignment and Closure (BRAC) decisions.

Recommendations

◆ Fund the Defense Economic Adjustment Assistance Grant Program (DEAAG) at a level sufficient to provide assistance to Texas defense communities that are negatively affected by BRAC 2005.
◆ Expand the DEAAG Fund to allow for the funding of grants to be used by communities to prepare for BRAC and work to attract new missions.
◆ Change the Revolving Loan Fund established by S.B. 652 to be accessible for post-BRAC needs.
♦ Revise the statute that allows for the use of 4A/4B sales tax revenue to be used for development projects to include the ability to use the revenue to attract new military missions or prepare for BRAC.

♦ Create a matching fund to be used by the Texas Military Preparedness Commission (TMPC) to support defense-dependent communities in their efforts to increase their military value.

♦ Create a system to help expedite the licensing and certification process for military dependents in Texas.

♦ Direct the Texas Workforce Commission to create a program with Texas' defense dependent communities to support military dependents transferring to Texas to find new employment.

♦ Continue to monitor the Texas Education Agency's (TEA) progress in reaching reciprocity agreements nationwide, particularly with Florida, Georgia, North Carolina, and Virginia.

♦ Work with the Texas Department of Insurance to develop stricter regulations on the sale of life insurance policies to service members.

♦ Support the addition of personnel and funding for the TMPC to better serve defense dependent communities.

♦ Require state agencies to work with the TMPC to begin assessing post-BRAC issues that will likely occur and work with defense-dependent communities to address infrastructure and human capacity needs.

**Charge**

Study and communicate national Base Realignment and Closure (BRAC) developments, criteria, and timelines to the Texas Military Planning Commission (TMPC) and affected military communities. Coordinate and monitor all BRAC issues associated with the governor's office, the TMPC, the Office of State-Federal Relations, the Texas Congressional Delegation, and the Texas House Committee on Defense Affairs and State-Federal Relations.

**Background**

After receiving congressional authority, the Department of Defense (DoD) conducted four rounds of BRAC in 1988, 1991, 1993, and 1995. Those actions were ultimately reviewed by an independent commission and approved by both the President and the Congress. The retrofitting of the military base structure to the changing needs of a smaller force and the reorganization of military functions to reduce overlapping capabilities achieved results: according to the DoD, an aggregate net savings of $17 billion through fiscal year 2001 and annual recurring savings of approximately $7 billion. Since BRAC 1995, the national security threat has changed and the DoD's operational doctrine and business practices have
evolved, leading to a call for and approval of an additional round of closures and realignments. In 2001, Congress authorized an additional BRAC round in 2005.

Secretary of Defense Rumsfeld and the DoD began the BRAC 2005 process in November, 2002. The framework includes the adoption of selection criteria, the publishing of a Force Structure report that outlines the current status of the entire DoD military capacity and needs, and adhering to a timeline that will culminate in November, 2005, with final presidential approval or disapproval of the recommendations.

In February 2004, the Office of the Deputy Undersecretary of Defense for Installations and Environment published the selection criteria for closing and realigning military installations inside the United States. The proposed criteria are based on the accepted criteria used in previous BRAC rounds, but also incorporate new statutory requirements and emphasize the DoD’s emerging approach to performing missions.

The list of eight criteria is meant to provide guidance when determining recommended installation closures or realignments. Four of the eight criteria are outlined as higher priority and focus specifically on military value. Other considerations include potential costs and savings associated with a recommendation; the economic impact on the installation’s community; the capabilities of potential communities to support incoming forces; and the environmental impact of a closure or realignment.

The recommendation criteria for the United States installations closure or realignment (under the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended, 10 U.S.C. 2687), are outlined in the full interim report.

**Recommendations**

- Develop an email list serve to provide an arena for community leaders, state leaders and national leaders to share information and ideas and to provide "best practice" stories.
- Encourage continued regular meetings and communication among state leaders.
- Support the timely publication of a monthly newsletter by the TMPC.
SENATE SELECT COMMITTEE ON WATER POLICY

Charge

Study all issues related to ground and surface water law, policy and management, including, but not limited to:

- the role of federal, state, regional and local governments, and their coordination in setting consistent, nondiscriminatory water policies;
- the authority of the Texas Commission on Environmental Quality (TCEQ) as it relates to water contracts;
- the role of the Edwards Aquifer Authority;
- the role of groundwater conservation districts;
- regional water planning process;
- conjunctive use of both ground and surface water resources;
- rule of capture;
- historic use standards;
- water infrastructure and financing;
- inter-basin transfers;
- junior water rights;
- conservation;
- water quality standards;
- drought preparedness; and
- water marketing.

Background

The Senate Select Committee on Water Policy reported that just as surface water and groundwater are linked together in the hydro-geologic cycle, all of the interim water charges are also interrelated. The select committee recognized the following three major topics and subcategories:

Groundwater Issues

- Rule of capture;
- Role of groundwater conservation districts;
Historic use standards; and
Role of the Edwards Aquifer Authority.

Surface Water Issues
Inter-basin transfers and junior water rights.

Conjunction Management/Statewide Water Issues
Regional water planning process;
Conjunctive use of both surface and groundwater resources;
Water marketing;
Water infrastructure and financing; and
Water conservation.

The rule of capture, which allows landowners to pump as much water beneath their land as they want without regard for the impact on their neighbors' supply, was established in Texas in 1904 and still prevails.

Currently, the state has jurisdiction over all surface water in the state, but groundwater management is regulated by regional or local groundwater districts as defined in Chapter 36 of the Texas Water Code.

Historic use standards involve the withdrawal and beneficial use of groundwater in a quantity demonstrated to have been put to beneficial use during some period in the past, prior to the effective date of a groundwater conservation district's rules.

The Edwards Aquifer Authority (EAA) was created by S.B. 1477, 73rd Legislature, Regular Session in order to preserve and protect the groundwater resources of the Edwards Aquifer.

Inter-basin transfers involve movement of surface water from one basin to another, subject to approval and regulation by the Texas Commission on Environmental Quality, and junior water rights are rights granted subsequent in time to other water rights in the same basin. Junior water rights are secondary in time priority to all such rights that were previously granted or recognized by the state.

With the population of Texas expected to double by 2050, major urban areas will be pressed to both conserve water and seek new sources of water to meet growing demands. The rural areas of the state are being targeted for water marketing and exportation to urban areas.
Recommendations

♦ Clarify appropriateness of rule-of-capture doctrine (as currently modified within groundwater conservation districts), or an alternative judicial doctrine for groundwater in Texas.

♦ Consider legislative changes to improve the effectiveness of, and provide greater support for, groundwater conservation districts (GWCDs).

♦ Clarify statutory provisions relating to historic use standards as used by groundwater districts as a permitting strategy.

♦ Clarify the role and jurisdictional authority of the EAA [Edwards Aquifer Authority] and the Texas Commission on Environmental Quality (TCEQ) within and outside the boundaries of the EAA.

♦ Evaluate the appropriateness of the junior water rights provision and other inter-basin transfer permit requirements added to Section 11.085, Water Code, as part of S.B. 1 in 1997.

♦ Consider legislative changes to improve the effectiveness of and support for the regional water planning process.

♦ Reaffirm [the] policy of the state endorsing the conjunctive use of surface and groundwater resources and explore mechanisms by which to promote conjunctive use projects.

♦ Consider the many issues necessary to accomplish the state's goal of ensuring that the growing water needs of all regions of the state are met, while protecting and managing existing water supply and rights.

♦ Evaluate the proposals included in the TWDB's [Texas Water Development Board's] report *Funding Analysis of the State Role in Financing Texas' Water Needs* submitted to the Select Committee on Water Policy, and consider implementation options to ensure financing for crucial water needs.

♦ Consider the implementation of recommendations proposed in the *Water Conservation Implementation Task Force Report to the 79th Legislature*.

Charge

Subcommittee on the Lease of State Water Rights:

♦ Study proposals to lease permanent school fund and permanent university lands and their water rights for the purposes of developing and marketing water.
Analyze the present and future effects of such proposals on local aquifers, historic stream flows, local underground water conservation districts, and other public and private water interests.

Study the process by which the General Land Office considers proposals to lease state water rights, including methodology for holding open meetings, obtaining public input, meeting competitive bidding requirements, and coordination with the Texas Commission on Environmental Quality and other government units with possible regulatory oversight.

Study and evaluate the current and future value of water rights that may be leased to private entities, including the value to the state, residential, and commercial interests.

Background

The General Land Office currently has the statutory authority to lease state water rights and has considered proposals to lease permanent school funds and permanent university lands and their water rights for developing and marketing water.

The Senate Select Committee on Water Policy adopted the Interim Report of the Subcommittee on the Lease of State Water Rights.

Recommendations

See page 145 for the recommendations of the Subcommittee on the Lease of State Water Rights.

Charge

Monitor the three on-going demonstration desalination projects by the Texas Water Development Board as one step toward securing an abundant water supply to meet Texas' future water supply needs. Study regulatory barriers that impair cost effectiveness of desalination (coastal and brackish) and how to facilitate use of this water source by municipalities.

Background

Already a major participant with over 100 plants that treat brackish surface or groundwater, the State of Texas is looking at desalination as an alternative solution for its future water supply needs.
Recommendations

♦ There are no recommendations.

Subcommittee on the Lease of State Water Rights

Charge

Study proposals to lease Permanent School Fund and Permanent University Fund lands and their water rights for the purposes of developing and marketing water.

Analyze the present and future effects of such proposals on local aquifers, historic stream flows, local underground water conservation districts, and other public and private water interests.

Background

As the state's population continues to grow, especially in the urban areas, rural Texas is being targeted as a possible resource for water. While some cities are working with rural areas to secure a future water supply and some water marketers are working with cities, local groundwater conservation districts, and regional water planning groups to purchase water for transport to other areas, many rural communities are concerned about the prospect of having large amounts of water withdrawn from their aquifers with inadequate attention, concern, and science on the impact to the present and future water needs in these areas.

In June 2002, Rio Nuevo, Ltd. (Rio Nuevo), a private company based in Midland, Texas, approached the General Land Office (GLO) with a proposal to lease groundwater rights beneath state lands in far West Texas for the purpose of marketing the water.

Lieutenant Governor Dewhurst established the Subcommittee on the Lease of State Water Rights in November, 2003, and charged the subcommittee with examining the Rio Nuevo proposal and the process by which the GLO leases state groundwater rights.

The GLO has previously leased state-owned lands to the City of Presidio, and The University of Texas System has leased land to municipalities to benefit the Permanent University Fund.

The GLO process for considering the lease of state water rights has been criticized for the lack of public input, the lack of communication with local groundwater conservation districts and regional water planning groups, and the lack of an open bidding process.
**Recommendations**

- Amend the Natural Resources Code to require School Land Board approval of all leases of land or granting of other interests in real property that is part of the Permanent School Fund which have a primary term, or a primary and extended term, that will exceed ten years.

- Amend the Natural Resources Code to require the School Land Board to adopt a clear set of rules for the leasing of groundwater from Permanent School Fund lands, including:
  - regional water planning groups and local groundwater conservation districts to be notified when the School Land Board receives proposals to lease groundwater rights;
  - contracts shall be negotiated by the School Land Board directly with the lessee;
  - buyers or lessees of groundwater from Permanent School Fund lands must comply with local groundwater district rules and permitting requirements;
  - buyers or lessees must comply with state and local regulations;
  - leases for groundwater rights shall be separate and apart from oil and gas leases; and
  - lease proposals submitted by a municipality or political subdivision of the state shall include a letter of interest, approved by the governing body of the municipality or political subdivision.

- Amend the Natural Resources Code to require that groundwater sale or lease proposals from Permanent School Fund and Permanent University Fund lands meet all competitive bidding requirements, unless:
  - the contract is between the state and another agency or political subdivision of the state;
  - the contract is between the state and an end user of the water; or
  - the contract is for the supply of water of less than 125,000 gallons per day.

- Amend the Natural Resources Code to increase the number of members of the School Land Board from three to five.

- Amend the Natural Resources Code to prohibit out-of-state exportation of groundwater from state-owned lands.

- Require regional water planning groups, which include Permanent University Fund lands, to appoint the Executive Director of University Lands as a non-voting member.

- Amend the Water Code to allow proposals to produce or transport groundwater from Permanent School Fund and Permanent University Fund lands to be included as a
recommended water management strategy in regional or state water plans or as amendments and updates to regional or state water plans.

♦ Amend the Natural Resources Code to require that all buyers or lessees of Permanent School Fund and Permanent University Fund lands, located within a groundwater district, be subject to all rules and regulations of the groundwater conservation district.

♦ Repeal Section 11.3271, Water Code.

♦ Advise the 79th Legislature to continue to study the ability and advisability of all state agencies to lease groundwater from their own lands.

Other Considerations:

♦ Create a statewide groundwater conservation district to govern lands not included in a local groundwater conservation district;

♦ Review the feasibility of requiring municipalities, prior to receiving groundwater from other areas of the state, to adopt and implement a water conservation plan;

♦ Review the effects of the transportation of groundwater from one region to another on the environment and local communities and economies;

♦ Review the ability of groundwater conservation districts to obtain the necessary science and data in order to best manage their water resources;

♦ Define the role and authority of regional water planning groups in the water planning process; and

♦ Discuss historic use and rule of capture.
SENATE SELECT INTERIM COMMITTEE ON WORKERS' COMPENSATION

Charge

Examine the status of the Health Care Network Advisory Committee's (HNAC) and the Texas Workers' Compensation Commission's (TWCC) implementation of the regional workers' compensation health care delivery networks outlined in Article 2 of H.B. 2600 (77th Legislature, 2001).

Background

H.B. 2600, 77th Legislature, Regular Session, allowed for the creation of health care delivery networks in workers' compensation, in which injured workers would receive care through a structured health care delivery network, and created HNAC to study the feasibility of regional workers' compensation networks. A February, 2003, study concluded that such regional networks were feasible on a limited basis, but that the viability of such networks would depend on the willingness of network providers to come forward and offer services under the statutory model. Based on this study, HNAC adopted a set of statutory recommendations, including the creation of a state employee pilot program, but the legislature declined to enact the recommendations. An RFP was also issued for a contract vendor to provide services to state employees in the Austin-San Antonio and Houston areas. It is unlikely that the implementation of a model program pursuant to the RFP would take place before the middle of the 2005 Legislation Session.

Findings

In the three years since HNAC began its work, concerns about medical quality and cost in the system have escalated. The issues facing the workers' compensation system have gone beyond what can be addressed by an HNAC pilot program that, if ever implemented, could only be evaluated in three to four years and would, by design, have limited affect.

The loose, voluntary employee-participation nature of the HNAC model, and the other constraints and caveats imposed by H.B. 2600, make the already challenging goal of implementation of networks even more questionable.

Although the HNAC model did not produce results in terms of implementation of networks in the timeframe called for by statute, HNAC has provided lessons and information valuable to the broader discussion of the use of networks, produced a meaningful set of potential standards for network care, and produced information on how network performance and the performance of other system participants could be measured and improved.
Removing the unique features of the HNAC model, such as the voluntary structure and direct state-contracting component features, is likely to generate significant interest in the network market.

**Charge**

Study the potential impact of networks on the workers' compensation healthcare delivery system. Include in the study:

♦ Quality of care;
♦ Network adequacy and access to care;
♦ Disclosure of information to patients, complaint procedures, appeal rights and overall patient satisfaction;
♦ Costs of care;
♦ Provider credentialing, selection, and dispute resolution;
♦ Financial risks to providers, employers, and carriers;
♦ Effects of networks on the Texas Workers' Compensation Commission; and
♦ Quality monitoring systems such as independent report cards.

**Background**

The use of provider networks, arrangements by which medical providers are selected to treat injured employees, has become more common across the country, largely driven by attempts to control costs and improve outcomes. In Texas, employers and insurance carriers cannot require injured employees to receive care from specific doctors or other health care providers, although they may offer specific providers or networks to employees. Twenty-five states currently mandate or allow network or managed care programs in workers' compensation. In most states with networks, managed care organizations or networks must be certified by the state in order to operate, although the requirements vary significantly.

The current Texas workers' compensation system has high costs coupled with poor outcomes. Studies found that significant savings are possible through the use of networks.

Workers' compensation networks do exist in Texas, but because they are voluntary, existing networks tend to focus on bringing in a wide pool of providers and negotiating discounts from the TWCC fee schedule. If employees were required under all or most circumstances to seek treatment in network, the incentives for networks to participate in the system would increase significantly. However, it is unlikely that networks will exist in all areas of the state; for example, in extremely rural areas, concentrations of providers may not exist to make networks viable.
Most states that certify networks in workers' compensation require those networks to operate internal procedures for dispute resolution. The potential for networks to minimize disputes, such as fee disputes and questions of medical necessity, may be significant.

Selection of high-quality providers should be one of the key strategies used by networks to improve outcomes. In the current Texas system, this strategy is poorly utilized. The TWCC Approved Doctor List (ADL), a list of doctors who are authorized as treating doctors in the workers' compensation system is essentially an "any willing provider" system, in which the main qualification is the doctor's willingness to undergo a relatively simple enrollment process. Those networks that do exist in workers' compensation in Texas also tend to "take all comers." Allowing networks to appropriately credential and select providers, with some controls to ensure fairness for all parties, is essential to allowing networks to perform as envisioned.

A widespread network system in Texas would fundamentally alter the role of TWCC, which plays a major role in the day-to-day management of workers' compensation claims in the current system. In a network system, that role would likely remain significant for indemnity-related issues and disputes, such as the compensability of injuries, but TWCC's role would be greatly reduced for in-network medical issues. The state will have an important role to play in certification and regulation, but the Texas Department of Insurance (TDI) would be the most appropriate agency for those functions.

**Recommendations**

♦ Allow networks to contract with carriers or self-insured employers, and if a network contract is in place, injured employees should have an appropriate network panel of doctors from which to choose.

♦ Require networks to be state-certified, with certification encompassing the general areas of ensuring adequacy, credentialing of providers, provisions for internal dispute resolution (with appeal to an Independent Review Organization (IRO) or other independent body), use of evidence-based treatment guidelines, treatment planning and disability management processes, and other areas as necessary for networks to function well.

♦ Do not require networks to accept "any willing provider." Instead networks should be held to adequacy standards that are part of the certification process.

♦ Measure network performance by the state through a quality monitoring process conducted by the workers' compensation research function, with publicly-available "report cards" issued to compare network and non-network outcomes, and to compare the performance of different networks.

♦ Allow networks to negotiate reimbursement per service, services subject to utilization review, and other administrative provisions currently dictated by the Labor Code and TWCC rule.
Charge

Study the impact of the Texas Workers' Compensation Commission's 2002 Medical Fee Guideline on access to quality medical care for injured workers and medical costs, including recommendations on whether the legislature should statutorily prescribe a methodology for calculating the workers' compensation conversion factor.

Background

In workers' compensation in Texas, prices for medical services are generally set by: TWCC's adoption of fee guidelines; or by system participants themselves through agreement or through the medical dispute process, for those services for which TWCC's guidelines do not determine a price. Such reimbursement is required to be "fair and reasonable."

Fee guidelines are one of the most common tools used in workers' compensation systems throughout the country to control costs. In most states, fee schedules act as a medical cost containment tool by ensuring reasonable pricing in accordance with standards set by statute and rule and limit the need for costly disputes and litigation in areas where fees are not explicitly set. In Texas, the fee schedule acts as a ceiling on reimbursement.

H.B. 2600, enacted by the 77th Legislature, Regular Session, required TWCC to adopt the billing, coding, and payment rules of the Medicare system, and incorporate Medicare's Resource-Based Relative Value System (RBRVS). The bill also laid out the methodology for TWCC to use in adopting new fee guidelines, requiring that guidelines incorporate several factors to be used in setting the pricing of services. TWCC has adopted fee schedules for certain services.

TWCC, in April 2002, adopted a fee reimbursement rate of 125 percent of Medicare, which was subsequently upheld during litigation. Assessing potential savings under this new guideline is difficult because there have been other major changes to the workers' compensation system which complicate the process of attributing broad system trends to any one policy change.

Information suggests that even prior to the fee guideline, access to care in the Texas workers' compensation system was comparatively poor. TWCC officials have contended that access is adequate, although others have expressed different views. Because the new fee guideline and new Approved Doctor List (ADL) requirements are both still relatively recent, there is limited actual data on practice patterns following their implementation. Access to care problems would likely be felt most acutely in rural communities where access was already poor or minimal. The current status of access in the system is clearly not ideal and workers in Texas are often less satisfied with their care than are workers in other states.
Recommendations

◆ Take steps to clarify the methodology by which fees are set. The statute could clarify that the underlying RBRVS used by Medicare, rather than the Medicare rate, be used to set the workers' compensation payment amount. This would insulate Texas workers' compensation payments from changes in the Medicare conversion factor that may be driven entirely by federal budget issues.

◆ Establish workers' compensation networks in Texas. Within these network arrangements, providers and payors should be free to negotiate market-based reimbursement amounts similar to the process used for group health networks.

Charge

Survey the costs and benefits of other health system cost-containment strategies as they relate to medical, therapeutic, and pharmaceutical care, including but not limited to, doctor selection, deductibles, co-payments, preauthorization of services, and return-to-work programs.

Background

There are differences in how coverage is determined in group health insurance plans, other health delivery systems, and the Texas workers' compensation program. Workers' compensation operates from the general theory that any medically necessary care related to a compensable injury is covered. Most other health care delivery systems have greater flexibility to exclude types of care or conditions from coverage. Some group health plans also impose dollar limits on medical costs that will be paid, but there are no such limits in workers' compensation. Pharmaceutical costs tend to make up a smaller portion of workers' compensation costs, largely because workers' compensation generally does not cover preventative care.

In the Texas workers' compensation system, employees generally may select their own treating doctor. Few private health insurance plans provide comparable flexibility in doctor selection. The implementation of new requirements for the ADL has limited doctor choice, but injured employees remain free to choose any willing doctor on the ADL. Almost all group health insurance plans are more restrictive, either by generally requiring that all care will be provided in network or encouraging employees to receive care through the network by paying a higher percentage of medical costs if network providers are used.

Deductibles and co-payments are not used in workers' compensation in Texas, but are a part of almost all group health insurance plans, Medicare coverage, and an increasing number of other public health care delivery systems. Co-payments and deductibles are thought to encourage covered employees to seek care only when necessary.
Many types of health delivery systems require preauthorization (approval from the insurance carrier or health plan prior to delivery of service) as a cost containment tool. In both workers' compensation and HMO group health plans in Texas, preauthorization denials are subject to review by an Independent Review Organization (IRO), which scrutinizes the denial and renders a decision as to medical necessity. While preauthorization in workers' compensation only applies to certain medical services, all other medical services are subject to retrospective review by the carrier for medical necessity. This form of retrospective review appears to have increased in use as a cost containment tool following the passage of H.B. 2600.

An evaluation of utilization review practices in Texas found they were regarded as ineffective, but some of these utilization and cost control features regarded as ineffective have since been removed from the system and carrier denial rates have increased. However, there is no real evidence to suggest that the utilization review process has significantly improved.

Rapid, appropriate return-to-work may have greater potential to improve outcomes and contain costs. Return-to-work can be encouraged through appropriate medical care and enhancing the employer's role in return-to-work. Some states have implemented incentive programs to reward employers for hiring injured employees or returning them to work.

Vocational rehabilitation is an important consideration in assessing the return-to-work efforts. Some states specifically designate vocational rehabilitation as a type of benefit to be provided to injured workers in need of such services. In Texas, vocational rehabilitation is available through the federally and state-funded vocational rehabilitation program of the Department of Assistive and Rehabilitative Services (DARS). In efforts to improve this process, TWCC and DARS have engaged in discussions about finding ways to better identify claims that could benefit from the vocational rehabilitation program and to better track outcomes.

Recommendations

♦ Allow the injured employee within a network panel to select his or her own treating doctor. Such an arrangement would more closely mirror doctor selection practices currently allowed in group health networks.

♦ Continue the policy that workers' compensation medical care be fully paid, but provided in a network setting, where networks are available and where the employer elects to participate.

♦ Allow negotiation within a network setting as to what services should or should not be preauthorized and otherwise reviewed, much the same as medical fees and other medical care delivery aspects can be negotiated. In addition, just as evidence-based treatment guidelines should be used in the front-end treatment of injuries, it is important that carriers and utilization review agents use evidence-based criteria in their decision-making about payment.
Consider incentive programs, perhaps funded through administrative penalties collected by TWCC or another funding source, to encourage smaller employers to employ injured workers. The most logical approach would be a pilot program evaluated by the workers' compensation research function and modified or expanded as indicated by the results.

Identify and eliminate any statutory or rule barriers to effective communication between TWCC and DARS, and require the agencies to further enhance their interaction and report on the results to the legislature.

**Charge**

Conduct a cost-benefit analysis, to the extent possible, comparing the Texas workers' compensation system to systems operating in other states. Make recommendations to improve the quality of care for injured workers, reduce fraud and inefficiencies, reduce overall claim costs, and streamline the administration of the system. Recommendations should address data exchange, advisory groups and review panels, dispute resolution, enforcement issues, paperwork reduction, and billing and administrative efficiencies.

**Background**

Texas is the only state in which coverage is optional for all private employers. Many nonsubscribers do offer some type of occupational injury coverage, such as medical benefits or wage replacement. In 2004, there has been a drop in both the number of employers subscribing to the workers' compensation system and the number of employees covered by the system. High premium costs were the primary reason given by employers for not subscribing.

Texas has the highest workers' compensation costs per claim in the country. Overall medical costs have two components, price per service and utilization of services. Texas, in general, has higher utilization of medical services, with more medical services per claim. These high medical costs have not led to improved outcomes, either in return-to-work rates or employee satisfaction with care.

Since the enactment of H.B. 2600, a doctor who wants to serve as a treating doctor in the workers' compensation system must apply for the ADL and complete a training program. The bill also gave TWCC more authority to review the practices of doctors and insurance companies and to impose appropriate sanctions and restrictions. Although this monitoring process is more than three years old, TWCC has only recently begun to take significant actions against more than a handful of providers and it is unclear to what extent providers sanctioned by TWCC might challenge TWCC's actions in court.

H.B. 2600 repealed TWCC treatment guidelines, making the adoption of such guidelines optional, rather than mandatory. TWCC has not formally proposed a disability management process, treatment guidelines, or treatment planning process. It has held several meetings and has emphasized a process that would focus on treatment planning or more intensive
disability management for "outlier" (i.e., problem) claims. Guidelines incorporating evidence-based treatment (treatment based on scientific proof of efficacy and outcomes, where available) could be part of an overall strategy to hold down medical costs and improve outcomes.

Medical care in the workers' compensation system is subject to different types of review by the insurance carrier for medical necessity. It appears that more carriers are using retrospective review to control utilization and costs, and there has been an increase in denials of medical payments. There also has been an increase in the number of indemnity dispute issues, which focus on the compensability of the claim, such as the extent of the injury.

Following the enactment of H.B. 2600, an IRO process has been used in the Texas workers' compensation system regarding medical disputes. The IRO process was envisioned to provide for review of the dispute by a doctor, rather than by TWCC staffers with little medical expertise, and result in more rapid dispute resolution. Costs increase when a doctor must review the case under the IRO process. TWCC has adopted an alternative for less expensive service disputes, although litigation has delayed implementation.

Texas, like all states, reimburses in income benefits only a portion of an insured worker's lost wages. All Texas benefits are subject to a statutory cap, which is relatively low compared to other states. Texas has a seven-day waiting period, which means that benefits do not accrue until the eighth day of lost time from work. Many states allow an injured employee to recoup income benefits from the waiting period if the employee misses a specified time from work (often known as the "retroactive period"). Texas has one of the longest retroactive periods in the country, at 28 days.

Texas administers its workers' compensation system through a separate dedicated agency governed by a six-member committee, with an executive director running the agency's day-to-day operations. The majority of states use a "single administrator" structure to govern their agencies.

Some of the most common complaints from providers in the workers' compensation system relate to billing, payment, and administrative burdens which make it more difficult and expensive for providers to operate in Texas. Currently, the system does not incorporate electronic medical billing and there has been an increase in the percentage of retrospective denials for services not deemed medically necessary. The implementation of networks would limit administrative burdens and methods that prove successful in a network system could be adapted to non-network care.

**Recommendations**

◆ Define medical necessity in the Texas workers' compensation system in a manner that encourages evidence-based treatment focused on return to work and function. Decisions about medical necessity ultimately revolve around how the statute defines necessity, and
linking the definition more closely to the principles of evidence-based care and return to work and function would support medical practice that adheres to those principles.

Direct TWCC to adopt treatment guidelines that meet the statutory standards and are evidence-based, to the greatest extent possible. Such guidelines should be adopted in conjunction with return-to-work guidelines. These guidelines should also be used in reviewing claims, both prospectively and retrospectively. The guidelines should not be absolute limits on coverage and may be challenged through an accessible dispute resolution process. TWCC and other appropriate system stakeholders should take steps to more strongly emphasize education of employers and employees about the benefits of early return to work.

Allow workers' compensation networks. It may be advisable to allow other treatment guidelines and treatment planning or disability management processes to be used, as long as these meet the general statutory standards. Networks should still be monitored and held accountable for their performance in reducing disability and providing effective care.

Direct TWCC to continue discussion with stakeholders on how to implement a more intensive treatment planning process designed to prospectively review problem claims on a pilot program basis, thereby reducing retrospective disputes and denials.

Consider implementing a more rapid, efficient dispute resolution process. The Sunset Advisory Commission has made some reasonable suggestions for streamlining dispute processes. Other options include eliminating the ability of a party to a medical dispute to appeal an IRO decision to the State Office of Administrative Hearings and inserting independent medical expertise into an evaluation of frequently-disputed issues such as the extent of an employee's injury, ability to work, and others, through a review by a TWCC designated doctor. If implemented, these changes should be accompanied by greater scrutiny and enforcement from TWCC on the quality of both IRO and designated doctor decisions.

Continue the TWCC Medical Advisor and Medical Quality Review Panel (MQRP) functions with a redirected focus if networks are implemented. Important medical quality aspects in the system, including ensuring the quality of designated doctor and IRO decisions, are appropriate functions for the expertise of the MQRP and are much more manageable than ADL enforcement. Important opportunities will also remain for Medical Advisor/MQRP intervention into specific cases with medical quality concerns in the non-network and perhaps in-network systems, as well. Further, TWCC should ensure greater accountability for its own decision makers at the hearing officer level and other levels, as data suggest significant variation in rulings between different commission field offices.

Shorten Texas' retroactive period for income benefits from 28 to 14 days and raise the cap on weekly income benefits to more closely approximate the national median state (currently Tennessee, at about $600 a week). The benefit enhancement should be tied to the expected implementation of networks and other provisions expected to lower overall system costs.
♦ Provide that the workers' compensation administrative agency operate under a single commissioner structure, with the commissioner appointed by the governor with the advice and consent of the senate.

♦ Enhance state agency enforcement activities to better ensure appropriate incentives are in place for compliance.

♦ Retain a workers' compensation research function, adequately staffed to complete a similar level of research projects to the former Research and Oversight Council. The most appropriate location for this function is likely TDI (its current location), although other options could be considered. The function, through the head of its agency, should propose and adopt an annual research agenda, with input from the public and stakeholders. In the next several years, much of the function's efforts should involve evaluation of the proposed new network care model and report card requirements, along with other legislative changes expected in the 79th session.

♦ Direct TWCC to take steps to implement electronic billing for health care providers and continue efforts to eliminate administrative hassles and uncertainties for providers, consistent with implementation of a treatment planning process focused on "outlier" claims. However, the legislature and administrative agency should not take decisive action to eliminate review of medical bills until the system can reasonably expect better up-front medical care.

**Charge**

Study the efficiency and effectiveness of the state's workers' compensation system, including a comparison of the medical and indemnity costs associated with the Texas A&M University System, the University of Texas System, the Texas Department of Transportation, and the State Office of Risk Management. Evaluate the potential costs and benefits associated with state agency participation in workers' compensation networks.

**Background**

The State of Texas self-insures to provide workers' compensation coverage to its employees. Coverage is provided through one of four state programs, administered by the following entities:

♦ The Texas A&M University System, providing care for Texas A&M University components and a few state agencies;

♦ The University of Texas (UT) System, providing coverage for UT system components;

♦ The Texas Department of Transportation (TxDOT), providing coverage for TxDOT's employees; and

♦ The State Office of Risk Management (SORM), which covers all other state employees.
Each program is required to follow the statutory requirements for workers' compensation and to comply with TWCC rules. Statutory differences between the programs and other factors related to the use of sick and annual leave by injured employees complicate indemnity comparisons. Of the four programs, SORM has had the most difficulty in managing medical costs, but SORM officials assert a combination of better in-house claim scrutiny, better performance by outside contractors, and improvements in covered state agency practices will produce improved results.

**Recommendations**

- Put in place consistent policies among the four programs regarding how sick and annual leave may be used by state employees. The programs should collect information on the use of sick and annual leave by covered injured employees in lieu of Temporary Income Benefits (TIBs) in a way that is both administratively useful in ensuring that more than the statutory maximum 104 weeks of TIBs are not paid, and also analytically useful for comparing the programs.
- Require state programs to participate in networks, where available, both to maximize savings to the state and "jump-start" network implementation.

**Charge**

Study and make recommendations relating to the pricing of workers’ compensation insurance premiums in Texas, including, but not limited to, the impact of rating tools such as schedule rating, negotiated experience modifiers, negotiated deductibles, and underwriting.

**Background**

Prior to 1991, Texas operated under a system in which the state promulgated the rate to be used by all insurance companies. This kept competition in the workers' compensation market minimal. Several important insurance-related changes were implemented in 1991:

- implementation of a "file and use" system for determining workers' compensation insurance rates, replacing the promulgated system;
- establishment of large and small deductible options for employers seeking coverage;
- creation of the Texas Workers' Compensation Insurance Fund (later renamed Texas Mutual Insurance Company) to act as the "insurer of last resort" and to enhance competition in the market; and
- allowing employers who met certain criteria to self-insure, through the Certified Self-Insurance Program administered by TWCC.
Other changes since 1991 have also enhanced employer's options, making the Texas market highly competitive and initially resulting in a decline in the average worker's compensation premium paid by employers. However, since 1999, the premiums have steadily increased, and Texas' premiums are now among the highest in the nation. A number of factors that may be responsible for this rise include: a weak economy and investment returns (a carrier invests the premiums it collects and can use good investment returns to offset rates, resulting in lower premiums); rising average costs for workers' compensation claims; and intense competition among carriers in the 1990s, driving premiums below levels that were sustainable in times of weaker investment returns.

The relationship between the premium collected and administrative costs and claims losses paid by an insurer is called the "combined ratio." A combined ratio of 100 means that carriers are collecting and paying out the same amount of money. A lower ratio indicates a profit for the carrier, while a higher ratio can indicate a loss. This ratio has declined in Texas over the past few years, even as premiums have risen.

**Recommendations**

♦ Direct TDI as part of the expected workers’ compensation reform proposal to examine carriers’ rate filings and pricing with special care to determine if savings are being passed on through lower premiums.

♦ Amend the Texas Insurance Code definition of “rate” to include consideration of variations applied to individual employers. This change would provide clear authority to TDI to consider the impact of any competitive tools in assessing whether a carrier’s rates are compliant with the law.

♦ Require workers’ compensation insurance carriers to file their underwriting guidelines with TDI, as are carriers in some other lines. These guidelines should also be held to standards that they must be actuarially justified and not unfairly discriminatory.
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House Committee Reports
HOUSE COMMITTEE ON AGRICULTURE AND LIVESTOCK

Charge

Evaluate the impact of the feral hog population in Texas in relation to economic harm to landowners and to the potential threat of spreading highly contagious animal diseases, such as foot-and-mouth disease.

Background

Feral hog populations have rapidly increased across the state, reportedly due to indiscriminate stocking to provide an additional game animal for sport hunting; increases in supplemental feeding practices targeting wildlife; and high intrinsic reproduction rates resulting in natural expansion of the feral hog's range.

Feral hogs cause agricultural and environmental damage by rooting, wallowing, and depredation, compete with wildlife and livestock for habitat, harbor endemic and exotic diseases, and transmit parasites to domestic livestock and humans.

In Texas, feral hogs are considered free-ranging exotic animals and may be taken at any time of the year by any legal means. The Texas Animal Health Commission regulates the trapping and moving of feral hogs to help prevent the spread of infectious diseases.

Recommendations

♦ Support and fund the efforts of the state agencies to control the population of feral hogs.
♦ Support a two-year research/demonstration effort designed to initiate a feral hog abatement program within Texas, led by the Texas Cooperative Extension, coordinated through the Department of Wildlife and Fisheries Sciences and Wildlife Services, and coordinated with other agencies including Texas Parks and Wildlife Department, Texas Department of Health, and the Texas Department of Agriculture.

Charge

Assess the state's brush control efforts to ensure that available programs and funding are utilized to fulfill their maximum potential and also examine the impact of invasive aquatic plants (hydrilla, water hyacinth, et cetera) and animals (zebra mussels, et cetera).
Background

The United States Natural Resources Conservation Service estimates that brush in Texas uses about 10 million acre-feet of water annually, compared to 15 million acre-feet per year for current human use. Brush control could increase state water supplies, recharge of groundwater aquifers, and spring flow enhancement.

All major land resource areas in Texas have significant brush infestations, but different species predominate in different regions of the state. Although not all species of brush are significant users of water, brush species such as juniper and mesquite can drastically reduce water yield in a watershed.

The 69th Legislature, Regular Session, created the Texas Brush Control Program (TBCP) to enhance the state's water resources through selective control of brush species. The Texas State Soil and Water Conservation Board (TSSWCB) was designated as the agency responsible for administering the program and was authorized to delegate responsibility for administering certain portions of the program to local soil and water conservation districts.

The Texas Water Development Board funded a study in 1998 to determine potential water yields from a comprehensive brush control program on the North Concho River watershed, and the legislature appropriated $1 million in 1999 for eight brush control feasibility studies that were submitted to the 77th Legislature.

The 78th Legislature, Regular Session, enacted S.B. 1828, implementing changes to the TBCP, including consultation with the Texas Department of Agriculture and the Texas Water Development Board, lowering the maximum cost share rate for private landowners to 70 percent, and establishing cost-share payments for public lands at 100 percent and 50 percent for political subdivisions.

Although the original goal of implementing brush management was to increase the productivity and health of rangelands to benefit ranchers, the opportunity to gain runoff or recharge to aquifers from brush control is now of interest.

Recommendations

♦ Continue to fund the Texas State Soil and Water Conservation Board's Texas Brush Control Program to continue the current projects of Twin Buttes, Oak Creek, Lake Ballinger, and Pedernales project areas, and to complete the North Concho River Pilot Project.

♦ Approve new projects that are contingent upon additional funding.

♦ Allow for any unexpended balances to be extended into the 2008-2009 biennium to allow for the implementation of sound conservation practices such as grazing deferment.
♦ Provide sufficient funding to allow for maintenance treatments of previously treated rangelands to ensure a continued successful brush control program.

♦ Urge all state agencies involved in water conservation to cooperate and coordinate any future brush control projects.

Other Recommendations

♦ Support increased funding for the Texas Animal Health Commission (TAHC) to maintain the ability of the agency to respond to future emergencies;

♦ Support increased funding needed to address salary inequity in the agency and appropriation of necessary funds; and

♦ Support the suggested legislative changes recommended by TAHC to provide it the tools necessary to respond to emergencies and to prevent further spread of deadly diseases.
**Charge**

Study ways to reduce specific cost drivers under the workers’ compensation system related to provider, surgical, and physical therapy services or care and the reduction of return-to-work time periods.

**Background**

Texas' medical costs are higher than those in comparable states. According to the Workers' Compensation Research Institute *Area Variations in Texas Benefit Payments and Claim Expenses* report, costs associated with workers' compensation in Texas varied greatly. Benefit cost per paid claim in the El Paso geographic area was almost 50 percent higher than in the lowest-cost area; Austin/San Antonio, with Dallas/Fort Worth and Houston somewhere in the middle.

While medical costs per claim have risen in other states, the rise in Texas from 1999 until 2003 has continued even though the state has seen a reduction in its rates of worker accident occurrence. The Texas Department of Insurance (TDI) indicates that while Texas had 7.3 injuries per hundred full-time employees in 1992, it had 4.9 injuries per hundred in 2001. Yet in the Workers' Compensation Research Institute's (WCRI's) 2004 study, *CompScope Benchmarks: Multi-state Comparisons*, the average medical payment per claim was $644 for claims arising between October 1998 and September 2000; it went up to $688 per claim for claims arising between October 2001 and September 2002.

While there are many cost drivers that can be shown as contributing to the costs of the workers' compensation system, several significant cost drivers were identified during testimony. These include provider services, hospital and surgical services, physical therapy and chiropractic care, and referrals and medical management services.

Other medical cost drivers identified with the workers' compensation system include the high cost of overhead and other administrative costs noted by health care providers.

In Texas, statistics are kept on employees who are injured on the job and eligible for workers' compensation benefits; there is a waiting period of seven days before an injured employee is eligible for benefit determination. The majority of injured employees never reach this seven-day threshold, but for those who do, the results can be devastating in regards to Return-To-Work (RTW).

An employee's ability to RTW after the worker is injured on the job in Texas is uncertain at best, especially if the worker has been off the job more than 30 days. Generally, outcomes...
are poor in Texas with only about 50 percent of those who lose more than seven days of work after an injury returning to the same or a comparable job; about 30 percent either return to a lesser paying job and/or one in another field and up to 20 percent may never return to work.

The results are even worse for those workers whose first language is not English, those with little education, those who are older, and those who work in certain trades (especially manual trades such as construction and landscaping). Over 47 percent of these workers never return to consistent employment.

There is consensus in the literature which states that Stay-At-Work/Return-To-Work is the best option for the injured employee. In instances where good communication exists between the parties, better rates are achieved for RTW. There are also higher rates of return for injured employees who have continual contact with their employer and co-workers. Studies also show that the longer it takes an injured employee to return to work the higher the likelihood that the worker will never return to work at all. Given enough time off, the employee becomes virtually unemployable with additional psychological, emotional, and financial concerns compounding the problem.

Some employees may not be getting the medical treatment they need in order to RTW, delaying any meaningful job placement; this is exacerbated by insurance carrier delay in payment of medical claims, medical dispute resolution, and Texas Workers' Compensation Commission TWCC appeals processes. In some cases, the provider is caught between the employer who wants an employee back at work even if the employee is not healed and an employee who feels that no one cares what happens to him. At TWCC there is only one employee in the agency who is specifically tasked for RTW efforts at the present time.

**Recommendations**

◆ Consider a new system, as it appears is merited in order for workers to get the proper care and to return to work in a timely manner and in the interests of controlling costs.

◆ Monitor hospital and ambulatory fee guidelines being put into place by TWCC for appropriateness.

◆ Investigate fees for medical doctors to determine whether they need to be increased in order to recruit additional doctors into the system as well as cover the state geographically. Additional consideration may be warranted in order to ensure that all necessary medical specialties are covered.

◆ Assemble and compile data already available as to self-referrals. A TDI study should be conducted to determine if there are measurable and/or significant differences between referrals that are self-referred and non-owned.

◆ Identify outlier insurance carriers (i.e., denials of medical necessity and compensability) as is currently being done for outlier physicians and providers.

◆ Establish back-to-work guidelines and education of employers.
♦ Implement electronic billing as soon as possible.

**Charge**

Study the cost effectiveness of the state workers’ compensation system including:

♦ Economic benefits, if any, of inclusion of the UT System, A&M University System, Texas Department of Transportation and Employees Retirement System under the State Office of Risk Management programs;

♦ Costs or savings to the state by allowing state agencies to self-insure; and

♦ The creation of workers’ compensation provider networks for state employees.

**Background**

The State Office of Risk Management (SORM) was created by H.B. 2133, 75th Legislature, Regular Session, and became a state agency effective September 1, 1997. SORM was created from the merger of the Workers’ Compensation Division of the Office of the Attorney General (OAG) and the Risk Management Division of the TWCC.

SORM provides services to state agencies for the protection of the state’s resources. Currently, these resources include approximately 172,000 employees, more than $8.8 billion in capital investments in buildings, and approximately $2.2 billion in fixed assets. SORM publishes risk management guidelines, trains state agency personnel, conducts safety reviews, devises protocols and responses at the request of state agencies or in response to external threats or risks, and provides risk management analyses, consultations, and insurance services to state agencies.

SORM administers the State Employees Workers’ Compensation Program for state agencies. SORM also administers workers’ compensation claims for employees of community supervision and corrections departments.

A mandate from H.B. 2600, 77th Legislature, Regular Session, required SORM, The University of Texas System (UT), the Texas A&M University System (TAMU), and the Texas Department of Transportation (TxDOT) to participate in the implementation of the regional network concept. The recently completed study of the Feasibility of Regional Workers’ Compensation Networks (RWCNs) in Texas was awarded to MedFx LLP (MedFx).

The study concluded that RWCNs are conditionally feasible if at least 15 percent of the state’s workers’ compensation medical costs were handled within the RWCN. The study recommended that a pilot project be implemented in the Austin/San Antonio and Houston regions, and estimated savings to be expected as a result of implementing the RWCNs. 

The
basis of the estimates included a factor to account for the fact that the RWCNs authorized under H.B. 2600 were voluntary.

MedFx estimated that if the RWCN concept were expanded to include all state employees statewide, estimated aggregate savings would be about $38.4 million. They suggested that SORM and the related state employers could contract to build networks in those areas where geographic deficiencies existed and still save significant amounts in those areas. They noted that the only significant difference would be an additional four to six months to contract with providers in those areas where geographic deficiencies were identified.

The MedFx analysis concluded that the proposed network model was feasible, but that the success of the model would be dependent on the receipt of satisfactory request for proposal responses consistent with the financial model and assumptions discussed in their full report.

**Recommendations**

- Prohibit other state agencies from being allowed to opt out of SORM.
- Continue to monitor SORM and to receive updates on their cost containment and other services once every six months.

**Charge**

Actively monitor the activities of the Texas Workers’ Compensation Commission in the continued implementation of H.B. 2600, 77th Legislature, and workers’ compensation legislation passed during the 78th Legislature.

**Background**

In Texas, private employers may opt to either provide workers' compensation or not; in every other state (with the exception of New Jersey), workers' compensation is mandatory. While New Jersey does not require employers to carry coverage, due to the restrictive nature of its statute, all employers in New Jersey have thus far chosen to carry workers' compensation coverage. It should also be noted that many states have statutory exceptions that allow small employers (typically those with less than 20 employees) the option of purchasing workers' compensation coverage.

Studies by the Workers' Compensation Research Group at TDI and its predecessor (the Workers' Compensation Research and Oversight Council) have shown that after several years of a downward trend, the number of nonsubscribers has begun rising, indicating that in addition to the economy, high premiums may be affecting the market once again. The latest estimate by TDI is that 38 percent of Texas employers do not carry workers' compensation coverage and that 24 percent of the Texas workforce is employed by nonsubscribers.
There are a number of issues concerning the structure of the regional networks and the pilot program envisioned by H.B. 2600, and the statutory structure for these networks is significantly different from managed care structures that seem to work in other states. Some of the difficulties include the following:

- It is uncertain as to the level of participation that can be expected in the networks envisioned by H.B. 2600 since employees may opt out of the networks. There is concern that this flexibility could result in less certainty in network participation and therefore make it more difficult to negotiate and establish networks. The regional networks are “fee-for-service”;
- Only “public employers” are required to participate in a pilot project for networks;
- Participation in regional networks by insurers and certified self-insurers is optional;
- Insurers electing to participate have the option of limiting participation to a particular employer or region of the state; and
- Data collection and reporting requirements are not yet fully developed and this is necessary to prepare the required Request for Proposal to solicit network proposals for the pilot program. This requires coordination with the evolving Business Process Improvement project at TWCC, which is still being implemented.

**Recommendations**

- There are no recommendations.

**Charge**

Monitor the implementation of H.B. 1366, 78th Legislature. Consider concerns from interested parties regarding the use of the remediation funds and recommend legislative changes to the 79th Legislature.

**Background**

Prior to the passage of H.B. 1366, there was no provision for a dry cleaning pollution clean up program. Cleaning up pollution, also known as remediation, can be very expensive. Should the contamination involve extensive soil or groundwater remediation, it can be almost impossible for smaller, family-owned dry cleaning businesses to afford. Even for larger dry cleaners, the cost of remediation can be professionally devastating.
H.B. 1366 added Chapter 374 (Dry Cleaner Environmental Response) to the Health and Safety Code and attempted to provide assistance to the dry cleaning industry in cleaning up chemical spills. The legislature's intent was to fully administer the program from proceeds received from registration fees. The dry cleaner remediation fund’s floor is ten million dollars and the ceiling is twenty million dollars. To date, $4,144,250.00 has been deposited to the fund.

**Recommendation**

♦ Revise the fee schedule and the opt-out clause. Currently there is a $2500 fee for gross annual receipts over $100,000.00 and $250 for those with gross receipts under $100,000.00 or for those not using perchloroethylene; there may be a need to make this tiering more equable.

**Charge**

Study the potential impact on the cost and quality of medical care through employer and/or insurance carrier selection of initial treating doctor and change of doctor in the workers’ compensation system.

**Background**

Managed care has been used for employee health insurance for many years with relative success. The Health Maintenance Organization (HMO) and Preferred Provider Organization (PPO) models are fairly familiar to most employees and employers.

In an attempt to control medical and indemnity costs while improving the quality of medical care provided to injured workers in Texas, policymakers explored the idea that well structured and managed workers' compensation health care networks could possibly hold the promise of providing consistently appropriate health care and disability management for injured workers in Texas while bringing down medical and indemnity costs.

Article 2, Section 2.01, of H.B. 2600, 77th Texas Legislature, Regular Session, established a Health Care Network Advisory Committee (HNAC) consisting of members from the labor, business, insurance carrier and health care provider communities to advise TWCC on the feasibility and implementation of regional fee-for-service health care networks.

As part of its statutory functions, the HNAC was required to make recommendations to TWCC about:

♦ standards for regional networks;
♦ the feasibility of establishing or contracting with one or more regional networks
♦ the procurement of regional network contracts; and  
♦ the selection of administrators to build and manage the regional networks and to report on their progress.

In an effort to determine the feasibility of implementing these regional networks, TWCC contracted with MedFx, of Mill Valley, California, to develop network standards, report cards and reporting requirements, and a Request for Information (RFI) from interested networks and providers for HNAC approval.

The MedFx analysis concluded that the proposed network model was feasible, dependent upon the receipt of satisfactory Request for Proposals (RFP) responses consistent with the financial model and assumptions discussed in the feasibility report; however, to date the RFP has not been issued. TWCC has recently testified that it has decided that further implementation of the network model will be delayed until an improved model of networks is evolved through the legislative process.

Under H.B. 2600, public employers such as SORM, UT, TAMU, and TxDOT, would be required to participate in these networks if implemented. Insurance carriers may offer network services to their client employers. Injured workers covered by participating insurers may receive medical care from regional networks on a voluntary basis, although once they elect to participate, they must receive care from the network for that injury, with certain exceptions.

**Recommendations**

♦ Direct networks to maximize choice of treating doctors and allow a change of treating doctor. Questions as to how many doctors would be available within a given network and how much control these providers would have over treatment plans are crucial. Reimbursement guidelines should be at a level to attract and retain good doctors. Direct networks to provide adequate access to medical specialists. Active recruitment of good physicians and other providers should be undertaken.

♦ Direct networks to guarantee that providers be paid promptly and fairly.

♦ Explore the idea of patient advocates or coordinators within the network.

♦ Ensure that workers' compensation networks have adequate regulation and oversight by state regulators. Network adequacy regulations should guarantee appropriate access to physicians, hospitals and other facilities and should also specifically ensure access to all needed chronic pain and other therapies as well. Dispute resolution processes should be clearly defined and streamlined.

♦ Direct networks to measure for performance to ensure that workers are getting the care they deserve and to ensure that employers are getting the best of network care for their money. Research and evaluation by the Workers' Compensation Research Group at TDI and contracts with WCRI should be utilized.
♦ Establish a reporting system for networks so that the legislature and others are aware of their effectiveness.

♦ Investigate incentives to make the network concept more acceptable to employees and labor. In order to give up the option of open choice of doctor, the employee should receive other considerations.

♦ Require the Texas Commissioner of Insurance to study the effects of a managed care system on workers' compensation insurance rates. The following should be evaluated:
  ♦ Identify and quantify the savings generated by the use of a managed care system, and
  ♦ Review workers' compensation insurance rates to determine the extent to which the savings were reflected in rates. When reviewing the rates, consideration should be given to an insurer's premium revenue, claims costs, and surplus levels.
**House Select Interim Committee on Child Welfare and Foster Care**

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**Charge**

Determine barriers to adoption, specific to minority children, in foster care. Determine activities that will increase the recruitment and retention of racial and ethnic minority families as foster care providers.

**Background**

The Texas Department of Family and Protective Services (DFPS) (formerly the Texas Department of Protective and Regulatory Services) operates substitute placement programs commonly referred to as foster care and adoptive care for children under DFPS managing conservatorship, and the recruitment, development, and maintenance of foster and adoptive homes for these children is an ongoing process.

The Federal Adoption and Safe Families Act requires states to locate adoptive homes for foster children; however, statistics have shown that the number of children in the Texas foster care system waiting for a safe adoptive placement continues to exceed the number of consummated adoptions. In 2003, of the 3,766 children who were eligible for adoption, meaning that parental rights had been terminated, only 2,444 children were adopted. While Texas has shortened the waiting period between foster care placement and adoption eligibility, the time period between eligibility for adoption and actual adoption is getting longer and the child typically experiences at least three moves before reaching a permanent home.

**Recommendations**

♦ Eliminate the 90-day waiting period for adoptions.

♦ Direct DFPS to maximize using private CPAs [child placement agencies] to complete adoption of children in DFPS managing conservatorship immediately when adoption becomes a child’s permanency goal.

♦ Amend the Family Code to direct DFPS to seek these services when adoption becomes the permanency plan and/or at the point of termination of parental rights, [to] quicken the process and move children more quickly to adoptive homes, shortening their time in foster care.

♦ Direct DFPS to set adoption targets to maximize Federal Funds available under the Federal Adoption Promotion Act.
Direct DFPS to reinstate the expansion of open enrollment adoption contracts and develop jointly with private CPAs target goals for the number of adoptions completed annually.

Direct DFPS to begin transitioning out of adoption services, with complete transition at the end of three years, when private agencies are responsible for at least 50 percent of all adoptions.

Direct DFPS to qualify individuals as adoptive parents prior to providing adoptive training.

Direct the HHSC [Health and Human Services Commission], which currently controls rate-setting, to review adoption subsidies for special needs children with disabilities to ensure that there is a fair and adequate rate for potential parents of these children.

Direct HHSC to also consider providing adoptive families with access to paid respite services for the first year after consummation of adoption, and explore the funding of public education on adoption incentives, services, and resources.

Direct DFPS to continue to strengthen its commitment to true public/private partnerships.

Direct DFPS to help increase private sector capacity by providing additional training and support to private foster care agencies that are interested and willing to expand their focus to adoption.

Direct DFPS to treat the foster/adopt model as a best practice model — with priority given to foster parents who seek to adopt.

Direct DFPS to help develop and implement long-term community partnerships and awareness campaigns in the private sector.

Direct DFPS to design campaigns that are culturally sensitive recruitment initiatives aimed at increasing adoption opportunities for minority children; use all necessary and available resources to ensure their success; and keep a high level of community visibility that is on-going, including television, radio, billboards, internet, newspapers, community activities, recruitment/information activities, and faith-based organizations and groups.

Direct DFPS to require caseworkers to perform an on-site unannounced visit/check-up of the adopted child(ren) once a year until the child(ren) reaches age 18, only for families who receive state funded adoption subsidies.

Direct DFPS to review the average amount of time spent on a home study conducted by private providers. The agency should explore methods to reduce the amount of time it takes to conduct a home study, and expedite all future home studies.

Direct DFPS to develop and implement uniform home study standards, and HHSC to determine an adequate amount of financial payment to reimburse private providers for conducting home studies.
Direct DFPS to improve the TARE [Texas Adoption Resource Exchange] website by requiring appropriate timeframes for posting an adoptive child (30 days) and removing a child from the website upon adoption (seven days).

Require DFPS to contact adoptive families within 48 hours of contacting the website with an interest in adopting a child.

Require DFPS to add privacy protection to the children portrayed on the TARE website by eliminating all individual medical diagnoses and any personally identifiable medical information. This information should be treated as confidential and should only be provided privately to parents who are interested in adopting that child.

Charge

Evaluate means by which the state may promote substitute care with relatives of a child who is removed from the home by Child Protective Services.

Background

Title IV-E of the federal Social Security Act directs states to consider giving preference to an adult relative over an unrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant state child protection standards. Under Texas law, a court must place a child who is removed from the child's custodial parent with the non-custodial parent or with a relative unless such placement is not in the best interest of that child.

The issue of substitute care has been the subject of much discussion. Some argue that parental rights should be paramount and that a parent who is the subject of a child abuse or neglect investigation should have input on where their child is placed. Others suggest that the child should be removed and placed in a foster home or facility away from the alleged abusers and their family in order to minimize the risk of abuse. Still others believe that both arguments have some validity and that each case should be treated individually.

Other concerns include allegations that Child Protective Services (CPS) caseworkers have in some cases failed to follow the law, poor placement decisions by CPS, and the legal constraints on caseworkers.

Recommendations

Expand the pilot project in S.B. 58, 78th Legislature, Regular Session.

Fund the relative caregiver placement pilot program designed for certain children for whom the DFPS is appointed managing conservator statewide.
◆ Require DFPS caseworkers to provide parents with a “proposed child placement resources form” that identifies potential kinship caregivers upon removal of any children from the home to promote early identification of relative caregivers.

◆ Require caseworkers to utilize the CPS Handbook, Section 6322, which authorizes expedited placement of children with relatives without a complete home study—after proper training and guidelines are established and enforced by the DFPS. Caseworkers would still be required to conduct a risk assessment and provide a written assessment of the suitability of the placement, and must also interview prospective relative caregivers, the child, at least two references and a collateral, as well as perform a visit to the proposed home. If a kinship caregiver is identified and approved by DFPS, the case would then be turned over to a private placement agency for complete case management. DFPS will maintain oversight of the case, but will not provide direct case management.

◆ Direct DFPS and HHSC to be more proactive in locating federal funding for kinship placements.

◆ Direct HHSC to apply for a Title IV-E waiver to develop a program that would allow for kinship or guardianship payments for kinship placements.

◆ Direct DFPS to expand the Family Group Conferencing pilot program statewide, and move towards contracting out for all Kinship and Family Group Conferencing type services.

◆ Provide for the transition of DFPS out of all Kinship and Family Group Conferencing Services that are funded by the Texas Legislature within three years.

◆ Direct the state auditor to perform an audit at the end of the three years to ensure that the transition has in fact occurred.

◆ Develop through a Request for Proposal a regional system of delivery that can be absorbed within the full child welfare restructuring as it rolls out across Texas.

◆ Expand the Texas Integrated Funding Initiative statewide to ensure that children and families receive wraparound services, and to ensure the most efficient use of funding across all agencies that provide child welfare services.

◆ Establish a pre-removal program for families needing services and or support from the DFPS to prevent the need for removal.

◆ Require DFPS, HHSC, other state agencies that provide services for children, and private child placement agencies to develop a plan for family preservation services, collaborate on efforts to strengthen family building and provide wraparound family connection services in an attempt to prevent children unnecessarily entering the system.

◆ Mandate that DFPS participate in the aforementioned partnerships, and that the parties shall work together to use state and federal dollars to pay for proven prevention programs and practices.

◆ Consider the costs and practicality of proven prevention programs, as well as any others that have the potential to prevent child abuse and neglect.
♦ Require DFPS to develop an educational manual to distribute to biological parents as well as kinship caregivers. This manual is to be provided to the family at the point of initial contact or CPS involvement, and is to be provided to the potential kinship caregivers upon CPS receipt of the “proposed child placement resources form” from the family. This manual should include information in both English and Spanish, and should cover such topics as the legal rights of birth parents and kinship caregivers, services, phone numbers and other valuable resource information.

♦ Direct that this information on available resources, rights, and services be printed in the CPS handbook.

♦ Direct DFPS to partner with the Texas Kincare Taskforce to further develop and distribute the Taskforce’s brochure “Kincare Choices in Texas.”

♦ Improve legal representation for parents. Attorneys for parents should be appointed in more cases and should be appointed at the very beginning of a case.

♦ Amend the code so that any time the state seeks to be named the conservator of a child the court must appoint an attorney for any indigent parent in opposition to the state's request.

♦ Direct DFPS to ease the space requirements on a case-by-case basis for relative caregivers who are ready and willing to foster or provide kinship care to a child in need.

**Charge**

Review the licensure requirements for and the performance of all types of foster care facilities, including residential treatment facilities, wilderness camps and emergency treatment centers. Assess the adequacy of communication and interaction between the licensing agency and other state agencies that place children within the foster care and Child Protective Care system. Explore other states’ efforts that will promote “best practices” and identify program efficiencies with Texas' child welfare system.

**Background**

Removing children from their homes is always traumatic. The safety of the child is paramount, and the state must ensure that its licensed foster facilities are providing the best quality of life for the children in their care. The strength or weakness of the licensure system to accurately assess foster facilities may mean the difference between a safe placement, and one that subjects a child to further abuse.

Concern has arisen that the licensing standards are inconsistently interpreted and applied across the state. It has been suggested that this inconsistent application is a direct result of the lack of DFPS staff training, inadequate communication, poorly defined policies, excess paperwork requirements, and excessive caseloads, and that as a result children are at risk.
Recommendations

◆ Restructure the Texas Child Welfare System. The state should eliminate the dual system in which DFPS not only provides foster care and case management services, but also regulates and provides oversight of those services. The goals of the restructuring are to improve protection for children; reduce the number of children entering foster care; and improve achieving permanency for children who do enter the system, including reunification with their families, placement with a relative, or adoption. Another goal of the new system is to encourage community ownership and responsiveness. Monitoring will shift to evaluating outcome results rather than process. All foster homes certified by DFPS should be transferred to and operated by private child placing agencies (CPA).

◆ Amend the Child Care Licensing Statute in Chapter 42 of the Human Resources Code to address concerns regarding uniform licensing standards, weaknesses in penalties, and the lack of differentiation between major and minor licensing violations.

◆ Increase DFPS full time employees (FTEs) for licensed investigators to adequately oversee, monitor and regulate all foster homes, therapeutic camps, and foster facilities.

◆ Direct DFPS to start making significant changes to move towards becoming accredited by the Council on Accreditation (COA); that investigations be handled solely by licensed investigative caseworkers; and that the DFPS work towards achieving a goal of 25 active cases per caseworker.

◆ Direct DFPS to ensure that caseworkers and all agency resources are being fully utilized in the most efficient and effective manner.

◆ Require that child care facilities that contract with DFPS use a certified behavior intervention program for children who need assistance in managing their conduct. This program must be taught by a certified instructor to staff who will be working with the children in their facility.

◆ Require DFPS to develop consistent reporting standards for child care facilities that contract with the state on the use of restraints and seclusion, and on serious injuries or deaths during or after the use of restraints or seclusion. DFPS should require all staff in child care facilities to receive training approved by the department on the risks of positional asphyxiation and other factors relating to the risks of restraints and seclusion, and the department should prohibit the use of "prone" restraints except for transitional purposes.

◆ Direct DFPS to adopt a policy that requires all providers to immediately report by telephone, children who have been arrested, are missing, or are truant. Failure to report such activity should result in financial sanctions.

◆ Direct DFPS to continue to assist and partner with the private sector in developing capacity for foster care homes, but to direct placing agencies to consider first to place children within the region/community of the home that the child was removed from in all cases, except where placement is not available.
♦ Provide incentives for child placing agencies to place children within the child's county, or at least in the county's region.

♦ Direct DFPS, in developing licensing’s minimum standards, to ensure through proper and thorough training, as well as clear and concise language that the agency creates a set of standards that are not open to individual interpretation. DFPS should use an agency-wide standardized checklist to monitor for facilities’ compliance with minimum standards. Data from the field must be used to determine which standards are subject to interpretation and test data against citations for those standards to validate consistency of interpretation.

♦ Direct HHSC and DFPS to continue to review and update minimum standards for wilderness and therapeutic camps. The safety of the children placed in these types of facilities is paramount, and the committee recommends that both HHSC and DFPS structure guidelines around [certain specified] principles.

General Recommendations

♦ Improve the quality of representation of children in the child welfare system by court-appointed attorneys ad litem (AALs). There should be uniform standards of practice for AALs appointed to represent the interest of children or parents in actions brought on behalf of the state, and the state must appropriate the funds necessary to pay for the ad litem attorneys.

♦ Ensure that when a child is initially placed in the foster care system, their educational needs are accurately and adequately assessed and that they are afforded the opportunity to advance their learning possibilities.

♦ Direct DFPS, for small school districts with a high concentration of foster children (above 15 percent of the student population), to meet with representatives of child placing agencies that have placed children in the district, as well as school officials, to discuss issues regarding the education of the foster students on a quarterly basis. If a child placing agency places a child from out of region into these high concentrated areas, a representative from their agency is required to attend these quarterly meetings.

♦ Amend the Texas Education Code to require the Texas Education Agency (TEA) to publish an annual report to describe the educational performance of children in licensed foster care facilities, including their performance on all academic skills assessment instruments.

♦ Direct TEA and the Texas Higher Education Coordinating Board to develop outreach programs for students in foster care and residential care who are currently enrolled in high school to ensure that they are aware of the free college tuition options provided by the state.
Direct that state, local child welfare boards, and private placement agencies partner with at-risk youth prevention programs such as Big Brothers, Big Sisters to provide mentoring services for foster children.

Require that all interviews with a child be video or audio taped without exception.

Extend a court's ability to order child and medical support payments even upon termination of parental rights, up until the time the child turns 18. Child support orders should be monitored from the day issued and the Office of the Attorney General should expedite the filing of support enforcement actions any time that a child support payment falls 60 days late.

Require DFPS, prior to the completion of the transition from public foster care to private foster care, to transfer cases and all necessary information to the region of placement for children who are placed out of region.

Direct DFPS to partner with the Texas Workforce Commission and the Texas Department of Housing and Community Affairs to develop programs that address such concerns as jobs and affordable housing.

Amend the Family Code to help deter people from falsely accusing others of abuse or neglect.

Explore the possibility of using Court Improvement Project funds, in addition to encouraging local matching dollars such as federal, local, and foundational funding as well as county grants to establish more family drug courts across the state. New family drug courts established at the county or regional levels should model themselves after the successful existing family drug court in El Paso.

Require DFPS to partner with volunteer and advocacy organizations to establish and implement the Texas Foster Grandmas and Grandpas Program.

Direct DFPS to work with law enforcement agencies to establish clear guidelines for when law enforcement should accompany CPS to a call regarding abuse and/or neglect and to adequately train statewide intake workers on properly screening emergency calls.

Direct the Office of Inspector General to continue to investigate Medicaid fraud and abuse in the foster care system, including investigating "over-charting," or the act of a facility or home making children's needs appear more severe in order to collect a higher level of care payment from DFPS. HHSC and DFPS should expedite the delivery of foster children's Medicaid information to caregivers in order to help prevent contractors from failing to make timely claims for reimbursement or delay services. Additionally, HHSC and DFPS should provide foster care contractors with assistance and training to help them claim Medicaid reimbursement for foster care services.

Direct the HHSC committee that is to consider the issue of providing medical passports for children in foster care implement a comprehensive plan to provide this necessary information to the appropriate individuals immediately upon placement of a foster child in any given facility or home.
♦ Require that the Legislative Budget [Board] review all of its performance measures as the transition to privatized foster care is taking place and replace the language of its performance measure of “number of completed investigations per month” with “number of assigned investigations per month” to more accurately reflect CPS’ workload and to remove the incentive to prematurely close cases.

♦ Direct DFPS to strengthen its partnerships with schools of social work to encourage students enrolled in Bachelor of Social Work (BSW) and Master of Social Work (MSW) programs to intern or work for the DFPS upon graduation.

♦ Direct DFPS to add conflict-of-interest disclosure provisions to all contracts related to foster care services, including subcontractors, if a Lead Agency Model is adopted.

♦ Direct DFPS to consider utilizing new technologies including wireless notebook devices that would enable CPS caseworkers to transfer data including notes and photographs from the scene of an investigation or a case visit back to their DFPS regional office.

♦ Amend the Family Code to add requirements for informed consent of administration of psychotropic medications for foster children as well as provide clear statutory authority of providing informed consent for the administration of psychotropic medications for foster children.

♦ Mandate that DFPS require training on psychotropic medications to be completed prior to a foster parent, caseworker, or caseworker's supervisor consenting to, or approving, the administration of psychotropic medications.

♦ Require that a pharmacist dispensing three or more concurrent psychoactive medications, or two or more psychoactive medications of the same class concurrently, to a patient younger than 18 years of age make a report to the Texas State Board of Medical Examiners.

♦ Require that a Medicaid Review Committee examine the administration, safety, and effectiveness of all psychotropic medications used on foster children.
Charge

Study the need for an inactive docket for claims alleging personal injury or death caused by exposure to asbestos fibers or other mineral dusts.

Background

Exposure to asbestos can cause cancer and other serious diseases and has resulted in massive tort litigation. Although the use of asbestos has declined, the number of cases continues to rise sharply. Asbestos personal injury litigation has already contributed to the bankruptcy of more than 60 companies and it is estimated that tens of thousands of workers have lost their jobs.

Many asbestos claims are filed by individuals who have been exposed to asbestos but do not present asbestos-related impairment. Concerns about statutes of limitations can force claimants who have been exposed to asbestos but who have no injury or symptoms to bring premature lawsuits in order to protect against losing their rights to future compensation should they become impaired. The United States Congress is considering a number of bills that would give priority to those asbestos claimants who can demonstrate actual physical harm or illness caused by asbestos, while preserving the rights of claimants who were exposed to asbestos to pursue compensation should they become sick in the future. The American Bar Association supports enactment of federal legislation that would allow persons alleging non-malignant asbestos-related disease claims to file a cause of action only if those persons meet the certain medical criteria and would toll all applicable statutes of limitations until such time as the medical criteria in such standards are met. The State of Ohio, in 2004, enacted legislation requiring the use of objective medical criteria in asbestos, silica, and other mineral dust claims.

Recommendations

♦ Focus on seeking prompt, efficient legal redress for symptomatic claimants (those who have been exposed to asbestos and demonstrate negative physical manifestations). Those claimants who have become sick as a result of their exposure to asbestos, silica or other mineral dusts should have their claims heard first in the courts.

♦ Use independent standards as set out by the American Bar Association or the American Medical Association to ensure that those truly harmed by asbestos or mineral dust exposure can be adequately and efficiently compensated.

♦ Preserve the rights of unimpaired claimants to seek legal redress in the event they develop an asbestos-related disease in the future. The establishment of an inactive docket
for claims alleging personal injury caused by exposure to asbestos fibers or mineral dusts is one option. The Ohio model is another alternative.

♦ Work with the Texas Trial Lawyers Association, the Texas Association of Defense Counsel, the Asbestos Coalition and other stakeholders to draft and pass into law an adequate remedy which addresses each of these concerns.

Charge

Monitor the legislation passed by the 78th Legislature, with a particular emphasis on the implementation of and rulemaking for H.B. 4.

Background

The 78th Legislature, Regular Session, enacted H.B. 4, a comprehensive tort reform bill addressing many issues affecting the civil court system, including class action lawsuits, proportionate responsibility, and medical. The bill granted rulemaking authority to the Texas Supreme Court in a number of areas, including class actions and the operation of the newly created panel on multidistrict litigation (MDL). The court has met the statutory deadlines for the creation of those rules.

H.B. 4 required the creation of an MDL panel with the authority to transfer civil actions involving one or more common questions of fact pending in the same or different courts to any district court for consolidated or coordinated pretrial hearings. The legislature provided no funding for such panels.

H.B. 4 also required the Texas Department of Health (now the Department of State Health Services (DSHS)) to adopt and implement rules regarding community benefits and charity care. Under the bill, a nonprofit hospital would qualify for a $100,000 limitation on non-economic damages in claims brought against the hospital if the hospital provides a certain amount of charity care. Nonprofit hospitals must seek certification by DSHS and DSHS must determine, no later than May 31st of each year, which hospitals meet the requirements for certification. Because of timing issues regarding the receipt of data from hospitals, DSHS cannot comply with the May 31st deadline for certification.

H.B. 4 provided that if the claimant has settled with one or more persons, the court must reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to each settling person's percentage of responsibility. This is a change from the prior law, which provided that, depending on an election by a defendant, the amount could be reduced by a credit equal to the sum of the dollar amounts of all settlements. However, for health care liability claims in which a claimant has settled with one or more persons, H.B. 4 provided that the court may still reduce the amount of damages to be recovered by the claimant with respect to a cause of action by an amount equal to the sum of the dollar amounts of all settlements or a percentage equal to each settling person's percentage of responsibility, depending on election made by a defendant. This elimination of
the "dollar-for-dollar credit" in most multi-defendant lawsuits may allow claimants to recover more than 100 percent of their damages, create conflicts between defendants, and encourage collusive settlements.

**Recommendations**

♦ Provide additional funding to the Texas Supreme Court for a second rules attorney, publication of rules materials and proceedings on their website, and operation of the Supreme Court Advisory Committee and the multidistrict litigation panel.

♦ Increase funding to maintain greater internet access to Texas Supreme Court orders and records.

♦ Provide necessary funding for the MDL panel.

♦ Modify the statute to allow for future certifications to take place in December of each year rather than in May as the law currently requires.

♦ Restore the optional dollar-for-dollar credit and allow the non-settling defendant to elect the appropriate credit after verdict. This solution would both preserve the claimant’s recovery and allow defendants the full benefit of a settlement before trial.
HOUSE COMMITTEE ON CORRECTIONS

Charge

Review the effectiveness, efficiency, and funding mechanisms of the community supervision and parole supervision systems. Examine accountability for various community supervision programs administered through local community supervision and corrections departments. Study the advisability, methods and costs of creating a progressive-sanctions model for the adult criminal justice system. (Joint interim charge with the House Appropriations Committee)

Background

At the end of fiscal year 2004, there were approximately 428,000 offenders in Texas serving a period of community supervision; 236,000 offenders were on probation for a felony offense; and 192,000 offenders were on probation for a misdemeanor offense.

Community supervision in Texas is a shared responsibility between the state and local communities. Community supervision duties include: monitoring compliance with court-ordered conditions; assisting in securing treatment and rehabilitation services when needed; filing violation reports; conducting office, home, and field visits; assisting offenders in securing employment and verifying employment; and monitoring drug usage through urinalysis.

The Parole Division (division) supervises offenders released from prison on parole or mandatory supervision to complete their sentences in Texas communities. The division is also responsible for pre-release functions such as investigating offender release plans and preparing release-eligible cases for consideration by the Board of Pardons and Paroles.

Findings/Recommendations

♦ Reduce caseloads for community supervision officers.
♦ Increase treatment resources for offenders on community supervision.
♦ Increase the number of community correction facility beds.
♦ Maintain current parole division funding levels [in] the FY [fiscal year] 2006-07 biennium.
♦ Increase funding to provide for expected growth in the active parole supervision population.
♦ Consider increasing parole supervision fees to $15 [per] month.
♦ Restore drug treatment funding to the parole division budget.
♦ Hire a no-loss contract to collect delinquent parole fees.

**Charge**

Study targeted contracting and review strategies and initiatives in the prison system related to oversight, efficiency, effectiveness, and potential cost-savings of contracted services by private sector vendors.

**Background**

In the 78th Legislature, Regular Session, Texas Department of Criminal Justice (TDCJ) funding was reduced by nearly a quarter of a billion dollars. For the 2005-2006 biennium, the agency has been instructed to anticipate additional reductions.

**Findings/Recommendations**

♦ Direct the Texas Department of Criminal Justice (TDCJ) to pursue new methods and procedures made available by advances in technology and free-world business practices. TDCJ should form strategic alliances with private sector partners to help identify areas for improvement and develop more efficient methods of operation.

♦ Direct TDCJ to report back to the legislature on the progress of any ongoing efforts and progress in carrying out the committees' [sic] recommendations since the publication of this report by March 1, 2005.

♦ Direct TDCJ to focus on the following areas for improvement and development of a more efficient means of operation:

  ♦ Develop plans for specialized units for contracted capacity in the areas of special needs offenders, mentally ill offenders, DWI offenders, sex offenders, drug treatment, and other specialized offender populations;

  ♦ Contract for or complete the offender management system launched a decade ago;

  ♦ Expand and develop new markets for Correctional Industries;

  ♦ Contract for new technology and a more efficient, comprehensive commissary system;

  ♦ Contract with a state university to modernize transportation and logistics operations;

  ♦ Contract for a more efficient means of food service;

  ♦ Contract for an offender telephone system to enhance security and public safety while generating revenue; and
♦ Investigate new technologies to enhance security and employee safety.

**Charge**

Study the Council on Sex Offender Treatment, including treatment methods and effectiveness and explore the possibility of licensing of registered sex offender treatment providers.

**Background**

The need for the creation of a Council on Sex Offender Treatment was identified in 1983 due to the rising rate of sexual crimes and high recidivism rates for untreated sexual offenders.

**Findings/Recommendations**

♦ Create a protected practice for sex offender treatment providers to standardize training and treatment grounded in "evidence-based" research and "best practices."

♦ Amend Chapter 110, Section 110.301, USE OF TITLE, Texas Occupation [sic] Code, by adding **AND PRACTICE: LICENSURE REQUIRED** to the section title.

♦ Require the council to work directly with CJAD [Community Justice Assistance Division], the directors of the CSCDs [Community Supervision and Corrections Departments], and the PSI [Pre-sentence Investigation] unit to develop, implement, and research dynamic risk assessment via a pilot program.

♦ Amend the Texas Health and Safety Code to include the definition of a "licensed practitioner" [as] a registered sex offender treatment provider who has been certified in the use of a penile plethysmography (PPG).

♦ Amend Texas Civil Statutes, Title 71, Chapter 6 F, Professional Counselors, Article 4512 (g)-1, Sex Offender Information Exchange, to add certain language.

♦ Exempt the TDCJ Institutional Division from the administrative requirements imposed by the creation of a protected practice for RSOTP [registered sex offender treatment providers].

**Charge**

Study the criminal justice mental health initiative in coordination with the Texas Correctional Office on Offenders with Medical and Mental Impairments [TCOOMMI].
Background

During the 77th Legislature, Regular Session, baseline data on the estimated prevalence rates of juveniles and adults with mental illnesses within the criminal justice system was presented by the Criminal Justice Policy Council and showed that TDCJ has a disproportionate percentage of mentally impaired.

As a result, the legislature appropriated $35 million dollars for a Mental Health/Criminal Justice Initiative. Despite the progress that has occurred in the last three years, continued obstacles exist that impact the overall success of the initiative. Based on monthly reports from providers, the lack of residential and substance abuse treatment and accurate mental health screening are primary barriers to the service delivery system.

Findings/Recommendations

♦ Develop enforcement provisions that link funding to compliance to Continuity of Care/MOU [memorandum of understanding] requirements.

♦ Include provisions during any future expansion of residential programs for CSCD's [sic] to be dedicated to offenders with special needs.

♦ Direct the Texas Commission on Jail Standards (TCJS) to incorporate the current rider provisions for mental health as an ongoing issue and expand to include a review of all medical issues, and report [jails] screening information in their monthly reports to TCJS.

♦ Direct TCOOMMI funded programs to establish a designated liaison to the jail and the courts to respond to pre-trial sentencing and treatment issues.

♦ Direct TDCJ to strengthen data collection and analysis in order to quantify outcomes and pursue external sources to review the outcomes of the initiative.

♦ Direct TCOOMMI to monitor and report any specific implementation changes in eligibility criteria or services that may impact offenders' special needs and report findings to the committee.
HOUSE COMMITTEE ON COUNTY AFFAIRS

Charge

Study ways to increase efficiency and provide for greater local control through restructuring county government.

Background

Commissioners courts are charged with producing a county budget and tax plan, overseeing all county facilities, allowing and supervising all business and contracts undertaken in the county's name, making appointments where allowable, and administering programs under the county's jurisdiction in the interest of the public good and programs directed by the state to be carried out at the county level.

During the interim, two approaches were primarily discussed as possible ways to increase efficiency in county government and provide for greater local control through restructuring county governments: expansion of commissioners courts from five members to either six or seven members; and reduction or elimination of duplicated services.

Recommendations

♦ Support the current constitutional and statutory structure of Texas county government and avoid any substantive changes to that structure.

♦ Acknowledge that the concept of sharing duplicated services with local municipalities does not present a problem as long as the required standards and responsibilities of the counties are met.

Charge

Consider the increased costs associated with Court Administration and Security as it relates to the implementation of the Fair Defense Act and heightened security requirements.

Background

The Texas Fair Defense Act (FDA), 77th Legislature, requires the judges of county and district courts who handle criminal cases in each county and the county juvenile boards to prepare countywide procedures for timely and fairly appointing counsel to indigent defendants in criminal and juvenile cases, and to submit their countywide plans annually.
Each countywide plan is required to meet the statewide standards for indigent defense procedures specified by the FDA.

**Recommendations**

- Encourage further research providing incentives for counties to hire public defenders to better manage and contain some of the costs associated with delivering indigent defense services.
- Encourage local government to continue to review its processes to make sure it is providing these services [indigent defense procedures] in a cost effective manner without jeopardizing the quality of court appointed counsel.
- Increase appropriations for indigent defense to relieve some of the financial burden local government is shouldering to meet state and federal law requirements pertaining to indigent defense services.

**Charge**

Review the proliferation of sub-standard housing in counties not covered by the Local Government Code, Chapter 232, Subchapters B and C, and ways to bring these areas up to minimum standards.

**Background**

Defined as colonias, a number of unincorporated settlements exist along the Texas-Mexico border lacking the basic necessities as electricity, paved roads, water and sewage systems.

In 1989, the Texas Legislature passed S.B. 2, creating the Economically Distressed Areas Program (EDAP) to provide water and sewage to residents of colonias who could not afford these basic services. Local entities who wanted to enter into the EDAP were required to adopt Model Subdivision Rules created by state agencies under the direction of S.B. 2. These rules provide guidelines for safe water and sanitary sewage systems and placed requirements for developers to install water sewage services or provide a financial guarantee to cover the cost of the systems in any new rural residential subdivision.

Currently, substandard and unhealthy conditions of colonias continue to be found in non-border areas. Subdivisions lacking water and sewage are found throughout the state, some in counties with larger, higher income communities. The poor living conditions in these non-border areas match those found in border or EDAP counties.
Recommendations

♦ Allow all counties the option to adopt the Model Subdivision Rules and give counties more authority in unregulated areas helping them to slow and eventually stop the growth of non-border area colonias.

♦ Continue funding for the Economically Distressed Areas Program.

Charge

Determine whether county fees/fines are at appropriate levels and have maintained their proper function and application.

Background

After property taxes, fees and fines are typically the second largest source of income for Texas counties. It is estimated that counties statewide collect eight percent to ten percent of their revenue from fees and fines. The Texas Legislature sets the amount a county may charge for fees and fines.

Recommendation

♦ Create a task force to look into the issue of fines and fees and decide if they need to be raised to meet the costs associated with them.

Charge

Study the concept of ways to limit unfunded state mandates by reviewing what other jurisdictions have.

Background

Texas Government Code, Section 320.001, defines a mandate as "a requirement made by a statute enacted by the legislature on or after January 1, 1997, that requires a political subdivision to establish, expand, or modify an activity in a way that requires the expenditure of revenue by the political subdivision that would not have been required in the absence of the statutory provisions."

Currently, there is no constitutional or statutory requirement limiting the passage of mandates in Texas that carry an unfunded fiscal impact on a political subdivision.
Recommendation

♦ Pass [an] H.J.R. to create a constitutional definition of an unfunded mandate requiring that all legislative mandates enacted after September 1, 2005, are required to be accompanied by appropriated state funds.

Charge

Review the amount of taxes collected and services delivered in incorporated areas versus unincorporated areas of counties.

Background

As of the 2000 census, the population of Harris County is 3.4 million. Within Harris County, 2.4 million people live in 34 incorporated areas. The percentage of Harris County residents that live within incorporated borders is 69 percent. Currently, the City of Houston comprises approximately 56 percent of the population of Harris County. The percentage was 58 percent in 1990, 66 percent in 1980, 71 percent in 1970, and 75 percent in 1960. In 2002, taxes collected within the City of Houston by Harris County totaled 52.93 percent of the county's revenue.

Recommendation

♦ There are no recommendations.

Charge

Monitor the agencies and programs under the committee's jurisdiction.

Background

In 1975, the Texas Legislature created the Commission on Jail Standards (commission) to implement a state policy that all county jail facilities meet the minimum standards of construction, maintenance and operation. The jurisdiction of the commission has been expanded since its inception to include county and municipal jails operated by vendors. The legislature also expanded the role of the commission to include consultation and technical assistance to individual facilities throughout the state and the State Jail Program.

Currently, the cost of an inspector to visit a facility is covered by the commission for the initial inspection. If the facility fails the inspection, it may apply for re-inspection in writing. Any costs associated with an inspector's re-inspection visit to the facility are currently covered by the commission. The commission has requested that it continue to cover the costs.
of the initial visit to a facility and the first re-inspection, but that any re-inspections after that be funded by the facility being re-inspected.

Recommendations

♦ Allow the commission [Commission on Jail Standards] to collect reimbursement for the cost of an inspection past the first re-inspection.
♦ Allow the funds collected from the inspection of federal facilities be granted to the commission.
HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE

Charge

Study moving the DWI [driving while intoxicated] administrative license revocation from the State Office of Administrative Hearings (SOAH) to the trial court handling the DWI criminal prosecution.

Background

Following an arrest for driving while intoxicated, intoxication assault, or intoxication manslaughter, the arrestee is subject to an administrative revocation of his or her driver's license in certain specific situations. This administrative suspension of a driver's license is instituted in advance of any finding of guilt for the underlying criminal offense. As a part of the booking process, the law enforcement officer confiscates the arrestee's driver's license and issues a temporary driving permit.

The arrestee may request an administrative license revocation hearing, which has the effect of staying the administrative license suspension until a final decision is rendered by an administrative law judge from SOAH. This administrative hearing process occurs independently of the prosecution of the underlying criminal charge and is not coordinated at all with the DWI prosecution. The current administrative hearings process encourages frivolous requests for hearings because criminal defense counsel can utilize the administrative discovery process to access evidence that might not otherwise be available in the criminal discovery process. Defense counsel can also use administrative hearings to conduct live cross examination of arresting officers. Having a concurrent administrative forum for the litigation of the issue of the license suspension, separate and apart from the criminal proceeding, is costly, inefficient, confusing, and in some respects, detrimental to the prosecution of DWI-related crimes in this state.

Texas continues to lead the nation in alcohol-related traffic incidents involving serious bodily injury or death. The administrative license revocation program uses limited state resources with no evidence that it has been successful in reducing offenses. A license suspended under the program does not necessarily take a driver off the road because the driver can apply for an occupational license.

Recommendations

♦ Eliminate the administrative license revocation program and instead return the forum for challenging a driver's license administrative suspension to the court where the criminal prosecution for the underlying DWI crime took place. The committee recommends that the legislation returning this function to counties include authorization for the county to
charge and collect a filing fee for the initiation of each such administrative license hearing.

♦ Enact meaningful changes to Penal Code Chapter 49 (Intoxication and Alcoholic Beverage Offenses). The current punishment for first-time driving while intoxicated is a Class B misdemeanor with a minimum confinement of 72 hours and maximum confinement in jail of up to 180 days and a fine of up to $2,000, or both. The minimum confinement for a first-time DWI should be increased to 30 days in jail. A subsequent offense is currently punishable as a Class A misdemeanor with a minimum confinement of 30 days in jail and a maximum confinement of up to one year in jail and a fine of $4,000, or both. A second time-DWI should be subject to a minimum confinement of 90 days in jail.

♦ Provide that felony DWI convictions or convictions under Section 49.045 (Driving While Intoxicated with Child Passenger) of the Penal Code include a minimum confinement of 180 days in jail if probation is assessed.

♦ Provide that if a defendant receives probation for intoxication assault, a condition of probation should include a minimum of 180 days in jail. Intoxication assault is currently a third-degree felony (imprisonment for not more than 10 years or less than two years and a fine of up to $10,000). A defendant can receive probation for intoxication assault.

♦ Provide that if a defendant receives probation for intoxication manslaughter, a condition of probation should include a minimum of one year in jail. Intoxication manslaughter is currently a second-degree felony (imprisonment for not more than 20 years or less than two years and a fine of up to $10,000).

**Charge**

Review the criminal laws and procedures relating to the substantive and procedural rights of defendants in proceedings before the Board of Pardons and Paroles.

**Background**

The Texas Board of Pardons and Paroles makes determinations on whether to grant, deny, or revoke parole or to revoke mandatory supervision. Another duty is the issuance of clemency and pardon recommendations to the governor. The Parole Division is responsible for supervising offenders released from prison who are completing their sentences in Texas communities. The division does not make release decisions or determine whose parole should be revoked or what special conditions should be placed on releasees. Authority for these decisions rests with the board, but the division works closely with the board and provides board members with the documentation needed to make informed decisions.
Recommendation

♦ Work with the State Bar of Texas to effect the establishment of continuing legal education programs on the issues of the substantive and procedural rights of defendants in proceedings before the Board of Pardons and Paroles, including the development of a CLE (continuing legal education) curriculum specifically focused on the unique aspects of this complex subject matter.

Charge

Review the Crime Victims’ Compensation Fund and in particular evaluate whether there has been a possible diversion of funds from crime victims as a result of prior legislation, and whether the fund meets the objectives of its authorizing legislation.

Background

The Crime Victims' Compensation Fund was established in 1979 as the payer of last resort to victims of violent crime, designed to provide reimbursement to a victim for expenses resulting from the crime that cannot be paid from other sources. Typical burdens include burial costs, medical bills, lost wages, and relocation expenses. The overwhelming bulk of the fund is generated through fees imposed on criminal defendants in the courts of this state, parole fees, and restitution. A constitutional amendment making the fund a dedicated account provides that grants and appropriations were to be used for victim-related services. However, various “victim-related” programs and services that do not directly assist victims of crime were added over the years, greatly expanding the original scope of what constituted eligible expenditures. The fund is projected to be insolvent by the 2006-2007 biennium.

Recommendation

♦ Act immediately to preserve the integrity of the Crime Victims' Compensation Fund by disqualifying expenditures that are inappropriate.

Charge

Review Code of Criminal Procedure, Article 2.13 and Article 14.03, as they relate to a peace officer's authority to act outside of the peace officer's geographic or territorial jurisdiction.

Background

Multi-jurisdictional drug task forces involve two or more separate law enforcement entities which have different jurisdictional responsibilities. These entities combine resources to enforce drug laws, under the premise that criminal activity does not limit itself to specific
locations and often moves across several counties. In an effort to combat such activities, local governments combine resources and apply for federal funds under the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program (a federal grant program with the purpose of assisting state and local governments enforce drug laws and fight violent crime) to finance the newly created task force, comprised of peace officers from different territorial jurisdictions. However, since task forces employ officers from various jurisdictions, there is a concern that officers are not adequately supervised. Multi-jurisdictional drug task force operations have experienced corruption, misuse of public funds, the fabrication of evidence, and the falsification of testimony. This problem has been exacerbated by a lack of clear accountability for addressing misconduct, with the task force officer often unaccountable to any traditional local chain of command or accountable elected official.

The Governor's Criminal Justice Division and the Department of Public Safety (DPS) entered into a memorandum of understanding (MOU) giving DPS operational command and control over all multi-jurisdictional drug task forces in Texas. This move allowed DPS to establish uniform policies for drug task forces regarding intelligence gathering, information sharing, and officer performance, which DPS monitors on a quarterly basis. Task forces that are found not to be in compliance with the guidelines may be at risk for losing funding. While the MOU gives DPS the authority to establish guidelines for the drug task forces, criticisms have been made that the policies themselves do not go far enough and that DPS lacks the authority to discipline task force officers who fail to comply with the policies.

**Recommendation**

◆ Amend the Code of Criminal Procedure to mandate the designation of a responsible local agency where particular police actions are being undertaken. The legal structure of multi-jurisdictional task forces as stand-alone entities—consisting of officers from cities or counties vested with authority to operate outside of their own originating agency’s jurisdiction—should be changed to require the presence of an officer who has original local jurisdiction where interdiction efforts are conducted.

**Charge**

Monitor the agencies and programs under the committee's jurisdiction, including considering the ongoing functions of the Office of the State Prosecuting Attorney.

**Background**

The State Prosecuting Attorney, appointed by the Texas Court of Criminal Appeals, represents the interests of the state in all appeals, suits, and prosecutions before the Court of Criminal Appeals, assists a district or county attorney before any of the fourteen courts of appeals, and reviews decisions from each court of appeals, serves as a resource for local prosecutors, and submits petitions for discretionary review to the Court of Criminal Appeals.
on the issues and cases the State Prosecuting Attorney considers to be of the greatest importance to the state. A question has arisen whether it is proper for the State Prosecuting Attorney to be appointed by the judicial body before which the attorney argues.

Recommendation

♦ Abolish the Office of the State Prosecuting Attorney. In the alternative, the legislature should direct that the office be absorbed into the Office of the Attorney General, with the attorney general appointing the position. In such an event, fairness would dictate that an analogous office be established for the advocacy of defendants' cases before the Court of Criminal Appeals, and the committee would recommend that its personnel be appointed by the Court of Criminal Appeals.
House Committee on Defense Affairs and State-Federal Relations

Subcommittee of the Whole

Charges

Examine ways that Texas and other states assist local communities that are affected by military base closures. Include opportunities for Texas to benefit from Base Realignment and Closure Commission actions.

Monitor the agencies and programs under the committee’s jurisdiction, including the implementation of the Texas Military Preparedness Commission and other legislation by the 78th Legislature.

Background

Eighteen major military installations are in Texas, creating 230,000 direct jobs and a $77 billion impact on the state. Base Realignment and Closure (BRAC) is a process by which the United States Department of Defense (DoD) transforms the future operations of the military, often by reducing costs through base closures and moving military forces away from installations that are no longer needed.

With the end of the Cold War and the advent of new quick-strike warfare, the DoD has envisioned a military structure that includes lighter forces that move on quicker deployments and use more technologically sophisticated equipment. This new strategy no longer relies on massive heavy infantry forces ready to fight Soviet forces as they were 50 years ago.

The Pentagon has gone through four previous post-Cold War BRAC rounds, in 1988, 1991, 1993, and 1995. During those rounds, defense officials picked 97 major domestic bases for closure, 55 major bases for realignment, and 235 minor installations to be either closed or realigned.

Because of the major military forces transformation, leaders have suggested that as many as 25 percent of all domestic military installations will be closed during BRAC 2005. The possibility of base closure has communities searching for ways to form new partnerships with the DoD to attract new missions to their bases and avoid an economic hit to their communities.

In Texas, the general consensus is that BRAC 2005, while painful to some communities, will be a positive venture for the state. The ability to train in the Gulf of Mexico for scenarios
involving the Middle East, and the quick access to inland bases with training facilities, allows the military to exercise multi-function systems, vessels, and aircraft in a single event with a joint purpose to train all branches of the military. Additionally, the proximity to civilian facilities, such as universities, hospitals, and industries, and the dedication of local and state civilian community leaders to service members and their families, give the military a framework for success in Texas.

The Texas Military Preparedness Commission (TMPC) is a nine-member commission appointed by the governor that works with defense-dependent communities, Congress, state and federal legislators, and state agencies to retain, improve and expand active military bases and missions in Texas. The TMPC is charged to develop a proactive statewide strategy to prevent future defense closures and realignments and to assist defense-dependent communities in preparing for future base realignments or closures.

Since 1989, 475 Texas cities have levied an economic development sales tax using the 4A/4B provisions in the Development Corporation Act (DCA). This act allows municipalities to create non-profit corporations that promote the creation of new and expanded industry and manufacturing activity within the municipality and its vicinity. In the 78th Legislature, Regular Session, H. B. 2912 overhauled the provisions in this code and as a result, the funds are no longer authorized to be used for military dependent communities that have been affected by BRAC. By restoring this provision to the DCA, communities can use this tool to fund infrastructure projects that attract new military missions or redevelop a community, should a base closure occur.

Created by S. B. 652, 78th Legislature, Regular Session, the Texas Military Revolving Value Loan Fund is a new financial assistance loan program for communities that are adjacent to active military installations. It allows the state to issue general obligation bonds not to exceed $250 million to provide loans to defense-dependent communities for economic development projects that enhance the military value of military installations. In order to receive funding for a project, the requesting community submits a fully detailed Military Value Enhancement Statement (MVES) explaining the project and use of the funds. The community is responsible for repayment of the loan in accordance with the terms of the contract. The TMPC commissioners analyze MVES for eligibility and may refer the community to another state agency that has an existing financing program. If there is no existing program, the commission may provide a loan to the defense community from the Military Value Fund. When a community has multiple projects, the commission may assist the defense community in prioritizing those projects.

The Defense Economic Adjustment Assistance Grant Program (DEAAG) was established in 1997 to assist adversely impacted defense-dependent communities in responding to or recovering from defense closures, realignments of defense installations, and reductions or termination of defense contracts. State grants are available to local municipalities, counties, or regional planning commissions representing these communities. Funding is available to local governmental entities to meet matching requirements for federal funding or for purchase of DoD property, new construction, rehabilitation of facilities, infrastructure,
purchase of capital equipment, or insurance. The state grants provide 50 percent of the amount of matching money or investment that the local governmental entity is required to provide (in some cases, special community hardship grants may be provided, up to 80 percent of the local governmental entity share). The amount of the grant ranges from $50,000 to $2 million. Applications are scored by a review panel appointed by the executive director of the TMPC. The review panel ensures that one adversely affected defense-dependent community is not disproportionately favored over another in recommending grant funding. The chief of staff of the Governor’s Office approves all grants. Funding is generally available only as the legislature appropriates. TMPC makes recommendations to the governor regarding amounts it considers appropriate, in anticipation of the 2005 BRAC.

Two bills were passed in the 78th Legislature (S.B. 652 and H.B. 591) that call for the Texas Education Agency (TEA) to pursue reciprocity agreements to expedite the transfer of military dependents to Texas' schools. From transfer credits and exit level exams to recognition of course work; military dependants are being penalized educationally as they transfer into and out of Texas schools. Similar legislation was passed in the 77th Legislature, Regular Session; however, no progress was made at the agency level. The TEA has made contact with the four priority states and has identified several ways to improve transfer policies.

**Recommendations**

- Consider revising the statute to allow for the use of 4A/4B money to allow for communities to use this outlet to attract military missions to their community, or to redevelop areas that have been slated for base closure.

- Change the Revolving Loan Fund established in S.B. 652 to be accessible for post-BRAC projects. The state should also consider the use of low-interest, or even no-interest loans to these defense communities.

- Expand the Defense Economic Adjustment Assistance (DEAAG) Grant Fund to prepare to address post-BRAC issues, including advance planning.

- Encourage communities to take advantage of the [Office of Economic Adjustment] Advance Planning Grants to begin planning for base property in the event of a closure of some, or all the missions on the base in their community.

- Continue to monitor [the Texas Education Agency's] progress to push for reciprocity agreements nationwide, especially starting with Florida, Georgia, North Carolina, and Virginia.

- Support the addition of personnel at the TMPC to provide a liaison between the commission and the base redevelopment authorities to help communities find locally-based solutions to post-BRAC 2005 redevelopment issues.

- Undertake assessment by state agencies of potential post-BRAC issues that will likely occur and make outreach efforts to begin cooperative planning with defense communities on the various infrastructure needs that will be required of them.
Subcommittee on Homeland Security

Charge

Monitor the development of a Homeland Security Strategy as set forth in H.B. 9, 78th Legislature, Regular Session, under the Office of the Governor and identify ways to bring homeland security missions to Texas.

Background

During the 78th Legislature, Regular Session, several bills were passed setting forth functions regarding homeland security. In particular, H.B. 9 provided for state structures to address homeland security missions regarding deterring, detecting, preventing, responding to, and recovering from homeland security incidents.

Recommendations

♦ Authorize and fund the [Department of Public Safety] to develop a system of automatic identity verification based on biometric identifiers such as facial recognition technology.

♦ Encourage the creation of a Texas Network Security Operations Center through a public/private partnership to provide a unified protection capability of state computer networks.

♦ Continue funding for the 2-1-1 communications network infrastructure through the state and fund a portion of the operations of 2-1-1.

♦ Encourage Texas' Congressional delegation to continue supporting a federal formula change so that federal grant monies are distributed based on risk, rather than on state equalization methods.

♦ Review future homeland security grant funding by the state to ensure that spending is based on identifiable state threat risks rather than on an equalization formula.

♦ Work with the Department of Public Safety to increase their counter-terrorism investigation and threat assessment capabilities by providing a more permanent funding for an increased counter-intelligence office.

♦ Encourage the Department of Defense to allow for another Civil Support Team to be stationed in Texas.

♦ Work with Texas' federal delegation and the United States Department of Homeland Security to attract a Regional DHS Office to be set up in Texas.

♦ Develop a plan to coordinate and implement interoperable radio communications for first responders throughout the state.
Subcommittee on Port Security

Charge

Evaluate the uses and security of the ports in the state, including optimizing their role in the deployment of military troops and what measures the state can take to minimize security risks from potential terrorist attack.

Background

Seaports are critical gateways for the movement of international commerce. More than 95 percent of non-North American foreign trade (and 100 percent of certain commodities, such as foreign oil) arrive by ship. Approximately 7,500 foreign ships carrying multinational crews and cargoes from around the globe make more than 60,000 U.S. port-of-calls each year. More than nine million containers enter the United States annually.

Texas leads the nation in marine commerce, with 12 deep-draft ports, 16 shallow-draft ports, extensive barge facilities and 423 miles of the Gulf Intra-coastal Waterway. The upper Texas coastal region includes an estimated 250 chemical plants, 26 oil refineries, and 74 gas processing plants. Those facilities supply nearly two-thirds of the nation’s petrochemical needs and 26 percent of the United States’ oil refining capacity. The state also boasts a thriving recreational fishing industry that contributes to the economic vitality of coastal communities and inspires the estimated $11.4 billion marine and coastal tourist trade, making the Texas coast the state’s second most popular destination.

Additionally in Texas, ports are widely used for shipping and receiving military combat equipment and supplies. In 2003, the Port of Corpus Christi handled 5,429 rail cars, over 1,950 commercial trucks, and 22,188 pieces of military cargo from 17 forts and bases in Texas, Louisiana, Oklahoma, New Mexico, Colorado, and Washington, all being shipped to the Middle East. The Port of Beaumont handled large amounts of military equipment coming from Fort Hood and Fort Bliss. Furthermore, this equipment, such as the Bradley Fighting Vehicles and military helicopters will return to Texas through the same ports to be returned by rail or truck to its originating base, or to one of the depot-level maintenance facilities located in Texas. With 18 major military installations across Texas, three Navy bases in the immediate Corpus Christi area, and the deployment of soldiers and equipment from Ft. Hood, Beaumont, and Corpus Christi, including a major flow of commercial goods, an important portion of the nation's security relies on Texas' 29 ports.

Recommendations

♦ Develop a program to retain key private sector emergency responder companies to ensure timely availability of experts and services during a crisis. Involvement of these
companies should extend to the state’s emergency planning processes and federal grants available to the state should be considered for these services.

♦ Develop a program for the pre-positioning of critical equipment and supplies through the retention of private emergency responders, or revise Texas’ statutes to allow for port authorities to use the magnetic strip on the back of a driver's license to identify and credential visitors and truckers to ports.

♦ Allow port authorities with integral police departments to utilize reserve police officers.

♦ Encourage [the Texas Department of Transportation] to give priority to projects that would upgrade military deployment routes and their security, including highway, rail and seaport infrastructure.

♦ Appropriate additional funding for railroad infrastructure and basic infrastructure in and around Texas’ ports.

♦ Ensure that the Governor's Office of Homeland Security informs all ports in Texas of the various grant programs at the state and federal level and provides assistance to the ports in applying for them.
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

Charge

Evaluate job training programs offered by the state and whether the state's efforts have been negatively impacted by the loss of the Smart Jobs program. Study the role of career and technology programs and their effectiveness in adult education programs, job retraining programs, post-secondary education and high school programs. Recommend legislative changes to enhance job training programs or provide incentives for business recruitment and retention.

Background

In Texas, employer-driven customized training programs are provided through two funds: the Skills Development Fund (SDF) and the Self-Sufficiency Fund (SSF). The state established SDF in 1995 to respond to the needs of local businesses and industries to train or retrain workers in their area. In fiscal year 2003, the Texas Workforce Commission (TWC), in administering the SDF for the state, awarded 32 grants totaling $12 million to create 4,214 jobs and train workers for them and to retrain workers for an additional 8,626 jobs.

The SSF was established in 1999 to respond to the needs of local businesses and industries by providing job training and support services to recipients of Temporary Assistance for Needy Families (TANF). In fiscal year 2003, TWC awarded 15 grants totaling $6.5 million to 129 businesses that committed to train and/or retrain 8,995 individuals at an average hourly wage of $9.42.

In addition to providing job training through employer incentive programs, Texas also provides job-training programs for incumbent and dislocated workers and economically disadvantaged individuals through the Workforce Investment Act and for individuals with disabilities through the Vocational Rehabilitation Act.

The 77th Legislature discontinued the Smart Jobs Fund (SJF) due to the failure of the Texas Department of Economic Development to exercise adequate administrative and fiscal oversight of the fund. A study conducted by the Office of the Comptroller of Public Accounts at the direction of the legislature found that SDF received markedly higher ratings from users compared to SJF, particularly in the areas of timely grant fund distributions; staff assistance; and reporting requirements.

Career and technology education (CATE) courses are elective courses offered to students in grades 7–12; in the 2002–2003 school year approximately 47 percent of students in those grades were enrolled in one or more CATE courses.
Data compiled by the Texas Education Agency (TEA) and the Lyndon Baines Johnson School of Public Affairs found that students enrolled in CATE courses, when compared to other students as a whole, had a lower high school dropout rate; performed comparably on the Texas Assessment of Academic Skills (TAAS); and attained employment beyond high school at a higher rate.

While enrollment in CATE courses continues to increase, state funding has declined from an average weight of 1.45 in 1984 to 1.37 in 1991 and 1.35 in 2003.

Adult education and literacy programs are funded through TEA and TWC. S.B. 280, 78th Legislature, Regular Session, required those agencies to improve the coordination and implementation of adult education and literacy programs. The legislation required TWC, under contract with TEA, to develop a workplace literacy and basic skills curriculum and required the Texas Workforce Investment Council (TWIC) to identify problems in the adult education and literacy programs at TEA and TWC; develop a system to monitor and evaluate the employment outcomes of participants in the TEA-administered adult education programs; and report to the governor and legislature on problems identified and the measures taken to address them. Noting that a report produced by TWIC estimated that 3,800,000 adult Texans are undereducated and in need of adult education services, but current programs serve only 136,000 of them, the committee stated that if problems in the adult education programs identified by TWIC persist, the legislature should direct adult funds through TWC and local workforce boards targeting specific workplace literacy strategies and programs to reach those with limited English proficiency.

**Recommendations**

◆ Supplement general revenue appropriations for the Skills Development Fund by using a similar funding approach as the former Smart Jobs program. An assessment of one tenth of one percent of taxable wages paid by an employer could be transferred to a holding fund. A corresponding decrease of the employer's unemployment insurance tax rate by one tenth of one percent would prevent a net tax increase. Upon determination at the beginning of the state fiscal year that the Unemployment Compensation Trust Fund would be at least equal to 100 percent of the floor, funds could be transferred to the Skills Development Fund, as well as a Skills Development Rainy Day Fund. The Skills Rainy Day Fund would receive a percentage of the funds to ensure that in years when the trust fund is below the floor, skills development efforts would not be drastically affected.

◆ Encourage integration of Career and Technology Education (CATE) classes into the required curriculum, and consider increased state funding to CATE programs that could positively impact the state's workforce system.

◆ Follow the Texas Workforce Investment Council's reports regarding the efforts of TEA and TWC to increase cooperation in running the state's adult education and literacy programs. If these problems continue to exist, the legislature should consider flowing the funds through TWC and the local workforce boards with the focus of developing and
implementing specific workplace literacy strategies and efforts targeted to reach those with limited English proficiency.

Charge

Review the state's role in tourism and the effects of moving tourism functions within the governor's office under S.B. 275, 78th Legislature, Regular Session. Examine how the state can assist rural communities in the promotion of tourism.

Background

Texas ranks third among all states in its share of leisure travel, with travelers spending an estimated $42.1 billion in Texas in 2003, paying $2.2 billion in state taxes in 2002, and directly supporting 177,000 jobs in 2003 with earnings of $13.3 million.

Texas provided $39.5 million in the 2004-2005 fiscal biennium to 11 state agencies involved with tourism, and the programs operated by those agencies generated a return-on-investment in state taxes of $10.97 for each dollar budgeted in fiscal year (FY) 2004. The hotel occupancy tax generated over $18.2 million for Texas counties, $247 million for cities, and more than $227 million for the state in FY 2003.

Among the most successful programs are cultural and historical, or heritage, tourism, which draw visitors who spend an average of $103.50 per day compared with the $81.20 per day spent by general leisure travelers; nature tourism, with Texas cited as the premier birding spot in the United States; and rural tourism, with rural counties receiving 22 percent of all leisure travelers to the state. Rural tourism is promoted by the Texas Department of Agriculture and the governor's office through the Texas Yes! program.

Recommendations

♦ Maintain the current funding for tourism, as well as consider ways to increase funding, considering the high return-on-investment that tourism provides. Since local entities already spend a significant amount of revenue collected from local occupancy taxes on in-state tourism, any increase in funding for state programs should be aimed at marketing Texas to lure non-Texans to the state.

♦ Monitor the impact of the Texas Yes! program, and consider continuation of the initiative.

♦ Continue to support the coordination, not the consolidation, of tourism programs.
Charge

Actively monitor the status of the Unemployment Compensation Trust Fund. Review the impact of legislative changes enacted by S.B. 280, 78th Legislature, Regular Session, on funding of the Unemployment Compensation Trust Fund.

Background

The Unemployment Compensation Trust Fund (fund) is a special fund consisting of contributions collected under Title 4 of the Texas Labor Code; interest earned on money in the compensation fund; property or securities acquired through the use of money in the compensation fund and earnings from such property or securities; amounts recovered for losses sustained by the compensation fund; and other money received for the compensation fund from any other source. The fund is to be used to pay unemployment insurance benefits to Texas workers. As of October 1, 2004, the fund balance was estimated to be $889 million, an amount that is $120.4 million above the fund floor.

Recommendations

♦ There are no recommendations.

Charge

Study how businesses currently view the Texas Workers' Compensation System and whether it deters business growth or expansion into Texas. Study any reforms that could be used as an incentive for economic development, business recruitment, or business retention.

Background

Workers’ compensation insurance provides a state-regulated system that oversees the payment of medical bills and income benefits to replace some portion of lost wages if an employee is injured at work or has a work related illness. Benefits are provided by the insurance carrier if the employer carries workers’ compensation insurance or by the employer if the company is certified by the Texas Workers' Compensation Commission (TWCC) to self-insure. If the employer provides coverage, the employee will receive statutory medical and income replacement benefits and the employer is protected from injury-related lawsuits except in cases of gross negligence.

Texas is the only state that allows any private sector employer the option of not purchasing workers' compensation coverage for employees. However, political subdivisions such as cities, counties, and school districts must provide coverage. As of 2004, an estimated 38 percent of year-round Texas employers did not carry workers' compensation coverage. These firms employ approximately 24 percent of the Texas workforce. While 38 percent of Texas employers do not have workers' compensation insurance, more than half of these
nonsubscribing employers (58 percent) indicated that they pay medical and/or wage replacement benefits to injured employees.

Concerns with the workers' compensation system include the high cost of workers’ compensation insurance coverage, rising medical costs and utilization, limited access to quality medical care, and poor return to work outcomes for injured workers. Criticism has also focused on the performance of the TWCC as the administrator of key parts of the system, including overseeing the benefit delivery system, ensuring fair and reasonable reimbursement for healthcare providers, and resolving disputes in the system. An annual study completed by the Workers' Compensation Research Institute (WCRI) compared Texas with 11 other states and found that Texas had the highest average medical costs per claim. Additionally, WCRI's study concluded Texas' costs are not just the highest among those 12 states analyzed, but among the highest in the nation. Based on the most recent TWCC medical data analyzed by TDI, the average medical cost per claim in Texas has increased approximately 35 percent from injury year 1999 to 2003. TDI found that these medical cost increases are not a result of changes in injury patterns, but rather from increased utilization of medical care.

A 2003 survey by the Research and Oversight Council on Workers' Compensation regarding work-related health problems of injured workers showed that two years after their injury, 34 percent of injured workers with soft tissue injuries were not employed. Nineteen percent of those unemployed workers returned to work at least once post injury, while 15 percent never went back to work after their injury.

**Recommendations**

◆ Address the problems in the Texas workers' compensation system, and find ways to lower costs, reduce administrative burdens, improve return to work outcomes for injured workers, and ensure that injured workers receive quality care. Rising costs associated with workers' compensation have the potential to place Texas at a competitive disadvantage.

◆ Continue to allow nonsubscription as an option; nonsubscription has given Texas businesses a crucial advantage in times when many employers could not have afforded workers’ compensation insurance. The cost savings provided by a responsible nonsubscriber program can prove valuable to businesses that may be shopping for more cost-effective venues to expand or develop new operations.

**Charge**

Study the role that Texas ports have in the economic growth of the state and how the state can partner with ports in developing trade, business recruitment and relocation and the transportation of goods and services both in domestic and foreign markets.
Background

Texas has 29 deep-draft (18 feet and deeper) and shallow-draft (fewer than 18 feet) ports, which provide access to not only 367 miles of coastline but to interior regions of the state for the promotion of trade and commerce. The Texas portion of the Gulf Intracoastal Waterway transports more than 73 million tons of cargo annually through 40,000 barges. The same amount of tonnage would equate to over three million semi-trailer trucks and over 570,000 rail cars. Texas’ ports employ nearly one million people and contribute over $87 billion annually to the Texas economy, according to a report by the Texas Ports Association.

The majority of Texas ports are public entities created by statute, but the State of Texas provides no state revenues or assistance to port authorities. In order to support their operations and functions, port revenues are generated from one or more of the following methods: a local ad valorem tax on property within the jurisdiction of the port authority; an assessment on the goods or products that flow within the jurisdiction of the port authority to ships and barges; or dockage fees by ships or barges berthing at port facilities.

S.B. 1282, 77th Legislature, Regular Session, was enacted to assist port authorities by in building infrastructure by creating the Port Access Account Fund (fund). The fund would have provided matching dollars to support port infrastructure projects. However, because of the state's budget constraints, the legislature has never allocated money to the fund. During the 78th Legislature in 2003, the jurisdiction of the fund was moved from the Texas Department of Economic Development to the Texas Department of Transportation in H.B. 3588, and the purpose of the fund was expanded to include port security projects.

Since the terrorist strikes in September 2001, more federal money has been appropriated for the security of key infrastructure including ports and waterways. Texas has many industries that could be potential targets of terrorism. Much of the nation's oil refining capacity and petrochemical industry are situated in the Houston and Corpus Christi areas. The world's largest plastics company has facilities at the Port of Port Lavaca/Point Comfort. The need for increased spending on security measures are impacting available federal dollars for dredging and maintenance and are draining local port revenues, and some port authorities now operate their own police force for security.

The United States Department of Homeland Security has stopped awarding security grants to the ports and has diverted homeland security money to the governor's office to appropriate. Governor Perry has charged the Texas Engineering Extension Service (TEEX) at Texas A&M University with distributing the funds to cities and counties for anti-terrorism equipment and homeland security planning. Because of this new funding method, ports may not receive needed funds to update security measures to protect facilities.
Recommendations

♦ Authorize TEEX to seek and evaluate applications from ports and distribute funds directly to them.

♦ Consider a method of supplementing federal and local funding to assist port authorities in building new infrastructure and maintaining ship channels and waterways, because port authorities positively impact economic development, employment, and state revenues.

♦ Instruct the Legislative Budget Board to study the economic impact Texas ports have on the state economy. Additionally, the study should determine the return of investment that could result from any state dollars appropriated or granted to port authorities through the Port Access Account Fund or other state assistance.

Charge

Evaluate the state's role in serving economic development interests in rural Texas after the passage of S.B. 275, 78th Legislature, Regular Session, and other economic development legislation from the 78th Legislature.

Background

According to the United States Bureau of the Census, Texas has the highest total non-metropolitan population of any state in the country. In 1999, Texas had a population of over 20 million, with more than 15 percent of the population, or 3.1 million people, living in non-metropolitan counties. More than 77 percent of the counties in the state are considered rural by the United States Department of Agriculture (USDA).

The Office of the State Demographer reports that during the next four decades rural areas in Texas will experience a growth statewide of 25 percent. Rural counties generally have higher poverty rates and lower income levels than their urban counterparts, and there are increased challenges related to growth in the elderly and minority populations. Since a larger percentage of the rural population will be living on fixed incomes, city and county revenues could be shrinking while the demand on services will be increasing. Data suggests that rural Texas needs assistance in generating increased economic development that will create better paying jobs and retain young people in rural areas. Barriers to economic growth in rural areas can include lack of financial resources and equipment, inadequate housing, scarce basic health care, and a heavy community dependence on a single industry such as petroleum or agriculture.

In 1997, the 75th Legislature created the Office of Rural Affairs (ORA) within the Texas Department of Economic Development (TxED). ORA’s charge was to provide information on economic development in rural areas, identify potential business opportunities, maintain an economic development database, and submit a biennial report to the legislature. ORA had two staff members, a director, and a program coordinator. After complaints by members of
the legislature that TxED had been unable to integrate rural development into its programs, H.B. 819 in 2001 transferred the Office of Rural Affairs to the Texas Department of Agriculture. In the same year, the Office of Rural Community Affairs (ORCA) was created by the 77th Legislature to develop policy specifically addressing economic and quality of life issues affecting small and rural communities across Texas. H.B. 7 created ORCA by merging two existing programs administered by the state: the Center for Rural Health Initiatives (CRHI), previously associated with the Texas Department of Health, and the Texas Community Development Program (TCDP) from the Texas Department of Housing and Community Affairs.

ORCA administers programs supporting rural health care, the federal Community Development Block Grant non-entitlement program, and programs designed to improve the leadership capacity of rural community leaders. ORCA also coordinates and monitors the state's effort to improve the results and cost-effectiveness of programs affecting rural communities, as well as, provides an annual evaluation of the condition of rural Texas communities.

The Texas Capital Fund (TCF) program is administered by the Texas Department of Agriculture through an interagency agreement with ORCA. The TCF encourages business development, retention, or expansion by providing infrastructure and real estate development funds to qualified applicants (non-entitlement cities/counties) with the express purpose of creating new permanent jobs or retaining existing permanent jobs, primarily for low-and-moderate income (LMI) people. There are over 1,200 eligible cities and counties in the state. Funds are awarded to cities and counties to make public infrastructure and/or real estate improvements to support a specific business that is expanding or beginning operations in the applicant’s jurisdiction and are contingent upon the business making a capital investment and creating/retaining jobs for Texans.

Recommendations

♦ Ensure that the regional economic development field staffs of the Texas Economic Development and Tourism Office and the Texas Department of Agriculture are not duplicating services and are working together as a cohesive force. The use of Council of Government (COG) boundaries to established service areas should be encouraged.

♦ Fund and foster the Texas Enterprise Network. Re-task the Cooperative Extension System to help entrepreneurs gain access to knowledge capital, leadership capital, and financial capital in every county of the state. Leverage government and university funding and know-how to aid success of entrepreneurs.

♦ Direct the Texas Economic Development and Tourism Office to coordinate with the Texas Department of Agriculture's Rural Economic Development Division, the Office of Rural Community Affairs, the Texas Workforce Commission, and other relevant agencies to create a one-stop website for economic development services.


**HOUSE COMMITTEE ON ELECTIONS**

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**Charge**

Review compliance with the provisions of the Federal Help America Vote Act (HAVA), and implementation through the Secretary of State's office of the legislation passed as issues surrounding HAVA become more settled.

**Background**

H.B. 1549, 78th Legislature, Regular Session, revised the Election Code to reflect new guidelines as a consequence of HAVA. H.B. 1, 78th Legislature, Third Called Session, clarified discrepancies between H.B. 1549 and other pieces of election legislation.

**Recommendations**

◊ Direct the Legislative Council to draft legislation providing stringent penalties for hacking into or tampering with DREs [Direct Recording Electronic] voting machines for introduction and consideration by the 79th Legislature, Regular Session.

◊ Appropriate the necessary funds for the five percent match to draw down an additional $100 million in federal HAVA funding.

**Charge**

Examine the risks, costs, benefits, and efficiencies of the entire canon of Texas election law for an omnibus rewrite and recodification.

**Background**

The current Texas Election Code was last recodified in 1983 following six years of interim study and review. That recodification incorporated dramatic changes in election law including the federal Voting Rights Act of 1965 and the National Voter Registration Act. Since 1983, the state's electoral process has been further impacted and altered by a number of factors, including the passage of the federal Help America Vote Act (HAVA) and the federal Bipartisan Campaign Finance Reform Act, the increase in early voting, and the use of electronic voting machines.
Recommendations

♦ Direct the Legislative Council to draft legislation consolidating state election law into the Texas Election Code for introduction and consideration by the 79th Legislature, Regular Session.

♦ Appoint a Joint House and Senate Select Committee on Election Law Recodification to conduct continuing review of the Texas Election Code in preparation for omnibus recodification.

♦ Direct the Secretary of State and the Texas Ethics Commission (TEC), in cooperation with the Legislative Council, to identify laws that are obsolete or in need of substantive revision to achieve and maintain efficient and ethical elections and to forward the recommendations to the joint committee.

**Charge**

Monitor the Texas Ethics Commission rulemaking for the implementation of H.B. 1606, 78th Legislature.

**Background**

The Texas Ethics Commission (TEC) was evaluated by the Sunset Advisory Commission, but because TEC is established through the Texas Constitution its continued existence as a state agency is not under review. However, the process of evaluation offers the legislature an opportunity to revise and update TEC procedures.

The enactment of H.B. 1606 combined the recommendations of the Sunset Advisory Commission with more stringent financial disclosure laws, among certain provisions, including campaign finance. The bill increased the autonomy of the executive director, streamlined TEC’s sworn complaint process, and expanded the use of electronic filing and the Internet to implement administrative rules to administer laws under its jurisdiction.

**Recommendation**

♦ Modify Administrative Rule Section 20.579 (c), which the TEC adopted, requiring candidates for county chair of a political party to file reports otherwise required only for unopposed candidates so that unopposed candidates for county chair are not required to file these reports.
HOUSE COMMITTEE ON ENERGY RESOURCES

Charge

Assess the development of new exploration activities and maintenance of current production of natural gas. Evaluate opportunities to expand infrastructure for liquefied natural gas (LNG) in Texas and explore the feasibility of LNG imports into Texas.

Background

The United States consumes approximately 25 percent of the world's annual natural gas production, although North America contains only about four percent of the world's proven natural gas reserves. Increasing natural gas prices and decreasing production and transportation costs for liquefied natural gas (LNG) have combined to make LNG an increasingly attractive energy source. Although LNG imports have comprised less than one percent of the United States' natural gas supply, the National Petroleum Council has projected that LNG imports will account for 14 to 17 percent of the nation's natural gas supply by 2025.

Texas has a sophisticated pipeline infrastructure and adequate port access, which would allow the state to serve as a host to LNG terminals. There are currently seven LNG terminal facilities in the permitting process in Texas.

Recommendations

♦ Encourage continued production of marginal low pressure wells (defined by a measured threshold) by exempting those wells from the 7.5 percent severance tax.
♦ Assure coordination of agency LNG permitting activities.
♦ Encourage expeditious LNG permitting.
♦ Establish [an] LNG public education initiative.

Charge

Examine the benefits and challenges associated with alternative forms of energy generation technologies, such as wind and hydrogen fuel cells, and what if any state government involvement should be considered. (Joint interim charge with Regulated Industries Committee)
Background

Oil and natural gas are the leading energy resources in Texas, with alternative and renewable energy generation comprising less than three percent of the current energy mix in Texas. Alternative and renewable energy sources include wind, solar, hydro, biomass, and hydrogen fuel cells. Federal tax credits, regulatory incentives, technological improvements, and rising oil and natural gas prices have begun to make wind energy economically competitive.

Among the challenges impacting the increased use of wind energy is a lack of transmission capabilities from rural generation areas to urban users, and difficulty acquiring financing for wind projects.

Hydrogen fuel cells use chemical energy from hydrogen to generate energy without combustion or pollution. The only by-products are water and useful heat. Hydrogen fuel cells could be used to power automobiles, buses, homes, businesses and factories.

Recommendations

♦ Undertake further study to determine if the RPS [renewable portfolio standards] for wind energy should be increased.
♦ Request the PUC [Public Utility Commission] to designate the planning, route, and permitting process as "prudent expenditures" to ensure timely cost recovery.
♦ Request the PUC to identify "competitive wind zones."
♦ Move the requirement for interconnection agreements to just prior to the construction phase.
♦ Lower the standard of full utilization of transmission until just prior to [the time] construction commences.

Charge

Evaluate current bonding requirements for oil and gas operators and explore alternative methods of financial security that would balance the economic interests of small oil and gas producers with environmental concerns.

Background

Oil and gas operator financial assurance requirements mandated by S.B. 310, 77th Legislature, 2001, took effect in March 2002. As of August 2004, 503 active operators had not been bonded as required. Those unbonded operators total approximately eight percent of the total number of operators in the state and account for approximately one percent of the state's oil and gas production.
Recommendations

- Continue the bonding program put in place by S.B. 310 insisting that all operators be financially accountable for wells and facilities.
- Provide a legislative statute to accept well plugging insurance as an additional means of financial assurance.
- Develop a plan providing incentives for voluntary well plugging.
- Monitor well transfers, assessing transfer approval on the basis of average daily oil and gas production from the total of all active and inactive wells. If the transfer would cause an operator's daily average to fall below an established threshold, the transfer would be disapproved and would necessitate additional financial assurance.
- Identify precursors for well abandonment. Considerations could include compliance history, low average well production, and number of inactive wells. Early identification could alert the TRC [Texas Railroad Commission] and allow them to intervene before the well is abandoned.
HOUSE COMMITTEE ON ENVIRONMENTAL REGULATION

Charge

Conduct a study on the regulation, design, planning, construction, installation, operation, licensing, maintenance, and inspection of on-site sewage disposal systems.

Background

Pursuant to Chapter 366, Health and Safety Code, it is public policy to eliminate and prevent health hazards by regulating and properly planning the location, design, construction, installation, operation, and maintenance of on-site sewage disposal systems. A person may not construct, alter, repair, extend, or cause to be constructed, altered, repaired, or extended, an on-site sewage disposal system that does not comply with the provisions of Chapter 366 and applicable rules adopted by the Texas Commission on Environmental Quality (TCEQ).

Authorized agents (AAs) are responsible for implementing the on-site sewage facility (OSSF) program and are required to appoint designated representatives (DRs) who are responsible for conducting the necessary reviews and permitting inspections. TCEQ licenses and regulates individuals involved in the OSSF installation and permitting process, and TCEQ and AAs may establish whatever fee structure is necessary to fund their respective programs.

The House Committee on Environmental Regulation reported the following findings:

♦ Current compliance education and training for OSSF owners and local elected officials who oversee and enforce the OSSF program is inadequate.

♦ The current system for enforcing OSSF maintenance requirements is inadequate.

♦ Current enforcement of TCEQ regulations applicable to OSSF licensees is inadequate.

Recommendations

♦ Instruct TCEQ, in conjunction with the Texas On-site Wastewater Treatment Research Council, to explore and implement innovative compliance education and training programs for OSSF owners and elected officials who oversee and enforce the OSSF program.

♦ Require that TCEQ license OSSF maintenance providers.
Instruct TCEQ, in conjunction with the Texas On-site Wastewater Treatment Research Council, to appoint a stakeholder committee to develop a tracking system.

Create an independent board attached administratively to TCEQ comprised of installers, site evaluators, regulators, maintenance providers, and public members to oversee the training and licensing of installers, site evaluators, regulators, and maintenance providers or other appropriate matters.

**Charge**

Examine compliance histories and incentives to reward compliance by entities regulated by the Texas Commission on Environmental Quality.

**Background**

H.B. 2912, 77th Legislature, required TCEQ to develop a uniform standard for evaluating compliance history for any person regulated under Texas Water Code, Chapters 26 or 27, or Texas Health and Safety Code, Chapters 361, 382, or 401.

Legislation on compliance history was also considered in the 78th Legislature, Regular and Called Sessions.

The House Committee on Environmental Regulation reported the following findings:

- The legislature has not provided TCEQ the tools to reasonably classify the wide range of entities it regulates based on compliance history.
- TCEQ has defined "repeat violator" too broadly.
- There is a substantial amount of compliance information that is of dubious value in evaluating compliance history objectively.
- Information on compliance history from other jurisdictions, including the United States Environmental Protection Agency, may not be meaningful uniformly for use in evaluating compliance history.
- The use of regulatory flexibility should be widely available to entities that perform satisfactorily based on compliance history and other factors determined by the TCEQ.

**Recommendations**

- Eliminate the requirement that TCEQ classify entities it regulates based on compliance history.
- Eliminate the requirement that the agency [TCEQ] evaluate compliance history based on a uniform standard.
♦ Provide some statutory guidance for the agency to use when determining if an entity is a repeat violator. Include provisions requiring the violations to be in the same environmental media and have some relationship to each other.

♦ Provide that notices of violation not be required to be a part of any evaluation of compliance history.

♦ Allow entities some opportunity to review and respond to compliance information before it is placed on the Internet.

♦ Allow the agency [TCEQ] to determine when to announce inspections based on its internal policies.

♦ Give TCEQ clear statutory instructions that penalties should not automatically be increased because of unresolved notices of violation.

♦ Provide that the statute only require information from the U.S. EPA [United States Environmental Protection Agency] that is reasonably available.

♦ Provide that the statute not require information from other states.

♦ Return the ability to use regulatory flexibility to an "equivalency standard" from a standard of "clear environmental benefit."

♦ Provide that the adequacy of demonstrations required of an applicant for regulatory flexibility be determined by TCEQ.

**Charge**

Monitor the implementation of H.B. 1365, 78th Legislature, Texas Emission Reduction Plan, to ensure compliance with federal Clean Air Act standards and deadlines.

**Background**

The Texas Emissions Reduction Plan (TERP) was established by S.B. 5, 77th Legislature, to help improve and maintain good air quality in areas throughout the state. One of the primary TERP programs administered by TCEQ is the Emissions Reduction Incentive Grants Program. Eligible projects include new purchases, replacements, and repowers for vehicles, equipment, locomotives, and marine vessels; retrofit technologies; infrastructures for idle reduction technologies and alternative fueling stations; and qualifying fuels. In 2003, TCEQ implemented the Small Business Grants Program for businesses that own and operate not more than two vehicles or equipment.

**Recommendations**

♦ There are no recommendations.
**Charge**

Monitor the agencies under the committee's jurisdiction.

**Background**

H.B. 1567, 78th Legislature, Regular Session, marked a policy change in Texas' statutory provisions regarding the disposal of low-level radioactive waste. TCEQ continues to implement the provisions of H.B. 1567 by meeting the statutory time line for the acceptance and processing of low-level radioactive waste disposal applications.

**Recommendations**

- Instruct TCEQ to refocus resources in both compliance monitoring and enforcement to give the highest priority to violations that result or could result in actual harm to the environment.
- Strengthen the enforcement process by eliminating individual assessments on most paperwork violations, and focus individual assessments on violations that result in environmental harm and establish standard minimum penalties for violations.
- Ensure that regulated entities do not gain an economic advantage by failing to comply with requirements.
- Streamline the enforcement process and reduce the timeframe by up to 125 days as a result of standardized penalties and simplifying policies and procedures.
- Allow small business and local governments to focus limited financial resources on corrective actions.
HOUSE COMMITTEE ON GENERAL INVESTIGATING

Charge

Continue investigation into the Houston Police Department Crime Lab and other crime labs, as necessary.

Background

Problems in the Houston Police Department (HPD) Crime Laboratory, dating back to 1997, have generated significant public controversy and led to the review of more than 400 criminal cases. Audit reports have identified many ongoing problems including, among others, procedural deficiencies, lack of external and internal oversight, inadequate training of laboratory personnel, and mishandling of evidence.

The 78th Legislature, Regular Session, enacted H.B. 2703 to address some of the problems identified in Houston. H.B. 2703 established an accreditation process for all crime laboratories and guidelines for the admissibility of evidence examined or tested in a crime laboratory.

Recommendations

♦ Continue to monitor the HPD Crime Lab[oratory].
♦ Investigate any new allegations concerning any crime lab[oratory].
♦ Revisit H.B. 2703 for recommended changes or corrections.
♦ Explore establishing regional crime laboratories in Texas.
♦ Recommend that an outside independent investigator or master be appointed to examine additional problems in the HPD crime lab[oratory].
♦ Recommend that the HPD crime lab[oratory] address the issue of funding, with a special focus on the need, if any, for stand-alone funding for the crime lab[oratory] independent of the police department budget.
♦ Recommend that the HPD crime lab[oratory] fully utilize grants available through the National Institute of Justice and the Department of Justice. As the funds are obtained, they should be used for the specific purpose for which they were obtained, not to supplement the crime laboratory's budget. Grant funding must be used in a timely manner to achieve the maximum benefits.
♦ Recommend that the HPD crime lab[oratory] either develop or purchase an evidence tracking system. The evidence tracking system should employ the use of a bar code. The
bar code can then be associated with a laboratory report number which will open a case file. The bar code can be scanned which will update the system as to the location of the evidence. Cases that do not have a completed report could then be tracked. The tracking system should also provide a laboratory management system, capable of providing information about case assignments, completed work, and evidence location.

♦ Recommend that the City of Houston adequately fund the HPD Crime Laboratory.

♦ Recommend that the monitoring and oversight of the crime laboratory remain the responsibility of the police chief.

♦ Direct the Texas Department of Public Safety (DPS) to implement a procedure to advise the appropriate law enforcement agencies and the district attorneys when they close or cease testing of any particular science in their laboratories. Require that this notification be given prior to closure.

♦ Direct DPS to notify the governor, lieutenant governor, and speaker of the house, chair of the General Investigating Committee, and chairs of the legislative oversight committees in both the house and the senate [when DPS closes or ceases testing of any particular science in their laboratories].

♦ Direct DPS to develop and maintain a system to track performance reviews and evaluations for each employee.

♦ Direct DPS to establish a peer review system to denote peer review and performance review, which would take place every three months.

**Charge**

Continue review of the creation of special purpose districts (SPDs) and their use of tax dollars.

**Background**

Special purpose districts have been the subject of ongoing interest, particularly the taxing authority and the oversight of these districts. Prior to the 78th Legislature, there were 1,336 SPDs assessing property taxes, 526 assessing sales taxes, and 89 imposing sales and use taxes.

**Recommendation**

♦ Establish a central database at the Office of the Comptroller of Public Accounts, using an adaptation of an existing computer program, for information regarding all special purpose districts.
Charge

Investigate [the] use of funds at Texas State Technical College.

Background

Information alleging possible misuse of funds by Texas State Technical College (TSTC) relating to the purchase of a Beechcraft King Air E90 aircraft was submitted to the House General Investigating Committee (committee). The allegations prompted the committee to review the use of funds by TSTC.

Recommendations

♦ Direct TSTC System to reimburse TSTC Waco campus from the monies derived from the sale of the aircraft for the cost of maintenance and housing of the aircraft.
♦ Recommend that the Appropriations Subcommittee on Education carefully review this transaction and any other questionable practices as they relate to TSTC during the budget process.
♦ Direct TSTC to develop a long range plan when expanding their curriculum, which may involve a substantial expenditure.
HOUSE COMMITTEE ON HUMAN SERVICES

Charge

Study ways to increase the adoption of special needs children through efficiency in the Adoption Assistance Program. This charge was reassigned to the Select Committee on Child Welfare and Foster Care.

Charge

Study the incidents [sic] of abuse and neglect of individuals receiving services in community care settings. The committee will evaluate the effectiveness of procedures to prevent abuse and neglect, methods to streamline reporting and investigations, and the adequacy of available enforcement mechanisms.

Background

Following widespread media coverage of apparent Adult Protective Services (APS) and Child Protective Services (CPS) failures in El Paso, San Antonio, Dallas, and other cities in Texas, Governor Rick Perry issued Executive Order RP 33 and Executive Order RP 35 mandating an investigation of the apparent crisis within APS and CPS throughout the state.

Based on the findings of the investigation, the House Committee on Human Services concluded that the agency is "overburdened, poorly equipped and poorly supervised, under-funded, and guided by questionable policies, [and that] APS consistently fails to fulfill its core mission. Administrators, caseworkers, critics, advocates, and citizens alike have agreed that the agency is in crisis."

The investigation of CPS by the Office of the Inspector General (OIG) of the Health and Human Services Commission (HHSC), revealed that CPS is also experiencing a "statewide, systemic failure that renders it unable to fulfill its mission to protect the most vulnerable among us."

Recommendations

Adult Protective Services

♦ Establish a standing subcommittee on Aging and Disabled Texans under the House Committee on Human Services. The subcommittee will coordinate an aggressive, comprehensive review of issues related to aging and disabled Texans and identify priorities for legislative action to prepare Texas for an aging population.
♦ Examine the underlying causes of abuse, neglect, exploitation, and self-neglect in elderly and disabled populations and develop comprehensive legislation and policies to address the needs of elderly and disabled Texans.

♦ Review statutes and policies controlling guardianship in Texas. The review should focus on:

- Consulting experts on guardianship within the state to develop improvements and innovations in guardianship services and other methods of protecting and enhancing the quality of life for individuals with reduced capacity and disabilities;
- Increasing the range of guardianship options available under law to adults with disabilities and reduced capacity;
- Transferring guardianship functions out of APS and into the Department of Aging and Disability Services (DADS) by statute;
- Increasing the funding for county-based guardianship services through private, non-profit guardianship service providers throughout the state, and developing an equitable system for funding guardianship services in all 254 Texas counties;
- Working with established associations representing guardianship service providers to establish effective standards for quality assurance and state regulation of private guardianship service providers;
- Strengthening the existing network of private guardianship service providers in preparation for the transfer of additional guardianship cases to private providers in lieu of state-administered guardianships;
- Exploring the partial restriction of liability for guardians who undertake responsibility for individuals whose condition or incapacity poses a heightened risk to the public in order to encourage guardianship placements for such individuals;
- Developing a statewide guardianship funding strategy through the introduction of legislation in order to equitably fund guardianship services throughout all 254 Texas counties.

♦ Encourage the formation of innovative and efficient public-private partnerships to be used to expand the "safety net" that protects elderly and disabled Texans.

♦ Review statutes controlling capacity determinations, and rewrite existing statutes or create new ones that will improve the ability of APS to secure reliable capacity determinations for all clients using qualified personnel.

♦ Direct APS to address the following issues regarding capacity screening procedures:
♦ APS should formulate a new policy to affirm that the courts are the final authority in capacity determinations, not caseworkers lacking expertise in capacity assessments.

♦ APS should make the development of a reliable capacity screening system a top priority. The new capacity screening system should employ consistent, understandable, and uniform standards and specially trained staff with expertise in capacity assessments.

♦ Review thoroughly the APS philosophy regarding self-determination in light of the development of a reliable capacity screening system.

♦ Direct APS to improve the quality of investigations into reports of abuse, neglect, or exploitation of the elderly or disabled in order to increase prosecution of perpetrators, create better records for judicial interventions, and lower the incidence of abuse among vulnerable populations.

♦ Direct APS to create a specialized staff of investigative workers who will focus solely on investigations and function independently of caseworkers providing services to clients.

♦ Create specialized investigation units for complicated elder abuse issues such as financial and legal exploitation and identity theft.

♦ Develop a target caseload for all APS caseworkers. The target caseload should be developed in consideration of current Texas caseloads and national "best practices" targets. The target caseload system should be phased in over a five-year period.

♦ Develop a comprehensive caseworker training program to improve the level of training caseworkers receive prior to assuming their duties. As part of the training program, APS should consider:

  ♦ The use of a mentoring training program to pair new caseworkers with experienced workers at the early states of caseworker tenure;

  ♦ A graduated caseload system that increases caseloads for new caseworkers at a pre-set rate over a fixed period of time;

  ♦ Evaluation and testing to ensure training efficacy;

  ♦ The development and promotion of on-going training and caseworker certification programs; and

  ♦ The use of specialized training for caseworkers dealing with complex issues of abuse, neglect, and exploitation.

♦ Provide funding for improved compensation and tenure incentives to attract and maintain high quality APS caseworkers.

♦ Direct the Department of Family and Protective Services (DFPS) to develop plans to increase the recruitment of caseworkers with education in "helping professions," such as psychology and social work.
Direct DFPS to work with the Texas Higher Education Coordinating Board (THECB) to develop strategies to increase the supply of graduates with degrees in the helping professions from institutions of higher learning within the state of Texas, as well as to design training and education that produces graduates with skills suited to the staffing needs of APS.

Provide for the purchase and use of adequate caseworker equipment and resources. Such equipment should include, but not be limited to:

♦ New technology that will allow APS workers to access data, record images, and communicate with service providers in the field;
♦ Sufficiently funded mobile communications capabilities; and
♦ Protective gear for hazardous environments.

Provide immediate and continued protections for caseworkers who come forward to report APS failures and deficiencies.

Direct APS to develop more accountability mechanisms to ensure that individual caseworkers meet the agency's stated mission to protect the unprotected.

Study the benefits versus the drawbacks of centralized control and administration of APS functions from Austin, including intake, community partnerships, and individual case management.

Direct APS to monitor and adjust regional divisions of the agency to ensure the highest level of safety and service to clients, while maximizing efficiency.

Direct HHSC to develop meaningful, system-wide, and transparent mechanisms to gauge the outcomes and performance of all APS programs. These mechanisms should be designed to ensure that performance measurements are required to be transmitted throughout the APS/HHSC chain of command.

Direct HHSC to develop and rigorously apply accountability standards for individual caseworkers. While the committee recognizes that excessive caseloads and inadequate training and support contribute to poor outcomes, there is a need to distinguish proficient caseworkers from those whose performance is deficient in order to protect clients.

Require HHSC to develop adequate mechanisms to oversee unlicensed nursing homes and assisted living facilities throughout the state.

Establish a 1-800 line to receive CPS complaints [which] should also accept complaints regarding APS.

Fund the development of comprehensive, state-wide public awareness and prevention campaigns to protect the elderly and disabled at risk of abuse, neglect, or exploitation. Such strategies should be developed with the aim of assisting at-risk citizens, as well as reducing the influx of new cases to the APS system.

Strengthen penalties for the abuse, neglect, and exploitation of the elderly and abused, as well as increase efforts to investigate and prosecute such crimes.
Child Protective Services

♦ Address the human resources crisis in CPS.

♦ Make an emergency appropriation to CPS, to the extent that emergency funding is available now, to address its immediate need for caseworkers and lower caseloads.

♦ Encourage HHSC to develop a ten-year implementation plan that will bring CPS' average caseloads to the number recommended by the Child Welfare League of America.

♦ Review policies and statutes that prohibit CPS from revising its hiring practices and providing the agency with more flexibility in human resources. Local CPS managers should be authorized to temporarily exceed state-imposed staff ceilings in anticipation of high turnover rates. Human resources administrators should monitor turnover, caseloads, and vacancy rates, and have the authority to address imbalances and critical staffing situations. Hiring practices within CPS should be revised to enable local offices to maintain authorized staffing levels in order to avoid overloads that negatively impact the quality of casework. The CPS central office should stand ready to authorize exceptional actions in response to situations that cannot be addressed at the local level through normal operating practices.

♦ Provide funding for increased administrative support staff.

♦ Do not grant extensions of the mandatory 12-month dismissal date for CPS cases unless truly exceptional circumstances exist.

♦ Direct CPS, assistant district attorneys, and courts to all set the target for completion of CPS services at no more than nine months. If this requires that the service authorization-service initiation process be further expedited, that should be done. Requests from attorneys to extend the 12-month deadline should be carefully reviewed the courts.

♦ Appoint attorneys for indigent parents to represent them during the initial removal proceedings.

♦ Direct DFPS to create special investigator positions within CPS and staff these positions with individuals who have a law enforcement background or training in law enforcement investigation techniques.

♦ Instruct judges and prosecutors to carefully consider the practice of routinely accepting a voluntary relinquishment of parental rights in cases where grounds exist for an involuntary termination. Under some circumstances, the state should preserve its ability to terminate parental rights when there is a subsequent birth of a child to a parent who has previously lost parental rights involuntarily.

♦ Consider legislation that would reduce the time for family reunification to six months for parents who have had repeated or numerous child removals and/or parental rights terminations; or who have failed to receive treatment for substance abuse/addiction; or who have given birth to a child born addicted to drugs.

♦ Direct district attorneys' offices, in conjunction with CPS, to reinforce the principle that mere participation in services is not sufficient to justify reunification. The purpose of a
service plan is to lay out a series of activities that create a process designed to produce desired outcomes. The focus should be the outcomes, not participation in the process. The final outcome should be observable and demonstrable changes — indications that participation in the process has resulted in the ability to provide adequate care for children.

♦ Direct CPS to refrain from returning children home before the Authorization To Place hearing is held, unless the court has provided prior authorization to do so.

♦ Direct that CPS supervisors be released from the duty to attend every court hearing with their caseworkers.

♦ Improve the quality of representation by attorneys ad litem for children in CPS cases by requiring attorneys ad litem to meet with their clients in the client's setting prior to the 14-day hearing and subsequent hearings, whenever possible. Attorneys ad litem should be held accountable for visiting and properly representing their children.

♦ Ensure the accountability of attorneys ad litem by requiring them to file a "statement of contacts" with their client prior to the 14-day hearing. Courts should develop a standardized format that assists attorneys ad litem to record and present information to the court regarding each child's case and the details of the attorney's visits with his or her client.

♦ Require attorneys ad litem to attend three hours of continuing legal education (CLE) each year if they are taking CPS cases. The training should focus on the duties of attorneys ad litem, CPS case procedures, and best practices for this type of legal work.

♦ Explore prosecution of bad faith reports of child abuse or neglect.

♦ Encourage the development of family drug courts in all Texas counties for all families in the CPS system, based on the existing court in El Paso. Counties should explore the possibility of using Court Improvement Project funds for this purpose, in addition to exploring the availability of federal and state matching funds for local dollars spent on these projects.

♦ Direct CPS to close the legal loophole which allows it to open a "new" case on the same child or children, providing that a "new" event occurs.

♦ Direct counties to provide urgently needed additional court and district attorney resources, as well as court support staff. Each county should review its own situation pertaining to this issue and respond accordingly.

♦ Direct CPS to restate its values and expectations for its mission performance. These values should include openness, cooperation, accountability, and demonstrated effectiveness. CPS' statement of values and expectations should be thoroughly discussed with current staff and made a part of the training curriculum for new employees. When instances of non-compliance are found to have occurred, it is recommended that management take immediate and decisive action to hold individuals fully accountable, throughout the hierarchy of the department from top to bottom.
Direct CPS to take strong and definite steps to repair its damaged relationships in the community. CPS must continue recent efforts to direct its focus on community integration, community partnerships, and responsiveness to the community. Opportunities for new and creative partnerships with the private childcare sector should be a priority.

Direct CPS and the Child Welfare Board to continue their recent efforts to develop a mutually satisfactory and open working relationship.

Direct CPS to develop caseworkers who are cross-trained to provide multiple CPS services on a given case and who can provide case management for parents and children when both are receiving services.

Direct CPS to explore more efficient case management by assigning entire CPS units to particular geographical areas.

Require all casework requirements imposed at the regional level to be in step with statewide requirements, and that any deviation be scrutinized by the central agency office to ensure that it has been approved by CPS management staff.

Make resources necessary to do proper casework available to caseworkers immediately.

Direct CPS to review the current in-house method of obtaining shelter and foster home placement for a specific child. CPS should determine whether efficiencies could be gained by further centralizing this placement function.

Direct CPS to explore the possibility of creating a "traveling unit" of caseworkers who focus on making visits to children who are placed in rural areas or who have been placed out of their home county.

Provide CPS investigative caseworkers with higher compensation than ongoing caseworkers and investigate other methods of compensation that encourage retention among investigative workers.

Direct district attorneys' offices and CPS management to develop a mutual philosophy and common guidelines for evaluating cases; to meet to review individual cases that can be brought by either agency for review and clarification; and to meet periodically to ensure that case directions reflect the principles of child protection, permanency, and prosecutorial discretion.

Reevaluate policies and practices motivated by the requirement that states use “reasonable efforts” to reunify families in order to recognize [and] apply exceptions to reunification policy as warranted, especially in cases involving multiple, previous removals of children.

Direct the DFPS Licensing Division to review the unintended consequences of its recent requirement stating that children aged five and under shall not remain in an emergency shelter for longer than 15 days.

Direct CPS to maintain ongoing collection and analysis of non-investigative case trends and caseload forecasts.
Review unit-level CPS staff turnover data regularly to identify questionable supervisory or management practices. Individual supervisors should be held fully accountable in situations where poor supervisory practices have contributed to understaffing problems.

Include more careful screening, using consistent guidelines in the initial intake of cases. Cases that are clearly without merit should be rejected at intake or assigned as Priority III for "follow-up" or confirmation, depending on the circumstances surrounding the report. For those cases that are accepted for investigation, complete information must be collected at statewide intake to reduce the amount of duplicative effort required by CPS caseworkers at the local level.

Make all reasonable efforts to limit reassignment of caseworkers, supervisors, attorneys, therapists, and primary care providers in any one case in all components of the child welfare system.

Direct CPS to improve staff training and development [and to] continue its efforts to design and implement additional management development activities for new CPS supervisory and management staff. These efforts should be based, at least in part, on the needs identified through direct, face-to-face communications with front-line caseworker staff. Conflict resolution skills are a vital asset to caseworkers, and they should be included in the curriculum.

Initial training programs for new CPS caseworkers should be re-examined and extended. Initial training should include more hands-on experiences with tenured caseworkers in the unit they will be joining. Initial training should integrate more practical, on-the-job skills training and shadowing.

Direct CPS to provide caseworkers and supervisors with the opportunity to periodically evaluate service providers.

Establish a formal process for periodic evaluation of service providers by front-line CPS staff and other agency personnel, such as the district attorneys, CASA volunteers, and attorneys ad litem. Evaluations should consider whether the contractors provide their services at times and locations convenient to the clients.

Direct CPS to review the level of support given to the CPS legal unit.

Direct CPS management, in cooperation with the district attorney’s office, [to] evaluate the CPS legal unit workload and make necessary adjustments to ensure that staff are able to perform their duties properly.

Encourage the creation of an integrated automated system to speed the sharing of information related to CPS cases. Local law enforcement and CPS should work toward creating an interagency “alert system” so that CPS caseworkers can be kept abreast of their clients’ domestic disturbances, incarcerations, and new criminal history. It is also recommended that law enforcement and CPS work together, at the state level if necessary, toward providing CPS direct access to TCIC and NCIC. Caseworkers require accurate and timely criminal histories on individuals who are being considered as a caregiver for a child.
Direct CPS to establish a policy requiring caseworkers to notify the child’s attorney of significant events. CPS should refrain from moving children within the foster care system without prior notice to the child’s attorney except in urgent cases.

Improve the Child Fatality Review process.

Direct CPS to increase interaction [between] mid-management staff [and] front line staff, formally and informally, to better understand their day-to-day work.

Establish an emergency intake priority. A "911 Priority" should be established and used as an immediate response priority with police escorts. [Current law] should be changed to reflect this change, and require a police escort to accompany CPS caseworkers for 911 Priority calls only.

Grant expedited access to statewide intake professionals who have statutory reporting requirements (e.g., physicians).

Require CPS investigators to receive more law enforcement-style investigation training to improve the quality of their investigations.

Implement a multi-disciplinary team concept involving CPS and law enforcement professionals statewide.

Require CPS workers and detectives work to together in a neutral and child friendly environment that encourages better coordinated and more timely investigations for the benefit of victims.

Direct the Department of Protective and Family Services (DFPS) to reward tenured frontline workers with career progression and salary increases that are based on skill, position within the agency, educational level, and years of service.

Require that new caseworkers receive a limited caseload during their first year of service.

Act immediately act to impose a maximum statewide caseload average for CPS caseworkers with the priority of reducing caseloads to a manageable level as quickly as possible.

Direct CPS to develop a "train the trainer" program [which] will allow more frequent training of CPS staff with lower costs.

Require that CPS staff be certified in their respective areas of specialization. Evaluations should be done periodically to document skills and knowledge.

Certification of achievement should be provided by the training provider.

Direct CPS to develop a centralized system to track staff compliance with training requirements.

Direct DFPS to develop web-based, video and teleconferencing training modules to allow caseworkers more access to training.

Direct CPS to determine equivalencies for on-the-job training versus classroom training, and create a system to credit caseworkers for both types of training.
Direct CPS to institute training workshops to keep staff apprised of all reforms made to CPS policies and practices as they develop following this legislative session.

Require caseworkers to log at least 12 hours of in-service training per year for continuing education. The agency should monitor compliance with this requirement along with the regular performance review process.

Direct DFPS to actively explore the development of internship programs with colleges and universities to increase the potential pool of CPS caseworker applicants.

Restore prevention programs that were cut as a result of the appropriations process in the 78th Legislature [and] prioritize funding for these programs based on effectiveness.

Restore funding identified in the HHSC 2006-07 LAR exceptional item 12. Restoration of this item will restore funding to the STAR program and allow it to continue functioning in all 254 Texas counties.

Require HHSC to develop a broad-based, interagency approach to promote child abuse and neglect prevention.

Increase funding to combat substance abuse in the state of Texas. Current and future programs should place an emphasis on programs whose treatment focuses on the family unit.

Mandate and fund the inclusion of sufficient evaluation mechanisms to accompany all state-funded prevention initiatives in order to identify the most efficient, cost-effective, and promising approaches for the future. Such evaluation mechanisms should be, whenever possible, automated and seamless so as to reduce time spent on paperwork by caseworkers and care providers.

Establish a pilot study to examine the consolidation of family-based safety services and in home safety services.

Require family-based services and in-home safety services to design and implement community-based programs to increase child safety for children in community care.

Require family-based services to include extensive drug treatment services to substance abusers, as well as to children raised with them.

Appropriate funding for the implementation of community based programs in all counties and regions of the state.

Direct CPS to reemphasize the importance of assigning caseworkers to particular geographical areas to improve their relationships with families and local community partners.

Fund additional pilot projects that provide community based services for CPS intake calls that are designated as information referrals.

Direct CPS to cultivate community partnerships to actively prevent child abuse and neglect and provide early intervention.
Direct DFPS to study the effectiveness of its current community-based prevention and early intervention programs.

Implement a blue ribbon task force in counties that have not established community collaborative efforts.

Direct CPS to cultivate better working relationships with community-based nonprofit agencies serving children [to achieve certain goals cited in the committee report].

Fund the HHSC 2006-07 LAR exceptional item 11. Exceptional item 11 provides $1.2 million to replace outdated equipment for the statewide intake call center in order reduce hold times for callers and improve call routing. Exceptional item 11 also funds the creation of a long-term disaster recovery solution to provide for continuity of intake services in the event of a catastrophic event.

Allocate additional funds to further reduce the hold time for statewide intake callers.

Fund the development of electronic passports for children in care.

Fund the development of an enhanced automatic law enforcement notification system.

Fund the development of online information and tutorials for individuals who are required by statute to report abuse and neglect.

Fund the development of teleconferencing capabilities in the courts in order to increase the efficient use of caseworker and supervisor time.

Direct HHSC to work with private child placing agencies to develop a "real-time" system capable of locating vacancies in shelters and foster care placements.

Provide sufficient funding for mobile communications use by caseworkers to increase their efficiency in the field. Adequate funding should cover the cost of "unlimited minutes" calling plans for caseworkers. Mobile communications should not be funded by the use of allowances or stipends given to workers. Rather, the state should negotiate with cell phone providers to secure blocks of mobile phone airtime that will cover all employees who currently receive stipends for their mobile phones.

Direct HHSC to involve private partners in the technology planning process to improve the use of technology throughout the public-private spectrum of agencies charged with the protection and care of children in Texas.

Direct HHSC to use information technology wherever possible to automate and integrate the evaluation of all programs in order to reduce the time caseworkers spend on paperwork.

Support efforts to improve data sharing with other states. Efforts should include the creation and sharing of a convicted child abuser database, similar to that used for convicted sex offenders, and medical and education passports that are accessible by child protection agencies and child welfare providers across state lines.

Evaluate Chafee [Chafee Foster Care Independence Program]/PAL [Preparation for Adult Living Program] independently to determine their effectiveness and identify which
program enhancements would be beneficial to children leaving foster care for independent living.

♦ Fund the extension of PAL to all children in rural areas of Texas that are not currently served.

♦ Provide transitioning youths with clear and concise information and assistance to continue receiving Medicaid benefits once they leave foster care.

♦ Direct DFPS to implement a system to monitor the progress of youths who leave foster care in order to better understand the needs of such individuals and improves services for them in the future.

♦ Use more community collaboration in order to increase PAL's capacity in all regions of Texas. PAL's services are not available in all areas of the state, and the program does not have sufficient capacity to assist all youth who age out of the system with the same type of services.

♦ Direct DFPS to provide better information on services it provides through PAL and Chafee to youths in foster care.

♦ Study the use of psychotropic medications on children in state care.

♦ Amend the Family Code to develop a clear and robust informed consent policy for children who receive psychotropic medications while in state care.

♦ Direct HHSC to study the use of psychotropic medications on children in state care with the goal of improving oversight that leads to better child safety.

♦ Instruct the Board of Medical Examiners to examine current protections for professionals who refuse to prescribe or dispense psychotropic medications for children due to their professional reservations, and report back to the legislature on its findings.

♦ Mandate the use of a medical records format that will follow children in state care to all placements and be accessible by any individual who prescribes psychotropic medications or who gives informed consent for the use of psychotropic medications.

♦ Direct the courts to enhance their supervision of the medical care of children in care by requiring that all procedural safeguards called for by law are followed.

♦ Direct HHSC to work with medical professionals and their institutions of learning to ensure that all professionals who prescribe psychotropic medications are properly trained in their use and are kept continually abreast of new developments regarding their safety and efficacy.

♦ Expand the development and use of mental health clinical pathways in the treatment of children in state care.

♦ Mandate that all children in state care be treated according to the professionally established standard of care indicated for their mental illnesses, including the use of counseling and other psychotherapeutic options.
Direct HHSC to require, as part of its standard contracting practices, that child placing agencies provide detailed documentation about their provision of therapy for children in care, along with the use of any psychotropic medications administered and improved monitoring of psychotropic drug use by Medicaid.

Direct HHSC to create a medical review board to monitor the use of psychotropic drugs in children in state care, and that the medical review board develop and promote best practices for providing mental health care for children in care.

Require that all caretakers of children in state care (e.g., foster parents, caseworkers, social workers, teachers, etc.) receive thorough training on the use and effects of psychotropic medications.

Enact a $1 per pack cigarette tax and devote the proceeds (after appropriations for smoking cessation programs) to human services spending, with an emphasis on child welfare programs.

Increase general revenue spending on child welfare programs to draw down more federal matching funds.

Restore funding for targeted case management as requested in the DFPS Exceptional Item Number 5.

Expand the Texas Integrated Funding Initiative statewide to ensure children and families receive wraparound services, and to ensure the most efficient use of funding across all agencies that provide child welfare services.

Direct HHSC to apply for a Title IV-E waiver to allow the agency to offer payments for kinship placements.

Explore other means to generate revenue for child protective services.

Direct HHSC to study which areas of CPS could benefit by privatization.

Direct that any privatization efforts be developed in tandem with rigorous accountability and oversight mechanisms. Contracting with and performance by private agencies must be zealously reviewed and regulated. Privatization schemes should be attempted first on a pilot program basis.

Design privatization efforts, where warranted, to take place within reasonable time frames.

Require that privatization efforts include stakeholder input at all stages of development.

Require HHSC to develop contingency plans to accompany all privatization plans in order to provide for emergency takeovers of privatized functions in the case of private provider service disruptions.

Take rapid, comprehensive action to make systemic reforms to the CPS system in order to reduce the threat of legal action against CPS that could abrogate the Legislature’s policymaking powers.
Charge

Assess the effectiveness of new marriage promotion initiatives in the Temporary Assistance For Needy Families (TANF) program.

Background

Concerns about the negative consequences associated with out-of-wedlock births have grown in recent years. The committee reviewed both state and national efforts to address these concerns and concluded that while promotion of healthy marriages is one viable option open to policy makers, "equal or more attention should be paid to the option of helping out-of-wedlock mothers avoid unwanted pregnancies in the first place." The committee also suggested that "Texas legislators must carefully weigh the benefits of marriage promotion against the potential risks of encouraging marriages that might be more likely to lead to domestic violence." Finally, the committee noted that "caution is advised in any attempts to expand these [government funded marriage promotion] programs at the cost of cutting services that are a matter of life and death for families in need."

Recommendations

♦ Consider compromising [on] or forgiving child support arrears that are owed to the state when a noncustodial parent marries the custodial parent of their child and remains married for a certain period of time.

♦ Establish paternity in-hospital [which] is a prime opportunity to provide resources that encourage couples to consider marriage.

♦ Improve and expand the p.a.p.a. (Parenting and Paternity Awareness) Program developed by the Attorney General’s Child Support Division.

♦ Recommend that each school district select a number of health teachers from their district to receive training from the Attorney General’s office on the p.a.p.a. Program, and subsequently return to their school districts to train other teachers.

♦ Recognize the connection between spousal violence and child abuse, and design marriage promotion strategies that are less likely to lead to marriages at high risk of spousal abuse.

♦ Do not increase funding for marriage promotion programs at the expense of cuts to other welfare programs that supply basic needs for families.

Charge

Monitor congressional reauthorization of TANF and child care programs and the impact of federal policy changes on Texas’ welfare reform efforts. Report any needed policy changes to accommodate new federal policy for the 79th Legislature.
Background

The 1996 welfare reform law, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), created the Temporary Assistance to Needy Families (TANF) program to replace Aid to Families with Dependent Children (AFDC). The PRWORA was preceded by Texas' reform of its state welfare system through the enactment of H.B. 1863 in 1995.

The Senate and the House each introduced TANF reauthorization legislation in 2002. The primary differences between the two versions have centered on recipient work requirements and child care funding. Congress has not completed the task of TANF reauthorization so the extension of TANF until March 31, 2005, will place reauthorization in the hands of the incoming 109th Congress. Key components of TANF reauthorization that are particularly important to Texas include: restrictions on the receipt of TANF funds by legal immigrants; superwaivers for states; provisions for high population growth states; work participation rates; and childcare funding.

The 78th Texas Legislature passed H.B. 2292, creating a “pay for performance” TANF program. Prior to H.B. 2292, Texas had a partial check sanction for non-cooperation with the requirements of the Personal Responsibility Agreement (PRA) under which the TANF case remained open during the sanction and the family’s other benefits were not affected.

The Pay for Performance program works differently in that families receive the first month of benefits up front, but are only entitled to receive subsequent benefits if they comply with all provisions of the PRA. Pay for Performance also introduced a full family sanction which provides that non-cooperation with any provision of the PRA results in the loss of all TANF cash assistance provided to the family for at least one month. Non-cooperation with work or child support requirements also results in the suspension of the adult’s Medicaid benefits, unless the adult is under age 19 or pregnant. Benefits are not restored until the family demonstrates one month of cooperation, while two consecutive months of non-cooperation results in denial of the TANF case.

Recommendations

♦ Continue monitoring of federal TANF reauthorization efforts.

♦ Delay welfare reform efforts that are dependent upon TANF until Congress completes reauthorization of the program. However, the legislature should consider measures that are effective in increasing work compliance rates in Texas, because these work compliance rates are likely to rise when TANF is reauthorized.

♦ Be prepared to respond to TANF reauthorization in special session if it occurs in the interim between the 79th and 80th legislative sessions.
Charge

Monitor the implementation of H.B. 669, 78th Legislature, which mandates police presence with Child Protective Services workers during priority calls. The study should include, at minimum, the impact on victims, parent cooperation and local law enforcement availability.

Background

In 2003, S.B. 669 amended Section 261.301, Texas Family Code (requiring that immediately on receipt of a report of serious physical or sexual abuse, DFPS notify the appropriate local law enforcement agency of the report), and Article 2.27, Code of Criminal Procedure (requiring that as soon as possible after being notified by DFPS of the report, but not later than 24 hours after being notified, a peace officer must accompany the DFPS investigator in initially responding to the report), to require law enforcement to accompany a DFPS CPS investigator on initial contact for all Priority One reports of serious physical abuse or sexual abuse.

Previously, DFPS and local law enforcement were required to conduct a joint investigation of a report of serious physical or sexual abuse of a child, but were not expressly required to respond together to a report of serious physical or sexual abuse of a child.

The committee concluded that law enforcement departments around the state are failing to meet the requirements of S.B. 669.

Recommendations

♦ Remove the requirement that law enforcement personnel must stay on the scene of a Priority One call after that scene has been secured, and the officer has completed his investigation.

♦ Impose sanctions for a law enforcement department's failure to comply with an amended S.B. 669.

♦ Direct CPS to provide better, standardized training for intake personnel to improve the proper and consistent classification of calls requiring law enforcement escorts.

♦ Direct CPS to review whether investigative paperwork can be reduced.

♦ Free CPS workers from filling out paperwork that family members themselves can complete after a Priority One call.

♦ Direct that law enforcement and CPS continue to work together to identify strategies that enhance cooperation in their mission to protect children.
Charge

Monitor agencies and programs under the committee’s jurisdiction.

Background

In 2003, through H.B. 2292, the Texas Legislature mandated a transformation of the state's health and human services system to create an integrated, effective, and accessible health and human services enterprise that protects public health and brings high quality services and support to Texans in need. Twelve agencies were merged into five. The health and human services delivery system in Texas continues to undergo a period of dramatic change. The committee concluded that "continued monitoring of the agency's progress during this process is essential if the legislature is to provide rapid, policy-level responses to emerging problems within the new organization."

Recommendation

♦ Continue monitoring the consolidation and reorganization of the Health and Human Services Commission to ensure that quality services are efficiently and effectively provided to Texans.


**HOUSE COMMITTEE ON**

**LAND AND RESOURCE MANAGEMENT**

♦ ♦ ♦

Charge

Examine the effect that the changes made by S.B. 89, 76th Legislature, have had on the annexation process in the state and determine if any further changes to the law need to be made.

Background

Municipal annexation is the process by which municipalities can extend their corporate boundaries. Municipal annexations have become controversial in many areas of the state over the past decade. Municipalities maintain that they must have this universal authority in order to control the orderly growth both within and outside their corporate boundaries. Opponents believe that they should have a say in whether they live in a municipality.

Recommendations

♦ Continue to look at the fundamental question of whether people should have a say in whether they are brought into a municipality without a meaningful voice in the matter.

♦ Examine how best to ensure that citizens have meaningful recourse when annexations are performed illegally or when services are not provided in an appropriate time. Currently, it is cost prohibitive for citizens to take these matters to district court. The legislature could consider extending the jurisdiction of small claims courts to such matters.

♦ Examine whether the exceptions to the general procedural requirements found in Section 43.052(h), Texas Local Government Code, are too broad. The purpose of S.B. 89 was to ensure that affected people have a voice in the process. Currently, if these residents are annexed under one of the exceptions their voice is muted.

♦ Examine whether an enforcement measure should be put in place to require service providers in an area to be annexed timely and universally prepare inventories for both the annexing municipality and the people who will be affected by it.

Charge

Evaluate need and possible strategies for a stable, long-term funding source for coastal hazard mitigation and the coastal erosion program at the General Land Office.
Background

The Texas coast suffers from one of the highest rates of coastal erosion in the country. In March, 2003, the General Land Office published the *Coastal Erosion Planning and Response Act (CEPRA)*. The report concludes that coastal erosion has numerous negative affects on Texas such as damage to the economy and our natural resources.

Recommendations

- Find a stable dedicated funding source to protect the Texas coastline from erosion.
- Provide funding from a variety of sources, primarily those that are responsible for the erosion or that benefit most from Texas beaches.

Charge

Evaluate necessity of and potential state, local, and private funding mechanisms for a purchase of development rights program in the state.

Background

Many states have purchase of development right (PDR) programs, compensating property owners who agree to restrict the development of their property. A PDR program allows the landowner to sell only the right to develop the property and in no way relinquishes other rights to the land, such as the right to sell, lease, or bequeath the property.

In 2000, then-Governor Bush appointed the Governor's Task Force on Conservation to study the threats facing Texas' natural resources, including preservation of rural land. The task force recommended that the state "establish a fund to provide grants to local governments and qualified nongovernmental organizations to buy development rights. . ." and create the Texas Land Stewardship Fund as the governing body.

Recommendations

- Support a voluntary statewide PDR program that would help protect key critical natural resources such as water that will enable future growth and enable more efficient leveraging of matching funds from federal and other sources.
- Encourage all efforts by local governments, the federal government, and non-profit conservation organizations to preserve open spaces in Texas through PDR programs.
- Spend any fees collected locally to purchase development rights in the same region.
**Charge**

Monitor agencies and programs under the committee's jurisdiction.

**Background**

Agencies under the jurisdiction of the House Committee on Land and Resource Management include the General Land Office (GLO) and the Office of Rural and Community Affairs (ORCA).

The legislature enacted the Coastal Erosion and Response Act (CEPRA) in 1999 in an effort to assist the GLO in protection of the state's coastal areas.

The 78th Legislature passed H.B. 1457, authorizing the GLO to establish a two-year moratorium on removing structures from the beach that have become seaward of the line of vegetation after a storm. The two-year period allows time for the natural line of vegetation, the boundary that separates public beach from private property, to grow back in such a way that the structure is no longer on the public beach. On June 8, 2004, the land commissioner announced that he had issued moratorium orders for 116 houses located on the public beach. The orders provide a two-year prohibition on removing those houses that might be barriers to public beach access and possible beachfront hazards (in violation of the Open Beaches Act).

Three private citizens have claimed that the "King Survey" of 1838, covering one league of land in Upshur County is "improperly located," meaning that the boundaries are false. They allege that a portion of the land was incorrectly patented, and some of the land still belongs to the state, even though many people currently own large sections of it. In January 2004, Land Commissioner Jerry Patterson ruled that there is no vacancy and current land interests should stand as-is. The decision has been appealed.

**Recommendations**

- Find a stable dedicated funding source to protect the Texas coastline from erosion. The funding should come from a variety of sources, primarily those that are responsible for the erosion or that benefit most from Texas beaches.
- Give the land commissioner the opportunity to manage the implementation of H.B. 1457.
**HOUSE COMMITTEE ON LAW ENFORCEMENT**

Charge

Review the requirements for incoming peace officers, police administration, and police
academies, and study the current requirements of initial and continuing education for
adequacy and effectiveness.

Background

In 1977, the 65th Legislature established Fund 116 which set aside a $1 court fee to provide
the budget for the Texas Commission on Law Enforcement Officer Standards and Education
(TCLEOSE). In 1995, the court fee was increased to $3 with the additional $2 distributed to
local law enforcement agencies to supplement training. Twenty percent of the funds
collected are distributed equally to all law enforcements agencies in the state. The remaining
80 percent is distributed according to the number of officers per department working more
than 32 hours a week who receive compensation and all benefits.

The Texas State Auditor’s Office (SAO) recently released a financial review of the
TCLEOSE fund. According to the report, most agencies surveyed or audited acted
appropriately in both the use of the fund and in the accounting methods. However, the SAO
discovered that some departments were supplanting their local funds rather than
supplementing them, combining the state funding with local funds in a manner that made it
difficult to track the use of the state TCLEOSE funding, and maintaining the funds outside
their local jurisdiction. Additionally, in a few instances, the SAO discovered over-reporting
of the number of full-time officers on the part of agencies.

Another issue raised by the SAO, was that agencies primarily use TCLEOSE funding for
entrance to conferences for police administrators. This aspect was not studied thoroughly by
the SAO because such choices are statutorily permissible.

Another concern raised by law enforcement organizations and citizen groups is that of
"gypsy" cops, who are officers that have either had professional failures and move from
department to department or officers with criminal or disciplinary records, despite current
procedural safeguards. Such movement can damage the public's trust in the profession of
law enforcement.

Recommendations

♦ Establish appropriate limits on police administrators' liability when communicating with
TCLEOSE or a hiring department about an officer's performance in good faith.
Request that TCLEOSE or an auditing entity perform a full study of the issue of "gypsy" officers and establish best practices for reduction in mobility of exceptionable officers.

Require administrative changes in the police administration curriculum to inform new administrators of their statutory duties when hiring or terminating an officer's employment.

Assess the sanctions imposed on officers' licenses for crimes for which officers are convicted.

Require TCLEOSE funds, legislatively or administratively, to be held in a separate account within the jurisdiction.

Set a minimum level of local funding, statutorily or administratively, for continuing education required in order to qualify for the state funding.

Require academy applicants to pass a basic academic skills test.

Require colleges that include a criminal justice curriculum of which the peace officer academy is one component to determine whether a person is eligible to be a peace officer prior to entrance in the entire criminal justice curriculum.

Require TCLEOSE to review and analyze statutorily required coursework before each legislative session and report to the Chairs of the Senate Committee on Criminal Justice and House Committee on Law Enforcement.

Require TCLEOSE to report any new optional courses added or any required courses added by rule.

Improve officer interactions with persons with mental illness.

Encourage police departments to send officers to classroom or practicum training whenever possible.

Encourage police departments to send officers to training on essential tasks rather than sensationalized topics.

**Charge**

Study home alarm systems and the interaction of law enforcement and private security in determining the appropriate response to home alarms.

**Background**

In certain municipalities in Texas and in other states, city governments have attempted to cease police response to home alarms, unless private security personnel from the home alarm company go to the site first and verify criminal activity. Citizens and home alarm companies have expressed concerns over these policies.
While many citizens feel strongly that an officer should answer their home alarm, information indicates that the overwhelming number of home alarms triggered are false alarms caused by user error. Some believe that dispatching an officer in each instance of user error may divert officers from more critical situations. Others believe that the current statutes provide an adequate means of recovering the cost of answering false alarms through home alarm permit fees and other user fees.

Under current law and court rulings, law enforcement has broad discretion to determine whether to respond to a call of any kind, including a 9-1-1 call, and to prioritize simultaneous calls and situations.

**Recommendations**

♦ Adopt measures to reduce the number of false alarms to which officers are dispatched [including]:
  ♦ decreasing the number of times that a household can have a false alarm to which an officer is dispatched before the municipality can charge a user fee;
  ♦ requiring home alarm companies to use a two call verification process;
  ♦ adopting a graduated scale of user fees for excessive false home alarms as proposed in S.B. 1907, 78th Legislature; and
  ♦ recommending municipalities adopt procedures, such as “no permit, no response” or citations for not obtaining a home alarm permit.

♦ Require municipalities to take public comment before adopting a policy to cease answering home alarms. Appropriate procedures may include:
  ♦ printing the proposed policy in the local newspaper;
  ♦ instituting a period of public comment, such as three months; and
  ♦ petitioning and instituting a local option election with a certain percentage of the population of the municipality having signed a petition.

**Charge**

Examine the efficiency of the concealed handgun licensing process.

**Background**

The concealed handgun licensing law (CHL) began with the passage of S.B. 60 in 1995 during the 74th Legislature, Regular Session. That set out extensive regulations for who can apply for and receive a license, how applications are processed, what coursework is required for licensure, who can teach the courses, and where the concealed weapon can be carried.
Additionally a provision of the bill requires that money collected from potential licensees be sent to the comptroller of public accounts and returned to the Department of Public Safety (DPS), only in the amount necessary to operate the licensing program. Additional fees collected are deposited in the Crime Victim’s Compensation Fund. Since that time, members of the legislature have frequently raised concerns that the fees charged by DPS to operate the program are high.

**Recommendations**

- Extend the time that a renewal license is valid from four years to five years.
- Match duplicate license fees for concealed handgun licenses statutorily to duplicate license fees for driver’s licenses.
- Match payment options and procedures, statutorily, for CHL licenses to that of driver’s licenses.
- Alter Government Code, Section 411.173, to open the non-resident license option to any person living in a state that has not entered into a reciprocity agreement with Texas.
HOUSE COMMITTEE ON
LICENSING AND ADMINISTRATIVE PROCEDURES

Charge

Actively monitor the implementation of H.B. 2519, 78th Legislature, to streamline bingo processes at the Lottery Commission, review the commission’s processes for leasing of facilities and the commission’s audit authority. Also, compare the distribution to charities as a percentage of revenues in Texas with charitable bingo in other states.

Background

Bingo conducted by a limited number of non-profit organizations was authorized by Texas voters through a constitutional amendment enacted in 1980. County-by-county elections were held starting in 1982 to allow charitable bingo to be played on a local option basis. Today, charitable bingo is conducted in 216 Texas counties.

Charitable bingo began to get smaller in 1992 when Texas Lottery scratch-off tickets emerged and "Pick Six" drawings were held. According to data from the Texas Lottery Commission (commission), the number of licensees regulated by the state for charitable bingo activities has declined 25 percent from 1991 to 2003, and the net revenues to charities from conducting bingo have also declined consistently since 1991.

H.B. 2519, 78th Legislature, Regular Session, was intended to streamline the regulation of charitable bingo and give the commission additional powers to regulate those who conduct the games.

Testimony from the commission and members of the charitable bingo community indicates that all of the provisions of H.B. 2519 have been successfully implemented; however, some unresolved issues remain.

Recommendations

♦ Continue monitoring the implementation of unit accounting and amendments to the unit accounting provisions of the Bingo Enabling Act, if needed to facilitate compliance with any IRS [Internal Revenue Service] ruling that may result.

♦ Limit the authority to request bingo advisory opinions to officers or business representatives of a licensee, their lawyers or bookkeepers, and their primary operators.

♦ Authorize the commission to refuse to answer questions it knows to be in active litigation.
Allow charities and other licensees to pay 50 percent of the two-year license fee up front and the remaining 50 percent at the mid-point of the licensing period to make it easier for them to take advantage of these provisions in H.B. 2519.

Amend the Bingo Enabling Act to provide for a probationary period for new employees pending approval of their application after a background check by the commission. Prohibit former bingo workers who are removed from the registry for violations of the Bingo Enabling Act to be used during the probationary period.

Amend the Bingo Enabling Act to allow for a maximum amount of operating capital that may be maintained in a charity's bingo account. One hundred percent of all bingo proceeds in excess of a charity's operating capital should be removed from its bingo account.

Allow a charity to transfer money into the bingo account from its other accounts as needed to satisfy the requirements of its bingo operations, provided that its bingo operations produce net proceeds during the license period. Require the charity to notify the commission when it makes such transfers into the bingo accounts so the commission can determine whether such transfers were justified by a reasonable and necessary expense, as required by law.

Require the reporting to the legislature and others to be done on the basis of net proceeds earned by charities from their bingo operations. Those net proceeds should be compared to the gross proceeds remaining after prizes are paid. Also, require that none of the reporting on rental payments made by charities be counted twice.

Exempt winning pull-tab tickets of $5 or less from the prize fee.

Delete the following provisions from the Bingo Enabling Act:

- Sec. 2001.002. Definitions. (10)
- Sec. 2001.102. License Application. (b)(5) & (b)(11)
- Sec. 2001.106. Form and Contents of License. (4) & (5)
- Sec. 2001.152. Eligibility. (c)
- Sec. 2001.154. Ineligible Persons. (a)(6), (a)(7), (a)(8), & (a)(9)
- Delete all of Sec. 2001.155. Exemption from Certain License Requirements.
- Delete all of Sec. 2001.305. Notice to Local Authorities.
- Sec. 2001.306. Amendment of License. (c)(1)
- Sec. 2001.410. Pull-tab Dispenser. (b) & (d)
- Sec. 4001.417. Toll Free Help. (a)
- Sec. 2001.505. Report of Expenses. (b)(2) & (c)
Charge

Monitor the implementation of S.B. 283, 78th Legislature, sunset legislation for the Board of Architectural Examiners. Pay particular attention to the interior designer’s transformation to a “Practice Act.”

Background

At a public hearing on September 15, 2004, the committee heard from both architects and interior designers and received conflicting testimony on whether the practice of interior design services constitutes a threat to the public, and whether a change in the current level of regulation is necessary.

Questions also exist regarding how a change from title protection to practice regulation would create unintended consequences in areas where there is significant overlap between the practice of interior design and interior decoration, as well as between the practice of interior design and interior architecture.

Recommendations

♦ There are no recommendations.

Charge

Monitor the implementation of H.B. 1487, 78th Legislature, creating a state wide license for electricians. Pay particular attention to any unintended consequences, such as an erosion in Texas right-to-work laws.

Background

With the passage of H.B. 1487, 78th Legislature, Regular Session, Texas for the first time established statewide standards and regulations to safeguard the lives, health and property of Texans and those working in the electrical trade. The Texas Department of Licensing and Regulation (TDLR) was charged with administering the law with guidance from the Texas Electrical Safety and Licensing Advisory Council. As of September 30, 2004, TDLR had issued 75,766 licenses.

Recommendations

♦ Amend the exemption relating to motor vehicles to clarify that recreational vehicles are also exempt.
Exempt electrical work performed in agricultural use including water wells (and deleting the related rider in the appropriations bill).

Amend provisions relating to apprentices to include electrical sign apprentices.

Exempt on-site sewage facility installers.

Clarify that governmental entities such as school districts and cities are not required to hold an electrical or electrical sign contractor license.

Establish a 45-day temporary apprentice license and a 90-day emergency license to allow TDLR to license out of state electricians in case of disasters. Grant additional rulemaking authority to the Commission, with the advice of the Advisory Board, to develop rules that provide for extensions of emergency licenses.

Provide a new grandfathering period for military service personnel to allow persons who were unable to apply during the initial grandfathering period due to active military duty.

Clarify that 1306.160(b) applies to a Electrical Sign Contractor by adding “sign” between “electrical” and “contractor” to read: (b) A person who holds a master sign electrician license issued or recognized under this chapter may only be assigned to a single electrical sign contractor.

Remove the late renewal provision in the Electrical Safety and Licensing Act which will bring the electricians renewal process in line with TDLR’s 21 other statutes (as established in TDLR’s enabling legislation, Occupations Code, Chapter 51).

Require the availability of online continuing education courses for electricians.

**Charge**

Monitor the implementation of H.B. 329, 78th Legislature, licensing mold remediators.

**Background**

Mold assessors and mold remediators were not regulated under state or federal law, which may have contributed to the incidence of costly mold assessment and remediation procedures, as well as hazardous and inefficient extraction of mold by untrained and unlicensed mold remediators. This, in turn, may have resulted in significant increases in homeowners' insurance premiums.

H.B. 329 was enacted by the 78th Legislature, Regular Session, and became effective on September 1, 2003. The bill authorized the Texas Department of Health [now the Texas Department of State Health Services] to implement rules and procedures by April 1, 2004, relating to the licensure of mold assessors and remediators.

The rules were finally adopted on April 15, 2004, and took effect on May 16, 2004. Under the rules (25 TAC §§ 295.301-295.388), all companies and individuals who perform mold-
related activities and laboratories that analyze mold samples must be licensed by January 1, 2005. Mold remediation workers must have training and be registered with DSHS. The rules, which contain a code of ethics, also prohibit a licensee from conducting both mold assessment and mold remediation on the same project. The rules also establish civil and administrative penalties for violations and require a minimum level of insurance coverage.

Recommendations

♦ There are no recommendations.

Charge

Identify licenses and duties that could be handled more efficiently at the Texas Department of Licensing and Regulation. Estimate cost savings and policy implications associated with such moves.

Background

During the 78th Legislature, Regular Session, the house considered H.B. 2 by Representative David Swinford which, in part, proposed the consolidation of eight agencies within the Texas Department of Licensing and Regulation (TDLR).

The bill was part of an effort to eliminate overlapping and duplication of services within existing agencies regulating licensure and registration of certain professions.

The committee was unable to determine whether consolidation of the H.B. 2 agencies would make state government more efficient. The committee noted that the Sunset Advisory Commission has recommended merging the Cosmetology Commission and the Board of Barber Examiners into a single agency.

Recommendations

♦ There are no recommendations.

Charge

Study ways to reduce the incidence of underage drinking in Texas. Include an analysis of best practices in other states.
Background

In the Texas Alcoholic Beverage Code, a "minor" is defined as any person under 21 years of age. In Texas it is illegal to purchase alcohol, attempt to purchase alcohol, or consume alcohol for any person under the age of 21; to sell alcohol to minors; to purchase or furnish alcohol for a minor; and to drive under the influence of alcohol as a minor. It is also illegal for a minor to misrepresent herself or himself as being 21 years of age or older in order to obtain alcohol.

Despite the law, underage alcohol consumption in Texas remains a significant problem.

Recommendations

♦ Authorize the suspension of a minor's driver's license, [if the minor] is convicted of purchasing, attempting to purchase, or possessing an alcoholic beverage, for up to six months upon first conviction and one year upon second or subsequent convictions.

♦ Authorize the immediate seizure of a minor's license at the scene of arrest for driving while intoxicated as part of an administrative license revocations procedure.

♦ Regulate Internet sales and home deliveries of alcohol by requiring all packages for delivery containing alcohol to be clearly labeled as such and requiring an adult signature for release.

♦ Require alcohol retailers to obtain and use driver's license scanners which are already available from TABC [Texas Alcoholic Beverage Commission].

♦ Apply criminal sanctions and increase administrative penalties on retail licensees for violations of sales-to-minors laws.

♦ Apply appropriate penalties to adults who supply alcohol to minors in social settings by imposing civil penalties, where applicable, as well as a range of criminal penalties and civil liability, either separately or in addition to civil penalties. Increase the penalties' deterrent effects, establish streamlined procedures for imposing sanctions in cases that do not involve serious community disruption, large teen parties, or bodily injury.

♦ Ban false identification by prohibiting the production, distribution, possession and use of false identification. Increase penalties on minors who attempt to use false identification, and allow for the confiscation of fake IDs.

♦ Require training for all servers and sellers of alcohol.
**HOUSE COMMITTEE ON NATURAL RESOURCES**

**Charge**

Assess the current condition of the Edwards Aquifer and the Edwards Aquifer Authority, including the authority's ability to meet the current statutory requirements of its enabling legislation, specifically its ability to meet or alter pumping limits contained in the Edwards Aquifer Act.

**Background**

The Edwards Aquifer Authority was created by the Edwards Aquifer Authority Act, 73rd Legislature, to preserve and protect the Edwards Aquifer, which serves the diverse needs of almost two million users in South Central Texas.

The statutory authority for the Texas Commission on Environmental Quality (TCEQ) to adopt the Edwards Aquifer rules contained in several parts of the Texas Water Code and the Texas Health and Safety Code. Special protection of the Edwards Aquifer is supported by the various powers and duties given to TCEQ. The Edwards Aquifer is expressly recognized under Section 26.046, Water Code, which requires TCEQ to annually hold a public hearing to receive evidence from the public on action that TCEQ should take to protect the Edwards Aquifer from pollution.

**Recommendations**

♦ Instruct the Edwards Aquifer Authority (authority) to continue to study and develop appropriate water quality regulations within its boundaries; work closely, in developing its regulations, with state and local entities to ensure coordination between governing bodies and minimization of regulatory overlap; and continue to explore the potential for delegation of TCEQ Edwards programs. Continue to monitor and review the authority's regulatory powers with respect to water quality, including the potential for consolidation of regulatory powers in one governmental body.

♦ Continue to explore, with input from the Board [Edwards Aquifer Authority Board], permit holders, and stakeholders in the region, the need for statutory changes to address the conflict between the pumping cap and the statutory minimums contained in the Act [Edwards Aquifer Act], including but not limited to increasing or delaying the pumping cap and authorizing the issuance of revenue bonds to pay for permit retirement.
Charge

Examine the issues associated with the Texas Commission on Environmental Quality's authority to amend, impair, interpret, or modify the terms of water contracts between willing parties, including the possible impacts the authority could have on the financing of public/private water projects.

Background

Several provisions of the Texas Water Code authorize the TCEQ to review and modify water supply contracts. Specifically, a person may request TCEQ review of the rates contained in a wholesale contract. If the agency finds that rates adversely affect the public interest, it may set new rates.

H.B. 2184, 78th Legislature, Regular Session, was introduced to prohibit TCEQ from exercising this authority. H.B. 2184 was approved by the House Committee on Natural Resources but was not passed into law, and the issue was recommended for further study during the interim.

Recommendation

◆ Continue to monitor and review the authority of the TCEQ to amend and interpret water supply contracts to ensure that this process does not discourage private investment in water supply contracts across the state.

Charge

Evaluate the availability and cost effectiveness of using brackish groundwater and surface water as an alternative source of water supply, including assessing the regulatory changes that are needed to facilitate use of this water source by political subdivisions.

Background

In order to provide an adequate water supply for their growing populations, Texas and other western states have begun to focus on alternative sources such as desalination of surface and groundwater across the state. Several regional water planning groups have considered this option, and the Texas Water Development Board (TWDB) has launched several new desalination projects.
Recommendation

♦ Continue to support the current efforts by the TWDB to research and explore this water supply option [desalination], especially with respect to potential impediments. Support and promote all the current desalination projects underway across the state and continue to examine avenues for additional proposals.
Charge

Examine the feasibility, risks, and benefits associated with Pension Obligation Bonds in order to reduce unfunded liabilities in municipal and state retirement systems.

Background

Pension obligation bonds (POBs) are a tool by which a public pension fund relieves the pension system's unfunded liabilities by the sale of bonds as long-term investments. The bonds are issued by the state or local government that sponsors the pension system, rather than by the pension system itself, and bond proceeds are deposited in the pension trust fund for investment. The issuing government repays the bonds with general funds.

Over the last 10 years, more than 300 POBs have been issued, totaling $38.1 billion. Among the governments issuing POBs are the states of Kansas, Massachusetts, Oregon, and Wisconsin and the cities of Fresno, California, and Westchester, New York. S.B. 1696, enacted by the 78th Legislature, authorized political subdivisions in Texas to issue pension obligation bonds, and the cities of Dallas, Houston, and San Antonio are expected to take advantage of that authority.

Among the risk factors associated with POBs are investment return; leverage; market risk; political concerns; and credit ratings.

The committee examined the POB issuance criteria drafted by the Commonwealth of Massachusetts. Among the Massachusetts provisions:

The appropriating authority must approve the issuance of pension obligation bonds by a two-thirds vote and certain disclosure language must be accepted by a two-thirds vote.

The commonwealth's Executive Office for Administration and Finance must make certain findings regarding credit ratings, pension obligation bond structuring, present value savings, financial capacity, pension fund historical and projected return performance, and pension fund management.

Recommendation

◆ Follow the example of the State [sic] of Massachusetts in adopting guidelines In an effort to protect the state, cities and counties from the possible dangers associated with the issuance of POBs. The committee believes this language is not a cure-all and strict scrutiny needs to be given to each and every actuarially unfunded pension system before
POBs are issued. However, the language of the State [sic] of Massachusetts will serve as a starting platform from which we can begin.

**Charge**

Study the risks, benefits, and impact associated with the "retire in place" practice as it relates to the Employees Retirement System, Teacher Retirement System, Texas County and District Retirement System, and the Texas Municipal Retirement System.

**Background**

Retire in Place (RIP) is a mechanism by which an employee who has reached retirement eligibility retires but continues to work in the same job. The person begins receiving annuity checks from the retirement system but also receives a pay check from the entity for which he or she is working. Return to Work (RTW) is the phrase used to denote a person who reaches retirement eligibility, retires from a position, and begins to receive a pension but returns to work for the same employer in a different position.

The Employees Retirement System (ERS), Teacher Retirement System (TRS), Texas County and District Retirement System (TCDRS), and the Texas Municipal Retirement System (TMRS) all have some form of RTW program.

ERS retirees are allowed to return to work with the same employer, often at a lesser salary. The active employee is receiving both a salary and an annuity payment, but is no longer paying into the retirement system nor is the state making a pension contribution on the employee's behalf. The state also achieves a cost-savings by no longer covering the employee under the state-paid health insurance program; the employee is instead covered as a retiree through ERS.

TRS retirees are allowed to return to work with the same employer, but are usually not allowed to return to work in the same position, although there are exceptions. Among those exceptions are provisions that allow a teacher to return to work in a teaching position if the district has been deemed to have an acute shortage area and the teacher has had a 12-month break in service.

TCDRS and TMRS are both statewide, multi-employer systems that prohibit employees from returning to work at the same entity from which they retired. The retirement annuity of a TCDRS participant who returns to work with the same employer is suspended; a person who returns to work for a different employer which is a member of TCDRS may receive both an annuity from the first job and an annuity from the second. Upon retiring from the second position, the employee may either withdraw the personal contributions or receive an additional annuity.
A participant in TMRS is prohibited from receiving both a salary and an annuity simultaneously. The returning retiree is required to "rejoin" TMRS and make monthly contributions. Upon the second retirement, the member will receive two annuities.

**Recommendations**

- Continue with the current RTW/RIP plan at ERS.
- Continue with the current RTW/RIP plan at TRS with careful consideration to the insurance funding and possible costs to the state.
- Elevate the current RTW program at TCDRS to allow a retiree to return to the same entity they [sic] retired from.
- Elevate the current RTW program at TMRS to allow a retiree to return to the same entity from which they [sic] retired.
- Monitor the RTW/RIP programs within each fund carefully to ensure the fund is not adversely affected. Any negative experience to the funds due to RTW or RIP should trigger immediate steps to correct the problem.

**Charge**

Monitor agencies and programs under the committee's jurisdiction and legislation passed by the 78th Legislature.

**Background**

The state's ERS was created to provide retirement, death, and disability benefits to state employees through the Texas Employees Uniform Group Insurance Program (UGIP). Coverage and benefits were later extended to the judiciary and to the employees of some institutions of higher education, while the rising cost of health insurance benefits has led to the institution of cost-containment measures in recent years.

In preserving UGIP for state employees, the state traditionally barred other entities from participating. However, legislation passed by the 78th Legislature allowed county supervision and correction department employees and their dependents to participate in UGIP, while an Attorney General's Opinion required ERS to allow the newly-included probation officers to retire and receive insurance benefits at an earlier age than is allowed for state employees.

The 78th Legislature also altered the age at which a state employee could retire and receive full insurance benefits by raising the age from 60 years of age plus 10 years of service to 65 years of age plus 10 years of service, but University of Texas (UT) and Texas A&M University (TAMU) employees were grandfathered out of that change. The exception caused
a disparity not only between UT and TAMU employees and state employees but between UT and TAMU and other state-funded universities.

**Recommendations**

♦ Enact legislation that would remove the county probation departments from the state insurance program. The committee feels that the addition of the probation officers to the Texas state employees insurance program [was] detrimental to the fund and morale [sic] of the state employees.

♦ Return to the age of 60 and 10 years of service for ALL [who] are covered under the UGIP. State employees have not been treated fairly with the many cuts and restoration of this benefit would be a step in the right direction. The state previously funded this benefit and would cost approximately $15 million. This money should not be viewed as "new money" needed, but paying for a benefit that should still be in existence.
HOUSE COMMITTEE ON PUBLIC EDUCATION

Charge

Assess the textbook adoption and distribution system. Investigate alternative methods of delivering educational resources using technology.

Background

The textbook adoption and distribution process is reviewed in the interim report. The Textbook Credit Pilot Project gives districts that purchase textbooks costing less than the state maximum credit for 50 percent of the difference that can be used to purchase textbooks. In 1995, the legislature authorized publishers to include electronic means of conveying information in the definition of textbook.

Recommendations

♦ Require the commissioner of education [commissioner] to aggressively proceed toward implementing the full use of technology in delivering instruction. The commissioner shall report to the legislature by December 2005 regarding how the agency will fully implement the use of technology in Texas, with specific recommendations for legislative change.

♦ Expand the textbook credit program to all districts and allow districts to retain a greater share of their credit (more than the current 50 percent). Districts should be allowed to use their credits to purchase any instructional materials or technology enhancements allowable for purchase using monies from the Available School Fund.

♦ Explore the option of allowing ongoing adoptions for instructional materials, perhaps requiring the publisher to pay a fee for the cost of evaluating texts when they are submitted for review.

Charge

Evaluate the extent to which public school tax dollars are used directly or indirectly to promote or oppose legislation.

Background

The Texas Education Agency (TEA) has a detailed process requiring school districts to account for expenditures of state, federal, and local money and student performance. The Comptroller of Public Accounts (comptroller) produces annual audits of districts'
expenditures and performance. There is some disagreement between the two agencies on expenditure categories. School districts do not report individual expense categories, such as lobbying, and some believe taxpayers need to know their districts' expenditures.

**Recommendations**

- Require the Legislative Budget Board (LBB) to report to the legislature at the beginning of every legislative session the comprehensive education spending, including state, local, and federal dollars and public and private grant money by school district.
- Require that school district expenditures on lobbying, association dues, and attorney fees be disclosed as part of the financial reporting process.

**Charge**

Perform a comprehensive analysis of state law with respect to educator contracts and certification. Make recommendations for changes which would improve student performance.

**Background**

The types of employment contracts used in public schools for professional educators are reviewed as well as requirements for licensing and the provision that voids any employment contract when the employee fails to meet certification deadlines. Termination procedures under each type of employment contract are summarized as are a teacher's rights and the appeal process.

Currently, some people believe that school district financial accountability should include a link between students' performance and their teachers' salaries, called performance pay. The current minimum salary schedule is based on years of service instead of recognizing and rewarding excellence; when performance is not rewarded, good teachers leave for other jobs. One measure of the learning a student accomplishes in one year is called value-added. Arizona, Colorado, Florida, North Carolina, and Tennessee use a value-added measure as a major component of performance evaluations for incentive programs.

**Recommendations**

- Establish guidelines for a fair and equitable incentive pay program that will reward our best teachers. Each incentive program should be locally designed and implemented and state funded, making sure local educators are involved in developing and implementing such a system.
- Create a commission made up of active teachers, administrators, and school attorneys to review Chapter 21 [Educators, School District Employees and Volunteers], Texas
Education Code, and make recommendations for greater efficiency from a student perspective.

Charge

Investigate and assess the effectiveness and efficiency of statewide educational initiatives, including programs to reduce dropout and increase graduation rates.

Background

The report discusses the Texas High School Initiative, the Dropout Prevention Clearinghouse, the State Dropout Prevention Plan, and other statewide programs to increase high school graduation rates.

Recommendations

♦ Implement a statewide electronic dropout tracking system.
♦ Continue monitoring the effectiveness of various education initiatives.

Charge

Investigate and assess the mission and performance of the University Interscholastic League and other quasi-educational organizations in terms of their role in improving student achievement.

Background

The University Scholastic League (UIL) began in 1913 when the Debating League of Texas and the Interscholastic Athlete Association merged. The report discusses its governing body, membership, and funding, which does not include any state revenue. The University of Texas at Austin provides in-kind support. UIL's primary revenue generator is admissions to UIL events, but it also receives percentages of gate receipts for high school games, and similar sources.

Recommendations

♦ Require the commissioner to provide an analysis showing the fiscal impact that any new UIL rule will have on programs outside UIL control before the rule can be adopted.
♦ Continue monitoring the effectiveness of the UIL and its programs.
Charge

Compare special education laws in Texas to other states and to federal standards. Make recommendations for reducing state and local administrative costs to increase resource allocation for direct services to students.

Background

Texas has 11.6 percent of its school population in special education; only California exceeds Texas in the number of special education students. The special education population in Texas has increased by nearly three percentage points over a decade. In 1997, the federal calculation of special education students changed from the number receiving services to a formula under which 85 percent of funding is based on a state's population of age-eligible (three to 21 years of age), special education students, and the remaining 15 percent on student poverty. In 2002-2003, the last year in which states had comparable data, Texas received $608 million or $1,325 per eligible student in federal funds. In 1988-1989, Texas spent $3,109, close to the national average of $3,225.

In 1999-2000, Medicaid contributed $73.1 million to Texas' $2.36 billion special education appropriation. Texas does not draw on state mental health funds or use private insurance for those special education students with coverage. The average state expenditure per special education student was $4,857.

States use six special-education funding mechanisms: weights; flat grants; census-based variations of flat grants; percentage reimbursements of cost; and variable block grants. Most states use weights. State controls on special education expenditures are discussed, such as capping either the number of students enrolled in special education or the total state funding for special education. The report discusses state compliance with both the Individuals with Disabilities Education Act (IDEA) and the No Child Left Behind law (NCLB). The issues include teacher preparation and certification, student outcomes, and student discipline.

Recommendations

♦ Determine what aspects of our current funding mechanism for special education encourage over identification; and then investigate alternative methods for funding special education that decrease any incentives to over identify students as needing special education services.

♦ Evaluate the accountability system as it relates to special education to determine if the state-determined alternative assessments of special education have had the desired result.

♦ Instruct school districts to include all admission, review and dismissal information (to the extent allowed by federal law) for students receiving special education services as part of the records that are transferred among schools when the child moves. The information transferred should at a minimum include indicators as to whether a child is currently
receiving special education services and the type of placement that has been determined to be appropriate for the child.

♦ Review the reauthorization of IDEA to determine [whether] the legislative action is necessary to be in compliance. Look specifically at any changes in the dispute resolution process that might help direct more dollars to direct student services.

**Charge**

Examine the impact on students, schools, and local economies from changes to the school start date.

**Background**

The traditional start date for school occurred after Labor Day. Between 1991 and 2000, districts could choose the date, but in 2001 the first day of school could be no earlier than the week that includes August 21 unless a district received a waiver for an earlier start date. A report from the Comptroller of Public Accounts found that early start dates increase utility costs, decrease tourist activity, and reduce income of migrant families.

**Recommendation**

♦ Explore further the academic and economic benefits of a uniform school start date on or near September 1.

**Charge**

Examine issues related to state aid to school districts for debt services, including issues related to the type of facilities that should be eligible for state support.

**Background**

Until 1997 and 1999, state funds did not provide significant funding for school facilities. The instructional facilities allotment (IDA) provides $35 per student per penny of bond tax rate for new facility debt up to the amount appropriated. A district's property wealth per student, attendance growth rate, rejection in a prior biennium, and the lack of outstanding debt influence the allocation of funding to schools. Those selected receive a commitment for the length of the bond period.

The existing debt allotment (EDA) assists districts in paying debt issued prior to September 1, 2001. The EDA provides $35 per student of tax effort up to 29 cents. Districts with low property value per student receive more EDA assistance.
Recommendations

♦ Authorize TEA to collect best practices for facilities construction. Provide these best practices as a guide to all school districts.

♦ Investigate the qualities that are necessary for a "successful" state facilities funding program, which may include a comprehensive facilities inventory.

Charge

Study and monitor issues related to the educational needs of dependents of military service men and women, including records transfer and implementation of reciprocity agreements with other states.

Background

The 78th Legislature required TEA to pursue reciprocity agreements with other states for student transfers, course credit, and comparability of exit examination criteria.

Recommendation

♦ Encourage TEA to continue their work toward securing reciprocity agreements with other states, keeping in mind the needs of all mobile children, including the unique needs of military children.
**Charge**

Study the need to regulate products containing dietary supplement ephedra. Include a review of other state actions.

**Background**

Ephedra, also called Ma huang, is a naturally occurring substance derived from plants. Its principal active ingredient is ephedrine, which, when chemically synthesized, is regulated as a drug. In recent years ephedra products have been extensively promoted to aid weight loss, enhance sports performance, and increase energy.

On December 30, 2003, the Food and Drug Administration (FDA) notified manufacturers that it would publish a rule stating that dietary supplements containing ephedrine alkaloids present an unreasonable risk of illness or injury. The rule would have the effect of banning the sale of these products as soon as it became effective, 60 days after publication.

The FDA also sent out an alert to the public about its determination that dietary supplements containing ephedra present an unreasonable risk of illness or injury, and should not be consumed. The FDA took this step after conducting an exhaustive and highly resource-intensive process required under the Dietary Supplement Health and Education Act of 1994 for banning a dietary supplement that presents a significant and unreasonable risk to human health.

The FDA gathered and reviewed evidence about ephedra's pharmacology; clinical studies of ephedra's safety and effectiveness; newly available adverse events reports; the published literature; and a seminal report by the RAND Corporation, an independent scientific institute. The FDA also reviewed tens of thousands of public comments.

The totality of the available data showed little evidence of ephedra's effectiveness except for short-term weight loss, while confirming that the substance raises blood pressure and otherwise stresses the circulatory system. These reactions have been conclusively linked to significant adverse health outcomes, including heart ailments and strokes.

The 108th Congress also considered several pieces of legislation relating to the regulation of ephedra and ephedra products.

**Policy Options**

♦ No interim study was conducted on Charge One due to pending federal action.
Charge

Examine the demographics and cost of diabetes in Texas. Assess the impact diabetes will have on Texas' population, budget, and health care system in the future and recommend appropriate policy changes.

Background

Based on surveys by the Behavioral Risk Factor Surveillance System, an estimated seven percent of adult Texans, an estimated 1.3 million individuals, have either Type I or Type II diabetes. The Texas Department of State Health Services (DSHS) estimates that an additional 3.3 percent may have diabetes that has yet to be diagnosed. Diabetes is the sixth leading cause of death in Texas and the fourth leading cause of death in both African Americans and Hispanics.

The direct and indirect costs of diabetes in Texas are estimated at $9.2 billion for 2002, with $6.4 billion of this amount being spent on medical care. Additionally, an estimated $2.8 billion is attributed to lost productivity, and $5.6 million to permanent disability.

The rate of diabetes in Texas continues to rise, up 2.2 percent from 1995 to 2002. The growth in childhood-onset in Texas is of particular concern — an estimated 35 percent of children in Texas are overweight or obese, a factor that contributes to the rate of diabetes.

Policy Options

♦ Direct TEA to continue to monitor the school districts to assure that they are actively pursuing the full intent of S.B. 19.

♦ Expand the role of the school nurse, licensed vocational nurse, or other school staff or volunteer affiliated with the school's health program to act as a facilitator of self-management and a resource for performing procedures and administering treatment.

♦ Manage PE [physical education] requirements to ensure that all participants actually receive the benefit of exercise during the class. Schools might also enlist the aid of private industry in rolling out such programs as "Step With It" and "Go Kids."

♦ Support lifestyle changes with education and community outreach by making education available to all Texans regarding lifestyle changes regarding healthy eating and exercise. The state should study The UTMB [University of Texas Medical Branch] Stark Diabetes Center as a model for possible partnerships with existing community-based organizations.

♦ Make diabetes a reportable disease in Texas. Cost and privacy concerns will have to be addressed.

♦ Reinstate podiatry services and ophthalmology services for adults who are enrolled in Medicaid, as funds allow.
Charge

Investigate the practice of allowing corneal tissue to be taken and used for transplantation without prior consent. Recommend appropriate state policy changes.

Background

The 64th Legislature passed H.B. 307, the "Gift of Sight" legislation filed by Representative John Bryant. The law did not require the medical examiner to ask whether a relative objected to the removal of corneal tissue. However, removal was only permitted if the medical examiner was not aware of an objection and, if the cause of death required an investigation by the medical examiner or justice of the peace, the removal could not interfere with an autopsy or alter the post-mortem facial appearance.

There have been numerous lawsuits in Texas related to the tissue and eye banks procuring tissue without the expressed consent from the next-of-kin. There are seven eye banks in the state of Texas. They are located in Dallas, Galveston, Houston, Lubbock, Austin, San Angelo, and San Antonio. Currently, two eye banks and medical examiner offices in Texas allow removal without consent: the Lions Eye Bank of Central Texas in Austin and the Lions Eye Bank of Texas at Baylor College of Medicine in Houston.

Policy Options

❖ Eliminate legislative consent for the removal of corneal tissue.
❖ Include cornea transplantation under the Anatomical Gift Act.
❖ Create a state sponsored registry for organ and tissue donation.
❖ Create a first-person consent law that allows hospitals legal authority to proceed with organ procurement.
❖ Improve education and public awareness for tissue/organ donation throughout the Texas health care community.
❖ Streamline communication between medical examiners, hospitals, and organ and tissue banks.
❖ Require documentation and/or attempt to reach next-of-kin.
❖ Require donor awareness training for medical examiners and justices of the peace, if changes occur in current statute.

Charge

Collect, review and report on the statistics and statewide impact of drug and alcohol abuse by pregnant women on the unborn.
Background

Alcohol and drug abuse by pregnant women are serious problems with far reaching consequences, however, there is a lack of data to show the extent of the problem. Fetal Alcohol Spectrum Disorder (FASD) and babies born drug affected are preventable conditions; nonetheless, the number of substance abusing pregnant women is growing. The law is silent with respect to alcohol and drug abuse by pregnant women.

Policy Options

♦ Expand the authority of Department of Family and Protective Services (DFPS) fatality review teams to specifically review stillbirths and deaths that may be attributed to substance abuse by the mother, and report on their findings to the legislature.

♦ Require DFPS to create a database of families in which substance abuse has been a factor in their referral to DFPS with the goal of facilitating early intervention for treatment.

♦ Assist state schools of public health in conducting a long term tracking study of children born exposed to drugs and/or alcohol in utero in order to help gain understanding of developmental and other problems these children may have and help develop treatment options to assist the children. The study should also specifically include children exposed to methamphetamine.

♦ Promote cooperation between DSHS and the schools of public health in the state to develop model programs for identifying, tracking and treating pregnant substance abusers.

♦ Create treatment options that specifically focus on caring for pregnant substance abusers in a number of sufficient geographic locations in the state to allow for meaningful access to care.

♦ Clarify the provisions of the Texas Health and Safety Code to specify that pregnant substance abusers are specifically included in provisions related to emergency detention, protective custody, and commitment to treatment.

♦ Direct DSHS to enhance public awareness about the impact of substance abuse on the developing fetus, including the impact of male substance abuse. This public awareness campaign should specifically include high schools and college campuses.

♦ Enhance penalties against drug dealers who knowingly sell to pregnant women.

♦ Enhance penalties against bartenders who knowingly serve an intoxicated pregnant woman.

♦ Engage the restaurant/bar industry in a plan to promote awareness of alcohol abuse on fetal development.

♦ Direct the Texas Council on Alcohol and Drug Abuse (TCADA) to engage the medical community in developing protocols for treatment referral of pregnant substance abusers.
Engage the county and district attorneys association, the criminal defense lawyers association, and representatives of the social service community to develop an educational program for prosecutors about appropriate use of such statutes, if prosecution of pregnant substance abusers is developed as an option.

**Charge**

Review the current operations of the Texas Immunization and Kidney Health Care programs. The review should determine if the operational and administrative changes made to the Medicaid Vendor Drug Program will continue to meet the needs of Texans who do not qualify for Medicaid, Children's Health Insurance Program, or private insurance and recommend any necessary changes.

**Background**

The Texas Legislature established the Kidney Health Care (KHC) Program in 1973 to provide limited financial assistance for the care and treatment of persons suffering from end-stage renal disease (ESRD). The program provides medical, transportation and drug services to eligible clients.

In fiscal year 2003, more than 24,000 clients were enrolled in the KHC program; 16,858 of whom received a drug benefit. Budget shortfalls have resulted in an inability to maintain the same level of services for the program participants and the implementation of cost containment measures.

Vaccines have proven to be one of the most cost effective and safe developments in public health. The state's immunizations rate has improved in the past four years. DSHS, in collaboration with public and private local, regional and statewide entities with an interest in immunizations, formed a workgroup of stakeholders to support statewide efforts to improve immunization rates and develop continuing education materials. Additionally, a statewide multimedia advertising campaign was aimed at educating parents about the value of fully vaccinating children against preventable and sometimes life-threatening illnesses.

**Policy Options**

- Identify the options to increase appropriations allocated to the KHC program to accommodate the growing number of KHC clients in the state including the consideration of funding the program with tobacco tax dollars.
- Identify and encourage opportunities for coordinated efforts between the KHC program and parties with an interest in diabetes to create collaborated efforts to educate Texans on the relationship between diabetes and end-stage renal disease.
- Direct the Appropriations Subcommittee on Health and Human Services to monitor the revenue loss to the KHC Voluntary Manufacturer's Drug program due to anticipated...
adoption of the Medicare part D drug benefit and supplement through an alternative funding source, possibly restructuring the voluntary rebate program.

- Initiate a public awareness campaign relating to the importance of kidney donations in collaboration with the overall public awareness and education campaign relating to organ/tissue donation.

- Determine the percentage of KHC clients who will be ineligible for the New Medicare Part D drug benefit program and consider alternative funding sources.

- Measure personal financial costs for KHC clients who are not protected from high cost sharing and who experience coverage gaps associated with the Medicare Part D drug benefit program.

- Identify and monitor the entity within the Health and Human Services Commission that will oversee the transfer of transportation services from the KHC program to the Texas Department of Transportation under the Health and Human Services Commission.

- Monitor DSHS' Immunizations public awareness campaign and identify ways to further enhance immunization rates in Texas.

- Direct DSHS' Immunizations public awareness multimedia campaign to specifically focus on pertussis (whooping cough) and educate parents and providers on the importance of keeping young children isolated from coughing adults.

- Increase utilization of the ImmTrac registry by identifying and targeting geographic areas with low vaccination rates.

- Identify the options to increase appropriations allocated to the Immunization Program for the purchase of enough vaccine to implement a single (one-tiered) system for all recommended vaccines.
Charge

Develop a plan to redistrict the court of appeals districts.

Background

The number of appeals to the state's 14 courts of appeals has increased dramatically, with the majority of the growth occurring in urban areas. This has resulted in an imbalance in dockets among the courts. The 76th, 77th, and 78th Legislatures all have directed the Texas Supreme Court to equalize the dockets. The 78th Legislature also attempted to equalize the courts' dockets by moving counties between jurisdictions and changing the number of judges on some courts.

Some counties fall under the jurisdiction of more than one court of appeals, known as coterminal or concurrent jurisdiction. This may result in "forum shopping," with appellants "shopping" for the court most likely to favor their case. Section 22.202(h) of the Texas Government Code has eliminated the potential for forum shopping in the First and Fourteenth Courts of Appeals by establishing a randomized process for assigning cases between the courts. Appellate courts with concurrent jurisdiction in a county may hand down conflicting decisions on an issue, resulting in conflicts of law.

Since 2000, the Texas Supreme Court has been authorized by the legislature to transfer cases among the courts of appeals to equalize the courts' dockets. Although this mandatory transfer does achieve a more equal distribution of cases, transferring cases out of a district causes additional cost to taxpayers and inconvenience to the parties involved, means that the case will be ruled upon by justices who were not elected by the parties involved, and creates potential conflict as to which court's legal precedent will apply.

The First, Fifth, and Fourteenth District Courts of Appeals have received forty-three percent of all new cases filed in 2003 and are also the sending districts of over 70 percent of the cases transferred. Increased funding for additional legal support staff in these districts would allow those courts to handle their case loads.

There is a problem retaining justices on the courts of appeals. Possible causes are the higher salaries in the private sector and a cap on retirement benefits.

The 14 chief justices of the Texas courts of appeals have presented a proposal to eliminate transfers for equalization purposes, reduce the number of counties under concurrent jurisdiction, remove the ability to "forum shop," and provide funding to certain courts for the hiring of more staff. The committee incorporated these proposals into its recommendations.
Recommendations

- Remove Hopkins, Kaufman, and Panola counties from the district of the Twelfth Court of Appeals.
- Remove Van Zandt County from the district of the Fifth Court of Appeals.
- Move Angelina County from the district of the Ninth Court of Appeals to the district of the Twelfth Court of Appeals.
- Remove Burleson, Walker, and Trinity Counties from the districts of the First and Fourteenth Courts of Appeals. Burleson and Walker Counties should be added to the district of the Tenth Court of Appeals, and Trinity County to the Twelfth Court of Appeals.
- Establish by statute a randomized system of assigning cases to the appellate courts, such as that outlined in the Texas Government Code, Section 22.202 (h), for all counties under concurrent jurisdiction.
- Retain the current coterminous districts of the First and Fourteenth Courts of Appeals, but the legislature should consider a solution to address the "conflicts of law" problem that will persist for lower courts in these districts.
- Consider additional funding for the hiring of legal support staff in the First, Fifth, and Fourteenth District Courts of Appeals. If sufficient annual funding can be allocated for this purpose, the legislature should consider the impact on and continued need for the Docket Equalization Program.
- Clarify the issue of the legal precedent to be applied in transfer cases and establish authority as to which precedent to follow.
- Consider increasing the salaries and retirement benefits provided to justices in order to improve retention rates and to continue to attract high quality candidates for the administration of justice in our state.

Charge

Consider changes to the structure and nomenclature of the various levels of courts below the court of appeals level with specific attention to how they can be smoothly integrated into the new court of appeals districts.

Background

The Texas Constitution requires the reapportionment of the judicial districts following the decennial United States Census. The purpose of reapportionment is to promote efficiency and promptness of the administration of justice. Texas has not implemented state-wide redistricting of the judicial districts of the courts below the courts of appeals since 1876.
Instead, as problems arose, the legislature created new courts to meet local needs, resulting in a complex system of lower courts with overlapping districts and jurisdictions.

**Recommendations**

- Request from the Office of Court Administration an analysis of the inefficiencies caused by the overlap of administrative judicial regions within the 82nd, 87th, 155th, 198th, and 273rd District Courts. If appropriate, a proposal should be included for a reapportionment of the Administrative Judicial Regions of Texas that would eliminate the problem of overlapping regions within those courts.
- Invest the necessary effort to obtain a thorough analysis of how the courts below the courts of appeals level might be made into a more logical and efficient system. There should be careful consideration of localities and the impact that any comprehensive plan to redistrict the state trial courts would have on existing communities of interest.

**Charge**

Consider modifications to the districts of district and county attorneys.

**Background**

District attorneys, county attorneys, county and district attorneys, and criminal district attorneys are prosecutors elected by the citizens of their districts to represent the state of Texas in all criminal cases in the courts below the courts of appeals level. They also represent the state in appeal cases and all juvenile law proceedings. Most counties have both a district attorney and a county attorney.

There is a trend of localities requesting the legislature to combine offices of district and county attorney in order to make more efficient use of funds, as well as a related trend of reducing the size of districts, which may allow further consolidation.

**Recommendations**

- There are no recommendations.
HOUSE COMMITTEE ON REGULATED INDUSTRIES

Charge

Gather and review information on the overall status of the telecommunications market in Texas, including the effects of inter-modal competition and emerging technologies. Recommend changes to Texas law to encourage new investment and technological innovation consistent with market-oriented public policies and the interests of Texas families and businesses. Gather information on the Federal Communications Commission Triennial Review and recommend adjustments to Texas law.

Background

Competition and technological advancement have radically changed the economic and regulatory equation in Texas and the Regulated Industries Committee suggests that it is essential that Texas provide a statutory framework for communications services that is both "technology neutral" and "flexible" to permit incorporation of new technologies into the statutory scheme without the need for legislative action and promote greater market efficiencies by permitting consumer demand (rather than statutory directive) to drive innovation and the provision of goods and services.

Fees for intra-state switched access service remain substantially higher in Texas than most other states and are an impediment to more flexible pricing options and services for consumers.

Recommendations

♦ Create a more supportive framework for open competition, economic investment, and technological innovation. Limited regulation must be at the centerpiece of this effort.

♦ Amend Texas communications law to ensure that it is technologically neutral in its application and enforcement.

♦ Systematically lower intrastate access fees over a reasonable and defined period. In order to allow providers the ability to recover revenues currently recovered through intra-state access fees, further retail pricing flexibility for basic service should be implemented. Lifeline eligibility also should be expanded but limited to basic service.
**Charge**

Study broadband service deployment, including other states’ models used to transition to a fully competitive communications marketplace and any new technologies of competitive providers.

**Background**

Although broadband technology is a key element of a new networked economy, access remains limited in rural Texas and even in many suburban areas and deployment disparity exists within certain urban centers and neighborhoods.

**Recommendation**

- Explore public-private partnerships, but resist the temptation to establish government funded and managed broadband networks. Consumer demand, not statute, will most effectively drive deployment and innovation. Consequently, reduction of regulatory encumbrances will increase open market competition and encourage broadband investment and deployment.

**Charge**

Study the process of economic dispatch and determine possible methods to improve the competitive electric utilities market and reduce costs and pollution caused by inefficient power plants.

**Background**

In 1999, the 76th Texas Legislature enacted sweeping electric market reforms designed to encourage competition and attract investors to build clean, efficient generating plants. Unanticipated growth of natural gas prices, the industry’s primary fuel source, has lessened the impact of this effort.

**Recommendation**

- The committee declined to make any recommendations with regard to economic dispatch until implementation of a nodal market design is complete, but suggested that the 79th Legislature insist that implementation of a nodal market design remain a significant priority for the Electric Reliability Council of Texas, Inc. (ERCOT).
Charge

Examine issues related to access of rights-of-way and easements to ensure state laws encourage non-discriminatory access for all broadband service providers regardless of technology used to offer the service or the regulatory status of the provider.

Background

The equitable treatment of all communications service providers with regard to the application of government fees, terms, and conditions for access to the public rights-of-way is important to insure that consumers have competitive choices in the marketplace. Unfortunately, due to historical compensation structures, judicial rulings, changes in technology, and marketplace developments, the practice is not uniform or equitable among competitors.

Recommendation

♦ Amend Texas law to ensure that fees, terms, and conditions for access to the public rights-of-way are competitively and technologically neutral as they apply to any communications service provider.

Charge

Examine the reliability of the electric utility service and review the authority and structure of ERCOT.

Background

ERCOT is responsible for the reliability and security of the state’s electricity market, as well as for fair and open access to the transmission and distribution system for all buyers and sellers of electricity. ERCOT’s board of directors is comprised of independent members, consumers, and electric power providers which has given rise to questions regarding potential conflicts of interest. While ERCOT is not a state agency, ERCOT has the ability to “tax” for its operating funds with little oversight by the Public Utility Commission (PUC).

Due to the absence of a Federal Energy Regulatory Commission (FERC)-approved Regional Transmission Organization (RTO) or similar entity, competition has not developed as anticipated in the state’s non-ERCOT regions.

Recommendations

♦ Refine ERCOT’s board structure to minimize conflicts of interest and promote independence of action by directors and officers.
♦ Give the PUC clear budgetary oversight of ERCOT.

♦ Do not require competition in non-ERCOT regions until such time that a FERC-approved RTO is in place and the power region has been qualified by the PUC.

♦ Ensure that the process for entry into competition by electric cooperatives and municipally-owned utilities is streamlined and that unnecessary impediments to entry are removed. In particular, modeling should be made readily accessible at a static and reasonable price for companies considering entry.

**Charge**

Study the size and scope of the various broadband infrastructure platforms (e.g., cable, satellite, fixed wireless, DSL [digital subscriber line]) in the state and how each are regulated under both state and federal law.

Broadband is defined by the Federal Communications Commission as a service capable of transferring data at 200 kilobits per second in at least one direction which allows for enriched information processing and video and audio capabilities. Currently, broadband platforms operate in various regulatory environments.

**Recommendation**

♦ Settle questions concerning the state’s role in regulation of broadband, as well as that of local government.

**Charge**

Determine how investment in broadband networks by both competitive local exchange carriers and incumbent local exchange carriers can be encouraged through public policy changes.

**Background**

The availability of broadband service across Texas is inconsistent and upgrading telephone and cable lines is an uncertain investment. Deployment of new wireless technology faces similar challenges. Some believe that statutory and regulatory uncertainty represent an impediment to such investment.
Recommendations

♦ Employ a statutory framework that relies upon the marketplace and consumer preferences, rather than government intervention, to drive broadband investment and deployment.

♦ Permit all advanced telecommunications technologies – such as broadband, VoIP [Voice-over-Internet Protocol], and fiber-to-the-neighborhood networks – to grow without traditional state regulation.

♦ Exclude advanced telecommunications technologies from state regulation.

♦ Prohibit tax-supported entities from being allowed to offer telecommunications or information services in direct competition with private industry.

Charge

Examine the benefits and challenges associated with alternative forms of energy generation technologies, such as wind and hydrogen fuel cells, and what if any state government involvement should be considered. (Joint Interim Charge with Energy Resources Committee)

Background

Texas has great potential for development of renewable, non-polluting energy sources such as wind, solar, and biomass. These power sources also can help address critical environmental issues in parts of the state; however, such energy sources are dependent on the development of technologies that will generate and transmit renewable energy affordably.

Recommendation

♦ Ensure proactive transmission planning and funding to help meet the state’s renewable energy goals. Evaluation of potential transmission projects should be allowed to take into account not only direct economic costs, but also potential environmental benefits. Particular attention should be given to delivering clean, renewable energy to Texas’s non-attainment regions.

Charge

Monitor agencies and programs under the committee’s jurisdiction, including identifying possible ways to merge or streamline agency functions to produce long-term financial benefit to the state and better efficiency of the agencies.
Background

The PUC is comprised of three members. The Open Meetings Act makes it unlawful for a majority of any commission to meet to discuss that commission’s business unless the meeting is conducted in a forum that is open to the public. Some believe that this restriction impairs even the most basic executive level interaction and prevents the frank discussion and exchange of ideas between commissioners.

Open discussions can cause unnecessary and harmful market fluctuations which could impair the burgeoning competitive markets, especially if proprietary, competitively sensitive information is released to competitors or the general public through an open meeting.

Recommendations

♦ Increase the number of PUC commissioners from three to five.
♦ Review fully and take under serious consideration the Sunset Commission’s recommendations regarding the PUC, ERCOT, and the Office of Public Utility Council [sic].
HOUSE SELECT INTERIM COMMITTEE ON
SEX OFFENDER STATUTES

Charge

Examine Chapter 62 of the Code of Criminal Procedure to streamline and clarify the statutory provisions relating to the Sex Offender Registration Program.

Background

Set out in Chapter 62 of the Texas Code of Criminal Procedure, the Texas sex offender registration law has become increasingly complex and detailed, due to numerous changes made over the last decade. Because of these piecemeal changes, the current law does not make registration requirements clear or easy to follow and enforce. New sex offenses have not been included as offenses requiring registration.

A general exemption process for registrants could serve the interests of justice in cases involving offenders who do not present a continuing threat, prevent registration from becoming an impediment in an agreed resolution of a case, and reduce costs for local government. However, federal mandates limit the ability of Texas to waive sex offender registration for certain offenses.

Recommendations

♦ Permit an exemption from registration for first-time adult offenders convicted or placed on deferred adjudication for certain nonaggravated offenses after they have registered. The legislature should consider the creation of an exemption option available only to certain non-aggravated, first-time adult sex offenders after those offenders have registered for a minimum of ten years. This delayed exemption review would be limited to those sex offenses which currently require lifetime registration under Texas law, but only require ten-year registration under federal law. This would provide increased protection to our communities while also providing relief to those offenders who can demonstrate to a court that they are no longer a threat to re-offend.

♦ Reorganize Chapter 62 into subchapters. To aid utility and comprehension, the committee recommends [that] Chapter 62 be subdivided as:
  ♦ General Provisions;
  ♦ Registration and Verification Requirements; Related Notice;
  ♦ Expiration of Duty to Register; General Penalties for Noncompliance;
  ♦ Provisions Applicable to Certain Workers and Students;
♦ Provisions Applicable to Persons Subject to Civil Commitment;
♦ Removal of Registration Information; and
♦ Exemptions from Registration for Juveniles and Certain Young Sex Offenders.

♦ Simplify certain definitions and make appropriate corrections to cross-references within Chapter 62: Most definitions in Chapter 62 should be consolidated in one article at the beginning of the chapter, and the definition of “reportable conviction or adjudication” should be broadened to include various types of juvenile adjudications of delinquent conduct, removing the need to separately define that conduct elsewhere.

♦ Add two recently-created crimes to the list of offenses requiring registration. During the past two sessions, the legislature has created two new criminal offenses that include elements of improper sexually-related conduct: Improper Relationship Between Educator and Student (Section 21.12, Penal Code); and Improper Photography or Visual Recording (Section 21.15, Penal Code). These two offenses should be added to the list of offenses that require registration as a sex offender for a term of 10 years.

♦ Clarify the effect of a pardon for innocence upon the duty to register. Current law does not automatically remove a pardoned offender from the sex offender registry. A registrant who is subsequently pardoned for innocence should be removed from that registry in the same manner as that for those who successfully appeal their reportable conviction/adjudication.

♦ Require the Department of Public Safety (DPS) to make available its prior determinations of “substantial similarity” regarding extra-jurisdictional offenses. DPS should periodically provide or make available to all law enforcement agencies a cumulative compilation of rulings it has made regarding the applicability of the Texas registration law to those offenses.

♦ Eliminate newspaper publication notice. Publication should remain an option for agencies publicizing notice for high-risk offenders, should that agency believe such notice is necessary.

♦ Expand neighborhood “post card” notification for high-risk offenders to include non-residential addresses (other than post office boxes) so that nearby pre-schools, daycare centers, schools, and businesses can be placed on notice.

♦ Tighten requirements upon registrants who have not established a new address to prevent registrants in transition between residences from getting “lost in the system,” they should be required to report to their primary registration authority on a weekly basis until they establish a permanent residence for registration purposes.

♦ Revise the “regularly visited locations” exception for reporting overnight visits by a registrant away from his/her registered address. The exception should be further limited to better track the whereabouts of registrants who temporarily stay, sleep, or take extended visits at locations other than their registered address.
Create a mechanism for monitoring the presence of certain registrants in “child safety zones.” Current law imposes additional registration duties in “child safety zones” for registrants who are on community supervision or parole for an offense or conduct involving a child. However, these same restrictions do not apply once those registrants have discharged their sentence, even though many of the same public safety concerns persist. Those registrants should have to give notice of their presence to the administrator of such a facility regardless of their status on probation or parole. Failure to comply with this provision should be punishable in the same manner as other offenses for failure to properly register.

Standardize certain registration and exemption requirements for adults and juveniles. To the extent possible, provisions directed at juvenile sex offenders should be expanded to include eligible adults in a manner consistent with the rest of Chapter 62. This includes expanding the existing law on disposal of juvenile records to apply to all registrants whose duty to register has expired, combining those current provisions that create limited exemptions from registration for certain juvenile and young adult offenders, and clarifying the process to petition, order, and appeal such exemptions.

Expand venue for the prosecution of offenses committed under Chapter 62. Sex offender registrants who frequently change residences or move between jurisdictions without making the proper notifications often end up “slipping through the cracks” between the various agencies located in those jurisdictions. The venue for the prosecution of these offenders should be expanded to close those loopholes and clarify the ability of those agencies to charge and prosecute those offenders for failures to properly register (this change can be made in Chapter 13, Code of Criminal Procedure).

Clarify the rules surrounding judicial admonitions regarding registration laws. Chapter 62 has become so complicated that it is not reasonable to expect courts to fully admonish offenders about each and every requirement under Chapter 62. Likewise, it is unjust to permit valid pleas of guilty to be overturned based upon a technical failure by a court. Plea admonitions regarding the collateral consequences of sex offender registration should remain valid as long as a court substantially complies with the law (this change can be made in Article 26.13, Code of Criminal Procedure).

Ensure the collection of DNA samples from all registrants. All registrants should already have a DNA profile entered in the appropriate investigative databases before their release. Unfortunately, compliance with this requirement is not always complete. To ensure that a registrant’s DNA profile is available for future use by criminal investigators, a specific authorization to take a sample in compliance with applicable state law should be included in the Government Code and that a registrant’s failure to comply with a valid request for a DNA sample be punishable under Chapter 62.

Require DPS to accept a valid identification card from the Department of Criminal Justice as proof of the identity of a registrant who is applying for a personal identification [card] or driver’s license.
HOUSE COMMITTEE ON STATE AFFAIRS

Charge

Review the process and appropriateness for naming public buildings for individuals.

Background

Chapter 2165 of the Government Code sets out the requirements for naming state-owned buildings. Under this chapter, the Texas Building and Procurement Commission (TBPC) submits names proposed for a new or existing state building to the presiding officers of the house of representatives and the senate. The name may be approved only by concurrent resolution passed by the legislature and signed by the governor. Except for institutions of higher education, prisons, and Texas Youth Commission (TYC) facilities, a building may bear the name of a person only if the person is deceased and was significant in the state's history. The Texas Military and Veterans Affairs Commission (TMVAC) has its own procedure for naming buildings it erects for the national guard.

The current system has led to two concerns: parties desiring to name a building after an individual must wait until the legislature is in session to obtain approval from both houses of the legislature, and the appearance of susceptibility to political considerations.

Recommendations

♦ Appoint a permanent five member body to consider all requests to name public buildings for individuals that are currently subject to recommendations by the TBPC. The body would consist of the governor, the lieutenant governor, the speaker of the house of representatives as permanent members, and would also include the state representative and the state senator who represent the location in which the building in question is located. The governor, the speaker, and lieutenant governor should also be allowed to designate one of their staff members to stand in for them in the decision making process.

♦ Institutions of higher education, the TMVAC, the TYC and state prisons should be exempt from this change and should continue to use their current procedures for naming public buildings for individuals.

Charge

Review and consider all issues related to disclosure protections for an individual's social security number to a member of the public in certain circumstances without that person's written consent.
Background

Millions of individuals and businesses have been victims of identity theft, in which thieves use stolen personal information, such as social security numbers, to commit fraud. Misappropriation of social security numbers has also been linked to terrorist activity.

The federal Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was enacted to reduce identity theft and help victims recover. The FACT Act preempts any more stringent state identity theft laws pertaining to certain issues, making it the national standard for the identity theft procedures of credit reporting agencies and others.

Recommendations

♦ Prohibit a governmental body from disclosing a person's social security number to a member of the public in certain circumstances without that person's written consent. The consent should be required to be given on a clear and understandable form that the attorney general would be required to prescribe for that purpose. If the consent form is part of a larger document, the consent form should be a separate page of the larger document and the person's signature must appear on that page. However, it is important that this prohibition not be overly disruptive to certain key government functions. Therefore, the legislature should maintain exceptions to this recommendation that would not prohibit the disclosure of a person's social security number without the person's consent:
   ♦ to a federal, state, or local governmental entity for a legitimate governmental purpose;
   ♦ by a local governmental body, if the social security number was contained in information that was created, assembled, or first maintained by or for the local governmental body prior to a certain date, and the disclosure of the number is not otherwise prohibited by law;
   ♦ to a private vendor as necessary to allow the vendor to perform a service for a governmental body under a contract with the governmental body (the vendor likewise may only disclose the number as necessary for this purpose);
   ♦ in connection with the collection of delinquent child support payments; and
   ♦ if the person whose social security number is disclosed has been convicted of a felony, and the disclosure is relevant to establishing the person's identity.

♦ Ensure that any exceptions granted to private businesses with regard to the use or display of social security numbers will only be for limited purposes and specific time durations.

♦ Examine the extent of the federal pre-emption created by the implementation of the FACT Act rules that should take place by the end of 2004, and once that issue is settled, enact similar social security number protections at the state level to cover smaller businesses and entities that will not fall within the purview of the FACT Act regulations.
The Office of Consumer Credit Commissioner expects to submit its report on this topic to the legislature in December of 2004, after the FTC has finalized its implementation of the FACT Act regulations. Once that process is complete, the legislature should immediately act to fill in the gaps to enact comparable regulations for any businesses or entities who are not covered by the federal statutes.

**Charge**

Gather and study statistical information concerning judicial proceedings to bypass parental notification of a minor's abortion.

**Background**

The Texas Parental Notification Law prohibits a physician from performing an abortion on an unemancipated minor unless the physician has given at least 48 hours notice to the minor’s parent, guardian, or managing conservator. This law also provides "judicial bypass" procedure to allow a minor to seek a court order authorizing the minor to consent to an abortion without notification to a parent, guardian, or managing conservator. A judge must enter an order authorizing the minor to consent to the abortion without notification if the judge determines that the minor is mature and sufficiently well-informed, an abortion is in the minor’s best interests, or parental notification would lead to abuse. In accordance with United States Supreme Court rulings, the law maintains the anonymity of the minor and requires that the judicial bypass procedure be completed with "sufficient expedition"; under the Texas law, if a court fails to rule on the application by a minor seeking an abortion without parental notification not later than 5:00 p.m. on the second business day after the application has been filed, the application is deemed granted.

Currently, the only available statistics relating to judicial bypass procedures are expenditures related to court costs and attorney and attorney ad litem fees paid by the state in accordance with the notification law. However, these summaries do not yield the exact number of applications, nor do they provide information on the disposition of those applications. These statistics also would not include situations in which there were no costs or fees required to be paid by the state, such as when a judge failed to rule on an application within the 48-hour time frame or if the attorney does not request reimbursement.

The Texas Parental Notification Rules authorize minors to file judicial bypass applications “in any county court-at-law, court having probate jurisdiction, or district court, including family district court, in this state.” There is no venue requirement, so that a minor may file a judicial bypass application in any Texas county, regardless of her residence.

**Recommendations**

♦ Require trial and appellate courts to report to the Office of Court Administration [OCA] all judicial bypass cases which were granted by operation of law because the court failed
to rule within the required time period. These reports should be absolutely prohibited from disclosing the name of the minor, her parents, her legal guardian, conservator, or sexual partner so as to ensure that the anonymity of the minor is protected. The reporting mechanism should include additional safeguards for courts located in small counties, which would be defined as counties with a population of fewer than 100,000, to take into account the possibility that the relatively small number of bypass cases in such counties might cause this type of reporting to erode the minor’s anonymity in spite of the other safeguards. Such small counties would be allowed to merge their reports with neighboring counties. Once collected, the data should be made available to the legislature and to the public exactly as it is reported.

 Require district clerks and county clerks to report to the OCA the number of judicial bypass applications granted and denied pursuant to judicial bypass hearings within each judicial district or county, and require OCA to make this data accessible by Administrative Judicial Region. All reports submitted to the OCA should also be absolutely prohibited from disclosing the name of the minor, her parents, her legal guardian, conservator, or sexual partner so as to ensure that the anonymity of the minor is protected.

 Limit permissible venues for judicial bypass proceedings to those counties that are either the minor's county of residence or are adjacent to the minor's county of residence.

 Require abortion providers to report to the TDH [Texas Department of Health] the number of minors who obtain abortions through judicial bypasses.
Charge

Monitor the implementation of the Driver Responsibility Act in respect to the collection of associated surcharges for trauma care. Specifically evaluate the funding and distribution of funds to trauma care facilities.

Background

H.B. 3588 enacted by the 78th Legislature, Regular Session, established the Driver Responsibility Program (DRP) to enhance public safety and create a source of revenue to help offset health care costs associated with automobile accidents. The Designated Trauma Facility and Emergency Medical Services Account (DTFEMSA) was created as a repository for the revenue generated through the DRP and certain traffic-related fines. The legislature designated that the DTFEMSA is to be used to support the state trauma system including designated trauma hospitals, emergency medical services providers, regional advisory councils, and the Texas Department of State Health Services (DSHS) Bureau of Emergency Management. The DSHS Board adopted final rules for the DTFEMSA on July 1, 2004.

The DRP assesses a surcharge on the license of a person who has accumulated six points during a specified period for moving violations classified as Class C misdemeanors. The person is assessed a $100 surcharge for the first six points and $25 for each additional point. Additional surcharges for offenses such as driving under the influence range from $100 to $2,000 per offense per year. Collection of fiscal year (FY) 2004 surcharges were deferred until FY 2005 to allow the Texas Department of Public Safety (DPS) to finalize selection of the vendor to collect the surcharges and in house computer programming. On August 26, 2004, DPS signed a contract with Municipal Service Bureau for the collection of the surcharges.

Recommendations

♦ Conduct an audit of the performance, collection, and enforcement of the driver responsibility program prior to the next scheduled distribution of funds in FY 2006.
♦ Examine DPS's statutory authority to issue an administrative fee and provide clarification to DPS.
♦ Keep the program in its current funding distribution formula to ensure that the state's trauma system remains the beneficiary.
Charge

Study the effects of “crowd out” in the Children’s Health Insurance Program and the Medicaid Program to determine accurate data and to ascertain if additional policy changes are needed to prevent “crowd out” of private insurance and escalating public insurance costs.

Background

The State Children's Health Insurance Program (CHIP) was created by the federal Balanced Budget Act of 1997 to provide health care coverage to children whose families earn too much money to be eligible for Medicaid, but not enough money to afford private health insurance. The issue of crowd out has been a much debated aspect of the CHIP program since its inception.

Crowd out occurs when publicly funded health coverage such as Medicaid or CHIP is substituted for private health care coverage. Crowd out can occur when a family chooses to maintain publicly-funded health care coverage, when an affordable employer-sponsored health insurance plan is offered, or when an employer elects to reduce or eliminate coverage for employees and their dependents with the expectation that government-sponsored health care programs will provide the coverage. States were required to submit strategies to prevent crowd out as part of their state CHIP plans. Texas has initiated various methods of preventing or reducing crowd out.

Recommendations

♦ Consider applying premium sharing to any added or restored benefits.
♦ Consider codifying exemptions for asset calculations.
♦ Consider exempting any cash that may be deposited in a Health Savings Account (HSA), Health Reimbursement Arrangement (HRA), or Flexible Spending Account (FSA), when determining CHIP eligibility to encourage individuals and families to save for their future healthcare needs.
♦ Direct the Health and Human Services Commission (HHSC) to require the CHIP application to ask applicants to both verify whether they have access to private health insurance through their employer and to report its cost.
♦ Monitor and seek to expand the use of the CHIP Premium Payment Assistance Program; work closely with the Office of State-Federal Relations in pursuit of a waiver.

Charge

Evaluate the funding source of the Medicaid Disproportionate Share Hospital (DSH) Program and the criteria that a hospital must meet to participate in the DSH program in comparison to the balance and fairness of other state and federal funding streams.
Background

The Disproportionate Share Hospital (DSH) Program reimburses hospitals providing care to patients who are underinsured or uninsured to help the participating hospitals offset losses on uninsured patients and the shortfall in Medicaid reimbursement. The federal government provides matching funds to the states to provide payments to hospitals. In Texas the DSH program provides payments to approximately 181 hospitals each year. For FY 2003, this included 167 non-state public and private hospitals and fourteen state-owned hospitals. In FY 2003, the 167 non-state hospitals in the Texas DSH program received approximately $840.4 million in DSH payments; the fourteen state-owned hospitals received approximately $480.2 million. Since the DSH program's inception, a number of restrictions and changes have been imposed by the federal government as well as at the state level.

Recommendations

♦ Continue to monitor the activity of the DSH program at the federal level, particularly in regards to retaining the legitimate use of intergovernmental transfers as a tool to secure matching funds.

♦ Attempt to coordinate a percentage of new or restored funds under graduate medical education into the DSH process in order to draw down additional federal matching dollars.

♦ Evaluate the County Indigent Health Care Program in an effort to encourage all counties to increase participation in the indigent health care system.

Charge

Study current consumer-directed care models that are in use by the state and look at other states’ consumer-directed care models that may benefit Texas in areas such as long-term health care and chronic health care. Place emphasis on the Program of All-Inclusive Care For the Elderly model to ascertain its true potential for both cost-effectiveness and improved health outcomes. Identify barriers to the model’s expansion in Texas.

Background

In 2000, an estimated 9.5 million people in the United States required long-term care, including six million elderly and 3.5 million non-elderly. The traditional case management approach used in health care services often limits the input that these clients have regarding the nature, scope, and scheduling of the care they receive, the persons providing that care, or the setting in which the care is received. Challenging this traditional model of care, clients of publicly-funded programs have advocated for greater control over their long-term care.

The concept of consumer-directed care is based on the premise that informed consumers can make choices about the services they receive, assess their own needs, determine how and by
whom these needs should be met, and monitor the quality of services received. Consumer-directed care allows an individual with a disability or chronic illness to function as independently as possible with the added advantages of being provided more personalized service in a more cost effective setting than a nursing or long-term care facility. Consumer-directed care models in public health programs range from direct pay models to professional case management models.

The 1999 United States Supreme Court ruling in *Olmstead v. L.C.*, 119 S. Ct. 2176 (1999), held that it is a violation of Title II of the Americans with Disabilities Act (ADA) for states to provide services in an institution to a disabled person if they could be better served in a community-based setting. This decision compelled states to develop comprehensive working plans for placing qualified persons in less restrictive settings and to assure that those on waiting lists for services would be served within a reasonable period of time. Following the *Olmstead* decision, the federal government and the states have been working to address issues relating to consumer-directed care models and to develop and expand programs based on this model.

**Recommendations**

- Continue to explore opportunities to expand and enhance its consumer-directed care programs as this service delivery model has demonstrated itself to be a cost-effective way to provide enhanced services to clients.

- Evaluate the expansion of the service responsibility option (pending a successful pilot); the separation of service coordination from service provision through the consumer-directed services model; the expansion of the provider base to Independent Living Centers and Area Agencies on Aging; the integration of adaptive technology as a means to achieve independence; and the use of Health Savings Accounts as a new tool for the delivery of consumer-directed care.

**Charge**

Continue to identify and seek new models for the provision of health care benefits within the Employees Retirement System (ERS) and the Teacher Retirement System (TRS).

**Background**

Currently 85 percent of health care costs are paid by third parties such as government entities, employers, or insurance companies and the proportion paid directly by consumers has continued to fall for several years. One emerging strategy to both moderate health care spending growth and improve the quality of outcomes is to have consumers direct their own care.
The underlying premise of consumer-directed health care is that the person receiving the health care — if provided the opportunity and sufficient information — can exercise the best judgment about the services needed and the appropriate payment method. Consumer-directed health care plans emerged in the late 1990s and now most major managed care and health insurance providers offer consumer-directed plan options, primarily in employer-sponsored health benefit programs.

Other consumer-directed options include flexible spending accounts (FSA) that are tax-favored programs that allow employees to set aside pre-tax money from their paychecks to pay for a variety of eligible expenses; medical savings accounts (MSAs), which are tax-deferred investment accounts that are used in conjunction with a qualified high deductible health plan (HDHP) to pay for qualified medical expenses; health reimbursement accounts, a type of defined contribution health care plan rather than a defined benefit plan; and health savings accounts, a tax-favored account that persons covered by HDHPs can use to pay for certain medical expenses.

The state's ERS and TRS offer limited consumer-directed health care options.

**Recommendations**

- Offer state employees, through ERS, the option of establishing an HSA, to include having readily available the required HDHP.
- Establish that various ERS health care vendors using an HSA will be provided access to the same negotiated discounts for products and services as those state employees found within the standard benefits package.
- Allow teachers within both the TRS-Care and TRS-ActiveCare programs to also have the option of an HSA and direct the TRS to offer an HDHP option that is compatible with an HSA.
- Establish that various TRS health care vendors using an HSA will be provided access to the same negotiated discounts for products and services as those state employees found within the standard benefits package.
- Examine the TRS HRA program in the 79th Regular Session to determine whether the implementation of HSAs offer a more effective means of providing teachers with a tax-shielded means of paying for both their health care and retirement needs.
HOUSE COMMITTEE ON TRANSPORTATION

Charge

Actively monitor and review the Texas Department of Transportation's [TxDOT] rulemaking, promulgation of policies and procedures, implementation of programs, and other activities related to the implementation of H.B. 3588, 78th Legislature. (Joint Interim Charge with Senate Infrastructure Development and Security Committee)

Background

The passage of H.B. 3588, 78th Legislature, Regular Session, and H.B. 2, 78th Legislature, Third Called Session, authorized certain financing mechanisms designed to accelerate project delivery and generate cash flow. Local authorities were given tools to build infrastructure they deemed necessary to their regions. TxDOT was given new responsibilities including rail management and public transportation. Other initiatives, including the use of toll equity, right-of-way leasing, and the use of the Texas Mobility Fund (TMF) to fully or partially fund the Trans-Texas Corridor, were legislated.

Funding tools to create a funding source for the TMF were authorized under legislation passed during the 77th Legislature and were designed to supplement the current system by allowing the Texas Transportation Commission to issue bonds on a limited basis for transportation infrastructure needs. A revenue source was not created until the passage of H.B. 3588 which directed that revenues from the Driver Responsibility Act and increased traffic fines be placed in the TMF.

Regional mobility authorities (RMAs) were created during the 76th legislative session for the purpose of constructing, operating, and maintaining toll road projects in the state. H.B. 3588 provided the RMAs with additional the tools, including the power of eminent domain, the authority to enter into comprehensive development agreements, and the authority to issue revenue bonds for transportation projects. In addition, an RMA now may develop projects for airports, rail projects, and ferries.

An RMA may now acquire, construct, operate, maintain, expand or extend a transportation project in a county that is not part of the authority if the transportation project in the affected county is a continuation of the RMA's transportation project extending from an adjacent county. RMAs may enter into agreements with a public or private entity, a toll road corporation, the federal government, or any individual state, Mexico, or any one of its individual states, another governmental entity, or a political subdivision. Additionally, RMAs may study the feasibility of transportation or acquire, design, finance, construct, maintain, repair, operate, extend or expand a transportation project. RMAs may use surplus
revenue to finance other local transportation projects and participate in the development of the Trans-Texas Corridor.

RMAs were additionally authorized to issue revenue bonds backed by tolls and to enter into comprehensive development agreements (CDAs) with private entities to design, construct, and operate toll facilities. Regular state highways may be converted to toll facilities and be transferred to RMAs for operation and maintenance as authorized by the Texas Transportation Commission; and TxDOT may provide payment of per-vehicle fees (pass-through tolls) as reimbursement to RMAs for construction and maintenance of state highways or as compensation for the cost of maintaining toll facilities transferred to an RMA.

Toll equity gives TxDOT the ability to put money into a project and not be reimbursed. If TxDOT provides a portion of funding for a toll project and a private entity provides the rest, the state saves money since TxDOT does not provide all the money for construction. When TxDOT provides a portion of the funding, the road usually reverts back to the state after a certain period of time.

Design-build is a method of project delivery that differs from the traditional design-bid-build approach in several ways. The design-build method enters into a contract with the owner to provide for architectural/engineering design services and construction services as opposed to the latter in which an owner commissions an architect or engineer to prepare drawings and specifications under a design contract.

A CDA is an agreement with a private entity that provides for the design and construction of a turnpike project. The CDA can also provide for financing, acquisition of property, and the maintenance and operation of the facility and is particularly advantageous to entities such as start-up RMAs facing constraints in financial and human resources.

Roughly half the states in the United States use this method of project delivery, and the Federal Highway Administration has been using CDAs or design-build since 1988. The first CDA in Texas will be State Highway 130, which has taken a design-build approach with a toll financing package, resulting in time efficiencies and a completed project estimated by December 2007.

TxDOT recommends that CDAs be used on large projects, especially in the turnpikes, rather than a broad range of nonspecific services.

Other matters under review include the areas of unsolicited proposals for transportation projects and what constitutes rules and guidelines for stipends to unsuccessful proposers.

It is expected that regional transportation solutions will include rail and other goals for reducing congestion as well as reducing truck traffic.
Recommendations

♦ Consider statutory authorization to use design/build procurements to develop tolled and non-tolled projects.

♦ Revise language regarding the CDA process in order to assure that innovative ideas are encouraged and rewarded. Also consider language to permit the "pre-qualification" of teams to avoid delays in the CDA process.

♦ Raise or remove the current cap on the amount of toll equity TxDOT may invest in projects.

♦ Consider language regarding the presumptive valuation of used cars for sales tax purposes.

♦ Clarify issues concerning toll conversions. This includes defining at what point in the project planning and development process a conversion will be deemed to occur, and what approvals are necessary for a conversion.

♦ Consider language to assure that franchises can be awarded either within existing CDA authorization or through separate statutory provisions.

♦ Consider language requiring TxDOT to release a list of projects throughout the state that may be toll viable based on TxDOT studies.

Charges

Review transportation best practices in other states to determine possible improvements in administration, operations, delivery of projects, and improving overall efficiency of the Department of Transportation.

Actively monitor agencies and programs under the committee's jurisdiction, including identifying possible ways to merge or streamline agency functions to produce long term financial benefit to the state and better efficiency of the agencies.

Background

While passage of H.B. 3588 and H.B. 2 in the 78th Legislature, Regular Session, helped advance traffic planning in meeting the tremendous population growth in the state, others less familiar with toll roads criticize what they consider the unfair adoption of tolls.

Tolling, highway-to-toll conversions, public/private partnerships, CDAs, RMAs, and other innovations, including land acquisition and changes in utilizing rail for freight and commuters, will help to merge growth successfully with a transportation infrastructure system.
In order to best utilize the many innovations of H.B. 3588, TxDOT must study the best practices of other states.

TxDOT's 2001 publication, "Transportation Partnerships," established five transportation goals: reliable mobility, improved safety, preserving existing transportation systems, streamlining project delivery, and increasing economic vitality.

Outsourcing has been increased in many state departments of transportation as capital transportation programs grow while staff levels remain constant or decline. Most typically these activities include surveying and mapping, location studies, plans and specifications, environmental impact studies, design/build, program management and engineering design. Maintenance activities most commonly outsourced include roadway surface, roadside, drainage, bridges, traffic signals, and traffic signs. Outsourcing of engineering services has also been considered although some concern remains due possibly to quality concerns.

Environmental streamlining has also been addressed by TxDOT through memorandums of agreement and memorandums of understanding with state environmental resources agencies such as Texas Parks and Wildlife and the Texas Commission on Environmental Quality and internal efforts including advance right-of-way acquisition and improved contracting agreements. Mitigations efforts include wetlands banking, conservation easements, and fee in lieu of mitigation.

TxDOT also works with the Federal Highway Administration to put into place "programmatic agreements" through which certain environmental documents can be identified as routine categorical exclusions and can be checked and thus cleared for implementation more quickly.

**Recommendations**

- Consider legislation that would allow the TxDOT to remove its requirement that its executive director be an engineer.
- Consider legislation that requires long-term maintenance and capital improvements (i.e., life-cycle costs) to be considered in CDA and design/build procurements.
- Consider legislation to assure that start-up funding is available for RMAs, so that the financial burden of start-up and organizational costs does not rest solely on the counties forming the RMA. RMAs can be a valuable tool for developing much needed infrastructure throughout the state while benefiting the regions that utilize the RMA model.
- Reconsider language permitting non-tolled travel on HOT lanes by hybrid and other vehicles should be reconsidered.
- Harmonize toll violation and enforcement authority for various types of tolling entities and to accommodate increased use of electronic tolling.
Consider language regarding participation by local entities as investors in toll projects who can receive a return on amounts contributed.

**Charge**

Review and study all existing legislation affecting the development of transportation infrastructure in areas adjacent to the Texas-Mexico border. Study international trade issues as they relate to transportation, the adequacy of existing infrastructure to facilitate international traffic related to trade, and potential for development of inter-modal hubs and other mixed use facilities which promote more efficient trade and economic development, and the opportunities for contracting with Mexico or any of the Mexican states for development of transportation infrastructure. (Joint Interim Charge with House Border and International Affairs Committee)

**Background**

The fastest growth in vehicle miles of travel in our urban regions has been truck traffic. In 1999, the federal government's study of Interstate Highway 35 showed that the highest vehicle counts, the highest fatality rate, the lowest levels of service, the most congregated patterns, and the slowest average speed per mile, all occurred in the Austin-San Antonio corridor.

Federal programs are in limbo due to budgetary considerations, which could impact the High Priority Corridors that support U.S./Mexican/Canadian trade patterns. The programs and the corridors need to be reviewed in order that the flow of trade to and from the border is enhanced.

The United States Supreme Court ruled on June 7, 2004, that Mexican trucks may travel on United States highways pursuant to the North American Free Trade Agreement (NAFTA). Safety concerns postponed action on the provision initially and, later, the Federal Motor Carrier Safety Administration (FMCSA) required a detailed environmental assessment to be completed before the border could be opened. The Supreme Court's ruling stated that the FMCSA "has no ability to countermand the president's lifting of the moratorium or otherwise categorically to exclude Mexican motor carriers from operating in the United States." Mexican trucks, according to the FMCSA, must meet the same standards for safety regulations that Canadian and United States trucks do, and United States Secretary of Transportation Norman Mineta reiterated that all trucks and buses operating within the United States will be in compliance with all applicable safety and environmental standards.

**Recommendations**

Continue to seek increased federal assistance in responding to NAFTA-related costs.
♦ Direct Border communities to continue to work closely with TxDOT personnel to evaluate potential tolling projects. Regional mobility authorities should be considered, particularly at border crossings, where tolling projects would be most viable.

♦ Note that the state would realize significant benefit from aggressively pursuing full integration into the FAST program, which, as described in this report, is a harmonized clearance process by U.S. Customs for shipments of known compliant stakeholders. The Texas Department of Public Safety has been diligent, but thus far unsuccessful, in gaining access to relevant data maintained by U.S. Customs for the FAST program, nor does the FAST program incorporate data from the DPS, such as identification data, violation histories, credentials, operating authority, and insurance coverage.

♦ Liberalize policies regarding short sea shipping to encourage use of this alternative to overland routes.
**HOUSE COMMITTEE ON URBAN AFFAIRS**

Charge

Review the roles of special purpose districts, including justification, powers and responsibilities, as well as relationships with local elected governing bodies. Specifically, include an analysis of the use, benefits and drawbacks of tax increment reinvestment zones.

Background

Special districts are political subdivisions of the state that are authorized to provide public services to specific populations or areas.

Municipal management districts (MMDs) are governed by Chapter 375, Local Government Code, authorized to impose ad valorem property taxes or assessments, as well as impact fees, issue bonds, and annex land. MMDs are generally authorized to serve as an auxiliary source of public funding to a specific portion of a municipality, or a neighborhood.

Municipalities are authorized to engage in tax increment financing pursuant to Chapter 311, Tax Code, in order to reinvest tax revenues on specific portions of incorporated areas in order to foster and encourage economic development. Many Texas municipalities have established tax increment reinvestment zones (TIRZs) to denote the area in which municipal investment will occur.

The House Committee on Urban Affairs found that:

- There is ample municipal oversight of TIRZs;
- TIRZs are accountable to the creating municipality and the other participating taxing units;
- A TIRZ cannot issue bonds or other obligations, impose fees, exercise the power of eminent domain, or levy taxes;
- A TIRZ can only exercise the powers granted to it by the municipality;
- A TIRZ must implement the project plan and reinvestment zone financing approved by the municipality;
- The municipality may terminate a TIRZ at any time; and
- The use of TIRZs throughout the state has been tremendously successful.
**Recommendations**

♦ Continue to allow the legislature's natural oversight function to play a part in the creation of MMDs.

♦ Explore updating Chapter 375, Local Government Code, to include provisions that have been used successfully in special districts established since 1987.

♦ Consider modifying Chapter 375, Local Government Code, to remove existing barriers to the expansion or contraction of any special district boundaries or powers through TCEQ's administrative petition process.

♦ Change any reference to the Texas Natural Resource Conservation Commission (TNRCC) in Chapter 375, Local Government Code, to the Texas Commission on Environmental Quality (TCEQ).

**Charge**

Actively monitor the implementation of S.B. 264, 78th Legislature, Sunset legislation for the Texas Department of Housing and Community Affairs (TDHCA). Include an analysis of whether further reforms are needed through a review of best-practices in other states.

**Background**

S.B. 264 attempted to return balance to the state's affordable housing primarily through modification of the most important public/private partnership program – the Low Income Housing Tax Credit Program.

The changes made in S.B. 264 were guided by four overriding principles: reverse the trend of warehouse low-income tax credit developments, encourage community participation in selecting viable low-income housing sites, locate tax credit developments in areas with the most need, and make affordable housing available to all persons below 60 percent of Area Median Family Income (AMFI). TDHCA was granted three new tools to implement these principles:

♦ Prevent the allocation of low-income tax credits for a development within one mile of any low-income developments that have received tax credit allocations during the previous tax credit allocation round.

♦ Increase community participation in the process by requiring elected state officials, local community groups, and elected local officials to be notified of any tax credit applications. Then, grant points to any applicants who have received support among these community groups and/or elected state officials.

♦ Establish a definition of "exurban" in an attempt to spread the placement of tax credit developments throughout existing urban regions.
The House Committee on Urban Affairs found that TDHCA systematically failed to correctly implement the legislative directives of S.B. 264 and that TDHCA's ill judgment worked to undermine the lawful oversight efforts of the legislature to restore fiscal integrity to the tax credit program while, at the same time, it diminished the value of local community input about the program.

**Recommendations**

◊ Explore in detail the subject of best practices in other states.
◊ Enforce the one-mile/one-year rule and reexamine the usefulness of this tool in ending the practice of warehousing low-income housing tax credit program developments. Clarify the two potentially contradictory sections which were passed in S.B. 264.
◊ Define clearly an exurban city/town in statute and make certain this tool will be used to direct low-income housing tax credit developments to those areas with the most need and reverse the practice of warehousing these developments while making certain the definition does not divert money from rural areas.
◊ Create legislation that will allow local communities to easily and simply involve itself in the proper placement of low-income housing developments. The language should not allow the department [TDHCA] to undermine this important component through complicated departmental rules.
◊ Make clear the legislature's policy decision to give points in the Qualified Allocation Plan to only state elected officials, rather than local elected officials.
◊ Rewrite any language that allows permissive and arbitrary interpretation of scoring in future Qualified Allocation Plans.
◊ Pass legislation that encourages the use of Alternative Dispute Resolution (ADR), allows either party (agency or applicant) to request ADR, is not a binding arbitration process and does not block access to the courts if necessary, and finally allows ADR to be effective for the same tax credit year.

**Charge**

Evaluate the effectiveness of current programs in meeting the state's housing needs and examine new alternatives such as urban land banks, homestead preservation districts and programs to provide gap financing.

**Background**

The House Committee on Urban Affairs heard testimony during the interim that reviewed urban land banks, homestead preservation districts, and various programs that provide gap financing and assist in meeting the state's housing needs.
Recommendation

♦ There are no recommendations.

Charge

Evaluate the effectiveness of Uniform State Service Regions in allocation of Home Investment Partnership Program (HOME) funds and low-income tax credits to develop housing and examine alternatives to meet the needs of the state's rural areas.

Background

Created in 1990, the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C., Section 12701, authorized Congress to allocate funds to the states. The Texas Legislature subsequently created legislation to administer these funds through what is now the Texas Department of Housing and Community Affairs.

In 2001, the 77th Legislature passed a provision in S.B. 322 requiring HOME funds to be evenly distributed among the 13 Uniform State Service Regions.

The House Committee on Urban Affairs reported the following findings:

- In determining the availability of other housing funds as part of the calculation of the Regional Allocation Formula, TDHCA does not adequately take into account which particular funds are available for each corresponding type of housing.
- As currently administered by TDHCA, rental housing is not receiving "primary attention" under the HOME Program as required by law.
- Non-participating jurisdictions should receive 100 percent of the HOME Funds.

Recommendations

♦ Amend the Texas Government Code to include a legislative directive regarding the types of financing to be included as "other available sources."

♦ Consider allocating HOME funds more in line with the primary statutory purpose of the HOME program and direct that $10 million annually of HOME funds be utilized for multifamily development or preservation.

♦ Amend the statute [Government Code] to set aside 100 percent of its funds for nonparticipating jurisdictions and for the preservation of rural housing that meets the definition of being located in a rural area.
HOUSE COMMITTEE ON WAYS AND MEANS

Charge

Monitor the fiscal impact to the state due to interstate sales and monitor Texas' involvement and implementation of the Streamlined Sales Tax Project (SSTP).

Background

Currently, 42 states, including Texas, and the District of Columbia participate in the SSTP. Twenty states, including Texas, have enacted all or part of the conforming legislation. The 78th Legislature, Regular Session, passed H.B. 2425 to enact several, but not all, provisions of the SSTP agreement.

H.B. 2425 addressed the issue of sourcing local sales taxes by taking a two-tier approach: one for taxable services and one for tangible personal property. Texas' sales tax is an origin-based system of allocating local sales tax on transactions. In Texas, the location of the seller's place of business generally determines the local sales taxes that are due, except for transit taxes. The SSTP agreement calls for collection of local sales taxes on a destination-basis that looks to the location where the goods are delivered or where the taxable services are provided.

Effective July 1, 2004, Texas was to begin sourcing taxable services on a destination basis but implementation of this provision had to be delayed.

H.B. 2425 also called for the Comptroller of Public Accounts (comptroller) to perform a study of the economic and other costs to local governments should sales, leases, and rentals of tangible personal property be sourced on a destination basis. The comptroller's office is studying the implications of these changes on local sales and use taxes, and developing various online and printed resources to help taxpayers understand the new requirements.

H.B. 2425 also called for the comptroller to perform a study of the economic and other costs to local governments should sales, leases, and rental of tangible personal property be sourced on a destination basis in conformance with the SSTP agreement. The comptroller's economic analysis staff is in the process of developing this study with input from other states and local governments.

The comptroller's staff continues to participate in the SSTP meetings and to work with other states, local governments, and with business interests in regards to issues of simplification of sales and use tax administration. The SSTP general meetings take place on a periodic basis about every other month.
Charge

Monitor federal tax policy changes that will affect Texas, specifically the permanent elimination of the inheritance tax and the deductibility of state sales taxes against federal income tax.

Background

The House Ways and Means Committee identified seven pieces of federal legislation that they determined could affect Texas taxpayers. As of the publication of Interim Digest, 78th Regular Session, five of the identified pieces of legislation have passed the United States House of Representatives and been placed on the United States Senate calendar. Two pieces of federal legislation became public law. A description of the federal legislation and subsequent outcome is listed below.

H.R. 4181, Permanent Extension of the Marriage Penalty Relief Act

The United States House of Representatives voted on April 28, 2004, to permanently eliminate the marriage penalty. H.R. 4181 provides permanent tax relief for millions of married couples. Marriage penalty relief was first enacted in the 2001 tax relief package. Congress accelerated the full effect of this relief to couples as part of the 2003 tax relief package. Marriage penalty relief is achieved by doubling the standard deduction and the 15 percent tax bracket for couples so that these provisions are double those for individuals. The 2001 tax relief also reduced the marriage penalty as it relates to the Earned Income Credit by gradually increasing the income level at which the credit is phased out for married couples. H.R. 4181 prevents all three relief measures from expiring after 2010. There has been no action by the United States Senate.

H.R. 4227, Middle-Class Alternative Minimum Tax Relief Act

This bill was approved by the United States House on May 5, 2004, and extends through 2005. Current income exemptions are subject to the alternative minimum tax at $40,250 for individuals and $58,000 for couples. Absent enactment of the bill, the income exemptions are scheduled to revert to $33,750 for individuals and $45,000 for couples in 2005. There has been no action by the United States Senate.

H.R. 4275, The 10 Percent Tax Bracket Extension and Permanency Act

This bill was approved by the United States House by a 344-76 vote on May 13, 2004. The bill, sponsored by Representative Pete Sessions (R-Texas), would preserve the benefits of the new 10 percent tax bracket. The 10 percent bracket applies to the first $7,000 in taxable income for single taxpayers and double that amount for married couples. The 2001 tax relief program created a new tax bracket at the 10 percent rate to help lower the burden on working Americans. This relief was expanded in 2003. If Congress fails to act, the 10 percent bracket will be lowered by $2,000 next year ($1,000 for singles), affecting an estimated 73 million
taxpayers, and will disappear in 2011. H.R. 4275 preserves the size of the 10 percent bracket and ensures that it is permanently preserved. This bill will provide Americans with $218 billion in tax relief over 10 years, according to the Joint Committee on Taxation. There has been no action by the United States Senate.

**H.R. 4359, One-thousand Dollar Child Tax Credit**

The United States House of Representatives voted on May 20, 2004, to approve H.R. 4359, the Child Credit Preservation and Expansion Act of 2004. Without action by Congress, the child credit will be reduced by $300 next year. This bill, introduced by Representative Jon Porter (R-Nevada), will ensure the $1,000 credit is available permanently. The bill also increases the income level at which the credit begins to phase out from $110,000 to $250,000 for married couples and from $75,000 to $125,000 for single parents. Enacting H.R. 4359 will prevent a tax increase of $610 next year on 30 million taxpayers with 49 million children, according to the Joint Committee on Taxation. There has been no action by the United States Senate.

**H.R. 8, Death Tax Repeal Permanency Act of 2003**

The House passed this measure on June 18, 2003, by a vote of 264-163. This bill provides that the sunset provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to the Estate, Gift, and Generation skipping Transfer Tax Provisions. The repeal measure was part of the tax relief package that President Bush signed into law in June 2001, but will expire at the end of 2010 because of a Senate rule. If it expires, the law would revert to estates with assessed values of more than $1,000,000 becoming subject to the levy. Under this bill, the repeal of the death tax will become permanent after 2010. There has been no action by the United States Senate.

**S. 150, Internet Tax Nondiscrimination Act**

This bill amended the Internet Tax Freedom Act to extend the ban on state taxation of Internet access and on multiple or discriminatory taxes on electronic commerce until November 1, 2007. The bill changed the definition of "tax on Internet access" and of "Internet access service." The bill also extended, through November 1, 2007, the Internet taxing authority of states that had a tax on Internet access prior to October 1, 1998, and through November 1, 2005, the Internet taxing authority of states that had a tax on Internet access as of November 1, 2003. S. 150 became Public Law 108-435 on December 3, 2004.

**H.R. 4520, American Jobs Creation Act of 2004**

In 1986, Congress introduced legislation to simplify the tax system by eliminating most of the itemized deductions, including all deductions for state and local taxes including income, property and sales tax. By the end of the process, the only deductions not allowed were state and local sales taxes. H.R. 4520 includes a section that allows taxpayers to elect to deduct state and local sales taxes in lieu of state and local income taxes for taxable years beginning
in 2004 and 2005. The bill permits taxpayers to elect to base their sales tax deduction on their own sales tax receipts or upon sales tax tables published by the Internal Revenue Service. H.R. 4520 became Public Law 108-357 on October 22, 2004.

Recommendation

♦ Continue to monitor the progress of various bills discussed above. The House Ways and Means Committee may want to consider sending letters of support as a whole or individually to the authors of each bill.

Charge

Actively support the Select Committee on Public School Finance in their deliberations on developing an alternative system of public school finance.

Recommendation

♦ There are no recommendations.
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Special Committee Reports
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JOINT COMMITTEE ON HIGHER EDUCATION

Charge

Study the structure and organization of higher education in the state, including the administration and operations of public and independent institutions of higher education.

Background

The committee stated that excellence in higher education demands both quality and access. The report summarized the educational resources, production, and progress toward state goals for higher education.

Recommendation

There are no recommendations.

Charge

Study the equity and adequacy of higher education funding and its relationship to the purposes of higher education, including providing opportunities to student to achieve their educational goals, furthering knowledge through research, and providing direct services as local, regional, and state engines of economic development.

Background

The report summarized state support for higher education, which totaled $9.25 billion in the 2004-2005 biennium; other sources of support for higher education such as tuition revenue bonds and additional revenue for growth or small size; online college programs; and sources of student financial aid.

Recommendation

There are no recommendations.

Charge

Examine the effects of student and community characteristics on the costs of higher education including income and educational levels of the families of students, unemployment rates, population growth, and other uncontrollable factors.
Background

The report summarized demographic factors and projections, relationship of incomes to demographic distributions, and the projected need for higher education resources.

Charge

Identify the number of classified and unclassified positions in the administration of each university system and examine each major function service or activity performed by system offices including:

♦ Central administration;
♦ Academic affairs coordination and support;
♦ General council and other legal services;
♦ Budgeting, accounting, and data reporting;
♦ Fiscal management;
♦ Facilities, planning, and construction;
♦ Governmental relations;
♦ Audit services;
♦ Real estate management;
♦ Information technology services; and
♦ Aircraft operation and usage.

Background

The Texas Higher Education Coordinating Board (THECB) gathered information from the six university systems. The report recognized that the differences among the university systems affects system administration cost per full-time equivalent student that ranged from $28 at the Texas State University System to $343 at the Texas Tech University System.

Recommendation

♦ There are no recommendations.

Charge

Identify the legislative and administrative changes in the organization and operations of institutions of higher education (IHEs) that will improve opportunities for residents of all areas to enroll in and complete programs of higher education.
Background

Eligibility requirements in the TEXAS Grants I and the B-On-Time (BOT) student loan program require students to complete the recommended high school curriculum (RHSC). The TEXAS Grants II Program, which assists students attending community colleges (CCs), does not require the RHSC but the program has higher requirements for subsequent awards than do the TEXAS Grants I and BOT. Grants are seen as more attractive to freshmen and sophomores, and because most students who complete two years of college continue to graduation; juniors and seniors are more likely to accept loans.

The $1,000 tuition rebate program is available for students who complete their degrees within three credit hours (plus nine credit hours by examination) of the number required for graduation.

Former education aides qualify for a tuition and fee exemption if they have worked in a classroom during one of the last five years before receiving the exemption.

Deadlines for registration and payment of tuition and fees fall before student financial aid programs and create hardships for their recipients.

The teacher shortage requires increased production of certified teachers. The alternative certification programs operated by regional education service centers, CCs, and public and private agencies are not eligible for the Hinson-Hazelwood College Student Loan Program and financial aid is not available.

THECB uses the federal Lender's Special Allowance to pay for the administration of loan and grant programs. THECB could use other appropriated funds for administration, and the allowance could be allocated for student financial aid.

The availability of TEXAS Grants I for four-year IHEs and TEXAS Grants II for CCs is confusing. A student receiving TEXAS Grants I can obtain extensions if a financial aid officer concludes that the student fell behind as a result of personal hardships, but extensions are not available to TEXAS Grants II recipients.

Currently tuition exemptions for members of the Texas National Guard (TNG) and Texas State Guard are administered jointly by THECB and the TNG. TNG selects participants and THECB administers the funds.

In statute, CCs are characterized variously as IHEs, school districts, and local governmental agencies, which confuse judges in cases of eminent domain and sovereign immunity.

CCs will enroll the majority of the 500,000 new college students expected by 2010. Many have tax bases that cannot support the rapid enrollment growth over the next 10 years, and one-third of the state property wealth is not in CC taxing districts.
The state provides group health insurance for most CC employees, but the insurance cost is paid through various revenue sources and the retirement contribution is confusing as well.

Some CCs are growing rapidly and hiring new staff. The legislature funds CC employee salary and benefit costs based on the employment figures from the previous biennium; fast growing CCs must pay new staff costs until the next biennium.

At the committee's request, THECB collected information from universities identifying sources of revenue and financial aid, and expenditures, and compared the cost of higher education versus the financial aid available.

**Recommendations**

♦ Award TEXAS Grants to eligible students during their first two years of college (first three years if they have acquired an associate's degree) and use the [BOT] to provide assistance in the upper-division undergraduate years.

♦ Modify the tuition rebate program to include awards to students graduating on time as measured by years, not just hours.

♦ Continue state support for the College for Texans Campaign.

♦ Align state academic progress requirements for the TEXAS Grant II Program to conform with the requirements of the TEXAS Grant Program and Texas B-On-Time Loan Program.

♦ Adjust the statute for the Educational Aide Exemption Program to indicate that a year of work as an educational aide is only a requirement for receiving a recipient's initial award in the program.

♦ Allow for institutions to issue funds generated through the Student Deposit Scholarship Program to students through the Texas Public Educational Grant Program.

♦ Allow institutions to issue their License Plate Insignia Scholarship Program funds to students through the Texas Public Educational Grant Program.

♦ Allocate the funds as follows:
  ♦ Appropriate $683,000 to the Texas College Work-Study Program, where state funds leverage employer contributions to generate approximately $911,000 in student earnings.
  ♦ Appropriate $250,000 to the Professional Nursing Loan Repayment Program, where it will attract federal matching funds and produce $500,000 in awards for nurse practitioners.
  ♦ Appropriate $500,000 to supplement existing State Nursing Scholarship programs for professional nurses, to encourage nurses to pursue a faculty track.
♦ Require the P-16 Council [the agency created to coordinate higher education and financial aid outreach activities in conjunction with Texas Guaranteed Student Loan Council] to develop a college-readiness program for eighth through twelfth-graders in all public schools by 2008.

♦ Allow THECB to draw down a portion of financial aid funds in August when most students are registering for fall enrollment and must pay for tuition, fees, and books.

♦ Require IHEs to allow students to enroll on an accounts-receivable basis for tuition and fees if they are unable to pay due to a timing delay of the release of federal or state financial aid funds.

♦ Allow students who have been approved for financial aid to enroll under the installment plan even if financial aid funds are delayed beyond the initial installment payment date.

♦ Expand the Hinson-Hazelwood College Student Loan Program to allow eligibility for students enrolled in alternative certification programs approved by the State Board for Educator Certification.

♦ Amend the statute that allows the state to use the federal Lender's Special Allowance to pay for the administration of loan and grant programs and extend the authority to allow such funds to be awarded to students through the TEXAS Grant or other state financial aid programs.

♦ Change the name of the TEXAS Grant II program to eliminate confusion with the TEXAS Grant program.

♦ Provide the same hardship provisions for the students receiving awards through the TEXAS Grant II program as are available for students in the TEXAS Grant Program.

♦ End the inefficiency and confusion created by dual administration and assign full administration of the Tuition Assistance Program for Members of State Military Forces, [i.e., National Guard] to the TNG.

♦ Retain the eligibility dates established by House Bill 1882 [incentives for certain high schools and high school students to participate in and student eligibility requirements under the Early High School Graduation Scholarship program], and repeal the delayed eligibility dates codified by Senate Bill 1366.

♦ Clarify sovereign immunity and eminent domain statutes so they clearly apply to community colleges.

♦ Review the recommendation made by THECB in January 2003 that endorses the incorporation of territory within the community colleges' legislatively designated service areas into the taxing districts.

♦ Direct THECB to provide a biennial analysis of major sources of revenue and expenditures for each community college district, beginning with the 2003-04 biennium. The format used by THECB for reporting data on higher education universities in March 2004 should be used as a template.
Direct THECB to continue development of field-of-study curricula to allow students to seamlessly transfer course credit from one institution to the another.

Clarify the state's definition of employee for qualification of health insurance benefits in higher education.

Review the establishment of a group insurance set aside for CCs that experience dramatic enrollment growth during the biennium and must therefore fund significant increases in faculty and staff.

**Charge**

Identify changes in the funding at IHEs and university systems to maximize the higher education needs of the state including incentives for sharing arrangements to improve productivity.

**Background**

The legislature uses a historical funding formula based on semester credit hours, a legislatively determined rate, and a factor derived from estimated costs of providing a specific program. The legislature has modified factors to emphasize certain programs in which there is a shortage. Some proposals have championed basing appropriations on a matrix that reflects the actual cost of administering a particular program, which would drastically cut programs championed by the legislature over the years. CCs are experiencing dramatic growth as an integral part of higher education needs of the state.

Tuition revenue bond sales do not need appropriations for debt service costs, although the legislature has routinely used general revenue (GR) to reimburse IHEs for debt service costs. Any revenue remaining in the tuition revenue bond debt service appropriation lapses at the end of each fiscal year (FY).

CCs have the authority to set their own tuition rates but cannot adopt differential tuition rates. For dual credit courses, the state pays public schools and CCs under existing formulas for each student enrolled, and colleges usually charge the student for tuition, fees, and books.

The 78th Legislature provided a hold-harmless provision for 14 CCs most likely to see a decline in contact hours and reductions in state funding. Twelve of those actually had an increase in contact hours but under current formulas could experience a 15-percent fall in state revenue.

The 77th Legislature created a Dramatic Enrollment Growth Fund to provide GR funds to IHEs that experience rapid growth. Unfortunately universities and CCs have different funding and have different thresholds to receive funding. Prior to 2001, the legislature appropriated an estimated growth amount for each year of the biennium.
TEXAS Grants II provides financial aid to CC students and received $9.7 million in funds for the 2004-2005 biennium. TEXAS Grants II's eligibility standards are a better fit for CCs, where the majority of college students will enroll.

**Recommendations**

♦ Adopt a matrix with a phase-in period that reflects a blend of the actual cost of the full-funding formula with historical funding levels that retain legislative incentives during the legislature's biennial appropriation of formula funding for higher education.

♦ Give priority to THECB’s 2006-07 recommendation to increase state funding for community colleges by an additional $279.9 million (from $1.598 billion to $1.878 billion), amounting to 60.3 percent of the cost of the full-funding formula.

♦ Restore the FY 2004 vetoed funding of $10.8 million for both the Texas Excellence Fund and University Research Fund as an emergency appropriations item.

♦ Require that general revenue funding be used to reimburse higher education institutions for the cost related to debt service of all legislatively approved Tuition Revenue Bonds, and thereby honor the commitment made when these bonds were authorized.


♦ Make changes to the tuition and fee flexibility granted to CCs districts to set differential tuition, and clarify their authority for assessing fees, similar to the authority granted to public universities.

♦ Provide funding to encourage dual credit programs that community colleges have with their service area high schools and reimburse the colleges for the cost of tuition, fees and textbooks of qualifying students. Such funding would make these programs more accessible and attractive to colleges and students, and reduce the time between a high school and college degree.

♦ Adjust state funding formulas for the 2006-07 biennium so that any public CC that experiences a decrease of more than 10 percent in contact hour funding from one biennium to the next shall be held harmless from the actual dollar loss in excess of 10 percent. The legislature may discontinue such hold-harmless funding to colleges that experience declines in enrollment growth.

♦ Take appropriate action to ensure that the Dramatic Enrollment Growth Fund trusteed with the THECB is restored to historic thresholds of appropriations for dramatic enrollment growth.

♦ Continue the funding floor for small colleges.

Continue the funding of STARLINK and the VCT, and appropriate funding directly to the host CC district. This would allow each program a separate-strategy identity and facilitate the pass-through of funds directly to the fiscal agents. The state appropriation request for STARLINK is $500,000 for the 2006-07 biennium; for VCT, the appropriation request for the 2006-07 biennium is $1,000,000.

Increase funding for TEXAS Grant II to meet student financial needs at CCs.

Charge

Identify accountability measures and performance incentives for IHEs and university systems that are aligned with the purposes of higher education and are sensitive to mission differentiation among institutions of higher education.

Background

Accountability measures have become more important as expectations of higher education have increased. IHEs produce comprehensive accountability reports that may be used by THECB to monitor and improve university performance.

Recommendations

Implement a statewide accountability plan to promote excellence through institutional groupings, peers, and benchmarks. The statewide accountability system should include the following:

- Establishing groupings of institutions of similar types and missions;
- Determining appropriate measures that reflect institutional performance;
- Determining benchmarks against which to measure success;
- Assessing progress annually and taking steps to improve performance; and
- Restricting authority to deregulate tuition for those institutions whose performance is judged unsatisfactory within the accountability system.

Consider incorporating the benchmarks established by THECB and the Council of Public University Presidents and Chancellors in their report to be released in December 2004.

Direct the systems and universities to incorporate into each institution's individual accountability system methods that place a greater emphasis on improving the accessibility, affordability and excellence of undergraduate education, particularly in compliance with the Closing the Gaps initiative and the state's goal of enrolling 500,000 more students in higher education by 2015.
Charge

Identify opportunities to consolidate or reorganize university system office functions and services, including the consolidation or reorganization of university systems to promote efficiency and productivity.

Background

The California higher education system is highly segmented into three tiers:

♦ The nine University of California (UC) institutions have high admission standards (limited to students graduating in the top 12.5 percent of all students based on statewide standards), must have 35 to 40 percent of upper-division students originally enrolled in CCs, and are the only IHEs to grant doctoral degrees;

♦ The 24 California State Universities (CSU) campuses have less restrictive admission standards (top 33 percent) and have authority to offer bachelor and master degrees; and

♦ The CC system, which has 112 campuses, has open admissions and their students can transfer to either UC or CSU institutions.

Texas' university system operations are usually efficient with relatively low costs. Four Texas public universities are independent—Texas Woman's University, Stephen F. Austin State University, Texas Southern University, and Midwestern State University. The Texas State Technical College System, in seven locations throughout the state, is considered as one agency which reports in the aggregate.

The University of Texas System (UTS) created an institutional accountability and improvement report that provides a comprehensive statistical portrait on the system and its 15 campuses.

Recommendations

♦ Direct the THECB to study the consolidation and/or reorganization of university systems, their component universities, research institutions and agencies, the independent universities, and the community and technical colleges of higher education in Texas to determine if other models would better serve the State of Texas, and improve opportunities for residents of all areas to enroll in and complete programs of higher education, and better align the system with the goals of the state's master plan of Closing the Gaps in Participation by 2015. This report should be delivered by September 1, 2006.

♦ Direct the systems and the state supported independent institutions to work with THECB and Legislative Budget Board to study the full impact of moving these universities into one of the systems. This study should weigh the advantages and disadvantages of such
restructuring on the students, the institutions and the systems involved. This report should be delivered by September 1, 2006.

♦ Require that system offices direct and assist component institutions to coordinate collaborative functions and to continue to study and develop economies of scale and other cost-saving initiatives and incentives in order to eliminate duplication and overlap of administrative, operational or reporting responsibilities or controls, and the corresponding expenditures. Systems should record findings and report to the legislature by September 1, 2006.

Charge

Identify potential reductions in personnel and other cost savings associated with the committee's recommendations.

Background

The Legislative Budget Board ordered The University of Texas at Austin and Texas A&M University to conduct an independent audit of their institutions' financial operations and ordered LBB staff to develop a work plan for audits of IHEs.

The legislature enacted programs to reduce tuition and fees paid by specific groups of residents: exemption program benefits can range from three-credit hours to lifetime free tuition and fees, costing $34.4 million in FY 2003; and waiver programs allow non-residents to pay resident rates, costing $162 million.

IHEs spend millions of dollars on information technology (IT) departments. The University of Miami contracted with a sole provider for all of its IT purchases, saving $2 million of its $60 million technology budget.

Recommendations

♦ Direct the THECB to appoint an advisory committee of representatives from the Texas Association of Registrars, Admissions Officers; Texas Association of Black Personnel in Higher Education; Texas Association of Chicanos in Higher Education; and The Texas Association of Student Financial Aid Administrators to conduct further studies to determine recommendations for aligning exemption and waiver programs with participation and success goals of Closing the Gaps by 2015 and making them more consistent and cost-effective.

♦ Direct THECB to coordinate and consolidate the scope of reporting by systems and universities so as to utilize the millions of dollars spent in a more efficient and effective manner.
♦ Require that the IHEs in Texas, individually or through system offices or related associations, conduct a study or bid-process to explore the possibility of using a one-supplier model of purchasing to consolidate and reduce spending, specifically in IT departments, but also in other areas of major expenditure. This study should include a review of how historically under-utilized businesses would be utilized under such a model. Institutions should report findings to the legislature by January 2006.

♦ Continue to work with the Coordinating Board, the Legislative Budget Board and the system offices for updated biennial information on the cost and function of all aspects of system administrative expense.

♦ Evaluate requiring that systems and universities conduct an internal or independent audit of their financial statements on a biennial or quadrennial basis and to report such results to the legislature. As a part of this evaluation, the legislature should weigh the potential benefits of a financial audit against the costs measured in funds and institutional resources of the university and/or system to accomplish such an effort.

**Charge**

Review deregulating seminaries and similar institutions offering exclusively religious education or training.

**Background**

In the 1970s, the legislature acted to prevent diploma mills by regulating private IHEs. Repealing that limitation would allow diploma mills to operate in Texas.

**Recommendation**

♦ There are no recommendations.
JOINT COMMITTEE ON
NUTRITION AND HEALTH IN PUBLIC SCHOOLS

Charges

Determine the nutritional content and quality of foods and beverages served to public school children, including food service meals, a la carte foods, and competitive foods and food provided in vending machines.

Evaluate the short-term and long-term financial, psychological, and physiological impact of obesity in public school children.

Assess the academic, emotional, and health value of a universal breakfast and lunch program by evaluating school children from school districts that provide each child a free or reduced-price breakfast and lunch.

Evaluate school contracts relating to competitive food products and vending machines.

Background

The number of overweight children in the United States has doubled in the past two decades and, on average, children in Texas are heavier than children in other regions of the United States. Overweight and obese children are also plagued with diseases that traditionally have not affected children.

Lifestyle issues including poor nutrition, consumption of foods and beverages of low or no nutritional value in larger amounts, and lack of adequate daily exercise have contributed significantly to the growing rate of obesity among children. Children who are overweight experience physiological consequences similar to those of overweight and obese adults, and a multitude of psychological problems.

Texas is facing an unprecedented crisis of poor nutrition and obesity among its public school children. A recent survey by the Texas Department of Agriculture (TDA) found that while school meals being served in Texas meet United States Department of Agriculture (USDA) standards and certain vitamin and mineral requirements, there is a need to increase fiber, reduce sodium and fat content, and adjust the caloric levels. The foods available through vending machines and a la carte services were found to be less nutritious.

TDA evaluated the impact of providing a universal (free) breakfast and lunches in schools. National studies have proven that providing free school meals for all students has a positive effect on children’s academic performance, emotional function, and psychological well being. Schools that have elected to do this for their students also report additional benefits in
the overall educational environment including improved attendance, reduced discipline problems, and students displaying more positive attitudes.

Over three-fourths of Texas’ school districts have contracts with vending companies to sell competitive foods in middle and high schools. The contracts, primarily with soft drink companies and fast food chains, are generally written contracts and the average duration is eight years. Annual revenues for school districts vary according to the size of the district, from $1 million to $2.7 million for large and very large districts, to $500,000 to $25,000 for medium, small, and very small districts. Total revenues to Texas school districts are estimated to be $54.1 million.

School districts report that school food service programs have suffered financial losses, some of which is attributable to competitive foods sales, and that they have experienced a loss of nutritional integrity. Overall, it is unclear who receives, disburses, or monitors the revenues from competitive food sales resulting from vending machines and other contractual activity.

**Recommendations**

**Obesity Awareness and Prevention**

✶ Support continuation of the School Physical Activity and Nutrition (SPAN) project, designed to collect data on prevalence of overweight among Texas school children.

✶ Incorporate Body Mass Indexing during other already scheduled vision and hearing screenings.

✶ Implement a statewide or targeted public awareness campaign to improve consumer health, including smaller portions of food, to clinically define obesity and state its adverse consequences, spread steps individuals and families can take to reverse this trend, and educate Texans on the importance of proper diet, nutrition and physical activity in the prevention and management of obesity.

✶ Recognize and monitor changes in obesity-associated risk factors for adult chronic disease, such as hypertension, dyslipidemia, hyperinsulinemia, impaired glucose tolerance, and symptoms of obstructive sleep apnea syndrome.

✶ Continue funding ANTES diabetes risk-factor detection program in the University of Texas Pan American Border Health Office and determine the feasibility of expanding to additional schools.

✶ Encourage the school health advisory councils, parents, teachers, coaches and others who influence youth, to discuss health habits, as opposed to body type, as part of their efforts to control overweight and obesity.

✶ Encourage public and private sources to direct funding toward research into effective strategies to prevent overweight and obesity and to maximize limited family and community resources to achieve healthful outcomes for youth.
Education and Outreach
♦ Educate children so that they have the knowledge and skills necessary for making healthy choices in food and lifestyles.
♦ Encourage healthy eating habits through campus marketing and advertising and by encouraging teachers and staff to model healthy behaviors.
♦ Establish an incentive program, such as REACH (Recognizing Extraordinary Achievement in Children’s Health), for schools that have developed outstanding programs that focus on and promote the importance of physical education and healthy living.
♦ Encourage programs that allow schools, and kids, to be at the center of fostering healthier lifestyles in families.
♦ Encourage school districts to partner with not-for-profits to create health and fitness programs for children with the goal of reducing obesity and improving health among school-age children.

Nutrition and Healthy Eating
♦ Encourage schools to provide more fruits and vegetables.
♦ Encourage the replacement of foods and drinks of low nutritional value with foods and drinks of documented nutritional value in promoting good nutrition policy at all grade levels at all schools in Texas.
♦ Continue to evaluate compliance and accountability concerning the new requirements to replace foods and drinks of minimal nutritional value with foods and drinks of documented value in promoting good nutrition at all grade levels at all public schools in Texas.
♦ Continue to limit vending products to healthy choices and restrict sales during lunch time in all public schools.
♦ Continue to encourage school food services to provide more fresh fruits and vegetables, more complex carbohydrates (less processed grain-containing foods), which will provide more fiber and raise the nutrient content.
♦ Continue to improve the menu choices in schools through TDA’s nutrition policy.
♦ Create menus that are more attractive to students.
♦ Encourage schools to have adequate time and space provided for students to eat school meals.
♦ Encourage the availability of water throughout the day.
♦ Encourage provision of healthy food choices when foods are sold at concessions.
♦ Continue to require schools to offer a low-fat meal choice and a minimum of three milk choices during school meals, and continue to monitor schools to ensure compliance with USDA Child Nutrition meal patterns.

♦ Encourage schools to set portion sizes for single-serve items sold to students.

♦ Encourage lunch periods to be at least 30 minutes.

♦ Encourage parents and caregivers to promote healthy eating patterns by offering nutritious snacks, such as vegetables and fruits, low-fat dairy foods and whole grains.

♦ Encourage children's autonomy in self-regulation of food intake and setting appropriate limits on choices.

♦ Encourage more healthy food choices for competitive foods.

♦ Expand farm to school programs to include all Texas schools, if feasible.

♦ Encourage school cafeterias to examine their "offer v. serve" option for young students.

♦ Encourage food and beverage contracts to include healthy food choices.

♦ Direct [the] Texas Department of Agriculture to continue to post on the Internet and develop fliers and posters as funds are available for schools regarding best times for schools and families to purchase specific fruits and vegetables according to season and availability in each school district's area, taking prices per pound into consideration.

♦ Work with WIC [Women, Infants, and Children] programs or other related programs in the public or private sectors to help elevate the nutrition knowledge of the mothers of preschool children in our state.

♦ Encourage Education Service Centers to provide school food service programs with access to a registered dietician or person with public health experience if funded.

♦ Consider creating a mechanism for keeping nutrition standards updated, and for staying consistent with scientific consensus—e.g., FDA [United States Food and Drug Administration] standards of identity for healthy/reduced and/or National Academy of Sciences Authoritative Statements.

**Nutrition Policy**

♦ Establish and fund a statewide workgroup or committee that mirrors the purpose, goals and membership of the Joint Committee on Nutrition and Health in Public Schools.

♦ Explore opportunities to implement programs and policies on the importance of proper nutrition and health nutritional choices for children starting at an early age.

♦ Encourage non-food rewards and incentives.

♦ Attempt to make school meal programs self-supporting.
Support current Texas Department of Agriculture guidelines and support continued changes that improve the school nutrition environment and support the Texas School Nutrition Policy as implemented.

Ensure that the Texas Department of Agriculture continues to post lists of types of healthy foods for vending machines and competitive foods.

Continue to maintain and update all postings on agency web site and on publications it produces on school food policy.

Use fundraising activities and rewards that support student health.

Expand Breakfast Program by providing breakfast at no cost to all children in Texas.

Seek to eliminate the reduced price school menu program and expand the free meal program.

Develop a comprehensive policy approach to creating a healthy school environment that includes emphasizing healthier eating and activity choices across all aspects of the school environment.

Encourage partnerships between local supermarkets and school districts for the purpose of creating a donation-match program to fund a Universal Breakfast/Lunch program for the students of the local district.

Physical Fitness

Assess barriers to the development of coordinated school health programs as required by S.B. 19 (77th Legislature), including goals for nutrition education and daily physical activity, in each grade level in every public school district in Texas.

Encourage compliance with S.B. 19 (77th Legislature) and S.B. 1357 (78th Legislature) by school districts regarding the formation of active school health advisory committees, implementation of the required physical activity periods, and the adoption of coordinated school health curricula.

Encourage schools to schedule physical education in all grades so students can engage in physical activity either every day or every other day.

Assess the physical fitness of every student at regular intervals.

Provide incentives to communities to encourage physical activities.

Promote physical education that emphasizes fun physical activities that can become part of sustainable habits.

School Health Advisory Councils

Encourage School Health Advisory Councils to make presentations to parents via PTAs [parent teacher associations] and PTOs [parent teacher organizations] of healthier
lifestyles to reduce risk of developing certain forms of cancers at least once during each school year.

❖ Provide quality technical support and guidance in implementing coordinated school health programs and effective school health advisory councils.

❖ Encourage appropriate information exchange between the School Health Advisory Council and school district leadership.

Insurance

❖ Work with physicians and insurers to require the use of diagnosis codes for obesity and/or diabetes when filing insurance claims for obese patients if and when the patient's obesity and/or diabetes may be a contributing factor to the patient's medical condition that is being treated.

❖ Require health insurance carriers to provide coverage and include counseling for overweight and obese people, including school-age children, based on a treating physician's recommendations and on guidelines developed by the Texas Department of Insurance.

❖ Promote partnerships with insurance companies and state and local entities to raise awareness about the dangers of an unhealthy weight and equip families and individuals with tools to address this serious health concern.
JOINT SELECT COMMITTEE ON PUBLIC SCHOOL FINANCE

Charge

The committee shall conduct a study of issues affecting the duty of the legislature to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

The study shall include:

♦ A review of the state's revenue system as it relates to the legislature's ability to provide for a constitutional school finance system;
♦ An assessment of funding options that will sustain Texas schools for the long term and that will substantially increase the state's share of public school funding;
♦ A determination of appropriate funding levels to enable high academic performance;
♦ An analysis of legitimate student and school district cost differences;
♦ A review of the appropriate role of the state in the provision of school facilities;
♦ An examination of strategies and practices that contribute to high academic performance in schools; and
♦ A review of possible incentives for improved student performance and cost-effective operation.

Background

The 78th Legislature considered school finance legislation during the regular session and the fourth called session but adjourned before adopting a bill. The governor appointed the Joint Select Committee on Public School Finance (JSCPSF) to examine all issues. Its report included goals and rationales for its recommendations and identified options.

For several years, school boards, superintendents, advocacy groups, and members of the legislature have been concerned by the lack of capacity within the foundation school program (FSP). Capacity is the ability of school boards to increase revenue by raising the operations-and-maintenance tax rate (tax rate). The Legislative Budget Board (LBB) reported to the committee that the current average tax rate is $1.48, just two cents below the cap of $1.50. A state district judge's opinion agreed with plaintiffs that the FSP is unconstitutional.
Recommendations

School Finance Reform

♦ Create an Accreditation Allotment in lieu of a Basic Allotment.
♦ Review the following potential changes:
  ♦ Funding secondary schools at a higher level than elementary schools creating an incentive for high school completion;
  ♦ Reflecting cost adjustments for student characteristics in dollar amounts; and
  ♦ Distributing funding on a more transparent per-pupil basis.
♦ Adopt rational adjustments that reflect variations in size and sparsity.
♦ Implement in statute and regularly update the Cost of Education Index.
♦ Provide for meaningful local enrichment with voter approval for revenue increases.
♦ Eliminate recapture.
♦ Roll all existing hold harmless provisions into one.
♦ Guarantee all districts [the] same level of funding at the 2005 levels.
♦ Phase-out hold harmless provisions over time.
♦ Maintain the current facilities system.
♦ Restrict state support to those facilities that are to be used for instructional purposes only.
♦ Eliminate [the] prevailing wage requirement.
♦ Consider establishing criteria for new facilities or renovations to qualify for Instructional Facilities Allotment (IFA) funding.
♦ Provide relief for fast-growth districts.
♦ Allow fast-growth districts to assess impact fees with voter approval.

Revenue Options

♦ Available Options for Property Tax Reduction:
  ♦ Increase [the] sales tax rate.
  ♦ Expand the base of the sales tax to include items currently exempted or excluded from the sales tax.
  ♦ Create a modified business activity tax spread over a broad spectrum at a nominal rate.
Available Options for Restructuring the Current System:
♦ Statewide property tax.
♦ Split tax roll.

Available Sources of Additional Revenue for Education:
♦ Authorize video lottery terminals by implementing devices at a limited number of locations.
♦ Increase the cigarette tax and/or other “sin” taxes.

Educational Accountability
♦ Improve the Student Assessment System [by]:
  ♦ Including end-of-course exams as necessary for core courses.
  ♦ Requiring ACT or SAT administration, fully funded by the state, to ensure college readiness and provide for student comparisons on a nationally norm-referenced test.
  ♦ Directing TEA to move forward on the use of on-line assessment using both computer-adaptive and computer-based tests.

♦ Benefits and Compensation:
  ♦ Simplify the existing teacher salary schedule to provide for greater flexibility.
  ♦ Fully fund liability insurance for teachers.
  ♦ Maintain health reimbursement accounts.

♦ Improve Financial Evaluation of School Districts [by]:
  ♦ Standardizing instructional and accountability tracking capabilities.
  ♦ Revising FIRST [Financial Integrity Rating System of Texas].
  ♦ Accounting for federal funding.

♦ Improve Public Education Information Management System [by]:
  ♦ Providing real-time data and accountability tracking capabilities.
  ♦ Making data useful for schools and educators when computing value-added.
  ♦ Improving data accessibility for educators, parents, and taxpayers.
  ♦ Linking all data to student performance.

School Efficiency
♦ Mandate Relief and Efficiency:
♦ Move [the] notice of non-renewal date to occur after end of school year.
♦ Make it less costly and time consuming to dismiss teachers with history of low performance.
♦ Provide voluntary incentives for cooperative efforts between school districts to consolidate services such as transportation, special education, personnel and human resources, food services, and business management.
♦ Provide districts more flexibility to convert to a campus charter model.
♦ Convert current class size limits to district-wide averages for grades K-4 to allow districts to better meet student needs.
♦ Encourage administrative cost reductions and greater efficiency while increasing student performance.
♦ Authorize the LBB School Performance Review to review districts with a focus on mandate relief, administrative savings, and operational efficiency.

**Educational Excellence Fund**

♦ Require the education commissioner to implement a value-added component that would include TAKS, but also include other measures as data allows.

♦ Individual Teacher Performance Incentives:
  ♦ Establish a [performance incentive program with] voluntary participation by the district and individual teacher.
  ♦ Permit locally implemented [incentive program] with an objective evaluation tied to value-added student achievement with input from principals and parents.
  ♦ Require [teachers receiving] performance [incentives] to be in the top 15 percent of eligible teachers in the district.
  ♦ Provide $10,000 for the top five percent of teachers in each district; $5,000 for next 10 percent [of teachers] in each district.

♦ Campus Performance Incentives:
  ♦ Provide for voluntary participation by a district [in a campus incentive program].
  ♦ Identify campuses by ranking based on value-added growth.
  ♦ Provide the largest bonuses for the highest-rated campuses that comprise 20 percent of the state’s students.
  ♦ Provide $3,000 to $5,000 bonuses to each teacher on the campus.
  ♦ Provide smaller bonuses of $1,000 to $2,000 [per teacher] for the next 20 percent [of campuses].
♦ Allow TEA to determine qualifying campuses.
♦ Provide bonuses for principals at $10,000 for top 20 percent and $5,000 for the next 20 percent.
♦ Allow, upon recommendation of the site-based decision making committee, the principal to determine specific bonuses for other eligible professional staff.

♦ Closing the Achievement Gap:
  ♦ Provide a significant incentive to bring the most effective teachers into the most challenging schools.
  ♦ Improve accountability and funding measures for bilingual education programs focused on progress toward proficiency in English.

♦ Other Incentives:
  ♦ Maintain and expand AP and algebra incentives.
  ♦ Provide financial incentives for schools whose students complete more rigorous graduation requirements.
  ♦ Design formulas to encourage high school completion.
Study Commission on Water for Environmental Flows

Charge

Conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine and bay and estuarine systems, including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the study commission determines have importance and relevance to the protection of adequate environmental flows.

Background

In 1985, the legislature directed the state water agencies to determine sufficient beneficial freshwater inflows. In 2001, the legislature directed the state water agencies to conduct studies and analyses to determine appropriate methodologies for determining flow conditions in the state's rivers and streams necessary to support a sound ecological environment. The 78th Legislature identified "biological soundness" as a goal for the state's waters and stated that biological soundness should be distinguished from soundness of the hydrologic, geomorphologic, or any of the other natural sciences as it relates to streamflows.

Currently, the science of evaluating and determining environmental flows is being comprehensively assessed as a contribution to the state's effort to develop effective environmental flow policy. The study commission provided observations based on the review of this subject by the study commission's science advisory committee.

Recommendations

♦ Reauthorize the Study Commission on Water for Environmental Flows (Flows Commission) to continue its efforts to address environmental flow issues. [See the committee report for specific components of this recommendation.]

♦ Implement the environmental flow process as outlined in [the report] for priority bay/basin ecological areas according to the following suggested schedule.

♦ Establish specific procedures during implementation to address currently pending and future permit applications within a bay/basin ecological area prior to the establishment of an environmental flow set-aside as provided for in [recommendation one].
Amend the Water Code, in view of the over-appropriation of water in some bay/basin systems, to allow for a full range of options to meet environmental flow needs, including strengthening the Water Trust, facilitating and encouraging market mechanisms, mitigation measures and voluntary conversions of water rights. The Flows Commission will explore options relating to private non-profit water trusts, with incentives for private investment, as a means to help protect environmental flows.

Study Commission on Water for Environmental Flows Science Advisory Committee

Charges

Provide a description of the current hydrologic conditions, streamflow patterns across the state in major river basins, and freshwater inflow patterns for major bay and estuary systems along the coast, relative to historical and existing environmental flows.

Evaluate the analytical tools and/or procedures that are used or available to assess the requirements for preservation, maintenance, or enhancement of aquatic resources and riparian habitat.

Identify ecological parameters or ecosystem characteristics to be considered in determining environmental flow needs for the state's surface water resources and identification of implementation options.

Provide any other technical information the Science Advisory Committee feels would be beneficial to the Study Commission on Water for Environmental Flows.

Background

In response to the charges as set forth by the Study Commission on Water for Environmental Flows, the Science Advisory Committee (SAC) established a scope of work that addressed specific technical areas for which information relevant to the environmental flows issue has been compiled, reviewed, and analyzed. The following study elements comprised the SAC's scope of work: surface water management in Texas; current state agency roles; general hydrologic conditions; general aquatic ecosystem conditions; environmental flow tools and procedures; instream flow methodologies; bay and estuary methodologies; environmental flow criteria; and environmental flow implementation strategies.

The SAC provided key points related to SAC charges.

Recommendations

There are no recommendations. The Advisory Committee issued findings and observations which may be found in the Advisory Committee's report.
LEGISLATIVE OVERSIGHT COMMITTEE ON LONG TERM CARE

Charges

The Long-Term Care Legislative Oversight Committee (LTCLOC) was not assigned any formal interim charges; however, the committee examined the issues of quality of care, quality assurance, Medicaid reimbursement rates, liability insurance, the effects of tort reform, and possible funding methods such as a quality assurance fee and private long-term care insurance.

Background

The LTCLOC was created by S.B. 190, 75th Legislature, to monitor the effectiveness and efficiency of the nursing facility regulatory system and to examine other long-term care issues. Under Section 242.654, Health and Safety Code, the report must include identification of significant problems in the nursing facility regulatory system and an analysis of the continuum of care of long-term care services available in Texas.

Recommendations

Funding Issues

♦ Increase Medicaid reimbursement rates, if the funds are available, to better meet the needs of the patients so that the expected quality of care is met and exceeded.

♦ Provide enough funds so that the discrepancy between funding and expansion coincides, if the Staff Enhancement Program is to be expanded.

♦ Consider several innovative methods, including [a] Quality Assurance Fee, to draw down federal dollars to supplement Medicaid, since additional funding for long-term care is crucial. The state should also look at ways to increase the awareness and purchasing of private long-term care insurance by incentivizing or communicating effectively to the citizens of Texas the need for less-reliance on state money.

♦ Work with the Health and Human Services Commission (HHSC) and provider groups to initiate the draw down of additional federal funds. Currently, a waiver request has been placed with [the] Centers for Medicare and Medicaid Services (CMS) for approval from the broad based requirement as described in 42 CR §433.68(c). If CMS approves this waiver, it is necessary that the state study this issue further with the development of a workgroup. The committee supports compromise legislation that takes into account the burden of taxation of private-pay residents. Funding requirements for Medicaid should mitigate to the greatest extent possible any potential fiscal impact on private-pay residents of nursing homes.
Direct HHSC to work with CMS to structure an acceptable waiver to reflect this intent. If an acceptable waiver cannot be approved or agreed upon, then the committee does not recommend QAF to be placed on nursing facilities, but instead recommends that the legislature work on alternative methods to fund long-term care.

Nursing Home Liability Insurance

Direct the Texas Department of Insurance to convene a workshop to investigate the concerns surrounding the parameters used for the five JUA [Joint Underwriting Association] risk tier classifications of facilities before September 1, 2005. The scope of the discussion should include but is not limited to tier escalation against smaller facilities and the need to consider the entire experience of the administrator and not just the amount of time spent at one facility for the purposes of the tenure score.

Encourage carriers to recognize more rapidly in premium rates the precipitous decline in numbers of claims filed, and other manifested impacts of the implementation of H.B. 4. It is important that the legislature not impose mandatory liability insurance with the current market conditions. Instead, the committee recommends that the state continue to monitor the development of a viable competitive market for liability insurance.

Investigate the means of better informing nursing facilities of the availability of general liability at the JUA.

Regulation and Quality of Care

Study alternative models and movements, such as the Eden Alternative, by establishing a task force led by the Texas Long-Term Care Institute.

Attempt to coordinate the efforts of the programs such as the State Quality Monitor Program and the NFQAT [nursing facility quality assurance team] to avoid duplication of time and effort. In areas of duplication, the state should reduce its efforts and allow federal programs to collect data. For Texas, this will provide a cost-savings measure.

Encourage long-term care facilities to move toward quality improvement over quality assurance. According to the Texas Medical Foundation, evidence suggests that quality of care has improved, but the state should not stop here. It is crucial that long-term care facilities go beyond just assuring quality, but constantly seek to improve quality.

Achieve sufficient staffing. Staffing continues to be a fundamental issue. Therefore, the committee recommends for the continuation of the Staff Enhancement Program. However, many facilities are unable to provide the residents with supplemental staff due to funding shortages, as mentioned above.

STAR+PLUS (State of Texas Access Reform)

Reduce providers' administrative costs. Numerous reports reveal that providers' administrative costs during the first couple of years of implementation of STAR+PLUS
were extremely high because payment authorization processes were unnecessarily complex and that providers have had to add administrative staff and shift significant staff time to deal with problems.

◆ Conduct more frequent and timely audits of the HMOs [health maintenance organizations] to make certain that they are distributing and spending the money properly.

◆ Provide all STAR+PLUS clients with access to care coordination if STAR+PLUS is expanded. The testimony heard at the September 22, 2004, Long-Term Care hearing indicated that patients have difficulty accessing care coordinators and that care coordinator do not provide services or visit clients. It is necessary to ensure that care coordination is provided to clients.
LEGISLATIVE OVERSIGHT COMMITTEE ON 
PROPERTY AND CASUALTY INSURANCE 

Charges

Study the implementation of S.B. 14, 78th Legislature, as it relates to the automobile insurance market to ensure that the legislation meets the legislature's goals of ensuring a stable market. Make recommendations for improving consumer satisfaction and expanding the market. Coordinate activities with the Joint Property and Casualty Insurance Legislative Oversight Committee.

Study the implementation of S.B. 14, S.B. 127, and H.B. 329, the property and casualty insurance reform and mold remediation measures passed by the 78th Legislature, to determine whether the legislation meets the legislature's goals of reducing homeowners' insurance costs and stabilizing the market. If not, make recommendations for reducing homeowners' insurance costs. Examine implementation of new policies relating to the use of credit scoring and its impact on consumers and the market. Coordinate activities with the Senate Committee on Business and Commerce.

Background

Automobile Insurance

In recent years dramatic losses and premium increases were occurring in the private passenger automobile market, with insurers writing an ever-increasing amount of business in their non-rate-regulated affiliates. While on average, the rate increases for auto insurance were significant they were not of the magnitude of the increases in homeowners' insurance rates.

Based on Texas Department of Insurance (TDI) estimates, some 34 percent of the private passenger auto insurance market was not subject to these rate standards. According to TDI's 2002 rate guide, almost all insurers were charging more than the benchmark rate promulgated annually by the commissioner. Factors affecting the increase in auto rates included rising costs of medical expenses and auto repair.

The new law, contained in S.B. 14, 78th Legislature, Regular Session, requires all automobile insurers to file their rates with TDI, along with justification for the rates. It also requires all insurers to file their credit scoring models with TDI to ensure that no unfair discrimination is taking place.

Other provisions of the new law include:
♦ All rates, including county mutuals' auto rates, must be reasonable, not excessive, adequate and not unfairly discriminatory.

♦ Special filing provisions for small county mutuals serving high-risk, nonstandard auto markets.

Prior approval of forms with approval by law if no objection is raised by TDI, beginning in 2004. Companies may file their own forms for approval; TDI will review filed forms and may disapprove any that violate state requirements. Prohibiting use of credit scoring as sole criteria for adverse action. Insurers must file credit scoring models with TDI, which are public information. Disclosure is required when credit scoring contributes to adverse action. Insurer must reconsider adverse action when consumer appeals. TDI, by rule, may limit rate impact of credit scoring. Underwriting guidelines are subject to the Public Information Act. Guidelines must be sound and not unfairly discriminatory. Rate standards apply to all previously unregulated carriers such as Lloyds carriers, reciprocal exchanges, and county mutuals.

Homeowners Insurance

Prior to the 78th Legislature, insurance premiums for homeowners' insurance policies increased from 14 percent to 200 percent for many homeowners. Complaints to TDI regarding rate increases for residential property insurance increased from 283 in 2001 to more than 2,400 through the end of 2002.

A combination of elements led to the increasing rates. Those elements included such factors as a weakened economy, investment losses by insurers, large legal settlements, lack of policy and coverage options for consumers, certain underwriting practices, allegations of fraud in remediation, and the emergence of unexpected claims, such as mold.

Additionally, Texas has had more catastrophic events than any other state over the past 50 years. Hurricanes, hail storms, floods, tornadoes, and high winds all cause significant damage—and all occur regularly in Texas. In 2001, insurers paid more for claims than they collected in premiums plus investment earnings.

Because of a loophole in state law that allowed insurance companies to move business from a regulated company to an unregulated company, the commissioner of insurance did not have control over the vast majority of insurance rates. By late 2002, 95 percent of Texas homeowners' policies were sold under these non-rate-regulated companies, thus allowing the insurers to charge rates higher than those approved by TDI.

One primary factor in rising insurance rates was the rising frequency and cost of mold and water-related claims. TDI data shows that the total number of mold-related water claims filed with the top five homeowners' insurance writers in Texas in 2000 was 7,083. In 2001, the number of claims filed with the top five homeowners' insurance writers increased to 37,202 claims, a jump of 425 percent.
S.B. 310, 78th Legislature, Regular Session, became effective on February 25, 2003, and required TDI to provide a summary report to the legislature on homeowners’ rates. Among the several findings of the S.B. 310 Report were that a portion of the rate increases occurring in Texas during 2001-03 were excessive.

In response, S.B. 14 required TDI to review insurers’ homeowners’ rates. If the rates were deemed to be in violation of the statutory rating standards, the commissioner was authorized to modify an insurer’s rates accordingly. This initial review and modification was designed to restore rates to a level that could be justified in order to provide immediate consumer relief.

TDI reviewed 61 insurance company group filings, a total of 90 companies, and ordered 30 company groups to lower their rates. Ordered rate reductions varied, with a maximum reduction of 31.0 percent and an average reduction of 12.5 percent. The resulting savings to policyholders was estimated to be over $500 million during the 12 months following the rate reductions. Twenty-two companies took a one-time reduction of the ordered rate reductions and six companies took a partial phase-in approach. Two company groups appealed their rate orders to state district court.

In November, 2004, District Judge Suzanne Covington granted the motions for summary judgment requested by those two companies, State Farm and Farmers Insurance Exchange. In that summary judgment, Judge Covington declared the procedural appeals process unconstitutional. The ruling did not address the assertion by Commissioner of Insurance Jose Montemayor that both Farmers and State Farm are charging excessive rates.

On November 19, 2004, TDI initiated administrative actions to demonstrate that the rates charged by both State Farm and Farmers are excessive and that refunds of the excessive premium should be issued directly to policyholders. TDI will seek a refund of the excessive premium plus 10 percent interest. These actions by TDI represent new rate actions, separate from the September 2003 reduction orders in which 30 insurers were ordered to reduce rates.

Based on presentations by Commissioner Montemayor and the Office of Public Insurance Council, personal lines insurance markets in Texas are improving in terms of availability and price competition. The actions taken pursuant to S.B. 14 have accelerated market improvements, bringing about initial rate reductions in homeowners’ insurance and implementing more modern market regulation that is consistent with other states.

**Recommendations**

This report for the Legislative Oversight Committee on Property and Casualty Insurance is identical to Senate Business and Commerce: Property and Casualty and Automobile Insurance report and summary. Recommendations relating to the issues discussed above may be found in the section on the Senate Business and Commerce: Property and Casualty and Automobile Insurance Report.