

## *Topics for the 83rd Legislature*

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The Texas Legislature will consider a wide variety of topics when it convenes in regular session on Jan. 8, 2013. Public education and health care are expected to top the agenda, with a variety of other important topics, such as tax policy, corrections management, and the financing of transportation and water planning projects, expected to feature prominently in discussions. A total of 24 agencies will be under Sunset review in such areas as public and higher education, criminal justice, energy resources, and public utilities. This report highlights many, although by no means all, of the issues the 83rd Legislature may consider during its 2013 regular session.

### **Appropriations and spending**

The 83rd Legislature will be writing a state budget for fiscal 2014-15 that will have to close an anticipated gap between state spending requests and expected state revenue. State revenue for fiscal 2012-13 likely will be greater than was anticipated in the comptroller's revenue estimate used to certify the budget for the current biennium. By some estimates, state revenue could be about \$8 billion greater than anticipated.

State agencies were instructed to submit baseline spending requests for general revenue and general revenue-dedicated funds that were no greater than funds expended in fiscal 2012 and budgeted for fiscal 2013. Agencies also had to submit plans showing potential general revenue and general revenue-dedicated spending cuts of 10 percent as part of their fiscal 2014-15 appropriations requests.

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Funds for certain programs were exempted from these restrictions on baseline spending requests, including amounts necessary to maintain funding for the Foundation School Program and to maintain benefits without changing eligibility criteria in Medicaid entitlement programs, the Children's Health Insurance Program, the foster care program, the adoption subsidies program, as well as the permanency care assistance program, which provides

financial support to relatives who take permanent legal responsibility for children who cannot be reunited with their parents and for whom adoption is not appropriate.

Under the Texas constitutional spending cap, state spending not constitutionally dedicated to particular purposes cannot increase from one biennium to the next beyond the rate of growth in statewide personal income adopted by the Legislative Budget Board (LBB) unless the cap is waived by a majority vote of both houses of the Legislature. On Nov. 15, the LBB adopted a projected state personal income growth rate of 10.71 percent from fiscal 2012-13 to fiscal 2014-15. This limits spending from non-dedicated tax revenue in fiscal 2014-15 to \$77.9 billion, up from \$70.4 billion in fiscal 2012-13, subject to revisions in the revenue forecasts and subsequent appropriations.

Lawmakers will examine state agencies' spending requests for fiscal 2014-15 along with ideas to increase revenue and proposals to use part or all of the state's Economic Stabilization Fund ("Rainy Day Fund") for the fiscal 2014-15 budget and for fiscal 2013 spending. Some agency requests for state spending are discussed later in this report under specific topic categories.

### **Supplemental appropriations for fiscal 2013.**

The Legislature also will have to consider additional spending for fiscal 2013. General revenue funding for Medicaid is expected to run out in March 2013, requiring a supplemental appropriation of about \$4.8 billion. Other supplemental requests also could be considered.

**Dedicated revenues.** Members may discuss the use of statutorily dedicated accounts in the state budget for purposes other than those to which they were dedicated. Government Code, sec. 403.095 requires the comptroller to include in the estimate of funds available for general-purpose spending the amounts in general revenue-dedicated accounts expected to exceed appropriations from those accounts. For fiscal 2012-13, total available general revenue-dedicated funds equaled about \$10.6 billion. The 82nd Legislature appropriated \$6.4 billion of that, leaving the remainder unspent but counted toward budget certification.

Proposals could be considered to stop using fees and dedicated accounts for purposes other than those for which they were originally intended. Other proposals could include reducing revenue collection in these accounts by lowering or suspending fees.

**School payment deferrals.** Legislators might debate making a 25th monthly payment to school districts during fiscal 2014-15. The 82nd Legislature deferred a payment to Texas school districts from 2012-13 into fiscal 2014-15. By making only 23 monthly payments, the Legislature reduced funding to school districts by about \$1.8 billion. A 25th monthly payment in fiscal 2012-13 would place the Legislature back on track to making 24 monthly payments per biennium, allowing subsequent legislatures to defer payments in response to future budget shortfalls.

**Tax speed-ups.** Legislators may consider winding back certain one-time prepayments of taxes to increase the amount of revenue available for appropriations during fiscal 2014-15. The 82nd Legislature required certain businesses to pay in fiscal 2013 what would have been their first fiscal 2014 motor fuels, alcohol, and sales tax payments. Requiring those taxes to be prepaid enabled the state to collect an additional \$800 million in revenue for fiscal 2012-13. Rescinding the prepayment requirement and allowing businesses to defer their final biennial tax payments into the fiscal 2014 budget period would allow the Legislature to respond to future shortfalls by once again requiring prepayments to "speed up" tax collections.

**Spending limits.** Legislators may consider proposals to limit tax and expenditure growth. Such proposals include limiting the rate of expenditure growth to the rate of inflation or to the rate of inflation plus the rate of population growth.

**Raising the Rainy Day Fund cap.** Legislators may consider proposals to increase the cap on the Rainy Day Fund. The fund receives 75 percent of any oil or natural gas production tax revenue that exceeds the amount collected in fiscal 1987. It also receives one-half of any unencumbered balance remaining in the General Revenue Fund at the end of a biennium, which has happened twice, in 1991 and 2008. The Rainy Day Fund is projected to have \$8.1 billion at the end of November 2012.

The cap on the Rainy Day Fund is established in the Texas Constitution. The fund cannot exceed an amount equal to 10 percent of the total amount deposited into general revenue (minus certain types of income and funds) during the previous biennium. The cap for fiscal 2012-13 is \$13.6 billion. Proposals could be made to raise the cap to 15 percent of deposits.

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## Taxes and revenue

As the 83rd Legislature resumes the appropriations process for the fiscal 2014-15 budget and addresses shortfalls in the 2012-13 budget, proposals will emerge to address revenue shortfalls by making changes to various taxes. Proposals may include eliminating certain exemptions, including those no longer considered necessary or that are thought to be outdated in the modern economy.

### **Replacing property taxes with sales taxes.**

The Legislature may consider proposals to reduce or eliminate current property taxes by increasing sales taxes. To make up for lost property tax revenue, lawmakers might consider expanding the sales tax base to include, for example, real estate transactions, sales of bottled water, and certain services, including physicians' and attorneys' fees. Other proposals would impose higher tax rates while leaving the tax base as it is.

**Margins taxes.** Legislators may consider proposals to reform the franchise tax, known as the margins tax. Proposals may include decreasing the number of deductions to simplify and stabilize the tax. Other proposals would increase the number of deductions and exemptions, which could include exempting entities that do not make a profit.

**Bonds.** Lawmakers may examine proposals to change the limits on the amount and kind of bonded debt state and local governments may authorize. One proposal would prevent local governments from issuing capital appreciation bonds, which delay principal and interest payments until the bond matures.

**Chapter 313 property tax abatements.** The Legislature may consider extending the Texas Economic Development Act under Tax Code, Ch. 313, which is scheduled to expire in 2014. This would allow local school districts to continue entering into agreements with property owners to abate the property taxes owed to the district by limiting the taxable value of improvements for a set period of time. The state reimburses the school districts for any lost property-tax revenue stemming from the abatement agreement. In exchange, the property owner agrees to create a certain number of jobs in the area.

Beyond renewing the statutes allowing the abatements, proposals may include requiring the creation of more jobs, more stringently monitoring job creation, and requiring state-level approval before the agreements are allowed to take effect.

**Tobacco taxes.** Legislators may consider proposals to increase taxes on certain small producers of tobacco products, which currently enjoy a competitive price advantage over large, established tobacco companies. Unlike the smaller producers, large tobacco companies are required to pay certain fees to the state as part of the 1998 tobacco settlement agreements.

## Business and economic development

The 83rd Legislature may consider options for boosting economic development and proposals to change the ways businesses are regulated. Changes to the operation of and eligibility requirements for funds received from the Texas Enterprise Fund, the Emerging Technology Fund, the Cancer Prevention Research Institute of Texas, and chapter 313 property tax abatement agreements (see "Taxes and revenue," this page) could be debated. Lawmakers may consider proposals to make insurance more affordable, to ease or eliminate occupational licensing requirements, and to examine restrictions on the alcohol and gambling industries.

### **Texas Windstorm Insurance Association.**

Proposals may emerge to address funding shortfalls for the Texas Windstorm Insurance Association (TWIA), which acts as an insurer of last resort for coastal property owners who otherwise could not receive coverage. Some say TWIA may not have adequate funding sources to cover policy holders' claims if Texas is hit by a catastrophic storm or a series of storms. Proposals include setting policy limits, increasing the rate TWIA charges its policy holders, and taking measures to "depopulate" TWIA by slowly moving more windstorm insurance policyholders into the private market.

**Homeowners' insurance.** Proposals may emerge to increase the affordability of coverage provided by homeowners' insurance policies offered in Texas. Many proposals are aimed at building stronger, more wind-resistant homes, which are cheaper to insure because they are less likely to suffer damage. These proposals include

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registering and licensing roofers, placing more restrictions in state building codes, and limiting the ability of local jurisdictions to deviate from the state building codes.

**Alcohol regulation.** Lawmakers could explore proposals to change the state's three-tier system for manufacturing, distributing, and selling alcohol to allow small producers of specialty beer and distilled spirits to operate outside the system. Proposals could be made to expand the way small brewers, brew pubs, and craft distillers are allowed to make their products available to consumers.

**Occupational licensing.** The 83rd Legislature may consider proposals to reduce certain occupational licensing requirements or to streamline the process for obtaining licenses. Under some proposals, licensing would be limited to occupations that affect the health and safety of consumers. Lawmakers could examine reducing some felony violations of licensing requirements to lesser penalties or revising them to civil penalties.

**Legal status of workers.** Proposals may emerge to require all employers to use the federal E-Verify system to determine if potential employees are allowed by law to work in the United States. Some would require only public employers, such as the state and political subdivisions, to use the system, while others would include contractors and subcontractors doing business with public employers.

**Gambling.** The Texas Lottery Commission will undergo Sunset review during the 2013 session. Legislators may consider recommendations to expand the size of the three-member commission and to require full commission approval of major contracts.

Lawmakers may consider authorizing casino gaming in Texas as a way to raise new state revenue. Setting an election on whether to authorize casinos could be debated, as well as details on casino proposals, including who would be allowed to operate them, where they could be built, and how they would be taxed. Lawmakers also may consider allowing casino gaming, such as slot machines, at existing pari-mutuel racetracks, bingo halls, and facilities operated by Texas' Native American tribes.

Legislators might discuss the legalization, prohibition, or state taxation of online gaming. In addition, laws governing electronic gaming machines, also known as

"eight liners," may be examined, and proposals could emerge to legalize them, to regulate them more strictly, or to outlaw them.

**Social media.** Lawmakers may consider proposals to prevent employers from requiring employees to grant access to their personal social media sites, such as Facebook, as a condition of employment.

## Criminal justice and public safety

The structure of the state's criminal justice agencies will be a topic of discussion for the 83rd Legislature as the recently established juvenile justice agency is examined and agencies that handle adult offenders undergo Sunset review. The projected size of offender populations could drive budget and policy decisions about how many facilities the state should operate and how health care should be provided for offenders. Lawmakers may consider new criminal offenses and changes to Texas' criminal procedures, especially investigation techniques and discovery for trials.

**Adult prison, probation, and parole.** The Texas Department of Criminal Justice (TDCJ), the Board of Pardons and Paroles, the Correctional Managed Health Care Committee, and the Windham School District, which operates education programs in Texas correctional facilities, will undergo Sunset review in 2013.

**Offender populations.** In September 2011, TDCJ closed the Central Prison Unit in Sugar Land, which housed about 1,060 offenders. Closing more units may be discussed, taking into account the LBB's projection of the size of the offender population. At the end of November 2012, TDCJ was holding 151,988 offenders with the operating capacity to hold about 3,600 more individuals.

**Prison health care.** Lawmakers may address the provision of health care for the state's offender population. The 82nd Legislature reduced funding for health and psychiatric care for adult offenders by \$75 million, or 8 percent, for the current biennium and transferred responsibility for contracting with providers to TDCJ from the Correctional Managed Care Committee.

The Legislature could consider whether to continue contracting with the University of Texas Medical Branch at Galveston and the Texas Tech University Health Science

Center to provide inmate health care. These providers have requested an increase of \$141 million for fiscal 2014-15, saying the additional funds are needed to maintain operations and ensure effective care. TDCJ is anticipating a supplemental appropriations request for offender health care ranging from about \$30 million to \$60 million.

**Correctional officer pay.** Pay increases could be proposed to alleviate a shortage of correctional officers. At the end of October 2012, TDCJ reported a vacancy rate in its correctional officer staff of about 10.75 percent. Discussions may focus on whether the state should attempt to deal with the shortage by building housing near some prison units or by closing units.

**Offender reentry process.** Lawmakers may discuss the state's system for transitioning offenders from prison to general society. While TDCJ has established a Reentry Taskforce, the agency has not yet developed a comprehensive reentry plan, as required by a 2009 law. The Sunset Advisory Commission has proposed requiring TDCJ to produce a written reentry plan containing specific types of information and to implement a systemwide risk and needs assessment for offenders on probation, parole, and in prison.

**Criminal procedure.** Proposals affecting discovery in criminal cases may be considered, including making discovery mandatory, automatic, and reciprocal between the defense and prosecution. The electronic recording of custodial interrogations also could be considered.

**Automatic license plate readers.** Legislators may debate the use of automatic license plate readers by law enforcement. These systems can read and record license plate numbers taken from digital photographs and check them against databases. Proposals may include prohibiting the systems from recording images of people, requiring that they capture only data necessary to identify a vehicle, restricting the use of captured information, and establishing rules to govern the retention of such information.

**Drug offenses.** Punishment for first-time, low-level drug crimes by non-dangerous offenders could be discussed, including mandating probation in some situations. Proposals to criminalize *salvia divinorum* by placing it on the state's list of controlled substances could be debated.

**Local jail population.** Lawmakers may debate proposals to address overcrowding in local jails by diverting some offenders with mental illness and substance abuse problems from the ordinary criminal justice system to special courts or to treatment or counseling programs.

**Prosecutorial conduct.** Controversy about wrongful convictions could prompt proposals addressing prosecutor misconduct. These could include requiring training and imposing consequences for certain actions, such as withholding evidence.

**Crimes against children.** The case of Caylee Anthony, a 2-year-old Florida girl murdered in 2008, could prompt proposals to criminalize the failure to report a missing child or the death of a child. Under current Texas law, failing to report a missing child is not a specific criminal offense, but other actions that could occur in these cases are crimes, such as tampering with physical evidence, endangering a child, or failing to report child abuse or neglect.

In the wake of the Penn State University child sexual abuse scandal, lawmakers could examine Texas' statute on failing to report certain crimes. The Texas Penal Code currently makes failure to stop or report aggravated sexual assault of a child a class A misdemeanor, and proposals could emerge to increase this penalty. This law could be examined in conjunction with another current law that, under certain circumstances, makes observing and failing to report the commission of a felony a class A misdemeanor.

**Pat-downs by public servants.** Making it a crime for public servants, including airport security personnel, to perform certain types of pat-down searches could be considered. Lawmakers may debate where and how a person was searched and whether he or she consented.

**Prostitution and human trafficking.** Proposals could be made to amend laws on human trafficking that were changed by the 82nd Legislature, especially to increase and improve data reporting and collection efforts. Lawmakers may discuss continuing the Human Trafficking Prevention Task Force, which is set to expire in 2013.

Lawmakers may address how the state punishes the crime of repeat prostitution. Currently, a fourth conviction for prostitution—offering or soliciting—is a state jail

felony, punishable by a sentence ranging from six months to two years in a state jail. Proposals could be made to reduce these offenses to misdemeanors. Other proposals could seek to increase penalties for repeat offenses of the promotion of prostitution. Civil penalties for persons who compel prostitution, promote prostitution, or publish advertisements relating to these crimes could be debated.

Discussions about human trafficking also could include a proposal to establish a pre-adjudication program focusing on assisting and rehabilitating juveniles involved in prostitution and human trafficking.

**Juvenile justice.** The 83rd Legislature could evaluate the operations of the newly created Texas Juvenile Justice Department (TJJD). The 82nd Legislature, in SB 653 by Whitmire, created the new agency and abolished the two state agencies—the Texas Youth Commission and the Texas Juvenile Probation Commission—that previously were responsible for juvenile offenders. Proposals could address how the duties of the two agencies are being integrated.

The 82nd Legislature limited TJJD to 1,600 beds, excluding halfway houses and contract facilities, and authorized it to close up to three facilities. In 2011, the agency closed facilities in Beaumont, Brownwood, and Crockett. In fiscal 2012, the agency received funding for 1,407 institutional beds, and the average daily population was 1,216. The closing of additional facilities could be discussed along with proposals to allow large counties to handle all of their juvenile offenders on the local level.

***Diversion and local programs.*** Lawmakers may debate the effectiveness of programs and grants to divert youths from TJJD and the juvenile justice system. Proposals may include additional investments in diversion, mental health, and early intervention programs and in local, community-based, non-residential juvenile justice programs. Discussions could include how to allocate funds between secure confinement and non-residential programs.

***Certification of juveniles as adults.*** The Legislature may consider proposals to change a law that allows juveniles at least 14 years old who have committed felony offenses to be transferred from juvenile to adult court.

**Alcohol offenses.** Lawmakers may debate making first-time driving-while-intoxicated (DWI) cases eligible for deferred adjudication, a form of probation in which a

judge puts off determining guilt while the defendant serves probation, which can result in the defendant's acquittal upon successful completion of that probation. Proposals could include requiring judges to order such defendants to install an ignition interlock device or requiring installation of a device following a first DWI conviction.

**Guns.** Legislators may debate allowing concealed handgun licensees to carry their weapons in places they currently are prohibited, including college campuses, either public or private. An Oklahoma law giving those licensed to carry concealed handguns the option to carry weapons in the open took effect Nov. 1, 2012, and a similar proposal could be debated by the 83rd Legislature. Regulating the sale of certain types of ammunition or weapons also could be proposed.

Proposals to increase security at Texas public schools in the aftermath of December's elementary school shooting in Newtown, Conn., may include allowing certain school personnel and school board members statewide to carry concealed handguns on district property.

**Border security and illegal immigration.** The 83rd Legislature may address funding for border security and proposals to authorize southbound checkpoints to look for the unlawful possession and movement of firearms, drugs, and money into Mexico.

Lawmakers may debate the role of state and local law enforcement in enforcing federal immigration laws, including proposals to authorize peace officers to verify citizenship and immigration status of people they detain. Some may propose prohibiting local rules that limit cooperation with federal immigration enforcement, such as adopting policies that create so-called "sanctuary cities." Lawmakers also may consider making it a state criminal offense for a person to enter or remain in the United States illegally.

## Health and human services

Budget issues will dominate much of the discussion in health and human services. Cost containment strategies could be considered for programs such as Medicaid and the Children's Health Insurance Program (CHIP). Lawmakers will be balancing budget pressures with maintaining state

services, given population growth and inflation. State implementation of the federal health care law also will be discussed.

**Federal health care reform issues.** The implementation of the 2010 federal health care law, the Patient Protection and Affordable Care Act (ACA), will be an issue for the 83rd Legislature. In June 2012, the U.S. Supreme Court largely upheld the constitutionality of the ACA, including the mandate that certain individuals have health insurance. The court also upheld the law's Medicaid expansion provisions but limited the federal government's ability to enforce the expansion. Implementation of the law has begun, while the federal government continues to issue information and guidance to the states.

**Medicaid expansion.** Lawmakers may discuss whether to expand the Medicaid program beginning in 2014 to parents and childless adults under age 65 with incomes below 133 percent of the federal poverty level. In Texas, Medicaid now is generally limited to low-income children, seniors, the disabled, and pregnant women, and more than two-thirds of Texas Medicaid recipients are children. The court ruled that if a state declined the Medicaid expansion under the ACA, the federal government could not withhold all of the state's federal matching funds for the current program. It said that the federal government is limited to withholding the matching funds for people made newly eligible under the proposed expansion.

Under the ACA, from 2014 to 2016 the federal government would cover 100 percent of the Medicaid costs of newly eligible persons. This would drop to 90 percent by 2020. States would be responsible for the administrative costs of the expansion. There is no deadline for states to decide whether and when to expand Medicaid, and states that expand the program can later reverse that decision, according to the federal Centers for Medicare and Medicaid services (CMS).

Gov. Rick Perry said in a June 2012 letter to U.S. Secretary of Health and Human Services Kathleen Sebelius that he opposed the Medicaid expansion. If the state does not expand the statewide Medicaid program as proposed by the ACA, the possibility of counties, regions, or local hospital districts expanding Medicaid in their areas could be explored by the 83rd Legislature.

The ACA could trigger growth in the state's current Medicaid program if, as many experts predict, individuals who currently qualify for Medicaid choose to enroll either because of enhanced outreach or because they believe they must do so as a result of the ACA's mandate for individuals to buy health insurance. The law contains exemptions from the mandate for low-income individuals. Options for handling increased enrollment in Medicaid could include pursuing block grants of federal money.

**State health care insurance exchange.** The creation of a state insurance exchange, as authorized by the ACA, could be discussed by the 83rd Legislature. The exchanges are designed to be online marketplaces for individuals and small businesses to shop for health insurance by comparing plans. States may establish their own exchanges, work with the federal government to run an exchange, or contract with other states for a regional exchange. If a state does not create an exchange, the federal government will establish and operate one in the state.

The Dec. 14 deadline for states to give federal officials a letter of intent and an application to run state-based exchanges has passed without such a response from Texas. States have until Feb. 15, 2013, to apply to partner with the federal government to operate an exchange. All exchanges are supposed to begin operating Oct. 1, 2013, with coverage starting on Jan. 1, 2014.

**Medicaid.** State general revenue funding for Medicaid is expected to fall short in fiscal 2012-13 by about \$4.7 billion from the amount estimated to be required, due in part to growth in costs and caseloads and because the Legislature did not fully fund Medicaid for the current biennium. General revenue funds for Medicaid are expected to run out in March 2013. Because Medicaid is an entitlement program that must cover all qualifying individuals, the 83rd Legislature will have to fund any shortfall with a supplemental appropriation in 2013. Lawmakers may discuss whether funds for the shortfall should come from general revenue or the state's Rainy Day Fund.

Lawmakers also may debate the rate the state should pay Medicaid providers. After cutting rates in fiscal 2010-11 and 2012-13, lawmakers may consider changing these rates. Proposals may include the restoration of payments for patients who are eligible for both Medicare and Medicaid, known as the "Medicare Equalization" cut.

The 82nd Legislature expanded Medicaid managed care to all areas of the state, but the program does not include all populations. The 83rd Legislature could discuss including populations such as children with disabilities and nursing home residents in the managed care program. Another proposal could shift mental health services for Medicaid patients into managed care.

Lawmakers may examine the reimbursement arrangement for pharmacies filling prescriptions for the more than 3 million Medicaid participants. In March 2012, the state shifted the Medicaid vendor drug program into a managed care model, with Medicaid prescription drug benefits being administered by pharmacy benefit managers acting as subcontractors for managed care organizations. The reimbursement rates set by the pharmacy benefit managers and their impact on pharmacies' finances and on patient access could be discussed.

Proposals may emerge to pursue greater flexibility in the Medicaid program, including the ability to tailor benefits and to implement nominal copayments.

Medicaid cost containment may continue to be an issue this session. Legislators may consider ways to reduce Medicaid fraud, waste, and abuse, as well as expenditures related to medical transportation, orthodontia treatment, and therapies.

**Hospital funding.** Hospital funding also could be discussed by the 83rd Legislature. The expansion of Medicaid managed care as authorized by the 82nd Legislature and federal approval of Texas' Medicaid "1115 transformation waiver" have affected funding streams for Texas hospitals. Legislative committees have been discussing these funding streams, including the former Upper Payment Limit (UPL) program and the Disproportionate Share (DSH) payment program.

The UPL program provided supplemental payments to hospitals to make up for low Medicaid reimbursement rates. In general, the payments were based on the difference between Medicaid rates and the usually higher Medicare rates for the same services, but could be based on other factors such as actual charges. Historically, state-owned or local governmental entities, mostly public hospitals, contributed the non-federal share to the state through intergovernmental transfers that were then used to draw down federal funds for the UPL program. In fiscal 2011, UPL payments to hospitals were about \$2.8 billion.

With the 1115 transformation waiver, the UPL has been eliminated and historic UPL funds and new funds are being distributed to hospitals and other providers through two new funding streams: the Uncompensated Care pool and the Delivery System Reform Incentive Payments pool. Payments from these funding streams are calculated differently than the payments they replaced. Legislators could discuss whether the system of intergovernmental transfers will continue and whether state regulations should be put in place if it does.

DSH funding goes to hospitals that serve a disproportionately large number of Medicaid and low-income patients. Texas' large public hospitals provide intergovernmental transfers of funds that are used to draw down federal funds for the program. It is unclear to what extent the large public hospitals will continue to contribute to DSH, which distributed about \$1.6 billion to hospitals in fiscal 2012. Other ways to fund the program, including with general revenue, could be proposed.

**Women's Health Program.** Issues related to the Texas Medicaid Women's Health Program (WHP), which provides family planning services and related health screenings for low-income women, will be raised during the regular session of the 83rd Legislature. Discussions could include how to fund the program and at what level, whom it will serve, and who will provide services.

WHP is available to women whose income and family size places them at or below 185 percent of federal poverty guidelines (the level at which they would be eligible for Medicaid if they were pregnant). In fiscal 2011, the program served some 115,000 women with a total budget of about \$40 million. The state traditionally has provided 10 percent of the funding and the federal government 90 percent.

In 2011, during the first called session, the 82nd Legislature enacted SB 7 by Nelson, which required the Health and Human Services Commission (HHSC) to ensure that state money for the WHP or a successor program not be used to contract with entities or affiliated organizations that perform or promote abortions. After rules developed under the bill barred Planned Parenthood from participating in the program, several Planned Parenthood associations filed court challenges.

In November, a Travis County district court issued a temporary injunction allowing Planned Parenthood to continue to participate in the WHP. The state appealed the injunction, saying that it plans to continue the program, with Planned Parenthood participating, until federal money runs out or final court action. The Texas program, which the state had planned to start operating on Nov. 1 using only state funds, is ready to begin at any time, according to HHSC.

The federal government has told the state that the rule banning Planned Parenthood is inconsistent with federal law and that it would stop funding the program Dec. 31, 2012, if Texas continued to restrict women's choice of family planning providers. In December, two additional lawsuits—one in state court and one in federal court—were filed in efforts to keep Planned Parenthood in the WHP program.

**Abortion.** Lawmakers could seek to define at what stage of development a fetus can feel pain and propose legislation banning some mid-term abortions. Some other states have enacted fetal pain laws to ban abortions after 20 weeks. Proposals also may emerge to increase regulations on facilities that perform abortions and on physicians dispensing abortion-inducing drugs.

**Drug testing and work requirements.** Legislators may consider new requirements, including drug testing, for recipients of Temporary Assistance for Needy Families (TANF) benefits. Under these proposals, applicants who test positive for controlled substances not prescribed by a physician could be denied benefits. Lawmakers also may discuss strengthening work and job training requirements and additional ways to ensure that benefits are not used for tobacco, alcohol, lottery tickets, or firearms. In October 2012, about 101,000 single-parent families received an average of \$174 monthly in TANF benefits and about 4,000 two-parent families received an average of \$298 in monthly payments.

**Health care workforce.** The size, composition, and role of Texas' health care workforce could be discussed by the 83rd Legislature. Topics could include how to ensure adequate numbers of health care professionals are educated in Texas and working in all parts of the state and whether to expand the scope of practice for health professionals such as physician assistants and advanced practice nurses.

**Privatization of state hospitals.** The 83rd Legislature could consider whether to privatize state mental health hospitals. In 2011, the Legislature directed the Department of State Health Services (DSHS) to develop a request for proposal to privatize one state hospital and to present a plan on privatization to the LBB and the governor. An approved privatization contract had to result in savings of at least 10 percent annually over at least a four-year period. In October 2012, DSHS announced that it could not recommend contracting with the one applicant that responded to the state's request for proposal. GEO Care had proposed privatizing Kerrville State Hospital, but DSHS Commissioner David Lakey said the savings in the proposal would come mainly from staffing and benefit reductions that would put patients and the state at risk.

**Foster care redesign.** An ongoing redesign of the state's foster care system that began in 2010 could be evaluated this session. The redesign is changing how the state obtains, contracts, and pays for services for about 28,000 children under state supervision. Under the changes, the state will outsource the provision of services to private contractors who will focus on foster children in certain geographical regions. The Texas Department of Family and Protective Services (DFPS) expects to sign a contract in January for foster care in parts of West Texas, with the first children being referred to the contractor in July. DFPS has put on hold awarding contracts in other areas. Debate over the redesign could include whether private contractors will be adequately monitored and how they can be held accountable for children under their care.

**State-supported living facilities.** State-supported living centers, formerly called state schools, are state-run facilities that provide residential care and treatment for people with cognitive or developmental disabilities. In 2009, the Legislature made major revisions to these facilities in response to allegations and incidents of abuse and neglect within them that had prompted investigation by the U.S. Department of Justice (DOJ). Implementation of a settlement agreement reached with the DOJ could be discussed, as could the long-term structure and size of the state system, including downsizing or privatization. Proposals may emerge to move residents into community care settings or to provide services in the community, as well as to develop ways to recruit and retain staff.

## Public education

Lawmakers will be monitoring the latest court case on school funding as they consider policies for educating the state's 5 million school children. A decision by the district court judge hearing the lawsuit, expected in early 2013, could affect the discussion, although that ruling is likely to be appealed to the Texas Supreme Court. In addition, the state's newest testing requirements and school discipline practices could be reviewed. The Legislature also may consider proposals to expand school choice, including the use of vouchers to pay private school tuition for some Texas students. The Texas Education Agency (TEA) will undergo Sunset review this session.

**School finance.** Depending on the outcome and timing of ongoing state court litigation, the Legislature may consider altering how Texas public schools are funded.

Plaintiffs in lawsuits against the state argue that:

- the Legislature has underfunded public schools to the point that the education offered is no longer constitutionally adequate;
- the current funding systems redistribute funds in a non-equitable way; and
- school districts no longer have meaningful discretion in setting local tax rates because so many are taxing at the maximum rate allowed under state law, which some say has resulted in an unconstitutional statewide property tax.

Proposals could include replacing the current system—funded largely through the collection, recapture, and redistribution of local property tax revenue—with a statewide property tax, authorized through a constitutional amendment approved by voters.

In addition, lawmakers may propose tapping the Rainy Day Fund or using other newly available revenue to restore state funding for public education, which the 82nd Legislature cut by \$5.4 billion for fiscal 2012-13. Similar proposals may seek to fund voluntary full-day pre-kindergarten programs by the same means.

**Public school accountability and test security.** Lawmakers may consider altering or removing the requirement that students' end-of-course exam scores account for 15 percent of their final course grade. They also could discuss scaling back the newest state-mandated

testing requirements under the State of Texas Assessments of Academic Readiness (STAAR) program. In addition, lawmakers may consider revising the high school curriculum to allow more career and technical classes to count toward graduation requirements.

TEA is revising the state's public school accountability rating system, which will be based on STAAR results and other performance indicators. Lawmakers may propose changes to the system, including assigning a letter grade annually to schools and districts ranging from "A" to "F" in place of the current performance labels.

Legislators could debate measures to enhance protections for public school district employees who report wrongdoing in the administration of state-mandated tests and expand TEA's authority to investigate complaints of inaccurate or fraudulent assessment data reported to the state.

**School choice and vouchers.** The 83rd Legislature may consider introducing school vouchers, including using public money to pay private school tuition for some Texas school children. Such a program could be targeted to low-income or special-needs students or those who attend low-performing schools. A related issue for debate could be providing tax credits for businesses that contribute scholarships for certain students to attend qualifying private schools. Proposals may impose state testing and accountability requirements on private schools receiving public money.

Lawmakers may consider proposals to expand open enrollment policies within and between school districts, which could make it easier for a student to attend a school other than the one assigned by the district based on where the student lives.

**Charter schools.** The Legislature may consider proposals to raise the cap on the total number of charter schools allowed to operate in Texas. A group of charter schools is a party in the ongoing school finance lawsuit, arguing they should be eligible to receive state funding assistance for facilities construction. Lawmakers could discuss a funding mechanism to help charter schools improve and construct facilities.

**School security.** Proposals may emerge to increase security at Texas public schools in the aftermath of December's elementary school shooting in Newtown,

Conn. While Penal Code sec. 46.03(1) prohibits individuals from taking firearms onto the premises of schools and educational institutions, districts may permit exceptions through written regulations or authorizations. Proposals may include allowing certain school personnel or school board members statewide to possess guns on district property or allowing weapons at schools by removing restrictions on where concealed handgun licensees may carry them.

Lawmakers also may consider creating penalties for school districts that fail to enact required school safety plans.

**Religious displays at public schools.** Members may debate proposals to allow school districts to display copies of the Ten Commandments in classrooms. Other debate may center on the rights of students to display religious messages, including Bible verses, at public school events.

**School discipline.** Legislators may discuss discipline practices in Texas schools. Current law allowing, and in some cases requiring, student suspensions and expulsions and the use of alternative education programs could be debated. Proposals to encourage alternative ways of disciplining students to keep them in school, rather than suspend or expel them, may be considered.

Lawmakers may discuss whether to limit the ability of police officers to issue class C misdemeanor tickets to students for violating rules and for relatively minor disciplinary infractions, such as disorderly conduct. Other proposals may emerge to allow deferred prosecution of these tickets or to allow the tickets and violations to be handled informally.

**Uniform school start date.** Proposals may emerge to repeal the state law that prohibits most school districts from beginning the school year earlier than the fourth Monday in August. Debate on this issue will likely weigh cost savings to school districts and increased economic activity associated with a later start date against local autonomy and the need of districts to begin classes earlier to prepare students to meet state-mandated testing requirements.

**Texas Education Agency Sunset review.** TEA will undergo Sunset review this session. Sunset staff have recommended several changes that the Legislature may consider. Proposals include:

- transferring adult education funds oversight from TEA to the Texas Workforce Commission;
- transferring regulation of the private driver training industry to the Texas Department of Licensing and Regulation;
- granting TEA greater authority to merge insolvent school districts;
- granting TEA greater authority over low-performing charter schools;
- implementing a ban on nepotism hires at charter schools; and
- abolishing the State Board for Educator Certification and transferring its powers and duties to the commissioner of education.

In addition, lawmakers may debate whether the State Board of Education should be subject to periodic Sunset review.

## Higher education

Higher education topics during the 83rd Legislature are expected to center on funding issues. Proposals to change how institutions of higher education are funded, to restructure student financial aid, and to construct and designate new buildings and campuses will be shaped largely by available funding. (See “Criminal justice and public safety,” [page 6](#), for a discussion of guns on campus.)

**Outcomes-based funding.** Lawmakers may debate the effects of aligning formula funding with the state’s higher education goals of increasing undergraduate degrees and responding to workforce needs. Formulas that would allocate a portion of state funding for university undergraduates would be based on student success measures, such as graduation rates, rather than on student enrollment. A portion of the community college formula would be based on “momentum points,” which are specific measures of student success that include progress toward certificates and degrees or transfer to four-year institutions.

**Financial aid.** Proposals could emerge to restructure TEXAS Grants, the state’s primary financial aid program, to enable limited state dollars to reach more students through such means as offering smaller grant awards per student. Another proposal might be to require full-time enrollment rather than three-quarter-time enrollment to be eligible for a TEXAS Grant.

Lawmakers may consider restructuring the B-On-Time Loan Program, which provides no-interest, forgivable loans to students who graduate on time with good grades. B-On-Time is funded with a combination of state general revenue and tuition set-asides. It provides no-interest loans to cover the tuition and fees of eligible students and offers loan forgiveness to those who graduate with at least a B average within a specified time or number of hours. A proposal could be made to use program funds for a tuition rebate program. Others might suggest lengthening the yearly and credit-hour graduation requirements for B-On-Time and requiring the Texas Higher Education Coordinating Board to set minimum personal financial credit requirements to obtain a loan through the program.

**Admissions policies.** Proposals to change the admissions policies of state public higher-education institutions may be considered. Race-based affirmative action admission policies recently have been challenged in court. In fall 2012, the U.S. Supreme Court heard a case challenging admissions policies at The University of Texas at Austin that give weight to applicants who are members of a racial minority. Proposals could include changing the “Top Ten Percent” law, which grants automatic admission to most public universities in Texas to high school students who graduate in the top ten percent of their high school classes. Another proposal could call for the adoption of income-based admissions policies that would give an advantage to lower-income applicants.

**Additional medical schools.** Lawmakers may debate whether to allow the University of Texas system to move ahead with plans to create a new campus in the Rio Grande Valley. The UT Board of Regents recently voted to create a new Rio Grande Valley campus by merging existing campuses at UT-Pan American, UT-Brownsville, and the Regional Academic Health Center in Harlingen. Proposals would link the new South Texas medical school that was created, but not funded, in 2009 to the proposed UT-Rio Grande Valley campus. Other proposals could include establishing a medical school in Austin.

**In-state tuition.** Lawmakers could seek to restrict or repeal a law that allows certain resident undocumented immigrants to pay in-state college tuition at public universities in Texas. Another proposal could surface to restrict students who are not U.S. citizens from eligibility for TEXAS Grants or any other state-funded student financial aid.

## Energy and environment

The Texas Railroad Commission will undergo Sunset review in 2013, with lawmakers evaluating its structure and enforcement policies. The Public Utility Commission (PUC) will be under a limited-scope Sunset review. Other major topics related to energy and the environment may include funding of the state water plan, common carrier eminent domain issues, and hydraulic fracturing.

**Texas Railroad Commission.** As part of the Sunset review process, lawmakers may consider proposals to change the name of the Texas Railroad Commission to the Texas Energy Resources Commission. Other proposals may include:

- limiting and prohibiting certain campaign contributions to the commissioners in an effort to avoid actual or perceived conflicts of interest;
- establishing a “resign-to-run” policy and changing the recusal policy to require a written record of any reason for recusal;
- removing the cap on the oil and gas regulation and cleanup fund;
- authorizing the commission to create a pipeline permit fee to help support its pipeline safety program;
- authorizing the commission to enforce damage prevention requirements for interstate pipelines;
- requiring the commission to develop an enforcement policy to guide staff in evaluating and ranking oil and natural gas related violations; and
- eliminating the commission’s authority to promote the use of propane, an activity no longer considered necessary.

**Pipelines.** Lawmakers may discuss regulation of diluting agents or additives used to facilitate the flow of a product through pipelines, especially with regard to the proposed Keystone XL Pipeline that would transport bituminous sands—sometimes referred to as “tar sands” or “oil sands”—from Canada to refineries in Freeport,

Houston, and Port Arthur. Because tar sands are more toxic, inflammable, abrasive, and corrosive than conventional crude, legislators may consider proposals to hold the pipeline transfer of tar sands to a higher regulatory standard and to require pipeline operators to specify whether they are transporting tar sands or conventional crude.

**Oil and gas production.** Lawmakers may discuss proposals for more stringent guidelines and oversight of cementing and casing requirements in the wellbore of oil and gas wells. This also may be addressed by Texas Railroad Commission rules. Proposals also may emerge to develop clear rules and authority for “unitization,” which is the process of combining the interests of a group of mineral rights owners for orderly development.

Legislators may consider regulating the deliberate burning off of excess gas, also known as “flaring.” Proposals may emerge to limit natural gas production so that surpluses are not burned off in a wasteful, environmentally damaging manner.

**Hydraulic fracturing.** The 83rd Legislature may examine state and local regulation of hydraulic fracturing in oil and gas production, especially as this practice relates to water quantity and quality issues. Proposals may include incentivizing the recycling or reuse of flowback water rather than permanently disposing of it in injection wells.

Lawmakers may discuss whether gas wells that are hydraulically fractured should be certified as high-cost, gas-producing wells, which would make them eligible for a severance tax exemption.

**Eminent domain.** Proposals may emerge to address the balance between property rights and the taking of private land by governmental entities. Lawmakers may consider the impact of recent court decisions on the state’s eminent domain laws, including a decision that prioritized private property rights over the Open Beaches Act under certain circumstances. The Open Beaches Act, which is designed to keep Texas beaches available to the public, prohibits structures on the beach roughly between the water line and the vegetation line.

Eminent domain issues surrounding the Keystone XL Pipeline could make common carrier eminent domain authority a topic of discussion, with a possible proposal to include in the permitting process a demonstration that the pipeline is serving a common good.

**Power generation capacity.** The 83rd Legislature may consider how to expand power generation capacity across the state, including addressing the proportions of oil, natural gas, coal, nuclear energy, and renewable sources that are used. Targeted incentives may be proposed for sources that quickly can be ramped up and down to correspond with peak demand for electricity, such as solar energy and natural gas “peaker” plants.

Lawmakers may offer proposals affecting carveouts for renewable energy. Some favor increasing carveouts statewide to promote the use of renewable energy, while others would limit carveouts and incentives due to concerns they have distorted the market and made it difficult to entice construction of new electricity generation facilities.

Legislators may discuss electric grid reliability as the Electric Reliability Council of Texas (ERCOT), which manages the electric grid for most of Texas, faces declining reserve margins due to increased demand, retired facilities, and decreased generation investment. Discussions may include how efforts by the PUC to encourage generation investment into the grid will affect consumer costs, particularly regarding the PUC’s recent decision to raise the price cap of electricity.

Discussions to combat the problem of increased demand and decreased generation investment may include creating a market structure that pays electricity generators based on their capacity to generate power, rather than just on the amount they produce. Another option may include incentivizing reduced electricity consumption during times of peak demand.

**Electricity service.** The PUC will undergo a limited-scope Sunset review in 2013. Lawmakers may seek to give the PUC restitution authority, stronger registration and renewal authority over market participants, and authority to impose more administrative penalties. Proposals may emerge to require the PUC to review and approve annually ERCOT’s budget and use of debt financing.

Discussions may include strengthening consumer protections, especially for low-income and elderly customers. Proposals may address the process for disconnecting electric service and establishing electric rates, buyback rates for excess energy from rooftop solar panels, as well as privacy, health, and cost issues surrounding the current inability of customers to opt out of

having a smart meter installed at their homes. Electricity discounts and weatherization programs under initiatives funded through the System Benefit Fund also may be discussed.

**Air quality.** Proposals may emerge to examine the funding and effectiveness of the Texas Emissions Reduction Plan.

**Water.** Lawmakers may propose long-term methods to help finance State Water Plan projects, including introducing a tax on bottled water or establishing graduated, monthly connection fees for different categories of water consumers. Lawmakers also may consider using money from the Rainy Day Fund to create a water infrastructure bank. Proposals may emerge to promote, incentivize, and optimize water conservation.

**State parks.** Legislators may discuss long-term funding to acquire, develop, and maintain state parks.

## Transportation

The state's growing population and aging transportation infrastructure may spur proposals to finance repairs and maintenance of existing state roads and bridges, as well as proposals to finance new highway projects and a statewide rail system. In addition, lawmakers may explore ways for state and local authorities to recoup the costs for damages to roads associated with significant oil and gas production. Other proposals may seek to increase enforcement for driving on toll roads without payment and focus on ways to curb unsafe driving.

**Highway finance.** Proposals may emerge to secure revenue for state roads and bridges in light of the fact that the state transportation program must rely more heavily on fuel tax and registration revenues as a temporary spike from bond funds and toll projects comes to an end. One proposal might reduce diversions of motor fuels tax revenue (Fund 6) for purposes other than building and maintaining roadways. This could include providing alternative funding for the Department of Public Safety (DPS), which received about \$1.3 billion in Fund 6 revenue in fiscal 2012-13.

Lawmakers could consider how to increase revenue to Fund 6, including proposing a constitutional amendment to approve an increase in the 20-cent-per-gallon tax on gasoline and diesel fuel to pay off debt service for previously issued highway bonds. Another constitutional amendment that may be proposed would dedicate the sales tax on new and used vehicle purchases to expanding and maintaining the state highway system and to paying off transportation-related debt.

Allowing local-option elections on local increases in the motor fuels tax, with the revenue going to fund local highway improvements, also could be proposed. Lawmakers may consider authorizing an additional sales tax for transit or allowing more counties to impose vehicle-related fees, such as registration fees, within their jurisdictions.

Proposals to fund highway projects could include enabling local entities to establish transportation finance zones by means other than tolling agreements with the Texas Department of Transportation (TxDOT), the method to which they currently are limited.

Lawmakers may consider giving TxDOT public-private partnership authority to help fund a new statewide rail system and to fund repairs and maintenance work on roadways. They also may consider using money from the Rainy Day Fund to create a transportation infrastructure development bank.

**Damage to roads from increased oil and gas production.** Lawmakers may offer proposals for state and local authorities to recoup the costs for damages to roads associated with the significant oil and gas production in the Permian Basin, Eagle Ford Shale, and Barnett Shale areas, including involving industry in the repairs and maintenance. One proposal could require that a portion of the state oil severance tax, which goes directly to the Rainy Day Fund and the Permanent School Fund, be allocated to the counties or cities where the oil was produced to improve and repair the roads. Another proposal may include adjusting the fee structure for oversized and overweight vehicles.

**Unsafe driving.** Lawmakers may consider legislation to reduce distracted driving, including behaviors such as using cell phones and text messaging behind the wheel. Proposals could include punishing such behavior with a criminal or civil penalty.

Lawmakers may debate the merits of the Driver Responsibility Program, which was established to discourage unsafe driving and to raise revenue for the state by levying annual surcharges on drivers who violate certain laws. Under the program, drivers whose traffic violations resulted in six or more points on their driving records are required to pay a surcharge in addition to fines and court fees already associated with each offense. Some who were convicted for the first time of certain traffic offenses, such as DWI, driving without insurance, or driving with an invalid license, are subject to the same penalty. Nonpayment of a surcharge results in the suspension of a driver's license. Some lawmakers may seek to repeal the program due to concerns about its fairness or effectiveness in keeping unsafe drivers off the road.

**Toll scofflaws.** Lawmakers may propose more stringent enforcement tools to pursue motorists who drive on Texas toll roads without paying for their use. Proposals may include blocking serial toll violators from registering motor vehicles until they settle delinquent toll accounts.

## Government organization

As a result of court rulings on redistricting maps and the voter identification law enacted in 2011, the 83rd Legislature may revisit those issues. Other subjects for possible discussion could include changes to state employee retirement and health benefit plans. In addition, the Texas Ethics Commission will undergo Sunset review in 2013.

**Elections.** The 83rd Legislature may consider proposals to amend the law requiring all voters to present government-issued photo identification at polling places before being permitted to vote. A law enacted by the 82nd Legislature that included such a requirement was blocked by a panel of federal judges who said the new restrictions would place an unfair burden on Latinos, racial minorities, and the economically disadvantaged and would have retrogressive effects.

Proposals to amend the law could include waiving photo ID fees for low-income Texans, expanding or increasing the types of photo IDs that would be acceptable at a polling station, and increasing the hours and days DPS offices are open to allow more access for potential voters to secure the necessary identification, especially for those who would have to travel to a different county to visit a DPS office.

Lawmakers also may propose legislation to change how a residence address for voter registration purposes is defined and to place restrictions on the use of mobile voting stations. Proposals also may emerge to eliminate the practice of straight-party voting, specifically in elections for judicial offices.

**Redistricting.** Lawmakers may revisit the state legislative and congressional maps drawn by the 82nd Legislature and various courts to address issues identified during ongoing court challenges to the maps.

**State employee retirement.** Lawmakers may consider proposals to address long-term issues identified by the Employees Retirement System. Proposals could include shoring up the system with more state or employee contributions, reducing retirement benefits, or replacing the current defined benefit plan with a defined contribution plan or a hybrid system.

**State employee health benefits.** Proposals to address the rising cost of employee health benefits may include those to require employees to cover 10 percent of the cost of insurance or to impose or increase deductibles and copays, as well as other cost-shifting methods.

**Government efficiency.** Eliminating some state agency rules and procedures related to occupational licensing programs could be a topic for lawmakers. Texas licenses about 500 occupations, and legislators may consider whether regulations are necessary to protect public health and safety. The use of a state website instead of local newspaper ads for government public notices also could be discussed.

**Texas Ethics Commission Sunset review.** The Texas Ethics Commission will undergo Sunset review in 2013. The Legislature may examine the agency's ethics enforcement process, information and technology management, and filing requirements.

## Judiciary

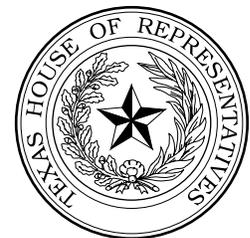
Tort reform and proposals that emerge from the Sunset review of State Commission on Judicial Conduct are expected to feature prominently in lawmakers' discussions.

**Tort reform.** The Legislature may consider proposals to prevent judges from recognizing causes of action and other rights and remedies unless they are created explicitly by statute. Proposals also may emerge to shift burdens of evidence in medical malpractice and asbestos litigation.

**State Commission on Judicial Conduct Sunset review.** The State Commission on Judicial Conduct will undergo Sunset review in 2013. The Legislature may consider proposals to:

- constitutionally authorize the commission to use its full range of sanctions at the conclusion of formal proceedings;
- allow a court of review to hear appeals of commission sanctions in the same manner as it hears appeals of commission censures; and
- require the commission to report to the Supreme Court as needed on suggested changes to update its procedural rules.

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