

- 2 Business and Economic Development
- 3 Public Education
- 4 Higher Education
- 4 Health and Human Services
- 5 Criminal Justice
- 6 Family Issues
- 6 Civil Justice
- 6 Environment
- 7 Transportation
- 7 Local Government
- 8 Government Organization

## *Topics for the 78th Legislature*

A variety of pressing issues will await the 78th Texas Legislature when it convenes in Austin on January 14, 2003. State budget concerns seem likely to dominate the upcoming session more than in any other session during the past 10 years. Insurance issues, especially in regard to homeowners insurance, also are expected to be near the top of the agenda. Other major topics are likely to include public school finance, higher education opportunities, health and human services needs, capital punishment, environmental protection, and highway funding. Also, 29 agencies representing a broad range of governmental activities will be subject to review under the sunset process.

The following pages highlight many, though not all, of the topics that the 78th Legislature may consider during its 2003 regular session. Many of these topics have been analyzed in HRO Focus Reports and *Interim News* articles issued since the end of the 2001 regular session.

### **Spending and Revenue**

**Appropriations.** According to the state comptroller's estimate, the 78th Legislature will face at least a \$5 billion budget shortfall for fiscal 2004-05, representing the difference between available revenues and the amount needed to continue to pay for existing programs. Others say the shortfall could range as high as \$12 billion.

*This report highlights many, though not all, of the issues that Texas lawmakers may consider during the 78th Legislature's regular session in 2003.*

As in prior sessions, the main budget drivers will be education and health and human services (HHS) spending. Some legislators have called for appropriating additional state revenue for public schools to provide local tax relief. Others may propose additional funding for higher education to pay for expanding admissions. Growth in the number of Medicaid recipients and in the costs of program elements such as prescription drugs

will drive the HHS budget, along with Children's Health Insurance Program (CHIP) costs. Other big-ticket appropriations issues may include continuing funding for the school employees' health insurance program created in 2001, paying for the state plan for reducing air emissions, and funding Gov. Rick Perry's proposal for a trans-Texas network of transportation corridors. The Legislature also may consider tightening constitutional limitations on the growth of state spending and changing the Constitution to require a larger majority to enact new or increased taxes.

**Rainy day fund.** A key budget issue could be whether to appropriate money from the state's economic stabilization (rainy day) fund to offset some of the projected shortfall in revenues. Debate likely would revolve around legislative intent in regard to use of the fund, the type of budget gap the funds would fill, and the possible impact on the state's ability to borrow money through future bond sales. The fund is projected to total about \$1.2 billion at the end of the current biennium.

**Tobacco money.** The Legislature has dedicated to CHIP the first revenues the state receives each year from the multibillion-dollar settlement of its lawsuit against the tobacco industry. Ongoing revenues could be used to expand Medicaid eligibility, as in the 2001 session, or for other purposes. Lawmakers may consider securitizing the tobacco-settlement revenue by selling bonds backed by future receipts in order to receive a single large lump-sum payment, as some other states have done.

**Taxes.** The Legislature likely will consider modifying the Tax Code to bring Texas into compliance with the recent multistate agreement on simplifying and standardizing administration of state sales and use taxes, aimed at increasing collection of use taxes by out-of-state businesses, especially for Internet transactions. Lawmakers also may consider applying the sales tax to real estate transactions or broadening the sales-tax base to include more professional services. Some may propose increasing taxes on cigarettes and other tobacco products, liquor, soft drinks, snack foods, and/or motor fuels, and possibly dedicating the revenue to specific programs. Expansion of the tax-exempt items sold during the August sales-tax holiday also may receive consideration.

Proposals may arise to amend the law that allows Texas corporations to create out-of-state subsidiaries and form partnerships with them in order to minimize corporate franchise-tax liability. Some also may propose expanding

the tax base to include entities such as partnerships, proprietorships, and associations.

In regard to local property taxes, lawmakers may consider requiring companies that fail to report or "render" their business personal property to county appraisal districts (CADs) to pay a percentage of the unreported value of that property. Some may propose requiring disclosure of real estate sales prices to CADs; changing the composition and selection of CAD boards of directors and appraisal review boards; changing the conduct of the comptroller's annual Property Value Study; expanding property-tax exemptions for the elderly and disabled; and modifying the tax exemption for travel trailers. Proposals also may arise to establish state oversight of local economic development sales taxes or to restrict use of the funds.

## Business and Economic Development

**Insurance.** Homeowners insurance likely will be a major concern of the 78th Legislature because of recent rate spikes, threats by major insurers to withdraw from the market, and issues surrounding coverage for toxic mold. Lawmakers may consider regulating the rates and underwriting guidelines of Lloyd's companies, to which insurers have shifted 95 percent of their homeowners policies in recent years, and instituting a "file and use" system for policy forms. Some have proposed restricting or prohibiting insurers' use of credit-based scoring — setting premiums on the basis of a consumer's credit history — and prohibiting insurers from "blacklisting" consumers who file claims for water or mold damage.

**Physician/insurer issues.** Lawmakers may reexamine issues related to the prompt payment of physicians by insurers, including requirements for prior authorization of medical procedures, binding arbitration, penalties for not complying with prompt-payment rules, and procedures for auditing claims. Also, the Legislature likely will consider extending the state law that allows physicians to negotiate jointly over contractual arrangements with insurers. Another likely topic of debate is whether to change Texas' civil liability laws in regard to medical malpractice because of concerns about rising premiums for "med mal" insurance and their effect on the availability of health care throughout the state. Proposals include capping jury awards of noneconomic damages, limiting attorney fees, and other measures aimed at easing insurers' liability.

**Homeowner protection.** Legislators may debate a “home lemon law,” similar to the automobile lemon law, that would require home builders to repair or buy back unsatisfactory homes. Related proposals may involve tightening requirements for new home construction to ensure that building materials are less susceptible to water and mold damage, or holding builders who use low-quality materials liable for subsequent losses. Some may propose licensing or regulating mold remediation businesses and public adjusters for insurance claims.

**Flexible benefit packages.** Texas law requires health insurance plans to offer specific mandated coverage in order to do business in the state. Some legislators may propose allowing insurers to offer more limited benefit packages at a reduced cost.

**Telemarketing.** Proposals for tightening restrictions on telemarketing may include allowing cellular and mobile telephone subscribers to sign on to the “no-call” list for telemarketers, created by the 77th Legislature.

**Telecommunications.** Issues may include reducing the access charges that long-distance carriers must pay to use long-distance lines and rebalancing or reclassifying rates for local telephone service. Proposals may arise to exempt broadband Internet service from state regulation. Lawmakers also may consider raising the statutory cap on the Telecommunications Infrastructure Fund (TIF) or extending the TIF board’s scheduled expiration date beyond 2005, thereby enabling the board to continue awarding grants to public schools, higher education institutions, health-care facilities, and libraries.

**Employee training.** Lawmakers may consider proposals to reconstitute Smart Jobs, a workforce training program that expired in December 2001.

**Privacy.** Some may propose restricting the sale of personal information by the state for commercial purposes; preventing merchants from recording customers’ full credit-card numbers on receipts; protecting highly personal information such as military discharge records filed with county clerks; and incorporating a “privacy audit” into sunset review of state agencies.

**Finance.** Lawmakers may consider expanding home equity lending to allow lines of credit secured by homesteads rather than lump-sum loans. Other issues may include restrictions on high-interest “payday” loans and financing of manufactured housing sales.

**Sunset.** The Sunset Advisory Commission has proposed restructuring the Texas Department of Economic Development (TDED) by eliminating its governing board and transforming the agency into a business and tourism promotion program within the Governor’s Office. Related proposals may involve transferring TDED’s business incentives program to the Comptroller’s Office and establishing a council to coordinate tourism efforts across state agencies. Sunset review of the Texas Workforce Commission (TWC) may involve proposals to change the structure of the three-member commission, create an Office of Employer Initiatives, and require TWC oversight to correspond more closely to the needs of local workforce development boards. Lawmakers also may consider specifying the duties of agencies that are members of the Texas Council on Workforce and Economic Competitiveness and may consider the Sunset Advisory Commission staff’s recommendation to abolish the Texas Aerospace Commission.

## Public Education

A major issue will be whether the Legislature should attempt to modify the public school finance system that requires property-wealthy school districts to share part of their revenue. Lawsuits filed in 2001 by school districts and taxpayers alleged that because so many districts have reached the statutory cap on local maintenance and operations (M&O) taxes, the current system imposes an unconstitutional state property tax. As more districts reach the cap, many say they have little choice but to cut programs, reduce staffing, and eliminate local tax exemptions. Solutions could involve a significant infusion of new state dollars into the public school system; increasing local taxing capacity by raising the M&O cap above the current level of \$1.50 per \$100 of property value; and/or increasing local borrowing capacity by raising the limit on the Permanent School Fund’s bond guarantee program. Some may propose automatically rolling forward the state’s allotment to help pay local debt for school facilities rather than leaving those funds contingent on the biennial appropriations process.

**Teacher shortage.** With attrition contributing to a shortage of qualified educators, lawmakers may consider increasing teachers’ salaries or encouraging the use of paraprofessionals to relieve teachers of some clerical duties. Other approaches could involve providing more funding for alternative certification programs at community colleges or universities; directing funds to workforce

development programs to encourage training of new teachers from among qualified unemployed workers; or relaxing the requirements for teacher certification.

**Accountability.** While monitoring the rollout of the Texas Assessment of Knowledge and Skills (TAKS) test, which replaces the Texas Assessment of Academic Skills, and enforcement of the Student Success Initiative, under which third graders who do not pass the reading portion of the TAKS will not be promoted, lawmakers may consider whether to impose stricter accountability standards on state-funded charter schools and whether to raise curriculum and testing standards for alternative education programs.

**School employee health plan.** In response to concerns about funding for the new health insurance plan, lawmakers may consider changing the state's "sum-certain" contribution to the plan, restricting employee "passthrough" dollars to health-care uses only, and requiring the plan administrator to include regional health-care providers in future rounds of bidding.

**State Board of Education (SBOE).** Lawmakers may revisit the SBOE's ethics policy and management and investment practices for the Permanent School Fund and whether to enhance or curtail the board's authority in regard to approval of public school textbooks.

**Vouchers.** The Legislature may consider establishing a pilot program to allow students at substandard schools to use vouchers to attend private schools.

**Other issues.** Some lawmakers may propose placing additional restrictions on the ability of underperforming charter schools to add campuses, grades, or students, as well as revoking charters sooner when problems arise. Others have proposed requiring a "minute of silence" in public schools to be used for prayer, meditation, or silent reflection.

**Sunset.** As the State Board for Educator Certification (SBEC) undergoes its first sunset review, lawmakers may consider revising the SBOE's authority to reject proposed SBEC rules and requiring SBEC to conduct criminal background checks on all applicants for teacher certification.

## Higher Education

The Legislature is likely to consider proposals to increase access to higher education, such as by creating a grant program for first-generation college students; restructuring the Hinson-Hazlewood loan program to allow students to receive up to \$5,000 in interest-free loans; using money from the state lottery to offer two-year scholarships at public community colleges and vocational/technical schools; and authorizing no-interest loans for college students who maintain high grades and graduate within four years. Other proposals may include requiring high school students to complete the advanced program to qualify for automatic admission to state flagship universities, now guaranteed to students in the top 10 percent of their high school graduating classes.

**Tuition.** Legislators may consider authorizing state colleges and universities to set their own tuition rates and fees. Proposals could include allowing two-year colleges to reduce tuition rates to attract more students during periods of low enrollment demand.

**Minority representation.** Lawmakers may consider establishing a law school in South Texas with the goal of increasing the representation of minorities in the state's law schools and in legal practice. Proposals also may arise to boost the enrollment of students from underrepresented groups in the state's medical schools.

**Sunset.** Among other proposals, the Sunset Advisory Commission has recommended reducing the size of the Texas Higher Education Coordinating Board from 18 to 15 members and requiring the board to provide impact statements for significant legislation affecting higher education.

## Health and Human Services

As in the past, containing the cost of the state-federal Medicaid program is likely to be a major focus of debate in the 78th Legislature. Among other health-related issues, lawmakers may debate measures to alleviate the shortage of nurses and allied health professionals and to address the unreimbursed costs of hospital emergency departments that provide services for uninsured people; whether the state should release specific information on complaints about hospitals and physicians that now is confidential by law; and whether to require the private sector to report children's immunizations to the state

tracking system. Major human services issues will revolve around renewal of the state-federal Temporary Assistance to Needy Families (TANF) program, which provides cash assistance and other services to poor families in Texas.

**Medicaid and CHIP.** Some legislators may seek additional funding to meet the cost of caseload growth in Medicaid and CHIP; others may propose restricting eligibility or services to limit increases in program costs. As part of efforts to limit growth in the cost of prescription drugs for public health programs, lawmakers may consider establishing preferred drug lists to elicit rebates from drug manufacturers or requiring physicians to obtain prior authorization from the state before prescribing certain medications.

**Smoking prevention.** Some legislators have proposed increasing cigarette taxes and dedicating part of the increase to preventing smoking. The Legislature also may consider imposing state-level restrictions on smoking in public areas that would preempt local regulations, possibly resulting in less stringent regulations in some areas.

**Mental health services for children.** Proposals may arise to expand the Texas Integrated Funding Initiative, a pilot program that pools funds from service providers in three sites to create a unified program for children who need mental health services.

**TANF.** Texas lawmakers are likely to reevaluate the state's use of TANF funds. Congress has postponed the expiration date of the federal block grant, originally set for September 2002, and is expected to reauthorize TANF, either in its current form or with changes to the services that states can offer.

**Food stamps.** Lawmakers may consider state options for the food stamp program associated with the federal farm bill, enacted in May 2002. These options include offering transitional benefits for families leaving TANF and adjustments in the amount of deductions allowed toward eligibility limits.

**Child care.** The state provides child care for TANF recipients who work, for recent TANF recipients, and for families considered at risk of requiring more extensive assistance if their child-care needs are not met. Legislators may consider expanding child-care services to meet growing demand. Funding options could include

appropriating additional general revenue or changing the mix of federal and state funds.

## Criminal Justice

**Capital punishment.** The Legislature may consider changing the procedures for determining if a defendant in a capital murder case is mentally retarded. Other proposals could include banning the execution of people who commit capital murder when younger than 18; banning the execution of the mentally ill; imposing a moratorium on all executions; creating an "innocence commission" to review death-penalty cases and to recommend changes in the way the system handles these cases; or mandating the death penalty for murder committed as part of a terrorist act.

**Criminal procedure.** Lawmakers may debate the procedures used to determine whether a criminal defendant is competent to stand trial and whether changes are needed in the insanity defense. Proposed changes in the 2001 law creating a procedure for prison inmates to request post-conviction DNA testing may include revising the screening process that determines who may request the test and changing the standard for when testing may occur. Proposals to revise the 2001 law dealing with criminal indigent defense may include eliminating or extending the deadlines for appointing attorneys, removing some restrictions on county appointment methods, and establishing statewide standards for indigency.

Some may propose changing the discovery procedures used in criminal trials, such as by giving both prosecutors and defense attorneys a right to discovery or by requiring that all files be open. Proposals could arise to allow judges, instead of prosecutors and defense attorneys, to examine potential jurors. Lawmakers also may consider establishing a sentence of life-without-parole for serious and violent crimes and increasing penalties for actions associated with identity theft.

**Alcohol, drugs, and firearms.** Some lawmakers may push to establish sobriety checkpoints at which law enforcement officers could check motorists for signs of intoxication. Other proposals could include creating stiffer penalties for motorists who refuse to take breath tests when asked to do so by law enforcement officers and changing the system that allows a driver whose license has been revoked for driving while intoxicated to receive an occupational license to drive under restricted

conditions. Lawmakers may consider requiring criminal background checks for firearm sales at gun shows and prohibiting local governments from banning the carrying of licensed, concealed handguns in public places. Some may propose enhancing the punishments for possessing or transporting chemical precursors used in producing illegal methamphetamines.

**Corrections.** Issues may include how best to provide health care for inmates and whether the state will need to expand its prison capacity during the next decade. Some may propose increasing funding or services for handling mentally ill adult and juvenile offenders, lowering caseloads for community supervision, or increasing funding for local community corrections programs.

**Gambling.** The Legislature may consider revising the laws governing electronic gambling machines, often called eight-liners, and legalizing casino-type gambling centers run by Texas Native American tribes. The Texas Lottery Commission will be subject to sunset review, and lawmakers may debate whether Texas should join a multistate lottery.

## Family Issues

**Family law.** The Legislature may consider changing the role of attorneys and guardians *ad litem* in child custody cases; establishing regulations for gestational agreements that involve surrogate motherhood or similar arrangements; and disqualifying homosexual or bisexual people from serving as foster parents.

**Same-sex marriages.** Current law prohibits same-sex marriages in Texas, and legislators may consider proposals to ban the recognition of such marriages or civil unions sanctioned in other states.

**Abortion.** Lawmakers may consider placing new restrictions on abortions, such as by requiring women to view certain information and sign consent forms before a procedure could be performed. Proposals also may arise to require parental consent for abortions for minors, in addition to the parental notification now required.

## Civil Justice

Issues considered in this area may include Supreme Court review of class certifications in class-action lawsuits;

incentives to encourage lawsuit settlements; elimination of prejudgment interest on future damages; and restrictions on binding arbitration agreements.

**Judiciary.** The Legislature may revisit the issue of changing the judicial selection process and may consider prohibiting judicial candidates from accepting campaign contributions except during the year before an election and six months after an election.

**Sunset.** As part of sunset review of the State Bar of Texas, lawmakers may consider changing the criteria for approval of proposed changes to rules governing operations of the bar and eliminating the option of a jury trial for an attorney facing sanctions for alleged misconduct. Other sunset-related proposals may include requiring the Board of Law Examiners to disclose attorneys who are practicing with a probationary license and requiring the establishment of a Court Reporter's Code of Ethics.

## Environment

**Air emissions.** The Legislature may consider options for funding the Texas Emissions Reduction Plan (TERP), such as imposing taxes or fees on vehicle inspections or on the purchase or lease of heavy-duty construction equipment or diesel vehicles. Proposals to modify the TERP may involve providing rebates to owners of older vehicles for installation of low-cost emission-control technologies, establishing emissions testing centers for heavy-duty vehicles and machines, or providing incentives for small companies with only a few such vehicles or machines to upgrade to newer and cleaner models. Some may propose amending the Texas Commission on Environmental Quality's (TCEQ) air permitting program by eliminating or raising the cap on emissions fees paid by industries or by requiring increased on-site emissions monitoring or improved ambient monitoring of air quality.

**Enforcement.** The Legislature may consider reprioritizing TCEQ spending to pay for more on-site inspections; requiring that a penalty imposed on a company reflect the economic benefit gained through the violation; or increasing penalties to deter future violations.

**Legal representation.** Lawmakers may consider making the Office of Public Interest Counsel independent of TCEQ and granting citizens a cause of action to sue for penalties for violations of state environmental rules.

**Low-level radioactive waste.** Lawmakers may revisit the issue of whether to establish a low-level radioactive waste management facility in Texas to accommodate waste generated in-state or shipped from Vermont under the terms of a 1993 compact. Proposals may include requiring TCEQ to apply for a waste-disposal license from the Bureau of Radiation Control or licensing a private firm to dispose of the waste. Waste management methods that may be debated include permanently burying the waste below ground or isolating it in an above-ground facility for long-term management.

**Oil and gas.** The Legislature may consider proposals to ease financial assurance requirements for oil and gas well operators with a good record of environmental compliance. Proposals may include creating an alternative means of obtaining financial assurance for operators that cannot obtain bonds or letters of credit, such as by paying a fee for inclusion in a shared risk pool.

**Recreation.** The Legislature may consider banning the operation of motorized vehicles within the beds and banks of rivers. Alternatives may include authorizing local governments to regulate motorized-vehicle activity in riverbeds, establishing a permit program, or developing alternative recreational sites for motorized vehicles.

**Water.** Some may propose rewriting the law regarding appropriation of water rights for environmental in-stream purposes. Proposals to fund new water-supply projects recommended under the state water plan, such as reservoirs or pipelines, also may receive attention.

**Agriculture.** In response to bioterrorism concerns, lawmakers may consider expanding the Texas Animal Health Commission's (TAHC) quarantine authority to restrict livestock movement statewide, rather than by county, and authorizing the Texas Parks and Wildlife Department and TAHC to coordinate efforts to control animal disease, especially with regard to the entry of deer and elk into Texas. Proposals also will arise to change the state's certification program for organic agricultural products to comply with new federal standards.

## Transportation

**Highway bonds.** The 77th Legislature created the Texas Mobility Fund to issue bonds for highway construction but made no appropriation and designated no funding source for debt service. In 2003, lawmakers

may consider dedicating a source of revenue, such as vehicle registration fees, traffic fines, motor-vehicle sales and rental taxes, or increases in motor-fuels taxes. Lawmakers also may revisit proposals to pledge the state's future federal highway reimbursements against grant anticipation notes, more commonly called grant anticipation revenue vehicles or GARVEEs. Other proposals could include granting explicit bonding authority to new regional mobility authorities formed for the purpose of expediting construction of toll roads.

**Trans-Texas Corridor.** Gov. Perry has proposed building a 4,000-mile network of transportation corridors across the state at an estimated cost of \$125 billion. The corridors would be designed to accommodate vehicles, freight and passenger rail, utilities, data transmission, and telecommunications. The 78th Legislature may consider a package of proposals that include expediting right-of-way (ROW) acquisition; authorizing the Texas Department of Transportation (TxDOT) and other entities to acquire property for utilities and railroads; removing limits on the number of design-build projects TxDOT may approve; allowing TxDOT to charge fees to public utilities for ROW placement; and giving landowners a percentage of future toll receipts in lieu of full cash payment.

**Other issues.** Lawmakers may consider expanding the \$175 million Border Colonias Access Program to allow funding for additional roadways in underdeveloped residential areas along the Texas-Mexico border. Some may propose increasing restrictions on overweight and oversized trucks; tightening regulations designed to protect Texas' county bridge system; requiring pavement warranties from contractors; and allowing use of the electric Segway two-wheeled human transporter on sidewalks and perhaps public roadways, free of the regulations that apply to motor vehicles.

## Local Government

**Counties.** The Legislature may consider authorizing counties to adopt and enforce construction codes setting minimum standards for residential building, plumbing, mechanical, and electrical work in unincorporated areas. Lawmakers also may consider proposals to enhance counties' authority to regulate land use, such as through zoning or ordinances regulating specific areas such as noise or fireworks, or to assess impact fees to cover the cost of expanding county infrastructure.

**Property associations.** Some may propose changing the laws governing foreclosure by homeowner's associations, such as by eliminating or limiting these associations' foreclosure powers, limiting the circumstances under which they can foreclose, and extending the time allowed for homeowners to redeem foreclosed property.

## Government Organization

**State pension funds.** Because of concerns about rising medical costs, the Legislature may consider requests by the Employees Retirement System (ERS) and Teacher Retirement System (TRS) to create reserve funds for their self-funded health-care plans.

**Return to work.** Lawmakers may consider measures to encourage retired state employees to return to work in fields such as mental health and criminal justice that are short of qualified professionals and to encourage retired public school teachers to return to the classroom to teach part-time or to act as mentors to new teachers. However, concerns about the actuarial soundness of the ERS and

TRS pension funds could lead to proposals to restrict the ability of returning employees to draw full retirement benefits.

**Elections.** The federal Help America Vote Act of 2002 will require state lawmakers to consider developing provisional voting procedures to accommodate voters whose eligibility is in question at the polls. Proposals to relieve voter "burnout" may include reducing the number of uniform election dates and requiring mandatory joint elections and joint primary elections in large counties. Some lawmakers may propose increasing the allowable number of registered voters in precincts in large counties. The Legislature also may consider redrawing the court-ordered congressional redistricting plan.

**Sunset.** With the Texas Ethics Commission (TEC) scheduled for sunset review, lawmakers may consider giving the TEC greater authority to investigate complaints, including subpoena power; allowing the commission to tighten requirements for electronic campaign finance reporting; and allowing it to share investigative information with law enforcement agencies.

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