

FOCUS *report*

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Topics for the 87th Legislature

The Texas Legislature may consider a variety of topics when it convenes in regular session on January 12, 2021, including legislation responding to the effects of the COVID-19 pandemic on public health, education, and the economy. In addition, lawmakers in 2021 are expected to consider a once-a-decade redistricting process for congressional, state House and Senate, and State Board of Education districts. The pandemic also could impact how legislative business is conducted and the volume of legislation considered. This report highlights many, although by no means all, of the issues the 87th Legislature could consider during its upcoming session.

A total of 19 agencies are under review this session by the Sunset Advisory Commission, including the Texas Department of Agriculture, the Texas Commission on Law Enforcement, and the Teacher Retirement System of Texas. During each regular legislative session, the commission reviews state agencies based on a schedule established in law and provides recommendations to the Legislature on whether to continue certain agencies and how to revise their operations.

Appropriations and spending

When the 87th Legislature writes the state budget for fiscal 2022-23, it will consider agency spending requests in the context of expected state revenue. Some proposals for state spending are discussed in this report under specific topic categories.

Legislators will examine state agencies' spending requests for fiscal 2022-23 and could consider proposals to increase revenue or to use the state's Economic Stabilization Fund for the fiscal 2022-23 budget.

Before the legislative session, the comptroller's *Biennial Revenue Estimate for 2022-23* will report the amount of revenue available for appropriation by the Legislature for the next biennium. In July 2020 the comptroller revised the previous revenue estimate to say the state would have \$110.2 billion for general-purpose spending in the fiscal 2020-21 biennium and would end fiscal 2021 with a \$4.6 billion deficit. The total available for spending in fiscal

2020-21 was a decrease of \$11.6 billion, or 9.5 percent, from the estimate made in October 2019 when the budget was certified.

Reductions for fiscal 2020-21. In May 2020, the governor, lieutenant governor, and speaker of the House asked state agencies and institutions of higher education to pursue cost savings that would not affect the state's response to the COVID-19 pandemic and to let any savings return to the state treasury. They also asked agencies and institutions to identify ways to reduce their general revenue and general revenue-related spending by 5 percent and to submit the recommendations to the governor and Legislative Budget Board (LBB). About \$1 billion in potential reductions was identified.

Several items were excluded from the 5 percent reductions, including appropriations to the Texas Division of Emergency Management, the Texas Department of State Health Services, the Texas Workforce Commission, the Texas Military Department, and the Texas Department of Public Safety. Also exempt was funding for debt service, bond authorizations, formula funding for the Foundation School Program as defined in statute, school safety, Child Protective Services, and funding for behavioral health service programs.

Additional exemptions from reductions included funds to maintain benefits and eligibility levels in Medicaid programs, the Children's Health Insurance Program (CHIP), the foster care program, the adoption subsidies program, the permanency care assistance program, and services for individuals with intellectual or developmental disabilities. Reductions also did not have to be identified in appropriations for the Texas Department of Criminal Justice's security operations or health care funding or in appropriations to health-related institutions and community colleges. Employer contributions to the Teacher Retirement System and Employees Retirement System funds and to Social Security also were exempt.

Agency spending requests for fiscal 2022-23. State agencies were instructed to submit spending requests with base funding equal to their adjusted fiscal 2020-21 base. The instructions said some agencies exempted from the request to identify 5 percent reductions in fiscal 2020-21 appropriations would receive adjusted baselines for their fiscal 2022-23 requests. Agency requests above that base amount were to be included as exceptional item requests, including requests to restore the 5 percent reductions.

Funds for certain programs were exempted from this baseline request limit, including amounts necessary to maintain funding for the Foundation School Program, Child Protective Services, and the Department of Public Safety. The instructions also exempted from the spending limit the money used to maintain funding for programs serving individuals with intellectual or developmental disabilities.

Also exempt from the limit were funds to maintain current benefits and eligibility in Medicaid, CHIP, foster care programs, the adoption subsidies programs, and the permanency care assistance program, which provides financial support under certain circumstances to relatives and others who become foster parents. Agencies were directed to include funds to cover projected caseload growth in the baseline requests for these programs.

Expenses to satisfy debt service requirements for bond authorizations were exempt from spending limits, as were expenses to maintain funding at fiscal year 2021 budgeted levels for state contributions to pensions systems for teachers and state employees and health insurance programs, although benefit plan modifications may be considered.

Supplemental appropriations for fiscal 2021. The 87th Legislature could consider additional spending for the current fiscal year, including for any potential funding shortfalls for Medicaid, CHIP, Child Protective Services, and correctional managed health care.

Strategic fiscal review of certain agencies. This budget cycle, 11 agencies underwent strategic fiscal review, a process designed to comprehensively examine an agency's budget and activities. As part of the process, the LBB collects detailed data on an agency's programs and finances and examines alternative funding levels for the agency's activities. It also studies the relationship of an agency's program to its mission and statutes. The 86th Legislature, in SB 68 by Nelson, required the LBB to perform a strategic fiscal review for each state agency under review by the Sunset Advisory Commission. The LBB released its review of the 11 agencies in October 2020.

The 11 entities that underwent review are:

- Texas Holocaust and Genocide Commission;
- Teacher Retirement System of Texas;
- Texas Commission on Fire Protection;
- Texas Commission on Jail Standards;
- Texas Commission on Law Enforcement;

- Texas Department of Agriculture;
- Texas Animal Health Commission;
- Texas Parks and Wildlife Department;
- Texas Department of Licensing and Regulation;
- Texas Racing Commission; and
- State Board of Veterinary Medical Examiners.

Economic Stabilization Fund. Legislators could consider proposals to use the state's Economic Stabilization Fund ("rainy day fund") for fiscal 2021 spending or for spending in the upcoming fiscal 2022-23 biennium. This could include proposals to use the fund to maintain formula funding levels for public schools and institutions of higher education or for other purposes. Lawmakers also could debate using the rainy day fund for health care services and additional renovations to state psychiatric hospitals.

In 2019 the 86th Legislature enacted SB 69 by Nelson which set the ESF sufficient balance as 7 percent of the certified general revenue related appropriations in a fiscal biennium. The bill also revised the investment criteria applied to the fund, allowing the comptroller to invest up to 75 percent of the fund in higher-yield investments while keeping the rest of the fund fully liquid.

Lawmakers could discuss changing how the fund may be spent by altering the voting thresholds for appropriating money. They could debate proposals to adjust the fund's cap or to use funds above the cap for tax relief. They also could consider putting some of the ESF in a new fund that could be invested for higher returns with the proceeds dedicated to specific purposes such as long term liabilities for infrastructure, pensions, or debt.

Spending limits. Legislators could consider revising the current limits on state expenditure growth or imposing new ones. The current limit on expenditure growth requires that the state calculate the growth rate of the Texas economy, which currently is based on personal income. Proposals could include using an expenditure growth rate based on population and inflation or another similar measure. Other proposals could include applying limits on expenditures to all spending rather than a portion of it.

Taxes and revenue

In the 87th regular session, lawmakers could explore options to add revenue to offset declines caused by the COVID-19 pandemic, including options to end certain

tax exemptions or raise tax rates. The Legislature also could consider proposals to amend the property tax system, including the voter approval tax rate established in the previous legislative session.

Eliminating tax exemptions or increasing rates.

The Legislature could debate whether to end certain tax exemptions or to increase tax rates to recover the reduction of state revenues caused by the COVID-19 pandemic. Proposals could include expanding the sales tax base to include services such as accounting, increasing the state motor fuels tax or cigarette tax rates, creating a new tax on e-cigarettes, or eliminating a natural gas tax credit. Proposals to tie tax rates to the annual increases in the consumer price index also could be considered.

Tax exemptions. Lawmakers could discuss whether to create new sales tax exemptions on certain items, including menstrual products and textbooks. Temporary exemptions may also be considered for products related to the COVID-19 pandemic or future breakouts of disease, such as disinfectant cleaning supplies, gloves, and face masks. Other proposals could include those to increase the \$500 property tax exemption for business personal property, the physical property used for business purposes, to account for inflation.

Property taxes. The 87th Legislature could monitor changes made to the property tax system in the previous legislative session and consider additional changes.

Certificates of obligation. Legislators could explore proposals to include local debt obligations not approved by voters, known as certificates of obligation, in the limitation on property tax revenue growth.

Disaster exemption. Lawmakers could discuss proposals to specify that a provision of law exempting local entities from being required to hold an election before increasing property tax revenues more than 3.5 percent in cases of a disaster declaration by the governor applied only to disasters inflicting physical damage on property, such as hurricanes, and not to those caused by a public health emergency.

Appraisals. The Legislature could consider legislation to amend the appraisal process, including the process to appeal an appraisal not considered equal and uniform with comparable properties. Other proposals could be considered to require virtual appraisal review board meetings in times of disaster, such as during the COVID-19 pandemic, or to allow for alternatives to in-person hearings.

Sourcing local sales taxes. Lawmakers could examine proposals to shift from origin-based sales tax sourcing, or collecting local taxes where an order was placed, to destination-based sourcing, or collecting where the order was taken possession of by the purchaser. Such changes may be considered specifically for items purchased on the internet.

Business and economic development

The 87th Legislature could consider legislation to continue or amend certain local economic development programs that provide certain tax or revenue incentives for private businesses. Lawmakers also could consider proposals to provide legal liability shields to businesses operating during the COVID-19 pandemic, expand port infrastructure, or support veterans entering the workforce.

Business incentives. The Legislature could consider proposals to extend, abolish, or amend certain programs allowing local economic development agreements.

Ch. 313 agreements. Tax Code ch. 313 allows school districts to offer temporary property tax limitations to certain businesses that agree to build new property and create jobs within the district. Legislators may consider extending the program, which expires December 31, 2022, or amending it by creating auditing and transparency measures.

Ch. 380 agreements. Local Government Code ch. 380 and ch. 381 allow cities and counties to offer loans and grants of public funds or services to commercial and retail projects to promote economic development and stimulate business activity. Legislators may consider proposals to amend or abolish the program.

Employer liability protections. Legislators could introduce legislation to provide certain legal liability protections for businesses operating during the COVID-19 pandemic or similar disasters. This could include proposals to provide a level of immunity from negligence lawsuits brought by employees for on-the-job injuries for businesses that meet certain safety standards.

Minimum wage. Lawmakers could discuss proposals to increase the state minimum wage above the current rate, which follows the federal standard, or to automatically adjust the wage rate by the annual increase in the consumer price index.

Sea and land port infrastructure. The House Committee on International Relations and Economic Development received an interim charge to study Texas' sea and land port infrastructure and make recommendations to maximize international trade. Possible proposals could include dredging and widening Texas sea ports, expediting border crossings, and optimizing auxiliary rail and road connections to ports.

Workforce barriers for military veterans. To address concerns about the difficulties faced by military veterans transitioning from service into the civilian job market, the Legislature could consider proposals to modify government transition benefits and study demand for veteran and military spouse employment.

Criminal justice and public safety

Lawmakers could consider proposals to create new criminal offenses and revise criminal penalties, as well as to reduce the number of jailable offenses and expand use of the cite-and-summons law. Several proposals relating to policing and the Sunset Advisory Commission's review of the Texas Commission on Law Enforcement could be considered as well as proposals on bail, possession of drugs, and civil asset forfeiture.

Policing. Legislators may consider several proposals relating to policing, including the use of force, officers' duties, and data collection.

Officer use of force. Several proposals on police use of force could be considered, including revising the criteria found in Code of Criminal Procedure (CCP) art. 6.06 and art. 6.07 and Penal Code sec. 9.51 for when deadly force may be used. Proposals could include banning the use of choke holds or other specific techniques and requiring law enforcement officers to use de-escalation techniques and responses that are proportionate to the seriousness of the offense and circumstances that the officers encounter.

Officer duties. Proposals to amend the statutory duties of police officers could include establishing a duty for officers to intervene when another officer is breaking the law or harming another person, a duty for officers to identify themselves, and a duty to render aid when people in their custody are injured. The Legislature also could consider whether to preserve the requirement under CCP art. 2.13 for officers to make arrests in every case where authorized.

Legislators could debate the use of search warrants that allow law enforcement officers to enter property without knocking and the standards of evidence to stop or search a vehicle. Proposals also could be made to ban law enforcement officers from stopping motorists for an alleged traffic violation as a pretext for investigating another alleged violation.

Data and information collection, transparency. Proposals to expand Texas law requiring law enforcement agencies to collect information about some uses of force could be considered. Currently, CCP art. 2.132 requires law enforcement agencies to collect certain information about motor vehicle stops in which tickets, citations, or warnings are issued, including whether a peace officer used physical force that resulted in bodily injury. In addition, CCP art. 2.139 requires data to be collected in all officer-involved shooting incidents.

Legislators could discuss policies on body and dash cameras, including proposals on privacy, evidence, and the circumstances under which a body or dash camera could or should be turned off. Other proposals could address the public disclosure of body camera videos.

Proposals could be made to revise Government Code sec. 552.108 provisions that allow law enforcement agencies to withhold from public release certain information if a case did not result in a conviction. One proposal could be to make information public if the person who was the subject of the information consented or was deceased.

Corroborating testimony. Proposals could be considered to require corroboration of the testimony of undercover law enforcement officers in drug cases, similar to the way CCP art. 38.075 requires corroborating evidence before a person can be convicted of an offense on the testimony of a jailhouse informant.

Disciplinary process, civil service, legal immunity, incident investigation. The Legislature could consider proposals to revise the civil service code disciplinary process in Local Government Code ch. 143, which governs some cities' police departments. Proposals could include revising investigation timelines, creating a standardized list of consequences for police misconduct, and addressing public access to the investigation process.

Legislators also could debate restricting qualified legal immunity, a doctrine established by the U.S. Supreme Court that can protect officers from some civil lawsuits alleging

violations of civil rights. Proposals could emerge to allow civil lawsuits in state courts for civil right violations. The Legislature also could discuss proposals to allow the Texas attorney general to investigate officer-involved deaths and to prosecute law enforcement actions when appropriate.

Funding for local departments. Legislators could debate prohibiting cities or counties from reducing their public safety budgets or establishing penalties for local governments that do so. Proposals could include freezing property tax revenues for such cities, removing these cities' annexation powers, or having local police forces consolidated within the Texas Department of Public Safety and placed under its authority.

Training. Lawmakers could discuss revising the current curriculum used to train police officers. Proposals could include requiring more training, incorporating new training models, and adding instruction for both new and existing officers on tactical communication, de-escalation, and use of force.

Texas Commission on Law Enforcement Sunset review. The Texas Commission on Law Enforcement (TCOLE) is undergoing review this session by the Sunset Advisory Commission. The review will focus on TCOLE's regulation of law enforcement, including its authority to address licensee misconduct and training standards and curriculum, and on TCOLE's information technology infrastructure and contracting practices. Lawmakers could consider recommendations to establish a panel to evaluate TCOLE's functions and provide recommendations on the state's regulation of law enforcement. Other proposals could include expanding TCOLE's authority to allow the commission to take action on licensee misconduct absent a criminal conviction or violation of administrative rules.

Arrests for misdemeanors. Lawmakers have considered a prohibition on arrests for fine-only misdemeanors in previous sessions and similar proposals could be considered again by the 87th Legislature. Other potential proposals could include reducing the number ofailable offenses and expanding use of the cite-and-summons law in CCP art. 14.06, which allows peace officers to issue a citation and a summons to appear in court for certain offenses, rather than to arrest and take a suspect to jail.

Death penalty. Legislators could discuss proposals to amend Texas law governing procedures used during sentencing in death penalty cases and other changes to the laws authorizing the death penalty. Proposals could include

revising the instructions to juries during the sentencing phase of a capital murder trial and establishing statutory procedures for how and when Texas courts would determine whether an individual was intellectually disabled and therefore ineligible for the death penalty. Other proposals to expand or restrict the death penalty could be debated, including proposals to expand the use of the death penalty to apply to murder of a prosecuting attorney or other specific circumstances and to prohibit a death sentence for a defendant determined to be a person with severe mental illness at the time of the offense.

Bail and pre-trial detention. Lawmakers could discuss pre-trial detention and bail policies. Proposals to limit use of cash bail could be considered, including proposals to prohibit courts statewide from assessing cash bail for certain crimes and requiring that arrestees be released on personal bonds that do not require cash or other sureties. Another proposal to limit cash bail could be to expand those who may be held pretrial without bail. Other proposals could center on using pretrial risk assessment tools in bail-setting, requiring legal representation at hearings when bail is determined, or training magistrates and judges in making bail decisions. Debate also could include how best to supervise those released into the community before trial and funding for local pre-trial supervision programs.

Drug offenses. The Legislature could consider proposals to reduce penalties for possession of small amounts of marijuana or other drugs. This could include reducing some penalties to Class C misdemeanors or replacing criminal penalties with civil penalties, such as a fine. Proposals also could be made to legalize marijuana following the model of other states that tax and regulate marijuana in a manner similar to alcohol.

Civil unrest. Legislators could consider proposals to increase criminal penalties for offenses related to riots. Penal Code sec. 42.02 makes it a crime to participate in a riot, which is defined as an assembly of seven or more resulting in conduct that creates an immediate danger of damage to property or injury to persons, substantially obstructs law enforcement or other government functions or services, or by force, threat of force, or physical action deprives anyone of a legal right or disturbs anyone in the enjoyment of a legal right. There is a defense to prosecution if a person left a gathering that began lawfully before someone manifested an intent to engage in the prohibited actions.

In general, offenses are Class B misdemeanors but can carry higher penalties under certain circumstances. Proposals could include increasing penalties for certain crimes committed during a riot, including those causing injury, harming law enforcement officers, or destroying property. New offenses related to rioting also could be created.

Civil asset forfeiture. Lawmakers could consider proposals to require a criminal conviction before a person's assets seized by a law enforcement agency and allegedly related to a crime could be forfeited to a government agency. They also could debate the standard of proof required to take property under civil forfeiture laws, how owners can prove their innocence and have property returned, and what entity should receive forfeited property or its proceeds. Expanding reporting on individual seized assets also could be discussed. Proposals could include requiring disclosure of the value of assets and whether a conviction was obtained in the case.

Juvenile justice. The handling of youth who commit low-level criminal offenses also may be discussed. Proposals could include diverting youth charged with non-traffic Class C misdemeanors from the criminal justice system and handling the cases as civil judicial matters, similar to the way the 84th Legislature revised the handling of truancy cases in HB 2398 by White, which took effect in 2015. Legislators also may consider ways to continue placing juvenile offenders under the supervision of local communities rather than in state custody and the size and location of the state's juvenile facilities.

Legislators may consider whether 17-year-olds should be subject to the adult or youth criminal justice system. Texas is one of a small number of states in which 17-year-olds accused of committing crimes enter the adult criminal justice system, rather than the juvenile system. Lawmakers also could discuss granting earlier parole eligibility for people sentenced to long prison terms for crimes committed while children.

Castle Doctrine. The 87th Legislature could discuss proposals to revise the Castle Doctrine under Penal Code ch. 9, subch. D, which establishes a justification for a person to use force, including deadly force, to protect the person's property under certain circumstances. Proposals could include amending how the doctrine applies in specific circumstances, such as when a person enters another's home and uses deadly force.

Health and human services

The 87th Legislature could consider proposals to address the uninsured rate in Texas. This could include proposals to expand Medicaid coverage for certain low-income adults, women, and children or to pursue federal waivers and create pilot programs to fund the delivery of health care. Lawmakers also may consider proposals to increase access to telehealth in rural and underserved areas, strengthen consumer protections in health insurance, and implement immunization protocols for distributing COVID-19 vaccines.

Medicaid and the Affordable Care Act. Texas' Section 1115 Medicaid waiver, which is a federal waiver under the Social Security Act that provides states more flexibility in designing Medicaid programs, expires September 30, 2022. The 87th Legislature could discuss renewing the 1115 waiver, which includes two funding pools (uncompensated care and the Delivery System Reform Incentive Payment, or DSRIP, program) providing billions of dollars in supplemental funding to hospitals and health care providers. Because the federal share of the DSRIP will expire in 2021 and uncompensated care pools will phase out by 2022, lawmakers could discuss alternative payment models for hospitals and providers.

On November 10, 2020, the U.S. Supreme Court heard oral arguments in *California v. Texas* to determine the constitutionality of the Affordable Care Act's (ACA) minimum-coverage provision and whether it is severable from the rest of the ACA. Depending on the outcome, the Legislature could seek to modify minimum standards for health insurance coverage and consumer protections under the ACA.

Legislators could consider proposals to change Texas' Medicaid program by expanding Medicaid under the ACA, pursuing a block grant, or creating pilot programs to increase access to direct primary care. Other proposals may include maintaining or increasing provider reimbursement rates, extending Medicaid post-partum coverage from 60 days to 12 months, and developing value-based payment models in Medicaid managed care. Proposals could emerge to increase oversight of pharmacy benefit managers' administration of prescription drug benefits in Medicaid managed care.

Telehealth. During the COVID-19 pandemic, the Texas Department of Insurance on March 17, 2020, adopted an emergency rule temporarily requiring that

health professionals' reimbursement rates for telemedicine-based services be at least the same as those for in-person services and that health plans offer telemedicine coverage on the same basis as in-person visits. The 87th Legislature could discuss adopting payment parity for telemedicine services and other telehealth regulatory changes temporarily allowed during the pandemic. Proposals also could focus on expanding broadband access in rural and underserved areas to help bridge the digital divide in health care.

Vaccines. Following declines in routine childhood vaccinations and inactive vaccination sites when local health department personnel were redeployed for the COVID-19 response, lawmakers in 2021 could discuss expanding provider eligibility to allow pharmacists to enroll and participate in the Texas Vaccines for Children Program, which provides low-cost vaccines to eligible children from birth through 18 years of age.

Legislators could discuss maintaining or increasing funding levels and recruiting additional providers for child and adult immunization programs. Other proposals may include revising the state's immunization registry and identifying ways to use non-traditional vaccination providers and locations to expand access to vaccines for all ages. Lawmakers may consider proposals to authorize pharmacists to provide vaccines to children 7 to 13 years of age without a prescription.

Codifying certain emergency licensing provisions. As part of the state's response to the COVID-19 pandemic, Gov. Greg Abbott issued several waivers relating to emergency medical licensing for health care professionals. These orders temporarily allowed out-of-state practitioners to provide care in Texas, allowed certain qualified health care trainees to practice before passing their required licensing exams, and permitted oral prescriptive agreements between physicians and physician assistants. The Legislature could seek to make some of these emergency licensure provisions permanent.

Lawmakers also could consider proposals to allow advanced practice registered nurses (APRNs) to practice without physician delegation or supervision and to allow pharmacists to dispense certain non-diagnostic medications, which are medications used to treat common conditions that are easily identified by the patient, directly from a pharmacist working under a physician protocol.

Health care costs and price transparency. Legislators could consider proposals addressing affordability and

access in the health care system and implementing certain financing models.

Price transparency. As lawmakers address concerns about rising health care costs, the Legislature could consider proposals to increase price transparency of medical services and pharmaceutical drugs. Legislators could discuss granting consumers the “right to shop” by comparing prices and information on the quality of health care services and procedures among different providers. The proposal could include establishing a centralized database containing billed charges from all health providers, reimbursement rates for in-network and out-of-network claims, and cost-sharing features such as deductibles, co-pays, coinsurance, and out-of-pocket amounts.

Health care costs. Lawmakers could consider proposals to pursue a federal Section 1332 waiver (State Innovation Waiver) under the ACA to increase Texans’ access to health care. Proposals for using a 1332 waiver could include creating a state reinsurance program, which provides payments to health insurers to help offset the costs of enrollees with large medical claims.

The Legislature could consider proposals to expand the attorney general’s authority to review physician and hospital mergers and consolidations and to address price-gouging protections for consumers and enforcement of current anti-fraud laws. Legislators also may discuss proposals to prohibit facility and observation fees for non-emergency and non-hospital services.

Balance billing. The 86th Legislature in 2019 enacted SB 1264 by Hancock, which prohibited certain health insurers from balance billing patients and created a mediation and arbitration system to settle balance bills (also known as surprise medical bills) between health plans and out-of-network providers and facilities. Lawmakers in 2021 could consider proposals to apply consumer protections for balance billing to emergency medical transportation services, COVID-19 testing and treatment, and alternative health plans (*e.g.* direct primary care arrangements, health care sharing ministries, and other short-term plans). Proposals could include requiring all health professional licensing agencies to enforce the balance billing prohibition and removing the use of billed charges as the standard for resolving payment disputes.

Abortion. The 86th Legislature in 2019 enacted SB 22 by Campbell, which prohibits government entities from

entering taxpayer resource transactions with certain abortion providers or their affiliates. Proposals in 2021 could seek to clarify the law’s definition of “taxpayer resource transaction” to address funding loopholes.

Legislators also could consider proposals to change the funding levels for the Alternatives to Abortion program and discuss other proposals, such as prohibiting a person from performing an abortion when a heartbeat is detected or prohibiting abortions based on gender, race, or genetic abnormalities.

Foster care system. Legislators could examine proposals addressing foster care services in preparation for the federal Family First Prevention Services Act (FFPSA), which takes effect in Texas on October 1, 2021. The FFPSA allows federal funds to be used for services that are intended to prevent children who are at imminent risk from entering foster care, for parent or kin caregivers of such children, and for pregnant or parenting youth in foster care. Proposals could include expanding access to evidence-based services, services for pregnant and parenting youth in foster care, and prevention services in rural areas.

Legislators may discuss strategies addressing the quality of care provided in residential treatment centers and increasing oversight of congregate care. Other proposals could include increasing access and funding for post-adoption services, expanding community-based care (formerly known as foster care redesign), and investing in interoperable case management technology for the state and private contractors.

Women’s health. The 86th Legislature in 2019 enacted SB 750 by Kolkhorst, which required the Health and Human Services Commission (HHSC) to evaluate and develop an enhanced postpartum care services package for low-income women enrolled in the Healthy Texas Women (HTW) program. On September 1, 2020, HHSC released the new services package (also known as HTW Plus), which focuses on treating major health conditions recognized as contributing to maternal morbidity and mortality in Texas, such as postpartum depression and other mental health conditions, cardiovascular and coronary conditions, and substance use disorders. The 87th Legislature could examine proposals to ensure enough providers are available to provide comprehensive mental health and substance use services for postpartum women.

Other proposals could focus on expanding access to long-acting reversible contraceptives for women enrolled in Medicaid or HTW and incorporating HTW into a managed care model. Lawmakers could discuss funding levels for the HTW program and Family Planning Program.

Mental health. The Texas Health and Human Services Commission on March 20, 2020, authorized Medicaid providers to submit insurance claims to receive reimbursement for certain behavioral health services delivered by telephone, including substance use disorder services, mental health rehabilitation, peer specialist services, and psychotherapy. The 87th Legislature could discuss amending state law to allow Medicaid reimbursement for behavioral health services delivered by telephone. Legislators also could discuss expanding mental health and substance use disorder services for certain populations, such as frontline workers, people of color, and rural communities.

Legislators could consider creating a perinatal psychiatric access program (similar to the Children's Psychiatric Access Network created by SB 11 by Taylor in the 86th Legislature) that would offer training and teleconsultation with psychiatrists to increase the number of health professionals with the skills to serve mothers facing mental health challenges.

Long-term care facilities. Gov. Abbott on March 19, 2020, issued an executive order that prohibited non-essential visitors from entering long-term care facilities in Texas. Lawmakers in 2021 could consider proposals requiring long-term care facilities to adopt more flexible and individualized visitation policies, including providing telecommunication access for virtual visits, broadening requirements for end-of-life visits, and allowing essential caregivers to enter all facilities.

Sunset review of health-related agencies. The Anatomical Board of the State of Texas and State Board of Veterinary Medical Examiners (limited scope review) are currently undergoing review by the Sunset Advisory Commission. Lawmakers could consider recommendations to abolish the Anatomical Board and reconstitute it as an advisory committee to the Texas Funeral Services Commission. The 87th Legislature also could consider recommendations on data collection and analysis for the state veterinary board.

Public education

The impact of the coronavirus pandemic on public schools and the revenue that funds them could dominate discussions about public education, including education finance, online learning, and testing and accountability. Legislators may discuss how to pay for the ongoing costs of HB 3 by Huberty, the school funding law enacted in 2019, and whether to modify or suspend portions of the law. Disruptions to in-person classroom learning from pandemic-related school closures could result in proposals to alter or delay state testing and accountability requirements. The shift to remote learning could prompt discussions about ways to increase the availability of high-speed internet connectivity to families that currently do not have access to broadband service and the devices needed for virtual instruction.

School finance. Lower-than-expected state revenue could lead to discussions about the continued implementation of school funding increases and property tax compression enacted in 2019 in HB 3 by Huberty. Lawmakers may discuss whether the state is able, in the face of reduced tax revenue, to provide the additional financial resources to maintain certain features of HB 3, such as the teacher incentive pay program and formula transition grants for districts that would have lost state revenue under the law's new formulas. The 87th Legislature also could consider proposals to change the governance and investment structure of the Permanent School Fund, which generates investment income for instructional materials and other school funding needs.

Online learning/virtual schools. As the coronavirus pandemic has led to school and college closings in favor of more remote instruction, lawmakers may consider ways to ensure that all students have the devices, internet connectivity, and speed needed for online learning. According to Connected Nation, at least 333,000 households in Texas are not connected at the broadband speed defined by the Federal Communications Commission as required for distance learning. The Legislature also may discuss proposals to increase digital learning programs offered by full-time virtual schools and through the Texas Virtual School Network.

Testing and accountability. The Legislature could consider changes to state standardized testing requirements and their use in determining A-F ratings for schools and districts. Lawmakers could decide whether to continue or delay the timeline for transitioning to online assessments by the 2022-2023 school year. Other proposals might include reducing the number of tests to those required by federal

law and removing grade advancement requirements tied to STAAR. Lawmakers also may discuss making permanent a program that authorizes individual graduation committees to determine if students failing one or two state end-of-course exams may demonstrate their readiness for graduation through other means. The graduation committee program is scheduled to expire in September 2023.

Special education. As Texas works to implement a special education strategic plan to correct deficiencies identified by the U.S. Department of Education, lawmakers may discuss proposals to ensure that students with disabilities are being located, evaluated, and appropriately identified for services and support. In addition, concern about the “pandemic slide” these students may have experienced when they were not in school could prompt discussion about extra funding to mitigate learning losses. Lawmakers also may consider proposals for using state resources to address a shortage of special education professionals and banning the use of certain restraints on students with disabilities.

Charter schools. The 87th Legislature might discuss issues related to the expansion of publicly funded charter schools, including limits on the number of campuses allowed to operate under existing charters. Lawmakers also may consider measures to exempt the owners of property leased by charter schools from property taxes and direct the tax savings to the charter schools for operating expenses. Proposals for statutory revisions to a 2017 law that provides financial and accountability incentives for partnerships between school districts and charter schools could be discussed.

School choice. Disruptions in public education related to the coronavirus pandemic, including school closures and home-based virtual learning, could renew discussion of proposals to provide state funding for education opportunities outside the traditional public school system. This could include a program to establish education savings accounts as a mechanism to pay for authorized expenses such as tutoring, private school tuition, or virtual school programs.

Teacher retirement. The capacity of the state’s pension system for teachers to meet future obligations could be discussed during the upcoming session. A Sunset review of the Teacher Retirement System (TRS) issued recommendations for improved communication and retirement planning for educators and school employers, more effective contract management, and additional oversight of pension fund investment practices. Lawmakers could consider proposals to limit real estate investments by TRS to increase transparency

about future transactions as well as a proposal to hire more investment staff in order to reduce fees paid to external fund managers.

Higher education

Higher education funding, including formula funding, capital projects, student financial aid, and the proposed 5 percent budget cuts to institutions of higher education could be considered by the 87th Legislature. Proposals could emerge to retrain adult workers, some of whom may have lost their jobs due to the pandemic, with skills needed by Texas employers.

Funding. Proposals to restore proposed budget cuts to higher education institutions could be considered. Most institutions of higher education have reported pandemic-related revenue losses and increased expenses and also have been subject to 5 percent reductions in their legislative appropriations requests due to expected state revenue declines in fiscal 2022-23.

Lawmakers might consider changes in higher education funding formulas. They may also consider the use of tuition revenue bonds to fund institutions’ infrastructure needs, including building and technology upgrades related to COVID-19, and whether direct appropriations could be an alternative to tuition revenue bonds for these needs.

Student financial aid. Student financial aid also could remain an ongoing topic for the Legislature, including whether need-based financial aid should be part of the 5 percent budget reduction directive. Proposals could emerge to expand aid to help students stay on track with their education during disruptions caused by the coronavirus pandemic.

Workforce development. The use of employer-based learning for community college and high school students could be a topic for the 87th Legislature. Lawmakers could consider proposals to improve access to liability insurance and tax credits for private employers who provide opportunities for individuals to train at their facilities. In addition, shifts in the employment market related to the pandemic are expected to result in the need for adult workers to attain new skills. Lawmakers could consider proposals to help Texans who have earned some college credit return to college to complete a degree or credential valued by employers.

Medical residency. Lawmakers could consider funding for additional medical residency positions to align with the increase in state medical school graduates. Additional funding would be needed for fiscal 2022-23 to continue providing the current ratio of first-year residency positions for Texas medical school graduates.

Energy, environment, and natural resources

The 87th Legislature could consider proposals to manage the state's water resources and address the needs of the state's growing population. Lawmakers also may discuss the regulation of aggregate production and processing operations and the development of new energy supply technology in the state's energy market.

Water. Legislators could consider proposals to address the water needs of the state's growing population, including options for developing new water sources and markets. Discussions started by the 86th Legislature in 2019 could continue on the recycling and reuse of produced water, a byproduct of the oil and gas industry, for irrigation, industrial, and city use, and to supplement environmental flows. Proposals could include tax credits, deduction, or discounts for operators that recycle, treat, or reuse produced water. Lawmakers also could consider making regulatory changes to permit certain recycling and reuse strategies.

Lawmakers also could continue monitoring groundwater regulation by reviewing the performance of groundwater conservation districts, proposing changes to existing groundwater permitting processes, and discussing different types of water ownership and related regulatory processes. They also could consider proposals for mechanisms to transfer water from one user to another and to convey water between different areas of the state.

Texas Parks and Wildlife Department Sunset review. The Texas Parks and Wildlife Department (TPWD) is currently undergoing review by the Sunset Advisory Commission. Lawmakers could consider recommendations related to TPWD's licensing and enforcement functions, including approaches to inspections and review processes for nonrecreational licenses and permits.

Texas Department of Agriculture Sunset review. The Texas Department of Agriculture (TDA) is currently undergoing review by the Sunset Advisory Commission. During the 87th regular session, lawmakers may consider

Sunset recommendations to re-establish the department's GO TEXAN program in statute and to require the department to implement a risk-based approach to inspections, among other measures. Legislators also may consider proposals to clarify the rule-making authority of the Prescribed Burning Board.

Aggregate production and processing operations. Lawmakers could consider changes to how aggregate production and processing operations are regulated by the state. Proposals could include introducing permitting and reclamation requirements for aggregate production operations as well as additional air quality permit requirements for certain aggregate-related facilities. Legislators also could consider measures requiring the implementation of best management practices by aggregate operators.

Distributed energy resources. The 87th Legislature could discuss the development of new energy supply technology, including distributed energy resources, or small-scale units of local generation connected to the grid at distribution level. Lawmakers also could consider past proposals similar to SB 1941 by Hancock, which died in the House during the 86th regular session, to provide the Public Utility Commission with legislative guidance on ownership and deployment of utility-scale battery storage devices in Texas' electric market, known as the ERCOT power region.

River authorities Sunset review. The Brazos River Authority and the San Jacinto River Authority are undergoing review by the Sunset Advisory Commission. The reviews will focus on the river authorities' project management, community engagement with their activities, and contracting processes. While the authorities are not subject to being abolished, lawmakers may debate recommendations such as requiring opportunities for public testimony at board meetings and other practices addressing accountability and transparency. Other proposals could include requiring the San Jacinto River Authority to adopt a public engagement policy on key decisions.

Transportation

As the COVID-19 pandemic has reduced public revenue traditionally used for transportation funding, such as the motor fuel tax, the 87th Legislature may consider proposals to allow for more public-private partnerships and to use other financing structures, such as tolled lanes. Lawmakers also may consider proposals to improve traffic safety or to establish an additional registration fee for electric vehicles.

Transportation project financing. Legislators may re-examine the methods of financing transportation infrastructure, such as toll roads, fuel taxes, and private-public partnerships. Proposals could include expanding the use of toll roads, increasing the state motor fuels tax, or authorizing the use of comprehensive development agreements or partnerships with private companies for highway construction.

Toll roads. Lawmakers could debate proposals to amend regulation of toll roads, including toll billing procedures. Other proposals could include ending tolling once the toll revenues were sufficient to pay off the original project construction or to consolidate regional tolling regulations into a statewide policy.

Traffic safety. The 87th Legislature could consider proposals to reduce fatalities on Texas roadways, including lowering the default speed limit on residential streets, further restricting the use of handheld electronic devices while driving, or creating other safety standards.

High-speed rail. The Legislature could consider legislation on the construction of high-speed rail in the state, including proposals to prohibit a state agency from issuing certain permits or approving the use of a right-of-way until the private entity building the high-speed rail project obtains federal approval.

Alternatively fueled vehicle fees. Legislators may consider proposals for imposing additional fees on alternatively fueled vehicles, such as hybrid and electric vehicles, for which taxes on fuel are not paid. Proposals could include an additional annual registration fee or a recalculation of the gas tax based on vehicle weight or miles traveled.

Autonomous vehicles. Lawmakers may examine measures related to emerging technology in the transportation industry, including automated vehicles. Proposals could include those to create new regulations for registration, operation, and inspection of autonomous vehicles. Other proposals could include dedicating lanes for automated vehicle testing.

Shared mobility. The 87th Legislature could consider policies to create statewide regulations on shared mobility, such as electric scooters or bicycles, including minimum age, parking, or safety requirements.

Government organization

The 87th Legislature in 2021 is expected to consider the once-a-decade redistricting process, proposals to amend laws governing emergency powers, and the state's response to natural and man-made disasters and public health crises such as the coronavirus pandemic. Lawmakers also may consider proposals to expand broadband access, preempt certain local business regulations, and amend mail-in ballot eligibility. Other discussions could include funding for contributions to the Employees Retirement System and for modernization of state information technology infrastructure.

Redistricting. The 87th Legislature in 2021 is expected to consider new district maps for state representatives and senators, Texas' delegation in the U.S. House of Representatives, and the State Board of Education. Under Art. 1, sec. 2 of the U.S. Constitution, maps must be drawn to reflect the change in population recorded in the 2020 census.

Emergency powers. Legislators could debate proposals to amend the Texas Disaster Act of 1975 and provisions of the Texas Constitution that govern emergency powers during a state of disaster. Proposals could address the scope of emergency authority at the executive and local levels, the duration of and process for extending disaster declarations, and the role of the Legislature when issuing orders, extending disaster declarations, or spending or transferring funds.

State employee pension fund. Proposals to increase contributions to the Employees Retirement System (ERS) may be discussed during the 2021 legislative session. The fund administrator reports that contributions must materially increase to ensure the pension plan will be able to continue retirement benefits for current employees into the future. Proposals also could emerge to transition newer state workers away from the ERS defined-benefit plan into a 401(k)-style defined-contribution plan.

Publicly funded lobbying. The 87th Legislature may debate proposals to prohibit local governments from using public money for certain lobbying activities, such as attempting to influence legislation related to taxation, financing, or government ethics and transparency.

Broadband expansion. Lawmakers could address making high-speed internet needed for telecommuting and distance learning available to all Texans, particularly those in rural areas. They may discuss proposals to create a state

broadband plan that would establish a timeline with goals to measure progress.

Public information. The Legislature could consider proposals to amend the Texas Public Information Act, including proposals to expedite agency responses to public information requests, to address whether dates of birth should be available in certain public records, and to award attorneys' fees to a requester under certain circumstances in a civil lawsuit. Other proposals could address access to public information during states of disaster and the disclosure of certain data and health care information during public health emergencies. Lawmakers could discuss proposals to limit the number of catastrophe notices that may be filed under SB 494 by Huffman, enacted in 2019 by the 86th Legislature, which allows governmental entities to temporarily suspend Texas Public Information Act requirements during certain emergencies.

State information technology infrastructure. The Legislature could debate the appropriate level of funding for state agency information technology modernization and continue evaluating legacy systems across state agencies and their impact on cybersecurity. Other proposals could include adopting methods to increase and train the cybersecurity workforce and to expand the use of cloud computing. After recent incidents in Texas, lawmakers also could discuss local and state agency responses to data breaches and ransomware attacks. In August 2019 more than 20 local governments were targeted in a coordinated ransomware attack, and in May 2020 both the Office of Court Administration and the Texas Department of Transportation were targeted in separate attacks.

Municipal preemption. The Legislature could debate proposals to preempt local business regulations with statewide law, including regulations on paid sick leave and employee background checks.

Mail-in ballot eligibility. In response to the COVID-19 pandemic, a series of lawsuits sought to expand the disability exemptions for in-person voting found in the Elections Code to allow more Texans to vote by mail. Lawmakers in the 87th regular session could consider proposals to modify eligibility to vote by mail or to change requirements for mail-in ballots to be accepted.

Temporary mobile polling places. HB 1888 by G. Bonnen, enacted in 2019 by the 86th Legislature, modified

requirements for temporary polling sites and required them to remain in one location for the entire voting period. This has been challenged in federal court, and lawmakers could consider proposals to reverse the changes governing temporary mobile polling places.

Election administration during declared disaster. The Legislature could consider proposals to modify procedures for voting during a declared disaster and to study model legislation from other states that have created contingency plans.

Privacy protection. Lawmakers could consider data privacy laws, including proposals related to state agency privacy standards, consumer privacy protections, highly regulated data such as health or financial information, data security, the right to know how personal information is used, and new technologies and business standards.

Regulatory issues

The 87th Legislature could consider proposals on several regulatory issues, including on laws governing firearms possession and handgun licensing, eminent domain, and alcohol delivery and takeout. Lawmakers also may discuss the future of the driver license program, the state's unemployment compensation system, and certain licensing fees and penalties.

Reforming licensing fees and penalties. The Commission to Study and Review Certain Penal Laws was created in 2015 by the 84th Texas Legislature to study criminal penalties found outside of the Penal Code. The commission found a large number of penalties related to licensing infractions and recommended that the Legislature downgrade some of these offenses from criminal to administrative penalties. The 87th Legislature may consider these recommendations, as well as proposals to reduce fees for license applications and renewals and for minor licensing violations.

Gun regulation. Legislators could debate changes to laws governing where individuals may possess firearms and proposals to change the fees for handgun licenses. Lawmakers also may consider proposals allowing people to carry handguns without a state license, sometimes referred to as "constitutional carry." Debate could include proposals to create a criminal offense for reckless discharge of a firearm and to expand background check requirements for guns

purchased from private sellers and at gun shows. Lawmakers also could examine the laws governing the storage of firearms and proposals that address new firearm technology.

Proposals to create “red flag” laws that allow family members, prosecutors, and others to ask a court to temporarily take or restrict firearms from individuals considered a danger to themselves or others also may be considered. The laws, sometimes called “extreme risk protection orders,” could allow courts to order mental health evaluations of such individuals.

Eminent domain. The 87th Legislature could weigh proposals on eminent domain, the process by which a public or private entity may condemn private land for oil and gas pipelines, transmission lines, railroads, or other infrastructure. Proposals could include amending the Landowner Bill of Rights, requiring condemners to pay a financial penalty for making an offer to the landowner that is significantly lower than the property’s actual value, and expanding public notice and meeting requirements.

Driver license program. Lawmakers could address the future of the driver license program. The 86th Legislature in 2019 enacted SB 616 by Birdwell, which provided for the conditional transfer of the driver license program from the Texas Department of Public Safety (DPS) to the Texas Department of Motor Vehicles (TxDMV). The bill required a third-party study to examine and make recommendations on the management and operating structure of the program and on opportunities for and challenges of transferring it from DPS to TxDMV. In its final report, the study team recommended that DPS’ Driver License Division form a new, standalone state agency rather than be transferred to TxDMV.

“Gig economy” workers. Legislators could examine whether certain gig workers — individuals who provide on-demand services, usually through a digital platform — qualify as employees or independent contractors and whether companies that provide such digital platforms must pay unemployment taxes.

Unemployment system. Lawmakers could consider proposals to update the state’s unemployment compensation system, which came under unprecedented strain in 2020 due to layoffs resulting from the COVID-19 pandemic. Proposals could include modernizing the Texas Workforce Commission’s information technology infrastructure that processes unemployment claims. Other proposals could

include removing the requirement that applicants renew their requests for benefits every two weeks and adjusting benefit eligibility requirements to take into account the gig economy.

Payday lending. The 87th Legislature could consider further regulations on consumer finance products such as payday and auto title loans in response to a November 2019 attorney general opinion. The opinion (KP-0277) said Finance Code ch. 393, which governs payday and auto title loans, does not restrict credit services organizations from offering consumers other loan products beyond those two types.

Alcohol. The Legislature could consider proposals to eliminate statutory restrictions on restaurants providing takeout and alcohol delivery. In March 2020, Gov. Abbott waived certain restrictions and allowed Texas restaurants to temporarily sell alcohol with takeout food and to deliver alcohol directly to consumers. Alcohol sold in this manner was required to be sealed in its original container or in a manner specified by the Texas Alcoholic Beverage Commission. Other proposals to adjust the way the state regulates alcohol could be discussed, including proposals allowing public corporations to sell liquor.

Nondiscrimination. The 87th Legislature could consider legislation that would prohibit discrimination based on certain personal characteristics. Proposals could include those to prohibit discrimination in student dress codes against a student with certain hair styles or textures or discrimination in housing based on an individual’s sexual orientation or gender identity.

Homelessness. Lawmakers could consider proposals affecting individuals experiencing homelessness. Proposals could include enacting a statewide ban on camping in public places, prohibiting panhandling or soliciting, or providing financial support for nonprofit organizations to assist with shelters.

Gambling. Legislators could examine proposals dealing with gambling and betting, including authorizing casinos and dedicating state tax revenue from them for a specific purpose or as general revenue. Debate could include details on how casinos would operate, including who would be allowed to operate them, where they could be built, and how they would be taxed. Proposals to legalize daily fantasy sports betting could involve designating the activities as games of skill rather than of chance. Laws governing electronic gaming

machines, also known as “eight liners,” could be examined, and proposals could emerge to legalize them, regulate them more strictly, or outlaw them.

Racing Commission Sunset review. The Texas Racing Commission is undergoing review by the Sunset Advisory Commission. Lawmakers could consider recommendations to transfer the commission to the Texas Department of Agriculture and to revise its licensing standards and processes.

Restaurant regulations. Legislators in 2021 could consider proposals to revise restaurant regulations due to the impact of the COVID-19 pandemic on the industry. Proposals could include creating a statutory definition of a “restaurant” to differentiate those establishments from bars for future executive orders regulating closure of such businesses due to the pandemic or allowing restaurants to sell groceries and grocery stores to sell restaurant-prepared food.

enhanced cybersecurity procedures for the Office of Court Administration and to provide best practices for court employees accessing links on state computer systems.

Judiciary and civil jurisprudence

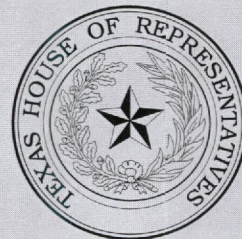
The 87th Legislature could consider reforms to the state judiciary, including considering ways to standardize and streamline the collection of criminal justice data across Texas and addressing the threat to the judiciary’s information technology system from cyberattacks.

Judicial partisanship. In the 86th regular session in 2019, the Legislature created the Texas Commission on Judicial Selection to study potential alternatives to partisan election of judges in the state. Proposals from the commission’s findings that could be considered in the 87th regular session include removing judicial partisan affiliation or creating a system of lifetime or term appointments to the bench.

Criminal justice data. The House Committee on Judiciary and Civil Jurisprudence was charged during the interim with identifying ways to streamline and modernize the collection of criminal justice data and court records across Texas. The Legislature could seek to centralize the collection of these records or to standardize best practices for data collection across the state’s 254 counties.

Information security. In May 2020, the Office of Court Administration was targeted by a ransomware attack that prevented appellate courts from accessing important files and resulted in the takedown of judicial websites across the state. The Legislature could consider proposals to require

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