HOUSE RESEARCH ORGANIZATION
Texas House of Representatives
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CSHB 1:

The House Appropriations Committee's Proposed Budget for Fiscal 2004-05

The House Appropriations Committee reported CSHB 1 by Heflin, the general appropriations bill for fiscal 2004-05, on April 7. The committee reported the bill by the following vote:

> 19 ayes — Heflin, Luna, Berman, B. Brown, Crownover, Ellis, Gutierrez, Hamric, Hope, Hupp, Isett, E. Jones, McClendon, Pickett, Pitts, Stick, Truitt, Turner, Wohlgemuth
>
> 2 nays — Deshotel, Raymond
>
> 8 absent — Branch, F. Brown, J. Davis, Dukes, Eiland, Kolkhorst, Menendez, Solis

The proposed state budget would appropriate $117.7 billion in all funds, an increase of less than 1 percent from the amount estimated to be spent in fiscal 2002-03. The general revenue-related portion, $63.8 billion, would be about 5 percent less than in fiscal 2002-03.

The budget proposal is the result of a zero-based budgeting process in which each agency identified its essential services and requested funding for those services in "building blocks." As such, CSHB 1 represents the committee's determination of funding for the most essential governmental activities in fiscal 2004-05.

This report presents an overview of the proposed state budget and of each article of CSHB 1 and highlights significant budget issues, including different proposals for funding individual agencies and programs.

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Fiscal 2004-05 Budget Overview

CSHB 1 by Heflin would authorize total spending of $117.7 billion for fiscal 2004-05, an increase of less than 1 percent from the current biennium. General revenue-related spending would fall by $3.4 billion, or 5 percent, to $63.8 billion, including $58.6 billion of undedicated or "pure" general revenue.

Federal funds, however, would increase by $2.2 billion, and "other" funds would increase by $1.7 billion. The federal funds increase would be driven mainly by health and human services (HHS) and public education, including the Leave No Child Behind Act, the nutritional supplement, and special education programs. The increase in "other" funds would be driven by public education recapture credits, the State Highway Fund, the System Benefit Fund administered by the Public Utility Commission, tobacco-settlement receipts, and income from patients served by health-related institutions of higher education.

CSHB 1 would reduce spending in fiscal 2004-05 by $66 million for public education, $774 million for higher education, $609 million for public safety and criminal justice, $218 million for natural resources, and $107 million for general government. However, it would increase overall spending by $2.1 billion for HHS, $249 million for business and economic development, and $178 million for regulatory government because of greater availability of federal and other funds.

The proposed spending levels in CSHB 1 largely reflect the "building blocks" approach adopted by budget writers. LBB directed agencies to identify their core functions and essential services and to prioritize them according to their pro-rata share of the $54.1 billion of general revenue estimated to be available for fiscal 2004-05. This share, termed Initial Relevant General Revenue (IGR), generally represented a 12.5 percent reduction in agency budgets from fiscal 2002-03. These priority "building blocks" formed the basis for agencies' testimony during legislative budget hearings.

LBB's Legislative Budget Estimates (LBE), published in January 2003, presented LBB's "current services" baseline budget estimate. This estimate reflects the cost of continuing in fiscal 2004-05 the level of services established by the current general appropriations act, adjusted for growth in the populations served and for inflation. The current-services estimate totals $124.6 billion from all funding sources, a 6 percent increase from fiscal 2002-03, and $69.7 billion in general revenue-related spending, a 5 percent increase.

CSHB 7 by Heflin, the supplemental appropriations bill, would reduce appropriations by nearly $1.7 billion in the current fiscal year. In January 2003, the governor, lieutenant governor, and House speaker directed agencies to reduce their fiscal 2003 budgets by 7 percent, excluding

Biennial Spending Comparisons for CSHB 1

(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$67,204.9	$63,831.4	$(3,373.5)	(5.0)%
Federal funds	37,002.0	39,234.5	2,232.5	6.0
Other funds	12,964.9	14,669.4	1,704.5	13.1
All funds	117,171.8	117,735.3	563.4	0.5

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

the Foundation School Program, acute-care Medicaid, and the Children's Health Insurance Program. Most agencies proposed to achieve the requested reductions by freezing hiring, reducing travel, delaying capital projects, and returning unexpended balances.

NOTE: In this report, comparisons to fiscal 2002-03 spending reflect LBB's adjustments to fiscal 2003 spending estimates. The term "general revenue-related funds" refers to the combined total of general revenue and general revenue-dedicated funds.

Employee reductions. Through the general appropriations act, the state limits the number of full-time employees (FTEs) employed by state agencies. The 77th Legislature set a cap of 229,950 FTEs for all agencies in fiscal 2003, although the actual number of budgeted positions exceeded the cap by 870 FTEs, according to LBB. Budget cuts pursuant to HB 7 would reduce the actual number of FTE positions in fiscal 2003. Many of those positions are vacant, but a few agencies already have reduced their workforce in anticipation of the cuts. CSHB 1 would provide for 219,750 FTEs in fiscal 2004 and 220,000 in fiscal 2005, a decrease of more than 10,000 FTEs from the current level.

Government reform. The House Government Reform Committee and the Senate Government Organization Committee will consider changes to agency structure and functions that could save money during fiscal 2004-05 and beyond. HB 2 by Swinford is expected to contain many of the House committee's recommendations. Savings proposed in HB 2 and other legislation would be in addition to those in CSHB 1 and could be used during the budget conference process. Many of the proposals that the Government Reform Committee will consider have appeared in the comptroller's e-Texas report and in agency reviews by the Sunset Advisory Commission, the State Auditor's Office, and the Governor's Office of Budget and Planning.

Some of the changes proposed in HB 2 as filed include abolishing certain agencies and transferring their duties to other agencies, consolidating HHS and financial regulatory agencies, and reorganizing university administration. Specific proposals are outlined in the analysis of individual budget articles elsewhere in this report.

ERS plan changes. The Employees Retirement System (ERS) administers health and retirement benefits for all state employees, including employees of some higher education institutions and the judiciary. Texas Constitution, Art. 16, sec. 67(b)(3) requires the state to contribute at least 6 percent of an employee's compensation, but no more than 10 percent of the aggregate compensation of those in the system, to the ERS plan. The 77th Legislature set the contribution rate at 6 percent for fiscal 2002-03.

ERS costs are a direct function of the number of state employees and their average salary. In fiscal 2003, the average state contribution per month per employee is $393 for insurance and $168 for retirement. Employee layoffs and hiring freezes in fiscal 2003, 2004, and 2005 would reduce the state's cost of providing benefits, but not enough to meet the proposed spending reduction for fiscal 2004-05. CSHB 1 would appropriate $2.4 billion to ERS in the coming biennium.

ERS has proposed achieving the necessary cost reduction by changing the design of its health plan. HB 3456 by Heflin would require newly hired employees to wait 90 days before joining the system, saving the state an estimated $34.9 million, and would increase employees' required copayments, saving an estimated $88.5 million. Other changes proposed by ERS, with their associated savings of general revenue, would include:

- reducing the contribution for half-time employees to 50 percent of the full contribution ($10.8 million);
- discontinuing contributions for nonemployee board members and eliminating eligibility for graduate teaching assistants ($16.3 million); and
- increasing prescription copayments and requiring the use of generic drugs rather than more expensive brand-name drugs ($45.4 million).

Supporters say requiring employees to pay more in these ways would save the state from having to take more onerous measures, such as eliminating benefits for part-time employees, sharply reducing the state's contribution for dependant care, or implementing a deductible for all health-care services. Opponents say the state already underpays most of its employees in comparison with similar private-sector functions and that a reduction in employee benefits would represent a pay cut.

Homeland security. Since September 11, 2001, the Department of Public Safety (DPS), Texas Department of Health (TDH), Texas Department of Agriculture, and other agencies have evaluated Texas' readiness in the event of a terrorist attack. The state's primary concerns would be similar to those associated with a disaster of any other kind, whether natural or manmade. CSHB 1 contains new funding for homeland security preparedness, primarily from federal sources. In March 2003, the state received a $29.5 million grant from the U.S. Department of Homeland Security, of which $16.6 million will go to local jurisdictions to buy equipment and the remainder will be used for disaster simulation exercises, training, and planning. The Texas Engineering Extension Service will administer the grant. Congress is considering additional funding of about $700 million for Texas that would go directly to local law enforcement and firefighters.

CSHB 1 would increase DPS' FTE cap by 85 so the agency could hire more troopers to conduct safety inspections of commercial vehicles along the Texas-Mexico border. The inspectors would ensure that Mexican trucks comply with size and weight limitations, vehicle registration, driver licensing, motor carrier safety, and hazardous material regulations. DPS has requested $5 million in federal funding from the Federal Motor Carrier Safety Administration for the program.

CSHB 1 would appropriate to TDH $82 million in federal grants for 572 public and private hospitals in Texas. The funding would pay for improvements in infection control, decontamination and isolation measures, and preparedness. This grant funding would be in addition to the $51.4 million Texas received this year from the federal Centers for Disease Control and Prevention to expand TDH's laboratory capacity across Texas.

The Texas Animal Health Commission received a grant of $1.3 million this year from the U.S. Department of Agriculture, earmarked for upgrading communication systems to prepare for a bioterrorism event.

Debt service. The Texas Public Finance Authority (TPFA) is responsible for issuing bonds and financing the acquisition or lease of equipment on behalf of other state agencies. Other agencies with authority to issue bonds include higher education institutions, the Texas Water Development Board (TWDB), and the Veterans Land Board. TPFA estimates that debt service on existing general obligation bonds will require about $485 million in general revenue in fiscal 2004-05 and that an additional $19 million will be necessary to pay debt service on bonds approved by the 77th Legislature but not yet issued. The total general revenue needed to pay debt service on existing and pending debt would exceed the TPFA's IGR by $40.7 million.

CSHB 1 would appropriate about $472 million for debt service in fiscal 2004-05. That appropriation would pay for debt service on existing and pending debt and would compensate for about $10 million that CSHB 1 would appropriate above IGR to TDWB for general obligation debt-service payments. The appropriation would rely on reducing payments by $46.4 million through a debt restructuring plan and using $6 million of unexpended revenue-bond proceeds for the Texas Building and Procurement Commission. Under the restructuring plan, TPFA would issue new bonds and use the proceeds to pay debt service in fiscal 2004. No statutory change would be necessary, according to TPFA, because the agency already has authority to refund debt.

Supporters say the appropriation would enable the state to meet debt-service requirements while remaining within budget constraints as directed by state leadership. The restructuring plan's moderate size and relatively quick repayment schedule would be unlikely to create concern among credit rating agencies. The state has flexibility in its debt repayment schedule because its total debt level is relatively low, and the state has a history of paying off its general obligation debt rapidly, about four years faster on average than the industry standard. The cost of the plan would be relatively small, about $218,000 in today's dollars, on a present-value basis.

Critics say restructuring the state's debt would saddle future legislatures with additional payments. The amount of restructuring required to meet the debt-service levels appropriated in CSHB 1 would add about $5 million in higher debt-service payments through 2011. If the economy were to remain in a slow growth pattern, the state's future budget challenges would be complicated by higher debt-service requirements, and ultimately the state could see its bond rating fall.

Tobacco-settlement funds. In 1998, Texas finalized a settlement of its lawsuit against major tobacco companies that awarded the state $17.3 billion over 25 years, subject to adjustments. In 1999, the 76th Legislature added Article 12 to the general appropriations act to allocate these funds and established 21 health-related permanent trust funds and higher education endowments. It also designated the first money left over from the permanent funds and endowments to support the Children's Health Insurance Program (CHIP).

For fiscal 2004-05, CSHB 1 would appropriate about $1.1 billion in tobacco-settlement funds, almost all general revenue, for various health-related programs, primarily CHIP. The funds include payments from the tobacco companies, interest earnings from the trust funds and endowments, and carryforward of some unspent balances. CSHB 1 would contain no separate Article 12, as in recent budgets, but would note the tobacco fund appropriations as a method of finance at the end of each relevant agency's budget. (See page 79.)

At least nine states have moved to securitize all or part of the money they are due to receive from tobacco settlements, seeking to obtain the funds sooner and with greater certainty. Securitization refers to replacing cash flows with negotiable securities, such as bonds, issued in public capital markets. In this case, a state or other public entity sells bonds backed by future tobacco-settlement receipts in order to receive money up front in a lump sum, rather than in a series of future payments. SB 1867 by Bivins would authorize the comptroller to direct TPFA to issue tobacco-settlement revenue bonds or to use other financing methods.

Supporters of securitization say the state should sell all or some of its future payments through bonds to provide an infusion of funds to fill the current budget gap. The state could use the funds as general revenue, to add to the existing endowments for public health and education, or to create new endowments that could earn interest to support ongoing program costs. Securitization would shift from the state to bond investors the risk of declining payments from the tobacco industry due to bankruptcies caused by litigation or continued weakness in the U.S. economy. This measure also would remove a conflict of interest between the state's fiscal and public-health interests, because the settlement money no longer would be tied to tobacco consumption. As Texas' settlement is structured, the more people who quit smoking, the lower the payment to the state. This vested interest in the continuing viability of the tobacco industry could make policymakers less likely to take actions that would result in lower cigarette sales.

Opponents say securitization would produce a one-time gain to alleviate politically painful spending cuts, depriving CHIP and other health-related programs of essential revenue in the future. The state should focus on rationalizing its spending with expected revenue, not on one-time fixes. Securitization would forfeit too much of the state's potential future revenue to investors. Because the proceeds of a securitization bond sale would be lower than what Texas is projected to receive over time from the settlement, the proceeds might not be sufficient to create endowments that would produce enough interest income to fund all state programs that depend on tobacco-settlement funds.

Budget "wish list." The two previous general appropriations bills contained Article 11, a "wish list" of items for which agencies had requested funding that did not appear in the committee's proposed budget. The House-Senate conference committee considered this list and moved some items into the final budget if revenue became available for them.

CSHB 1 contains no Article 11 but presents the budget "wish list" in Article 9 (see page 79). These items total about $1 billion, primarily for HHS and education-related agencies.

Rainy day fund. The economic stabilization (rainy day) fund, which draws money from a portion of any state budget surplus and from excess oil and natural-gas production taxes, is expected to contain $1.2 billion by the end of the current biennium, its highest level ever. The fund has grown rapidly in recent years because of higher collections of natural-gas production taxes.

Generally, money in the rainy day fund can be spent only as approved by at least three-fifths of the members present in each house. Spending from the fund generally may not exceed the amount of any unanticipated deficit

or revenue shortfall, but any amount from the fund may be spent for any purpose if at least two-thirds of the members present in each house approve it. No money has been spent from the fund since fiscal 1994-95. CSHB 7 by Heflin proposes to appropriate almost $789 million from the rainy day fund for fiscal 2003 for health-related and economic development programs, and others have suggested using money from the fund for the fiscal 2004-05 budget.

Two current pieces of legislation would affect repayment of the rainy day fund. HB 3207 by Heflin would require that any appropriation from the fund for use in fiscal 2003 be repaid from general revenue in fiscal 2004. HJR 2 by Heflin would propose a constitutional amendment requiring that any amount appropriated from the rainy day fund during a biennium be repaid from general revenue the following biennium. This provision would apply to transfers made for fiscal 2004-05, even if the actual transfer was made before voters approved the constitutional amendment.

Supporters of spending some of the rainy day fund say this session's budget crisis and the sluggish economy warrant tapping into the fund. Texas has used the fund in less critical periods and has better reason to do so now. This one-time measure would save some of the state's essential services, and the fund balance could be restored when economic conditions improve. The oft-cited belt-tightening analogy supports using the fund: families use their savings and well as tightening their belts when income takes a short-term dip.

Opponents say instead of patching the budget imbalance with a one-time fix, the state should make the tough decisions needed to ensure that Texas can live within its means. Texas lawmakers also need to evaluate the consequences of spending from the rainy day fund in light of the state's future ability to raise money through bond sales. In evaluating states' credit, bond rating agencies consider the presence of a reserve fund and the size of that fund in relation to the state's budget. Drawing down the balance of Texas' rainy day fund could cause credit rating agencies to downgrade the state's bond rating.

Spending versus revenues. An appropriations bill may become law only if the comptroller certifies that sufficient revenue will be available to fund it (Texas Constitution, Art. 3, sec. 49a). The comptroller's estimate of available general revenue is the major limit on state appropriations. In January 2003, Comptroller Carole Keeton Strayhorn estimated that general revenue available for certification would total $54.1 billion during fiscal 2004-05. The comptroller may revise the pre-session revenue estimate at any time.

Art. 3, sec. 49a prohibits the Legislature from appropriating more than the amount of cash and anticipated revenue certified by the comptroller, except in the case of "emergency and imperative public necessity" and with a four-fifths vote of the total membership of each house. In March 2003, Sen. Steve Ogden requested the attorney general's opinion on whether lawmakers can vote to appropriate amounts in excess of the comptroller's biennial revenue estimate and whether the Legislature has the authority to determine an emergency or public necessity. On March 31, Attorney General Greg Abbott issued Opinion GA-0054, concluding that the Legislature may make appropriations that exceed the certified amount, provided that the appropriation bill states the Legislature's finding that an emergency or imperative public necessity exists and that the bill is enacted by a four-fifths vote of the full membership of each house.

Supplemental appropriations for fiscal 2003. CSHB 7 by Heflin would reduce general revenue-related appropriations for fiscal 2003 by nearly $1.7 billion. The bill also would appropriate $931 million from the rainy day fund and the Telecommunications Infrastructure Fund for fiscal 2003: $494 million to the Health and Human Services Commission and TDH for Medicaid costs and CHIP; $26.4 million to the Department of Human Services for the Texas Integrated Eligibility Redesign System; $116 million to the Texas Education Agency for the student technology allotment; and $295 million to the Governor's Office for a proposed Texas Enterprise Fund for economic development programs.

Article 1 Overview

The nearly two dozen agencies within Article 1 perform the core operations of state government. They include the offices of the governor, secretary of state, attorney general, and comptroller; agencies charged with general operations of state office buildings and bond issues; agencies that support and coordinate statewide and federal priorities; and agencies that administer state employee benefits, pensions, and workers' compensation payments. The budgets of the Legislature and of legislative agencies appear in Article 10.

For Article 1 agencies, CSHB 1 proposes to spend about $2.6 billion in all funds for fiscal 2004-05, or 2 percent of the total state budget, including $1.8 billion in general revenue-related funds. Total appropriations would fall by 4 percent from fiscal 2002-03.

Budget highlights

Article 1 agencies took similar approaches to reducing spending for fiscal 2003, including freezes on hiring and out-of-state travel and reduced spending on in-state travel, training, and administrative costs. CSHB 7 by Heflin would reduce fiscal 2003 appropriations to these agencies by about $114 million in general revenue and by $4.6 million from general revenue dedicated accounts. The largest portion, $57.6 million, would come from the budget of the Texas Public Finance Authority. This money represents funds from the agency's fiscal 2002-03 appropriation for general obligation bond debt-service payments that lapsed because of refinancing and low interest rates on short-term debt, as well as delays in construction projects at other state agencies.

Child-support enforcement. For fiscal 2004-05, CSHB 1 would reduce general revenue funding for the attorney general's child-support enforcement program by $8 million from the current appropriation, resulting in a loss of $16 million in federal funds and requiring a reduction of nearly 200 FTEs over the biennium. Opponents of the cut say the state has made great strides toward improving child-support collections and that the reduction could return the state to the days when it was nearly impossible for mothers to obtain assistance over the child-support hotline. An item in the Article 9 "wish list" would restore child-support enforcement funding to its current level.

Courthouse preservation. CSHB 1 would appropriate $13.8 million for the Texas Historical Commission's courthouse preservation program, about $30 million less than the commission requested for its highest-priority building block. For the current biennium, this program received $50 million. Supporters of reducing funding say the state should not be spending money to restore courthouses when other vital programs are being reduced. They say the reduction would not eliminate the program but would put it "on hold" until the state's fiscal situation improves. Opponents of the cut say the program benefits many rural communities through increased tourism

Article 1 Spending Comparisons
(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$1,900.9	$1,835.9	$(65.0)	(3.4)%
All funds	2,663.4	2,556.7	(106.6)	(4.0)

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

and related activities that provide a much-needed boost to local economies. They say the renovation program is vital to preserving Texas' heritage and helps to meet immediate needs for building repair and rehabilitation. An item in the Article 9 "wish list" proposes an additional $45 million for courthouse preservation.

Veterans services. CSHB 1 would appropriate $6.9 million in general revenue to the Veterans Commission for fiscal 2004-05, an increase of $345,000 over current funding. Supporters say that since 1999, the commission annually has secured federal payments for veterans equal to at least eight times the commission's general revenue appropriation. A significant reduction in the commission's budget, they say, would result in closing a toll-free hotline for veterans and would preclude the filing of thousands of new benefit claims. Opponents say they sympathize with veterans' needs but that current fiscal conditions require sacrifices by all state agencies.

TexShare. CSHB 1 would allocate $12.1 million from the Telecommunications Infrastructure Fund (TIF) to the Library and Archives Commission to fund TexShare, a resource-sharing program for more than 600 libraries that includes subscriptions to electronic information databases. The proposed allocation would be an increase from the $5.8 million appropriated for TexShare for fiscal 2002-03. According to the agency, however, total funding for TexShare would decline, because the agency also was to receive $15.8 million in TIF grants for the program in the current biennium, but Gov. Perry froze $7.4 million of the expected grants in January 2003.

Increasing arts grants. CSHB 1 would provide $7.5 million to the Texas Commission on the Arts (TCA) for direct grants to nonprofit arts organizations in fiscal 2004-05, a $1.5 million increase from fiscal 2002-03. However, the bill would reduce the agency's overall appropriation by $2.9 million. Opponents of increasing TCA's funding for direct grants argue that university fine arts and humanities programs do more to support the arts than does TCA, which the state auditor cited in 2002 for inadequate grant monitoring. Supporters of additional funding say cutting funding for grants would punish artists for TCA's past troubles and that the commission has fixed the problems cited in the auditor's report.

Ethics Commission technology upgrades. The Texas Ethics Commission (TEC) maintains databases and online filing for political candidates and lobbyists. CSHB 1 would appropriate no new funding to TEC for information technology (IT) repair, upgrades, licensing fees, or security. The commission says its current system is nearing capacity, and if new legislation were to increase the burden on the agency's IT infrastructure — such as by requiring lobbyists to register online — the commission could not accommodate the increased demands on its computer system. TEC has estimated that it would cost about $291,000 more to maintain current levels of website access and database management. HB 795 by Solomons, et al., the commission's sunset bill, would authorize TEC to set fees sufficient to cover the costs of establishing an electronic filing system for lobbyists.

Housing and employment investigations. CSHB 1 would appropriate $4.4 million to the Commission on Human Rights in fiscal 2004-05, a $598,000 decrease from fiscal 2002-03. Although CSHB 1 would not change the commission's FTE cap, the appropriation would require a reduction of 12 to 15 FTEs, according to the agency, because federal funds for housing and employment investigations do not cover the full cost of conducting investigations. The agency had requested $731,000 above its IGR amount to provide full funding for employee benefits.

Government reform. HB 2 by Swinford, as filed, would reconstitute the Texas Building and Procurement Commission as the State Administrative Services Agency and would transfer functions of the Department of Information Resources to the new agency. The bill also would abolish the Commission on State Emergency Communications and transfer its functions to the Public Utility Commission.

Other budget issues. The following pages discuss these Article 1 budget issues in more detail:

- auditing/enforcement staffing levels at the Comptroller's Office, and
- continuing the Aircraft Pooling Board.

Additional employees for tax auditing and enforcement

Agency: Comptroller of Public Accounts (CPA)

Background

The CPA's primary duty as the state's chief fiscal officer is to collect taxes and fees. In addition to processing tax and fee payments, the comptroller ensures payment through auditing and enforcement. The CPA's biennial revenue estimate determines what generally is considered the state's spending limit. The CPA must certify revenue as being sufficient to fund the general appropriations act for each two-year budget cycle.

Among its other duties, the CPA operates the state treasury; accounts for state funds; handles audit and tax claims against the state; provides taxpayer information; reviews school district and state government performance and develops cost-saving recommendations; manages an integrated statewide financial information system; conducts an annual study of school district property values; and provides staff support for the Council on Competitive Government.

The 77th Legislature appropriated about $359 million to the CPA for fiscal 2002-03 and allocated 2,845 FTE positions. The CPA's actual FTE level during fiscal 2002 was 2,759. Auditing, revenue and tax processing, tax-law compliance, and taxpayer information account for more than 70 percent of the agency's expenditures. During the current biennium, the CPA's base budget has increased by about $14 million because of rider appropriations and other adjustments. Almost all of the agency's budget comes from general revenue. The agency's IGR estimate for fiscal 2004-05 was about $327 million.

CSHB 1 — $390 million

CSHB 1 would appropriate $390 million to the CPA for fiscal 2004-05, a 4 percent increase over the agency's current biennial budget. The total would reflect an additional $7 million plus reallocation of $4.2 million to hire 80 more FTEs for enhanced audit and tax-fraud coverage, including creation of a task-force-style team to monitor motor-fuels tax compliance; and an additional $9 million plus reallocation of $3.5 million to hire 78 more FTEs for enforcement. Riders 20 and 21 would require the CPA to certify a net general revenue increase of $106.4 million from additional tax collections as a result.

Supporters say the proposed additional spending and FTEs for auditing and enforcement would result in the collection of $165 million in additional gross revenue for fiscal 2004-05. Much of this potential additional revenue would be sales taxes. In all, the CSHB 1 funding level would enable the comptroller to certify an additional $186 million. More than 80 percent of the CPA's personnel are involved in revenue collection to some extent, so any significant budget reduction would result in less revenue for the state. Given the state's fiscal condition, it would be counterproductive to risk a loss of revenue.

Opponents say every agency should be expected to bear its share of budget reductions. An agency the size of the CPA should be able to curtail programs and services without jeopardizing revenue. The CPA is known for innovative initiatives in encouraging other agencies to do more with fewer resources, and the CPA should exercise that capacity itself. Also, the comptroller's estimates of additional revenue that the new employees could bring in may be overly optimistic.

Continuing the Aircraft Pooling Board

Agency: Aircraft Pooling Board (APB)

Background

The APB is responsible for maintaining and operating the state's fleet of aircraft. In this capacity, the APB provides air transportation for state officials and employees traveling on state business and provides maintenance, repair, and storage services for aircraft owned by other state agencies. The 77th Legislature in 2001 continued the APB for 12 years and required the board to conduct long-range planning for its aircraft usage needs. The sunset legislation also directed the APB to begin planning to replace its fleet of aging aircraft to save on future maintenance costs. In response, the APB has developed a plan to acquire 10 new aircraft over the next 10 years at an estimated cost of $5.4 million.

Gov. Perry and the comptroller have proposed abolishing the APB, arguing in part that the state would save money by privatizing its services. CSSB 915 by Fraser would prohibit the APB from receiving any state appropriation and would require the board to pay its expenses, including the cost of aircraft purchases, from funds received under interagency service contracts.

The board's fiscal 2002-03 appropriation, $8.9 million, includes $1.4 million of general revenue and $7.5 million from interagency transfers and appropriated receipts.

CSHB 1 — $7.4 million

CSHB 1 would fund the APB at $7.4 million for fiscal 2004-05. The total would include about $995,000 of general revenue for fleet operations (Strategy A.1.1), including purchase of new technology mandated by the Federal Aviation Administration. The APB sought no funds for aircraft replacement in its building block request for fiscal 2004-05.

Supporters say aircraft pooling is the safest and most economical to provide aircraft services to state agencies. Any initial savings from abolishing the APB would be offset by higher fees that state agencies would have to pay under contracts with private companies. The state might not be able to raise substantial revenue by selling the board's assets. Spending additional funds to replace the APB's fleet would reduce the agency's long-term costs, as new aircraft are less costly to maintain and yield a lower ratio of maintenance cost to revenue generated. A fleet upgrade also would address safety concerns regarding the aging fleet.

Other proposals — $0

Supporters say if the APB were abolished, the state could avoid future maintenance costs by using private charter services. Sale of the APB's assets would net almost $10 million in fiscal 2004-05 and would enable the state to pay all the board's debt-service obligations. Shutting down the agency would save more than $1 million per biennium in ongoing costs. Maintaining an aging fleet of aircraft would increase service costs and safety risks in the future.

Article 2 Overview

The health and human services (HHS) agencies in Article 2 constitute Texas' second largest budget function after education. HHS agencies account for 35 percent of the total proposed budget for fiscal 2004-05 and 25 percent of proposed general revenue-related spending. They receive funding from multiple federal, state, and local sources and vary widely in size, mission, and funding mix.

The Health and Human Services Commission (HHSC) oversees and allocates resources for other HHS agencies, including the Department of Health (TDH), Department of Human Services (DHS), Department of Mental Health and Mental Retardation (MHMR), Department of Protective and Regulatory Services (DPRS), Rehabilitation Commission, Department on Aging, Commission on Alcohol and Drug Abuse, Commission for the Blind, Commission for the Deaf and Hard of Hearing, and Interagency Council on Early Childhood Intervention. The largest agencies, HHSC, TDH, DHS, and MHMR, account for 90 percent of the proposed appropriations for Article 2 in fiscal 2004-05 and have more than 47,000 employees.

CSHB 1 would fund Article 2 agencies at $40.9 billion in all funds for fiscal 2004-05, nearly 6 percent more than in fiscal 2002-03. The general revenue-related portion, $16.2 billion, would represent a 4 percent increase from the current biennium.

Background

Federal directives drive many HHS programs. Federal funds finance about 60 percent of all HHS spending in Texas and often require matching contributions from the state. Funding for Medicaid, the Children's Health Insurance Program (CHIP), and Temporary Assistance to Needy Families (TANF), the largest sources of federal funds, crosses several state agencies, including programs administered by the Texas Education Agency (Article 3) and the Texas Workforce Commission (Article 7).

Demographics. According to HHSC, 3.2 million Texans, or one-sixth of the state population, lived below the federal poverty level (FPL) in 2002. In part because of this, Texas has a high number of medically uninsured adults and children. HHSC estimates that Texas has about 4.6 million uninsured residents (24 percent of the population under age 65), of whom about 900,000 are children. Outreach efforts in the Medicaid and CHIP programs in recent years have resulted in higher enrollment of children in these programs. The goal of these efforts is to reduce the number of uninsured children in Texas.

Article 2 Spending Comparisons
(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$15,602.6	$16,174.6	$ 571.9	3.7%
Federal funds	22,733.1	24,259.1	1,526.0	6.7
Other funds	433.2	460.2	27.0	6.2
All funds	38,768.9	40,893.9	2,124.9	5.5

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

Caseloads. Federal entitlement programs such as Medicaid, TANF, and food stamps require the state to serve *all* individuals who meet the eligibility standards. Entitlement caseloads in Texas and other states had declined following federal welfare-reform efforts, but in recent years, caseloads appear to have bottomed out and have begun to rise in certain programs.

As the Texas population grows and ages, several HHS programs — especially those delivering social, nursing, and rehabilitative services in the community — cannot serve all eligible people within current budget levels. These programs maintain waiting lists that often include thousands of names. The 1999 U.S. Supreme Court ruling in *Olmstead v. L.C.* found that the federal Americans with Disabilities Act compels states to provide treatment and habilitation for disabled people in a community setting within a reasonable amount of time if community placement is appropriate. (See HRO Focus Report Number 77-9, *The* Olmstead *Challenge: Community Care for the Disabled*, March 27, 2001.)

Medicaid. Medicaid, the federal-state health insurance program for the poor, elderly, and disabled, is the largest source of federal funds in the state budget. In fiscal 2002-03, Texas will spend $25.2 billion on Medicaid, programs, including $10.1 billion of general revenue and tobacco-settlement funds, before an expected supplemental appropriation in CSHB 7. Medicaid expenditures are split between the federal government and the states according to each state's relative average per-capita income, which is adjusted annually. In fiscal 2004-05, Texas will pay about 40 percent of all program costs, and the federal government will pay the rest. This is an improved match rate for Texas in relation to the current biennium.

Medicaid caseloads appear to be rising again, and the caseload mix has shifted toward higher-need categories, such as the elderly and disabled. More recently, outreach efforts for CHIP enrollment and Medicaid simplification initiatives have resulted in growing caseloads, though children account for much of the increase. Per recipient, children cost less than other Medicaid populations. In the current biennium, HHSC has experienced a shortfall of about $487 million in Medicaid and CHIP funding, largely because of the increase in caseloads, but also because of rising costs of services and drugs.

For fiscal 2002-03, HHSC contracted with the National Heritage Insurance Co. (NHIC) to manage the processing of Medicaid claims. The State Auditor's Office has reported that NHIC overcharged the state by $15 million in unallowable expenditures under the terms of the contract. HHSC has contracted with Affiliated Computer Systems beginning in calendar 2004.

CHIP. The 76th Legislature in 1999 established CHIP to provide health insurance for children in low-income families who were not eligible for Medicaid. The program is funded by the state with a federal match of more than 70 percent. When Congress authorized the first 10 years of funding, the funding amounts allocated for 2002-2006 were lower than those available in earlier years. However, Texas may be required to return $285 million of unspent CHIP funds to the federal government, mainly because of delays in initial implementation of the program, and no mechanism is available now for redistribution of the returned funds to states that need additional funds during the so-called "CHIP dip."

TANF. The 1996 federal welfare-reform law created TANF to replace Aid to Families with Dependent Children and other assistance programs. States may use federal TANF block grant funds to provide the following services to families who meet state income and resource criteria: assistance for caring for children in their homes or in relatives' homes; job preparation, work, and marriage-promotion services; services to prevent out-of-wedlock pregnancy; and services that encourage the formation and maintenance of two-parent families. Also, a state's welfare clientele receiving cash assistance must meet minimum work-participation rates, which may include participation in job training and other education programs as well as actual employment.

Federal legislation authorized TANF through September 1, 2003. Congress has extended funding on a temporary basis but is expected to reauthorize the entire program this year. In February 2003, the U.S. House passed H.R. 4, which would reauthorize the TANF block grant at current funding levels and would increase funding for the Child Care and Development Fund. The bill also would impose stricter work requirements; mandate full-family sanctions, under which families lose benefits if they do not comply with work participation requirements;

and give states more flexibility in administering programs for low-income families.

Under the 1996 TANF authorization and the reauthorization proposed by the U.S. House, states must meet a maintenance-of-effort (MOE) requirement to receive TANF funds. Under the original authorization, Texas had to spend on TANF at least 75 to 80 percent of its 1994 spending on AFDC. To maintain the current 80 percent MOE, Texas must spend $251 million in general revenue per year on TANF. TANF programs may be paid for entirely with federal funds, with federal funds and state MOE funds, or with MOE alone. Texas has a balance of TANF funds carried forward from the block grant's inception. Over time, the state has spent down the balance to about $134 million expected at the end of fiscal 2003.

Tobacco-settlement money. The previous two legislatures appropriated funds from revenues the state receives from the settlement of its lawsuit against major tobacco companies. Lawmakers have dedicated these funds primarily to health-related programs in Article 2 and to higher education institutions in Article 3. CHIP, the largest program funded by tobacco-settlement receipts, has first priority for any tobacco money available after funding the 21 permanent trust funds and endowments created in 1999.

Budget highlights

CSHB 1 would increase overall Article 2 spending by $2.1 billion from fiscal 2002-03 levels. While general revenue spending would increase 4 percent, federal funds would increase almost 7 percent. Agencies with the largest increases include HHSC, which would increase $4.8 billion in all funds, and TDH, which would increase $482 million in all funds.

Article 2 agencies took a combined approach to reducing their budgets for fiscal 2003. Gov. Perry exempted Medicaid and CHIP from the reductions. CSHB 7 by Heflin would reduce fiscal 2003 appropriations for HHS agencies by about $161 million, including $148 million in general revenue. The bill also would appropriate almost $494 million to HHSC and TDH to meet fiscal 2003 shortfalls in Medicaid and CHIP, plus $26.4 million to DHS for the Texas Integrated Eligibility Redesign System.

CSHB 1 would restore $2.75 billion above the IGR level for HHS agencies. This money became available through savings achieved in fiscal 2003 and anticipated savings from other areas of the fiscal 2004-05 budget. The $2.75 billion would be used to fund:

- CHIP benefits for children in families whose income is below 150 percent of the FPL;
- Medicaid provider rates at 95 percent of fiscal 2003 levels;
- nursing-home care for elderly or disabled Texans with income between 100 percent and 300 percent of Supplemental Security Income payments;
- a portion of the appropriation for mental health and mental retardation community centers and community hospital inpatient mental health services;
- a portion of the HIV medication program; and
- a portion of MHMR and DHS in-home and family support programs.

Medicaid. CSHB 1 would appropriate $11.8 billion in general revenue and $30.2 billion in all funds for Medicaid in fiscal 2004-05. This funding level assumes a slight increase in the Medicaid caseload, from roughly 2.4 million acute-care recipients in 2003 to 2.5 million recipients in 2005. However, certain optional groups no longer would be eligible for Medicaid, including about 17,000 women whose income is between 133 percent and 185 percent of the FPL and who are over age 19. Their newborns would remain eligible. The Article 9 "wish list" proposes restoring $3.3 million for this program. Adults in the medically needy program, which provides access to Medicaid for people whose medical expenses cause their income to fall to Medicaid eligibility levels, no longer would become eligible. This group represents about 9,200 people. The CSHB 1 funding level also assumes cost savings through management of prescription drug expenditures, hospital cost savings, and a reduction in reimbursement rates for Medicaid providers.

CHIP. CSHB 1 would appropriate $223 million in general revenue and $744 million in all funds for CHIP in fiscal 2004-05. HHSC expects this funding level to reduce the caseload by 220,000 through lowering the eligibility

threshold from 200 percent of the FPL to 150 percent. CSHB 1 would include no funding for the State Kids Insurance Program, the CHIP counterpart for state employees established in 1999, or for School Employee Children's Insurance, the CHIP counterpart for teachers established in 2001. Other changes to the remaining CHIP program include:

- reducing continuous eligibility from 12 months to six;
- implementing a 90-day waiting period between when eligibility is determined and when services are rendered; and
- increasing monthly premium cost-sharing and copayments.

CSHB 1 funding for CHIP also assumes changes in the benefit package. Children in CHIP would receive inpatient and outpatient hospital visits, office visits, laboratory and X-ray services, immunizations, well baby checkups, and prescription drugs. However, they no longer would receive dental, behavioral health, chiropractic, allergy, or tobacco cessation services.

TANF. In the current biennium, Texas is spending about $251 million to meet its MOE for TANF. Assuming that the federal reauthorization of TANF imposes the same requirements on spending, Texas would need to spend the same amount in fiscal 2004-05.

CSHB 1 would appropriate $1.2 billion in TANF funds across eight agencies in fiscal 2004-05. This amount is greater than the state's TANF grant and would require spending down Texas' TANF balance to $25 million at the end of the coming biennium. Some of the programs funded from amounts to be appropriated from the balance would include early intervention services at the Interagency Council on Early Childhood Intervention, foster-care rates and case workers at DPRS, and restoration of the earned-income disregard for cash assistance at DHS. This approach also would permit a method-of-finance swap to allow the state to use general revenue for adoption subsidies and additional case workers at DPRS.

Trilingual interpreters. Current law directs the Commission for the Deaf and Hard of Hearing to develop two tests for interpreters, one that would court certify sign-language interpreters and one for approval of trilingual interpreters, those who speak English, Spanish, and sign language. The lack of such tests can delay the processing of inmates who are deaf and who may know only Spanish or have limited English or American Sign Language skills. To develop the tests, the agency received $156,600, contingent on new revenue from fees in fiscal 2002-03, but could not generate the revenue. The agency estimates that it would need $175,000 in fiscal 2004-05 to finish developing the tests and that if it received the needed funds for the trilingual test, it could generate revenue by selling the test to other states and countries.

Prevention and treatment services. TDH offers both prevention and treatment services. Funding decisions in CSHB 1 tend to favor treatment over prevention as a budget priority. Prevention services include education and outreach for conditions such as osteoporosis, obesity, and Alzheimer's disease. The agency also generates significant data used for epidemiological investigation and prevention services, including a cancer registry and birth defects monitoring. Treatment services generally include direct payment for medical care or prescriptions or for support services such as medical transportation. These services include HIV medications, kidney health, and the Children with Special Healthcare Needs (CSHCN) program.

Faced with a smaller pool of funds for TDH, budget writers determined that reducing some prevention services would have less direct impact on clients than reducing treatment services. CSHB 1 would exclude funding for TDH's osteoporosis prevention education program and Alzheimer's disease education program and would reduce funding for other prevention programs.

CSHCN waiting list. The state pays for "wrap-around" services — those that do not address direct medical needs but can prevent institutionalization — for chronically ill or disabled children and their families, as well as some direct medical services through the CSHCN program. TDH has established a waiting list to control enrollment in the program, creating a $14.3 million surplus in all funds for fiscal 2002-03. The agency intends to use part of the surplus to expand eligibility for children on the waiting list, but the rest of the list would not be funded during fiscal 2004-05 without an additional $18.5 million in general revenue, not contained in CSHB 1.

Reallocating unclaimed lottery funds. The first $40 million in unclaimed lottery funds during a biennium goes to the University of Texas Medical Branch (UTMB) in Galveston. Any unclaimed funds above that level are appropriated to state and private hospitals that provide uncompensated charity care. Riders 26 and 39 for TDH would reduce the UTMB money to $25 million and would allocate the remaining $15 million to pay for dental services in TDH's Texas Health Steps program, an early intervention and screening service for Medicaid-eligible children. SB 178 by West would require unclaimed lottery funds to be deposited in an account administered by HHSC and would remove the statutory directions for disbursing the funds.

Community support grants. DHS pays a one-time grant of up to $3,600 for housing modifications or adaptive aids and an ongoing stipend of up to $300 per month for in-home services that enable elderly or disabled clients to remain in the home. This program pays for attendant care, wheelchair access, adaptive devices, prescriptions, or other supports that prevent the person from being institutionalized. The program pays only for services that cannot be obtained through other programs because of eligibility restrictions or benefit plan designs. In fiscal 2002-03, this program was appropriated $18 million in all funds and served about 4,200 clients. CSHB 1 would fund the program at $3 million for fiscal 2004-05 and would retain a caseload of 700 clients. The Article 9 "wish list" proposes $7 million to $15 million toward restoring this program. Program supporters say that without it, recipients would wind up in nursing homes at a much higher cost to the state.

Family violence prevention. DHS' family violence prevention program is funded in part by the Crime Victims Compensation Fund (CVC). The current budget appropriates $40.6 million to DHS Strategy C.1.1 for family violence prevention. The program received $30.7 million from the CVC as a direct appropriation and an additional $4 million from the CVC through interagency contract. These funds, generated mainly by court fees paid by criminal offenders, are intended to pay for compensation, services, or assistance for crime victims. CSHB 1 would maintain fiscal 2002-03 funding for this program from the CVC.

Increased client acuity in long-term care. DHS administers the long-term care portion of Medicaid. Growth in this program is due to more clients or to a higher level of acuity, or need, among the current population living in nursing homes or receiving long-term care services through managed care or in the community. CSHB 1 would not restore payments or account for higher acuity in fiscal 2004-05, estimated to cost $74.3 million in general revenue and $170.5 million in all funds. The Article 9 "wish list" proposes restoring $15.5 million for acuity payments. Supporters of this funding say that nursing homes would be hit hard without it, because their mandate to carry liability insurance beginning in September 2003, enacted in SB 1839 by Moncrief, will eliminate any room in their budgets to cover what is not funded by the state.

Additional capacity in ICF-MR facilities. MHMR pays for the care of mentally retarded people in intermediate care facilities (ICF). The agency expects to save $49 million in general revenue and $124 million in all funds by requiring facilities with three to four beds each to become six-bed facilities and by switching clients to a waiver program, a mechanism in Medicaid that allows funding for noninstitutional care. A short-term bonus, an offset to the estimated savings, is built in to account for relocation or renovation costs that facility owners may incur during this transition. Opponents of the change say the offset is insufficient and that the switch would burden an already fragile system of care. Rider 63 for MHMR would direct the agency to achieve savings of 1 percent each year of the biennium from state school operations. The savings would be used to preserve some of the three to four bed facilities.

At-risk children. CSHB 1 would reduce or eliminate funding for programs that serve children at risk of incarceration or institutionalization. One such program, the Texas Integrated Funding Initiative (TIFI), received $850,000 in transfers from six agencies with at-risk prevention services. TIFI works with these agencies to obtain a continuum of services for at-risk children or families. CSHB 1 would exclude the directive to transfer funds in fiscal 2004-05. Overall, the bill would reduce appropriations for DPRS' at-risk prevention services by 21 percent from fiscal 2002-03, to about $100 million.

Federally qualified health centers (FQHCs). Rider 37 for TDH would target at least $24 million of the fiscal 2004-05 appropriation for community health services to FQHCs, public or not-for-profit health centers with consumer boards that offer services regardless of a client's ability to pay. Medicare pays for some health services in FQHCs that usually are not covered, such as preventive care.

Automated external defibrillators (AEDs). Rider 50 for TDH would direct the agency to allocate $250,000 in fiscal 2004-05 to buy AEDs for state buildings. These devices can be used to shock a heart-attack victim's heart back into a normal rhythm. The agency would have to identify up to 100 locations for placement by December 31, 2003.

Tobacco-settlement funds. For fiscal 2004-05, Article 2 agencies would receive about $1 billion in tobacco-settlement receipts for CHIP and other medical assistance programs for children, plus $34 million for other health-related programs.

Government reform. A proposal in HB 2 by Swinford would abolish each HHS agency and transfer its duties to HHSC. CSHB 2292 by Wohlgemuth would realign agency duties according to a client population model under the HHSC umbrella. This would group functions such as children's and family services, aging and long-term care, and public health and mental health.

The Cancer Council, funded at $8.1 million for fiscal 2002-03, coordinates Texas' comprehensive cancer plan, required of the state by the federal Centers for Disease Control and Prevention. The council says its programs have made it possible for other entities in Texas to receive federal funds for which they would not have been eligible otherwise. A proposal to dissolve the Cancer Council and continue its programs at another state agency projects an administrative saving of about $880,000 in fiscal 2004-05. The council maintains, however, that an independent board attracts donated services and in-kind contributions that would be jeopardized if the council's functions were transferred to a larger agency.

Major budget issues. The following pages address these specific budget proposals for Article 2:

- reducing reimbursement rates for Medicaid acute-care providers (HHSC);
- containing Medicaid acute-care prescription drug costs (HHSC);
- reducing the personal needs allowance for nursing-home residents (DHS);
- raising eligibility standards for community services (DHS);
- closing state mental health and mental retardation facilities (MHMR);
- reducing waiting lists for community care (DHS and MHMR);
- changing continuous eligibility for CHIP and Medicaid (HHSC);
- reducing TANF grants (DHS);
- funding for the HIV medication program (TDH); and
- funding for child protective services (DPRS).

Reducing reimbursement rates for Medicaid acute-care providers

Agency: Health and Human Services Commission (HHSC)

Background

Texas' Medicaid program is divided into two service-delivery models: fee for service and Medicaid managed care. Under fee for service, HHSC contracts with physicians, hospitals, pharmacies, and medical transporters to serve Medicaid clients. All professional reimbursement rates are the same, regardless of geography or medical specialty, except that the 77th Legislature appropriated an increase for high-volume providers. Slightly more than half of high-volume Medicaid providers practice in counties on the Texas-Mexico border. Reimbursement rates depend on the amounts appropriated for that purpose and generally lag behind the rates set by other health-care payors.

The 77th Legislature appropriated some $350 million for provider rate increases in fiscal 2002-03, including $50 million for professional fees, $20 million for dental fees, and $35 million for outpatient hospital services. Lawmakers directed HHSC to target the rate increases to support specific providers and services, such as providers with a large percentage of Medicaid clients, providers in the border region, and preventative care. At the current funding level, Medicaid reimbursement rates average about 70 percent of Medicare reimbursement.

Medicaid is budgeted under HHSC's Goal B at about $14.8 billion for fiscal 2002-03, of which about $41 million is associated with administrative and rate-setting functions. Other Medicaid reimbursement rates are appropriated through the Texas Department of Health and the Department of Human Service, but are not reflected in the acute-care provider rates.

CSHB 1 — $11.6 billion

CSHB 1 funding would require reducing reimbursement rates for Medicaid acute-care providers to 95 percent of the current levels, saving $230 million of general revenue.

Supporters say the state must make some cuts to live within its means, and the reduction in provider rates is not as large as originally proposed. Without additional funding from other areas of the budget, the state would have been forced to reduce rates by 33 percent. HHSC has stated that the larger cut would have threatened the integrity of the provider system, while a 5 percent cut would not. Providers will receive relief in other areas that will help offset the effects of a 5 percent reduction. HB 4 by Nixon, passed by the House on March 27, will reduce medical malpractice rates across the state if it becomes law. If physicians could pay less for medical malpractice insurance, the rate cut would not be detrimental.

Other proposals — various

An additional $580 million would restore Medicaid provider rates to fiscal 2003 levels. The $1 billion proposed in HHSC's Legislative Appropriations Request would provide an increase in current rates.

Supporters of restoring rates to current levels say providers already are leaving the Medicaid program and would leave by droves if reimbursement rates were reduced as proposed by CSHB 1. The loss of even more Medicaid providers would jeopardize the health of Medicaid clients and the health-care system for all Texans. Medicaid recipients who cannot get appointments with primary-care physicians will wait until their conditions worsen or else visit emergency rooms immediately. If that occurs, they will be sicker when they arrive and will take up emergency room resources with complaints that could have been treated more appropriately and less expensively in doctors' offices.

Reducing Medicaid provider rates would do the most harm to patients in the most vulnerable areas. A doctor practicing in a high-poverty area may have a clientele that is entirely Medicaid patients. Even though these high-volume providers receive a bit more than the general provider population, their rates would be cut by the same amount. Many high-volume providers may not be able to operate their offices with anything less than the current revenue level. This could cause significant geographic gaps in the Medicaid program.

Medicaid is an entitlement program, meaning that the state must provide services to all eligible clients. In return, the state receives federal matching funds for the money the state spends. By making it fiscally impossible for physicians to remain in the program, Texas would deny assistance to Medicaid-eligible people. The state should not subvert the entitlement to Medicaid services by forcing providers to stop serving that population.

Supporters of raising Medicaid provider rates say the state must ensure an adequate base of providers or the costs to the system will become untenable. The SB 1299 and SB 1053 Task Force, established last session, was charged with evaluating rate setting in general and for the border region. It recommended that the Legislature appropriate an additional $1 billion over four years and then peg rates to a Medicare inflation factor to ensure that they do not fall behind in the future.

Containing costs in the Vendor Drug Program

Agency: Health and Human Services Commission (HHSC)

Background

The state offers prescription drug coverage to all Medicaid recipients, though it restricts the number of prescriptions for some groups. HHSC's Vendor Drug Program (VDP) processes and reimburses all prescription drug purchases under Medicaid, Kidney Health Care, Children with Special Healthcare Needs, and the Children's Health Insurance Program (CHIP). The VDP paid for 29.9 million prescriptions in fiscal 2002, and HHSC projects that the number would grow to 39.8 million in 2005 under current law. The cost per prescription in the program was $51.66 in fiscal 2002 and would grow to $68.98 in 2005.

Texas has several agreements in place that help the state minimize payments for drugs:

- *Limits on pharmacy reimbursement.* If a generic drug is available from at least five wholesalers, the state will pay no more than the median cost. For all other drugs, including branded drugs specified by the physician, the state pays the estimated wholesale acquisition cost or the retail price, whichever is less.

- *Mandatory rebates.* Federal law requires pharmaceutical manufacturers to enter into rebate agreements for their products to be eligible for coverage by Medicaid programs. Rebates to the state average 23 percent of the drug's cost. In effect, manufacturers must charge less for their drugs to be included in the Medicaid program.

- *Generic substitution.* The VDP requires pharmacists to substitute a generic drug for a branded one if a suitable generic is available and if the prescribing physician does not instruct the pharmacist to prescribe as written. According to HHSC, a generic drug is dispensed 99 percent of the time when it is available, and physicians override the substitution less than 1 percent of the time.

In 2001, the 77th Legislature directed HHSC to save $205 million in general revenue for fiscal 2002-03 by implementing initiatives listed in Rider 33 under Special Provisions Relating to All Health and Human Services Agencies. Among 17 initiatives, the list included $3 million in savings by establishing sliding-scale copayments for Medicaid recipients.

The VDP is budgeted at $3.1 billion for fiscal 2002-03. The CHIP portion was funded as part of the CHIP managed-care rates until March 2002. The agency has carved out that expense and budgeted about $86 million in all funds for fiscal 2003.

CSHB 1 — $4.3 billion

CSHB 1 would increase funding for the Medicaid portion of the VDP by $1.1 billion and would add $85 million of CHIP drug expenditures for fiscal 2004-05. However, it also would require implementation of certain cost-saving initiatives.

Preferred drug list with prior authorization. A preferred drug list is a set of prescription drugs selected by a committee on the basis of criteria such as cost, availability of equivalent therapeutics, safety, and efficacy. As an incentive for beneficiaries to use drugs on the preferred list, these drugs are subject to a lower copayment or exempt from prior authorization requirements. Prior authorization is a system that requires the pharmacist to call the insurer for special authorization to dispense a drug. The state already has a form of preferred drug list: all pharmaceuticals dispensed under the state Medicaid program must be listed on the Texas Drug Code Index, generated by HHSC and the Texas Department of Health. The index excludes certain drug categories such as amphetamines, first-aid supplies, and prescriptions for which there is no federal rebate.

Supporters say the state should exercise tighter control over the drugs in the VDP. Like many private insurers, the state should have a check against what physicians are prescribing and a mechanism for preventing a costly drug from being dispensed when it is not needed.

Mandatory supplemental rebates. Some states have established preferred drug lists to elicit supplemental rebates from drug manufacturers, a practice first put in place by California. Manufacturers pay the state a rebate in addition to the federal rebate, and in return, the state places the manufacturers' products on the preferred drug list. Drugs not on the preferred list require prior authorization. Manufacturers that do not pay the supplemental rebate may be shut out of the Medicaid market. The Pharmaceutical Research and Manufacturers of America (PhRMA) has filed lawsuits in Florida and Michigan challenging the legality of supplemental rebates under federal law. The association says that California's supplemental rebate program is "grandfathered" because it was in place before enactment of the federal rebate program, but that other states' supplemental rebate programs conflict with a federal law under which manufacturers that enter into a rebate agreement with the federal government are guaranteed inclusion in state Medicaid programs.

Supporters say the State of Texas is one of the largest purchasers of prescription drugs and should use its market clout to obtain more favorable rates, as Florida and California have done.

Copayments. The CSHB 1 funding level assumes the continuation of cost-saving initiatives under Rider 33, including sliding-scale copayments for Medicaid recipients. In December 2002, HHSC implemented cost sharing for Medicaid recipients over age 19 in the form of copayments. Recipients were asked to pay $0.50 for generic prescription medications and $3 for each brand-name prescription medication. In addition, nonemergency services provided by an emergency department required a copayment of $3. Copayments were limited to $8 per person per month, and recipients had to keep receipts to prove they had met the maximum. Providers could not deny services to recipients who could not pay, but providers could bill recipients. Pregnant women and people in institutions were exempt from the copayment. HHSC would have reduced the amount of the reimbursement to a pharmacy for prescriptions provided to Medicaid recipients who had to make copayments. However, in the same month, a state district court ordered HHSC to halt the program on the basis of temporary restraining order sought by Texas pharmacists.

Supporters say copayments encourage the use of the most cost-effective services by guiding beneficiaries toward lower-cost options. CHIP already employs this model with a sliding scale to ensure access to appropriate services at all income levels. Paying a small copayment prepares recipients to manage higher costs for health care once they are no longer eligible for Medicaid. It also helps remove the "welfare" stigma often associated with Medicaid, which is discouraging to recipients as they work toward greater self-sufficiency.

Other proposals — various

Preferred drug list with prior authorization. Proposals include not requiring implementation of a preferred drug list with prior authorization.

Supporters say a preferred drug list with prior authorization would be too expensive for the state to administer. The Medicaid program would have to respond to many queries that would require staff and resources dedicated only to prior authorization. The state already has a sort of preferred drug list and guides recipients' purchases toward prescriptions for which a rebate is available. Combining this with generic substitution, the state already encourages the best possible purchasing behavior from recipients. Prior authorization takes prescribing decisions away from qualified physicians and imposes a burden on patients.

Mandatory supplemental rebates. Other proposals would not pursue supplemental rebates as part of a preferred drug list or prior authorization system.

Supporters say in addition to the uncertainty about mandatory supplemental rebates raised by the PhRMA lawsuit, these programs fail to address the demand generated by manufacturers for new, higher-priced drugs. Even though states save some money by paying less for expensive drugs, consumers still may use these drugs when lower-cost alternatives are available. In the case of a $100 retail price for a branded drug, a state could receive a 25 percent federal rebate and a 5 percent supplemental rebate and pay $70 for the prescription, which would be higher than a $60 therapeutically equivalent drug at retail.

Copayments. Others propose not implementing a copayment for prescription drugs in the VDP.

Supporters say cost sharing runs counter to the spirit of Medicaid, which was designed to ensure that medical care is available to all residents whose family income falls below certain levels. By requiring recipients to help pay for their medical care, the state would shirk its responsibility to ensure access to care. Even voluntary cost sharing could prevent some of the intended population from receiving care, because some recipients may feel that, if the state asks them to contribute, they should. Otherwise they should not use health-care services unless they can help pay for them.

Most adults who would pay copayments in the Medicaid program are elderly or disabled people who are unlikely to become more financially self-supporting. Paying part of a Medicaid bill does not teach recipients additional skills that will help them become more self-sufficient. Also, the Medicaid population is fundamentally different from the CHIP population, in which most families have at least one employed adult, so while the self-sufficiency argument may apply to CHIP, it does not apply to Medicaid.

Reducing personal needs allowance for nursing-home residents

Agency: Texas Department of Human Services (DHS)

Background

Poor and low-income elderly recipients of Medicaid who live in nursing homes may have income up to 223 percent of the federal poverty level (about $1,500 per month) but may keep only $60 of that income for "personal needs." In fiscal 2003, DHS expects about 62,000 nursing-home residents to receive a personal needs allowance. Residents use this allowance to pay for toiletries, clothing, and incidental items such as newspaper subscriptions. They must apply the rest of their income to the cost of nursing-home care to reduce Medicaid costs. Some Medicaid residents receive income from Supplemental Security Income (SSI), the federal cash assistance program for low-income people with disabilities, or through pensions. In 2001, the 77th Legislature increased the personal needs allowance from $45 to $60 per month by enacting HB 154 by Thompson, which took effect September 1, 2001.

For fiscal 2002-03, the personal needs allowance is budgeted at about $50.2 million under DHS Strategy A.1.4, which funds nursing facility and hospice payments.

CSHB 1 — $25.1 million

Under CSHB 1, nursing-home residents' personal needs allowance would fall from $60 per month in fiscal 2003 to $45 per month in fiscal 2004-05.

Supporters say the portion of SSI in the personal needs allowance does not truly belong to the client, because that money would have gone toward the cost of nursing home care.

Other proposals — $50.2 million

This funding level would maintain the personal needs allowance at its current level.

Supporters say the state should not reduce the allowance when nursing-home residents already receive so little. Many residents of nursing homes and other institutions have no family to help pay for the small items that contribute to a sense of health and well-being, or their families are too poor themselves to help much. Nursing-home residents on Medicaid receive less of their Social Security income for a personal needs allowance. By comparison, war veterans in institutions can keep $90 per month of their income.

Providing a decent quality of life for institutionalized, low-income elderly and disabled people should be a state priority, not a local or private one. Churches and other charity groups are beginning to feel financial strains. Some communities do not have a church or charity group that is wealthy enough to take on the additional service of providing for residents of long-term care facilities. Also, some residents may live in nursing homes that are in different communities from the ones they once were a part of. Because they may not have strong ties to local churches or groups, these residents are less likely to receive the help they need.

Raising eligibility standards for community services

Agency: Texas Department of Human Services (DHS)

Background

DHS serves people in long-term care (nursing home) settings and in the community. It operates two programs, primary home care and frail elderly, designed to allow people at risk of moving into nursing homes to stay at home with the attendant help they need. Attendant care services may include help with bathing, routine bodily care, dressing and grooming, meal preparation and eating, travel, housekeeping and laundry, shopping, and other tasks necessary for maintaining independence.

Eligibility for these programs is limited by income and need. The primary home care program is limited to people with an income below 100 percent of Supplemental Security Insurance (SSI), or $552 per month. The frail elderly program is limited to people with income between 100 percent and 300 percent of SSI but is not limited by age, as the name would suggest.

Both programs are limited by functional needs requirements as determined by a DHS evaluation. The result of the evaluation is a "functional needs score" that reflects the person's ability to perform basic daily living functions. A lower score indicates higher functioning; a fully functioning adult has a score of zero. The eligibility threshold for these programs is set at a score of 24 in fiscal 2003.

For fiscal 2002-03, all community care services are budgeted at about $2.1 billion under DHS Strategy A.1.1. The primary home care and frail elderly portion of this is $1.1 billion. This level of funding provides services for 118,000 clients.

CSHB 1 — $891 million

Funding proposed by CSHB 1 would require reducing eligibility for services by setting a higher threshold for the functional needs score. The income requirements would not change. A person with a functional needs score of 29 or higher would receive services, but a person with a score between 24 and 29 would not. This would reduce the number of clients receiving services by almost half, to 62,000.

Supporters say this is the best approach to ensure that the neediest Texans receive services, given the state's current fiscal constraints. The only other "lever" in the program is the income requirement, but raising the income requirement would force the most marginal clients into nursing homes, where some of them might qualify for Medicaid. Within this group of very low-income elderly and disabled people, the criteria for services should reflect the priority of keeping people out of nursing homes.The functional needs test is inconsistent and easy to manipulate. A person who functions relatively well can receive a score of 24 if a sympathetic case worker performs the evaluation. The attractive services this program offers — including housecleaning, cooking, and transportation — tend to invite abuse.

Other proposals — $1.4 billion

Leaving the functional needs criterion unchanged would restore benefits for 55,000 people and would cost $1.4 billion for fiscal 2004-05. Changing the income eligibility threshold to restrict eligibility to people with incomes of 100 percent of SSI or less would result in a caseload of 35,000 and would cost $825 million in fiscal 2004-05.

Supporters of restoring the functional needs score say if fraud occurs in either of these programs, the state should prevent it by monitoring the ongoing needs of clients more closely. If the needs tests are inconsistent, the state should train caseworkers better and should spot-check their work. Many means exist to ensure that services are used properly; dropping people from the service rolls is not an appropriate response.

Supporters of changing the income eligibility threshold say people with incomes at 300 percent of SSI, or $1,500 per month, are better able to pay out of pocket for the services they need than are people who live on less than $500 per month. Changes in the functional score test would eliminate eligibility for people under 100

percent of SSI if their needs were less severe. However, these people still would require services to stay out of nursing homes and cannot afford to pay for it themselves. These people would be more likely to move into nursing homes so their needs can be met, compared to someone who has greater functional needs but greater financial resources with which to meet them.

Closing state mental health and mental retardation facilities

Agency: Texas Department of Mental Health and Mental Retardation (MHMR)

Background

MHMR serves two distinct populations: people with mental illness and people with mental retardation. Services for the mentally ill primarily consist of community care and short-term acute care in state mental hospitals. MHMR operates ten state hospitals — Austin, Big Spring, El Paso, Kerrville, North Texas, Rusk, Rio Grande State Center, San Antonio, Terrell, and the Waco Center for Youth — with a total of 2,300 state beds for acute mental illness and an average length of stay of 31 days. Services for the mentally retarded include in-home support; intermediate fare facilities (ICF-MR), which are small residences; and long-term institutional care in state schools. MHMR operates 13 state schools: Abilene, Austin, Brenham, Corpus Christi, Denton, El Paso, Lubbock, Lufkin, Mexia, Richmond, Rio Grande State Center,San Angelo, and San Antonio.

For fiscal 2002-03, the state hospitals for mental illness are budgeted at about $543 million under MHMR Goal B, MH Specialized Services. This funding provided services for an average daily census of 2,266 people in state hospitals. State schools for the mentally retarded are budgeted at about $713 million under Goal D, MR Specialized Services. This funding provided services for an average monthly census of 5,018 residents of state schools.

CSHB 1 — $1.3 billion

Funding proposed by CSHB 1 would require closing one state mental hospital and one state school. Savings achieved by closing a state hospital would be $6.5 million. The total number of beds statewide would not decline because the facilities that remained open would add beds to maintain current capacity. General revenue savings achieved by closing a state school would be $7.5 million. Residents of the closed state school would be moved to other state schools, where about 686 openings exist. An item in the Article 9 “wish list” proposes an additional $6.5 million to restore the state hospital.

Supporters say the state should close one state hospital to free up funding for MHMR to offer better long-term disease management services and to reorganize from a reactive system to a management system. Clients now receive access to services only when they are in trouble, whether with an illness requiring hospitalization or after a brush with the law. The current system stabilizes the patient but provides little ongoing disease management to ensure that the patient takes medication as prescribed or has the support needed to live in the community. By focusing its resources on disease management, MHMR would serve its clients better. Closing a state hospital would involve a longer drive for some law enforcement officers who bring in the clients, but this would be a small price to pay for better mental health services.

Other supporters say that closing a state school would be the right way to offer choices for mentally retarded Texans and their families. State schools are an inefficient way to deliver services to mentally retarded people; they are expensive, all-inclusive, and sometimes offer more than people need. Some of the money saved by closing a state school could be better spent on services in the community. For some people, however, a state school environment is the only appropriate setting. The state should strike the appropriate balance between funding services in the community and in an insitutional setting. Closing a school would require a transition for its residents but would enable the state to provide more adequate funding for all three levels of need — state schools, ICF-MRs, and in-home care.

Other proposals — additional $14 million

Maintaining all 10 existing state hospitals would require an additional $6.5 million in all funds for fiscal 2004-05, while maintaining the 13 state schools would require $7.5 million in all funds.

Supporters say CSHB 1 funding would drain resources from an already weakened mental health system. Closing a state hospital would not free up enough general

revenue to fund better care in the community. Disease management for clients with mental illness is a laudable goal but cannot be achieved without additional funding far beyond the MHMR budget. Effective disease management would require case management services to assist with the medical and life-skills aspects of living with a mental illness. The state cannot deliver these services adequately at current funding levels. Closing a state hospital would save relatively little money but would shut down a valuable avenue to obtaining help in times of crisis.

A related issue is restricting services to people with schizophrenia, bipolar disorder, and serious depression. Even though those three diagnoses account for much of the mental health service need, they do not include all mental illness. This approach would leave some people with access to no services at all, including people with anxiety disorders such as agoraphobia and obsessive-compulsive disorder and mood disorders other than bipolar or depression, such as mania. The diagnosis of mental illness is a subjective process. If the only way for people to obtain services is to have a diagnosis of schizophrenia, bipolar disorder, or serious depression, then people will be misdiagnosed simply so that they can obtain services.

The state slowly is forcing mentally retarded people out of the state schools and into less appropriate settings. The number of people living in state schools has declined over the past decade as the state has sought less costly alternatives. Some people cannot live in a residence or in the community, yet the state is moving to depopulate the state schools. A state school campus offers a variety of activities, closer relationships, and a safe environment for people with mental retardation. Texas should not close a state school but should ensure that parents have the option of placing their children there.

Reducing waiting lists for community care

Agencies: Texas Department of Human Services (DHS) and Texas Department of Mental Health and Mental Retardation (MHMR)

Background

Medicaid waiver slots are the primary funding mechanism for moving people with disabilities from institutional to community settings. Under federal law, Medicaid can pay for long-term care services only in institutional settings unless the client obtains a waiver. Because the number of waivers is limited by availability of funds and the demand for waivers is greater than the supply, most states have created waiting lists for waiver programs. About 48,000 Texans are on waiting lists for these waivers. Depending on the level of need, a person may wait many years for a waiver slot to open up.

Reducing waiting lists has become a more urgent priority since the 1999 U.S. Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581, which established the right of people with disabilities to live in the community if that is the most appropriate setting and required states to make reasonable efforts to accommodate those needs. In September 2002, The Arc of Texas filed a federal lawsuit against DHS and MHMR alleging that the state has failed its obligation under *Olmstead* to make reasonable efforts to increase the number of waiver slots.

DHS administers three main waiver programs: Community-Based Alternatives (CBA) for people with disabilities who are eligible for nursing-home care; Community Living Assistance and Support Services (CLASS) for people with developmental disabilities other than mental retardation; and the Medically Dependent Children's Program (MDCP). MHMR administers the Home- and Community-Based Services (HCS) waiver program, which provides therapeutic and family-support services to maintain people with mental retardation at home or in small-group homes as an alternative to institutional placement.

For fiscal 2002-03, Medicaid waivers are budgeted at about $2.4 billion under DHS Strategy A.1.1, which funds all community care services, about $1 billion of which was waiver services, and at $564 million under MHMR Strategy C.1.4, which funds mental retardation HCS services.

CSHB 1 — $1 billion for DHS, $560 million for MHMR

Funding proposed by CSHB 1 would maintain the current number of CBA, CLASS, and MDCP waiver slots at DHS and the current number of HCS waiver slots at MHMR. It also would freeze the number of clients in DHS-administered waiver programs. A person with a waiver slot would keep it, but vacancies would not be filled when they became avaliable. The Article 9 "wish list" includes items to restore $26.6 million for DHS and $7 million for MHMR.

Supporters say the state must focus its resources on the people with the greatest need. A person who remains in an institution needs a higher level of care, and the state has an obligation to ensure that that person has somewhere to live. When budgets are being cut in all areas, institutional care should be cut less because it is the absolute safety net. Community care slots may be better for people over the long term, but they are less integral to the state's safety net.

Shifting a large amount of funding to *Olmstead*-related initiatives could undermine state support for institutions, causing the level of care to deteriorate. Expanding the number of waiver slots could create a system that is unfavorable to people who live in institutions. The state could coerce those living in institutions into moving into less than ideal situations in the community because care is less expensive there.

Other proposals

DHS' proposal of an additional $84 million would fund about 2,400 more waiver slots in the CLASS, CBA, and MDCP programs in fiscal 2004-05. MHMR's request for an additional $90 million would fund 1,155 additional slots in the HCS program.

Supporters say the state has an obligation to open up additional waiver slots to comply with *Olmstead*. Additional funding approved by the 77th Legislature has reduced the waiting list for waiver slots by less than 10 percent. More people have joined the waiting list since then, and people who were on the waiting list last session have been on it even longer.

It makes fiscal sense for the state to fund waiver slots as opposed to institutional beds, because waiver slots are less expensive by definition. A waiver slot must be cost-neutral, meaning that the cost of paying for a person's care in the community must be equal to or less than the cost of the person's care in an institution. The state actually could save money by increasing the number of waiver slots.

Changing continuous eligibility for CHIP and Medicaid

Agency: Health and Human Services Commission (HHSC)

Background

In 2001, the 77th Legislature enacted SB 43 by Zaffirini, which directed DHS to create a simplified process for children's Medicaid applications. The simplification was modeled on the application for the Children's Health Insurance Program (CHIP), viewed as an easier, faster process. The four major components of Medicaid simplification were a streamlined application, telephone or mail applications, a self-declared assets test, and continuous eligibility. Except for continuous eligibility, all elements of Medicaid simplification took effect January 1, 2002.

SB 43 directed the Department of Human Services (DHS) to phase in continuous eligibility, first by making the eligibility period continuous, then by extending it to 12 months. Before SB 43, a child would lose Medicaid eligibility if the family's income rose during a six-month period as families reported changes in income. After the first phase of continuous eligibility, children receive Medicaid for six months regardless of changes in family income during that time. SB 43 directed DHS to implement 12-month continuous eligibility between September 1, 2002, and June 1, 2003.

HHSC estimates that expanding continuous eligibility from six to 12 months would result in a net increase in the number of children who receive Medicaid of 161,000 per month for fiscal 2004 and 187,000 per month for fiscal 2005. Medicaid is budgeted under HHSC's Goal B at about $14.8 billion for fiscal 2002-03.

CSHB 1 — ($703 million) for Medicaid, ($50 million) for CHIP

CSHB 1 would reduce Medicaid funding by about $703 million in fiscal 2004-05 to postpone implementation of 12-month continuous eligibility, as recommended by the comptroller's E-Texas report and as proposed by HB 728 by Delisi. It would reduce CHIP funding by $50 million in fiscal 2004-05 to change the continuous eligibility of CHIP recipients from 12 months to six. This CHIP reduction is in addition to the savings assumed from changing the eligbility criteria from 200 percent of the federal poverty level to 150 percent.

Supporters say the state should not change the structure of the Medicaid program in a way that would create large costs in a period of scarce resources. This proposal would not impair the Medicaid program but would maintain the current caseload projections.

Postponing 12-month continuous eligibility would not reduce the number of children receiving Medicaid in relation to current levels. Rather, it would prevent an expected "spike" in enrollment, because children who no longer are eligible for Medicaid would leave the program after six months, rather than automatically staying in the program for a year.

The state does not need to adopt 12-month continuous eligibility to solve the problem of children "falling off" Medicaid because of fluctuations in family income. During the current biennium, the state went from six-month eligibility to six-month continuous eligibility, allowing children to stay on Medicaid for that period regardless of changes in family income. This ensures that fluctuations in family income do not affect children's eligibility for Medicaid. The other elements of Medicaid simplification, including establishment of a self-declared asset test, a streamlined application form, and recertification by phone or mail, ensure that children who are still eligible for Medicaid will reenroll.

In tough economic times, the state should focus its resources on children who are eligible for Medicaid and CHIP and should consider expanding services when the budget situation improves. Postponing expansion of continuous eligibility until 2006 would ensure that the state's Medicaid dollars go to children who need them in fiscal 2004-05. Requiring eligibility determination for CHIP every six months would ensure that only eligible children stay on the rolls.

Opponents say one-year continuous eligibility for Medicaid and CHIP is important to reduce the application

difficulties encountered by working families and to give patients a "medical home" for preventive care, one of the main benefits of the managed-care system that the state has struggled to implement. Recertification every six months requires families repeatedly to complete the application and other attachments and an interview. As a result, families often let coverage lapse until a child falls ill again, or they reenroll as necessary but end up in another plan with a different provider. Good primary and preventive care usually requires a longer-term physician-patient relationship.

Postponing implementation of 12-month continuous eligibility would increase costs to hospitals and local taxpayers, who have to provide health care for indigent people as part of local charity-care obligations. Also, it would force children into the least appropriate health-care setting. Instead of visiting primary-care physicians, children who became sick after leaving the program would show up in emergency rooms, where there is no ongoing care and little medical history is taken.

Reducing the eligibility period for CHIP would be a big step backward. One of the best aspects of the CHIP program is that it has moved children into a stable health-care environment. Children have received a full year of immunizations and checkups, which hold costs down in a managed-care environment. Changing the eligibility period would cost the state more in the long run.

Reducing TANF grants

Agency: Texas Department of Human Services (DHS)

Background

The 1996 federal welfare-reform law created Temporary Assistance to Needy Families (TANF) to replace Aid to Families with Dependent Children and other assistance programs. States use a mixture of state and federal TANF funds to provide cash assistance, child care, job preparation, and other services. TANF recipients are eligible for Medicaid services and food stamps. TANF funds are distributed either as monthly grants to families eligible under federal guidelines; TANF-SP, monthly grants to families eligible under state guidelines; or OT-TANF, larger one-time grants in lieu of monthly payments.

TANF eligibility is restricted by family income and assets. A family's financial eligibility is based on a figure that represents 100 percent of the estimated cost to meet basic needs for one month, according to household size. DHS determines benefits based on an amount that equals 25 percent of the family's budgetary needs and pays a maximum TANF grant that equals 17 percent of the federal poverty level (FPL). Some earned income may be disregarded in calculating the family's ability to meet basic needs, such as work-related expenses and child care. The asset restriction is $2,000, with certain exemptions including the value of a home, burial plots, and vehicles worth less than $4,650 for TANF, or one vehicle worth $15,000 for TANF-SP.

The average TANF recipient is a single mother of two children, at least one of whom is under the age of six. About two-thirds of TANF recipients live in DHS' Houston, Arlington, San Antonio, and Edinburg regions. Gross earnings of employed TANF families in 2002 averaged $518 per month, and the average monthly grant was $149.

Under federal law, a state's public assistance clientele must meet minimum work-participation rates, which may include participation in job training and other education programs as well as actual employment. Recipients may be exempted from this requirement for reasons that include caring for a child under the age of one, attending high school full-time, pregnancy, disability, or being over age 60. As a condition of receiving cash assistance, the head of household must sign a Personal Responsibility Agreement and attend a workforce orientation, designed to set the recipient on the path to permanent employment and self-sufficiency.

For fiscal 2002-03, TANF is budgeted under DHS Strategy B.1.1 at about $577 million, including $234 million in general revenue.

CSHB 1— $496 million

CSHB 1 would reduce TANF funding by $80 million in fiscal 2004-05. DHS would have to reduce grants, freeze the average grant amount, lower the asset test, eliminate the back-to-school stipend, and increase the penalties for not complying with the Personal Responsibility Agreement. These adjustments would result in serving about 61,000 fewer clients. An item in the Article 9 "wish list" proposes restoring $6.2 million for TANF grants.

Supporters say budget reductions should be made in these areas to preserve other parts of the safety net. Slightly lower grants and freezing the average grant size at fiscal 2003 levels would not take money away from anyone but would enable all currently eligible people to receive assistance in the future. Lowering the asset test and increasing penalties for noncompliance would help the state focus assistance on those who need it the most and on those who truly are trying to work their way out of poverty.

Some efforts could be combined to restore some funding. Rider 26 in the DHS budget would require the agency to implement "full family sanctions," penalties that include the entire case benefit, not only the portion attributable to an adult. The rider would direct the agency to apply any savings toward restoration of the back-to-school stipend and restore the maximum monthly grant to 17 percent of the FPL.

Other proposals — $537 million

This funding level would restore the reductions proposed by CSHB 1, maintaining fiscal 2002-03 service levels. The TANF program would continue to serve about 361,300 clients.

Supporters say each of the reductions proposed by CSHB 1 would cause the "safety net" to disintegrate for the poorest Texans.

The TANF grant levels were pegged to 17 percent of the FPL in 1999 to avoid the loss of buying power that recipients had experienced in the past. Lowering that percentage would make it more difficult for TANF recipients to meet their basic needs. If the grant is not enough to help with basic sustenance, recipients will not be able to obtain jobs and hold them long enough to become self-sufficient. Freezing the average grant amount at 2002-03 levels would have a similar effect.

Lowering the asset limits for eligibility would force Texans on the margin — those with a car that is worth slightly more than the limit — into worse situations before they could get help. The asset limit is so low — about $4,600 for a car — that it provides no cushion for potential recipients to stay afloat. If the family is not eligible for a grant, a car breakdown can turn into an emergency that results in losing a job. Once the job is lost, those families become eligible for the help they needed in the first place.

The back-to-school stipend, a $60 supplement paid to families with school children in late July or early August, ensures that children in very poor families have supplies, such as paper and pencils, and clothing for school. Eliminating the stipend would impair these children's ability to learn and could shift the burden onto teachers, who often pay for school supplies out of their own pockets.

The state already charges penalties against people who do not comply with the Personal Responsibility Agreement by reducing the amounts of their grants. Increasing these penalties would hurt children by taking family income away.

Funding for HIV medications

Agency: Texas Department of Health (TDH)

Background

TDH's Texas HIV Medication Program (THMP) distributes medications that help treat needy Texans for HIV infection and related complications. To receive benefits, a person must be diagnosed as HIV-positive, have a household income under 200 percent of the federal poverty level, and have no other insurance or be underinsured.

THMP's budget increased from $1 million in 1987 to $58 million in 2001. In June 2002, THMP served about 12,300 people at an average cost per client of about $800 per month and an average annual expenditure per client of $5,003. The increase in expenditures is due to the convergence of several factors:

- the number of people infected with HIV continues to grow, even though specific populations are experiencing a decline in new infection rates;
- HIV-positive people live longer because of newer and more effective antiviral drugs;
- drug regimens developed in the late 1990s combine drugs into a "cocktail" treatment that expands the single drug protocols used in earlier eras of the disease; and
- the cost of prescription drugs is increasing across the health-care market.

To address current-year and projected budget shortfalls, TDH proposed rules in fall 2002 that would have tightened eligibility requirements for THMP by reducing the income threshold. About 2,500 THMP clients would have lost services under the proposed rules. TDH tabled the proposed rule change in February 2003 with the intention of reducing other parts of its budget.

HIV Education and Prevention programs are funded under TDH Strategy A.3.1. For fiscal 2002-03, THMP received $21.6 million in general revenue.

CSHB 1 — $54.7 million

CSHB 1 would more than double the appropriation for THMP, to $54.7 million in fiscal 2004-05.

Supporters say this funding level would be consistent with TDH's responsibility to ensure the public health of all Texans. Increasing this program's budget would enable it to continue serving people who receive services now and to serve some new clients. In the current budget climate, the state cannot afford to expand services to all anticipated new clients. People with HIV can obtain medications through other programs for which they are eligible.

Opponents say the proposed funding for THMP, though higher than the current level, would not meet the expected growth in demand for funds. CSHB 1 funding would serve about 14,200 clients during fiscal 2004-05, or 800 more than the program now serves. THMP is using federal funds to cover a general revenue shortfall in fiscal 2003, and TDH will have to make up for the shortfall with fiscal 2004 general revenue when it becomes available.

Some THMP clients would die without the antiviral medications the program provides. Most are not eligible for other programs like Medicaid, and some programs for which people might have been eligible in the past — particularly local programs — have closed because of their own budgetary problems. The long-term costs of limiting THMP's ability to serve needy clients could be much higher than short-term savings because most clients who receive the medication assistance remain healthy enough to hold jobs. If they do not receive the medications, they lose their livelihoods as well as their health. Thus, they could become a much larger drain on state resources as they turn to public assistance and emergency-room health care.

Other opponents say the THMP budget should not be spared from the reductions TDH is making in most other programs. Policymakers should not treat HIV medication assistance as an entitlement. Although its beneficiaries and advocates characterize it as essential, it is not as essential as programs like Medicaid, the Children's Health Insurance Program, local emergency management services, and tuberculosis control.

Other proposals — $72.7 million

TDH originally requested $18 million more than the CSHB 1 level to extend THMP services to people who will become eligible for the program during the coming biennium. According to TDH, this level of funding could serve an additional 1,700 people in fiscal 2004-05.

Supporters say THMP provides an essential service to lower-income, HIV-positive Texans. The life expectancy of HIV-positive people drops sharply without medications that delay the onset of symptomatic disease. The additional money requested by TDH is necessary to achieve the goals of treating HIV/AIDS and preventing the spread of the disease in Texas. Withholding these funds would withhold assistance that could make the difference between life and death for 1,700 Texans over the next two years.

Opponents say the current budget climate dictates fiscal discipline for THMP and all state programs. Though THMP would receive less funding than requested, lawmakers cannot reduce the state's budget to match available revenues if all programs do not share in budget constraints. Given that budget cuts are necessary, TDH has no choice but to reduce programs that seem essential to their target populations.

Funding for child protective services

Agency: Texas Department of Protective and Regulatory Services (DPRS)

Background

Child protective services (CPS) are designed to protect children from harm by their parents or by people responsible for their care. CPS caseworkers field and investigate reports of child abuse and neglect. The agency's Intensified Family Preservation unit offers comprehensive services to children who are eligible for removal from the home but who may be able to stay with their families with support and under intensive supervision.

If preserving the family is not possible or if a safe home environment cannot be established and maintained, CPS may petition a court to remove children from the home and place them temporarily or permanently with substitute families or caregivers. The agency also oversees foster care and adoptions for children who must be removed from their homes. DPRS provides money to foster and adoptive families to defray the costs of caring for children who otherwise would have to live in institutions.

The 76th Legislature in 1999 gave DPRS funding to reduce caseloads and increase the salaries of CPS workers, but caseworker turnover remained at about 25 percent. Caseworkers averaged 25 cases each, compared to the national average of 18. In 2001, the 77th Legislature appropriated additional funds for 137 new caseworkers and a second pay raise and directed DPRS to develop a human resources management plan to reduce turnover. The agency reports that turnover has fallen and the average caseload has stabilized at 25.

For fiscal 2002-03, DPRS received an appropriation of $1.2 billion in all funds for CPS across multiple strategies. This includes $518 million for protective services and $698 million for foster-care payments and adoption subsidies.

CSHB 1 — $550 million

CSHB 1 would appropriate about $550 million in all funds for protective services and $919 million for foster-care rates and adoption subsidies in fiscal 2004-05. Because of pay raises and an increased travel reimbursement rate in fiscal 2002-03, DPRS estimates that this level of funding would require the agency to lay off 54 caseworkers. The agency would not expect to lay off caseworkers in the Intensified Family Preservation unit but could add to their caseloads. The agency expects that this level of funding would cause the average caseload to rise above the current ratio of 25 cases per worker.

CSHB 1 also would appropriate $919 million for foster-care rates and adoption subsidies, which the agency anticipates would require a reduction in foster-care payment rates because of caseload growth. This level of funding for adoption subsidies would assume a tiered adoption subsidy rate, which would allocate a smaller subsidy for adoptions of younger or easier-to-place children. Families who adopted older children or those with physical, medical, or emotional problems would receive a higher subsidy.

Supporters say this level of funding would strike the right balance between protecting children before they have entered the system and helping families take children out of the system and into their homes. It might be more difficult for caseworkers to do their jobs with higher caseloads, but the bill would not eliminate the caseworkers who provide intensive services to keep children safe in their homes. Foster-care payments and adoption subsidies help remove children from the system, which should be the state's priority. CSHB 1 would fund foster-care payments at 97 percent of the agency's projected requirement for fiscal 2004-05. It would reduce adoption subsidies by only $10 million from the agency's estimated need.

Other proposals — $ 638 million

DPRS estimated that it would need 338 caseworkers above fiscal 2002-03 levels to reduce caseloads adequately. This level of funding would allow the agency to retain all current caseworkers and add new caseworkers.

Supporters say the state should focus its spending on children who are at risk of abuse or neglect, because this prevents them from becoming part of the system. While foster-care payments and adoption subsidies are important, the absolute safety of children should be of paramount importance. Often a CPS caseworker is the only person standing between a child and serious injury or death. Asking those caseworkers to manage even more cases would be a great disservice to the children of Texas.

CPS caseworkers' jobs already are among the most difficult in the state. These workers go deep into crime-ridden areas of Texas cities and out to remote locations across the state to visit children, carrying little more than a cell phone to call for help if something goes wrong. Asking them to do more probably would increase attrition to the levels seen before the 77th Legislature tried to take action with a pay raise. The additional funding spent in 2002-03 would go to waste if the state now increases turnover among caseworkers.

Public Education Overview

Public education, the largest single function funded by the state, accounts for about 28 percent of the total budget and 38 percent of general revenue-related spending. Nearly all public education funding is appropriated to the Texas Education Agency (TEA), including funding for the State Board of Education. The State Board for Educator Certification, Texas School for the Deaf, and Texas School for the Blind and Visually Impaired also receive state funds. Other major budget items under Article 3 pay for the Teacher Retirement System (TRS) and grants from the Telecommunications Infrastructure Fund (TIF).

For fiscal 2004-05, HB 1 proposes total funding of $33.2 billion for public education. This would represent a decrease of $66 million in all funds from fiscal 2002-03. General revenue-related spending would decrease about $2 billion, or 7.5 percent, to $24.2 billion.

Background

School districts generate more than half of all funding for public education through local property taxes, and the state Foundation School Program (FSP) and federal funds pay for the remainder. Public school funding needs are driven by five primary factors: property values, enrollment growth, court-imposed equity standards, staff salaries and benefits, and facility needs.

Property values. In recent years, substantial growth in taxable property values has resulted in a higher local share of public education funding. In tax year 2002, statewide taxable property values rose by an estimated 5.9 percent over 2001 values, according to preliminary data from the comptroller's annual Property Value Study. The comptroller projects that statewide values will grow by about 5 percent in 2003.

Enrollment growth. Over the past five biennia, Texas public schools' average daily attendance (ADA) has increased by roughly 2 percent per year, or about 75,000 students per year. For purposes of school finance, LBB estimates that Texas public schools had an ADA of almost 3.9 million students in 2002. Statewide ADA is projected to increase to nearly 4.1 million by 2005.

Equity. Years of school-finance litigation and four decisions by the Texas Supreme Court have established the state's mandate to maintain standards of equity in public education. Among the system elements that the court found constitutional in *Edgewood IV* in 1995 were:

- 98 percent of revenues in an equalized system;
- 85 percent of students in an equalized system;
- a maximum $600 gap in funding per student between the wealthiest and poorest districts at the highest levels of tax effort; and
- substantially equal access to similar revenues per pupil at similar levels of tax effort.

Public Education Spending Comparisons
(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$26,169.3	$24,204.0	$(1,965.3)	(7.5)%
Federal funds	5,661.2	6,566.5	905.3	16.0
Other funds	1,457.2	2,451.3	994.2	68.2
All funds	33,287.6	33,221.8	(65.8)	(0.2)

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

Salaries and benefits. Staff salaries and benefits account for more than 80 percent of the expenses of local school districts. Teacher salaries are based on a state-mandated minimum salary schedule that increases for every year of service up to 20 years. Many school districts also add local supplements to the state's minimum salary schedule. State minimum standards increase when state funding for the FSP increases.

The 77th Legislature in 2001 created TRS-ActiveCare, a state-funded group health insurance plan for public school employees in districts with 500 or fewer employees (HB 3343 by Sadler). The TRS board of trustees has opened up participation to all districts beginning with the 2003-04 school year. Lawmakers appropriated $1.3 billion for fiscal 2002-03, which covered only one year of operation because the plan took effect on September 1, 2002. Cost estimates to continue TRS-ActiveCare intact in fiscal 2004-05 are in the range of $2.5 billion.

Facilities. Growing enrollments require additional classrooms. A separate component for state aid for facilities is necessary to maintain school-finance equity as mandated by the courts. The state Instructional Facilities Allotment (IFA), created in 1997, provides a guaranteed yield for tax effort for new facilities, allowing poorer districts to generate the same revenue per penny of tax effort as wealthier districts generate for new debt. The IFA is funded at $534 million for fiscal 2002-03. The Existing Debt Allotment (EDA) of the FSP, which helps school districts pay "old" debt for construction and facilities, is funded at $981 million. According to TEA, the total amount of state and local payments for debt service now allocated for facilities is $2.2 billion per year.

Permanent School Fund. Stocks, bonds, and royalties from mineral leases on state land comprise the $16.6 billion Permanent School Fund (PSF), which generates income of about $765 million annually. PSF investments have lost nearly $6 billion in value since August 1999, when the fund hit an all-time high of $22.5 billion. The PSF distributed $197 per student to school districts in the 2001-02 school year through the Available School Fund (ASF) and will distribute an estimated $212 per student in the current school year. Under the Texas Constitution, the PSF may distribute only interest and dividend income to the ASF.

Some observers maintain that if PSF spending remains limited to interest and dividend distributions, the PSF may be unable to maintain the purchasing power of its distributions while increasing the market value of PSF assets. These two objectives conflict because investments that generate high interest and dividend income do not tend to increase in principal value over time. Some lawmakers have recommended amending the Texas Constitution to allow the PSF to adopt a total-return investment strategy. This would allow the PSF to distribute a portion of its capital gains to the ASF in addition to interest and dividend income. Supporters say this change not only would help lawmakers through the current budget crisis by making available $511 million in capital gains but would enhance revenues on a recurring basis. Opponents say the state cannot count on reaping capital gains in the current market environment. State Board of Education members oppose the change on the grounds that ultimately it could jeopardize the soundness of the fund.

Budget highlights

To reduce spending in fiscal 2003, TEA froze hiring and travel and returned unexpended funds for textbooks and competitive and other grants. TRS returned unspent funds budgeted for TRS-ActiveCare. CSHB 7 by Heflin would reduce fiscal 2003 appropriations for public education by $166 million in general revenue, including $75 million from TRS and $88 million from TEA. The bill would reduce TEA's appropriations from dedicated funds by $328 million and would reduce the TIF Board's appropriation from the TIF by $224 million. It also would appropriate to TEA $116 million from the TIF for the technology allotment in fiscal 2003.

CSHB 1 would reduce TEA's total appropriation by about $188 million, or less than 1 percent, for fiscal 2004-05. TEA's general revenue appropriation would fall by about $1.1 billion. Federal funds, however, would increase by $911 million, including $794 million from the federal No Child Left Behind Act.

School finance equity. CSHB 1 would appropriate about $21.1 billion for Chapter 42 formula funding in fiscal 2004-05, compared to $21.7 billion in the current biennium. Although the FSP largely is protected, the

elimination of most compensatory education set-asides and a newly restricted definition of career and technology courses would result in a small decrease in funding for FSP equalized operations. CSHB 1 would allocate $2.45 billion in "recapture" revenue for fiscal 2004-05, an increase of $994 million from the current biennium. According to TEA, the state would have to raise the guaranteed yield for Tier 2 districts in both 2004 and 2005 to meet all current statutory requirements for the FSP and to maintain the court-accepted level of equity within the school-finance system. The bill would maintain the current basic allotment, guaranteed yield, equalized wealth level, and hold-harmless clauses, but it would reallocate $635 million in funding from other TEA programs and administration to keep the formulas whole.

CSHB 1 would eliminate all but $20 million of general revenue funding for Teaching Excellence and Support (Strategy B.3.1), which received $484 million for fiscal 2002-03, including $88 million for education service center (ESC) core services and professional development, $50 million for teacher training for the Student Success Initiative, and $20 million in stipends and training for Master Reading and Mathematics teachers.

CSHB 1 would allocate $20 million to small and rural school districts (TEA Rider 65) to make up for the decline in ESC funding. The Article 9 "wish list" contains an additional $50 million for technical assistance to these districts. SB 929 by Shapiro would redirect to school districts all state and federal funds the ESCs now receive through TEA, essentially reducing the centers' budgets by half. Supporters say small and rural districts most often use ESC services, and sending the money directly to those districts would help mitigate the effects of cutbacks in ESC services. Opponents say ESCs hold down districts' administrative costs, and few of the target districts could afford to outsource ESC services such as data processing and reporting, bulk buying of Internet services, and training administrators and teachers to comply with state and federal mandates.

Many services for students at risk of dropping out of school would receive no state funding under CSHB 1. However, two proposed riders would attempt to replace state funding with private and federal money. Rider 59 would allow the commissioner to use up to $60 million of state and federal funds as matching funds for grants from private sources. The money would be dedicated to helping not only ninth graders but all high school students at risk of not graduating. Rider 58 would allow the commissioner to identify $85 million in state and federal funds to support after-school activities in schools with high concentrations of economically disadvantaged students. This rider essentially would allow the use of federal grants to pay for programs for at-risk students. The Article 9 "wish list" contains $65.6 million for Communities in Schools, $16.2 million for the Investment Capital Fund, and $20 million for the After-School Initiative.

Revenue enhancement. CSHB 5 by Grusendorf proposes two statutory changes that would enhance revenues for public education in the current budget cycle. One proposal would save an estimated $880 million by delaying August 2005 FSP payments to school districts until September 2005. Another proposal would change the way that "settle-up" is calculated. Under current law, TEA must determine state aid payments on the basis of estimated school district property values and attendance. This system historically has resulted in overpayments or underpayments to school districts during the second year of a biennium. In 2001, school districts returned to the state $800 million in "settle-up" funds, which freed an equal amount of general revenue for the new TRS-ActiveCare program. LBB expects a settle-up of between $300 million and $400 million for 2003, which would accrue in 2004. CSHB 5 would require the commissioner to reduce state aid payments to school districts in 2005 if their final taxable property values were greater than the amount used to estimate payments.

CSHB 5 would repeal Education Code, chapters 41, 42, and 46 effective September 30, 2005, essentially eliminating the state's current school finance system. The bill would provide an extra $300 per unweighted student to each school district in fiscal 2004-05 as a hedge against inflation until a replacement system was developed. Avoiding overpayment of settle-up funds and delaying FSP payments would save enough money to cover the cost of CSHB 5, estimated at $1.2 billion. TEA Rider 68 in CSHB 1 would allocate $600 million for CSHB 5; the remaining funds presumably would be contingent on the comptroller's certification of additional revenue.

A third proposal would change the PSF accounting method to achieve a one-time gain of $100 million for fiscal 2004-05. Currently, short-term bonds are purchased throughout the year and mature in one to six months, but interest on those bonds is not realized until the following biennium. A change to the accrual accounting method would enable lawmakers to identify accrued bond interest at the end of each fiscal year and transfer that amount to the PSF corpus.

Delaying textbook purchasing. CSHB 1 would reduce TEA's budget for textbooks by 60 percent in fiscal 2004-05, saving $383 million. TEA would delay the purchase of "nonessential" textbooks for grade levels and subject areas that are not associated with an accountability test. A statutory change to allow the purchase of fewer textbooks could produce additional savings. Under current law, the state must provide textbooks to school districts and charter schools at 110 percent of maximum attendance. TEA seeks reduce this to 103 percent of maximum attendance, thereby decreasing the number of textbooks needed. Opponents say delaying textbook purchases could force school children to use outdated textbooks that do not meet the requirements of the Texas Essential Knowledge and Skills curriculum. They note that materials for the 2003-04 school year are printed already and materials for the second year of the biennium already have been submitted. By reducing its textbook budget, they say, the state would leave publishers at risk for millions of dollars in textbooks that they developed and printed in good faith.

Reducing monitoring at TEA. CSHB 1 funding would require TEA to reduce its workforce by 14 percent, resulting in a loss of 122 out of 860 FTEs. Of TEA's three building blocks dedicated to administration, CSHB 1 would retain only $69 million of $139 million requested by TEA, a cut of 50 percent. An example of administrative cuts is TEA's proposal to reduce its monitoring function significantly. Under the proposal, which would require statutory changes, TEA would cease routine cyclical monitoring of compensatory education, bilingual education, gifted and talented, state special education, and career and technology programs. It would continue to monitor Title I and federal special education programs and would continue audits of school finances, attendance, and data quality. Although most district site visits would be eliminated, TEA would retain the ability to investigate complaints and to perform "desk audits."

Teachers' out-of-pocket expenses. TEA Rider 60 would establish a pilot program to reimburse teachers for out-of-pocket expenses for classroom materials. The commissioner would have to identify state discretionary and administrative funds that could be used as matching funds for local dollars. The rider would depend on enactment of HB 1844 by Grusendorf and Bohac.

PSF in-house investments. In 1995, the State Board of Education (SBOE) began to employ external managers to invest about 40 percent of PSF assets, primarily stocks. TEA staff manages the rest of the PSF's assets. CSHB 1 would delete funding for external money managers. Supporters say this measure would save the state $40 million and would help prevent any future occurrence of ethical impropriety, such as has been charged against the SBOE and its managers in recent years. Opponents respond that TEA staff lacks the expertise to manage the fund and that outside assistance is necessary to make wise investment decisions.

TRS pension fund. At the end of fiscal 2002, the TRS pension fund had an unfunded liability of $3.3 billion, primarily due to investment losses. To be considered actuarially sound, a pension system must be able to amortize all its liabilities over 30 years. Actuaries at the State Auditor's Office say it now would take an infinite number of years to amortize TRS liabilities and that the fund's status could worsen in the future because of net investment losses of $16.2 billion that will be spread out over the next five years. CSHB 1 would provide no additional funds to address these liabilities.

Supporters of shoring up the TRS pension fund note that TRS serves more than 1 million active and retired members, about one in 20 Texans. Improvements in pension benefits are unlikely in the coming decade, they say, without a dramatic upswing in market conditions or an increase in the state's contribution rate, which has declined from 8.5 percent to a constitutional minimum of 6 percent of payroll (Texas Constitution, Art. 16, sec. 67 (b)(3)). Actuaries say the state's contribution rate would have to increase to 7.15 percent to meet the fund's current obligations, at a biennial cost of $527 million.

Others counter that the pension fund has been in worse shape before and has been able to recover. In view of other urgent budget needs, they say, the most prudent course would be to wait for market conditions to improve, especially as auditors have yet to declare the fund actuarially unsound.

Criminal background checks for teachers. The State Board for Educator Certification (SBEC) requested $5.5 million in general revenue to perform fingerprinting and national criminal-history background checks for all new prospective teachers, as proposed in Rider 11. The funds would come from a $42 increase in fees for applications for certification and would be passed through to the Texas Department of Public Safety and the Federal Bureau of Investigation to pay for the background checks, less an administrative fee of $3 per investigation. The application fee is now $72; an increase of $42 would cover the program costs. SBEC now performs only Texas criminal-history background checks on applicants.

Supporters argue that fingerprint-based national background checks are necessary to protect students, particularly as the number of out-of-state applicants for Texas certification continues to increase. However, some current teachers and schools oppose a sharp increase in application fees for prospective teachers at a time when schools and some legislators would like to reduce the barriers to hiring qualified teachers. Other opponents say teachers should not have to bear the cost of background checks but that employers should bear this cost as part of their due-diligence process for hiring.

Government reform. As part of SBEC sunset review this session, the Legislature will consider whether to continue the agency or transfer its functions back to TEA. Lawmakers created SBEC in 1995 to regulate and oversee public school teachers' preparation, certification, continuing education, and standards of conduct. Before 1995, TEA performed those functions. Some contend that a return to the former arrangement would create substantial savings by reducing costs for staff and facilities. In its 2002 review of SBEC, however, the Sunset Advisory Commission identified no significant savings from such a transfer, while stressing the state's continuing need for an independent entity to oversee teacher preparation and certification.

Major budget issues. The following pages discuss these budget issues for public education in more detail:

- funding for school facilities through the EDA;
- reducing funding for TRS-ActiveCare for public school employees;
- redesigning benefit plans for TRS-Care for retired teachers; and
- redistributing the Telecommunications Infrastructure Fund.

Funding for school facilities debt

Agency: Texas Education Agency (TEA)

Background

Most new school facilities are financed by bonds approved by local school district voters, backed by the Permanent School Fund (PSF), and paid by local property-tax revenues. Since 1992, as districts have addressed pent-up demands to expand and upgrade their facilities, voter-approved debt for Texas schools has risen more than eightfold, to nearly $29 billion, of which $26 billion is guaranteed by the PSF. School debt has grown most substantially in fast-growth suburban school districts.

The state has assumed a growing portion of the debt service on school bonds since the late 1990s, when the Legislature created the Instructional Facilities Allotment (IFA) and the Existing Debt Allotment (EDA), forming the facilities funding component or "third tier" of the Foundation School Program. In submitting building blocks for the fiscal 2004-05 budget, TEA identified facilities as its top priority.

The IFA is a competitive program that provides equalized state aid to help qualified school districts pay debt service for new instructional facilities, additions, and renovations. IFA recipients must match state aid with local taxes. Low-wealth districts generally receive priority, but some districts that normally would not qualify for IFA may qualify if they have experienced rapid enrollment growth over several years. The IFA is a sum-certain appropriation, meaning that once TEA has allocated all appropriated funds through the application process, it can allocate no more. Only 128 of the 326 eligible districts that applied for IFA assistance in the 2002-03 school year received funds. TEA has asked for an additional $100 million for new IFA issuances, and this item appears in the Article 9 "wish list."

The EDA is an equalized funding program that helps qualified school districts pay "old" debt, defined as debt for which a district made payments before September 1, 2001. EDA provides a guaranteed yield of $35 per student per penny of debt tax effort up to 29 cents per $100 of valuation. No application is required for a district to receive an allotment. Districts with lower wealth per student have a greater share of their debt paid by the EDA.

The 77th Legislature "rolled forward" the EDA eligibility cutoff date to cover two more years of debt. As the EDA rolls forward, it covers any debt that the sum-certain IFA appropriation may have "missed" in the previous biennium. SB 636 by Nelson would roll forward the eligibility cutoff for two more years, while SB 639 by Nelson/HB 1227 by Eissler would roll it forward automatically each biennium. Providing two more years of debt assistance would cost an estimated $130 million.

CSHB 1 — $1.38 billion

CSHB 1 would appropriate $1.38 billion for facilities funding in fiscal 2004-05, a decrease of $135 million from fiscal 2002-03. According to LBB, the proposed appropriation would provide sufficient funding to maintain the state's obligation to school districts.

Other proposals — $1.61 billion

The estimated cost of expanding IFA and rolling forward two more years of EDA would be $230 million on top of the amount proposed in CSHB 1.

Supporters say lawmakers should create a true "debt tier" in the school finance system that would provide ongoing assurance of state support for school facilities and other capital expenditures. Failure to roll forward the eligibility cutoff date could widen the gap for districts that already are struggling to keep up with enrollment growth and could provoke another school finance lawsuit by creating a major equity issue between richer and poorer districts.

Opponents say in the current fiscal situation, it would be unwise to commit more state resources to a program that was designed to deal with pent-up demand and not necessarily intended to be permanent. CSHB 1 would maintain the state's current commitment, and budget writers should retain flexibility as to whether to roll forward the EDA eligibility cutoff date this biennium.

Reducing support for school employees' health insurance

Agency: Teacher Retirement System (TRS)

Background

In 2001, the 77th Legislature enacted HB 3343 by Sadler, creating a state-administered health insurance program for teachers and other public school employees in districts with 500 or fewer employees. Beginning with the 2003-04 school year, all districts will be eligible to join. Lawmakers directed TRS to manage the new health plan, in part because of the agency's 17-year history managing TRS-Care, the statewide health plan for retired school employees. TRS-ActiveCare now covers about 112,500 employees, about 20 percent of all public education employees in Texas and about 25 percent of those with group health coverage. Counting dependents, the plan covers about 182,800 people.

Almost all funding for TRS-ActiveCare flows through Article 3 and is divided between TRS and the Texas Education Agency (TEA). The state's premium contribution to eligible school districts is $75 per month ($900 per year) per participating employee, included in the school finance formulas and paid by TEA from the Foundation School Program (FSP). TEA also provides "hold harmless" funding for districts that do not gain enough state aid through the formulas to meet the $75-per-month threshold. In addition, all school employees, regardless of whether they participate in a group health plan, receive $83.33 per month ($1,000 per year) in "passthrough" money from TRS, except for employees of open-enrollment charter schools that chose not to participate in TRS-ActiveCare. The TRS budget also pays for minimum-effort transition aid and Social Security "hold harmless" funding for eligible districts.

For fiscal 2002-03, TRS-ActiveCare received about $1.3 billion, covering one year of operation, including $692 million through TRS. TEA's portion was funded by increases in the guaranteed yield and the equalized wealth level. The effect on TEA's budget of adjusting the formulas amounted to $600 million, of which $450 million went to TRS-ActiveCare and the remainder to districts to use at their discretion. TEA received another $27 million for hold-harmless aid to districts under the plan.

The $1,000 passthrough — funded at $588.7 million — is the most expensive component. School employees can choose to apply their passthrough to health-care costs (such as premiums, dependent coverage, or medical savings accounts) or to salary. Preliminary results of a recent survey by TRS showed that 75 percent of employees chose to apply some portion of their passthrough to health-care costs.

In fiscal 2003, about $106 million went toward minimum-effort transition aid and Social Security "hold harmless" funding for certain school districts. Each participating district must contribute at least $150 per month per employee toward premiums. Districts that were not paying $150 per month per employee before 2001-02 could receive minimum-effort transition aid from the state to help them meet this threshold. This transition assistance was to have been phased out over six years, except that districts levying maintenance-and-operations (M&O) taxes at the statutory cap of $1.50 per $100 of taxable value were entitled to permanent transition aid. Social Security hold-harmless funds were allocated to the few districts that participate in Social Security to help offset the cost of employer matching taxes when employees chose to use their passthroughs for salary.

In TRS' budget, the active-employee health plan is funded under Strategy A.3.1, and the passthrough is addressed in Rider 9.

CSHB 1 — $442.6 million

CSHB 1 would appropriate $442.6 million for TRS' portion of TRS-ActiveCare in fiscal 2004-05, all of which would go toward a reduced passthrough benefit. This would represent a reduction of $253 million from TRS' current appropriation for TRS-ActiveCare and a reduction in the passthrough of $146 million. As the current appropriation covers only one year of operation, the proposed funding for fiscal 2004-05 would fall well below the amount needed to maintain the program at its current level. Because TRS has no revenue source for the passthrough, funding would depend on delaying payments to school districts through the FSP from August until September 2005. CSHB 1 also would eliminate minimum-effort transition aid and Social Security hold-harmless funding through TRS.

Because of reduced funding levels, the proposed passthrough benefit would be "stair-stepped" by type of employee, as follows:

- $550 per year ($45.83 per month) to certified employees such as teachers, nurses, librarians, counselors, and educational diagnosticians;
- $300 per year ($25 per month) for full-time support staff, such as office workers and teacher aides; and
- $200 per year ($16.67 per month) for part-time employees.

Administrators would receive no passthrough. No restrictions would apply as to how employees could use the passthrough money. New employees would have to wait 90 days before receiving the passthrough.

Supporters say budget writers worked hard to preserve the passthrough and explored every option to maintain some level of benefit for all public school employees. Lawmakers are open to finding creative solutions this session, and assuming that the economy improves over the next two years, budget writers next session will have more flexibility and can be more generous. Reducing the passthrough would not eliminate TRS-ActiveCare, and school employees still would have the option to participate in the program. The stair-step levels reflect the importance of retaining a higher level of benefits for teachers and other certified employees, in view of the ongoing teacher shortage in Texas.

Opponents say this proposal would amount to a pay cut of $450 to $800 per year for school employees. Because state and district premium contributions are frozen, employees must absorb any cost increases. Reducing the passthrough could force many employees to drop their insurance coverage altogether. If employees began to drop out because of price concerns, only the highest-risk employees who were most desperate for insurance would remain in the risk pool. This would drive up claims costs, and the eventual premium increases would be shifted back to employees. "Stair-stepping" the passthrough would be a regressive policy implying that some school employees are more valuable than others. If part-time maintenance or cafeteria workers received only $16.67 per month to apply to a $300 health-care premium, they would have few options but to look for work elsewhere.

Other opponents say eliminating transition aid and hold-harmless funding would hurt districts at the M&O cap. At the time HB 3343 was enacted, the more than 200 districts then at the cap were promised permanent transition assistance. CSHB 1 would renege on that promise and would require those districts to shave millions of dollars more from their already tight budgets. Many more districts have reached the M&O cap since 2001, and the number continues to rise. Reducing funds for TRS-ActiveCare also would complicate districts' contract negotiations, which normally take place in the spring. Districts that enter into contracts that included the passthrough money and health insurance benefits could be exposed to costly litigation and contract dispute hearings if they had to revoke those promises later. The proposed method of finance also would hurt districts, in that it would rely on delaying state payments to school districts through the FSP at the beginning of a school year, putting districts in a difficult cash-management position.

Redesigning benefit plans for TRS-Care

Agency: Teacher Retirement System (TRS)

Background

Texas lawmakers created TRS-Care in 1985 to provide health insurance coverage for public school retirees. TRS-Care now covers about 148,000 people, including public school and higher education retirees, surviving spouses and children, and dependent spouses. The plan is funded by active-employee payroll deductions of 0.25 percent of salary, matched by a state contribution of 0.50 percent. Other revenue sources include retiree premiums, copayments and deductibles, and investment earnings.

While state and active-employee contributions were capped in 1989, retiree premiums rose by 87 percent between 1989 and 2001. Even with premium increases, enrollment growth and rising costs of medical care and pharmaceuticals have created a cash-flow problem for the plan. Program costs began to exceed revenues in fiscal 1996, and in the past two legislative sessions, the program has required supplemental appropriations to cover medical claims and maintain plan solvency. TRS-Care has no contingency reserve.

Under HB 3343 by Sadler, the 77th Legislature transferred $42 million from TRS-Care to TRS-ActiveCare to help with initial claims costs during the start-up phase of the new group health program for active public school employees.

In its Legislative Appropriations Request for fiscal 2004-05, TRS sought $1.37 billion for TRS-Care, more than double the $649 million appropriation for fiscal 2002-03. By the time the 78th Legislature convened, TRS estimated the program shortfall at $854 million. In its building blocks submission, TRS requested $515 million in general revenue appropriations plus $1.1 billion in supplemental funding. The program is funded in TRS Strategy A.2.1.

CSHB 1 — $630 million

CSHB 1 would appropriate $630 million for TRS-Care in fiscal 2004-05, a $19 million decrease from the current biennium. To make up the $854 million solvency shortfall for TRS-Care, the following changes would be necessary:

- reducing the payroll growth assumption ($116 million);
- increasing office copayments by 67 percent, instituting a three-tiered drug copayment, and tightening the provider network ($176 million);
- increasing retirees' TRS-Care premiums by 33 percent ($133 million);
- raising active employees' contributions to 0.50 percent in 2004 and to 0.75 percent in 2005 ($168 million);
- requiring school districts to make a 0.50 percent contribution ($220 million); and
- transferring the initial claims buffer amount back to TRS-Care from TRS-ActiveCare ($42 million).

Supporters say a report by the state auditor in January 2003 found that "significant changes" are necessary to keep the plan solvent. In response, lawmakers have worked hard to come up with creative solutions to the TRS-Care shortfall and to spread the burden of increased costs among all users of the system. TRS trustees have worked with retirees over the years to institute a series of network design changes that TRS-Care participants have found acceptable. Adding a school district contribution has become necessary now that the Legislature must come up with supplemental appropriations for TRS for the third session in a row.

Opponents say the state would back away from its commitment to TRS-Care by shifting all responsibility for rising costs onto employees, retirees, and school districts. Retired teachers have borne the brunt of past increases, and asking them to pay 33 percent higher premiums and a 67 percent increase in copayments would impose an unfair burden on them. Premium increases would range from $22 to $134 a month, depending on whether a retiree is in Medicare or has a spouse covered under TRS-Care. Considering that the average pension annuity provides only about $2,000 a month, this would be an onerous burden for someone on a fixed income.

Other opponents say imposing higher payroll contributions on active school employees would be unfair in combination with the proposed reduction in the passthrough for TRS-ActiveCare (see pages 45-46). It is unreasonable to ask school districts to come up with a 0.50 percent contribution, which would shift an even greater burden onto local property taxpayers. More than 400 districts have reached the statutory cap on maintenance-and-operations taxes and another 200 are close to the cap. Payroll typically represents 85 percent of a district's costs, and when the proposed district contribution of $220 million is coupled with proposed funding cuts for education programs, districts would be left between a rock and a hard place. This proposal would represent a tax increase for 60 percent of districts and a budget cut for the 40 percent of districts that already have reached their fiscal capacity. Either way, when the state refuses to pay its fair share, school children and local taxpayers suffer.

Redistributing TIF funds

Agency: Telecommunications Infrastructure Fund Board (TIFB)

Background

The 74th Legislature created the Telecommunications Infrastructure Fund (TIF) as part of the Public Utility Regulatory Act of 1995. With revenue generated by an assessment on telecommunications providers' receipts that is passed on to consumers through a charge on telephone bills, the fund was intended to receive $1.5 billion over 10 years to provide telecommunications access to Texas' public schools, not-for-profit hospitals, public libraries, and institutions of higher education. The fund is expected to reach its statutory limit during the third quarter of fiscal 2004, at which point the assessment will end.

The 1995 law also created the appointed, nine-member TIFB to help Texas develop an "advanced and sustainable telecommunications infrastructure that stimulates equitable access and universal connectivity." The law directed the TIFB to prioritize the funding of projects to benefit groups not previously served, especially in rural or remote areas, and distance-learning projects in school districts with a disproportionate number of at-risk students. Since 1995, the TIFB has awarded more than $1 billion in grants that have funded computer and server hardware, advanced Internet and intranet connections, distance learning, telemedicine technology, and training programs for education and health care. Under current law, the TIFB is scheduled to expire in 2005.

In addition to grant funds from the TIFB, school districts in Texas receive from the Texas Education Agency (TEA) a general revenue "technology allotment" of $30 per student to help buy technology equipment and to pay for instructional use in the classroom. For fiscal 2002-03, TEA distributed $230 million to school districts for the technology allotment.

In fiscal 2002-03, appropriations of income from the TIF assessment included about $400 million to the TIFB; $38 million to TEA; $22 million to the Health and Human Services Commission (HHSC) for grants for research and development of telecommunications technology to help people with disabilities and for an information and referral network; $6 million to the Library and Archives Commission for TexShare, a resource-sharing program for libraries that includes subscriptions to electronic information databases; and $1 million to the Texas Higher Education Coordinating Board (THECB).

In January 2003, Gov. Perry froze $224 million of the TIFB's $400 million appropriation for fiscal 2002-03 and proposed using TIF funds to finance the ongoing TEA technology allotment to schools. CSHB 7 by Heflin would reduce the TIFB's fiscal 2003 appropriation by $224 million, making it available for other purposes. The total remaining TIF money, including the frozen funds and remaining assessments, is projected at $491 million.

SB 1873 by Bivins/HB 3459 by Pitts would allow the TEA technology allotment to be paid from TIF funds, the available school fund, or any other funds available for that purpose. If the legislation took effect immediately, TIF funds could be used to fund the TEA technology allotment in fiscal 2003. CSHB 7 would appropriate $116 million from the TIF to TEA for the $30 technology allotment for 2003 and $26.4 million to the Department of Human Services (DHS) for TIERS, an HHS eligibility screening and enrollment technology project.

Two other bills filed this session would affect the TIF and its allocation. HB 46 by S. Turner would extend the expiration date of the TIFB until 2009 and would increase the TIF collection limit to $2 billion. HB 1635 by King would restrict the distribution of TIF funds to schools and higher education institutions.

CSHB 1 — $347 million

CSHB 1 would appropriate $2.1 million to the TIFB in fiscal 2004 to cover costs related to closing down the agency. The TIFB would receive no funds for fiscal 2005. The remaining TIF assessment for fiscal 2004-05 would be divided as follows: $282 million to the TEA technology allotment; $27 million to fund TIERS; $23 million to THECB for technology initiatives; and $12 million to the Library and Archives Commission for TexShare. CHSB 1 would leave unappropriated an estimated $144 million in TIF funds.

Supporters say CSHB 1 would allow the state to increase the technology allotment to schools by diverting TIF funds to TEA and increasing the technology allotment from $30 to $35 per student. The TIFB already has allocated more than $1 billion to building the state's technology infrastructure. This redirection of funds would achieve the purpose envisioned when the TIF was created: supporting the use of technology in public schools.

Opponents say TIF funds were intended to be used to help prevent a "digital divide" by developing a strong technology infrastructure in rural and underserved communities, not to fund general technology expenditures in schools, regardless of how worthy such expenditures may be. If TIF funds were distributed through the technology allotment, rural communities would receive a much smaller portion of the funds, because the allotments are distributed on a per-student basis. With the increased per-student allotment, the state would need to come up with even more technology funding in the next biennium, when TIF funds would not be available.

Other opponents say rather than closing down the TIFB, the Legislature should extend the assessment and increase its $1.5 billion limit. This would allow the state to continue to fund technology infrastructure projects as well as the technology allotment.

Higher Education Overview

Public higher education institutions funded by the state include 35 universities, 50 community and junior college districts, one technical college system, and three lower-division state colleges. Funding also goes to nine public health-related institutions, to the private Baylor College of Medicine, and to eight institutions in the Texas A&M System that conduct research and other programs in agriculture, engineering, transportation, and science. Compared to current funding, CSHB 1 would reduce overall funding for higher education by about $774 million, or 5 percent, in fiscal 2004-05. General revenue-related funding would fall by about $1 billion, or 8 percent.

Background

Public four-year universities depend on state funding to varying degrees. Some are funded almost entirely by state appropriations, while others rely heavily on external support, including nonappropriated tuition and fees, research grants, and private donations. Nearly 60 percent of all direct state appropriations for general academic institutions are allocated via two funding formulas and supplements for each formula, based primarily on enrollment and type of courses. One formula addresses instruction and operations, and the other, infrastructure. Universities also receive state funding from nonformula sources, including funding for institutional enhancements, "special items" identified by the Legislature, debt service for tuition revenue bonds, distributions from the Available University Fund (AUF) and the Higher Education Fund (HEF), and appropriations for staff benefits.

Public community and technical colleges receive nearly all of their state appropriations through formulas based on contact (classroom) hours. Health-related institutions receive state general-revenue allocations through a combination of formula funding, special items, tuition revenue bonds, and revenue generated by hospital services. Baylor College of Medicine receives funding equivalent to the per-student cost of public medical-school education.

The Permanent University Fund (PUF) backs bonds for capital improvement projects at the University of Texas and the Texas A&M University system offices and other institutions and agencies. Income from PUF investments, distributed through the Available University Fund (AUF), is used for debt service at the eligible institutions and for "excellence" funding at UT-Austin, Texas A&M-College Station, Prairie View A&M, and the UT and A&M system offices. The Higher Education Fund (HEF) provides funding for capital improvement projects and debt service at 30 other institutions. The 77th Legislature created two new funds for research and excellence funding: the University Research Fund supports institutions that receive funding from the AUF, and the Texas Excellence Fund supports institutions that receive HEF funding.

Higher Education Spending Comparisons
(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$12,870.1	$11,822.4	$(1,047.7)	(8.1)%
Federal funds	267.4	254.4	(13.0)	(4.9)
Other funds	3,249.4	3,536.5	287.1	8.8
All funds	16,386.9	15,613.3	(773.5)	(4.7)

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

Enrollment issues. Nearly one million students were enrolled in Texas' public higher education institutions in fall 2002, 9 percent more than in 2001. About 509,000 were enrolled in community colleges and state colleges, 456,000 in four-year universities, 13,800 in health-related institutions, and 10,700 in technical colleges. Nearly 115,000 students were enrolled in private institutions of higher education across the state. In the past two years, the rate of enrollment growth at both public and private institutions has been the highest in 25 years. Most of the growth has occurred in lower-division, two-year institutions.

Much of the debate on higher education funding in Texas centers on whether the budget is adequate to prepare an educated workforce for the "knowledge-based" economy, to enable higher education institutions to meet the growing demand for their services, and to keep Texas institutions competitive with university systems in other large states. Another major debate hinges on efforts to maintain a racially, ethnically, and economically diverse student body. Historically, Hispanics and African-Americans have enrolled in and graduated from higher education institutions at lower rates than Anglos. Some experts predict that Texas will have a less competitive workforce in the future unless public universities try harder to recruit and retain minority students.

To address these issues, the Texas Higher Education Coordinating Board (THECB) has focused on steps the state could take to improve the preparation of its workforce by "closing the gaps" in higher education participation, graduation rates, and funded research. Two specific goals are to enroll an additional 500,000 students in higher education by 2015 and to increase by 50 percent the number of degrees and certificates awarded by high-quality programs. An ongoing priority has been to expand the TEXAS Grants program and similar need-based financial aid programs. TEXAS Grants are available to Texas residents with the greatest financial need who complete college preparatory classes in high school or who earn associate degrees.

Tuition. Tuition and fees charged by public higher education institutions are set in statute. The 77th Legislature raised the resident tuition limit and increased the cap on aggregate student services fees at most universities from $150 to $250 per semester. The statutory tuition rate for the 2002-03 academic year is $44 per semester credit hour for Texas residents, with two-dollar increases scheduled each academic year until tuition reaches $50 per semester credit hour in 2005-06. Nonresident tuition is based on the average of nonresident tuition rates in the five most populous states other than Texas.

In addition to this statutory rate, institutions charge designated tuition (formerly the building use fee), which is not part of general state appropriations. Designated tuition is set by each institution's governing board and may vary even within individual systems, but may not exceed the statutory tuition rate.

To help offset projected state budget reductions, university system chancellors have expressed support for some form of tuition deregulation. HB 3015 by Morrison would allow institutions to charge tuition of up to 5 percent of a family's gross income. SB 1542 by Shapiro would allow governing boards to set designated tuition at up to three times the statutory tuition rate. SB 1486 by Ogden would give the boards flexibility in setting nonresident and summer school tuition.

Budget highlights

For fiscal 2003, most higher education institutions proposed achieving the requested 7 percent budget reduction by freezing hiring, reducing travel, postponing capital expenditures, and limiting summer school options. Because spring semester had begun before state leaders requested the cuts, most institutions' options for other reductions were limited. CSHB 7 by Heflin would reduce fiscal 2003 appropriations for higher education (including public junior and community colleges) by about $343 million in general revenue and by about $400,000 from general revenue dedicated accounts.

For fiscal 2004-05, CSHB 1 would distribute funding for higher education institutions through the established formulas at an amount 12.5 percent below the total formula funds distributed in fiscal 2002-03. Because the formulas are based mainly on enrollment, institutions with limited or no enrollment growth would experience funding cuts greater than the 12.5 percent decrease in formula funding.

CSHB 1 would distribute "hold harmless" funds to ensure that no general academic institution lost more than 5 percent more than the overall 12.5 percent decrease and that no health-related institution or two-year institution lost more than 12.5 percent. It would reduce funding for nonformula items, including special items, worker's compensation insurance, and institutional enhancement, by 12.5 percent. An additional $15 million would be allocated for debt service to institutions that are part of the South Texas Border Initiative. Appropriations to Texas State Technical College would include about $7.5 million in hold-harmless funds to minimize the effects of reduced income from student contact hours as the result of a move from a quarter to a semester system. Public and community colleges would receive $15 million more than in fiscal 2002-03 to cover enrollment growth.

Dramatic enrollment growth supplement. For fiscal 2002-03, THECB received $11 million for allocation to general academic institutions and $1.5 million for general academic nursing programs that experienced dramatic enrollment growth. Institutions that grew by 3 percent in each year of the biennium or by 6 percent overall were to receive allocations from the trusteed amount in addition to allocations for growth in the basic funding formulas. According to LBB, priority given to professional nursing programs in the allocation of these funds in fiscal 2002-03 resulted in less funding available for dramatic enrollment growth at general academic institutions.

For fiscal 2004-05, CSHB 1 would allocate $7.5 million for general academic institutions that experience dramatic enrollment growth. Nursing programs no longer would get first priority on growth funding. Supporters of this level of funding say rapidly growing institutions should continue to receive this additional financial support, particularly because many qualified institutions did not receive funding in fiscal 2002-03 because of the emphasis on nursing programs. Opponents say nursing programs should continue to have priority in rapid enrollment growth funding in order to continue progress made over the last two years in increasing enrollment in nursing programs to address the state's nursing shortage.

Baylor College of Medicine. CSHB 1 would appropriate $58 million in fiscal 2004-05 to Baylor College of Medicine, a 25 percent reduction from fiscal 2002-03. This funding would represent about 6 percent of Baylor's annual $890 million budget, much of which is committed to research grants. Supporters of this level of funding say Baylor should receive at least this much so that it can continue to provide a high-quality medical education at the same cost to the state as public institutions. Opponents say continuing support for medical training at this private institution would require the state to eliminate funding for research and technology at public institutions.

Tuition Equalization Grants. CSHB 1 would appropriate $143.8 million in fiscal 2004-05 to fund these grants, which pay part of the difference between tuition at private institutions and comparable public institutions for financially needy students. This would represent a 12.5 percent reduction from current funding. Supporters say these grants provide students with educational choices regardless of need and make additional space available for other students in public universities. Opponents question the use of public funds to support private education when resources to support public higher education institutions are limited.

AUF distributions. In November 1999, voters amended the Texas Constitution to allow the UT System Board of Regents to determine annual PUF distributions to the AUF on the basis of the total return on all PUF investments. Supporters said that granting fund managers broader investment authority would enhance PUF assets and enable the fund to grow enough to support bond issues required to cover the capital needs of eligible institutions. The UT System Office estimated that the change would generate an additional $87 million for the AUF for fiscal 2002-03. However, from August 2000 to January 2003, the value of PUF assets dropped from $8.4 billion to $6.3 billion, according to fund managers, as financial markets declined. The proposed distribution of $714 million for the AUF for fiscal 2004-05 would be deducted from the principal of the PUF, fund managers say. Rider 4 for the AUF would add language requiring fund managers to submit detailed investment information to the governor and LBB.

Funding for TEXAS Grants

Agency: Texas Higher Education Coordinating Board (THECB)

Background

In 1999, the 76th Legislature created the TEXAS Grants I program, administered by THECB. To qualify for these grants, students must be Texas residents who meet financial eligibility guidelines and complete the recommended or advanced high school curriculum. According to THECB, the average family income for most grant recipients currently is $40,000 per year. Grant amounts for students at public higher education institutions are based on statewide tuition and fees, and grants for students at private institutions are based on tuition and fees at comparable public institutions. The average grant award is $1,475 per semester for university students. THECB projects that about 40,200 new grants will be awarded during 2003, nearly four times the number awarded in 2000, the first year of the program.

For fiscal 2002-03, the 77th Legislature appropriated $295 million for TEXAS Grants I and authorized THECB to carry over unexpended balances from fiscal 2001 and to transfer funds from other selected programs. At the end of fiscal 2003, THECB expects to have an unexpended balance of $82 million, consistent with legislative directive in the current general appropriations act.

The 77th Legislature established TEXAS Grants II for students attending community and technical colleges. To qualify for these grants, students must meet financial eligibility guidelines but are not required to complete the recommended high school curriculum. For fiscal 2002-03, lawmakers appropriated $10 million for TEXAS Grants II.

CSHB 1 — $335 million

CSHB 1 would appropriate $335 million in general revenue to fund TEXAS Grants I for fiscal 2004-05 and $9.7 million for TEXAS Grants II. According to LBB, this funding would represent a 2 percent decrease from all amounts (including carryover of unexpended balances) appropriated for fiscal 2002-03.

Supporters say reducing TEXAS Grants funding by only 2 percent would represent a strong commitment to the program at a time when other state programs face severe cutbacks or elimination. While THECB might not be able to meet its full funding goals, the majority of high school students who qualify could receive TEXAS Grants. In establishing this program, the state did not promise that every qualified student would receive a grant. This level of funding would represent a temporary pause in the program's growth, which lawmakers can restore in future years as the budget situation improves.

Other proposals — $404 million

Supporters say the state should increase funding over the CSHB 1 level to ensure that TEXAS Grants are available to every qualified Texas student. By making higher education more accessible to qualified low-income students, this program is one of the state's most important tools for "closing the gap" in higher education. At the CSHB 1 funding level, THECB estimates that it would have to deny grants to an estimated 10,000 students in 2004 and to as many as 18,000 students in 2005. Without this assistance, many low-income and minority students might be unable to pursue a higher education. Texas needs to provide this financial aid to help produce an educated workforce that can attract industrial growth and to make sure that jobs created in Texas go to Texans. With the rapid increase in college costs in recent years, more students than ever depend on financial aid to help cover a portion of college costs. Authorizing THECB to carry over its current unexpended balance of $82 million from fiscal 2002-03 would enable the agency to offer more new grants to qualified students.

Opponents say maintaining or increasing funding for TEXAS Grants would make it necessary to sacrifice other important higher education programs. For example, a program to provide funding for graduate medical students would be eliminated entirely. Cuts to medical students and schools through various agencies' budgets could have a catastrophic effect on the state's health-care infrastructure.

Article 4 Overview

The Texas court system includes two high courts, 14 intermediate appellate courts, 418 state district courts, and nearly 2,200 county, city, and justice-of-the-peace courts. The state funds all functions of the Supreme Court and the Court of Criminal Appeals and most functions of the 14 courts of appeals. Some of the 13 appellate courts outside of Austin also receive some funding from the counties in which they are located. The state provides no funding for local courts. Most judicial functions for trial courts are funded locally, including the cost of all court personnel (other than judges' salaries) and the courts' capital and operating expenses.

The state pays the salaries of all 450 appellate and district judges, provides courtrooms for the three appellate courts based in Austin, and covers travel expenses for district judges whose district covers more than one county. The state also pays the entire salaries of 153 district and county attorneys and partial salaries of two assistant district attorneys.

Other state-funded judiciary functions include the Office of Court Administration, State Law Library, Office of the State Prosecuting Attorney, State Commission on Judicial Conduct, Court Reporter's Certification Board, and Judiciary Section of the Comptroller's Office.

For fiscal 2004-05, CSHB 1 proposes total funding of $418 million for the judiciary, or less than 1 percent of all state spending. This would represent a reduction of about $11 million, or 2.5 percent, in all funds from fiscal 2002-03. General revenue-related appropriations would total $338 million, a reduction of 6 percent.

Background

Court budgets are not based on the number of cases, but on the number of judges and staff. Therefore, a continuing issue for courts is showing the number of cases disposed in relation to the number filed, both per court and per judge. In general, the number of cases filed increases every year, with criminal case filings rising faster than civil case filings in most parts of the state. The Supreme Court and Court of Criminal Appeals have some discretion over which cases they hear, but the intermediate appellate courts must dispose of every case filed. As dockets have grown and the number of judges has remained constant, appellate judges have relied on legal staff and visiting judges to increase output and avoid creating a backlog of cases.

Budget highlights

Judiciary agencies proposed trimming their fiscal 2003 budgets by reducing travel, returning unexpended balances, and reducing FTEs. The agencies made these reductions after prioritizing the speedy disposition of cases and maintenance of salaries. CSHB 7 by Heflin would

Article 4 Spending Comparisons
(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$361.4	$338.4	$(23.0)	(6.4)%
All funds	428.8	418.2	(10.6)	(2.5)

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

reduce fiscal 2003 budgets for Article 4 agencies by $5.1 million in general revenue and by $836,000 from dedicated accounts in general revenue.

Comptroller's Judiciary Section. CSHB 1 would appropriate about $176 million in all funds to the comptroller's Judiciary Section in fiscal 2004-05, down from $188 million in the current biennium. These funds pay the salaries, in whole or in part, of many district judges, prosecutors, county judges, and administrative law judges. Among other items, the appropriation also pays for operations of the Public Integrity Unit of the Travis County District Attorney's Office; operations of the Special Prison Prosecution Unit, which prosecutes crimes committed on property of the Texas Department of Criminal Justice; and salaries of former and retired judges who are called to duty as visiting judges under Government Code, sec. 74.061.

The Public Integrity Unit, though staffed by county employees, is funded entirely by state appropriations. The unit investigates cases of insurance and motor-fuels tax fraud, public corruption and malfeasance, and crimes committed by state employees and by the public against state government. The unit's appropriation for fiscal 2002-03 is about $6.2 million. CSHB 1 would reduce the unit's fiscal 2004-05 budget to $5.7 million, requiring a reduction of 21.5 FTEs. The comptroller maintains that this cut would not decrease the amount of tax revenue collected. According to unit officials, the proposed budget cut would limit severely the unit's ability to respond to state agency requests and would reduce its investigative capability.

Statewide fee for appellate court funding. Some counties apply a fee to all cases filed in trial courts and use the proceeds to pay for expenses of the court of appeals serving that county. The fees range up to $5 per case filed, and the use of proceeds is governed by both the commissioner's court and the court of appeals receiving the funds. Only the courts of appeals serving the largest counties (Harris, Tarrant, Dallas) receive funds from this fee. Last year, Harris County raised more than $600,000, which was split equally between the 1st and 14th Courts of Appeals. Some courts have suggested that establishing a statewide fee on case filings could raise several million dollars in revenue for the courts of appeals.

Government reform. Chief Justice Tom Phillips has proposed reducing the number of justices on the Supreme Court from nine to seven by attrition. Proponents say this measure would save an estimated $400,000 per biennium with no decrease in productivity. They note that every other large state has a seven-judge supreme court.

A proposal has arisen to combine the 1st and 14th Courts of Appeals. The two courts are housed on adjacent floors of the same building in Houston and have the same jurisdiction, but each court employs its own staff and justices. The proposal would create a single court with 18 justices (each court now has nine) with a consolidated staff attorney, briefing attorney, and administrative staff. To reduce their fiscal 2003 budgets, the 1st Court reduced staff and the 14th Court gave back unexpended balances. Supporters say the proposed consolidation would make it possible to eliminate several FTEs and save several hundred thousand dollars each biennium. Combining the courts' libraries, they say, could create savings by reducing the number of subscriptions. Opponents say consolidating the courts probably would save no money in the coming biennium because of reductions already made for fiscal 2003 and that further study is necessary to determine if the measure would save money and resolve logistical and feasibility issues.

Article 5 Overview

Article 5 covers state agencies responsible for criminal justice and public safety. The largest agency is the Texas Department of Criminal Justice (TDCJ), which operates the adult correctional system. TDCJ receives about two-thirds of the general revenue-related funds in Article 5. Together, the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC), responsible for juvenile offenders, receive about 9 percent. Other Article 5 agencies include the Department of Public Safety (DPS), Texas Alcoholic Beverage Commission (TABC), Commission on Jail Standards, Adjutant General's Department, Criminal Justice Policy Council (CJPC), and three boards that license and regulate criminal-justice professionals.

CSHB 1 would appropriate $6.7 billion in general revenue-related funds for Article 5 in fiscal 2004-05, a decrease of about $375 million, or 5 percent, from fiscal 2002-03. Article 5 agencies would receive 7 percent of all funds and 11 percent of general revenue-related funds in fiscal 2004-05, roughly the same shares as in the current biennium.

Background

Growth in adult correctional demand. Growth in Texas' criminal-justice spending has been driven mainly by increases in the number of adult offenders incarcerated in state facilities. Texas houses more prisoners than any other state. On average, inmates are serving much larger percentages of their sentences than in 1992, according to CJPC. For example, offenders who committed the most serious and violent crimes served 80 percent of their sentences in 2001, compared to 40 percent in 1992.

From 1989 to 1999, Texas' adult correctional capacity — mainly in prisons, state jails, and transfer facilities — more than tripled. As of February 2003, total adult correctional capacity stood at about 151,470 beds. However, TDCJ can operate at only 97.5 percent of total capacity, or 147,683 beds, because of the need for flexibility in moving inmates.

Many factors contribute to the demand for correctional beds, including the crime rate, types of criminal sentences prescribed by the Legislature and imposed by the courts, rates of parole and probation, and rates of revocation of parole and probation. Also, the state has a statutory duty to accept state offenders from county jails within 45 days after all processing is completed for their transfer to state facilities.

Parole release and revocation policies have the most immediate impact on the demand for correctional beds, according to CJPC. As parole approval rates have risen in recent years, more correctional beds have become

Article 5 Spending Comparisons
(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$7,123.3	$6,748.7	$(374.6)	(5.3)%
Federal funds	388.9	257.4	(131.5)	(33.8)
Other funds	958.5	855.3	(103.2)	(10.8)
All funds	8,470.8	7,861.4	(609.4)	(7.2)

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

available. The 2002 parole approval rate was 25 percent, the highest since 1994.

TDCJ's excess prison capacity is declining rapidly, however, in part because of higher crime rates. The index crime rate, a measure of seven categories of serious crime, increased by 4 percent in 2001 and by 1.3 percent in the first half of 2002, according to CJPC. In recent months, admissions to TDCJ have increased faster than projected. As of late February 2003, TDCJ had no empty beds below operational capacity. Assuming that admission and release trends do not change significantly, CJPC projects that demand for prison space will exceed operational capacity by 2,131 beds at the end of fiscal 2003, by 4,755 beds at the end of fiscal 2004, and by 6,865 beds at the end of fiscal 2005, leading to backlogs in county jails as convicted felons await available beds in TDCJ facilities.

TDCJ is pursuing short-term solutions to meet capacity demands, including finding additional capacity within existing units that can be used on a temporary basis, redesigning Substance Abuse Felony Punishment from a nine-month to a six-month program, and transferring the Hamilton TYC facility in Bryan, once used for adult prisoners, back to TDCJ. These emergency measures would add about 4,000 beds.

Growth in juvenile offender populations. The capacity of state facilities for juvenile offenders also has grown over the past decade to meet expected demand due to tougher policies for punishing and supervising juvenile offenders. In 1995, TYC facilities contained space for 1,686 juveniles. By 2002, that capacity had grown to more than 4,000. While Texas' juvenile population grew by 15 percent from 1995 to 2001, the arrest rate dropped by 21 percent. Also, a statute enacted by the 76th Legislature allows misdemeanant offenders to be committed to TYC only after two prior felony or misdemeanor adjudications, instead of after a first offense.

The TYC population was lower during fiscal 2002 and the first part of fiscal 2003 than CPJC had projected, partly because of fewer commitments from counties and reduced lengths of stay for nonviolent offenders. For the current biennium, TYC has reduced its contracted capacity to save money. CJPC's March 2003 projections, based on current assumptions, indicate a surplus capacity of 293 beds by fiscal 2004 and of 345 beds by fiscal 2005.

Only a small percentage of juveniles referred to the juvenile justice system are sent to TYC. The rest are handled locally by juvenile probation departments or juvenile courts. CJPC projects that in 2004, nearly 120,400 juveniles will be referred to probation, compared to about 113,100 juveniles in 2001.

Budget highlights

Article 5 agencies submitted separate proposals to reduce their budgets by 7 percent for fiscal 2003. TDCJ proposed laying off about 850 administrative and other staff. Several hundred correctional managed health-care employees also would lose their jobs. The agency did not propose laying off correctional workers. TDCJ also proposed reducing funding for prison health care, post-secondary vocational and educational programs, and sex-offender treatment and substance-abuse programs. TJPC proposed reducing funding for local juvenile probation departments for direct services such as summer school and residential programs for youthful offenders. DPS proposed reducing funds for concealed-handgun licensing and for the remote-sensing component of the emissions inspection and maintenance program. Other Article 5 agencies reduced their budgets mainly by returning unexpended balances, eliminating travel, reducing or delaying capital expenditures, and imposing a hiring freeze. CSHB 7 by Heflin would reduce fiscal 2003 spending for Article 5 agencies by about $195 million in general revenue, including $171 million from TDCJ.

CSHB 1's proposed fiscal 2004-05 appropriation for TDCJ, $4.8 billion, would represent an 8 percent reduction of current funding. TDCJ has requested an additional $45 million to contract with county jails to house state prisoners, at a rate of $40 per inmate per day. That funding request, however, was based on CJPC's January projections of the prison population during fiscal 2004-05, and revised projections are significantly higher.

Adult probation. Adult community supervision (probation) receives about 10 percent of TDCJ's total funding. The Community Justice Assistance Division

(CJAD) oversees and distributes state funds to local community supervision and corrections departments (CSCDs) that provide direct services. The state pays for about two-thirds of a CSCD's operating budget, and offenders pay for the rest through court-ordered fees. County governments provide office space and equipment. In fiscal 2002, about 430,000 offenders were under community supervision, according to CJAD.

CSHB 1 would appropriate $411 million for adult probation services in fiscal 2004-05. TDCJ has requested an additional $12.7 million for CJAD to continue to provide local CSCDs with their current level of state funding. This funding appears in the Article 9 "wish list." Supporters argue that adult probation is underfunded in the current budget and that any reduction would be a move in the wrong direction. They say that average caseloads for community supervision officers already are too high and that not enough residential facilities exist to house offenders.

An earlier proposal would have reduced funding for adult probation by nearly 50 percent from current levels. Such cuts would have eliminated funding for misdemeanor probation, outpatient treatment, community restitution, employment and education programs, and drug courts, and would have required significant cuts for residential services and specialized caseloads.

Substance-abuse programs. TDCJ offers substance-abuse treatment for offenders from the time of commitment until the end of community supervision. CSHB 1 would appropriate $105 million for these programs in fiscal 2004-05, compared to $136 million in the current biennium. TDCJ has requested additional funds to continue substance-abuse services provided by the state jail division ($5.3 million), by self-help recovery programs for TDCJ inmates ($5.7 million), and for referrals of parolees ($11.4 million). Funding for these items appears in the Article 9 "wish list." Supporters argue that these programs reduce recidivism, thereby easing prison crowding and enhancing public safety, and that they enhance institutional security by engaging inmates in productive activities while they are incarcerated.

Vocational/educational programs. Inmates have access to post-secondary academic and vocational programs. The Windham School District oversees these programs and enters into contracts with colleges and universities serving the geographic areas where the units are located. College-level vocational programs include auto body repair, electronics, masonry, and welding, among others. Offenders also may work toward post-secondary academic degrees while incarcerated. Inmates are responsible for many of the costs associated with academic programs, whether they pay at registration, qualify for grants or scholarships, or reimburse the state after release. Project RIO (Re-Integration of Offenders) seeks to secure employment for offenders after their release by linking them to job placement and training programs. TDCJ receives funding for this program through an interagency contract with the Texas Workforce Commission (TWC).

CSHB 1 would allocate $1.7 million in general revenue for vocational programs and $7.2 million for Project Rio in fiscal 2004-05; both totals are slightly below the levels in the current general appropriations act. However, CSHB 7 by Heflin would authorize TWC to reduce fiscal 2003 appropriations for Project RIO in an amount approved by LBB. TDCJ has asked for additional funds for academic programs, and the Article 9 "wish list" includes $5.7 million in all funds for these programs. Supporters argue that vocational and academic programs reduce recidivism, enhance institutional security by engaging inmates in productive activities, and increase the likelihood that inmates will become contributing members of society after their release from prison.

TYC operations. CSHB 1 would appropriate about $482 million to TYC for fiscal 2004-05, 10 percent less than in the current biennium. To meet this reduction, TYC has proposed reducing average lengths of stay for nonsentenced offenders. For general offenders, this would mean a reduction from the current 17 months to 14 months in fiscal 2005. For more serious or violent nonsentenced offenders, the reduction would be from 24 to 22 months. Youths who received determinate sentences from courts would continue to serve their entire sentences. TYC also would have to end parole supervision for juveniles 18 and older. Currently, TYC supervises parolees up to age 21, when appropriate. Under CSHB 1, youthful offenders would receive services for the first 90 days after their 18th birthday and then be discharged.

Concealed handgun licensing. CSHB 1 would appropriate $8.5 million to DPS for concealed handgun licensing in fiscal 2004-05, about $2.4 million less than in the current biennium. DPS pays overtime for traffic enforcement troopers to conduct background checks of applicants for concealed-handgun licenses. Revenue for the program comes from the $140 application fee. DPS says it has eliminated the backlog of applications and expects to be able to continue performing background checks as needed.

Government reform. A January 2003 report by the State Auditor's Office identified gross fiscal mismanagement at the Texas Commission on Private Security that led to a budget shortfall of $923,000 in fiscal 2002 and an anticipated shortfall of $434,000 in fiscal 2003. HB 2 by Swinford, as filed, would abolish the commission and transfer its functions to DPS. CSHB 1 would move the commission's appropriation of $808,000 to DPS.

HB 2 also would abolish the Texas Military Facilities Commission and transfer its functions to the Adjutant General's Department. CSHB 1 would fund the military commission at $25.3 million for fiscal 2004-05. HB 2 also would abolish the Commission on Law Enforcement Officer Standards and Education (TCLOSE) and transfer its functions to DPS. CSHB 1 would fund TCLOSE at $5.4 million for the coming biennium.

Other budget issues. The following pages examine these Article 5 issues in more detail:

- reducing funding for prison health care and psychiatric care, and
- reducing community services for mentally ill offenders.

Funding for prison health care and psychiatric care

Agency: Texas Department of Criminal Justice (TDCJ)

Background

In 1993, the 73rd Legislature created the Correctional Managed Health Care Committee (CMHCC) and charged it with developing a managed health-care system for prison inmates. TDCJ contracts through the committee with the University of Texas Medical Branch at Galveston (UTMB) and the Texas Tech University Health Sciences Center (TTUHSC) to provide the statewide managed health-care network. TTUHSC's contract covers about one-fifth of the prison population, and UTMB's contract covers the remainder.

Texas' correctional managed health-care program is similar to health maintenance organizations in the "free world," using a statewide network of providers and set rates for services, called capitation rates. Inmates have access to a full range of medical, dental, and psychiatric services. The system includes ambulatory care clinics at each prison unit, infirmaries at locations across the state, regional medical facilities operated by the two universities for inmates with more serious medical problems, specialty care hospitals, and chronic care clinics for inmates with illnesses such as HIV, hepatitis, and diabetes. Both universities use telemedicine, which allows distant medical specialists to evaluate inmates without the need to transport them. The universities also provide comprehensive mental health services, including inpatient care at several facilities and outpatient treatment at most prison units. Crisis management and on-call psychiatric services are available 24 hours a day.

The most significant factors driving up health-care costs, according to CMHCC, are the aging of the inmate population and changing standards of care for hepatitis C and psychiatric disorders. The number of offenders age 55 or older has increased by more than 13 percent in two years. Although these older offenders comprise less than 5 percent of all offenders in TDCJ facilities, they account for 18 percent of billed charges for hospitalization. The chronic care program now monitors some 18,000 hepatitis C patients, and 28 percent of new offenders committed to TDCJ test positive for hepatitis C. The National Institutes of Health (NIH) has recommended new medications and treatment therapies for hepatitis C that would cost much more than current treatments. Providing newer psychiatric medications to inmates also would drive up costs. CMHCC expects pharmacy costs to increase by double-digit percentages in the next few years as newer therapies emerge and the standard of care changes.

CSHB 1 — $657 million

CSHB 1 would appropriate $657 million to TDCJ in fiscal 2004-05 for correctional managed health care and psychiatric care under Strategies C.1.3 and C.1.4, about the same amount as appropriated for fiscal 2002-03.

Other proposals — $688 million

TDCJ seeks about $31 million in additional general revenue to continue funding for health care and psychiatric care at current-services levels.

Supporters say additional funding is necessary to maintain a constitutional prison health-care system in Texas. The federal court ruling in *Ruiz v. Estelle*, originally filed in 1972, found constitutional violations in several areas of Texas' prison system and instituted federal court oversight beginning in 1980. Among other changes, the court ordered the state to increase the availability of medical care for inmates. Federal court oversight ended in June 2002. TDCJ must maintain its current level of health-care services to avoid the reimposition of federal oversight and renewed costly litigation. Even if this funding were restored, TDCJ could not keep pace with new standards of care in the treatment of hepatitis C, nor could it provide new-generation drugs to treat mental illness. These deficiencies could expose TDCJ to a lawsuit challenging the constitutionality of its health-care system.

Without this funding, inmates could be denied access to timely health-care services. In some facilities, nurses and doctors would be on duty for only 12 hours a day, rather than their current 24-hour service. If an inmate needed care while no nurse or doctor was on duty, the prison would have to transport the inmate to another

facility or possibly a local emergency room for treatment. As a result, TDCJ would face higher transportation and security costs.

The CSHB 1 level of funding also would cause a reduction of ancillary psychiatric services such as occupational, recreational, and music therapy. These treatments ultimately can reduce the need for medications for mentally ill inmates.

TDCJ also needs additional funding to continue vaccinating new inmates for hepatitis B. The 76th Legislature appropriated money for vaccinations to address a growing problem in the prison system that would threaten the general public if offenders with this disease were released from prison. Continuing the vaccinations would be less expensive for the state than treating inmates for the illness.

Opponents say funding under CSHB 1 would enable the state to continue to provide the constitutionally required level of health care for prison inmates. The prison system has an obligation to assume its share of budget reductions, and inmate health care should not be exempt.

Reducing community services for mentally ill offenders

Agencies: Texas Department of Criminal Justice (TDCJ) and Texas Juvenile Probation Commission (TJPC)

Background

The 77th Legislature in 2001 appropriated $35 million in new funding for an Enhanced Mental Health Services Initiative to serve mentally ill offenders in the community. The initiative targets offenders with serious mental illnesses such as schizophrenia, major depression, and bipolar disorder. It provides intensive case management, specialized supervision, and treatment services to offenders at the pretrial, probation, and parole levels.

In fiscal 2002-03, about $31 million went to TDCJ to serve adult offenders and $4 million to TJPC for juvenile offenders. Of TDCJ's portion, about $23 million went to the Texas Council on Offenders with Mental Impairments (TCOMI), which coordinates programs for mentally and physically impaired adult and juvenile offenders, and the remainder went to TDCJ's Community Justice Assistance Division. TCOMI has contracts with 32 local mental health/mental retardation (MHMR) centers that deliver services for mentally ill offenders.

CSHB 1 — $12.1 million

CSHB 1 would appropriate $8.1 to TDCJ for adult probation mental-health caseloads and $4 million to TJPC for juvenile caseloads in fiscal 2004-05. The bill would omit $22.2 million for TCOMI requested by TDCJ.

According to TCOMI, more than 5,500 adult and juvenile probationers and juvenile parolees would stop receiving mental health services under CSHB 1. The bill would eliminate funding for intensive case management services for adult and juvenile offenders, including psychiatric assessments, medication, and counseling. It also would eliminate continuity-of-care services, including screening, referrals for medical and psychiatric treatment, and after-care services for offenders released from local jails and detention centers, as well as from the Texas Youth Commission (TYC). CSHB 1 also would not fund benefit eligibility specialists who ensure that mentally ill offenders apply for benefits under Medicaid or the Children's Health Insurance Program (CHIP).

Other proposals — $34.3 million

The Article 9 "wish list includes $22.2 million for TCOMI to restore funding to the fiscal 2002-03 level.

Supporters say CSHB 1 would undo important gains made by the 77th Legislature in ensuring that mentally ill offenders receive the intensive treatment they need. TCOMI funding is necessary to ensure public safety. Mentally ill offenders are a high-risk population, and they are likely to commit more crimes if they are not stabilized with medication and treatment.

Without intensive treatment, mentally ill offenders would be likely to wind up back in prison, in TYC facilities, or in a state hospital. Judges would lose faith in the probation alternative for mentally ill offenders and would sentence them to prison instead. It would be much more cost-effective to keep these offenders on probation and parole than to pay to incarcerate or hospitalize them. As inmates, the mentally ill are among the most expensive to maintain. Early intervention provided by TCOMI lowers rates of recidivism among the mentally ill populations. Many of those who receive treatment from TCOMI are being stabilized for the first time in their lives.

CSHB 1 would make mentally ill probationers and parolees wait in line for MHMR services like anyone else, and they might not receive the services they need. Also, MHMR providers ordinarily cannot force patients to participate in treatment. Under the TCOMI plan, offenders who do not show up for treatment are pursued actively, and judges may use the threat of revoking probation to keep them on track.

Eliminating specialists who help mentally ill offenders apply for Medicaid or CHIP would be counterproductive, because these programs help defray the costs of treating mentally ill offenders. Furthermore, once mentally ill offenders are sent to jail or prison, they no longer are eligible for Medicaid or CHIP benefits.

Opponents say this type of mental health assistance could be funded better at the local level. Many counties have achieved success with this type of initiative. Pretrial and probation services traditionally are funded at the county rather than the state level, and that should continue, especially in light of the state's current budget constraints. Also, MHMR centers already offer programs that address the needs of the mentally ill population.

Article 6 Overview

Article 6 contains Texas' natural resource agencies: the Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife Department (TPWD), General Land Office (GLO), Texas Water Development Board (TWDB), Texas Railroad Commission, Texas Department of Agriculture (TDA), Texas Animal Health Commission (TAHC), Soil and Water Conservation Board (SWCB), Texas Council on Environmental Technology, and river compact commissions. These agencies are entrusted with protecting, managing, and developing Texas' agricultural, wildlife, environmental, water, and oil and gas resources, as well as state parks and lands.

Natural resource agencies are funded primarily by general revenue and general revenue-dedicated funds. Some, like TCEQ, are funded mainly by fees, while TDA is supported almost entirely by general revenue. However, federal funds account for between 10 percent and 25 percent of the budgets of TCEQ, TPWD, TAHC, and SWCB.

CSHB 1 proposes to spend almost $2 billion in all funds for Article 6 agencies in fiscal 2004-05, 10 percent less than in the current biennium. General revenue-related spending would total $1.4 billion, an 11 percent decrease from fiscal 2002-03.

Budget highlights

To save money in fiscal 2003, Article 6 agencies proposed to freeze hiring, leave FTE positions vacant, reduce or eliminate spending on travel and training, and reduce or defer vehicle purchases. CSHB 7 by Heflin would reduce fiscal 2003 appropriations for Article 6 by $11 million in general revenue and by $44 million from dedicated accounts. The total includes $30 million from lapsed funds for TCEQ's petroleum storage tank remediation program.

HB 3442 by Pickett, as filed, would allow lawmakers to reduce appropriations to Article 6 agencies as necessary to achieve a balanced budget. It would require the GLO, TPWD, Railroad Commission, and TAHC to reduce spending of state funds in certain areas and would amend funding mechanisms for some agencies.

Weather modification. CSHB 1 would discontinue funding for TDA's weather modification program, which received $4.9 million for fiscal 2002-03. The program awards grants to political subdivisions for cloud-seeding projects. Discontinuing the program could reduce fee revenue generated by the Texas Department of Licensing and Regulation for weather modification licensing, according to LBB. Supporters say eliminating the program

Article 6 Spending Comparisons
(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$1,599.9	$1,421.1	$(178.8)	(11.2)%
Federal funds	285.4	241.6	(43.7)	(15.3)
Other funds	305.4	309.7	4.3	1.4
All funds	2,190.7	1,972.4	(218.3)	(10.0)

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

would preserve core services in other functional areas during difficult economic times. Opponents say the grants have benefitted agricultural production in drought-stricken areas of West Texas.

Coastal erosion control. CSHB 1 would eliminate general revenue funding for coastal erosion control, a trusteed program within the GLO (Strategy A.1.1). The program received about $31 million for fiscal 2002-03, including $12.6 million in general revenue, $4.8 million in dedicated funds from interest on the Coastal Protection Fund, $8 million in federal money, and appropriated receipts from local matching funds. Several bills this session would raise the cap on the fund from $25 million to $40 million until August 31, 2005, and would allow the agency to use the money to pay for coastal protection. According to GLO, raising the fund cap would make up for the eliminated general revenue appropriation. Fund revenue comes from a fee of $0.02 per barrel of crude oil imported to or exported from a Texas port. Under current law, when the fund balance reaches $25 million, income up to $5 million is transferred to the Railroad Commission for the oilfield cleanup fund. However, CSHB 1 contains no rider that would restore funding for erosion control contingent on enactment of legislation to raise the cap. In addition, HB 3442 by Pickett would require the Railroad Commission to reduce general revenue spending by combining its oil-spill response functions with those of GLO.

Pipeline and railroad safety. CSHB 1 would appropriate to the Railroad Commission $3.5 million for pipeline and rail safety, about $6.6 million less than in fiscal 2002-03. Numerous bills would require the commission to impose fees on pipeline operators (and pipeline consumers under HB 3442 by Pickett) to pay for the pipeline safety program. HB 3442 also would require user and operations fees on railroads. The new fee revenue would cover the cost of restoring pipeline and railroad safety programs. However, CSHB 1 contains no rider that would appropriate funds contingent on the enactment of legislation. According to the commission, without the fees, the state would have to forgo $3.3 million in federal funds for pipeline safety and return responsibility for railroad safety to the federal government.

Debt service on water bonds. CSHB 1 would appropriate $51.5 million to TWDB for debt service on general-obligation water bonds in fiscal 2004-05, $7.5 million more than in the current biennium. The increase would pay for debt service on debt issued during fiscal 2002-03, as well as new debt to be issued during fiscal 2004-05 for the Economically Distressed Areas Program. The current appropriation also includes debt-service payments for $16 million in agricultural water conservation bonds issued at the end of fiscal 2002. The fiscal 2004-05 appropriation would provide debt service for the full biennium.

Petroleum storage tank (PST) remediation. CSHB 1 would appropriate $147 million to TCEQ's PST cleanup program, about $59 million less than the total funding for fiscal 2002-03 (Strategies C.1.1 and C.1.2 and Rider 39) and about $40 million less than the agency requested for the program. Supporters of reducing the appropriation point out that the program has $30 million of lapsed funds in fiscal 2002-03 from lower-than-expected reimbursement claims. Opponents argue that the lapsed funds were due in part to an overestimate of the number of eligible cleanup sites. They note that reducing funding would lengthen the amount of time needed to clean up the state's leaking PSTs and could create problems with statutory deadlines for completing the program.

Government reform. HB 2 by Swinford, as filed, would abolish the Texas Council on Environmental Technology (TCET), transfer any unobligated funds to general revenue, eliminate the council's FTEs, and transfer its contracts and other duties to TCEQ. TCET, created in 2001 (SB 5 by Brown), awards grants for development of new emissions-reducing technologies, such as alternative-fuel engines or emissions-control systems. For fiscal 2002-03, the council was appropriated $22 million for technology grants and for three FTEs in 2002 and four in 2003. However, TCET received only $1.5 million in fiscal 2002 because of a fee-revenue shortfall in the agency's funding mechanism. CSHB 1 would appropriate $3.1 million to the council for fiscal 2004-05.

Other Article 6 issues. The following pages discuss in greater detail the issues of reducing funding for low-income vehicle repair and assistance (TCEQ) and reducing state funding for local park grants (TPWD).

Vehicle repair and assistance for low-income families

Agency: Texas Commission on Environmental Quality (TCEQ)

Background

Texas operates a vehicle emissions inspection program as part of its State Implementation Plan (SIP) to reduce ground-level ozone emissions to comply with U.S. Environmental Protection Agency (EPA) air-quality standards. The program requires emissions testing of vehicles registered in Collin, Dallas, Denton, El Paso, Harris, and Tarrant counties. These counties form part of the state's ozone nonattainment areas, classified as such by EPA because they violate federal standards for ground-level ozone. By requiring vehicles in these counties to meet emissions standards, the state earns credit toward emissions reductions required by the SIP. In May 2003, the vehicle emissions inspection program will expand to include Brazoria, Ellis, Fort Bend, Galveston, Johnson, Kaufman, Montgomery, Parker, and Rockwall counties. Chambers, Liberty, and Waller counties are scheduled to enter the program in May 2004.

In participating counties, the emissions test is conducted along with the annual vehicle safety inspection on gasoline-powered vehicles between two and 24 years old. In all participating counties except El Paso, two emissions tests are available: an on-board diagnostic test for 1996 and newer vehicles and an accelerated simulation mode test for pre-1996 vehicles. Inspection stations can charge a fee of up to $27 for each emissions test, which, added to the safety test fee of $12.50, results in a total inspection fee of up to $39.50. In El Paso County, vehicles are tested by a two-speed idle test, for which a total fee of $26.50 is charged for the emissions test and safety inspection.

If a vehicle fails the emissions test and the owner does not receive a waiver, the owner must have the vehicle repaired to correct the deficiency and must submit it for free retesting at an inspection station. If a vehicle registered in a participating county fails the emissions test and the owner does not return for a retest or receive a waiver, the owner cannot renew the vehicle's registration.

The 77th Legislature enacted HB 2134 by Chisum, creating the Low Income Vehicle Repair Assistance, Retrofit and Accelerated Vehicle Retirement Program (LIRAP) to provide financial assistance for low-income owners of vehicles that fail the emissions test. Eligible owners are those whose family income is at or below 200 percent of the federal poverty rate. A vehicle is eligible for LIRAP if it has failed an emissions test within 30 days of applying for the program, has been registered in the county for at least two years, can be driven under its own power to the emissions inspection station or disposal facility, and has passed the vehicle safety inspection. A county participating in the vehicle emissions inspection program may choose to implement LIRAP. Collin, Dallas, Denton, Harris, and Tarrant counties have implemented LIRAP, but El Paso County has not.

LIRAP provides up to $600 to repair or retrofit a vehicle to bring it into compliance with emissions standards. If repair or retrofit is uneconomical, LIRAP provides between $600 and $1,000 toward purchase of a replacement vehicle. HB 2134 directs TCEQ to fund LIRAP through a portion of the fee collected for the emissions test. Because the on-board diagnostic test is cheaper for the inspection station to perform than the accelerated simulation mode test, TCEQ has chosen to fund the program with $6 of the total $39.50 fee for the on-board diagnostic emissions test and safety inspection.

For fiscal 2002-03, TCEQ Rider 41 appropriates $17.1 million for LIRAP from the Clean Air Account, contingent on generation of sufficient new fee revenue. The appropriation includes $3.2 million for fiscal 2002 and $13.6 million for fiscal 2003 to provide funding to counties participating in LIRAP, plus about $350,000 for administrative costs.

CSHB 1 — $27.2 million

CSHB 1 would appropriate $27.2 million for LIRAP in fiscal 2004-05 under TCEQ Strategy A.1.4, Air Quality Assessment and Planning. Rider 21 would specify that the program receive equal appropriations each year of the biennium but would appropriate no additional inspection-fee revenue from counties that opt to participate in the program on or after September 1, 2003.

Supporters say LIRAP helps the state reduce emissions as required by the SIP. Vehicles that fail the emissions test must be brought into compliance. LIRAP enables low-income owners to pay for necessary repairs that they otherwise could not afford. This funding level would be adequate to support the program and represents an increase over fiscal 2002-03. Although the appropriation would be less than the agency requested, TCEQ so far has spent only $29,000 of the $13.6 million appropriated to the program for fiscal 2003.

Other proposals — $37.9 million

In its building blocks submission, TCEQ requested $37.9 million for LIRAP in fiscal 2004-05.

Supporters say this request reflects the estimated cost to operate the program. TCEQ based its estimate on the number of vehicles expected to fail the emissions test, the number of owners expected to meet the family income criteria, and the average cost of repairs. The agency has designed the program's fee structure to meet the expected cost. The reason for the discrepancy in the amount appropriated for fiscal 2003 and the amount spent is that TCEQ began the program late in fiscal 2002 by providing $3.2 million to participating counties. LIRAP programs in some counties still are spending from the initial funds. Moreover, the program began operating on a reimbursement basis after the initial round of funding, meaning that TCEQ has yet to receive bills for work already performed.

Opponents say the estimated cost of the program is little more than a guess. Because the program is new, little information exists on which to base an estimate. Also, the lack of equivalent programs in other states provides little basis for comparison.

Other opponents say the state might be able to spend the money allocated for this program in other areas to achieve a greater reduction in pollution.

State funding for local park grants

Agency: Texas Parks and Wildlife Department (TPWD)

Background

TPWD makes grants to local governments from the Texas Recreation and Parks Account (TPRA) to cover one-half the costs of developing local parks or recreational or open-space areas. The TRPA, a dedicated account in general revenue, comes from sales taxes on the sale, storage, or use of sporting goods. When revenue to the account exceeds $14 million per year, up to 15 percent is available for grants to local governments to help pay for acquisition or development of indoor public recreational facilities.

For 24 years, the state has provided grants to local governments for parks. In 1979, the Legislature created the Texas Local Parks, Recreation, and Open Space Fund. The fund received 1 cent per pack of the cigarette tax to award matching grants to local governments for half the cost of new local parks and recreational facilities and to provide state matching funds for federal monies under the Urban Parks Rehabilitation and Recovery Act of 1978. In 1993, the 73rd Legislature repealed the dedication of cigarette-tax revenue and designated the fund as the TRPA. Under that legislation, revenue for local park grants comes from sales taxes on the sale, storage, or use of sporting goods. The State Parks Account and the TRPA each receive $13.5 million per year and 40 percent of the amount over $27 million per year of sporting-goods sales-tax credits to TWPD, not to exceed $32 million. However, HB 3442 by Pickett would repeal those dedications.

The fiscal 2002-03 budget allocates about $50 million in all funds ($31 million in general revenue) to TPWD for local park grants through Strategy B.1.2. The estimated number of assisted projects completed is 130 for the biennium. Rider 15 allocates $2 million from this strategy to fund local grants for the development of indoor recreation facilities.

For fiscal 2004-05, TPWD initially proposed achieving its 12.5 percent budget reduction entirely from the TRPA, since few of the agency's other programs involve general revenue. The House Appropriations Committee's general government subcommittee asked TPWD to search its budget for reductions in other areas to preserve as much funding as possible for local park grants.

CSHB 1 — $34.8 million

CSHB 1 would appropriate $34.8 million in all funds (including $14.9 million from the sporting-goods sales tax) to TPWD for local park grants in fiscal 2004-05, about 30 percent less than in fiscal 2002-03. At this funding level, TPWD could award an estimated 120 grants during fiscal 2004-05.

Supporters say although local park grants have been popular, continuing the grants at the current funding level would take needed general revenue away from programs that involve public health and safety. Local governments should bear the primary responsibility for local parks. In these tight fiscal times, the state's first obligation in this area should be to state parks.

Opponents say the local park grants program has fulfilled a need for more than two dozen years. With continuing urban and suburban development, the state needs to devote more money to protecting open spaces and help maintain and develop local recreational areas for the majority of its citizens. As the costs of land, services, and materials increase, city and county funds are stretched too thin to meet the recreational needs of their populations in metropolitan or small community areas.

Article 7 Overview

Article 7 contains the budgets of agencies charged with supporting the Texas economy through business development, transportation, and infrastructure: the Texas Department of Transportation (TxDOT), Texas Workforce Commission (TWC), Texas Department of Economic Development (TDED), Texas Department of Housing and Community Affairs (TDHCA), Texas Aerospace Commission, Texas Lottery Commission, and Office of Rural and Community Affairs (ORCA).

CSHB 1 proposes to spend $14.2 billion for fiscal 2004-05 under Article 7, about 12 percent of the total state budget. Overall funding for these agencies would increase by $249 million, or about 2 percent from the current level, because of greater availability of federal and other funds, primarily highway-related. General revenue-related funding would decline by $98 million, or 12 percent.

Federal funds account for about 50 percent of appropriations for Article 7 as a whole. Most of the federal funds are appropriated to TxDOT for highway programs, but federal funding also accounts for a significant portion of the budgets of TWC, TDHCA, and ORCA. Another 45 percent of Article 7 spending comes from "other" funds, including the State Highway Fund (Fund 6), interagency contracts, and appropriated receipts.

Background

Transportation funding. Unlike most agencies, TxDOT receives most of its funding from constitutionally dedicated sources, primarily state and federal motor-fuels taxes (MFTs) deposited into Fund 6. Less than 1 percent of TxDOT's budget comes from general revenue.

Legislators have discussed various options to increase highway funding, including efforts by Texas' congressional delegation to obtain a greater proportion of what Texans pay in federal MFTs; expanding toll roads; redirecting some general revenue sources into Fund 6; and bonding, either through federal grant anticipation notes (GARVEE bonds) or through the Texas Mobility Fund. The 77th Legislature created the mobility fund but designated no revenue source, although several bills filed this session would designate a source. The current federal highway funding statute expires this year, and members of Congress are seeking more money than the White House has proposed for the next six-year plan.

Budget highlights

Most Article 7 agencies proposed to reduce their budgets for fiscal 2003 through method-of-finance changes, reducing travel expenditures, and leaving unfilled FTE positions vacant. CSHB 7 by Heflin would reduce fiscal

Article 7 Spending Comparisons
(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$ 789.8	$ 691.5	$ (98.2)	(12.4)%
Federal funds	7,006.1	7,064.2	58.1	0.8
Other funds	6,155.1	6,443.9	288.9	4.7
All funds	13,950.9	14,199.6	248.7	1.8

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

2003 appropriations for Article 7 agencies by $12.5 million in general revenue (more than half from the TWC budget) and by nearly $25 million from dedicated accounts, almost all from the Lottery Account. Also, TxDOT transferred $100 million from its fiscal 2002-03 capital expenditure appropriations to its planning, designing, and managing functions. This sum was not spent because of TxDOT's cash-flow problems that arose in the fall of 2001.

HB 3443 by Pickett, as filed, would allow lawmakers to reduce appropriations to Article 7 agencies as necessary to achieve a balanced budget. It would authorize these agencies to reduce spending by consolidating reports and publications; extending license, permit, and registration periods; contracting with other agencies or with private vendors to carry out agency duties; adopting additional eligibility requirements for benefit recipients; and adopting and collecting fees to cover agency costs.

For fiscal 2004-05, Article 7 agencies prioritized their reductions to mitigate the impact on key programs. For example, TDHCA preserved the Housing Trust Fund from spending reductions and sought equivalent cuts elsewhere. TWC pursued a similar strategy regarding the Skills Development Fund.

TxDOT programs. Overall, CSHB 1 would appropriate $10.7 billion for TxDOT in fiscal 2004-05, up from $10.3 billion in fiscal 2002-03. Most of the increase would come from projected growth in MFT and vehicle-registration fee revenues and from an expected increase in federal payments. CSHB 1 would eliminate all but about $9 million of TxDOT's general revenue funding, which is $52.5 million for fiscal 2002-03. Most of these expenditures are for commercial truck regulation and various loan and grant programs, including public transportation, that would receive Fund 6 money in fiscal 2004-05. Thus, the general revenue reduction primarily would affect the automobile theft prevention program and TxDOT administration.

TxDOT's Automobile Theft Prevention Authority (ATPA) makes grants to local law enforcement agencies to help pay for activities that deter automobile theft. ATPA is funded by a $1 fee assessed on each auto insurance policy in force in Texas and sometimes paid by insurers. Although the fee is specified in ATPA's statute, collections go into general revenue and are not dedicated. CSHB 1 would shift ATPA's method of finance to the undedicated portion of Fund 6 and would reduce the appropriation from $31 million in fiscal 2002-03 to $20.4 million in fiscal 2004-05. Rider 53 would allow ATPA to spend additional revenue if the fee were to generate more than $30.4 million in fiscal 2004-05. Supporters say this is the best approach to maintain the grant program, which some local agencies have come to rely on as a budgetary supplement. Opponents say it would be unfair to sever the linkage between auto insurance and theft deterrence to address a short-term revenue shortfall. Some also suggest that APTA more appropriately belongs in the Department of Public Safety or the Department of Insurance.

Government reform. The Sunset Advisory Commission and the comptroller have recommended abolishing TDED and transferring its primary economic development functions to the Governor's Office, as well as reducing the number of agencies involved in tourism promotion. The Sunset staff also has recommended abolishing the Aerospace Commission, stating that its limited resources preclude the commission from serving effectively as an economic development agency. The Sunset Advisory Commission did not adopt the staff's findings on the Aerospace Commission.

SB 275 by Nelson would move TDED's functions to an economic development office within the Governor's Office, which would be the sole state entity responsible for out-of-state tourism marketing and promotion. The bill also would move the Aerospace Commission's functions to the same new office. According to LBB, the TDED move would save the state at least $3.1 million in fiscal 2004-05, primarily by reducing administrative expenses. Others argue that this move could reduce the effectiveness of economic development initiatives in Texas. CSHB 1 would fund TDED at $55.7 million in fiscal 2004-05, about 20 percent below the current level.

Other Article 7 issues. The following pages discuss in greater detail the issues of funding for child-care assistance and funding for skills development, both under TWC.

Funding for child-care assistance

Agency: Texas Workforce Commission (TWC)

Background

TWC subsidizes child-care costs for some low-income families so the parents can work or attend training or educational classes. Three categories of children are eligible for subsidized child care: those whose parents take part in the Temporary Assistance to Needy Families (TANF) Choices program, those whose parents are making the transition from TANF to work, and those whose parents are classified as at risk of receiving public assistance. In awarding child-care funds, TWC must give priority to current and recent TANF recipients before serving at-risk families. When a higher-priority child requests services, TWC must end services to a lower-priority child to make room in the program.

Funding for child-care assistance comes from both state monies and federal block grants. To draw federal funds, state matches can come from general revenue, local funds, or in-kind donations. In addition to federal block grants for child care, up to 20 percent of a state's TANF block grant can be converted to child-care funds.

During fiscal 2002-03, TWC is expected to spend $862 million on child-care services, serving an average of 108,900 children per day. Of this amount, $702 million, or 83 percent, comes from federal Child Care Development Fund (CCDF) grants. From 2002 to 2003, the number of children on the waiting list for child-care assistance rose from about 37,300 to 52,200. This number depends on availability of federal funds and recertification of need by eligible families. Following the release of new federal funds in December 2002, about 31,000 children remained on the waiting list for child care as of March 2003.

In 2002, Congress failed to reauthorize the expired federal TANF legislation but continued funding for TANF at current levels. Lawmakers are likely to consider reauthorization again this spring. Legislation approved by the U.S. House of Representatives would require increased participation in welfare-to-work programs and likely would increase the number of families eligible for TWC child-care services.

CSHB 1 — $889 million

CSHB 1 would appropriate $889 million to TWC for child-care services in fiscal 2004-05, an increase of about $27 million, or 3 percent, from the current biennium. Of the proposed amount, about $149 million, or 17 percent, would be general revenue, and the rest would come from federal and other funds.

Supporters say CSHB 1 would provide adequate funding for TWC's child-care programs. As demand for TANF and TANF-transitional child care increases because of stricter federally-mandated work requirements and increased program participation, these two groups will use more of the funds allocated to TWC for child-care services, leaving less funding available for working families at risk of becoming dependent on TANF. General revenue in the CSHB 1 proposal would draw down federal child-care dollars effectively, enabling TWC to serve about 53,650 at-risk children on average each fiscal year.

Opponents say the state's fiscal situation constrains the amount of general revenue available for child-care funding. While child care for at-risk families is an important priority, the state has too many other immediate needs in areas such as health care, education, and transportation to justify increased spending for child care for these recipients. Also, child-care services suffer from a lack of coordination. Head Start, pre-kindergarten, and other programs do not work together to ensure maximum efficiency, so one program may have open slots while another has a waiting list. Before the state dedicates more resources to these programs, the program administrators should demonstrate that they can work together more closely.

Other opponents say CSHB 1 would not provide enough support for child-care services. Some 31,000 children are on the waiting list for these services across the state — Houston's local workforce development board alone is unable to serve 8,000 eligible children — and waiting times for eligible families can be more than one year. Failure by the state to provide child care for these at-risk families could lead to increased TANF caseloads.

Funding for skills development

Agency: Texas Workforce Commission (TWC)

Background

TWC administers the Skills Development Fund, created in 1995 by the 74th Legislature to help businesses, labor unions, community organizations, and educational institutions pay for and implement customized job training. The fund supports efforts to produce skilled employees in areas deemed necessary by Texas employers. Training is tailored to specific jobs with local employers.

Unlike most TWC programs, all of the Skills Development Fund budget comes from general revenue. The 77th Legislature appropriated $24.7 million for the program in fiscal 2002-03. This level of funding allowed TWC to serve about 13,700 trainees per year.

CSHB 1 — $24.7 million

For fiscal 2004-05, CSHB 1 would maintain funding for skills development (Strategy B.1.3) at the current level of $24.7 million.

Other proposals — $49.7 million

TWC requested an additional $25 million for the Skills Development Fund, double the appropriation proposed by CSHB 1. The agency listed this additional funding as its top "exceptional item" priority.

Supporters say the substantial waiting list for the program justifies additional funding. Given the rising cost of providing training, the funding proposed by CSHB 1 probably would serve fewer people in fiscal 2004-05 than it has served in the current biennium. TWC can provide only one dollar of services for every three to four dollars demanded by employers. Additional funding would enable the agency to train nearly 10,000 additional workers each year whose expertise is needed by Texas businesses. The agency has identified a wage premium of more than $3 per hour for workers associated with the program.

Opponents say the state's difficult financial situation places constraints on all agencies. While the Skills Development Fund program has been efficacious, other agencies with pressing needs have been forced to reduce their budgets. CSHB 1 would exempt this program from budget reductions in recognition of the high demand and lengthy waiting list for skills development training.

Article 8 Overview

The state delegates much of its regulation of business professionals and service industries to agencies in Article 8, which range in size and scope from the Public Utility Commission (PUC) to the Structural Pest Control Board. Article 8 also includes the Insurance and Banking departments, Board of Medical Examiners, Worker's Compensation Commission, and Racing Commission. Thirty-six agencies regulate specific professions or industries: general professions and services (13), health care (10), financial services (seven), insurance and workers' compensation (four), and utilities (two). The Texas Department of Licensing and Regulation (TDLR) and the State Office of Administrative Hearings provide general administrative support.

Most Article 8 agencies obtain revenue from fees paid by the professionals and workers they regulate — typically for registration, licensing, and examinations — and from fines assessed to violators. A few also derive revenue from sales of goods and services and through interagency contracts.

Fiscal 2004-05 funding for Article 8 as proposed in CSHB 1 would total $896 million, less than 1 percent of the overall state budget, including $500 million in general revenue-related funds. Overall funding would increase by almost 25 percent from fiscal 2002-03.

Budget highlights

To reduce their fiscal 2003 budgets, regulatory agencies reduced travel and salaries, deferred capital expenses (mainly computers and vehicles), and froze hiring. TDI reduced its staff by 48 FTEs and is holding 40 positions vacant through fiscal 2003. The PUC laid off 37 employees, and the Real Estate Commission laid off six employees and left another position vacant. CSHB 7 by Heflin would reduce fiscal 2003 appropriations for Article 8 agencies by $11 million in general revenue and by $1.6 million from dedicated accounts.

The overall funding increase for Article 8 in fiscal 2004-05 is due mainly to an increase in the System Benefit Fund, administered by the PUC. This fund, which comes from fees charged on electricity customers' utility bills, pays for assistance to low-income customers and for other programs arising from utility restructuring.

CSHB 1 would fund most regulatory agencies at slightly below their fiscal 2002-03 levels. However, those that regulate financial sectors would receive an increase in all funds, in part because some would receive higher contingency appropriations. Several agencies said the proposed cuts would result in less oversight of licensees, possibly resulting in more complaints by consumers. Agencies also projected increases in the time required to resolve complaints filed against licensees.

Article 8 Spending Comparisons
(millions of dollars)

Type of funds	Expended/budgeted 2002-03	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	$484.7	$500.3	15.6	3.2
Other funds	226.0	390.0	164.0	72.5
All funds	717.6	895.8	178.2	24.8

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, April 7, 2003.

State Securities Board (SSB). With its mission to protect Texas investors, the SSB investigates and assists in the prosecution of securities fraud and processes applications to register securities for sale in Texas. CSHB 1 would appropriate $7.1 million to the SSB for fiscal 2004-05, down from $8.7 million in the current biennium. To meet the reduction, the SSB would have to eliminate 16 FTEs, or 20 percent of its staff, including four investigators. The securities commissioner testified that the planned cuts would erode the board's ability to investigate securities fraud cases during a critical period for the securities market.

Unlike most other state agencies that regulate financial transactions and institutions, the SSB's fees are set in statute. Fees specified for filing various applications range from $10 to $75; the $10 fee for an application to sell securities has not changed since 1977. These fees typically have generated much more for general revenue — more than $225 million in the past two fiscal years — than the agency has been appropriated for its operations. CSHB 1840 by Solomons would allow the board to set application fees up to $100 as needed to cover the cost of administering and enforcing the Securities Act.

Regulatory response riders. Contingency riders allow agencies that regulate segments of the financial services industry to spend additional revenue generated by fee increases if warranted by industry conditions or federal resources, subject to approval by the governor and LBB. CSHB 1 would change the Banking, Savings and Loan, and Credit Union departments' regulatory response riders to reflect revised appropriation and FTE levels that would apply in fiscal 2004-05. It also would add a new Rider 5 for the S&L Department pertaining to mortgage brokers. CSHB 1 would appropriate up to $2.4 million to the Banking Department if examiner turnover or quality impedes the frequency of examinations.

Government reform. HB 2 by Swinford, as filed, would abolish the Structural Pest Control Board and transfer its duties to the Texas Department of Agriculture. It would abolish the State Board of Barber Examiners, the Texas Cosmetology Commission, and the boards of Professional Land Surveying, Public Accountancy, Professional Engineers, and Architectural Examiners and transfer their functions to TDLR. It would direct the Finance Commission to develop and implement cost-saving measures by combining financial regulatory agencies' administrative functions and to report on those measures biennially to the lieutenant governor and House speaker. CSHB 1403 by West would merge the barber examiners and cosmetology commission into a new Texas Commission on Barbering and Cosmetology.

The Board of Nurse Examiners (BNE) primarily regulates registered nurses (RNs), while the Board of Vocational Nurse Examiners (VNE) regulates licensed vocational nurses (LVNs). The two agencies share a common reception area and receptionist, and BNE will take over responsibility for VNE's information technology functions as of September 1, 2003. Some argue that combining the two agencies would save money, increase operational efficiency, and be more convenient for the nursing communities. Others counter that LVNs could lose their professional identity if the two agencies were combined and that merging the agencies would not necessarily save money or improve the performance of either board. HB 1483 by Allen would abolish the VNE and direct the BNE to regulate both sets of professionals. CSHB 1 would fund the BNE at $5.1 million and the VNE at $2.6 million in fiscal 2004-05.

SDSI agencies. The 76th and 77th Legislatures created a pilot program allowing more fiscal autonomy for the Public Accountancy, Professional Engineers, and Architectural Examiners boards. The intent of the Self-Directed, Semi-Independent (SDSI) licensing agency project was to test whether agencies could operate effectively outside the appropriations process. The SDSI agencies can set licensing fees, enter into contracts, and acquire property. They deposit their collected fees, fines, and other money into a trust fund in the treasury and withdraw funds as needed to meet their budgets, which they adopt independently of legislative oversight. They may not charge any cost, including salaries, to general revenue. Legislation enabling this program expires September 1, 2003, and the Sunset Advisory Commission has recommended allowing the program to expire. As noted above, HB 2 would abolish the three agencies as separate entities. CSHB 1 would bring these agencies back into the budget with total funding of $12.5 million for fiscal 2004-05.

Funding for regulatory agencies

Agencies: Various regulatory agencies in Article 8

Background

State regulatory agencies commonly charge fees and taxes to their regulated entities to pay for activities such as licensure, examination, and inspection. Article 8 agencies generally are appropriated general revenue and/or dedicated general revenue for the biennium, and their fee and tax collections are returned to general revenue or, in the case of agencies with dedicated general revenue, to the agency for its dedicated purpose.

Agencies that regulate the financial sector (Department of Banking, Savings and Loan Department, Credit Union Department, and Office of Consumer Credit Commissioner) are called self-leveling. That is, a decrease in their appropriation requires a corresponding reduction in the revenues collected from the entities they regulate.

Agencies that regulate and oversee the insurance sector (Texas Department of Insurance, Texas Workers' Compensation Commission, and Research and Oversight Council on Workers' Compensation) assess taxes on insurers. These entities, like the self-leveling financial regulators, are neutral to the state's general revenue. Maintenance taxes for these three agencies are set in statute. Because of budget reductions for fiscal 2003, the maintenance taxes assessed this year are expected to exceed the amounts these agencies will spend. Any savings would be reallocated to the agencies, and the agencies would have to adjust their maintenance tax rates for fiscal 2004-05 to generate less revenue because of the fiscal 2003 overcollection.

Some other regulatory agencies (boards of Dental Examiners, Chiropractic Examiners, Plumbing Examiners, and Tax Professional Examiners, among others) are not self-leveling. The governing boards or commissions of these agencies have authority to increase or decrease their fees. These agencies usually collect more money than they are appropriated, creating a net gain for general revenue.

The House Appropriations Committee's regulatory subcommittee initially recommended reducing the fiscal 2004-05 appropriations of all Article 8 agencies by 12.5 percent from current levels, without distinguishing among agencies according to their method of finance. The full committee abandoned this approach in favor of the provisions of CSHB 1.

CSHB 1 proposal

CSHB 1 would allow agencies that regulate the financial and insurance sectors to maintain approximately the same appropriations and service levels in fiscal 2004-05 as in the current biennium. It would reduce the appropriations of other agencies by varying amounts from fiscal 2002-03.

Supporters say agencies that regulate finance and insurance should maintain current funding in fiscal 2004-05 so they may continue their current regulatory activities. In this period of volatile financial and insurance markets, taxpayers are served better if regulators have the resources they need to protect the public interest. The financial industry generally supports this position and is willing to pay higher fees, because it is in the industry's best interest to keep the profession free of the fraud and malpractice that often abound when regulation is weak.

Reducing the budgets of these agencies would result in no net reduction of general revenue, nor would it release monies that could be used elsewhere. Dollars cut from these agencies' budgets also reduce revenue generation, so the comptroller would have to make a corresponding reduction in the total revenue available for appropriation. In the case of insurance regulation, reducing funding for the regulating agencies ultimately could cost the state general revenue through a loss in premium taxes.

Many regulatory agencies also collect fines from regulated entities that fail some component of the inspection process. These fines, in most cases, go into general revenue and can be used as state lawmakers choose. One way that regulatory agencies have proposed to meet the proposed budget reductions is by reducing their workforces. These cuts would include laying off inspectors,

without whom the agencies could not perform as many inspections as they do now. Though the primary purpose of the fines is not to raise money for the state, in practice, fines contribute to the state's available resources. Thus, reducing an agency's inspection budget could have the unintended consequence of reducing state revenues.

Opponents say a budget that excepts some agencies from spending cuts likely would not achieve the targeted overall reduction. Fees are taxes in disguise, and allowing agencies to increase their fees and taxes to support the cost of state government would contradict the tax-policy commitments of state leaders and the preferences of the voters who elected them.

Exceptions to budget cuts also raise equity concerns about the appropriation process. It would be inequitable to cut programs as essential as nursing homes and children's health care while some regulatory agencies retain their full budgets simply because they can raise fees or taxes from their constituents. All components of state government should share the burden of adjusting to the budget shortfall.

Other opponents say regulatory agencies that oversee other professions are as important for consumer protection as are those that oversee the financial and insurance sectors. To protect the public from fraud and abuse in all professions, the regulatory boards for health care and other professions also should have their budgets restored to current levels.

Article 9 Overview

Provisions in Article 9 direct state agencies in their use and management of budgeted dollars in administrative and program operations, such as:

- employee salaries and benefits;
- travel;
- capital budgets;
- board and commission per-diem payments;
- contract workers;
- publications;
- information resource projects; and
- worker's compensation payments.

Article 9 also includes general provisions on state employment policies, use of federal funds and revenues from the sale of surplus property and other goods and services, transfer of funds between capital items, and budget performance and accounting requirements.

CSHB 1 would delete from Article 9 many provisions of past budget acts that the 77th Legislature codified in statute. The bill also would repeal the current appropriation of $200 million to the comptroller for an emergency contingency reserve and contingent appropriations for salary increases in fiscal 2002-03.

Major provisions

Tobacco-settlement funds. The 76th Legislature in 1999 used tobacco-settlement proceeds to establish 21 health-related permanent trust funds and higher education endowments. In so doing, it "locked in" the corpus and earnings of those funds to support the programs for which they were established. The transfer and distribution of dedicated earnings on tobacco-settlement funds are governed by spending rules enacted by the 76th Legislature in HB 1676 and HB 1945, both by Junell. Under SB 445 by Moncrief, the first money left over from the permanent funds and endowments goes to support the Children's Health Insurance Program (CHIP).

The budget acts for fiscal 2000-01 and 2002-03 appropriated tobacco-settlement funds under Article 12. CSHB 1 includes no separate article for tobacco-settlement funds but would note the appropriation as a method of finance at the end of each relevant agency's budget. An informational rider (Art. 9, sec. 10.09) lists tobacco-settlement appropriations and distributions from the permanent funds and endowments.

For fiscal 2004-05, CSHB 1 would appropriate slightly more than $1.1 billion in tobacco funds, or $66 million more than in fiscal 2002-03. CSHB 1 would place no additional money in the permanent trust funds or endowment funds. Interest from the trust funds and endowments would be appropriated for their stated purposes, as noted in the method-of-finance section for each agency.

The Health and Human Services Commission (HHSC) and the Texas Department of Health (TDH) would receive all but about $100 million of the tobacco-settlement funds. The largest portion, almost $1 billion, would pay for part of CHIP, administered by HHSC. TDH would receive about $34 million for tobacco prevention and other programs. The remaining tobacco funds would support programs in other budget areas, including $4.7 million for health programs under the Office of Rural Community Affairs and smaller amounts for higher education institutions.

"Wish list" items. Art. 9, sec. 11.29 identifies certain budget items that would not be funded by the general appropriations act for fiscal 2004-05 because of insufficient revenue. The House-Senate conference committee on HB 1 could consider funding these items as additional revenue became available. The list includes slightly more than $1 billion for programs under Articles 1, 2, 3, and 5, the largest being $283.5 million for the Department of Human Services' community care entitlement program.

Sec. 11.28 identifies 62 items of general revenue capital budget authority for individual agencies that the conference committee could consider reducing for fiscal 2004-05. These items total $29.5 million.

e-Texas recommendations. Art. 9, Part 12 lists contingency measures that would take effect if the Legislature enacted certain recommendations in the comptroller's e-Texas report. Generally, these measures

would reduce or transfer fiscal 2004-05 appropriations for specific agencies or programs and/or would reduce FTE authorizations.

Salary schedules. Article 9 of CSHB 1 would adopt the state auditor's recommendations for changes to the salary classification plan. The changes would include creating one inclusive set of salary schedules for certain groups; reducing the number of unused, underused, and redundant classes; revising outdated and inconsistent class titles; and adjusting the classification schedules for correctional officers. The bill would create a formal compensation policy, as recommended by the State Auditor's Office. Such a policy would be designed to encourage agencies to make more effective use of the compensation system and to inform employees of how the system works.

Travel compensation. CSHB 1 would add Art. 9, sec. 5.06(e), authorizing the comptroller to reimburse state employees for meals or lodging expenses for trips that last less than six hours. Current law does not allow reimbursement for these short trips. The compensation would have to meet all other requirements associated with travel compensation.

Travel cap for river compact commissions. CSHB 1 would exclude river compact commissions from the definition of a state agency for purposes of limiting travel expenditures under Art. 9, sec. 5.09. By virtue of their mission, the river compact commissions require a significant amount of travel, and the restrictions limit how well the commissions can perform their duties, according to budget writers.

FTE cap for State Preservation Board. Some state agencies' FTE caps are calculated on the basis of an average for the fiscal year, while others are an absolute number. Some agencies, such as higher education institutions and the Texas Parks and Wildlife Department, have seasonal highs and lows in employment. For these agencies, an annual average provides a more accurate picture of staffing levels. Art. 9, sec. 6.14(c) of CSHB 1 would add the State Preservation Board to the list of agencies whose FTE cap is computed as an average.

Budget reporting. Under Art. 9, sec. 7.01, state agencies must report an itemized budget to the governor, LBB, comptroller, and Legislative Reference Library on or before November 1 of each fiscal year. CSHB 1 would change the deadline to December 1 in an effort to improve the quality of information being reported. LBB observed that because the state fiscal year ends only two months before this deadline, many agencies must revise their budgets soon after submitting them.

Notice to LBB of contracts. Sec. 7.05 would require a state government entity that entered into a contract larger than $50,000 to notify LBB. Portions of the Government Code require agencies to notify LBB about their information resources, construction, and professional or consulting contracts. The proposed rider would broaden the requirement to include all contracts over $50,000, regardless of their content, except interagency contracts.

Notice to LBB of federal funds. Sec. 8.02 would require state agencies and higher education institutions to report receipt of federal funds of at least $5 million if the funds were not appropriated by the general appropriations act. Unless the federal funds were for disaster assistance, the agency could not spend the funds without submitting a plan outlining how the funds would be spent.

TERP fund. The Texas Emissions Reduction Plan (TERP), created by the 77th Legislature in SB 5 by Brown, is a set of incentive-based programs intended to reduce Texas' ozone-producing emissions enough to satisfy federal clean-air requirements. Surcharges on construction equipment, certain heavy-duty diesel vehicles, commercial vehicle registration, and a commercial vehicle inspection fee generate revenue for the program. Revenue has come in about 85 percent below the original estimate of $133 million, mainly because a state district court decision in 2002 invalidated the primary funding mechanism, a $225 inspection fee for registering an out-of-state vehicle.

Art. 9, sec. 11.21 would appropriate $43.2 million in fiscal 2004-05 from the TERP account to the Texas Commission on Environmental Quality, Public Utility Commission, Comptroller's Office, and other agencies that administer TERP programs. The money would be distributed according to the allocation formula in Health

and Safety Code, sec. 386.252, and any excess revenue in the account would be distributed to the appropriate agencies. HB 1365 by Bonnen, approved by the House on April 8, would restore TERP funding by imposing a temporary fee on delivery of diesel fuel, increasing the surcharge on sales of heavy-duty diesel equipment, and applying the surcharge to leases and rental of such equipment.

Interoperable communications equipment. Sec. 11.24-25 would require seven agencies to link their radios through an interoperable communications system, contingent on receipt of federal funds. Those agencies are DPS, the Texas Parks and Wildlife Department, Texas Department of Transportation, Texas Youth Commission, Texas Department of Criminal Justice, Texas Alcoholic Beverage Commission, and Texas Forest Service. The agencies could not buy any new radio equipment until the interoperable system was established.

Fuel efficiency. Sec. 11.27 would require state agencies with more than 10 vehicles or pieces of nonroad diesel equipment to reduce total fuel consumption by at least 5 percent from 2002 levels through the use of cost-effective fuel-saving technologies purchased from the agencies' fuel budgets.

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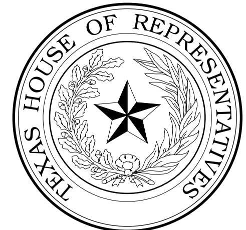

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