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Topics for the 77th Legislature

Redistricting will dominate the 77th Texas Legislature's attention in 2001, but along with the other main order of business, preparing a budget for state government operations in fiscal 2002-03, lawmakers will face a host of other issues, dealing with topics as diverse as teachers' health insurance, groundwater management, rural development, privacy protections, and highway finance. Also, 25 state agencies, including those dealing with environmental regulation, business and economic development, and financial institutions, will be subject to review under the sunset process.

The following report highlights many, although by no means all, of the issues that the 77th Legislature may consider during its 2001 regular session. Many of these issues have been analyzed in HRO Focus Reports and *Interim News* articles issued since the end of the previous regular session.

Redistricting

In redrawing district boundaries for state representatives and senators, the Texas congressional delegation, and the State Board of Education to reflect population shifts measured by the 2000 census, legislators will have to determine whether to use the actual headcount or population figures adjusted to compensate for those missed by the census, if the U.S. Department of

Commerce makes such figures available. In addition to following

state constitutional requirements, such as avoiding crossing county lines in drawing Texas House districts, lawmakers will have to comply with equal-population standards, minority voter representation protections under the federal Voting Rights Act, and prohibitions against racial and partisan gerrymandering, as outlined in recent U.S. Supreme Court decisions. Finally, the

Legislature will have to complete redistricting of Texas

House and Senate districts by the end of the regular session, or else that task will fall to the five-member Legislative Redistricting Board.

This report highlights many, though by no means all, of the issues that the 77th Legislature may consider during its 2001 regular session.

Spending and Revenue

Appropriations. In writing the fiscal 2002-03 state budget, the Legislature is likely to consider such spending priorities as the rising costs of health-benefit coverage for Medicaid recipients, salary increases for state and higher education employees, increased formula funding for higher education institutions, increased benefits for retired teachers, and health insurance for local school-district teachers and employees. Rising enrollment in public schools, higher education institutions, and the state-federal Children's Health Insurance Program (CHIP) also will drive increases in spending.

Medicaid appropriations will be a major budget issue because of higher-than-expected prescription drug costs and enrollment, a higher-than-expected state matching rate (39.43 percent of state-federal program costs instead of 38.88 percent), and requests by nursing homes and other service providers for increased reimbursement to cover higher costs of labor, insurance, and health-care services. An emergency appropriation will be proposed for the current biennium to cover not only higher-than-anticipated health-care costs but also rapid growth in the state prison population and recently approved salary adjustments for state prison workers.

Tobacco money. SB 445 by Moncrief, enacted in 1999, dedicated to CHIP the first revenues the state receives each fiscal year from the settlement of its lawsuit against the tobacco industry. Additional revenues from the settlement will be largely up for grabs this session. The amount of money available is still uncertain because of year-end formula adjustments that take into account U.S. tobacco sales, inflation, and other factors. In 1998, when the settlement became final, revenues were projected at about \$500 million per year. The Texas Health and Human Services Commission is requesting about \$440 million to fund the state's portion of CHIP in fiscal 2002-03.

Taxes. Lawmakers may consider creating various tax incentives, including a cap on property-tax valuations of large new capital investments, sales and franchise tax credits for companies providing high-speed Internet access to rural areas, and severance-tax relief for the oil and gas industry. Proposals for tax exemptions may include extending the back-to-school sales-tax "holiday" and expanding this exemption to include additional items such as school and sewing supplies, backpacks, and footwear. Also under consideration will be revising the provisions for *ad valorem* taxation of pollution-control

equipment used by industrial facilities to comply with federal Clean Air Act mandates. Another major focus may be issues related to the taxation of "e-commerce," including a definition of "nexus," the primary location where an electronic commerce company does business for tax purposes.

Public Education

As in past sessions, the Legislature is likely to consider increasing the state's share of public school funding for facilities construction and raising the threshold of property value per student for school districts to qualify as "wealthy." Other prominent initiatives may include measures aimed at recruiting and retaining high-quality teachers and at establishing additional ratings for schools, status reports for parents, and bonuses for new teachers and for campuses that perform well. Also, the Legislature may consider restricting the authority of the State Board of Education (SBOE) to invest the Permanent School Fund and allowing voter recall of local school trustees. Finally, lawmakers may revisit the issue of establishing a school voucher pilot program to pay for students in low-performing schools to attend private schools.

Health insurance for teachers. After providing a \$3,000 pay raise for teachers last session, lawmakers this session likely will consider proposals to provide full or partial state funding for health insurance for half a million current teachers and more than 100,000 retired educators.

Charter schools. Issues of oversight, resources, and accountability for charter schools may receive close attention. Specific proposals may include requiring minimum training for charter board members and school staff, minimum standards for teacher certification, and criminal background checks of charter school operators; new funding approaches for charter schools; authorizing the SBOE to revoke charters in a more timely manner; and issuing a moratorium on the approval of new charter-school applications.

Math proficiency. In 1999, lawmakers created the Master Reading Teacher program, which awards \$5,000 stipends to certified reading specialists. The 77th Legislature may consider expanding this program to include math teachers, as well as other measures to boost students' math proficiency, such as the creation of math and science camps.

School starting dates. Lawmakers may reexamine proposals to establish a uniform starting date for public schools across the state.

Higher Education

Much of the Legislature's focus on higher education is likely to involve proposals for making college more accessible to disadvantaged and minority students by increasing state funding for scholarships and the Texas Grant Program. Also, lawmakers may consider creating another flagship or "Tier I" university on par with the University of Texas at Austin, Texas A&M University, and Texas Tech University. Also under discussion are accountability proposals such as student testing to measure the performance of public higher education institutions and expanded efforts to increase student retention and graduation rates.

Tuition. With increasing enrollment and the need to remain competitive with higher education institutions across the country, Texas' public universities would like more control over tuition rates. Some may try to persuade lawmakers to scrap the current hourly tuition system for a plan that would allow individual institutions to set their own undergraduate tuition rates.

Technical graduates. Lawmakers may consider proposals aimed at increasing the number of technical graduates from state institutions of higher education. These proposals could include targeting talented community-college graduates for enrollment in university-based engineering programs and creating a fund through which the state would match private donations to pay for tuition for disadvantaged high school graduates to pursue technical degrees at community colleges, junior colleges, or technical schools.

Health and Human Services

CHIP. Some lawmakers will ask for increased funding for the CHIP program to meet the costs of rising enrollment. The Legislature also may consider proposals to improve the state's efforts to publicize the program and to enroll eligible children.

Electronic health care. Proposals to expand the development, use, and funding of telemedicine services and health care over the Internet are expected. These

proposals may affect laws relating to Medicaid and the Telecommunications Infrastructure Fund. Lawmakers also are likely to introduce measures to protect the privacy of information about individuals' medical history and health coverage.

Health insurance/managed care. The Legislature may consider issues concerning the state's role in evaluating the cost and necessity of mandated health benefits. Major managed-care initiatives may include proposals to define "medically necessary" in statute; amendments to facilitate doctors' use of the authority granted them last session to negotiate jointly for contracts with health-maintenance organizations (HMOs); and provisions relating to HMO contracting, providers' assumption of risks, and health insurers' use of hospitalist programs.

Indigent care. Some legislators hope to revisit current laws affecting the financing and delivery of health care for indigent people, especially the requirements for nonprofit hospitals' charity obligations. Issues surrounding the financing of indigent care also have spurred proposals to address state funding of graduate medical education and to evaluate changes in state formulas for allocating federal funds under the Disproportionate Share Hospital Program, which compensates hospitals that care for large numbers of indigent patients.

Long-term care. The Legislature may consider proposals to ensure timely and appropriate placement of individuals in community settings for long-term care to conform with the 1999 U.S. Supreme Court ruling in *Olmstead v. L.C.* The court said that under certain circumstances, states must provide access to community services for people in institutional settings. In particular, some lawmakers may recommend spending more on community-based services and establishing a housing assistance program for people moving from institutional to community-care settings. The Legislature likely will reexamine problems in coordinating and regulating services for the elderly, disabled, and chronically ill, including a possible reevaluation of the measure enacted last session to merge the Texas Department on Aging into the Texas Department of Human Services in September 2001. Reimbursements of nursing homes from the Medicaid program again will be a major issue, and lawmakers may consider proposals to improve the availability of liability insurance for nursing-home operators.

Medicaid. Lawmakers are likely to introduce proposals to streamline the process of applying for

Medicaid, including eliminating the assessment of an applicant's family assets and allowing recipients to remain in the program for 12 consecutive months. Legislators also may evaluate the results of the moratorium imposed last session on statewide implementation of managed care in the Medicaid program, as well as proposals to reduce burdens on managed-care organizations and providers and the barriers facing enrollees. Also under consideration may be procedures to detect and eliminate fraud and abuse in Medicaid dental services.

Pharmaceuticals. Texas lawmakers, along with those in many other states, are likely to debate proposals to lower the cost of drugs for low-income elderly individuals, charity organizations, and state agencies. The Legislature also may consider proposals to create a pilot test of the effectiveness of disease-management approaches, which closely monitor patients' drug use, lifestyle choices, and recovery from disease.

Biotechnology. Biotech businesses may ask for state assistance in funding their research and development programs. Also, recent progress in genome research and the medical use of genetic information has spurred proposals to protect individuals' privacy by limiting the use of such information.

Welfare. Among many welfare-related proposals, the Legislature may consider proposals to expand and streamline eligibility and recertification for the federal Food Stamp program and to increase assistance to families and individuals on welfare who face multiple barriers to achieving sufficient employment. Lawmakers may examine Texas' program structure and compliance with federal regulatory and funding requirements. Also, calls are likely to arise for additional funding for the Texas Workforce Commission's program to provide child-care assistance for families leaving welfare.

Workers' compensation. Lawmakers may consider measures to curb or manage this program's high medical costs and to improve wage compensation, retraining, and representation of workers in workers' comp disputes.

Criminal Justice

Capital punishment. The Legislature may consider giving jurors the option of imposing a sentence of life in prison without parole instead of the death penalty for capital murder. Some may propose banning the execution

of people with mental retardation, imposing a moratorium on all executions, or creating an "innocence commission" to review death-penalty cases and recommend changes in the way the criminal justice system handles these cases.

Sex offenders. Proposals may include increasing restrictions on where sex offenders can be housed while on parole, restricting or prohibiting probation for certain sex offenders, and revising procedures that govern the civil commitment of these offenders. Lawmakers may consider exempting juvenile sex offenders, or perhaps only first-time juvenile offenders, from some of the requirements for notifying communities about the presence of sex offenders, such as by posting information about them on the Internet. Some may propose easing lifetime registration requirements for some offenders, including those convicted of statutory rape.

Alcohol, drugs, and firearms. Some lawmakers may push for tougher penalties for driving while intoxicated (DWI), including mandatory jail time, and a ban on open containers of alcohol in automobiles. Others may propose revising the system under which drivers' licenses are revoked administratively for DWI so that a motorist would face tougher penalties for refusing to take a breath test when asked to do so by a law enforcement officer. Lawmakers also may consider requiring firearms dealers to provide trigger locks or similar devices on firearms they sell and requiring criminal background checks for firearm sales at gun shows.

Corrections. Prominent topics of debate may include whether to expand the state's prison capacity and whether the state should lease more beds from counties. Some lawmakers may propose alternatives to incarceration such as intensive supervision, mandatory substance-abuse treatment, drug courts, and housing alternatives for low-level, special-needs, and elderly offenders. Some may call for reviewing the evaluation and housing of mentally ill offenders and lowering caseloads for parole officers and probation officers.

Criminal procedure. The Legislature may debate proposals for revising the system for providing lawyers for indigent criminal defendants. Some may propose creating a specific procedure for prison inmates to request post-conviction DNA testing and requirements for handling DNA evidence. Other proposals may include a ban on racial profiling and requiring local law enforcement officers or Department of Public Safety troopers to gather data about the race, ethnicity, and gender of motorists

they stop. Another topic of debate may be changes to the state law governing hate crimes, including changing the wording that describes when a court must find that a hate crime has occurred, specifying the groups against whom such a hate crime is directed, and allowing civil damages for such crimes. Others may propose raising the \$50,000 cap on damages that people who are convicted wrongfully may recover from the state. Another proposal involves possible expunction of criminal records when a charge is later dismissed.

Pardons and paroles. Lawmakers may consider requiring the Board of Pardons and Paroles to hold public meetings to consider clemency requests, possibly only in death-penalty cases, or expanding the governor's authority to grant clemency in capital cases without the parole board's recommendation. Some may propose expanding the special-needs parole system that allows release of some elderly, handicapped, retarded, and mentally or terminally ill inmates, and increasing the use of intermediate sanctions for parolees who violate the terms of their release.

Juvenile justice. Proposals in this area may include bringing into the juvenile justice system children under 10 years old who commit serious, violent crimes and automatically restricting access to some juvenile records. Lawmakers also may consider revising the evaluation and treatment of juvenile offenders with mental retardation and mental illness and raising the salaries of juvenile probation, detention, and correctional officers.

Family Issues

Family law. Proposals may include implementing the Uniform Parentage Act, a model act for the states, to govern the determination of parentage in divorce and child-custody cases; enacting rules to govern gestational agreements that involve surrogate mothers; and changing the community property laws governing reimbursements between marital estates for improvements and the paying down of debts. The Legislature also may consider restricting no-fault divorce and providing the option of "covenant marriage," which would require counseling before both marriage and divorce.

Child support. Some may propose limiting the amount of retroactive child support that courts may order and establishing an administrative procedure to turn over property that is the subject of a child-support lien.

Abortion. In addition to efforts to revise and clarify the legislation enacted last session to require parental notification by minors seeking to obtain an abortion, lawmakers may consider various measures aimed at restricting abortions or defining the rights of a fetus.

Business and Economic Development

Rural development. The Legislature may consider a range of proposals aimed at promoting economic development in rural areas, including ways to promote high-speed telecommunications connections, improve rural community leadership training, enhance access to health care, and rebuild rural transportation networks.

Utilities/cable. Issues in cable regulation may include requiring minimum customer-service standards and requiring cable companies to provide access to their broadband or high-speed networks to unaffiliated Internet service providers. Lawmakers also may examine siting of electric transmission lines and wireless communication towers.

Privacy. In addition to proposals aimed at ensuring the privacy of individuals' medical records, lawmakers may consider restricting the disclosure of a customer's personal financial information to associated businesses or third parties, either by requiring customers to "opt in" or allowing them to "opt out." Other proposals may involve restricting the disclosure to private organizations of personal information gathered by state agencies for government business and allowing electronic filing of and searching for automobile liens.

Telemarketing. Proposals for tightening restrictions on telemarketing may include establishing a statewide "no call" list and a "no rebuttal" provision for solicitors, which would require telemarketers to end phone calls once the persons called say they are not interested. Other initiatives may include allowing consumers to cancel a sale within three days; toughening the registration and bonding requirements for telemarketers; and reducing the number of exemptions to the registration requirement.

Financial institutions. The Legislature may consider granting home-equity mortgage lenders a "cure" provision, allowing them to correct inadvertent mistakes without forfeiting their rights to principal and interest. Some may propose clarifying the timeline on home-equity borrower "opt-out" notices and what can be counted toward the 3 percent cap on loan fees and establishing home-equity

rulemaking authority in a single state agency, perhaps the Finance Commission. Lawmakers also may consider amending usury laws to set maximum interest rates for so-called “payday” loans and restricting fees for the use of automated teller machines.

Criminal forfeiture. Proposals may arise to curtail prosecutors’ ability to seize financial instruments used as collateral from institutions not involved in criminal activity. Lawmakers also may consider measures to hold corporations criminally liable for certain violations of the Securities Act.

Housing. The Legislature may consider setting aside 15 percent of the Housing Trust Fund for people with special needs and creating a dedicated bond fund to supplement federal funding and increase flexibility in state spending.

Sunset. Lawmakers may consider whether to place both the Texas Department of Economic Development (TDED) and the Texas Department of Housing and Community Affairs (TDHCA) on probation, pending further sunset review. Proposals may include moving part, if not all, of the Smart Jobs program from TDED to the Texas Workforce Commission; creating a separate board within TDHCA to regulate manufactured housing; requiring developers to comply more strictly with federal requirements before receiving approval for new projects; and setting aside 10 percent of funds allocated to multifamily housing to keep affordable properties from being sold in the private market. Other sunset-related legislation may include merging the Banking and Savings and Loan departments and granting the consumer credit commissioner greater authority to regulate automobile financing and mortgage brokers.

Civil Justice

Class actions. The Legislature is likely to consider proposals to help judges decide class-action lawsuit certifications. One proposal involves allowing the Texas Supreme Court hear an appeal from a trial judge’s certification decision. Also, lawmakers may consider whether to require class representatives to use existing nonjudicial remedies before filing class-action suits and whether to authorize the Supreme Court to adopt rules for designating classes for settlement-only actions.

Civil practices. To curb “forum shopping,” some have proposed amending state law so that claims in which more than \$500,000 is in dispute can be moved from state court to federal court if a defendant and a plaintiff are from different states. Another proposal would regulate transfer of structured settlement agreements, which involve receiving periodic payments instead of a lump sum. The Legislature also may consider relieving or reducing property owners’ liability for third-party crimes committed on their premises.

Judiciary. The Legislature may revisit the issue of changing the judicial selection system and may consider prohibiting fundraising by a judicial candidate whose election is not opposed by a major-party candidate. Lawmakers also may consider a proposal to give more oversight of the Texas Supreme Court’s rulemaking process by allowing the Legislature to review rules before they take effect. Another possible issue is requiring trial judges to specify the grounds for granting summary judgments. Also, some lawmakers may propose a “shield” law exempting working journalists from disclosing confidential sources in court.

Environment

Air emissions. The Legislature may examine rules recently adopted by the Texas Natural Resource Conservation Commission (TNRCC) to reduce air pollution in some of Texas’ major cities. Examples of the new requirements include large reductions of emissions from industrial sources, an enhanced program for vehicle maintenance and inspection, and time restrictions on certain construction and lawn-care activities. Lawmakers also may consider limiting or expanding tax exemptions allowed for industrial pollution-control equipment and approving tax incentive and grant programs aimed at reducing emissions.

Groundwater regulation. The Legislature may reexamine the “rule of capture,” the long-standing doctrine allowing unrestricted withdrawals of groundwater. It also may consider proposals for streamlining the process for creating groundwater districts and for ensuring the creation of districts along designated management boundaries rather than political boundaries such as county lines. Another issue is whether to eliminate or revise the requirement that interbasin transfers of water become junior in priority to other water rights in the basin. Lawmakers also may consider eliminating measures that exempt certain water

wells from regulation by groundwater districts and creating a state fund to plug abandoned or deteriorated water wells. Other issues may include authorizing districts expressly to charge export fees for water transported out of the district and eliminating some of the current statutory limitations on water exports.

Waste disposal. The Legislature may consider options for managing low-level radioactive waste generated in Texas and waste shipped to Texas from Maine and Vermont as part of a disposal compact among the three states. While current law provides that a waste disposal license be issued only to a public entity, some have proposed licensing a private entity. Other issues include whether waste should be managed above or below ground and which state agency should have regulatory authority over the disposal.

Oil and gas. The Legislature may consider requiring oil and gas well operators to secure bonds or letters of credit on their wells to ensure cleanup of drilling sites. Issues relating to pipeline safety may include increasing the penalty for beginning excavation without calling the state's One-Call hotline. Lawmakers also may examine the Texas Railroad Commission's inspection requirements for intrastate pipelines and whether to continue the Petroleum Storage Tank Reimbursement Program, under which petroleum transporters pay fees to certain owners and operators to reimburse them for cleaning up areas contaminated by leaking tanks. Fee collection under this program is scheduled to end in February 2002, and reimbursement is scheduled to end in August 2003.

Agriculture. Lawmakers may consider creating agricultural development districts to assist producers in processing their own products, as well as an Agriculture Policy Council to monitor the status of agriculture in Texas and make recommendations to the Legislature.

Land conservation. Land conservation proposals may include both bond and general-revenue funding to acquire and develop state parks and to buy development rights from landowners.

Sunset. Sunset review of Texas' major environmental agencies may involve changes in the Parks and Wildlife Department's funding structure, development of a system to assess the state's conservation and recreational needs, and increased public input in agency decisions. Lawmakers may weigh requiring TNRCC to develop a common definition of "compliance history" and to consider that

history when determining eligibility for innovative programs under a new regulatory tier system. TNRCC's various fee structures, such as the current 4,000-ton cap on air-emission fees, also may come under scrutiny.

Transportation

Highway finance and construction. Lawmakers are likely to consider amending the Texas Constitution to allow the use of bonding to pay for highway construction. Options include Grant Anticipation Revenue Vehicles (GARVEEs) backed by federal highway funds and conventional bonds backed by a dedicated revolving fund. Similarly, some may propose a constitutional amendment to allow partial nonreimbursable state funding of toll-road construction. Other proposals may include creating a pilot program to allow design-build contracting on large projects as an alternative to the statutorily mandated low-bid process and requiring road builders to provide pavement warranties.

Safety. Proposals in this area may include tightening weight-tolerance permit requirements to restrict travel of overweight trucks on load-zoned bridges and a measure considered last session to install cameras at intersections to photograph vehicles that run traffic lights. Another issue considered last session would raise the speed limits on rural highways. Lawmakers also may examine measures to restrict the use of cellular phones while driving.

Driver's licenses. Some lawmakers may propose issuing graduated driver's licenses that give juveniles progressively more privileges as they get older and maintain good driving records.

Local Government

Counties. The Legislature may consider authorizing counties to enact land-use or development regulations and authorizing counties adjacent to large urban counties or along the border with Mexico to regulate development and manage growth through zoning or to exercise general ordinance-making authority. County commissioners also are likely to push for expanding their authority over land use to allow prohibition of sexually-oriented businesses in certain areas. Others may propose requiring approval by a county court or the Texas Historical Commission before demolishing older and potentially historic structures.

Government Organization

Elections. Some have suggested reducing the number of statutory exceptions to the four uniform statewide election dates and shifting some of the dates. Others may propose moving the date for party primary elections to either earlier in March or later in the year, possibly May. Proposals to tighten eligibility to vote by mail may include raising the age of eligibility from 65 to 70, requiring proof of disability for disabled persons seeking mail-in ballots, and requiring that anyone recruiting voters to sign up for mail-in ballots or assisting absentee voters be a deputy early-voting assistant. A narrower definition of residency as it relates to voting eligibility also may receive scrutiny.

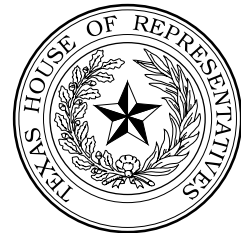
Campaign finance. The Legislature may consider requiring statewide candidates to list the employers and occupations of contributors who make large donations, perhaps setting the threshold at \$500 a year. Other proposals may include requiring all statewide candidates to collect and report all contributions at least 10 days before an election and requiring disclosure of contributors' addresses in campaign-finance reports to be posted on the

Internet. Some may propose requiring out-of-state political action committees (PACs) to disclose their donors just as in-state PACs must do. Lawmakers also may consider enhancing civil and criminal penalties for failure to report contributions in a timely and complete manner.

Open meetings. Proposals may arise to specify that quorums of governmental bodies may attend meetings of other governmental bodies without having to post notice and follow other requirements of the Open Meetings Act. Lawmakers also may consider clarifying notice requirements for the public portions of meetings that contain staff briefings.

Sunset. The Legislature may consider the Sunset Advisory Commission staff's recommendation to remove the General Services Commission's (GSC) responsibility for procuring telecommunications services and electronic technology for state agencies and transfer those functions to a new agency into which the Department of Information Resources would be folded. Under the proposal, GSC would retain its duties related to construction and state building and property management.

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Capitol Extension
 Room E2.180

P.O. Box 2910
 Austin, Texas 78768-2910

(512) 463-0752
 FAX (512) 463-1962

www.capitol.state.tx.us/hrofr/hrofr.htm

Staff:

Tom Whatley, *Director*; Greg Martin, *Editor*;
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