

Senate Finance Committee  
Interim Report  
November 2018



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# SENATE FINANCE COMMITTEE

85th Legislature

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November 28, 2018

The Honorable Dan Patrick  
Lieutenant Governor of the State of Texas  
Capitol Building, Room 2E.13  
Austin, Texas 78701

The Senate Finance Committee submits this report in response to the interim charges you have assigned to this Committee.

This report examines several topics, including the Alamo's historical site renovation, the Economic Stabilization Fund, the Texas Emission Reduction Plan, the structure of fees across state government, adult and juvenile corrections funding, the state's trauma system, business personal property taxes, and interest rate disparities. Additionally, this report focuses on the cost and economic impact of Hurricane Harvey.

We appreciate the leadership you have displayed in asking this Committee to examine these issues, and we trust the recommendations offered in this report will help guide our discussion next session on these important issues.

Respectfully submitted,

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Senator Jane Nelson, Chair

Handwritten signature of Juan "Chuy" Hinojosa in cursive.

Senator Juan "Chuy" Hinojosa, Vice-Chair

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Senator Paul Bettencourt

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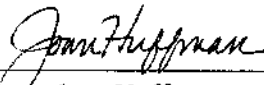
Senator Brian Birdwell



Senator Donna Campbell



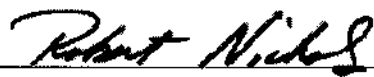
Senator Kelly Hancock



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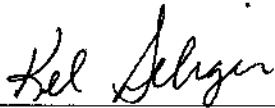
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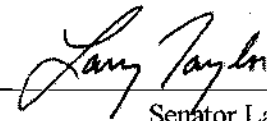
Senator Robert Nichols



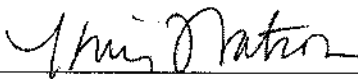
Senator Charles Schwertner



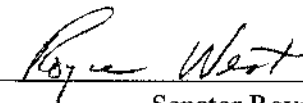
Senator Kel Seliger



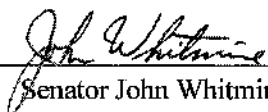
Senator Larry Taylor



Senator Kirk Watson



Senator Royce West



Senator John Whitmire

## Interim Charges

1. **A. *Harvey Costs*** - Monitor all funds currently being used to address Hurricane Harvey relief and recovery. Identify ways to maximize the use of federal funds and ensure the efficient use of state funds.  
  
**B. *Harvey Economic Impact*** - Evaluate the long-term impact of Hurricane Harvey on the Texas economy and the gulf coast region.
2. ***Alamo Historical Site Renovation*** - Monitor the expenditures of state funds appropriated to the General Land Office for the preservation, maintenance, and operation of the Alamo historical site. Ensure the funds are spent to emphasize the architectural design and the historical impact the battle had on the development of Texas as a nation and as a state. Study the benefits, including the dynamic effects, of continuing to phase out the franchise tax. Consider alternate approaches to funding the Property Tax Relief Fund.
3. ***Economic Stabilization Fund*** - Examine options to increase investment earnings of the Economic Stabilization Fund in a manner that minimizes overall risk to the fund balance. Investment options should ensure the liquidity of a sufficient portion of the balance so that the legislature has the resources necessary to address the needs of the state, including natural disasters. Evaluate how the Economic Stabilization Fund constitutional limit is calculated; consider alternative methods to calculate the limit, and alternative uses for funds above the limit. Examine options and make recommendations for strengthening restriction on appropriations established in Article VIII Section 22 of the state constitution, including related procedures defined in statute. Consider options for ensuring available revenues above spending limit are reserved for tax relief.
4. ***Texas Emission Reduction Plan*** - Review the Texas Emission Reduction Plan (TERP) and its economic benefits to the state. Examine whether the state's investment in TERP, including transfers from the Department of Transportation, are being effectively utilized to comply with federal air quality standards, reduce pollution, and protect the public health of Texans.
5. ***Request to Exceed Review*** - Review all riders requiring interim action by the Legislative Budget Board to reduce the number of times interim budget modification is necessary.
6. ***Fee Structure Review*** - Review state General Revenue-Dedicated fees and make recommendations to reduce fees and lessen reliance on General Revenue-Dedicated fee balances to certify the budget.
7. ***Adult and Juvenile Corrections Funding*** - Examine the funding patterns used to fund the juvenile justice system and adult probation departments. Develop recommendations to ensure the Texas Juvenile Justice Department budget does not dis-incentivize the use of cost-effective best practices such as diverting youth from the juvenile justice system, providing services to youth in their community, and keeping youth closer to home. In

addition, review funding to adult probation departments and ensure it provides for an equitable distribution to all Texas Probation Departments.

8. **Trauma Funding** - Review revenue sources currently funding the state's trauma system and the impact of declining revenues and balances in General Revenue-Dedicated accounts. Evaluate the impact of statutory changes affecting trauma system funding, including efforts to eliminate the Driver Responsibility Program. Examine ways to ensure sustainability of the trauma system in Texas.
9. **Property Tax on Business Personal Property** - Evaluate the property tax as it applies to business personal property and the current \$500 exemption. Quantify the economic effect of taxing business personal property and determine whether the tax places Texas at a competitive disadvantage relative to other states. Evaluate the burden on taxpayers and local governments of administering the property tax on business personal property and determine whether the current \$500 exemption should be increased.
10. **Interest Rate Disparity** - Evaluate the rate of interest charged on delinquent property taxes and delinquent state taxes, compared to the rate of interest paid on property tax refunds and state tax refunds.
  - Evaluate the effect of interest rate disparity on the assessment decisions of governments and the payment decisions of taxpayers.
  - Quantify the amount by which state and local governments profit from interest rate disparity.
  - Identify best practices among other states regarding interest rates charged and paid.
  - Recommend a plan and timeline to reduce interest rate disparity.



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## Charge #1: Hurricane Harvey Relief and Recovery Charges

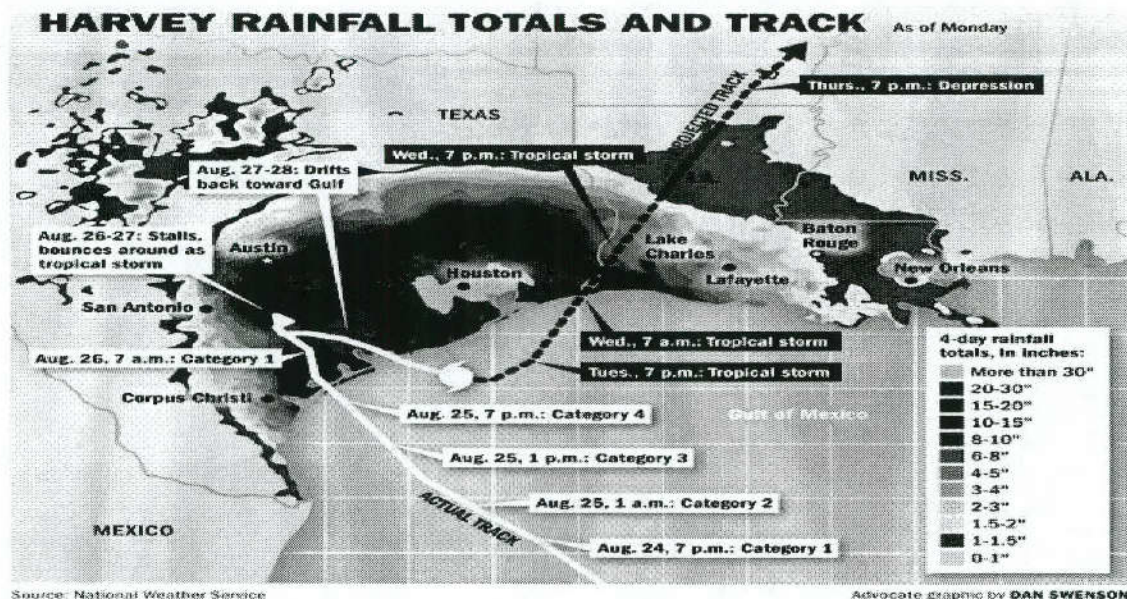
**Interim Charge Language:** (1A) Monitor all funds currently being used to address Hurricane Harvey relief and recovery. Identify ways to maximize the use of federal funds and ensure the efficient use of state funds. (1B) Evaluate the long-term economic impact of Hurricane Harvey on the Texas economy and the gulf coast region.

### Hearing Information

The Senate Finance Committee met six times during the interim on its charges related to Hurricane Harvey and heard from multiple agencies, including the Legislative Budget Board (LBB), Texas Department of Emergency Management (TDEM), the Texas General Land Office (GLO), Texas State and Federal Relations, the Commission to Rebuild Texas, Health and Human Services Commission, Texas Department of Criminal Justice, the Office of the Governor, Military Department, Texas Education Agency (TEA), and Texas Department of Transportation. Information regarding witnesses and testimony can be found at <https://capitol.texas.gov/Committees/MeetingsByCmte.aspx?Leg=85&Chamber=S&CmteCode=C540>.

### Introduction and Background

Formed in the Atlantic as a tropical storm, Harvey hit the Texas coast on August 25, 2017 as a Category 4 Hurricane, making landfall near Rockport and then stalling and wreaking havoc over the Texas coast. The storm brought more than 60 inches of rainfall, caused dozens of deaths, and billions of dollars in property damage.<sup>1</sup> Hurricane Harvey destroyed or damaged more than 178,000 homes, and left behind approximately 22 million cubic yards of debris.<sup>2</sup> Experts say Harvey will prove to be the most expensive storm in American history with \$125 billion in estimated total damages, including \$669 million to public property, \$200 million in agricultural losses, and a 50 percent loss of tourism revenue.<sup>3</sup> The image below, from the National Weather Service, shows the trajectory, duration, impact area, and rainfall totals of Hurricane Harvey.



The full force of state government was brought to bear well before the storm hit, and the state immediately began partnering with federal and local leaders on relief and recovery efforts. Five state agencies provided 21,888 personnel in the immediate response. Those five agencies include Texas A&M Engineering Extension Service (commonly recognized as Texas Task Force 1 and 2), Texas A&M Forest Service, Texas Department of Public Safety (DPS), Texas Military Department, and Texas Parks and Wildlife Department. An additional 1,050 State Guardsmen were mobilized to perform response-related missions. State health care workers transferred 3,299 medically sensitive patients and correctional officers temporarily relocated approximately 6,000 prisoners to safer facilities. Texas A&M AgriLife, the Texas Alcoholic Beverage Commission and other agencies also played a part in the response.

With many left homeless in the early days after the storm, displaced Texans were connected to multiple benefits. At the peak of FEMA's Transitional Sheltering Assistance (TSA) effort, 69,187 people were receiving temporary housing assistance through this program.<sup>4</sup> This included traditional hotels, motels, corporate lodging, bed & breakfasts, recreational vehicle parks, and even tents.

The state's health and human services agencies delivered emergency-related medical and food benefits to those in need. More than 130 Texas Department of Insurance (TDI) employees were dispatched to help Texans with insurance claims. This included staff involvement at the Disaster Recovery Center, Fraud Unit response, adjuster application processing, and windstorm inspections. In the end, more than 550 employees from TDI and the Division of Workers Compensation at TDI performed work related to Harvey. Expenditures from TDI's efforts totaled more than \$500,000. Texas Parks and Wildlife Department, performed search and rescue response-related missions and opened up state parks for displaced families—waiving all fees for the duration of their stay.

### **State Expenditures & Projected Costs**

As of August 31, 2018, a year after the storm, approximately \$2.7 billion in All Funds (AF) had been expended by 71 different state agencies. Of that amount, approximately \$2.2 billion is federal funding and just under \$500 million is state dollars based on agency expenditures reported to the LBB. Twelve state agencies are responsible for 98 percent of these expenditures.<sup>5</sup> See Figure 1.<sup>6</sup> In addition, agencies report an additional \$1.9 billion in projected expenses related to Harvey. See Figure 2.<sup>7</sup> Not included in the projected expenses for Harvey is the total estimated costs for Foundation School Program for Fiscal Years (FY) 2018-19, with additional costs anticipated in FY 2020-21. See Figure 3.<sup>8</sup>

These funds fall into various categories. Some are directly passed through from the federal government to state agencies for individual assistance, institutional funds expended by institutions of higher education, Housing and Urban Development (HUD) grants for Harris County and the City of Houston, and through the Health and Human Services Commission. Other resources are fronted by the state but are eligible for full or partial reimbursement from the federal government. This includes temporary housing, Partial Repair & Essential Power for Sheltering (PREPS), debris removal, and other public assistance. Some of those costs will be paid with existing funds in the current state budget. Other costs will be covered by other institutions and local entities.

**Figure 1**  
**State Agency Expenditures Through FY18**  
**(In Millions)**

<b>State Agency</b>	<b>Expended Amounts</b>
Health and Human Services Commission	\$1,290
Texas Department of Public Safety	\$736
General Land Office	\$260
Texas Department of Transportation	\$96
Office of the Governor - Trusteed Programs	\$74
Department of State Health Services	\$34
Texas Military Department	\$29
Texas Workforce Commission	\$24
Lone Star College (Houston)	\$17
University of Houston	\$12
University of Texas MD Anderson Cancer Center	\$9
University of Houston - Downtown	\$9
<b>TOTAL</b>	<b>\$2,600 (totals may not add up due to rounding)</b>
<i>The Legislative Budget Board reports that 98% of expenditures, as of August 2018, are attributable to these 12 agencies.</i>	

**Figure 2**  
**State Agency Projected Beyond FY19**  
**(In Millions)**

<b>State Agency</b>	<b>Projected Costs</b>
Department of Public Safety	\$861
General Land Office	\$507
Texas Education Agency	\$192 (preliminary estimate)
Health and Human Services Commission	\$100
Texas Department of Transportation	\$92
University of Texas at Austin	\$42
University of Houston	\$25
Parks and Wildlife Department	\$23
Lone Star College	\$17
Texas Workforce Commission	\$8
<b>TOTAL</b>	<b>\$1,900 (totals may not add up due to rounding)</b>
<i>The Legislative Budget Board reports that 98% of projected costs, as of August 2018, are attributable to these 10 agencies.</i>	

**Figure 3**  
**Texas Education Agency Projected Costs**  
**(In Millions)**

<i>Foundation School Program</i>	
<p><b>\$426</b> - estimated by the TEA for legally obligated Foundation School Program costs from Hurricane Harvey. Those costs include:</p> <ul style="list-style-type: none"> <li>• \$150 - increased state aid to the 12 school districts that voted to reappraise 2017 taxable values;</li> <li>• \$147 - students eligible for Compensatory Education weighted funding;</li> <li>• \$99 - holding harmless districts that experienced declining attendance; and</li> <li>• \$30 - decreased recapture payments from Chapter 41 districts with facilities damage.</li> </ul> <p>These amounts are not reflected in the Hurricane Survey collected by the Legislative Budget Board because at the time this data was collected, the survey was limited to FY 2017-18. TEA will have additional costs that are expected to occur in FY 2019.<sup>9</sup></p>	
<i>Hold Harmless</i>	
<p><b>\$865</b> - estimated costs that the Legislature, at its discretion, may wish to consider funding through the appropriations process.<sup>10</sup> These costs, which hold no legal obligation, would be primarily attributed to holding impact school districts harmless for the loss of local property tax in the 2018-19 biennium.<sup>11</sup></p>	
<b>TOTAL</b>	<b>\$426 to \$1,300</b>

The state budget will absorb significant Harvey related costs. The estimated total cost to the state is \$1 to 2 billion, but this number will continue to fluctuate based on federal reimbursements. These numbers could also fluctuate depending on decisions regarding non-federal share, commonly referred to as the “local match.” According to TDEM, prior to the \$90 million funding allocation for debris removal during Harvey, the matching funds for FEMA disaster projects in Texas were mainly covered by local governments. After Harvey local governments sought help from the state, which elected to cover the entire local match associated with the removal of debris from Harvey-impacted areas. The state also provided direct assistance to the Houston. As federal funds are pursued for flood control and hazard mitigation projects, it is likely that state assistance with the local match will be requested.

The largest cost to the state will be for public education. Some costs, such as hold harmless for declining student populations or change in the number of compensatory education students, have already been committed. Some costs, such as property value decline and facilities repair, will be decision points during the FY 2020-21 appropriations process. See Figure 4.<sup>12</sup>

**Figure 4**  
**Public Education Costs Comparison (by School Year)**

	2017-18	2018-19
ADA Hold Harmless	Est: \$99 Million 2	No Impact
M&O Property Value Decline	Est: \$300 Million 3	Est: \$150 Million 5b
		Est: \$500 Million - \$1 Billion 5a
Facilities Repair	No Impact	Est: \$30 Million* 8
		Est: \$60 Million 9
Student Weights	Est: \$103 Million 10	Est: \$44 Million 10

The LBB and the Comptroller are working in tandem to monitor and identify all state costs associated with Harvey. The LBB and the Comptroller have issued guidance to state agencies and institutions of higher education on reporting and tracking costs and revenues associated with Harvey.<sup>13</sup> While most agencies are reporting similar amounts to both the LBB and the Comptroller, reconciling differences in amounts is occasionally necessary. Tracking the costs associated with Harvey will be a coordinated effort between the Legislature, the Governor's Office, the Comptroller, and the LBB, and it will take many years to realize the total impact of the storm. All agency expenditure cost reports are online for public inspection, along with all Harvey-related contracts, and can be accessed at <http://www.lbb.state.tx.us/Harvey.aspx>.

### Interim Budget Actions

Disasters can present significant cash flow issues, especially for agencies that rely on federal reimbursement—which can take months or even years. For example, the state is still waiting for federal reimbursements from Hurricane Rita, Hurricane Dolly, Hurricane Ike, and six different wildfires. With a two-year state budget, the General Appropriations Act (GAA) provides several tools to address needs that arise during a disaster. Specifically, GLO transferred \$12 million<sup>14</sup> from FY 2019 to FY 2018. The Texas Workforce Commission also transferred \$8.9 million from FY 2019 to FY 2018 to meet a federal match requirement for \$33 million for vocational rehabilitation funds. Also, members of the LBB, along with the Governor, approved inter-agency transfers during the interim, including:

- \$90 million from the Solid Waste Disposal Fees Account to TDEM to cover the 10% local match for debris removal across impacted regions; and
- \$38.6 million from the Department of Criminal Justice (TDCJ) to the GLO for housing and other rebuilding efforts with assurance that TDCJ will be made whole via the supplemental appropriations process.

## **Disaster Fund**

The Disaster Fund is administered by the Office of the Governor and is dependent on appropriations made by the Legislature. The intent of this fund is to improve coordination between state agencies responsible for disaster response and ensure resources will be available in the event of an emergency. Last session, the Legislature appropriated \$110 million from the Economic Stabilization Fund for the Disaster Fund. At the end of FY 2018, the fund balance was \$58 million—up from an interim low of approximately \$10 million.

Through the interim, the Office of the Governor authorized disbursement of disaster funds to assist agencies struggling with cash flow needs, including up to \$100 million to the DPS and \$10 million to GLO. An additional \$50 million was distributed to help the City of Houston with hurricane recovery.

Other expenditures included funding for response personnel and costs related to other disasters across the state. The Fund received reimbursements from the federal government throughout the year. There is no automatic reporting mechanism to monitor incoming and outgoing resources from the Disaster Fund, but the Office of the Governor has made this information readily available upon request.

## **Federal Resources & State Partners**

The following are state agencies responsible for providing disaster assistance and resources to Texans impacted by Harvey. These programs require state and federal collaboration as described below.

### **Texas Division of Emergency Management - Individual and Public Assistance**

#### *Transitional Sheltering Assistance*

The federal government provides significant resources in the event of a natural disaster such as Harvey. States are often dependent upon this funding to supplement programs necessary for response and recovery efforts. So far, Texans have received over \$14.7 billion in state and federal resources and benefits. This amount includes a combination of FEMA Individual Assistance, Public Assistance, National Flood Insurance Program and Small Business Administration Disaster Loans. TDEM works closely with the Federal Emergency Management Administration (FEMA) as the Governor's designee to coordinate state response to disasters. TDEM most notably oversees TSA to help families with temporary housing needs. This FEMA program is offered to disaster survivors who may be eligible to stay in hotel or motel lodging, for a limited period of time, and have the cost of the room and taxes covered by FEMA. This does not include the FEMA Direct Housing Mission (e.g. PREPS, travel trailers, etc.) managed by the GLO. TSA is managed and operated by FEMA, and the state is responsible for providing the non-federal cost share for the entire program—which is 100 percent federally funded for the first 30 days and 90 percent after that time.

#### *Other FEMA Programs*

TDEM also has multiple responsibilities in relation to disaster and emergency management in Texas and is the main liaison with FEMA for many other programs including: FEMA Individual Assistance, Public Assistance, Debris Removal, the National Insurance Program and Small



Business Administration Disaster Loans. At the end of FY 2018, FEMA reports \$14.8 billion "obligated" for these programs. Figure 5<sup>15</sup> outlines the breakdown of this amount including the total number of applicants, the total number of participants, and the amount of funding disbursed. Participants in the National Flood Insurance Program (NFIP) received a much higher payout than those who received Individual Assistance. At the September 2018 Senate Finance interim hearing, members expressed interest in identifying ways to better utilize the NFIP.

**Figure 5  
FEMA Programs with TDEM Oversight  
(Actual Amounts as of September 1, 2018)**

<b>Individual Assistance</b>	
Number of Registrations	895,568
Number of Inspections	610,821
Amount Disbursed	\$1.63 billion
Average Amount per Inspection	\$2,600

<b>Small Business Administration</b>	
Applications	110,840
Total Number of Loans	43,522
Total Loan Amount	\$3.4 billion

<b>National Flood Insurance Program (NFIP)</b>	
Number of Claims	91,661
Amount Disbursed	\$8.83 billion

<b>Debris</b>	
Original FEMA Estimate	30 million cubic yards
Updated Estimate	13.25 cubic yards (98% of debris removal complete)

*Debris Removal*

One of the major challenges for local economies was debris removal. FEMA approved hurricane-related solid waste and debris disposal costs incurred by local governments are anticipated to be reimbursed at up to 90 percent by the federal agency.<sup>16</sup> As of July 31, 2018, \$28.4 million had been awarded to local governments to be applied toward the 10 percent match required by FEMA for debris removal, and approximately \$15.2 million of that amount had been expended.<sup>17</sup> Per TDEM's testimony before the Senate Finance Committee, the total cost for debris removal will be less than the \$90 million originally estimated.

*Hazard Mitigation*

Immediately after Hurricane Harvey was declared a federal disaster, FEMA approved \$1.1 billion for hazard mitigation grants. Of that amount, TDEM received half of the funding immediately. The other half was received a year after the date the storm made landfall. Hazard mitigation grants receive a 75 percent federal match for retrofitting facilities to prevent future

storm-related damage. The state has been working to educate local governments and assist them with submitting proposals for hazard mitigation projects.

### **General Land Office**

Texas received federal assistance in the form of Community Development Block Grant - Disaster Recovery (CDBG-DR) funding specifically for the Direct Housing Mission to assist with infrastructure and housing repair projects. The General Land Office is the designated oversight agency for CDBG-DR funding and is responsible for grant coordination and the distribution of funding between federal, state, and local governments. Specific uses of CDBG-DR funding is subject to federal Housing and Urban Development (HUD) rulemaking through the federal register. This includes a public comment period prior to the approval of HUD rules. CDBG-DR funding for these projects totals \$9.8 billion and includes:

- *\$57 million* - CDBG-DR money for housing projects remaining from the initial \$400 million available from Hurricane Ike.
- *\$5.024 billion* - CDBG-DR awarded to GLO for infrastructure and housing for Hurricane Harvey. Per HUD rules, 80 percent of this funding is designated for the most impacted counties/zip codes and 70 percent of that money is designated for low-income families. Additionally, while all of the CDBG-DR funding will flow through the GLO, one-half of this \$5.024 billion is directly administrated by the GLO. 25 percent is administered by the City of Houston. 25 percent is administered by Harris County for projects outside the City of Houston.
- *\$4.7 billion* - Texas' portion of an aid package approved by Congress for states impacted by disasters, including Texas, Florida, and Puerto Rico. Of the \$4.7 billion, \$650 million is approved for housing to help pay for projects in impacted counties and zip codes that did not receive any portion of the initial \$5.024 billion. The remaining \$4 billion is for flood mitigation grants with no match required. Per the GLO, most of this money will go to local governments for project proposals.

### **Department of Insurance - Workers' Compensation**

The Texas Department of Insurance, Division of Workers' Compensation (DWC) took several steps to address the impacts that Hurricane Harvey had on injured employees, health care providers, and other system participants. DWC issued a Commissioner's Bulletin on August 29, 2017. This provided specific expectations for carriers and suspended certain deadlines for system participants who resided in all counties included in the governor's disaster proclamation. In addition, DWC:

- sent staff to disaster recovery centers and other sites to provide information to injured employees on how to contact insurers, reschedule appointments, and answer other questions;
- extended customer service hotline hours;
- allowed staff to take time off to volunteer in cleanup efforts; and
- coordinated with federal agencies such as FEMA.<sup>18</sup>

To better assist businesses, workers, and homeowners, the Texas Department of Insurance deployed its Disaster Recovery Center. The Center allowed for extended helpline hours, the additional processing of license applications, and increased property inspections.

## **Health and Human Services Commission**

Both during and after a disaster, the Health and Human Services Commission (HHSC) is primarily responsible for coordinating state and federal resources and providing financial and other assistance directly to impacted individuals.<sup>19</sup> As of September 1, 2018, HHSC has expended a total of \$1.3 billion on Hurricane Harvey recovery efforts, \$155.6 million of which is General Revenue (GR).<sup>20</sup>

### *FEMA Other Needs Assistance Program*

HHSC administers the FEMA Other Needs Assistance (ONA) program, which provides cash assistance to individuals and families who are unable to meet their necessary expenses as a result of a disaster.<sup>21</sup> ONA is intended to provide disaster victims with grants when other assistance, including from governmental entities, is either unavailable or inadequate.<sup>22</sup> Allowable expenses include personal property, childcare, medical and dental expenses, funeral and burial costs, and transportation. While FEMA fully reimburses agency expenses to administer the program and process applications, cash assistance grants to individuals and families require 25 percent in state matching funds. As of September 1, 2018, HHSC has expended \$408 million to process and approved 514,880 applications for ONA.<sup>23</sup> In total, HHSC expects to spend \$456.5 million AF, \$110 million of which is GR, to administer the program and provide ONA benefits.<sup>24</sup> ONA is an 18 month program expected to run through February 25, 2019.

### *Supplemental Nutrition Assistance Programs*

HHSC is responsible for administering the Disaster Supplemental Nutrition Assistance Program (D-SNAP), which provides one-time food assistance benefits to disaster survivors when they return to their homes and have access to electricity and grocery stores.<sup>25</sup> D-SNAP differs from the traditional SNAP program in eligibility and benefit amount and is only available for individuals who were not receiving traditional SNAP benefits at the time of the disaster.<sup>26</sup> D-SNAP is a 100 percent federally funded program. As of September 1, 2018, HHSC has provided \$549 million in D-SNAP benefits to 517,329 households.<sup>27</sup>

In addition, HHSC also provided assistance to traditional SNAP beneficiaries in Harvey-affected counties. As of September 1, 2018, HHSC has issued \$145 million in early food benefits for 393,128 SNAP households and \$91 million in replacement food benefits for 700,000 SNAP households to replace food lost during the storm.<sup>28</sup>

### *Disaster Case Management*

HHSC provides time-limited case management services to disaster survivors through the Disaster Case Management (DCM) program.<sup>29</sup> DCM services are provided through a federal grant and provide a single point of contact for disaster survivors to facilitate access to available resources.<sup>30</sup> As of September 1, 2018, HHSC estimates the total amount in federal DCM grants attributed to Hurricane Harvey is \$44.6 million. Additionally, 175,017 cases have been assigned to HHSC vendors.

### *Medicaid and CHIP:*

HHSC worked with federal Centers for Medicare and Medicaid Services (CMS) to receive flexibility in both the Medicaid program and Children's Health Insurance Program (CHIP) to assist in Harvey recovery efforts. For example, CMS granted approval of the state's requests to:

- Automatically extend Medicaid and CHIP eligibility for an additional six months for individuals in disaster affected counties due to be recertified between August and November of 2017;
- Extend medical necessity, service authorizations, and level of care authorizations for services expiring at the time of the disaster or shortly after, through November 2017;
- Expedite Medicaid provider enrollment for out-of-state providers, and allow for providers to temporarily enroll in order to serve Medicaid/CHIP clients while individuals are displaced and regularly-enrolled providers are getting back on their feet; and
- Waive CHIP co-payments and enrollment fees through November 2017.<sup>31</sup>

As a result of these efforts, HHSC has roughly estimated increased costs to Medicaid in the amount of \$62.3 million AF (\$26 million GR) and to CHIP in the amount of \$7.8 million AF (\$566,541 GR) in FY 2018.

#### *Crisis Counseling Program*

HHSC is responsible for providing community-based outreach and psychoeducational services to individuals and groups recovering from a disaster through the federal Crisis Counseling Program (CCP).<sup>32</sup> CCP provides short-term interventions, which include: helping disaster survivors understand their reactions, mitigating stress, improving coping strategies, assisting survivors review disaster recovery options, and linking with other individuals and agencies to help with recovery.<sup>33</sup> The CPP is a 100 percent federally funded program.<sup>34</sup> As of September 30, 2018, HHSC has expended \$5.4 million on grants and administrative costs for this program, including temporary staff available for counseling.<sup>35</sup>

#### *Public Assistance*

As part of the federal Public Assistance (PA) program, HHSC has submitted the following claims to the federal government for reimbursement:

- \$11.0 million AF for facilitating the delivery of ice and water to affected areas (estimated federal reimbursement of 90 percent);
- \$14.6 million AF for facilitating general sheltering of displaced individuals (estimated federal reimbursement of 91 percent);
- \$2.7 million AF for Disaster SNAP site setup (estimated federal reimbursement of 91 percent).

#### **Department of State Health Services**

The Department of State Health Services (DSHS) supports the medical emergency response portion of the state's disaster preparedness plan under the direction of TDEM. This includes support of disaster response activities like medical evacuations, sheltering, vaccine provision, and supplies. DSHS responsibilities also include public health and medical support of reentry and recovery for impacted areas, including vector control, safety and security of foods, and ongoing assessment of the health and medical infrastructure. DSHS has made the following impact as part of their Harvey-response efforts:

- 689 DSHS staff involved
- 990 medical response missions
- 1,800 patients treated by mobilized medical units
- 3,299 medical patient evacuations

- 70,000 vaccines distributed
- 6,765,971 acres treated for mosquito control<sup>36</sup>

As of September 1, 2018, DSHS has expended \$35 million on Harvey related items, all of which is expected to be reimbursed by the federal government.<sup>37</sup> Examples of major expenditures include: Emergency Medical Task Force resources (ambulances, mobile medical units, and staff), vector control, medical shelters, pharmacy contracts, and medical supplies.<sup>38</sup>

### **Additional Resources**

There is \$5 billion available to Texas from the U.S. Army Corps of Engineers for disaster recovery projects. This funding will go towards critical flood mitigation projects identified by the governor. In addition, \$16 million will be used for studies to help make Texas more resilient against future storms. Five Texas higher education institutions received federal funding assistance from the U.S. Department of Education, including: Houston Community College, Lamar University, Sam Houston State University, University of Houston - Clear Lake, and Warton County Junior College, totaling approximately \$2.5 million in assistance for Texas.

### **Economic Impact**

Hurricane Harvey will have a lasting impact on the state budget—and the Texas economy. A wide array of businesses were impacted by the storm's destruction. According to the Texas Comptroller's office, the hardest hit industries included memberships (to clubs, sports centers, parks, theaters and museums), telecommunication services and entertainment. Industries faring the best include health services, the food and beverage industry, rental housing, motor vehicles, furniture and clothing.<sup>39</sup> While there were short-term economic losses from Hurricane Harvey, the Texas economy bounced back to pre-hurricane levels after the first calendar year.<sup>40</sup> The Comptroller attributes a majority of the "Harvey-boom" to rebuilding efforts and spending in impacted communities that spurred economic growth. The majority of funding for these efforts was derived from private insurance, state and local government, and FEMA.<sup>41</sup> Figure 6<sup>42</sup> shows the Comptroller's analysis of the net economic impact of Hurricane Harvey on Texas gross state product by year—with an overall positive net impact of \$800 million after year three.

**Figure 6**  
**Harvey Economic Impact to Texas**  
**(In Billions)**

<b>NET ECONOMIC IMPACT OF HURRICANE HARVEY ON TEXAS GROSS STATE PRODUCT</b>				
(IN BILLIONS OF DOLLARS)				
	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>	<b>YEARS 1-3</b>
<b>Estimated Losses</b>	(\$16.8)	(\$2.0)	(\$1.0)	(\$19.8)
<b>Estimated Gains</b>	\$13.0	\$4.1	\$3.5	\$20.6
<b>Net Economic Impact</b>	(\$3.8)	\$2.1	\$2.5	\$0.8

Source: Texas Comptroller of Public Accounts

## **Conclusion**

Hurricane Harvey will prove to be the most costly disaster ever to hit the Texas coast. While immediate direct costs to the state are estimated to be approximately \$900 million, the total costs are undetermined and will be incurred over the years ahead. As the state continues to monitor future costs, state agencies must coordinate to mitigate state costs and ensure that available federal funds are maximized. The Legislature must examine the lessons learned from Hurricane Harvey in order to improve the state's ability to more effectively and efficiently respond to and recover from any future disaster.

## **Recommendations**

1. Continue to monitor the ongoing costs attributed to the impact of Hurricane Harvey and ensure that state agencies, institutions of higher education and other governmental entities are maximizing available federal resources, including reimbursement for damaged facilities.
2. Encourage local governments to apply for available federal funding for rebuilding efforts, including HUD CDBG-DR funds, hazard mitigation grants, flood mitigation grants, and other federal assistance programs.
3. Monitor the disbursement of hazard and flood mitigation funding to ensure there is a clear process for applicants and an appropriate cost-share between federal, state, and local governments.
4. Continue to monitor Harvey's impact on student population shifts and property value decline affecting local school districts. Review policies utilized during the interim to address these impacts and consider ways to streamline processes for future disasters.
5. Implement a home single-inspector system for assessing storm-related damage. The inspection system should streamline government in a way that reduces burdens for homeowners and helps communities recover after a disaster.
6. Improve public awareness of the National Flood Insurance Program. Better utilization of this program will help ensure families have the resources necessary to rebuild following a severe weather event.
7. Consider ways to streamline agency reporting processes to improve the accuracy and availability of cost-related data for Hurricane Harvey and future disasters.
8. Consider ways to better track the flow of Disaster Fund transfers, reimbursements, and balance updates.

<sup>1</sup> Texas Comptroller of Public Accounts, Fiscal Notes, "A Storm to Remember: Hurricane Harvey and the Texas Economy," accessed September 2018: <https://comptroller.texas.gov/economy/fiscal-notes/2018/special-edition/impact.php#article>.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Kidd, Chief Nim, Texas Division of Emergency Management testimony to Senate Finance Committee, Hurricane Harvey Numbers. September 11, 2018. *Note: These TSA figures include some Hurricane Maria evacuees who sought refuge in Texas. They do not include participants in the FEMA Direct Housing Mission.*

<sup>5</sup> Legislative Budget Board, "Hurricane Harvey: Fiscal Analyses and Resources," accessed September 2018: <http://www.lbb.state.tx.us/Harvey.aspx>.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Texas Education Agency presentation to Senate Finance Committee, "Hurricane Harvey, Financial Implications for Public Education," March 20, 2018 (pg. 5).

<sup>13</sup> Legislative Budget Board, "Hurricane Harvey: Fiscal Analyses and Resources," accessed September 2018: <http://www.lbb.state.tx.us/Harvey.aspx>.

<sup>14</sup> Texas General Land Office, Information Provided to Senate Finance Committee, "Harvey Cash Flow," September 11, 2018.

<sup>15</sup> Kidd, Chief Nim, Texas Division of Emergency Management, Senate Finance Testimony, Hurricane Harvey Numbers. September 11, 2018.

<sup>16</sup> Legislative Budget Board Presentation to Senate Finance Committee, "Hurricane Harvey's Fiscal Impact on State Agencies," September 2018: [http://www.lbb.state.tx.us/Documents/Publications/Presentation/5443\\_SFC\\_.pdf](http://www.lbb.state.tx.us/Documents/Publications/Presentation/5443_SFC_.pdf).

<sup>17</sup> Id.

<sup>18</sup> Division of Workers' Compensation Response to Hurricane Harvey: <https://www.tdi.texas.gov/bulletins/2017/b-0020-17.html>.

<sup>19</sup> Legislative Budget Board Presentation to Senate Finance Committee, October 2017 (pg 7).

<sup>20</sup> Health and Human Services Commission, Harvey Expenditure Report to the Legislative Budget Board, September 2018.

<sup>21</sup> Health and Human Services Commission, Responses to the Legislative Budget Board, September 2018.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id., and Health and Human Services Commission, "Disaster Food Benefits Key Points," Accessed September 2018: <https://hhs.texas.gov/sites/default/files/documents/services/financial/d-snap-key-points.pdf>.

<sup>26</sup> Health and Human Services Commission, "Disaster Food Benefits Key Points," Accessed September 2018: <https://hhs.texas.gov/sites/default/files/documents/services/financial/d-snap-key-points.pdf>.

<sup>27</sup> Health and Human Services Commission, Responses to the Legislative Budget Board, September 2018.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id., and Health and Human Services Commission, "Hurricane Harvey Medicaid and Children's Health Insurance Program (CHIP) Frequently Asked Questions," September 6, 2017.

<sup>32</sup> Health and Human Services Commission, Responses to the Legislative Budget Board, September 2018.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Health and Human Services Commission, Harvey Expenditure Report to the Legislative Budget Board, September 2018.

<sup>36</sup> DSHS Email to Senate Finance Committee, September 12, 2018.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Texas Comptroller of Public Accounts, Fiscal Notes, “A Storm to Remember: Hurricane Harvey and the Texas Economy,” accessed September 2018: <https://comptroller.texas.gov/economy/fiscal-notes/2018/special-edition/impact.php#article>.

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Id.



## **Interim Charge #2 - Alamo Historical Site Renovation**

**Interim Charge Language:** *Monitor the expenditures of state funds appropriated to the General Land Office for the preservation, maintenance, and operation of the Alamo historical site. Ensure the funds are spent to emphasize the architectural design and the historical impact the battle had on the development of Texas as a nation and as a state.*

### **Hearing Information**

The Senate Finance Committee met on December 5, 2017 to discuss Interim Charge #2 related to the Alamo historical site renovation. Representatives from the General Land Office and Legislative Budget Board (LBB) provided invited testimony. Information regarding witnesses and testimony can be found at:

<https://capitol.texas.gov/Committees/MeetingsByCmte.aspx?Leg=85&Chamber=S&CmteCode=C540>.

### **Introduction and Background**

While the State of Texas is the sole owner of the Alamo Complex, the General Land Office serves as its custodian charged with the site's preservation and maintenance. In 2015, the General Land Office, per the direction of House Bill 2968, entered into a memorandum of understanding with the City of San Antonio to coordinate the planning and development of improvements to the Alamo Complex and the area immediately surrounding the Complex<sup>1</sup> This is commonly referred to as the Alamo Master Plan. Since 2015, the Legislature has appropriated significant state resources to help implement the Alamo Master Plan.

In 2015, the 84th Legislature appropriated \$25 million to the General Land Office for the implementation of an Alamo "joint" master plan, which resulted in a cooperative agreement between the City of San Antonio and the state to preserve and restore the Alamo. Additionally, the 84th Legislature appropriated \$5 million for maintenance of the Alamo Complex. In October 2015, a cooperative agreement was signed by the General Land Office, the City of San Antonio, and the private Alamo Endowment to fund and oversee the development of a new master plan and the implementation of that plan for the Alamo Plaza Historic District and Alamo Complex.<sup>2</sup>

In 2017, the 85th Legislature, appropriated an additional \$75 million to implement the Master Plan and specifically for the preservation, maintenance, and operation of the Alamo and Alamo Complex.<sup>3</sup> Over this same relative period of time, the Alamo management structure has been reorganized with specific changes to Alamo Complex oversight, operations, and responsibilities.

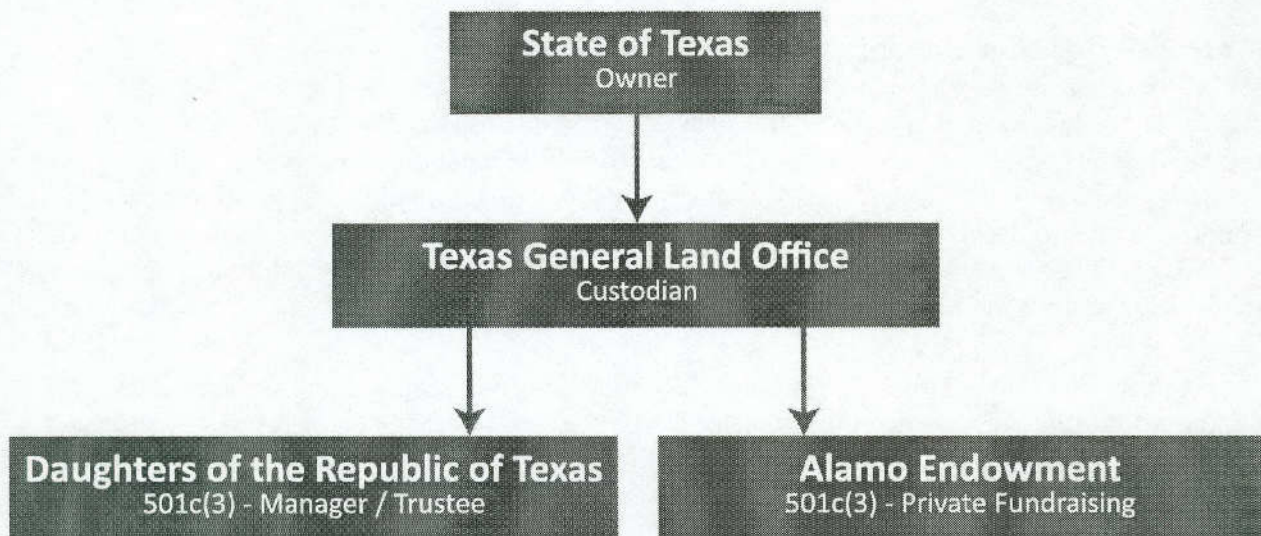
### **Alamo Management Structure**

Prior to September 1, 2011 the state of Texas served as the owner, and the Daughters of the Republic, a 501c(3) organization, served as the trustees and managers of the Alamo Complex. During the 84th session, the Legislature passed House Bill 3726 which statutorily changed the oversight structure and preservation and maintenance of the Alamo. Specifically, this legislation placed the jurisdiction of the Alamo Complex under the General Land Office and charged the agency to be responsible for the preservation, maintenance, and restoration of the Alamo

Complex and its contents and the protection of the historical and architectural integrity of the exterior, interior, and grounds of the Alamo Complex.<sup>4</sup>

House Bill 3726 also allowed the General Land Office to establish or partner with a nonprofit organization to raise funding, provide services or other benefits for the preservation or maintenance of the Alamo Complex.<sup>5</sup> It also permitted the General Land Office to contract with [that] organization for the performance of any activity.<sup>6</sup> As a result of that legislation, the State of Texas remained the owner of the Alamo Complex with the General Land Office serving as its custodian. The Alamo Endowment, a 501c(3) organization, was established as a private fundraising entity, and the Daughters of the Republic remained as the trustees and managers of the Alamo Complex. See Figure 1.

**Figure 1**  
**Alamo Management Structure: September 2011 - July 2015**

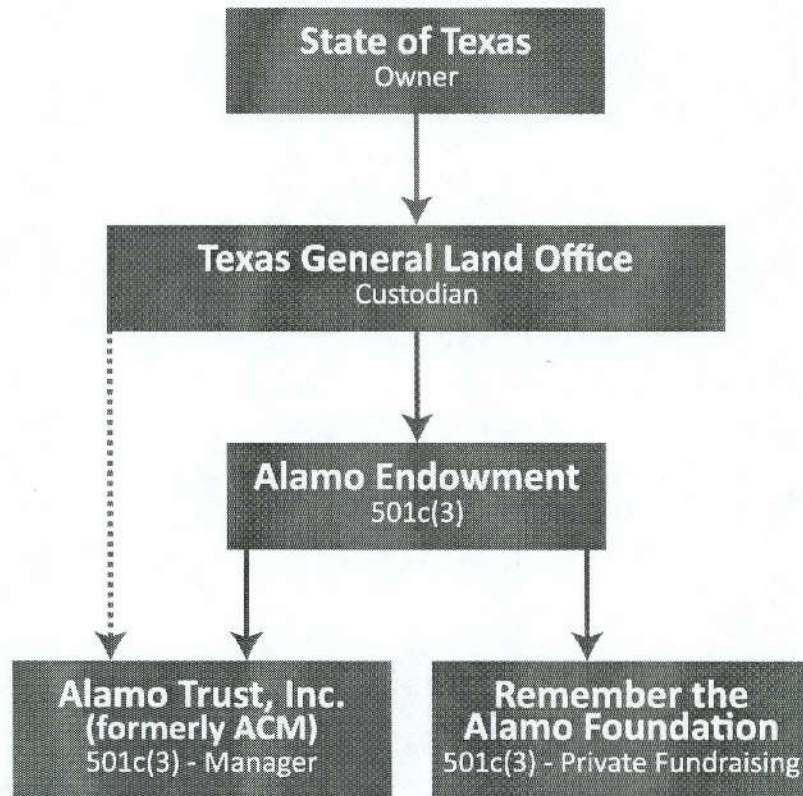


Following the 84th session, in 2015, several changes were made to the Alamo management structure. Specifically, the Alamo Endowment Board responsibilities were expanded; the management contract with the Daughters of the Republic was terminated; and the Alamo Complex Management was established as a subsidiary of the Alamo Endowment to manage daily operations of the Alamo. Shortly thereafter, the General Land Office changed the name of the Alamo Complex Management to the Alamo Trust Inc. At the time, the agreement between the Alamo Endowment and Alamo Trust Inc. allowed for financial reimbursement from the General Land Office for Alamo Complex preservation and maintenance expenditures.

Additionally in 2015, the Remember the Alamo Foundation was created as a subsidiary of the Alamo Endowment. The Foundation was established to serve as the private fundraising entity for the Alamo Complex and to raise capital for improvements to the Alamo Complex and Master Plan.<sup>7</sup> This structure was in place from July 2015 until 2018.

During the interim hearing on December 5th, 2017, multiple questions were raised about whether the Alamo Management structure is too complicated and operating in a transparent manner. To further increase transparency and accountability, members suggested that the State of Texas should have direct oversight of Alamo employees, who are responsible for day-to-day operations and conducting financial transactions, instead of the Alamo Endowment. See Figure 2.

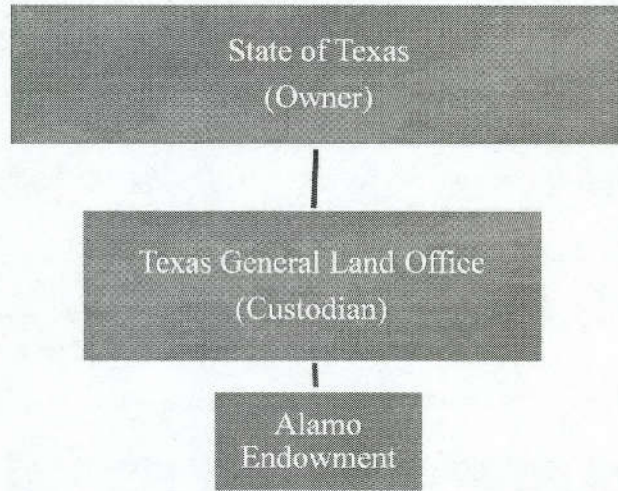
**Figure 2**  
**Alamo Management Structure: July 2015 - August 2018**



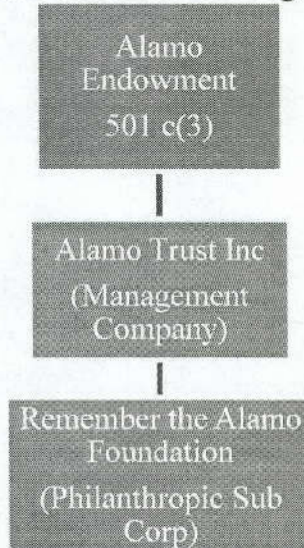
**Alamo Management Structure Update**

Since the December 5th, 2017 interim hearing, the General Land Office has taken steps to alter the Alamo management structure. The General Land Office has entered into a contract with the Alamo Endowment, specifically with its subsidiary the Alamo Trust Inc., to manage the Alamo Complex and oversee daily operations. The General Land Office also announced that the Alamo Trust Inc.—a private entity not subject to open records laws—would voluntarily adhere to the Public Information Act and conduct open meetings for the public to attend. Additionally, the General Land Office has designated the chief financial officer of the Alamo, an employee of the General Land Office, to oversee all financial transactions to ensure compliance with Texas government financial standards. This is the current Alamo management structure today. See Figure 3 and Figure 4.

**Figure 3**  
**Alamo Management Structure: August 2018 - Present**



**Figure 4**  
**Alamo Endowment Structure: August 2018 - Present**



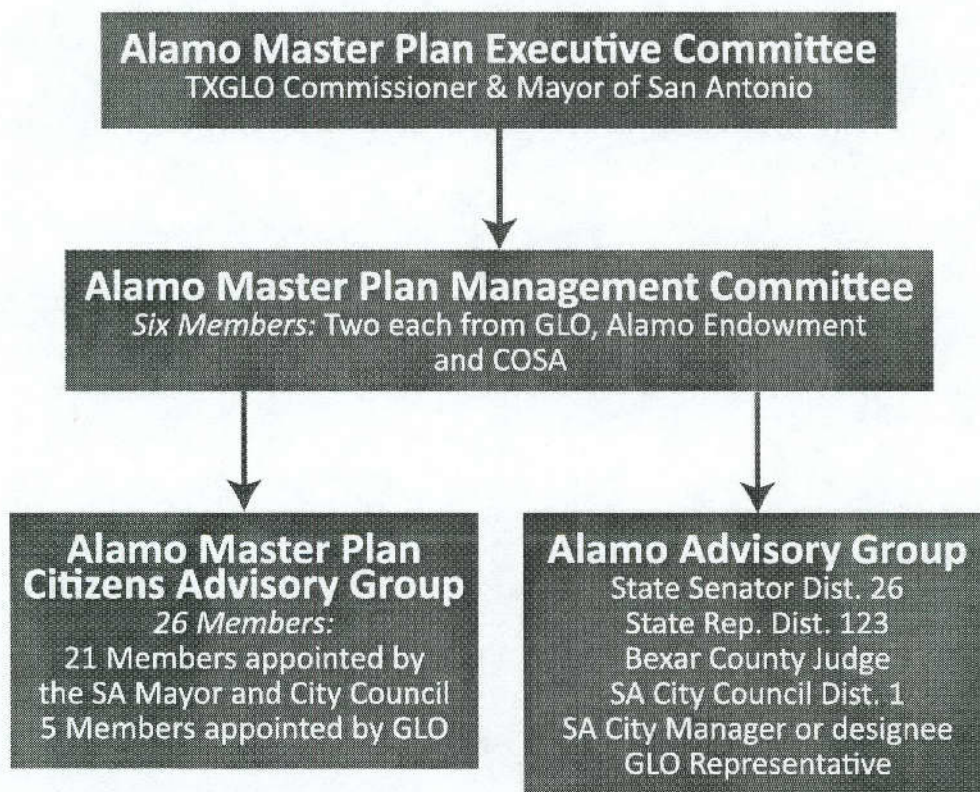
### **The Alamo Master Plan**

In development of the Alamo Master Plan, the General Land Office held 164 Alamo stakeholder meetings from January 2016 to November 2017 to review, discuss, and solicit input on the design and concepts. The result of these collaborative meetings was a comprehensive blueprint to restore the Alamo. The Master Plan will address the following: the Alamo church and long barracks, the Cenotaph, preservation of the battlefield, the closure of Alamo Street, and the construction of a museum.

Specifically, General Land Office outlined five key concepts that the Master Plan is designed to achieve, including: restore the church and long barracks; re-establish clarity and order through the delineation of the historic footprint; recapture the Historic Mission Plaza; repurpose the Crockett, Woolworth, and Plaza buildings into a world-class museum; and create a sense of arrival to the site and enhance connectivity to other public spaces. The Alamo Master Plan management committees and advisory groups are charged with overseeing the plan's concept and design, coordinating stakeholder approval, and implementation.

During the interim hearing, concerns were raised regarding the Alamo Master Plan, including: eliminating the proposed glass wall; costs associated with the Master Plan; the closure of Alamo Street and the visibility of the chapel; the restoration and location of the Cenotaph monument; maintenance of the mission chapel; the museum and its contents, including the "Phil Collins collection"; and the importance of capturing the significance of the Battle of 1836. See Figure 5 for the Alamo Master Plan management structure.

**Figure 5**  
**Alamo Master Plan Management Structure**



Information on the comprehensive Master Plan can be accessed at:  
<http://www.thealamo.org/alamomasterplan/index.html>.

## Conclusion

The Alamo was a pivotal battle that shaped the history of Texas and the nation. The Legislature should allocate funds in a way that will best preserve the mission, honor those who fought and died at the Alamo, and highlight the battle's significance to our state—as one of the world's most recognizable historic sites.

## Recommendations

- Continue to assess the Alamo Complex management structure for potential improvements and to safeguard its operational transparency and compliance with the Public Information Act; and
- Ensure the planning and implementation processes of the Alamo Master Plan are collaborative and restores the sites historical reverence—with a significant emphasis on the Battle of 1836.

<sup>1</sup> HB 2968 84(R).

<sup>2</sup> The Texas General Land Office. <http://www.glo.texas.gov/the-glo/news/press-releases/2017/april/reimagine-the-alamo-unveils-proposed-master-plan-design.html> Posted April 13, 2017. Accessed November 16, 2018.

<sup>3</sup> 2018-2019 General Appropriations Act , Rider 16, page 696.

[http://www.lbb.state.tx.us/Documents/GAA/General\\_Appropriations\\_Act\\_2018-2019.pdf](http://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2018-2019.pdf).

<sup>4</sup> HB 3726 82(R), Subchapter I The Alamo Complex, Sec. 31.451 Preservation and Maintenance of the Alamo.

<sup>5</sup> Id.

<sup>6</sup> Id.4

<sup>7</sup> Bush, George P. Texas General Land Office. Update on Alamo Management Structure. January 2018.

## **Interim Charge #3 - Economic Stabilization Fund Investment**

**Interim Charge Language:** *Examine options to increase investment earnings of the Economic Stabilization Fund in a manner that minimizes overall risk to the fund balance. Investment options should ensure the liquidity of a sufficient portion of the balance so that the Legislature has the resources necessary to address the needs of the state, including natural disasters. Evaluate how the Economic Stabilization Fund constitutional limit is calculated; consider alternative methods to calculate the limit, and alternative uses for funds above the limit.*

### **Hearing Information**

The Senate Finance Committee met on March 20, 2018 to discuss Interim Charge #3 related to the Economic Stabilization Fund. The Comptroller provided testimony, along with representatives from the Legislative Budget Board, Pew Charitable Trusts, and the Texas Taxpayers and Research Association. Information regarding witnesses and testimony can be found at:

<https://capitol.texas.gov/Committees/MeetingsByCmte.aspx?Leg=85&Chamber=S&CmteCode=C540>.

### **Introduction and Background**

Texas has a long history of preparing for the future and saving for a "rainy day." In fact, Texas has the largest savings account in the entire country.<sup>1</sup> The Economic Stabilization Fund (ESF), commonly referred to as the "Rainy Day Fund," was initially created in 1987.<sup>2</sup>

The ESF draws most of its funding from a percentage of oil and natural gas severance taxes. In 1987, oil severance tax collections were approximately \$532 million, and natural gas severance tax collections were approximately \$600 million. These two 1987 values are still used as the benchmark for ESF transfers. At the end of each fiscal year, the Comptroller transfers 37.5 percent of all oil severance tax collections and natural gas severance taxes in excess of these 1987 levels to the ESF.<sup>3</sup> Additionally, half of unencumbered General Revenue balances are automatically deposited in the ESF.<sup>4</sup> The Legislature has the ability to appropriate directly to the ESF, although this option has never been utilized.

The fund was created to help the state through swings in oil and gas revenue, or as one witness described, to "smooth out the roller coaster...in our state revenues."<sup>5</sup> Views regarding the purpose of the ESF are varied and have evolved over time. Some believe the fund should only be used in times of emergency. Many believe ESF draws should be limited to one-time expenditures to avoid propping up ongoing programs without regard to the state's ability to pay for them. Others hold the view that there should be no limits on the ESF and that the state should not hold back revenue that could meet important needs.

### **Spending History**

There are three different scenarios in which the Legislature may appropriate from the ESF.

- If there is a deficit in the current biennium, then 3/5 of the members present are needed to draw from the fund;

- If the Comptroller estimates that revenue will decrease from the current biennium to the next biennium, then 3/5 of members present are needed to draw from the fund;
- If there is no deficit, then 2/3 of members present are needed to appropriate.<sup>6</sup>

From 1999 to 2017, there have been \$20.9 billion in deposits and earnings to the ESF and \$10.6 billion in expenditures, leaving a balance at the end of Fiscal Year 2017 of \$10.3 billion.<sup>7</sup> As shown in Figure 1 below, ESF balances have been appropriated eight times since its creation.<sup>8</sup> The first five times, the Legislature appropriated the entire (or close to entire) balance of the fund. The last three times, the appropriations were significant in dollar amounts—but constituted a smaller percentage of the available balance.

**Figure 1**  
**ESF Appropriations by Legislative Session**  
**(In Millions)**

Legislation	Appropriation (millions)	Estimated ESF Available	Appropriation as % Of Available Revenue
SB 11, 71 <sup>st</sup> Legislature, 6 <sup>th</sup> Called Session, 1990	\$29.0	\$29.0	100%
SB 171, 73 <sup>rd</sup> Legislature, Regular Session, 1993	\$125.8	\$197.8	100%
SB 532, 73 <sup>rd</sup> Legislature, Regular Session, 1993	\$72.0		
HB 7, 78 <sup>th</sup> Legislature, Regular Session, 2003	\$1,260.5	\$1,297.6	97%
HB 10, 79 <sup>th</sup> Legislature, Regular Session, 2005	\$2,030.1	\$2,013.2	101%*
HB 275, 82 <sup>nd</sup> Legislature, Regular Session, 2011	\$3,198.7	\$9,405.3	34%
HB 1025, 83 <sup>rd</sup> Legislature, Regular Session, 2013	\$3,936.2	\$11,756.4	33%
SB 1, 85 <sup>th</sup> Legislature, Regular Session, 2017	\$988.9	\$11,922.6	8%
<b>TOTAL</b>	<b>\$11,641.2</b>	<b>\$36,621.9</b>	<b>32%</b>

\* \$100 million of the House Bill 10 appropriation was contingent on transfers to the Economic Stabilization Fund exceeding the estimate

Approximately \$11.6 billion has been appropriated from the ESF and for a variety of reasons. As shown in Figure 2 below, the biggest recipient of funds has been public education, at \$3.5 billion total, for items such as funding the Foundation School Program or the Teacher Retirement System.<sup>9</sup> The smallest was for \$44,000 to the Commission of Judicial Conduct.<sup>10</sup>



**Figure 2**  
**ESF Appropriations by Purpose<sup>11</sup>**

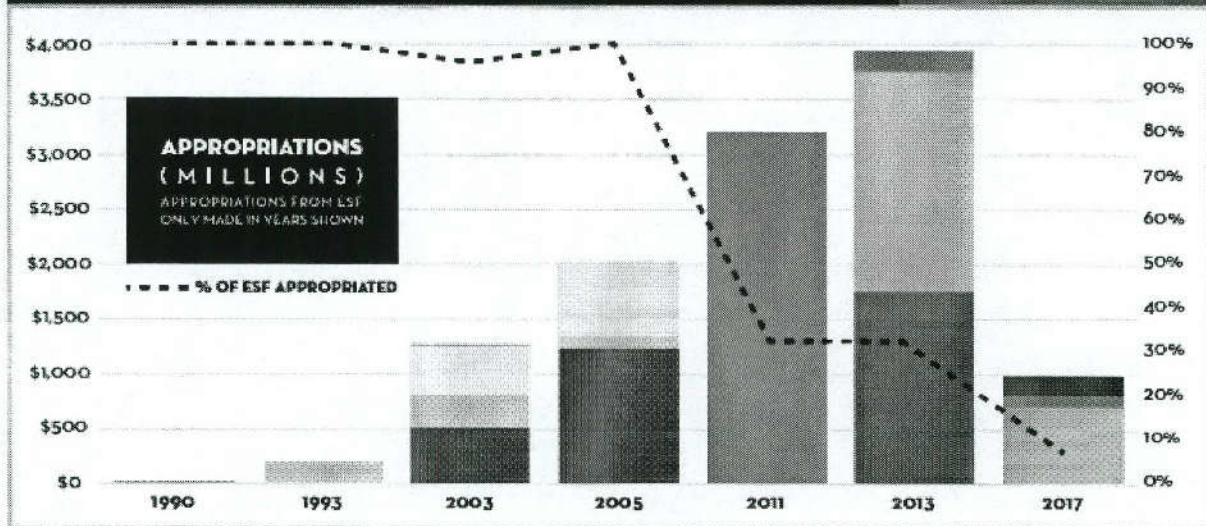
**APPROPRIATIONS** where does it go?

PURPOSE	TOTAL (MILLIONS)	% OF TOTAL
Public Education	\$3,541.4	30.4%
General Deficit Reduction	\$3,198.7	27.5%
Economic Development	\$2,395.0	20.6%
Health & Human Services	\$1,126.8	9.7%
State Facilities Repairs & Deferred Maintenance	\$708.6	6.1%
Disaster Relief	\$302.6	2.6%
Corrections	\$197.8	1.7%
One-time Grants to Local Entities	\$170.3	1.5%
Judicial	\$0.04	0.0%
<b>Total (1990-2017)</b>	<b>\$11,641.2</b>	<b>100.0%</b>

**TOTAL  
ESF  
APPROPRIATED**

---

**\$11,641.2  
MILLION  
1990-2017**



**Constitutional Limit**

The ESF is capped at 10 percent of the amount deposited into the General Revenue Fund during the previous biennium.<sup>12</sup> Until 1995, the General Revenue Fund was limited to state revenue deposited into the treasury. The 74th Legislature expanded the General Revenue Fund by including some federal funds, which increased the ESF cap accordingly.<sup>13</sup> Many argue that broadening the General Revenue Fund to include more than just state General Revenue dollars made the fund less transparent and more difficult to ascertain the amount of money available to be appropriated by the Legislature. These critics contend that federal dollars were never intended to be counted towards the fund's ceiling.

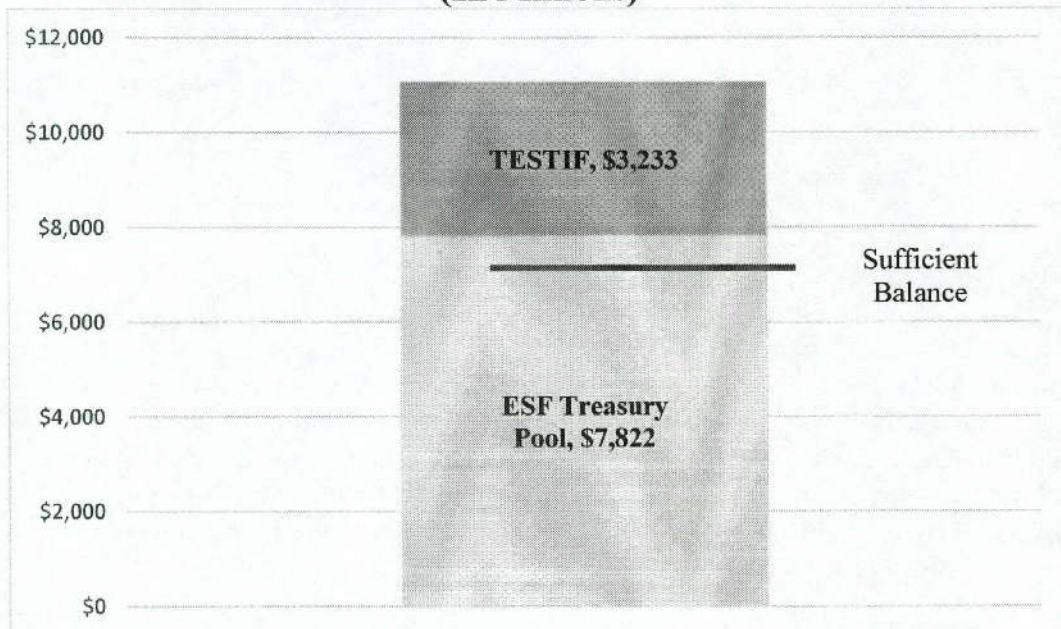
There have been legislative attempts to exempt federal dollars from calculating the ESF cap, which would free up additional revenue for state needs while still maintaining up to 10 percent of true state revenue in reserves.

### State Highway Fund Transfer & Investments

Proposition 1 on the November 2013 ballot, approved by nearly 80 percent of the voters, created a mechanism by which a portion of revenue that would otherwise go into the ESF would automatically transfer to the State Highway Fund, as long as a sufficient balance is met.<sup>14</sup> That figure is determined by the Committee to Establish the Sufficient Balance in the Economic Stabilization Fund, which is comprised of five Senators appointed by the Lieutenant Governor and five Representatives appointed by the Speaker. However, the sufficient fund balance can be changed by a majority vote in both chambers. For the 2018-19 biennium, the sufficient fund balance is set at \$7.5 billion.<sup>15</sup> An alternative method of setting the sufficient balance that has been discussed would be to tie the sufficient balance to a set amount, such as a certain percentage of total state revenue. According to credit rating agency Standard and Poor, their highest ranking is given to states with budget reserves above 8%.

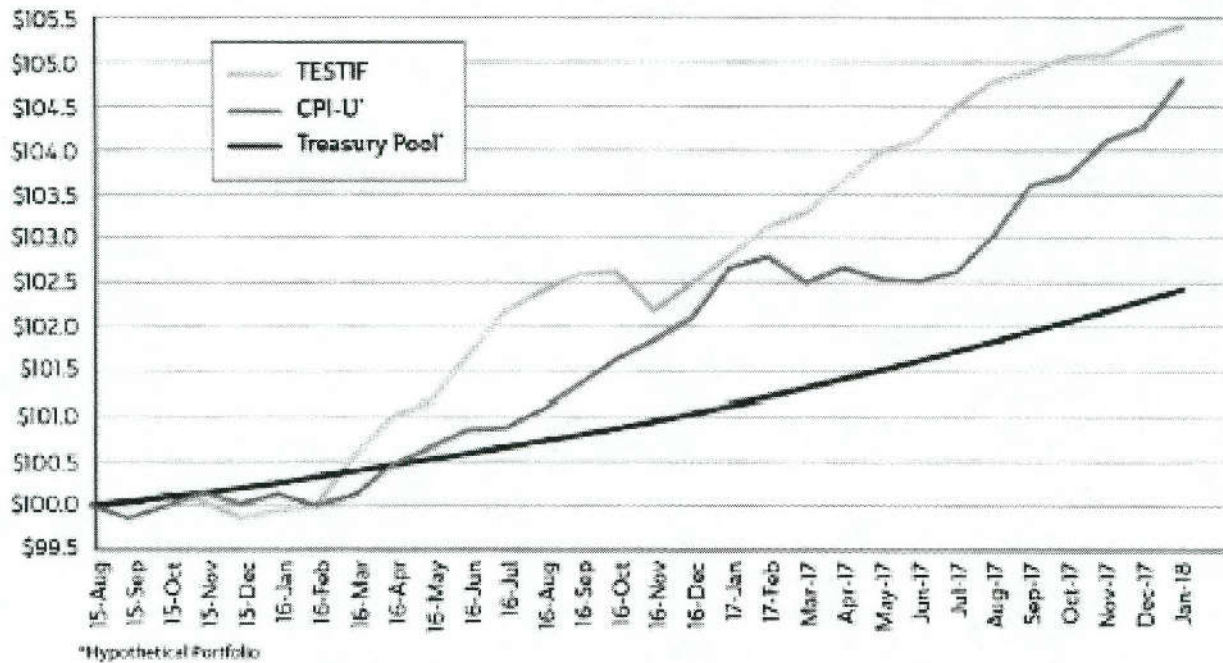
Concerns have been raised about the limitations on investing funds from the ESF. Until 2013 the Comptroller could only deposit ESF funds in the treasury pool—which currently yields less than the rate of inflation. The 84<sup>th</sup> Legislature directed the Comptroller to invest a portion of funds in high-yield investment strategies.<sup>16</sup> This invested portion is referred to as the Texas Economic Stabilization Investment Fund (TESTIF).<sup>17</sup> The amount available for the TESTIF represents all funds above the sufficient balance. The data in Figure 3 below, provided by the Comptroller's office, demonstrates that the majority of ESF funds remain in the treasury pool.

**Figure 3**  
**Economic Stabilization Fund Balance as of June 30, 2018**  
**(In Millions)**



The Comptroller's testimony included the data in Figure 4, which demonstrates that the TESTIF investments far outperform funds in the treasury pool.<sup>18</sup> The ESF has \$85 million more than it would have earned had all the funds continued to be invested in the treasury pool.

**Figure 4**  
**Hypothetical Growth of \$100 Since Inception**  
 (as of 1/31/18)



As of January 2018, the TESTIF had 34 percent allocation in the treasury pool/cash, which means it is liquid and therefore easy to access if needed quickly.<sup>19</sup>

### Conclusion

The state needs to maintain a healthy balance in the ESF for emergencies. The state also needs to maximize returns on its investment of reserve funds while maintaining a level of liquidity in case of an immediate need to access the funds.

### Recommendations

- Allow a greater portion of the ESF to be invested in high-yield strategies while maintaining enough liquidity in case of emergency or natural disaster.
- Seek out alternate methodologies to establish the sufficient balance.
- Reconsider the manner by which the ESF cap will be determined, potentially by exempting federal funds as part of the calculation.

<sup>1</sup> LBB Presentation at SFC Hearing March 20, 2018, pg 1.

<sup>2</sup> Tex. H.J.R. Res. 2, 70th Leg., R.S. (1987).

<sup>3</sup> Prior to 2013, the Comptroller transferred three-fourths of any oil and gas production taxes. Proposition 1 changed the percentage to 37.5% of each, with the remainder being transferred to the state highway fund.

<sup>4</sup> Tex. H.J.R. Res. 2, 70th Leg., R.S. (1987).

<sup>5</sup> Stan Schlueter testimony before House Committee on Appropriations Feb 16, 1987.

<sup>6</sup> Texas Constitution Art III, Sec. 49-g

<sup>7</sup> LBB infographic:

<https://public.tableau.com/profile/state.of.texas.lbb#!/vizhome/HistoryofEconomicStabilizationFundESF/EconomicStabilizationFund>

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> [http://www.lbb.state.tx.us/Documents/Publications/Info\\_Graphic/5192\\_ESF.pdf](http://www.lbb.state.tx.us/Documents/Publications/Info_Graphic/5192_ESF.pdf).

<sup>12</sup> Tex. H.J.R. Res. 2, 70th Leg., R.S. (1987).

<sup>13</sup> Tex. H.B. 3050, 74th Leg., R.S. (1991).

<sup>14</sup> Texas Transportation Funding Amendment, Proposition 1. November 2014.

[https://ballotpedia.org/Texas\\_Transportation\\_Funding\\_Amendment,\\_Proposition\\_1\\_\(2014\)](https://ballotpedia.org/Texas_Transportation_Funding_Amendment,_Proposition_1_(2014))

<sup>15</sup> LBB Presentation SFC Hearing March 2018, pg 1.

<sup>16</sup> Tex. H.B. 903 84(R), (2015).

<sup>17</sup> Investment Policy Statement Texas Economic Stabilization Investment Fund Texas Treasury Safekeeping Trust Company, October 2016, pg 3.

<sup>18</sup> Comptroller's Presentation at SFC Hearing March 20, 2018, pg. 8.

<sup>19</sup> Id.

## **Interim Charge #4 - Texas Emission Reduction Plan**

**Interim Charge Language:** *Review the Texas Emission Reduction Plan (TERP) and its economic benefits to the state. Examine whether the state's investment in TERP, including transfers from the Department of Transportation, are being effectively utilized to comply with federal air quality standards, reduce pollution, and protect the public health of Texans.*

### **Hearing Information**

The Senate Finance Committee met on January 30, 2018 to discuss Interim Charge #4 related to the Texas Emissions Reduction Plan. Representatives from the Texas Commission on Environmental Quality (TCEQ) and Legislative Budget Board (LBB) provided invited testimony. Information regarding witnesses and testimony can be found at:

<https://capitol.texas.gov/Committees/MeetingsByCmte.aspx?Leg=85&Chamber=S&CmteCode=C540>.

### **Introduction and Background**

The TERP program was created in 2001 by the 77th Legislature to bring the State of Texas in compliance with federal air quality standards. Specifically, the Federal Clean Air Act (FCAA) requires each state to develop and maintain a plan, known as the State Implementation Plan (SIP), on how it will comply with air quality standards outlined by the FCAA.<sup>1</sup> The TERP program is a part of the Texas SIP. Per federal law, SIPs include control strategies to manage pollution in areas that fail to achieve national ambient air quality standards (NAAQS).<sup>2</sup> NAAQS measure six different pollutants that, at elevated levels, can be harmful to people, property, and the environment.<sup>3</sup>

Areas of the state that have high levels of these pollutants are referred to as non-attainment or near non-attainment areas because they either fail to meet or are on the verge of failing to meet federal air quality standards. Currently, those areas include: Austin, Beaumont-Port Arthur, Corpus Christi, Dallas-Fort Worth, El Paso, Houston-Galveston, Tyler, and Victoria. The purpose of the TERP program is to provide grants to individuals, businesses, or government entities in non-attainment or near non-attainment areas in an effort to reduce harmful pollutants and to protect public health.<sup>4</sup> States that fail to comply with the FCAA could face serious economic sanctions from the Environmental Protection Agency that may include a loss in federal highway funds.<sup>5</sup> Additionally, The University of Texas at San Antonio Institute for Economic Development estimates that investments in TERP-related programs have a significant economic impact to the state-with a total impact over \$900 million.<sup>6</sup>

A majority of harmful air pollutants are derived from mobile and stationary sources such as cars, heavy-duty machinery, and maritime vessels. TERP grants provide incentives to individuals and businesses to help reduce emissions from on-road vehicles, off-road commercial and industrial equipment, maritime vessels, locomotives, and stationary engines.<sup>7</sup> TERP programs include: the Alternative Fueling Facilities Program, the Drayage Truck Incentive Program, the Emissions Reduction Incentive Grants, the New Technology Research and Development Grants, the New Technology Implementation Grant Program, Rebate Grants, the Texas Clean Fleet Program, the Texas Clean School Bus Program, the Light-duty Motor Vehicle Purchase or Lease Incentive Program, and the Texas Natural Gas Vehicle Grant Program.

## TERP Funding Structure

Funding for the TERP program is derived from fee revenue and is deposited into the TERP General-Revenue Dedicated account number 5071 (Account 5071). Figure 1<sup>8</sup>, below, outlines the origination of TERP account fee revenues.

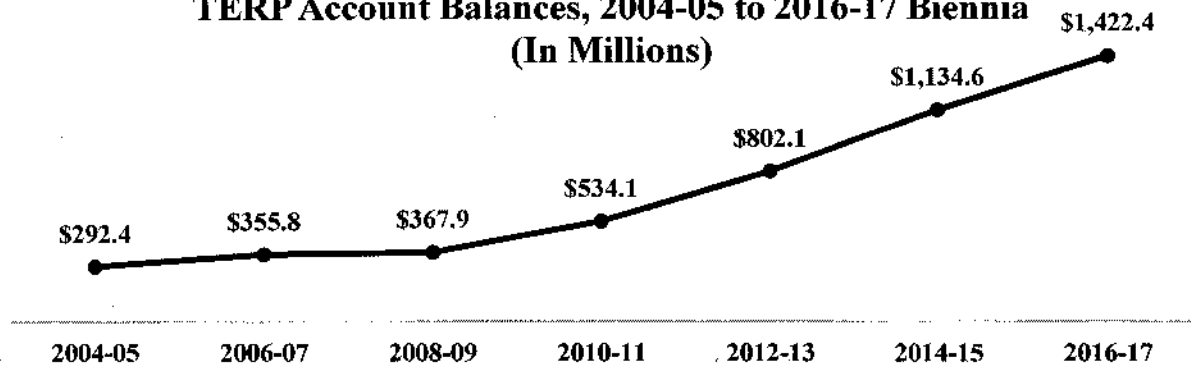
<b>Figure 1 TERP Revenues</b>	
Certificate of Title Fee	A certificate of title fee of \$20 in nonattainment areas or \$15 in all other counties. This fee is deposited to the Texas Mobility Fund; the TERP Account is reimbursed with an equal amount by the State Highway Fund.
Limited Sales and Use Tax	A surcharge of 1.5 percent on the cost of off-road heavy-duty diesel equipment.
Motor Vehicles Sales and Use Tax	A surcharge of 2.5 percent on the cost of on-road diesel motor vehicles of model year 1996 or earlier; for model years 1997 and later, the surcharge is 1.0 percent.
Commercial Motor Vehicle Registration Fee	A surcharge of 10.0 percent for commercial motor vehicle registration.
Commercial Motor Vehicle Inspection Fee	A fee of \$10 for commercial motor vehicle inspections.

According to the Comptroller's 2014-2017 Annual Cash Reports and the 2018-19 Biennial Revenue Estimate, overall TERP revenues have continued to increase since 2014.<sup>9</sup> Most of the consistent revenue growth can be attributed to the Certificate of Title Fees.

## TERP Balance

Since 2006, TERP revenues have exceeded subsequent appropriations and expenditures. As a result, the TERP account balance has continued to grow over time from \$292.4 million in Fiscal Year (FY) 2004-05 to over \$1.4 billion in FY 2016-17.<sup>10</sup> The Comptroller estimates that the balance will grow in excess of \$1.7 billion by the end of FY 2018-19.<sup>11</sup> Below, Figure 2<sup>12</sup> shows the ending balance in the TERP account for each biennium and how it has grown over time.

**Figure 2**  
**TERP Account Balances, 2004-05 to 2016-17 Biennia**  
**(In Millions)**



TERP account revenues that are not appropriated remain in Account 5071 and can be used by the Comptroller for certification of the General Appropriations Act.<sup>13</sup> Concerns have been expressed regarding the growing balance of the TERP account. Some suggest that the Legislature has become too reliant on this account balance in order to certify the state's budget. Further, critics argue that this trend has prevented TERP funding from being utilized for the purpose in which it was intended—to mitigate pollutants, improve air quality, and protect the public's health.

### Fee Expiration

Last session the Legislature passed Senate Bill (SB) 1731 which made some changes to the TERP program. SB 1731:

- Extends the authorization of the TERP program, previously set to expire on August 31, 2019, to the end of the biennium in which Texas attains the national ambient air quality standards for ground-level ozone;
- Allows TCEQ to reallocate funding between TERP programs based on demand for grants;
- Removes and amends various caps and minimum spending levels on TERP programs; and
- Renews the Light-Duty Motor Vehicle Purchase or Lease Incentive program and creates the Governmental Alternative Fuel Fleet Grant program.<sup>14</sup>

However, this legislation did not address the imminent expiration of TERP revenue fee transfers to Account 5071. Currently, all TERP fee revenue will expire on August 31, 2019, including those derived from the following: limited sales and use tax, motor vehicles sales and use tax, commercial motor vehicle registration, commercial motor vehicle inspection, and the certificate of title equivalent transfer from the State Highway Fund 6. Without the continuance of one or more of these fees, no new revenue will be collected in Account 5071 for TERP-related purposes. Allowing TERP fees to expire creates a negative impact to the state budget in two ways: 1) lost revenue and 2) less available General Revenue-Dedicated funding for budget certification. The total hit to the budget could be approximately \$250 million per fiscal year.

## Conclusion

The TERP grant program was created as a part of the Texas SIP to ensure air quality compliance with the FCAA. Specifically the program is intended to mitigate harmful air pollutants and environmental hazards by reducing emissions—and ultimately to help ensure clean air for all Texans. All TERP fee revenue will expire on August 31, 2019, and without the continuation of these fees, no new revenue will be collected for this purpose.

## Recommendations

- Consider ways to maximize TERP appropriations to ensure compliance with the Federal Clean Air Act and to ensure funding achieves its intended purpose.
- The Legislature, in collaboration with the Texas Commission on Environmental Quality, should regularly review individual TERP programs and perform an analysis of how each program is being utilized, its value to the TERP mission, and its economic benefit to the state.
- Review the current TERP fee structure, including fees set to expire at the end of the fiscal year, and the impact those fees have on the grant program, fee-payers, and the budget.

<sup>1</sup> Texas Commission on Environmental Quality. <https://www.tceq.texas.gov/airquality/sip/sipintro.html> Last modified on October 3, 2018. Accessed on November 16, 2018.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Legislative Budget Board. Overview of the Texas Emission Reduction Plan Account.

[http://www.lbb.state.tx.us/Documents/Publications/Presentation/5162\\_TERP%20SFC\\_1\\_29.pdf](http://www.lbb.state.tx.us/Documents/Publications/Presentation/5162_TERP%20SFC_1_29.pdf) Posted on January 30, 2018. Accessed on November 16, 2018.

<sup>5</sup> Niermann, John. *Texas Commission on Environmental Quality, Senate Finance Testimony*. (2018).

<sup>6</sup> Center for Community and Business Research at The University of Texas at San Antonio Institute for Economic Development (2015). *Technical Report*. Economic Impacts of Natural Gas Fueling Station Infrastructure and Vehicle Conversions in the Texas Clean Transportation Triangle. (February 2015)

<sup>7</sup> Legislative Budget Board. Overview of the Texas Emission Reduction Plan Account.

[http://www.lbb.state.tx.us/Documents/Publications/Presentation/5162\\_TERP%20SFC\\_1\\_29.pdf](http://www.lbb.state.tx.us/Documents/Publications/Presentation/5162_TERP%20SFC_1_29.pdf) Posted on January 30, 2018. Accessed on November 16, 2018.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.



## **Interim Charge #5 - Request to Exceed Review**

**Interim Charge Language:** *Review all riders requiring interim action by the Legislative Budget Board to reduce the number of times interim budget modification is necessary.*

### **Hearing Information**

The Senate Finance Committee held a hearing on January 30, 2018 to discuss Interim Charge #5 related to Requests to Exceed. The Legislative Budget Board provided invited testimony. Information regarding witnesses and testimony can be found at:

<https://capitol.texas.gov/Committees/MeetingsByCmte.aspx?Leg=85&Chamber=S&CmteCode=C540>.

### **Introduction**

In accordance with the Texas Constitution, the Texas Legislature meets every odd-numbered year to consider changes to state law and to adopt a two-year budget—the only legislative act that is constitutionally required.<sup>1</sup> The state budget is heavily based on estimates, which do not always line up with actual costs and revenues. Additionally, unforeseen events occur, such as natural disasters, new federal requirements, new costs resulting from litigation and other unanticipated needs at state agencies.

To ensure the state can effectively manage unforeseen events and unanticipated costs, each appropriations act includes provisions by which interim budget adjustments can be made with legislative and often gubernatorial approval. This approval process is known as a Request to Exceed, which state agencies may submit in order to exceed a limitation placed on its appropriation.

### **Requests to Exceed**

Texas voters approved a constitutional amendment<sup>2</sup> in 1985 authorizing interim budget actions by the Legislature.<sup>3</sup> The General Appropriations Act, adopted by the Legislature and signed by the Governor, includes rider provisions that limit how an agency's appropriation can be expended and, in limited circumstances, provides authority for agencies to request to exceed those limitations.<sup>4</sup> These requests are known as Requests to Exceed. For example, the General Appropriations Act for Fiscal Years (FY) 2018-19 allows agencies to exceed the 20 percent transfer limitation between strategies with prior Legislative Budget Board (LBB) and Governor approval.<sup>5</sup>

Over recent years, Requests to Exceed have been used more broadly to provide legislative oversight of major expenditures and to prevent increased costs to the state. For example, the current budget requires prior LBB approval before expending new funds appropriated for state hospital construction.<sup>6</sup> Additionally, prior approval is needed before paying reimbursement rates above certain thresholds in health and human services agencies and correctional managed care.<sup>7</sup>

Action in response to Requests to Exceed cannot increase overall state appropriations above amounts in the General Appropriations Act.<sup>8</sup> Most actions allow agencies to transfer funds between strategies, programs, or projects with surpluses to areas of need. However, some

actions may result in additional action by the next Legislature. For example, the LBB and Governor approved transfers to provide additional resources for critical needs at Child Protective Services in December 2016, which were ultimately funded by a supplemental appropriations bill in the next legislative session.<sup>9</sup>

### Use of Interim Adjustments

Some rider provisions allowing for Requests to Exceed have remained in the state budget for many years. Others have been added and/or removed from budget to budget. These riders are often incorporated into the budget to address fiscal challenges at a state agency, provide oversight to agency action, or to reinforce a legislative budget goal.

The FY 2018-19 General Appropriations Act includes 117 riders that require LBB action during the interim to exceed a budget limitation. Figure 1 shows this number broken down by article of the state's budget.

**Figure 1**  
**Number of Riders Requiring Interim Action<sup>10</sup>**

Article	Approval
I: General Government	12
II: Health and Human Services	51
III: Public Education	6
III: Higher Education	5
IV: Judiciary	1
V: Public Safety and Criminal Justice	9
VI: Natural Resources	5
VII: Business and Economic Development	7
VIII: Regulatory	5
IX: General Provisions	16
<b>TOTAL</b>	<b>117</b>

Some of these riders may not be utilized by agencies at all while others can be utilized multiple times within the interim. Since 2010, the number of LBB interim budget actions have fluctuated in accordance with legislative decisions to place additional budget restrictions on state agencies.<sup>11</sup> In addition, inconsistencies among rider provisions have emerged over time. For example, some provisions require approval within 15 business days while others allow 30 business days. Some provisions have no approval timeframe at all. When drafting the budget for FY 2020-21, the Legislature should evaluate ways to make these timelines more consistent.

## **Conclusion**

The state budget places many limitations on agency spending. Requests to Exceed are a tool to manage a two-year budget to address unforeseen events and account for updated cost estimates. As the Legislature develops the budget for the FY 2020-21 biennium, it should consider ways to streamline these requests and reduce the amount of budget decisions that occur during the interim.

## **Recommendations**

- Review budget riders and consider ways to reduce number of unnecessary interim actions by the Legislative Budget Board and Governor.
- Provide for more consistent timeframes and approval processes for Requests to Exceed.
- Review budget riders and consider ways to consolidate similar Requests to Exceed.

<sup>1</sup> Texas Constitution, Article III, Section 5.

<sup>2</sup> Texas Constitution, Article XVI, Section 69.

<sup>3</sup> Legislative Budget Board Presentation to Senate Finance Committee, January 30, 2018 (page 4).

<sup>4</sup> Legislative Budget Board Presentation to Senate Finance Committee, January 30, 2018 (page 3).

<sup>5</sup> 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Article IX, Section 14.01).

<sup>6</sup> 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Article II, HHSC Rider 147).

<sup>7</sup> See 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Article II, Special Provisions 17). See 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Article V, TDCJ Rider 46).

<sup>8</sup> Legislative Budget Board Presentation to Senate Finance Committee, January 30, 2018 (page 3).

<sup>9</sup> H.B. 2, 85th Legislature, Regular Session, 2017 (Sec. 10).

<sup>10</sup> Legislative Budget Board Presentation to Senate Finance Committee, January 30, 2018 (page 7).

<sup>11</sup> See Legislative Budget Board, RTEs 2010-2019, October 22, 2018.

## **Interim Charge #6 - Fee Structure Review**

**Interim Charge Language:** *Review state General Revenue-Dedicated fees and make recommendations to reduce fees and lessen reliance on General Revenue-Dedicated fee balances to certify the budget.*

### **Hearing Information**

The Senate Finance Committee held a hearing on January 30, 2018 to discuss Interim Charge #5 related to fee structures. Representatives from the Legislative Budget Board (LBB) provided invited testimony. Information regarding witnesses and testimony can be found at: <https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C5402018013010001.PDF>.

### **Introduction and Background**

Approximately \$6.2 billion—or 9 percent of state revenue—is derived from fees, permits, registrations, penalties or other forms of fees. Many Texans view a fee no differently than a tax because it comes out of the pockets of businesses and everyday Texans. It is the responsibility of the Legislature to ensure that fees are set at appropriate levels and that opportunities to reduce or eliminate fees are considered.

While fees represent a significant funding source to the state and are needed to provide services, they should not be overly burdensome to Texans and Texas businesses. Over the past three sessions, the Legislature has successfully decreased or phased out fees that were outdated or not meeting their originally intended purpose. The Legislature has also taken steps over the years to reduce its reliance on General Revenue-Dedicated (GR-D) accounts to certify the state budget—a long-term objective that should continue to be pursued.

### **Fees**

Fees are not defined in Texas statute, but they are generally described as "a payment made to the state for a service rendered or a privilege granted, often but not always to recoup the costs of providing that service or privilege."<sup>1</sup> In contrast, taxes, according to the Internal Revenue Service, are "an enforced contribution...imposed and collected for the purpose of raising revenue to be used for public and governmental purposes." The Texas Comptroller of Public Accounts categorizes fees more broadly to include: fees, licenses, fines, and penalties.<sup>2</sup> For purposes of this report, the term "fee" will refer to the Comptroller's definition.

Fees and the rates associated with a fee can be set by a variety of governing bodies and methods. Fees can be set by the Legislature in statute, which is the case for certain titles, securities, and licenses. State agencies and governing boards may establish fees to support their operations. The General Appropriations Act (GAA) may not establish fees, because doing so would be making general law. Additionally, the Legislature may not appropriate the entire amount of projected fee revenue or provide appropriation authority for additional fee revenue raised by a particular entity.<sup>3</sup>

## Fees as a State Revenue Source

Out of the \$72.8 billion in non-federal revenue collected by the Comptroller in Fiscal Year (FY) 2017, fees, licenses, fines and penalties made up \$6.2 billion, or 9 percent, as shown in Figure 1.

The source of these fees came from a variety of sectors such as transportation, education, health, court costs and others. A further breakdown of fees by category in FY 2017 is shown in Figure 2.

**Figure 1**  
**Non-Federal Revenue by Source, FY 2017<sup>4</sup>**

Source	Amount (in billions)	Percentage (non-federal revenue)
Sales tax	\$28.9	40%
All other taxes	\$20.7	28%
State health service fees and rebates	\$6.7	9%
<b>Fees, licenses, fines and penalties</b>	<b>\$6.2</b>	<b>9%</b>
All other non-tax collections	\$4.8	6%
Land, interest, and investment	\$3.4	5%
Net lottery proceeds	\$2.1	3%
<b>TOTAL</b>	<b>\$72.8</b>	<b>100%</b>

**Figure 2**  
**Fees, Licenses, Fines, and Penalties Revenue by Category, FY 2017<sup>5</sup>**

Category	Amount (in billions)	Percentage (total revenue category)
Transportation	\$2.6	41%
Education	\$1.1	18%
Business regulation/insurance	\$0.7	12%
Court costs and fines/penalties	\$0.5	7%
Administrative services	\$0.4	7%
Natural resources/parks and wildlife	\$0.4	7%
Health/welfare	\$0.3	6%
Other	\$0.2	2%
<b>TOTAL</b>	<b>\$6.2</b>	<b>100%</b>

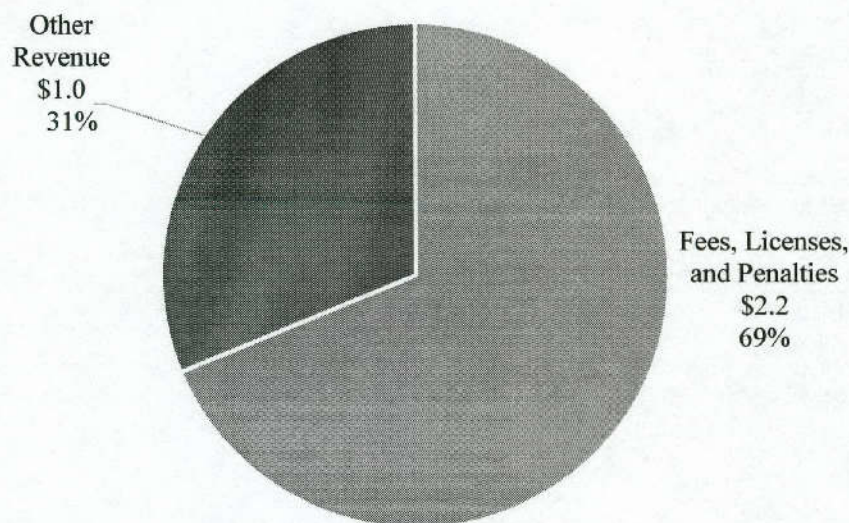
## General Revenue-Dedicated Accounts

Out of the \$6.2 billion in non-federal fee revenue in FY 2017 cited above, \$2.2 billion, or 36 percent, was deposited into one or more of the state's 200 GR-D accounts within the General Revenue Fund.

In many cases, fees are deposited into GR-D accounts that are dedicated to specific uses. Fees made up 68 percent of total GR-D revenue in FY 2017, as shown in Figure 3.

Other GR-D sources of revenue include: (1) taxes; (2) lottery operating costs; (3) unclaimed lottery proceeds; (4) federal receipts; (5) sale and lease assets; (6) gifts, grants and donations; and (7) judgments and settlements.<sup>6</sup>

**Figure 3**  
**General Revenue - Dedicated Revenue Sources, FY 2017**  
**(In Billions)<sup>7</sup>**



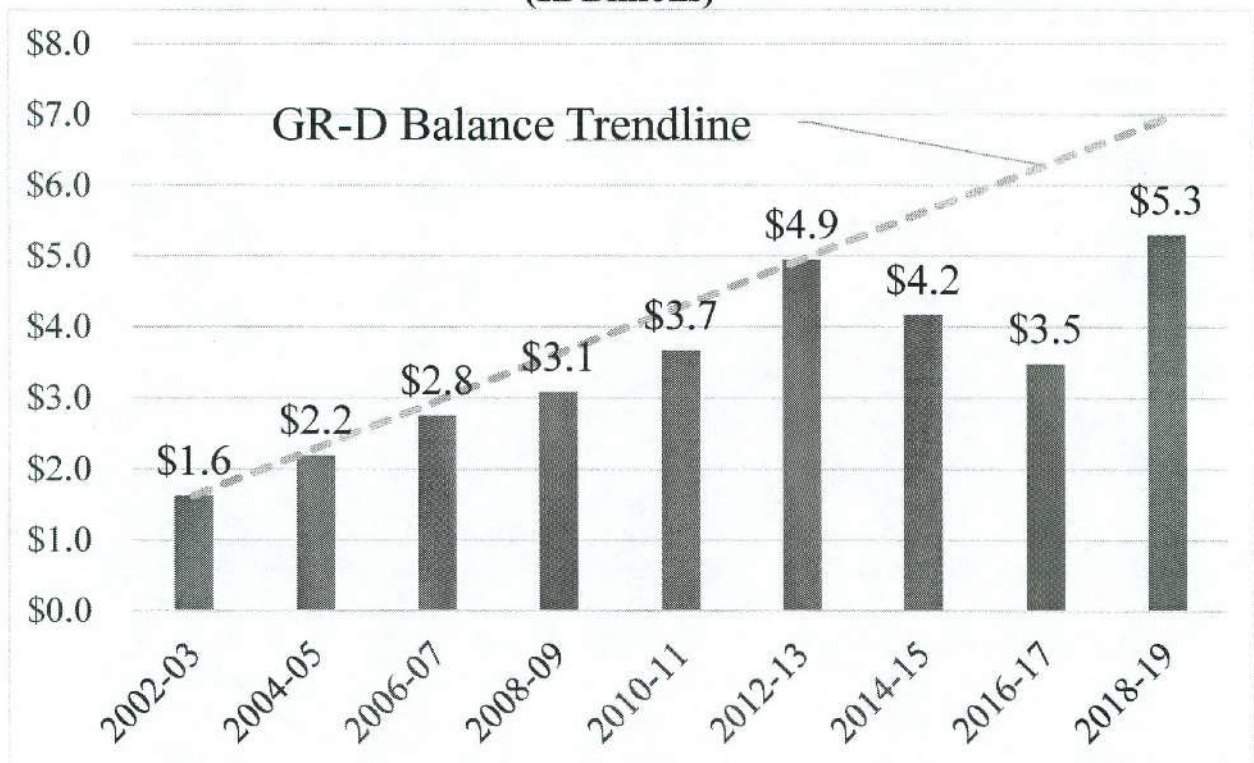
### **Trends: GR-D Balances Counted for Budget Certification**

Balances within the General Revenue Fund, including GR-D balances, are available to certify the appropriations bill.<sup>8</sup> Certification of the appropriations bills is required by the Texas Constitution to ensure "the amount appropriated is within the amount estimated to be available."<sup>9</sup> According to the Comptroller's report on the use of general revenue-dedicated accounts, "when the Legislature does not appropriate all of an account's revenue stream, or when revenue exceeds the estimate, a balance will accumulate in the account. If the Legislature appropriates more than the estimated biennial revenue for an account, in some cases the balance of that account is used to fund the appropriations. The balances in General Revenue Dedicated accounts are available for certification of General Revenue appropriations according to the provisions of Section 403.095."<sup>10</sup>

Over time, fee revenue has increased significantly—from \$300.8 million in 1972 to \$6.2 billion in FY 2016—an average annual growth rate of 7.1 percent.<sup>11</sup> More recently, GR-D balances have increased by more than \$3.7 billion over the past nine biennia—from \$1.6 billion in FY 2002-03 to \$5.3 billion in FY 2018-19—as shown in Figure 4. The Legislature has demonstrated

a strong interest in reversing that trend. During the 2013 and 2015 sessions, the Legislature took action to significantly decrease GR-D balances. Budget constraints in the most recent session contributed to an increase in these balances from \$3.5 billion in FY 2016-17 to nearly \$5.3 billion in FY 2018-19. However, due to action taken by the Legislature in 2013 and 2015, current balances are still well below the previous trend line.

**Figure 4**  
**General Revenue - Dedicated Balances, FYs 2002 - 2019**  
**(In Billions)<sup>12</sup>**



### **Reducing Reliance on GR-D Balances for Certification**

There are four different actions the Legislature can take to reduce reliance on GR-D balances. One or more of these methods can be utilized to help reduce account balances, which include:

1. reducing the rate of revenue collected, capping the amount collected, or abolishing an account;
2. increasing appropriations from GR-D accounts;
3. expanding the allowable use of an account; and
4. exempting available account balances from certification.<sup>13</sup>

### Recent Legislative Action to Reduce Fee and Reduce Reliance on GR-D

Over the past three sessions, the Legislature has taken the following actions to reduce fees and its reliance on GR-D account balances to certify the budget.

### **85th Legislature**

- SB 16 reduced the fee for concealed carry permits (\$22.4 million in GR);
- HB 2578 abolished several license fees related to bingo (\$6.4 million in GR); and
- HB 2662 reduced the non-party compact waste disposal surcharge and removed a surcharge on federal facility waste for the 2018-19 biennium (temporary, \$1.5 million in GR-D).

### **84th Legislature**

- HB 7 eliminated certain occupational license fees and taxes;
- HB 7 reduced the assessment of the diesel surcharge on the sale, lease, or rental of certain off-road equipment (\$32.5 million in GR-D); and
- HB 7 modified the basis for an assessment of petroleum product delivery fees (\$22.0 million mostly GR-D).

### **83rd Legislature**

- HB 7 eliminated a non-bypassable fee that previously financed the System Benefit Fund (\$245.5 million in GR-D);
- HB 7 limited the assessment against certain insurers for rural fire protection (\$23.0 million in GR-D);
- HB 7 reduced rates for certain solid waste disposal fees, and changed the allocation of those fees (\$17.3 million in GR-D); and
- HB 485 reduced concealed handgun permit fees for various individuals (\$0.8 million in GR).<sup>14</sup>

## **Conclusion**

While the state budget relies heavily on fee revenue to meet the state's growing needs, the Legislature has an obligation to re-evaluate fees, ensure funds are being spent on their intended purpose, and pursue opportunities to reduce or eliminate fees. Legislators should continue to focus on a long-term strategy to reduce reliance on GR-D accounts for budget certification.

## **Recommendations**

- Ensure that fee revenue is being used for its intended purpose.
- Consider reducing or eliminate unnecessary fees as the budget allows.
- Pursue a long-term strategy to reduce reliance on GR-D balances to certify the state budget.

<sup>1</sup> Texas Taxes and Fees, pg. 15. <https://comptroller.texas.gov/transparencv/revenue/sources.php> Accessed November 15, 2018.

<sup>2</sup> Id.

<sup>3</sup> Overview of State Fee Revenue, Appropriations, and Reliance on GR-D Balances, pg. 9, [http://www.lbb.state.tx.us/Documents/Publications/Presentation/5167\\_Fee%20presentation\\_SFC.pdf](http://www.lbb.state.tx.us/Documents/Publications/Presentation/5167_Fee%20presentation_SFC.pdf) Accessed November 15, 2018.

<sup>4</sup> Id. at pg. 10.

<sup>5</sup> Id.



<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Budget 101: A Guide to the Budget Process, pg 65, [https://senate.texas.gov/assets/srcpub/85th\\_Budget\\_101.pdf](https://senate.texas.gov/assets/srcpub/85th_Budget_101.pdf) Accessed November 15, 2018.

<sup>10</sup> Comptroller's Report on Use of General Revenue Dedicated Accounts, pg 1, <https://comptroller.texas.gov/transparency/reports/use-of-general-revenue-dedicated/> Accessed November 15, 2018.

<sup>11</sup> Id.

<sup>12</sup> Overview of State Fee Revenue, Appropriations, and Reliance on GR-D Balances, pg. 10, [http://www.lbb.state.tx.us/Documents/Publications/Presentation/5167\\_Fee%20presentation\\_SFC.pdf](http://www.lbb.state.tx.us/Documents/Publications/Presentation/5167_Fee%20presentation_SFC.pdf) Accessed November 15, 2018.

<sup>13</sup> Id. at 13.

<sup>14</sup> Id. at 10.

## **Interim Charge #7 - Corrections**

**Interim Charge Language:** *Examine the funding patterns used to fund the juvenile justice system and adult probation departments. Develop recommendations to ensure the Texas Juvenile Justice Department budget does not dis-incentivize the use of cost-effective best practices such as diverting youth from the juvenile justice system, providing services to youth in their community, and keeping youth closer to home. In addition, review funding to adult probation departments and ensure it provides for an equitable distribution to all Texas Probation Departments.*

### **Hearing Information**

The Senate Finance Committee met on December 5, 2017 to discuss Interim Charge #7 related to adult and juvenile corrections funding. Representatives from the Legislative Budget Board (LBB), Texas Juvenile Justice Department (TJJJ) and Texas Department of Criminal Justice (TDCJ) provided invited testimony. Information regarding witnesses and testimony can be found at: <https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C5402017120510001.PDF>.

### **Introduction and Background**

State laws require that individuals who commit criminal acts be brought to justice. However, the state also has an interest in rehabilitating offenders to become productive members of society. To further these interests, the Texas Juvenile Justice Department (TJJJ) and the Texas Department of Criminal Justice (TDCJ) provide supervision and services to offenders committed to their care.

Over the years the Legislature has taken steps to minimize the number of juveniles committed to state facilities and to keep youth who are committed to the juvenile justice system close to the supports of home and family. Accordingly, the largest program area in the TJJJ budget is local juvenile justice, which supports 166 juvenile probation departments around the state.<sup>1</sup> Despite these efforts, serious concerns about the safety and well-being of youth committed to state facilities continue to surface. New leadership installed at the agency in January 2018 has initiated an improvement plan to continue decreasing the census and working to restore a rehabilitative environment for youth in the state's care.<sup>2</sup> While these are positive steps, the Legislature must keep advancing its goals of diverting youth from the system, providing supervision services built on best practices, and keeping youth as close to the supports of home as appropriate.

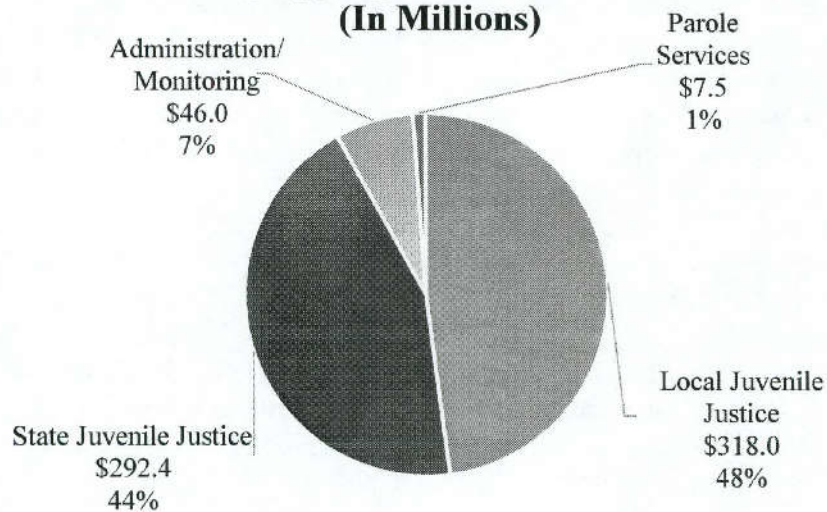
Alternatives to incarceration for the adult offender population grew significantly following the 80th Legislature, when the state prison system was at capacity and the state made substantial investments in diversion programs rather than expanding its prison facilities.<sup>3</sup> Today, adult probation, also referred to as community supervision, is the third largest program budget within TDCJ, behind correctional operations and offender services. Community supervision services are provided by 123 local Community Supervision and Corrections Departments (CSCDs).<sup>4</sup> State funding is distributed to CSCDs through a combination of formula funding and grants for specialized programs—a hybrid system that has been in place since 1986.<sup>5</sup> The Legislature has twice directed reviews of community supervision funding in an effort to ensure the state is providing equitable assistance to its local partners, but no significant changes to the longstanding community supervision funding mechanisms have occurred.<sup>6</sup> For many offenders, community

supervision remains an appropriate alternative to incarceration; accordingly, the Legislature's interest in ensuring CSCDs around the state are receiving appropriate support for services needed in their communities should continue.

### Juvenile Justice System

In the 2018-19 biennium, the Legislature appropriated \$663.9 million All Funds (AF) for TJJD, an increase of \$9.8 million over the previous budget.<sup>7</sup> TJJD separates its operations into four main program areas: local (community) juvenile justice, state juvenile justice, administration and monitoring, and parole services. As illustrated in Figure 1, local juvenile justice programming received the largest allocation of the department's appropriation for Fiscal Years (FYs) 2018-19, totaling \$317.9 million AF or 48 percent of the total TJJD budget.<sup>8</sup> With state support, local juvenile justice departments provide a range of services from basic supervision to treatment. In FY 2018, TJJD is expected to serve a total of 19,399 youth through community supervision programs. The LBB projects the probation population will decline to 17,390 annually by FY 2023 due to fewer referrals.<sup>9</sup>

**Figure 1**  
**Juvenile Justice Department Program**  
**Areas by Appropriation, FYs 2018-2019**  
**(In Millions)**



The department distributes local juvenile justice programming funding through formula-based distributions, non-formula discretionary grants, and other programs. In FYs 2018-19, formula funding for local juvenile probation departments, called "State Aid Grants," will total \$260.2 million AF or 82 percent of the community juvenile justice budget.<sup>10</sup> Through discretionary grants, TJJD distributes another 9.1 percent of its community juvenile justice budget, totaling \$28.9 million AF in the 2018-19 biennium.<sup>11</sup> The remaining 9 percent of the local juvenile justice program budget, totaling \$28.9 million, supports education programs, foster care placement reimbursements, system support, and an appropriation for the Harris County Leadership Academy.<sup>12</sup>

The 84th Legislature required TJJJ to complete a regionalization plan to advance the state's goal to serve youth closer to home.<sup>13</sup> Completed in August 2016, the plan aims to ensure that only those youth with the highest likely rates of recidivism and need for intervention are matched to the most intensive commitments at state or contracted residential facilities.<sup>14</sup> As a result, TJJJ is now focused on identifying youth who - with more support than has traditionally been available - could be served in their community through the Regional Diversion Alternatives (RDA) program. RDA was initiated as a \$9.6 million pilot in FYs 2016-17 and biennialized in the FY 2018-19 budget at a total cost of \$18.3 million in General Revenue (GR) within the community juvenile justice goal of the budget.<sup>15</sup> The program seeks to divert 150 juvenile offenders from state facilities annually. With the cooperation and support of local partners, RDA successfully diverted 21 youth in FY 2016, 187 youth in FY 2017, and a projected 245 youth in FY 2018.<sup>16</sup> The program's effectiveness is largely attributed to the availability of funding from TJJJ to supplement the cost of additional supervision and treatment services locally in lieu of placement in a state facility.<sup>17</sup>

Understanding not every committed youth can be served effectively in the community, the state has simultaneously made significant and necessary investments in TJJJ correctional facility operations. In the FY 2018-19 budget, those investments include appropriating \$12.7 million from the Economic Stabilization Fund for critical health and safety improvements to TJJJ facilities and \$650,000 million GR and six positions for additional mental health specialists at secure facilities and halfway houses.<sup>18</sup> During the interim, an additional \$247,295 was provided to develop the infrastructure to support the use of 1,250 correctional officer body cameras the state is testing on a trial basis this interim. The agency's legislative appropriations request for FYs 2020-21 includes an exceptional item request of \$3.2 million to purchase the cameras, associated storage space, and maintenance services.<sup>19</sup>

Despite these investments, concerns about the well-being of youth in facilities remain. These concerns are exacerbated by a high turnover rate among staff at these facilities—many of which are located in parts of the state with small local workforces.<sup>20</sup> In addition, TJJJ has identified a small population of youth who could benefit from an even higher level of supervision and treatment than is available in existing state facilities.<sup>21</sup> Moving forward, the Legislature must carefully consider workforce availability and offender population needs and trends when charting the future course of TJJJ facilities.

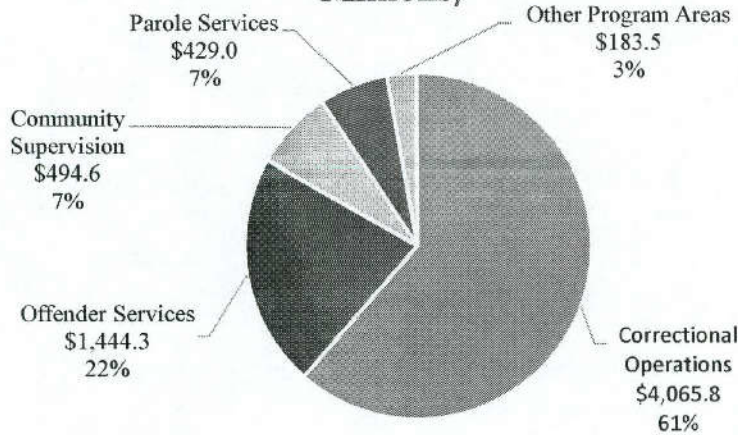
## **Adult Probation**

### **Funding**

While CSCDs are partially supported through offender fees and in-kind contributions from counties, nearly two-thirds of CSCD funding comes through state appropriations.<sup>22</sup> The 85th Legislature appropriated \$494.6 million AF to CSCDs for community supervision services, the third largest program area in TDCJ's budget, as depicted in Figure 2.<sup>23</sup> State funding for community supervision consists of: formula funding based on population projections; non-formula funding based on discretionary decisions; and health insurance benefits funded by the state for CSCD employees, which is distributed through a separate appropriation to the Employees Retirement System. In FYs 2018-2019, \$129.5 million was appropriated to provide health insurance benefits to CSCD employees.<sup>24</sup> In FY 2018, the adult felony direct supervision population is expected to be 155,483; the LBB projects this population will remain relatively

stable over the next five years, with a projected population of 155,487 in FY 2023. The adult misdemeanor community supervision population served is expected to be 85,542 in FY 2018 and decline to 74,384 in FY 2023 due to continuation of the trend of decreasing placements.<sup>25</sup>

**Figure 2  
Department of Criminal Justice  
Program Areas by Appropriation (In  
Millions)**



Formula funding ensures the state contributes to adult probation expenses at every CSCD. The Legislature appropriates basic supervision funding to the Department using the following formula: cost per day multiplied by the projected number of offenders to be served and days in the biennium.<sup>26</sup> The Legislature appropriated \$136.4 million in FYs 2018-19 for basic supervision, funded at \$1.057 per felony offender per day and \$0.70 per misdemeanor placement day for 182 days.<sup>27</sup>

Non-formula funding is appropriated to the agency by the Legislature and then distributed by the agency through both competitive and non-competitive grant processes, which allows CSCDs to demonstrate a specific need and for the state to target funding to programs tailored to a specific offender population. In FYs 2018-19, non-formula state funding for CSCDs totals \$344.3 million.<sup>28</sup> Funded programs include: community corrections at \$83.5 million; diversion programs such as battery intervention and prevention at \$241 million; and the Treatment Alternatives to Incarceration Program for offenders who do not qualify for or are unable to afford substance abuse screening, assessment and treatment at \$19.8 million.<sup>29</sup>

**Equity**

Dispersing a portion of funding to CSCDs through formula calculations ensures every CSCD serving at least one offender will receive some funding from the state. However, using *only* formula funding to provide adult probation services would prove challenging when faced with Texas' diverse offender population and landscape. Despite the intent of non-formula grant funding to compensate for different needs among CSCDs, concerns of inequity continue. In FY 2019, total state support to unique CSCDs spans from a low of \$21,603 to a high of \$37,495,931; the average amount received per felony probationer also significantly varies from a low of \$219 to a high of \$1,901.<sup>30</sup>

To better understand adult probation funding and the variances received by CSCDs, the Legislature directed TDCJ to review the issue.<sup>31</sup> Accordingly, a committee of stakeholders

including county CSCD directors, judges, district attorneys, and TDCJ staff issued a report in August 2016. The report offers suggestions to improve funding equity among CSCDs.<sup>32</sup>

## **Conclusion**

Moving forward, the Legislature should continue its efforts to serve offenders of all ages in the least restrictive setting possible and, when appropriate, with the supports of home. For many criminal offenders, community supervision is an appropriate way to protect the public while serving justice and rehabilitating the offender. The Legislature can incentivize such placements through funding mechanisms that balance reasonable oversight with flexibility to develop programming tailored to the needs of a specific area of the state or offender population.

## **Recommendations**

### *Juvenile Justice System*

- Align funding with the state's goal of ensuring that juvenile offenders who can be served appropriately in the community are placed accordingly.
- Review the appropriate number and locations of TJJD residential facilities with consideration given to adequate local employment pools, infrastructure needs, and safety of staff and committed youth.
- As the budget allows, extend existing investments and focus on building community-based service resources for low and medium risk offender youths.
- Identify gaps in specific capacity, including committed youth with long-term and emergency intensive mental health needs.
- Analyze the impact of adjusting probation formulas to account for factors such as offender risk and compensation for referrals diverted from the system.

### *Adult Probation*

- Review and consider the Community Supervision and Correction Department Funding Committee's report and associated recommendations related to adult probation funding.
- Consider options to make the current hybrid formula/grant system more equitable.
- Analyze impact of specific adjustments to the basic supervision formula, including offender risk, location, and treatment needs.

<sup>1</sup> Texas Juvenile Probation Departments, <http://www.tjjd.texas.gov/publications/other/alljuveniledepartments.aspx>. Accessed November 15, 2018.

<sup>2</sup> *Short-Term Solutions and Long-Term Goals: A Plan for TJJD*, <http://www.tjjd.texas.gov/Docs/TJJJPlan.pdf>; TJJD Ombudsman Report Q3 2018 [https://www.tjjd.texas.gov/ombudsman/reports/IO\\_3Q\\_18.pdf](https://www.tjjd.texas.gov/ombudsman/reports/IO_3Q_18.pdf)

<sup>3</sup> 2013 Sunset Advisory Commission Final Report with Legislative Action, <https://www.sunset.texas.gov/public/uploads/files/reports/Criminal%20Justice%20Agencies%20Staff%20Report%202013%2083rd%20Leg.pdf>

<sup>4</sup> Community Supervision In Texas, [https://www.tdcj.state.tx.us/documents/cjad/CJAD\\_Community\\_Supervision\\_in\\_TX\\_Fact\\_Sheet.pdf](https://www.tdcj.state.tx.us/documents/cjad/CJAD_Community_Supervision_in_TX_Fact_Sheet.pdf). Accessed November 15, 2018.

- <sup>5</sup> CSCD Report page 5, [http://tdcj.state.tx.us/documents/cjad/CSCD\\_Funding\\_Review\\_and\\_Recommendations\\_2016.pdf](http://tdcj.state.tx.us/documents/cjad/CSCD_Funding_Review_and_Recommendations_2016.pdf). Accessed November 15, 2018.
- <sup>6</sup> CSCD Report Appendix A: House Committee on Corrections Letter to TDCJ, [http://tdcj.state.tx.us/documents/cjad/CSCD\\_Funding\\_Review\\_and\\_Recommendations\\_2016.pdf](http://tdcj.state.tx.us/documents/cjad/CSCD_Funding_Review_and_Recommendations_2016.pdf)
- <sup>7</sup> 2018-2019 General Appropriations Act, page V-27.
- <sup>8</sup> Id.
- <sup>9</sup> Correctional Population Projections, June 2018, Legislative Budget Board, page 16
- <sup>10</sup> TJJJ Info Request, 8-20-18.
- <sup>11</sup> Id.
- <sup>12</sup> Id.
- <sup>13</sup> SB 1630, 84(R)
- <sup>14</sup> TJJJ Regionalization Plan, August 2016, [https://www.tjjd.texas.gov/Docs/Regionalization/16\\_Regionalization\\_Plan.pdf](https://www.tjjd.texas.gov/Docs/Regionalization/16_Regionalization_Plan.pdf)
- <sup>15</sup> 2016-2017 GAA page V-25; 2018-2019 GAA page V-27
- <sup>16</sup> TJJJ info request (email, 8/14/18)
- <sup>17</sup> Community Juvenile Justice Appropriations, Riders, and Special Diversion Programs, December 2017, [https://www.tjjd.texas.gov/publications/reports/17\\_AnnualReport\\_for\\_Governor-LegBudgetBoard.pdf](https://www.tjjd.texas.gov/publications/reports/17_AnnualReport_for_Governor-LegBudgetBoard.pdf)
- <sup>18</sup> 2017-2018 General Appropriations Act page V-27, Items B.1.8 and B.3.1
- <sup>19</sup> TJJJ Info Request 8-16-18. [http://tlchouse.granicus.com/MediaPlayer.php?view\\_id=13&clip\\_id=15424](http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&clip_id=15424)
- <sup>20</sup> *Short-Term Solutions and Long-Term Goals: A Plan for TJJJ*, <http://www.tjjd.texas.gov/Docs/TJJJPlan.pdf>; TJJJ Ombudsman Report Q2 2018 [https://www.tjjd.texas.gov/ombudsman/reports/IO\\_2Q\\_18.pdf](https://www.tjjd.texas.gov/ombudsman/reports/IO_2Q_18.pdf); TJJJ Ombudsman Report Q3 2018 [https://www.tjjd.texas.gov/ombudsman/reports/IO\\_3Q\\_18.pdf](https://www.tjjd.texas.gov/ombudsman/reports/IO_3Q_18.pdf)
- <sup>21</sup> *Short-Term Solutions and Long-Term Goals: A Plan for TJJJ*, <http://www.tjjd.texas.gov/Docs/TJJJPlan.pdf>.
- <sup>22</sup> Community Supervision In Texas, [https://www.tdcj.state.tx.us/documents/cjad/CJAD\\_Community\\_Supervision\\_in\\_TX\\_Fact\\_Sheet.pdf](https://www.tdcj.state.tx.us/documents/cjad/CJAD_Community_Supervision_in_TX_Fact_Sheet.pdf)
- <sup>23</sup> 2018-2019 General Appropriations Act, pages V-5 & V-6.
- <sup>24</sup> 2018-2019 General Appropriations Act, page I-34.
- <sup>25</sup> Correctional Population Projections, June 2018, Legislative Budget Board, pages 8, 9, and 25
- <sup>26</sup> Correctional Population Projections, June 2018, Legislative Budget Board, Page 5
- <sup>27</sup> LBB Presentation to Senate Finance, December 5, 2017, "Juvenile Justice System and Adult Community Supervision Funding", slide 17
- <sup>28</sup> LBB Presentation to Senate Finance, December 5, 2017, "Juvenile Justice System and Adult Community Supervision Funding", slide 18
- <sup>29</sup> LBB Presentation to Senate Finance, December 5, 2017, "Juvenile Justice System and Adult Community Supervision Funding", slide 18
- <sup>30</sup> TDCJ info request, 8-16-18.
- <sup>31</sup> SB 213, 83R; House Committee on Corrections Letter to TDCJ
- <sup>32</sup> Community Supervision and Corrections Department Funding Review and Recommendations, [http://tdcj.state.tx.us/documents/cjad/CSCD\\_Funding\\_Review\\_and\\_Recommendations\\_2016.pdf](http://tdcj.state.tx.us/documents/cjad/CSCD_Funding_Review_and_Recommendations_2016.pdf) Accessed November 15, 2018.

## **Interim Charge #8 - Trauma Funding**

**Interim Charge Language:** *Review revenue sources currently funding the state's trauma system and the impact of declining revenues and balances in General Revenue - Dedicated accounts. Evaluate the impact of statutory changes affecting trauma system funding, including efforts to eliminate the Driver Responsibility Program. Examine ways to ensure sustainability of the trauma system in Texas.*

### **Hearing Information**

The Senate Finance Committee met on January 30, 2018 to discuss Interim Charge #8 related to funding for the state's trauma system. Representatives from the Legislative Budget Board (LBB), Department of State Health Services (DSHS), Texas Hospital Association (THA), and the Texas Association of Counties (TAC) provided invited testimony. Information regarding witnesses and testimony can be found at:

<https://capitol.texas.gov/Committees/MeetingsByCmte.aspx?Leg=85&Chamber=S&CmteCode=C540>.

### **Introduction and Background**

Trauma is the leading cause of death for Texans under 44 years of age.<sup>1</sup> Nearly 30 Texans die from trauma-related injuries every day, almost 10,000 each year<sup>2</sup>, which can result in significant loss of income and productivity as well as loss to the state in lifetime tax revenues. Short of death, serious injuries resulting in long-term disabilities can lead to additional persons dependent on state assistance programs and increased cost to the state. Consistent funding and effective coordination among trauma system participants such as hospitals, Regional Advisory Councils (RACs), emergency providers, counties, state agencies, and others is essential for a well functioning trauma system.

Nearly 30 years ago, Texas did not have a formal trauma system to ensure critically injured persons had access to emergency health care services.<sup>3</sup> At that time, only 1,000 Emergency Medical Services (EMS) providers and 300 hospitals existed in Texas.<sup>4</sup> In 1989, the 71st Legislature passed The Omnibus Rural Health Care Act, which required the Texas Department of Health, now Department of State Health Services (DSHS), to develop and implement a statewide EMS and trauma care system, designate trauma facilities, and develop a statewide trauma data registry to provide system monitoring statewide cost and epidemiological statistics.<sup>5</sup> In the years following, the Legislature continued to allocate funds to support this newly coordinated trauma system, including the dedication of significant funding in 2003 using surcharge revenue from the Driver Responsibility Program.<sup>6</sup>

As a result of these efforts, the trauma system in Texas now includes 289 designated trauma hospitals, 159 designated stroke hospitals, 67,870 EMS personnel and 769 EMS providers, and 4,954 EMS vehicles.<sup>7</sup> The trauma fatality rate in Texas continues to decrease with 1,000 fewer deaths in the trauma system in 2016 than 2012.<sup>8</sup>

### **Trauma-Related General Revenue-Dedicated Accounts**

There are currently five General Revenue-Dedicated (GR-D) accounts that support the state's trauma system. Each has unique funding sources (primarily fines, fees, and surcharges) and



allowable uses for how the funds must be appropriated. As shown in Figure 1, the Fiscal Year (FY) 2018-19 budget dedicates \$302.6 million through various GR-D accounts to support the state's trauma system.<sup>9</sup>

**Figure 1  
Trauma-Related GR-D Accounts<sup>10</sup>**

<b>GR-D Account</b>	<b>Funding Source</b>	<b>Primary Uses</b>	<b>FY 18-19 Appropriation*</b>
<b>Account 5111: Designated Trauma Facilities and EMS</b>	\$30 State Traffic Fine, Driver Responsibility Program surcharges, Red Light Camera penalties**	Reimbursement of uncompensated trauma care	FY 18: \$116.2M FY 19: \$116.2M
<b>Account 5046: Permanent Fund for EMS and Trauma Care</b>	Tobacco Settlement Funds	Payment of principle or interest of a bond at the Cancer Prevention and Research Institute of Texas and EMS and Trauma Care services through DSHS	FY 18: \$26.3M FY 19: \$0M
<b>Account 5007: Commission on State Emergency Communications</b>	9-1-1 Equalization Surcharge Funds	9-1-1 emergency communications systems and poison control centers through the Commission on Emergency Communications. County and regional EMS and trauma care systems through DSHS	FY 18: \$17.9M FY 19: \$16.4M
<b>Account 5108: EMS, Trauma Facilities, and Trauma Care Systems Fund</b>	\$100 for DUI/DWI Conviction Surcharge	County and regional EMS, designated trauma facilities, and trauma care systems	FY 18: \$2.4M FY 19: \$2.4M
<b>Account 512: Bureau of Emergency Management</b>	Fees and other funds received under the Emergency Health Care Act, such as fees collected for applications for EMS personnel certification	Administration of the Emergency Health Care Act, which regulates EMS personnel and providers	FY 18: \$2.4M FY 19: \$2.4M

\*Appropriated amounts are estimated based on anticipated revenue.

\*\*Revenue from red light camera penalties was previously deposited into Regional Trauma Account 5137, which was abolished by the 84th Legislature. As of 9/1/15, revenue is now deposited into Account 5111.

## **Trauma Funding Challenges**

One source of trauma funding, as shown in Figure 1, is interest accrued from tobacco settlement funds. The Permanent Fund for EMS and Trauma Care (Account 5046) was established by the Legislature in 1999 with a \$100 million corpus, the interest of which to be used as an ongoing source of funds for the trauma system.<sup>11</sup> Since the Legislature allowed corpus balances to pay Cancer Prevention and Research Institute of Texas (CPRIT) bond debt service in 2011, the corpus has steadily declined resulting in diminishing interest available to support trauma.<sup>12</sup> During the 85R legislative session, it was estimated that the corpus of Account 5046 would be fully depleted with no interest earnings available for appropriation in FY 2019.<sup>13</sup> However, the Comptroller's Revised Certification Revenue Estimate in July 2018 estimates \$0.8 million in interest earnings from Account 5046 will be available during FY 2019.<sup>14</sup>

Additionally, the 84th Legislature took action to considerably spend down balances of GR-D accounts, including trauma-related accounts. For example, that Legislature appropriated \$348.1 million from Account 5111 in FY 2016-17<sup>15</sup> out of \$366 million available for appropriation.<sup>16</sup> To mitigate these effects, both the 84th and 85th Legislatures provided non-dedicated GR funds to ensure level funding for trauma.

### **Potential Repeal of Funding Sources for Trauma**

Several bills have been filed over the years to either eliminate or diminish dedicated funding sources for trauma, including red light camera penalties and Driver Responsibility Program surcharges. Half of red light camera penalties are retained by local governments while the other half is deposited into the Designated Trauma Facilities and EMS Account (Account 5111) to support the state's trauma system.<sup>17</sup> Since the use of red light cameras was authorized by the Texas Legislature in 2007, the state has received \$163.2 million in revenue to date.<sup>18</sup> Several bills have been filed to eliminate red light cameras, which many believe are unconstitutional and have not achieved their intended purpose of improving safety for motorists. Prohibiting red light cameras would reduce funding for the state's trauma system, as revenue from these penalties deposited into Account 5111 in FY 2018-19 are estimated to be \$16.2 million per fiscal year.<sup>19</sup>

The Driver Responsibility Program (DRP) was created in 2003 to hold irresponsible drivers accountable for causing trauma by collecting surcharges from certain driving violations, including driving while intoxicated and driving without insurance.<sup>20</sup> Roughly half of DRP surcharges are deposited into the General Revenue Fund while the other half is deposited into Account 5111 to offset the cost of uncompensated trauma care.<sup>21</sup> For the FY 2018-19 biennium, the DRP is estimated to generate 47.5 percent of all EMS and trauma revenue—making the DRP the leading source of funding to the state's trauma system.<sup>22</sup> However, many contend that the negative consequences of the DRP outweigh its benefit as a revenue source to the state. The DRP has long been criticized for having a disproportionate effect on low-income drivers who have accrued penalties through the program and are unable to pay. Additionally, administrating the program is burdensome for judges, courts and sheriffs around the state.<sup>23</sup>

For several legislative sessions, attempts have been made to repeal the DRP, or repeal and replace the program, in response to concerns from the public. These proposals would have a significant fiscal impact to the state. The amount of state revenue produced by the DRP varies from year to year. As shown in Figure 2 below, repeal of the DRP would result in as much as

\$173 million in annual lost revenue to the state, exacerbating the existing challenges to funding the state's trauma system.

**Figure 2**  
**DRP Surcharge Revenue (in millions), FY 2011–2017<sup>24</sup>**

	2011	2012	2013	2014	2015	2016	2017
<b>General Revenue</b>	\$86.1	\$88.4	\$68.7	\$73.0	\$76.4	\$74.7	\$72.6
<b>Trauma Account 5111</b>	\$84.4	\$85.0	\$69.1	\$71.6	\$74.9	\$73.2	\$71.2
<b>TOTAL</b>	<b>\$170.4</b>	<b>\$173.4</b>	<b>\$137.8</b>	<b>\$144.5</b>	<b>\$151.2</b>	<b>\$147.8</b>	<b>\$143.8</b>

In addition, funds appropriated from Account 5111 have been recently leveraged to draw down additional federal funds for hospital payments. Out of the \$232.4 million appropriated out of Account 5111 in FY 2018-19, \$203.3 million was transferred to the Health and Human Services Commission to draw down \$273.3 million in additional federal funds for Medicaid add-on payments for trauma and safety-net hospitals.<sup>25</sup> The Legislature should consider the impact to the state's ability to draw down these additional federal funds when deliberating changes that would reduce revenue to Account 5111.

### **Conclusion**

A coordinated and adequately funded trauma system is essential to providing effective response and treatment for Texans experiencing trauma. Funding challenges in recent years have put dedicated funding for the state's trauma system at risk. Due to real concerns about the effectiveness of the DRP and red light cameras, the Legislature should consider changes to these programs. However, as part of the discussion, the Legislature must carefully consider the negative fiscal impact to the trauma system.

### **Recommendations**

- When considering changes to trauma revenue sources, such as the Driver Responsibility Program and red light cameras, the Legislature should identify permanent funding sources to sustain the state's trauma system.

<sup>1</sup> Texas EMS Trauma and Acute Care Foundation, "The Texas Trauma System State's Unique, Coordinated System Saves Lives," [http://tetaf.org/wp-content/uploads/2016/01/TX-Trauma-Sys-11x17\\_White\\_Paper.pdf](http://tetaf.org/wp-content/uploads/2016/01/TX-Trauma-Sys-11x17_White_Paper.pdf), accessed July 25, 2018.

<sup>2</sup> Department of State Health Services, <https://www.dshs.texas.gov/emstraumasystems/Etrahist.shtm>, accessed July 25, 2018.

<sup>3</sup> Department of State Health Services Presentation to Senate Finance Committee, January 30, 2017 (pg. 2).

<sup>4</sup> Id.

<sup>5</sup> Id. Legislative Budget Board, EMS and Trauma Care Funding Infographic, October 2018.

<sup>6</sup> H.B. 3588, 78th Legislature, Regular Session, 2003. H.B. 3318, 78th Legislature, Regular Session, 2003. H.B. 2,

78th Legislature, Third Called Session, 2003.

<sup>7</sup> Department of State Health Services Presentation to Senate Finance Committee, January 30, 2017 (pg. 6).

<sup>8</sup> Email from the Department of State Health Services, May 7, 2018.

<sup>9</sup> See Legislative Budget Board presentation to Senate Finance Committee, January 30, 2018.

<sup>10</sup> Legislative Budget Board presentation to Senate Finance Committee, January 30, 2018.

<sup>11</sup> Legislative Budget Board, Department of State Health Services Summary of Recommendations-Senate (pg. 15).

<sup>12</sup> Id.

<sup>13</sup> Legislative Budget Board, Department of State Health Services Summary of Recommendations-Senate (pg. 5).

<sup>14</sup> Comptroller of Public Accounts, Certification Revenue Estimate, Revised July 2018.

<sup>15</sup> 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II Special Provisions 32, 58, and 59). Note: H.B. 7, 84th Legislature, Regular Session, 2015, abolished Regional Trauma Account 5137 and transferred fund balances and revenues to Account 5111.

<sup>16</sup> Available funds for appropriation includes account balances and revenue estimates for Account 5111 and Account 5137 for the FY 2016-17 biennium. FY 2015 ending balances totaled \$128.8 million and estimated revenue collections totaled \$237.2 million, per the Biennial Revenue Estimate, January 2015.

<sup>17</sup> Legislative Budget Board presentation to Senate Finance Committee, January 30, 2018 (pg. 9). Note: State revenue from red light camera penalties were previously deposited into the Regional Trauma Account 5137, which was abolished by the 84th Legislature. As of 9/1/15, revenues are deposited into Account 5111.

<sup>18</sup> Email from Legislative Budget Board, August 21, 2018.

<sup>19</sup> Legislative Budget Board presentation to Senate Finance Committee, January 30, 2018 (pg. 10).

<sup>20</sup> Legislative Budget Board presentation to Senate Finance Committee, January 30, 2018 (pg. 14).

<sup>21</sup> Legislative Budget Board presentation to Senate Finance Committee, January 30, 2018 (pg. 16).

<sup>22</sup> Legislative Budget Board, EMS and Trauma Care Funding Infographic, October 2018.

<sup>23</sup> Texas Hospital Association testimony to Senate Finance Committee, January 30, 2018 (coalition letter dated May 15, 2017).

<sup>24</sup> Legislative Budget Board presentation to Senate Finance Committee, January 30, 2018 (pg. 17).

<sup>25</sup> 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Article II Special Provisions 22). Email from the Health and Human Services Commission, September 25, 2018.

## **Interim Charge #9 - Business Personal Property Tax**

**Interim Charge Language:** *Evaluate the property tax as it applies to business personal property and the current \$500 exemption. Quantify the economic effect of taxing business personal property and determine whether the tax places Texas at a competitive disadvantage relative to other states. Evaluate the burden on taxpayers and local governments of administering the property tax on business personal property and determine whether the current \$500 exemption should be increased.*

### **Hearing Information**

The Senate Finance Committee met on February 20, 2018 to discuss Interim Charge #9 related to the business personal property tax. Representatives from the National Federation of Independent Business - Texas (NFIB), Texas Taxpayers and Research Association (TTARA), Harris County Appraisal District, Texas Association of Manufacturers, and the Texas Retailers Association provided invited testimony. Information regarding witnesses and testimony can be found at: <https://capitol.texas.gov/Committees/MeetingsByCmte.aspx?Leg=85&Chamber=S&CmteCode=C540>.

### **Introduction and Background**

Texas remains a national leader when it comes to establishing a hospitable environment in which businesses can succeed. As states continue to vie for relocations and economic development opportunities, the Legislature must continually review our policies and tax structure with the goal of strengthening Texas' competitive advantage. The business personal property tax presents an obstacle to economic growth and a unique burden to certain classes of Texas businesses.

In 1981, Texas began taxing business tangible personal property<sup>1</sup>, which is defined as any property used for business purposes "that can be seen, weighed, measured, felt, or otherwise perceived by the senses."<sup>2</sup> This includes both fixed assets such as furniture, equipment, tools, machinery, and inventory held for sale or rental. Manufacturing companies, retailers, and other industries contend that the business personal property tax presents a significant hardship and disproportionately burdens companies that rely on personal property for their operations.

In 1995, the Legislature exempted property with a taxable value of less than \$500. That exemption has remained in place despite inflation. A \$500 exemption in today's dollars is equivalent to \$367 in 1997 dollars, according to TTARA.

### **Competitive Advantage & Impact on Taxpayers**

With a low tax burden and a sensible regulatory environment, Texas is consistently rated among the nation's top states for business. In nationwide comparisons, Texas ranks favorably in several categories. As one of only seven states with no income tax, Texas has the fourth lowest state-local tax burden per capita and as a percentage of income.<sup>3</sup> USA Today recently ranked Texas among the top five lowest tax burden states.<sup>4</sup>

While our tax structure is favorable, it is not perfect. Texas is one of 42 states that tax business personal property. Further, Texas is one of only 10 states that tax inventory.<sup>5</sup> In addition, Texas

has one of the nation's highest overall property tax collections on industry, which creates a competitive disadvantage and a burden on businesses.

Retailers report paying two to three times more in business personal property tax on inventory than what they pay in franchise tax.<sup>6</sup> This becomes especially burdensome in difficult economic times when inventory remains on shelves for long periods of time.<sup>7</sup> While most grocery store items are not subject to sales tax, grocery stores pay the business personal property tax on grocery items prior to sale because those items are considered inventory.<sup>8</sup>

Stakeholders contend that the business personal property tax can represent "sticker shock" to certain industries moving to Texas and presents a barrier to the recruitment of advanced manufacturers. These advanced industries have expensive equipment that depreciates quickly.<sup>9</sup> In fact, when a business wants to expand in Texas, some store materials and parts outside of Texas to avoid the business personal property tax.<sup>10</sup> For example, some airplane maintenance facilities that perform repairs in Texas house jet engine parts in other states, which means Texas does not get the benefit of maintenance facility expansion, warehouse storage, or the jobs that come with expanding these types of services.<sup>11</sup> Businesses report that to avoid paying the higher tax rate, they are willing to have items shipped and wait for them to be delivered.<sup>12</sup>

Small businesses report a competitive disadvantage because of the business personal property tax burden. According to a 2016 survey conducted by NFIB, small business owners ranked property tax their fifth most difficult challenge out of 75 issues surveyed.<sup>13</sup> The complexity of the rendition process also presents difficulties for small businesses, which face 36 percent higher costs in complying with regulations than their big business counterparts, according the U.S. Small Business Administration.<sup>14</sup> NFIB reports that many small business owners weigh their time and money spent filling out the rendition form versus the cost of paying a tax penalty.<sup>15</sup>

### **Burden on Local Governments**

Texas law requires business owners to report business personal property to the appraisal district for assessment and taxation.<sup>16</sup> This process can be costly for both taxpayers and the appraisal district. In Harris County, for example, the administrative cost to the county of processing rendition forms is about \$22 per parcel. If there is a protest and an appraisal hearing, that represents an additional \$23 per parcel.<sup>17</sup> As the chart below shows, for business personal property valued between \$500 and \$2500, the average levy in Harris County is \$43, and the average processing cost to the county is \$29.<sup>18</sup>

HARRIS COUNTY APPRAISAL DISTRICT  
Business Personal Property 2017

					Estimated Processing Costs <sup>Ⓛ</sup>			
	Appraised Value	Parcels	Taxable Value	Levy @ 3%	Ave. Levy Per Parcel	Settled @ \$22	ARB Hearing add \$23 <sup>Δ</sup>	Ave. Cost Per Parcel
1	> \$2,500	156,500	\$64,965,200,000	\$1,948,956,000	\$12,453	\$3,443,000	\$244,000	\$24
2	\$500 - \$2,500	24,000	34,000,000	1,020,000	43	528,000	165,000	29
3	< \$500	11,500	800,000	24,000	2	253,000	51,000	26
TOTAL						\$4,224,000	\$460,000	\$4,684,000

Ⓛ Excludes costs of tax office administration (exs. billing and collection)

Δ 20,000 protests (approx. 1 10,600; 2 7,200; 3 2,200)

**HIGHLIGHT** : Retained levy upon \$2,500 exemption = 99.95%

It is important to point out that \$22 average cost for settling in Harris County is the cost *just* to the county. It does not include costs to other taxing jurisdictions within Harris County.<sup>19</sup> After all jurisdictions have processed, there is a possibility that tax collections can be negated by processing costs for property with a low value.<sup>20</sup>

## Conclusion

The Legislature must continually review the state's tax structure to protect our competitive advantage when it comes to the recruitment and retention of Texas businesses. The business personal property tax presents a burden on several classes of industry in Texas, and should be reviewed in the next legislative session. There are many options available to address these challenges, including exempting inventory, raising the exemption above \$500, or doing away with the business personal property tax entirely.

As with any tax reform, the Legislature must weigh the potential benefits of tax relief against the impact on state revenue. Eliminating the business personal property tax entirely would have a roughly \$6 billion negative fiscal impact.<sup>21</sup> Exempting inventory entirely would have a negative fiscal impact of \$1-\$1.5 billion.<sup>22</sup> Increasing the \$500 exemption would be scalable.

## Recommendations

- Consider changing the current \$500 exemption by adjusting it upward to keep up with inflation.
- Continue studying options for reducing the business personal property tax burden on Texas businesses.

<sup>1</sup> Texas Tax Code. Taxable Property and Exemptions. Sec. 11.01(c).

<sup>2</sup> Texas Tax Code. Definitions. Sec. 1.04(4).

<sup>3</sup> Tax Foundation <https://taxfoundation.org/facts-figures-2018/>. Accessed November 16, 2018.

- <sup>4</sup> USA Today. Tax Policy: States with the Lowest and Highest Taxes.  
<https://www.usatoday.com/story/money/taxes/2018/04/06/states-highest-and-lowest-taxes-3-6/482944002/>.  
Published April 6, 2018. Accessed November 16, 2018.
- <sup>5</sup> TTARA written testimony at SFC Hearing on February 20, 2018, pg 1 and Texas Tax Code Sec 23.12.
- <sup>6</sup> Retailers testimony at SFC Hearing on February 20, 2018 at 3:16.
- <sup>7</sup> Retailers testimony at SFC Hearing on February 20, 2018 at 3:17.
- <sup>8</sup> Retailers testimony at SFC Hearing on February 20, 2018 at 3:17:30.
- <sup>9</sup> TAMS written testimony at SFC Hearing on February 20, 2018, pg 2.
- <sup>10</sup> Manufacturers written testimony at SFC Hearing on February 20, 2018, pg 2.
- <sup>11</sup> Manufacturers testimony at SFC Hearing on February 20, 2018 at 2:59.
- <sup>12</sup> Manufacturers written testimony at SFC Hearing on February 20, 2018, pg 2.
- <sup>13</sup> NFIB written testimony presented at SFC Hearing on February 20, 2018, pg 1.
- <sup>14</sup> Id.
- <sup>15</sup> NFIB witness testimony (Newton) at SFC Hearing on February 20, 2018 at 2:18.
- <sup>16</sup> Texas Tax Code. Information From Taxpayer. Sec 22.01(a).
- <sup>17</sup> Roland Altinger hearing testimony at SFC Hearing on February 20, 2018 at 3:09.
- <sup>18</sup> Harris County written testimony presented at SFC Hearing on February 20, 2018.
- <sup>19</sup> Roland Altinger testimony at SFC Hearing on February 20, 2018 at 3:09:10.
- <sup>20</sup> Id.
- <sup>21</sup> Dale Craymer testimony at SFC Hearing on February 20, 2018 at 2:34:20.
- <sup>22</sup> Dale Craymer testimony at SFC Hearing on February 20, 2018 at 2:34:33.



## **Interim Charge #10 - Interest Rate Disparity**

**Interim Charge Language:** *Evaluate the rate of interest charged on delinquent property taxes and delinquent state taxes, compared to the rate of interest paid on property tax refunds and state tax refunds. Evaluate the effect of interest rate disparity on the assessment decisions of governments and the payment decisions of taxpayers. Quantify the amount by which state and local governments profit from interest rate disparity. Identify best practices among other states regarding interest rates charged and paid. Recommend a plan and timeline to reduce interest rate disparity.*

### **Hearing Information**

The Senate Finance Committee met on February 20, 2018 to discuss Interim Charge #10 related to interest rate disparity. Representatives from the Comptroller of Public Accounts Office (CPA), the Council on State Taxation (COST), and the Texas Taxpayers and Research Association (TTARA) provided invited testimony. Information regarding witnesses and testimony can be found at:

<https://capitol.texas.gov/Committees/MeetingsByCmte.aspx?Leg=85&Chamber=S&CmteCode=C540>.

### **Introduction and Background**

Tax parity, which exists when the interest owed by a taxpayer on a penalty for failure to pay a tax is equal to the amount of interest the state pays a taxpayer for overpayment of a tax, occurred in Texas in 1999.<sup>1</sup> Senate Bill (SB) 1321, passed by the 76<sup>th</sup> Legislature, held that both the interest rate on a delinquent tax and the credit interest on refunds were to be set at the prime rate + 1 percent.<sup>2</sup>

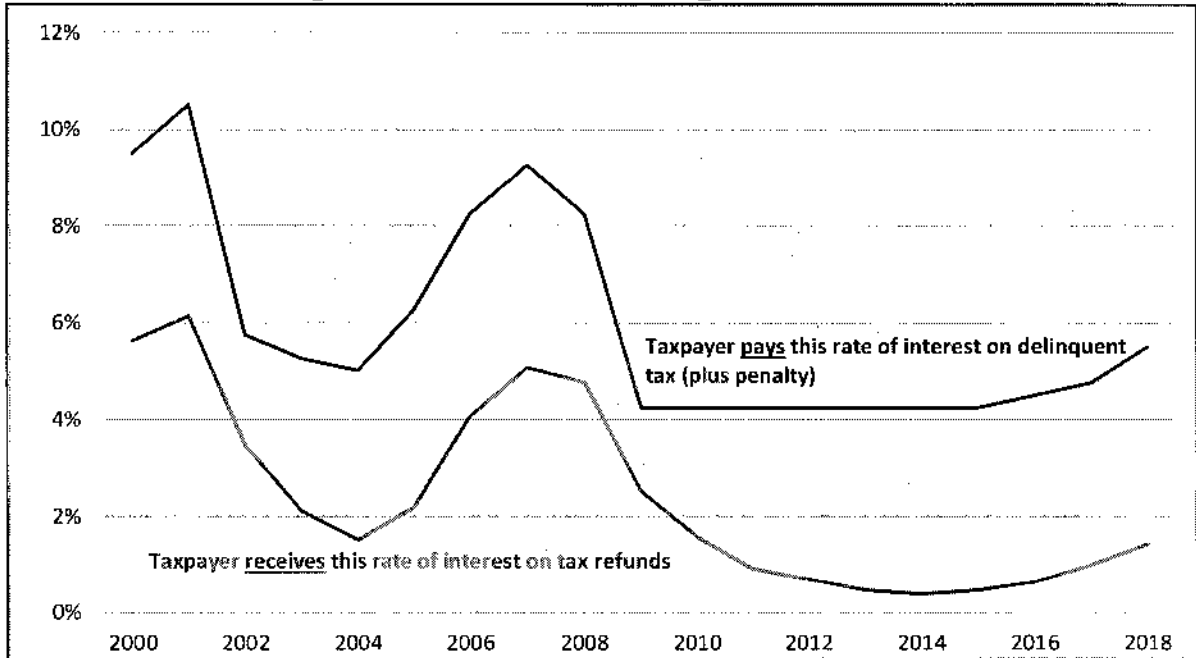
In 2005, the Legislature changed the way interest is paid on taxpayer refunds.<sup>3</sup> Under current law, taxpayers who owe back taxes are charged an interest rate of prime + 1%.<sup>4</sup> However, if the state owes the taxpayer a refund, the interest rate is the lesser of prime rate + 1% or the rate of interest earned by the state Treasury during December of the previous year.

Several pieces of legislation have been filed to address the lack of parity, but so far none have received sufficient support to become law.

### **Rate of Interest Charged on Delinquent Taxes Compared to Interest Paid**

There is disparity in Texas for those who owe the state in penalties versus those who are owed interest from the state, as shown in Figure 1, provided by TTARA.<sup>5</sup>

**Figure 1**  
**Percentage of Interest Rate Charged Versus Refunded**



As outlined in Figure 1, in 2018, taxpayers that owe back taxes will be charged 5.5 percent interest on their delinquent taxes.<sup>6</sup> By contrast, if the state owes a taxpayer a refund, the taxpayer will receive a 1.429 percent interest rate on their tax refunds.<sup>7</sup>

Critics of disparity argue that "interest, at a market rate, should compensate for the time value of money and should be equal for both government and taxpayer."<sup>8</sup> Others would say that achieving parity would benefit few Texans while taking away resources from the state. Over time, the impact of parity would cost the state nearly \$450 million per biennium.<sup>9</sup>

### **Effect on Payment and Assessment Decisions**

Questions have been raised regarding whether, if the state adopted a policy of tax parity, businesses would be incentivized to overpay their taxes. A tax overpayment in 2018—repaid with 5.5 percent interest—would provide a higher yield than many other investment portfolios. During the Senate Finance Committee interim hearing on this subject, representatives from the business community testified that the return for overpaying is not worth the overpayment.<sup>10</sup>

Additionally, stakeholders are critical of the fact that to challenge an assessment, they must pay the assessment as charged by the state before they can contest the amount in court. The "pay-to-play" provision in and of itself creates burden on taxpayers and acts as a deterrent for challenging a penalty. It has also been noted there is not a level playing field among taxpayers to contest unfair tax levies, given that low-income Texans do not have the resources to hire tax consultants.

Stakeholders also question how much the state is making in underpayments versus how much taxpayers are actually receiving in overpayments. Representatives from the Comptroller's Office

testified that, while the state collects data about assessments and refunds, the state does not collect payment information in a manner that can accurately compare penalty payments with interest versus taxpayer refunds with interest.<sup>11</sup> It is difficult to fully understand the fiscal impact of interest rate disparity without being able to accurately compare the two.

## **Conclusion**

Texans deserve fairness in the taxing process. There are 29 other states that currently have parity.<sup>12</sup> The Internal Revenue Service practices parity, which is generally "the 'federal short-term rate' plus 3 percentage points, rounded up to the nearest half-point."<sup>13</sup> While fairness is important, so is the financial feasibility of implementation. Eliminating the interest rate disparity would bear a significant cost that must be weighed against the growing needs of the state.

## **Recommendations**

- Consider ways to phase in tax-parity over time as the state budget allows.
- Direct the Comptroller to gather comparative data to determine the impact of interest rate disparities on tax levy challenges.

<sup>1</sup> SB 1231 76(R).

<sup>2</sup> Id.

<sup>3</sup> SB 1863 79(R); and SB 1570 79(R).

<sup>4</sup> Texas Tax Code. Interest on Delinquent Tax. Sec. 111.060(b).

<sup>5</sup> TTARA Chart, pg 3, of their written testimony submitted to the SFC on February 20, 2018.

<sup>6</sup> TTARA written testimony, pg 2, submitted to the SFC on February 20, 2018.

<sup>7</sup> Id.

<sup>8</sup> TTARA written testimony, pg 1.

<sup>9</sup> SB624 85(R) fiscal note.

<sup>10</sup> Dale Craymer testimony at SFC Hearing on February 20, 2018 at 3:56

<sup>11</sup> Karey Barton testimony at SFC Hearing on February 20, 2018 at 3:46

<sup>12</sup> Comptroller's written testimony, pg 6, submitted to the SFC on February 20, 2018.

<sup>13</sup> TTARA written testimony, pg 3.





