

CSSB 1:

The House Appropriations Committee's Proposed Budget for Fiscal 2006-07

The House Appropriations Committee reported CSSB 1 by Ogden (Pitts), the general appropriations bill for fiscal 2006-07, on March 29. The committee reported the bill by the following vote:

27 ayes – Pitts, Luna, Berman, Branch, B. Brown, F. Brown, Chisum, Crownover, J. Davis, Dukes, Edwards, Gattis, Guillen, Haggerty, Hegar, Hope, Hopson, Isett, T. King, Kolkhorst, Martinez, Menendez, Pena, Pickett, T. Smith, Truitt, Turner

0 nays

2 absent – Hamric, McClendon

The proposed state budget would appropriate \$137.5 billion in all funds, an increase of 8.6 percent from the amount estimated to be spent in fiscal 2004-05. The general revenue-related portion, \$65.5 billion, would be about 9 percent more than in fiscal 2004-05. The House proposal would spend \$1.8 billion less than the Senate proposal of \$139.3 billion in all funds.

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

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Fiscal 2006-07 Budget Overview

CSSB 1 by Ogden (Pitts), the House Appropriations Committee version of the general appropriations bill for fiscal 2006-07, would authorize total spending of \$137.5 billion, an increase of 8.6 percent from the current biennium. General revenue-related spending would increase \$6 billion, or 9 percent, to \$71.5 billion, including \$65.9 billion of undedicated or “pure” general revenue.

Federal funds would increase by \$3.2 billion, and “other” funds would increase by \$1.8 billion. The federal funds increase would be driven mainly by health and human services (HHS), public education, including No Child Left Behind, and business and economic development. The increase in “other” funds would be driven by higher education, including income from patient care, and business and economic development.

CSSB 1 would increase spending in fiscal 2006-07 by \$5.3 billion for public education, \$4.4 billion for HHS, \$2.9 billion for business and economic development, \$536 million for higher education, \$223 million for public safety and criminal justice, \$28 million for regulatory agencies, and \$22 million for the judiciary. However, it would decrease overall spending by \$413 million for general government agencies, \$103 million for natural resources, and \$8.5 million for legislative agencies.

The proposed spending levels in CSSB 1 largely reflect the appropriations request approach adopted by budget writers based on the Legislative Budget Board (LBB) “base bill” and agency-determined “exceptional items.” LBB’s Legislative Budget Estimates (LBE), published in January 2005, presented LBB’s baseline budget estimate. This estimate reflects the cost of continuing in fiscal 2006-07 the level of services established by the current general appropriations act, adjusted for growth in the populations served and for inflation, with a few significant caveats.

The governor had asked most agencies to reduce their budget requests by 5 percent for the coming biennium, which was reflected in the LBB base bill. Calculations also included changes from current services or continuations of current spending patterns not yet authorized by statute, which brought the base bill within the available revenue as identified by the comptroller in the biennial revenue estimate. Some of those changes include maintaining the teacher health insurance passthrough at fiscal 2004-05 levels, preserving the 90-day wait for health insurance and retirement benefits for new public school and state employees, using state highway funds for public school transportation, expanding STAR+PLUS Medicaid managed care, and accounting for six-month eligibility for the Children’s Health Insurance Program (CHIP) and Medicaid.

Biennial Spending Comparisons for CSSB 1 (millions of dollars)

| Type of funds | Expended/budgeted 2004/05 | Recommended CSSB 1 | Biennial change | Percent change |
|-----------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue | \$65,524.9 | \$71,478.0 | \$5,953.1 | 9.1% |
| Federal funds | 44,497.5 | 47,673.2 | 3,175.7 | 7.1 |
| Other funds | 16,601.7 | 18,383.2 | 1,781.5 | 10.7 |
| All funds | 126,624.1 | 137,534.4 | 10,910.3 | 8.6 |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

The LBB base budget totaled \$134.4 billion from all funding sources, a 6 percent increase from fiscal 2004-05, and \$69.6 billion in general revenue-related spending, a 6 percent increase. The base budget falls short of the amounts requested by agencies for the biennium. Without the 5 percent reduction or other changes imposed by the LBB, and including exceptional items, agencies requested \$151.5 billion in all funds and \$80 billion in general revenue-related funds, a funding level 20 percent greater in all funds and 21 percent greater in general revenue-related funds than the estimated spending in fiscal 2004-05. CSHB 10 by Pitts, the supplemental appropriations bill, would increase appropriations by nearly \$2.5 billion in all funds for the current fiscal year.

Compared to the amounts proposed by the LBB in the base bill, CSSB 1 would include a net \$3.1 billion increase in all funds and a \$1.9 billion increase in general revenue.

NOTE: In this report, comparisons to fiscal 2004-05 spending reflect LBB's adjustments to fiscal 2005 spending estimates. The term "general revenue-related funds" refers to the combined total of general revenue and general revenue-dedicated funds.

Comparison of CSSB 1 to SB 1. SB 1, as approved by the Senate, would appropriate a total of \$139.3 billion in all funds, an increase of \$13 billion or 10 percent over fiscal 2004-05 spending. This is \$1.8 billion more than CSSB 1, the House committee proposal. Significant spending differences include \$2.8 billion more in spending in CSSB 1 for public education and \$1 billion more in the Senate proposal for higher education.

Article 11 list. CSSB 1 includes an Article 11 list, sometimes referred to as the "wish list," an informational listing of the committee's priorities for spending beyond what is proposed in the budget. Both the House and Senate proposals include the list, which will be reconciled in conference committee and could result in the funding of some items.

The Article 11 list in CSSB 1 totals \$8.6 billion. Items on the list include more than \$4 billion in HHS, \$3.1 billion split between public and higher education, as well as

requests for salary increases for state employees and peace officers, and funds for economic development and the Texas Enterprise Fund. The Article 11 list in the Senate proposal totals \$746 million.

Tobacco-settlement funds. In 1998, Texas finalized a settlement of its lawsuit against major tobacco companies that awarded the state \$17.3 billion over 25 years, subject to adjustments. In 1999, the 76th Legislature established 21 health-related permanent trust funds and higher education endowments and designated the first money left over from the permanent funds and endowments to support CHIP. For fiscal 2006-07, CSSB 1 would appropriate about \$1.1 billion in tobacco-settlement funds for various health-related programs, primarily CHIP. The funds include payments from the tobacco companies, interest earnings from the trust funds and endowments, and carryforward of some unspent balances.

Rainy day fund. The economic stabilization (rainy day) fund, which draws money from a portion of any state budget surplus and from excess oil and natural-gas production taxes, is expected to contain \$2 billion by the end of the coming biennium. The fund has grown rapidly in recent years because of higher collections of natural-gas production taxes.

Generally, money in the rainy day fund can be spent only as approved by at least three-fifths of the members present in each house. Spending from the fund generally may not exceed the amount of any unanticipated deficit or revenue shortfall, but any amount from the fund may be spent for any purpose if at least two-thirds of the members present in each house approve it. In 2003, the 78th Legislature appropriated almost \$494 million from the rainy day fund for health-related programs and transferred the remaining \$295 million to the Texas Enterprise Fund during the two-year period following the creation of the fund.

The House Appropriations Committee would use the balance in the rainy day fund for supplemental funding needs in fiscal 2005 and for appropriations to public education in fiscal 2006-07 through CSHB 10 by Pitts, the supplemental funding bill. The Senate proposal did not include the rainy day fund as a method of finance.

Texas Enterprise Fund. In 2003, the 78th Legislature created the Texas Enterprise Fund (TEF) as a “deal-closing” fund within the Governor’s Office to entice businesses to expand in or relocate to Texas. The fund, which received an initial appropriation of \$295 million from the rainy day fund, provides cash grants for a wide variety of economic stimulus programs. Money may be awarded only with the approval of the lieutenant governor and the speaker of the House, and the governor has the option of including “clawback” provisions in contracts that require an enterprise to repay some or all of the grant to the state if it fails to create the promised number of jobs or to invest a minimum amount in the state. To date, about \$212.4 million in grants have been awarded to 18 entities, primarily for business incentives. The Governor’s Office has indicated that it plans to expend the remaining funds before the end of the fiscal year.

CSSB 1 and the Senate proposal would appropriate \$140 million directly to TEF in general revenue-related funds and authorize the appropriation of up to \$130 million in additional funding in fiscal 2007 from the Skills Development Holding Fund, contingent upon enactment of SB 1177 by Staples or similar legislation. Under SB 1177, money in the fund would become available on October 1 of each year if the unemployment compensation trust fund were above its statutorily defined floor; however, in years when the trust fund fell below that floor, money in the holding fund first would be transferred to the trust fund in the amount necessary to bring it up to its floor. The Texas Workforce Commission anticipates that the Holding Fund will have about \$62 million available for fiscal 2007. CSSB 1 includes an additional \$24.3 million for the fund in Article 11. The bill also includes a rider requiring the governor to submit biennial reports to the Legislature on grants made from the fund.

Supporters say the fund has proven to be an effective means of attracting economic investment and jobs to the state, resulting in deals that will create more than 24,000 new jobs and add more than \$6 billion to the economy. The fund has helped Texas to create jobs while other states were losing jobs, and its benefit to the economy also has provided increased revenue for other important government programs.

Accountability is ensured by the requirement for unanimous consent of the state leadership for fund-supported projects and the clawback provisions of contracts. CSSB 1 would continue this successful program, while minimizing the use of general revenue-related funds so they could be used for other priorities.

Opponents say that the grants are a form of corporate welfare that have done little to help the state and its residents. Despite the closure of some high-profile deals, the job growth rate in Texas remained well below the national average in 2004. The fund lacks adequate safeguards to ensure that promised jobs eventually are created and has no standards for promoting job creation in rural or economically distressed regions where jobs are needed most. With Texas’ strong reputation as a pro-business, low-regulation state, it is likely that many of the companies receiving grants would have located or expanded in Texas even without the incentives. Texas can ill afford these corporate subsidies while so many more important government programs go underfunded.

Veteran’s museum. A rider included in Article 11 of CSSB 1 would direct the Texas Enterprise Fund to spend \$5 million on a veteran’s museum in Harris County, contingent upon the receipt of almost \$100 million of federal funds for the project. Supporters of the museum, which would honor and document the service of all American veterans from World War I to the present, say that it will increase tourism and create jobs.

Texas Emerging Technology Fund. Article 11 of CSSB 1 includes \$300 million for a new emerging technology fund within the Governor’s Office. Under SB 831 by Shapiro, et al., the Emerging Technology Fund would be used to stimulate investment in scientific research and enterprise. The Senate version of the bill does not include any funding for this proposal.

Supporters say the new fund would spur innovation, create quality high-tech jobs, and help position Texas at the forefront of technology research and development. Other states have created similar funds, and Texas cannot afford to be left behind in this growing trillion-dollar sector.

Opponents say the state should spend its money on proven growth factors – such as education and health care – rather than on risky research enterprises.

Federal funds. Federal funds would account for about 35 percent of the state budget under CSSB 1. Health and human services, business and economic development, and education account for 98 percent of federal funds in the budget. The federal budget currently under consideration could include significant changes in the funding states receive for certain programs, most notably Medicaid. Changes could include the use of intergovernmental transfers and the use of certain taxes for Medicaid match, community development block grants, and education programs, including terminating programs in vocational and technical education, adult education, and others and redirecting those funds to Title 1 funds for economically disadvantaged children and special education funding.

Employee compensation. In Article 11, CSSB 1 recommends \$406 million in general revenue-related funds for salary increases for state employees. The proposal would provide a 3 percent or \$100 per month minimum across-the-board pay raise for most employees, starting September 1, 2005. It would not apply to elected officials, judges, district attorneys, employees who receive a raise elsewhere in the budget, DPS officers, and others. Contingent upon the enactment of SB 495 by Williams, or similar legislation, CSSB 1 would allocate \$5.7 million to the Office of Attorney General (OAG) for a salary increase for OAG attorneys. This increase would be funded by raising bond review fees. Other pay raises proposed by the House committee include those for peace officers and judges.

Article 11 also includes a proposal to appropriate \$126 million toward longevity and hazardous duty pay, increasing longevity pay at the rate of \$20 per month for each two years of service, rather than every three, depending on statutory authorization. Article 9 estimates a savings of \$10.5 million in all funds in fiscal 2006-07 from discontinuing longevity pay for retirees who return to work, pending authorization in HB 2976 by Hegar.

The Senate proposal would appropriate \$575 million in all funds and \$370 million in general revenue-related funds to provide an across-the-board pay increase for state employees. Most state employees would receive an increase of 4.5 percent, or a minimum of \$100 per month, each year of the biennium, starting January of 2006 and 2007. The Senate proposal also would appropriate \$110.2 million to increase longevity pay at the rate of \$20 per month for every two years of service, rather than every three, pending statutory authorization. It also would increase hazardous duty pay. In addition, the Senate proposal would include a 15 percent pay increase for statewide elected officials in fiscal 2006-07; CSSB 1 contains no such provision.

The Senate proposal would lower agency FTE caps by 4 percent for all agencies except the Governor's Office, the Comptroller's Office, and agencies with fewer than 300 employees. An agency could petition for an exemption by the LBB and governor from this reduction if it would impede agency operations. It is unlikely that this new limitation would result in the layoff of any employees because most agencies operate about 6 percent below their individual FTE caps.

Spending versus revenues. An appropriations bill may become law only if the comptroller certifies that sufficient revenue will be available to fund it (Texas Constitution, Art. 3, sec. 49a). The comptroller's estimate of available general revenue is the major limit on state appropriations. In January 2005, Comptroller Carole Keeton Strayhorn estimated that general revenue-related funds available for certification would total \$64.7 billion during fiscal 2006-07. The comptroller may revise the pre-session revenue estimate at any time; the revenue projection that counts is the one the comptroller uses to determine whether to certify that spending as finally approved does not exceed available revenue.

Both the House and the Senate budget proposals would appropriate general revenue-related funds above the amount estimated by the comptroller in the biennial revenue estimate. Other bills under consideration by the 78th Legislature, most notably HB 3 by J. Keffer, could change

the revenue assumptions on which the biennial revenue estimate is based, which also could change the amount of revenue available for certification when the comptroller receives the appropriations bill in June.

Supplemental appropriations for fiscal 2005.

CSHB 10 by Pitts would increase general revenue-related appropriations for fiscal 2005 by \$487.3 million – \$2.5 billion in all funds – and would appropriate \$936 million for fiscal 2006-07. The bill would sweep about \$84.7 million

from existing state accounts, including the System Benefit Fund, the Subsequent Injury Fund at the Texas Workers' Compensation Commission, and other unexpended balances. It would allocate funding to Medicaid, CHIP, child protective services, community care programs, the Texas Department of Criminal Justice, public education, the Teacher Retirement System, and the Secretary of State, among other programs and agencies.

Article 1 Overview

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

For Article 1 agencies, CSSB 1 proposes to spend about \$3.1 billion in all funds for fiscal 2006-07, or 2 percent of the total state budget, including \$2.3 billion in general revenue-related funds. Total appropriations would fall by \$412.7 million, or 11.9 percent, from fiscal 2004-05.

Article 1 agencies took similar approaches to reducing spending as they did for fiscal 2004-05, including lowering FTE caps, freezing out-of-state travel, and reducing spending on in-state travel, training, and administrative costs. CSSB 1 would increase fiscal 2006-07 appropriations to these agencies by about \$414.3 million in general revenue-related accounts.

The Secretary of State's Office would experience the greatest reduction in all funds among Article 1 agencies – \$185.3 million, or a decrease of 81.7 percent from fiscal 2004-05 funding. This reduction includes the loss of \$179.1 million in federal funds for the administration of

the Help America Vote Act (HAVA). CSHB 10 by Pitts, the supplemental appropriations bill, would appropriate to the secretary of state \$1.5 million in general revenue-related funds to meet the state's 5 percent match for additional HAVA funds of \$103.2 million.

Budget highlights

Employees Retirement System. To meet demands for spending reductions in fiscal 2004-05, the Legislature and ERS made a number of changes aimed at shifting health care costs from the state to employees. These included: changes to health insurance benefits, including increasing copayments for primary and specialty care and for prescription drugs, as well as a new deductible for drugs and higher coinsurance for hospital care and other medical expenses; restricting the access of retirees to health benefits until they become Medicare eligible at age 65; imposing a 90-day waiting period for health insurance and retirement contributions for new state employees; and reducing state benefit contributions for part-time employees. The State Auditor's Office estimated that these changes will save the state \$443.5 million in fiscal 2004-05, while ERS estimated cost savings of \$621.3 million.

To be considered actuarially sound, a pension system must be able to amortize all its liabilities over 31 years. Government Code, sec. 811.006 prohibits ERS from

Article 1 spending comparisons (millions of dollars)

| Type of funds | Expended/budgeted 2004-05 | Recommended CSSB 1 | Biennial change | Percent change |
|-------------------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue-related | \$1,905.1 | \$2,319.3 | \$414.3 | 21.7% |
| Federal | 869.4 | 667.6 | (201.8) | (23.2)% |
| Other | 705.5 | 80.3 | (625.2) | (88.6)% |
| All funds | 3,479.9 | 3,067.2 | (412.7) | (11.9)% |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

granting increases in benefits to annuitants unless the pension fund is considered actuarially sound. Since 1989, the state's contribution rate has declined from 7.4 percent to the constitutional minimum of 6 percent of payroll (Texas Constitution, Art. 16, sec. 67 (b)(3)). Actuaries say the state's contribution rate would have to increase to 7.13 percent of payroll for ERS to be considered actuarially sound, at an estimated cost of \$104.5 million in all funds. ERS proposed an incremental increase in the state's contribution of 6.45 percent, at a cost of \$41.8 million for fiscal 2006-07. This would represent "normal cost," the amount that should be invested now to fund an employee's benefit at retirement.

For fiscal 2006-07, CSSB 1 proposes total funding of \$2.73 billion for ERS. This would represent an increase of \$344 million in all funds from fiscal 2004-05.

CSSB 1 would maintain the current state contribution to the ERS pension fund of 6 percent, but Article 11 would increase it to 6.45 percent. The Senate proposal would increase the state contribution to the ERS pension fund to 6.45 percent. CSSB 1 would assume that the 90-day waiting period for retirement benefits for new employees, due to expire on August 31, would continue for a savings of \$15 million in general revenue-related funds. The bill would direct ERS to provide a \$60 credit that could be applied to other benefits for employees who opted out of ERS health insurance coverage. These employees would have to prove that they had comparable health insurance coverage. A contingency rider for HB 2970 by Eissler in Article 9 estimates a savings of \$8.3 million in all funds for fiscal 2006-07 for allowing employees to opt out.

Assumed in CSSB 1 is \$48.5 million that ERS expects to receive in fiscal 2006-07 as reimbursement for prescription drug coverage for ERS members who are eligible for Medicare. The federal Medicare Prescription Drug, Improvement and Modernization Act of 2003 adds a new Part D, which allows employers to receive a subsidy of roughly 28 percent for most of their expenditures for prescription drugs to encourage them to continue providing prescription drug coverage to their Medicare-eligible insurance plan participants.

Supporters of increased funding for ERS say the state shifted a number of costs to employees to address budget shortfalls last session. This session, the state should assume the full cost of increases in health insurance costs for state employees. ERS did a good job of negotiating significant price reductions for its health insurance and pharmacy benefit management contracts for fiscal 2006-07. These savings should be passed on to employees by not increasing health benefit costs.

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

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

CSSB 1 would maintain CPA funding for fiscal 2006-07 at 100 percent of the agency's current biennial budget, or about \$372 million. The comptroller has testified that by keeping current funding, the agency could generate an additional \$435 million in general revenue-related funds for the state in tax collections. CSSB 1 also would allow the CPA to retain its current FTE cap at 2,888.8. The Senate proposal is identical to CSSB 1.

Supporters say this would produce a \$420 million net gain of general revenue-related funds to the state. The comptroller has testified that by restoring \$15.1 million to the CPA budget from the initially proposed 5 percent reduction from fiscal 2004-05 spending, the agency could return \$29 for every dollar funded. Given the state's fiscal status, it would be counterproductive to risk such a loss of revenue. Opponents say every agency should be expected

to bear its share of budget reductions. The CPA has been known for innovative initiatives to encourage other agencies to do more with fewer resources, and the CPA should exercise that capacity itself.

TexShare services. TexShare, administered through the State Library and Archives Commission (SLAC), is the state's resource-sharing cooperative of 697 public and private academic libraries, community college libraries, public libraries, and libraries of clinical medicine in Texas.

CSSB 1 would fund TexShare at \$10.7 million in all funds for fiscal 2006-07, a 4 percent decrease from spending in the previous biennium. It also would include in Article 11 for an additional \$4 million in general revenue-related funds for TexShare databases. Article 11 also contains a rider, contingent on enactment of HB 661 by Branch, that would grant \$8.6 million to TexShare for inclusion of public school libraries in licensing agreements for electronic databases. The Senate proposal would fund TexShare at \$11 million in all funds, representing a 0.4 percent decrease from fiscal 2004-05 funding. SB 483 by Staples (identical to HB 661) would allow designated public school libraries to participate in group purchasing agreements through TexShare.

Supporters say that library patrons in remote areas are particularly dependent on TexShare and would suffer the most from funding cuts. Due to Texas Education Agency library funding cuts in fiscal 2004-05, more public school students now use public libraries and TexShare databases. In addition, nursing students and others training in health care fields increasingly rely upon TexShare's cooperative databases. Without the current level of funding for TexShare, some medical training courses could be eliminated entirely.

Renovation of the de Zavala building and other state record centers. The Senate proposal assumes the issuance of \$18.5 million in general obligation bonds in fiscal 2006-07 through the Texas Building and Procurement Commission (TBPC) for renovations to the Lorenzo de Zavala State Archives and Library Building in the Capitol Complex, the State Records Center in Austin, and the Sam Houston Regional Library and Research Center in Liberty. The debt service on these bonds would be \$2.7 million

in general revenue for the biennium. These proposed renovations would be in addition to appropriations for the SLAC strategy to manage state-local records.

Supporters argue that these state records include the national archive for the Republic of Texas, valuable records that need immediate attention and protection. Unlike many of its contemporaries, the de Zavala building has had no substantial improvements since it opened in 1959. The money proposed for renovations would add another 59 years to the life of the de Zavala building and improve storage conditions in the other facilities.

CSSB 1 contains no funding for renovations. While acknowledging the importance of preserving important state records, supporters of this proposal say other budget priorities should take precedence.

Commission on State Emergency Communications. The Commission on State Emergency Communications (CSEC) facilitates local implementation and maintenance of enhanced 9-1-1 emergency communication and poison control center services throughout the state. Appropriations for fiscal 2004-05 totaled \$104.4 million in general revenue-dedicated funds from four telecommunication fees: the 9-1-1 equalization surcharge; the poison control surcharge; the emergency service fee; and the wireless service fee.

CSSB 1 would appropriate \$99.6 million to CSEC, or 95 percent of current funding. In addition, CSSB 1 contains two riders that would appropriate fees estimated at \$24.2 million collected in excess of the biennial revenue estimate in CSEC Accounts No. 5050 and No. 5007. Any cost to the bill could be offset by these fees. CSSB 1 also would include \$4.8 million in Article 11 for increased 9-1-1 network reliability. The Senate proposal funds the agency for fiscal 2006-07 at \$11.6 million more than its current level of funding, an 11 percent increase. The Senate proposal includes the following increases requested by the agency: \$4.3 million for 9-1-1 subscriber growth; \$11.1 million for 9-1-1 equipment replacement; and a combined \$1.1 million for poison control call takers salary increases and for poison control call taker equipment upgrades.

Supporters say that population increases are placing stresses on 9-1-1 communications at a time when the state should be particularly concerned about public safety. The budget increases are necessary to maintain current services and reliability and, for poison control call operations, to retain skilled personnel and replace outdated equipment. Opponents contend that it would be unreasonable to raise fees because Texas already has among the highest combined telecommunications fees in the nation. In addition, the CSEC dedicated accounts have sufficient balances to fund all the agency's special requests without increasing fees. Other opponents say the increased fee approach would fall short of CSEC's needs, particularly for the \$11.1 million identified to replace existing 9-1-1 equipment.

Veterans services. CSSB 1 would appropriate \$7.3 million in general revenue to the Veterans Commission for fiscal 2006-07, an increase of \$476,000, or 7 percent, over the estimated fiscal 2004-05 level to support seven additional full-time counselors. The Senate proposal would increase funding for the commission by \$741,000.

Supporters say additional funding and FTEs are needed to serve the increasing number of veterans returning to Texas from the war in Iraq. With additional counselors, wounded and disabled veterans would receive improved assistance in obtaining the benefits to which they are entitled. Opponents, while acknowledging veterans' needs as a high priority of the state, say no state agency should be immune to budget reductions for the second biennium in a row.

Courthouse preservation. CSSB 1 would change the method of finance for Texas Historical Commission's courthouse preservation program from general obligation bonds to federal Transportation Equity Act for the 21st Century (TEA 21) enhancement funds, which normally are used to finance transportation-related projects at the state level. The Senate proposal, by contrast, would appropriate \$40 million in general revenue bonds toward courthouse preservation.

Supporters of CSSB 1 say replacing bonds with federal funds would save the state bond debt and \$3.8 million in general revenue funds. If it proved impractical, the

Legislature could return to the current financing method for fiscal 2008-09. Opponents say some courthouses may not qualify for TEA-21 funds, which would hamper the preservation program by making the disbursement of money subject to federal approval. In addition, funds would be disbursed directly through the Texas Department of Transportation to counties, unfairly distancing the Historical Commission, which has cultivated the program since its inception, from courthouse selection and construction processes.

BRAC. The Texas Defense Economic Adjustment Assistance Grant Program was created by the 75th Legislature in 1997 to assist communities that have seen a significant loss of defense-related employment due to defense cuts, primarily from the Department of Defense's base re-alignment and closure (BRAC) program. The grants, which can range from \$50,000 to \$2 million, may be used to match federal funds, to purchase, construct, rehabilitate, or renovate facilities or infrastructure, to purchase capital equipment or project-related insurance, or to purchase or lease equipment to train workers whose jobs have been threatened or lost. The program's fund currently is depleted.

Article 11 of CSSB 1 contains \$30 million to re-fund the grant program. Supporters say this funding is necessary to ensure that defense-dependent communities in Texas receive grant funds to assist their economic recovery following expected base closures and funding reductions under the 2005 BRAC round. With 18 major military installations and numerous smaller ones, Texas could be affected significantly by this latest round of BRAC, which is widely expected to reduce military infrastructure by up to 25 percent. The closing or substantial reduction in funding of a base severely affects a community's and region's economic stability, and these communities cannot afford to wait two years to receive the help they need.

The Senate proposal includes no money for this program. Supporters say that while helping communities negatively impacted by BRAC is a worthy goal, the state should wait until the BRAC process is completed before appropriating dollars to a grant program that might not be needed, particularly when so many other state programs desperately need funding. The state already has moved

to help defense communities prepare for, and possibly head off, base closings under BRAC through the Texas Military Value Revolving Loan Fund, which can be used to help fund projects that enhance the value of their installations. By proactively helping communities improve their infrastructure prior to BRAC, the state has reduced the likelihood of base closings and funding reductions.

Film Incentive Fund. Article 11 of CSSB 1 contains \$30 million for a new film incentive fund within the Office of the Governor, contingent upon enactment of HB 2954 by Hamric or similar legislation. This fund would provide grants to production companies for each film, television program, or major commercial they produced in the state, provided they paid at least \$500,000 in wages to Texas residents per film or television program or \$50,000 per commercial. The grants could not exceed the lesser of \$750,000 or 20 percent of the wages paid to state residents, although that grant could be increased to 25 percent if at least 25 percent of the filming days were located outside of Austin, Dallas-Fort Worth, and Houston.

Supporters say this money would help Texas promote the state's film industry and entice filmmakers to locate projects in the state. In 2004, film and television projects contributed about \$200 million to the state's economy. With a little investment, Texas could capture an even greater share of U.S. film production and its associated economic benefits.

The Senate proposal includes no money for the film fund. Supporters of the Senate proposal say the fund is unnecessary as Texas already has a healthy film industry. This money would be better spent on other state programs.

Fire fighters' pension commissioner. The fire fighters' pension commissioner administers the Texas Statewide Emergency Services Personnel Retirement Fund, which currently provides retirement, disability, and survivor benefits to members of 176 volunteer firefighter departments and emergency personnel services that have elected to participate. In November 2003, a valuation concluded that the fund is actuarially unsound, with a projected deficit of \$13.4 million. Under state law, the

Legislature must make the fund actuarially sound, but appropriated funds cannot exceed one-third of total annual contributions by participating departments.

Article 11 of CSSB 1 contains the statutorily required contribution for fiscal 2006-07 of about \$1.38 million; the Senate version of the bill includes this funding in the agency's bill pattern. The House proposal includes an additional \$10.2 million for the fund contingent upon the enactment of HB 1655 by J. Keffer, which would raise the fire insurance premium tax from 1.6 percent to 2 percent and direct the additional revenue to the fund. The Senate proposal does not include this funding, but contains almost \$800,000 in additional funds to pay for administrative costs and maintenance of computer systems.

Supporters of the Article 11 provisions in CSSB 1 say the additional revenue would go a long way toward making the fund actuarially sound. In many parts of the state, volunteers constitute the only fire or emergency services available. The state should ensure the sustainability of these essential departments. Supporters of the Senate proposal say that by covering administrative costs, the fund would be able to keep more of the revenue it generated, thus moving it faster to actuarial soundness.

Opponents say that although the work of these departments is admirable, other opportunities for making the fund actuarially sound exist, including changing eligibility requirements or reducing benefits. Opponents of the Senate proposal say that the state does not usually support administrative costs for pension funds and should not make an exception now, especially with so many other funds more significantly unsound and in need of additional funding.

Crime Victims' Compensation Fund. The Office of Attorney General (OAG) administers the Crime Victims' Compensation Fund (CVCF), which awards compensation to victims of crimes who have sustained monetary losses as a result of personal injuries or deaths. Money in the fund comes primarily from court costs and fees imposed on criminal offenders. In 1997, the Legislature enacted SB 987 by Moncrief, which broadened the categories of services

for which CVCF money could be appropriated, allowing state agencies that deliver or fund victim-related services to receive money from the fund.

Since the Legislature began using grants from CVCF for victims' assistance organizations and state agencies, the money in the fund, once a large surplus, has been nearly depleted. SB 259 by Williams would amend the current law to define "victim-related services or assistance" to include only compensation or services "provided directly to a victim or a claimant."

CSSB 1 would appropriate \$212.8 million from the CVCF to the OAG and other agencies for direct crime victims' compensation and assistance programs. This distribution from the fund is \$69 million less than in the last biennium since it would be removed as a method of finance for most victim-related services outside the OAG, including family violence services, adult protective services and foster care. For example, in CSSB 1 the Battering Intervention

and Prevention Program would receive the same level of funding as in fiscal 2004-05, but it would be from general revenue-related funds, not CVCF. Appropriations from CVCF for direct victim's compensation payments and claims administration would increase by \$36.6 million over fiscal 2004-05, and direct victims assistance programs would be maintained. Contingent on the enactment of SB 978 by Barrientos, the OAG will receive an additional \$12.4 million for crime victims' compensation. SB 978 would expand participation in the Model Fines Collection Program, a program operated through the Office of Court Administration, which helps to ensure payment of fines, fees, and court costs assessed by a court.

Supporters say CSSB 1 would use CVCF money as originally intended by limiting its use to programs and services closely associated with helping crime victims. While services such as foster care programs are important, using CVCF money to pay for them circumvents the original intent of the fund.

Health and Human Services Overview

The health and human services (HHS) agencies in Article 2 constitute Texas' second-largest budget function after education. HHS agencies account for 35 percent of the total proposed budget for fiscal 2006-07 and 26 percent of proposed general revenue-related spending. They receive funding from multiple federal, state, and local sources and have more than 46,000 employees.

The Health and Human Services Commission (HHSC) oversees four HHS department-level agencies following a widespread reorganization mandated by the 78th Legislature in HB 2292 by Wohlgemuth. The commission administers eligibility determination for all HHS programs and performs some administrative duties for all HHS departments, including human resources, administrative procurement and contracting, and strategic planning. In addition, HHSC administers Medicaid, the Children's Health Insurance Program (CHIP), the vendor drug program, and Temporary Assistance for Needy Families (TANF), among other services. The four departments under HHSC are:

- the Department of Aging and Disability Services (DADS), which administers mental retardation services, including state schools, nursing home services, community care for people with disabilities, and other services for the elderly;
- the Department of State Health Services (DSHS), which oversees mental health programs, including state hospitals; health services, such as prevention and epidemiology; and alcohol and drug abuse services;
- the Department of Family and Protective Services (DFPS), which administers child and adult protective services, including early intervention and prevention services, and child care regulation; and
- the Department of Assistive and Rehabilitative Services (DARS), which implements rehabilitation services, early childhood intervention, and services for the blind and the deaf.

CSSB 1 would fund Article 2 agencies at \$48.4 billion in all funds for fiscal 2006-07, more than 10 percent more than in fiscal 2004-05. The general revenue-related portion, \$18.8 billion, would represent a 15 percent increase from the current biennium. The Senate proposal would fund Article 2 agencies at \$49.1 billion in all funds for fiscal 2006-07, nearly 12 percent more than in fiscal 2004-05. The general revenue-related portion, \$19.0 billion, would represent a 16 percent increase from the current biennium.

Article 2 spending comparisons (millions of dollars)

| Type of funds | Expended/budgeted 2004-05 | Recommended CSSB 1 | Biennial change | Percent change |
|-------------------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue-related | \$16,338.8 | \$18,787.2 | \$2,448.4 | 15.0% |
| Federal | 26,762.4 | 28,683.3 | 1,876.0 | 7.0 |
| Other | 901.8 | 1,000.0 | 98.2 | 10.9 |
| All funds | 44,002.9 | 48,425.5 | 4,422.5 | 10.1 |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

Background

Federal funds. Federal directives drive many HHS programs. Federal funds finance about 60 percent of all HHS spending in Texas and often require matching contributions from the state. In fiscal 2004-05, at least 80 percent of the state's general revenue spending in HHS was used to draw down federal funds. The largest programs that receive a significant portion of their funding from federal sources include Medicaid, CHIP, and TANF.

Demographic and economic drivers. In 2003, 3.7 million Texans, or 17 percent of the state population, lived below the federal poverty level (FPL), according to HHSC. Rates of poverty, changes in ethnic composition, aging of the population, and overall economic trends drive much of the demand for HHS services. Growth in health program spending (primarily Medicaid and CHIP) also is driven by the number of medically uninsured in the state. Texas has about 5.3 million uninsured residents (27 percent of the population under age 65), of whom about 1.3 million are children. An additional 860,000 adults and 2.2 million children receive health insurance through a state program.

Caseloads. Federal entitlement programs such as Medicaid, TANF, and food stamps require the state to serve all individuals who meet the eligibility standards. Attempts have been made to control growth in entitlement programs by modifying the qualification criteria or application process. At the federal level, welfare reform in the mid-1990s reduced caseloads in TANF by instituting new work requirements and personal responsibility agreements with stricter eligibility requirements. Recently, Texas implemented changes designed to reduce caseloads, including instituting stringent asset tests in CHIP and TANF and changing Medicaid and CHIP qualifying poverty levels.

Several HHS programs — especially those delivering social, nursing, and rehabilitative services in the community — cannot serve all eligible people within current budget levels. These programs maintain waiting lists that often include thousands of names. The longest wait lists often are populated by individuals seeking services in the community. The U.S. Supreme Court ruling in *Olmstead v. L.C.*, 527

U.S. 581 (1999), found that the federal Americans with Disabilities Act compels states to provide treatment and habilitation for disabled people in a community setting within a reasonable amount of time if community placement is appropriate. (See HRO Focus Report Number 77-9, *The Olmstead Challenge: Community Care for the Disabled*, March 27, 2001.)

Medicaid. Medicaid, the federal-state health insurance program for the poor, elderly, and disabled, is the largest source of federal funds in the state budget. In fiscal 2004-05, Texas will spend \$29.4 billion on Medicaid programs, including \$11.3 billion of general revenue-related and tobacco-settlement funds, not counting additional appropriations in the supplemental appropriation proposed in CSHB 10 by Pitts. Medicaid expenditures are split between the federal government and the states according to each state's relative average per-capita income, which is adjusted annually. In fiscal 2006-07, Texas will pay about 39.3 percent of all program costs, and the federal government will pay the rest. This is an improved match rate for Texas compared to fiscal 2004, but worse than the match in fiscal 2005.

Medicaid is composed of three primary spending functions: Medicaid acute care, which pays for medical services; vendor drug, which pays for prescriptions; and long-term care. Acute care accounted for 55 percent of Medicaid funds, while vendor drug accounted for 15 percent and nursing home care accounted for 12 percent in fiscal 2004-05. Other long-term care expenditures accounted for 18 percent.

Medicaid caseloads and costs are on the rise even though extensive controls were adopted by the 78th Legislature. In fiscal 2004-05, the average caseload was about 2.8 million, which was 22 percent higher than in fiscal 2002-03, and HHSC expects it to rise another 14 percent in the coming biennium. Costs also are trending upward from an estimated \$189 per month in fiscal 2005 to \$204 in fiscal 2007, primarily due to caseload mix and general medical cost growth. In the current biennium, HHSC has experienced a shortfall of about \$1.6 billion in Medicaid and CHIP funding because of the increase in caseloads and

costs of services and drugs, most of which will be covered in proposed supplemental appropriations in CSHB 10.

The long-term care component of Medicaid also is increasing. In fiscal 2004-05, Medicaid paid for an average of 72,000 clients in nursing care and is expected to pay for an average of 76,000 in fiscal 2006-07, a 5 percent increase. Because Medicare does not pay for most nursing home services, Medicaid pays for most nursing home care provided to 67 percent of people living in nursing homes.

CHIP. The 76th Legislature in 1999 established CHIP to provide health insurance for children in low-income families who were not eligible for Medicaid. The program is funded by the state with a federal match of more than 70 percent. CHIP has two funding components: a vendor drug model, which pays for prescriptions, and a capitated services model, which pays managed care plans based on a negotiated, set rate per patient. CHIP caseloads have declined since their peak of 507,000 children in September 2003 due to policies enacted by the 78th Legislature. In fiscal 2005, CHIP's caseload is approximately 339,000 children.

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

Federal legislation authorized TANF through September 1, 2003. Congress has extended authorized funding on a temporary basis until June 30, 2005, at current funding levels, and is expected to approve a further extension and include it in the next federal budget. States must meet a maintenance-of-effort (MOE) requirement to receive TANF funds. Under the original authorization, Texas had to spend on TANF at least 75 to 80 percent of its 1994 spending on Aid to Families with Dependent Children, TANF's

predecessor. To maintain the current 80 percent MOE, Texas must spend \$251 million in general revenue per year on TANF. Texas has a balance of TANF funds carried forward from the block grant's inception. Over time, the state has spent down the balance to about \$16 million expected at the end of fiscal 2007.

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

Medicare Modernization Act. This new federal prescription drug benefit enacted in 2003 will shift some of the cost burden for prescription drugs from the state Medicaid program to the federal Medicare program. Because some individuals are eligible both for Medicare, usually because of age, and Medicaid, because of income level, the state had paid for prescription drugs while the federal program paid for other medical services. In 2006, these individuals, termed "dual-eligibles" will obtain their primary prescription drug coverage from Medicare. The federal legislation requires states to send a portion of the general revenue funds that would have been spent on these individuals to the federal program, known as the "giveback" provision. In fiscal 2006-07 that amount will be \$465.3 million, a figure that will decline in future years. This compares with the estimated \$57.8 million more the state would have spent in general revenue-related funds if the federal program had not been available.

Budget highlights

CSSB 1 would increase overall Article 2 spending by \$4.4 billion from fiscal 2004-05 levels. General revenue-related spending would increase 15 percent and federal funds would increase 7 percent. Some of the increase in general revenue would replace one-time federal fiscal relief funds. HHSC funding, which would increase \$3.9 billion in

all funds, primarily would go toward increases in Medicaid. CSSB 1 also would appropriate an additional \$317 million in all funds to DFPS for Child Protective Services (CPS) reform.

Medicaid. CSSB 1 would appropriate \$14 billion in general revenue-related funds and \$36.9 billion in all funds for Medicaid in fiscal 2006-07. This funding level assumes an increase in the Medicaid caseload, from roughly 2.86 million acute-care recipients in 2005 to 3.14 million recipients in 2007. The HHSC caseload estimate for fiscal 2007 was almost 200,000 recipients higher. It assumes that continuous eligibility for children will be maintained at six months, rather than 12. This funding level would account for a 3.5 percent increase in costs in fiscal 2006 but would hold costs steady in fiscal 2007. It would include funding for a Medicaid buy-in program but would not restore certain Medicaid services for adults, provider rate cuts, or the medically needy spend down option.

Medicaid buy-in. CSSB 1 and the Senate proposal would include \$15.8 million in all funds – \$6.3 million in general revenue-related funds – to establish a Medicaid buy-in program. This level of funding would establish a program through which people with disabilities who receive Medicaid would be able to obtain employment without losing Medicaid benefits. HB 1135 by Delisi, if enacted, would direct HHSC to develop such a program. According to HHSC, a buy-in program likely would be open to disabled individuals with income below 250 percent of the federal poverty level (\$23,275 per year) who obtain employment. Participants would buy in to the Medicaid program through a sliding-scale monthly premium that could range from \$25 to \$400. The fiscal note attached to the bill assumes participation by 3,400 people by the end of fiscal 2008.

Supporters of the program say that employment benefits people in intangible ways, such as community involvement, skills development, and social interaction, even though it may not provide enough income to pay their medical bills. Also, people who participate in the buy-in would be contributing to the cost of their health care, just as if it were a private health plan. Opponents caution against any

expansion of Medicaid, warning that state health programs demand an increasing portion of the state's budget each year.

Medically needy spend-down. Prior to 2003, adults with incomes above the poverty level who had very high medical bills could qualify for Medicaid if their medical bills offset enough income to pull their effective incomes under the poverty level. That population was cut from eligibility in 2003, although pregnant women and children still qualify. Restoration of non-pregnant adults to this program would cost \$89 million in all funds. The Senate proposed restoring that level of funding, which would provide services to about 10,000 people in the coming biennium but would reimburse providers only 20 percent of the Medicaid rate. CSSB 1 includes comparable funding in Article 11. Supporters of restoring this program say that extraordinarily high medical bills are the leading cause of bankruptcy in the United States and Texas should help families on the brink of poverty to stay afloat. Most people who participated in this program before it was cut had been in car accidents or had suffered other catastrophic events that would have ruined them financially if not for the spend-down provision.

STAR+Plus expansion. Star+Plus is a managed care pilot program initiated in the Houston metropolitan area in 1998. CSSB 1 would require HHSC to implement a non-capitated model of care management for the aged, blind, and disabled Medicaid populations by September 1, 2006, as an alternative to Star+Plus. HHSC proposed an expansion of the Star+Plus program to the state's other metropolitan areas, which would have outsourced the delivery of Texas Medicaid in urban areas to capitated HMO-style delivery systems. The proposal drew fire from urban hospitals around the state because under a capitated system like Star+Plus, "upper payment limits" (federal funds) no longer would be available to hospitals. Under CSSB 1, Star+Plus would not be expanded but would remain in effect in the Houston area. The Senate proposal would assume implementation of a non-capitated model of care management and an associated savings of \$277.6 million in all funds, including \$109.5 million in general revenue-related funds.

Supporters of a non-capitated model of care management believe this alternative would deliver health

care more efficiently and protect federal funding for hospitals. Under CSSB 1, appropriations to HHSC would be reduced by \$109 million in general revenue-related funds and \$168.1 million in federal funds for fiscal 2006-07 to reflect the net savings associated with the implementation of a non-capitated model of care management by HHSC. Under an Article 2 Special Provisions Rider, certain funds appropriated to DADS for Medicaid long-term care services could be transferred during fiscal 2006-07 to HHSC to support execution of the non-capitated system. HB 1771 by Delisi, SB 871 by Nelson, and SB 1756 by Zaffirini each would implement a non-capitated model of care.

CHIP. CSSB 1 would appropriate \$998.8 million in all funds for CHIP in fiscal 2006-07, an increase of \$6.7 million. This funding level assumes a decline in the CHIP caseload, from roughly 339,000 in 2005 to 331,000 in 2007, about 50,000 fewer in 2007 than estimated by HHSC. It assumes that continuous eligibility would be maintained at six months, rather than 12, and would not include a provider rate restoration. This funding level would include a 30 percent increase in costs in fiscal 2006, including a restoration of vision and dental benefits, and would hold them steady in 2007 (see highlight on page 29).

CSSB 1 assumes a cost savings of \$15 million due to the implementation of a new cost-sharing requirement. In 2003, the 78th Legislature required HHSC to increase cost-sharing responsibilities for CHIP families, but the effort was abandoned when a large number of families appeared unable to meet the new obligations. The new cost-sharing plan would set three tiers ranging from \$50 to \$100 based on income and would be paid in semi-annual installments. If a family failed to pay, CHIP enrollment would be suspended for up to three months. If the family caught up, enrollment would resume, and the child would not be subject to the 90-day waiting period.

Some stakeholders have said that the caseload estimates used to project expenditures in the coming biennium are too low and that HHSC could be forced to establish a waiting list or freeze on enrollment if actual numbers exceed the projection. Because CHIP is not an entitlement, the program is not required to serve any eligible child who applies. In

fiscal 2004-05, the program experienced a shortfall, which would be made up by the supplemental appropriation included in CSHB 10.

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

CSSB 1 would appropriate \$1.2 billion in TANF funds across eight agencies in fiscal 2004-05. This amount is greater than the state's TANF grant and would require spending down Texas' TANF balance to \$16 million at the end of the coming biennium. The largest items funded with TANF would include cash assistance grants, workforce programs, foster-care rates and case workers at DFPS.

Caseload estimates. Budget writers base the appropriation for many HHS programs on caseload estimates prepared by the LBB and HHSC. Some programs are entitlements, meaning that any eligible individual who applies will enter the program, such as in TANF, food stamps, and Medicaid. Others have the option of establishing a wait list if more eligible people apply than there is funding available, such as CHIP, Children with Special Health Care Needs, and community care waiver programs. In the past two biennia, the Legislature has allocated supplemental funding to cover shortfalls in some of these programs.

Some observers say that the state routinely adopts artificially low caseload estimates, which leads to an inevitable shortfall in the coming biennium. They say that HHSC's estimates often are higher than the ones proposed by LBB and that, by choosing the lower number, some programs are forced to establish waiting lists. Stakeholders for CHIP fear that the program, which has never had a waiting list, will be forced to establish one in fiscal 2006-07 if higher caseloads are not assumed. Supporters of using the caseload estimates built into CSSB 1 say that caseload estimating is not an exact science and that there is a mechanism in place – supplemental appropriations – in case the estimate falls short.

Waiting lists and waiver services. Federal law allows states to apply for permission to depart from certain Medicaid requirements. These waivers allow states to operate programs that include exceptions to Medicaid's basic principles: required array of benefits; mandated eligibility; and income groups. Medical waiver slots are the primary funding mechanism for moving people with disabilities from institutional to community settings. The waiver programs include Community-Based Alternatives (CBA) for people with disabilities who are eligible for nursing-home care; Community Living Assistance and Support Services (CLASS) for people with developmental disabilities other than mental retardation; Medically Dependent Children's Program (MDCP); Deaf-Blind with Multiple Disabilities (DBMD); and the Home and Community-Based Services (HCB) waiver program, which provides therapeutic and family-support services to maintain people with mental retardation at home or in small-group homes as an alternative to institutional placement. Because the number of waivers is limited by availability of funds and because demand for waivers is greater than the supply, most states have created waiting lists for waiver programs. Currently, more than 47,000 Texans are on the state's waiting lists, where some have remained for more than 10 years.

CSSB 1 would include an increase of \$47 million in general revenue-related funds and \$796 million in all funds to reduce waiting lists for all HHS programs. This additional funding will serve 1,900 clients in fiscal 2006-07. Article 11 contains a funding request for \$605.5 million. Supporters of additional funding believe it makes sense to fund waiver slots because the slots are less expensive by definition than institutional placements. Funding would give individuals freedom to make their own choices, such as giving them the opportunity to live in the community rather than in state facilities.

The Senate proposal would appropriate \$79.6 million in general revenue-related funds, \$167.1 million in all funds, for use in reducing waiting lists by 5 percent in fiscal 2006-07. Article 11 contains an additional \$177.9 million to further reduce waiting lists.

Direct care employee pay. DADS requested a rate increase of \$1 per hour for direct care staff. Direct care staff for all contracted providers at nursing facilities, ICF/MRs, state schools, and home and community-based care services includes aides and attendants, registered nurses, and licensed vocational nurses. The current average wage rate for direct care aides is about \$7 per hour. Neither CSSB 1 nor the Senate proposal would appropriate funds for the biennium to support the rate increase. Supporters feel that the wage increase would result in more satisfied employees, who will provide improved services while reducing turnover rates.

Vocational rehabilitation. DARS administers the vocational rehabilitation program, a joint state-federal effort that helps people with disabilities find and retain jobs. Services can include counseling, training, assistive devices, and job placement assistance. Both CSSB 1 and the Senate proposal would allocate an additional \$5 million to vocational rehabilitation, which would result in an increase of \$18 million in all funds for the program. The agency estimates that this funding level would offer assistance to 12,851 additional clients. This would offset program changes that re-focused eligibility standards on higher needs clients.

Obesity prevention funding. In 2001, Texas ranked sixth among states in obesity prevalence among adults. Two-thirds of Texas adults and more than one-third of Texas children are overweight or obese. Obesity leads to a spectrum of health problems including diabetes, heart disease, high blood pressure, and high cholesterol and also is associated with asthma, sleep apnea, stroke, and cancer. Medical care for obesity-related conditions is projected to cost the state of Texas \$15 billion by 2010 if the current trend in increasing obesity rates continues.

Neither CSSB 1 nor the Senate proposal reflects an increase in funding for obesity prevention or treatment in HHS programming. Rider 20 under the Texas Department of Agriculture (TDA), however, expresses legislative intent that TDA administer the Child Nutrition Program, which includes \$2.2 billion in federal funds and \$29 million in general revenue for the biennium. Through an interagency contract with TDA, the Texas Education Agency would

provide Child Nutrition funds to individual school districts for reimbursement for the School Lunch, Breakfast, and After School Snack programs.

Nursing home allowance. CSSB 1 and the Senate proposal would maintain the personal needs allowance at \$45 per month for low-income nursing home residents. Poor and low-income elderly recipients of Medicaid who live in nursing homes may have incomes up to 223 percent of the federal poverty level (about \$1,500 per month) but may keep only \$45 for “personal needs.” In fiscal 2005, DADS expects about 12,520 nursing-home residents to receive a personal needs allowance. Residents use this allowance to pay for toiletries, clothing, and incidental items such as newspaper subscriptions. They must apply the rest of their income to the cost of nursing-home care to reduce Medicaid costs.

Supporters of maintaining this level say that it allows residents to have some discretionary income while state and federal payments account for the rest of their care. Opponents argue that \$45 is completely insufficient to pay for incidental items, particularly as Medicaid benefits have been cut and incidental items now include necessities such as eyeglasses and hearing aids. Three bills have been filed in the House that would increase the personal needs allowance to between \$60 and \$100: HB 24 by Thompson, HB 288 by Chavez, and HB 921 by Uresti. As an example of the cost to the state to increase the personal needs allowance, according to the LBB fiscal note, a \$75 personal needs allowance would cost \$25.8 million in all funds for fiscal 2006-07.

Nursing home regulation. Over the last several biennia, additional nursing home clients have been added to long-term care eligibility services without a corresponding increase in the number of caseworkers. Since 2002, the Legislature has reduced long-term care functional eligibility staff by 17 percent, or 580 positions. For fiscal 2004-05, the estimated budget for functional eligibility staff is \$53.7 million in general revenue and \$128 million in all funds. Additional clients, coupled with fewer caseworkers, have increased the number of cases per worker from an average of 169 in fiscal 2005 to an estimated 445 in fiscal 2007. CSSB 1 assumes LBB caseload growth projections, and funding for long-term care functional eligibility full-time

employees would increase, resulting in proposed funding of \$141.6 million in all funds. The Senate proposal also assumes LBB caseload growth projections, with proposed funding of \$133.7 million during fiscal 2006-07.

Child abuse prevention programs. Child advocates say that Child Protective Services (CPS) reform is only one aspect of protecting Texas children from abuse and neglect. Studies have demonstrated that family counseling, parent education, and intensive family interventions can lead to a reduction in the incidence of child abuse and neglect. Evidence also suggests that programs aimed at reforming youth at risk of becoming runaways or entering the juvenile justice system also correlate with reduced child abuse incidence rates. A recent study of the Community Youth Development (CYD) program demonstrated that counties participating in CYD saw a corresponding 14 percent drop in CPS referrals. CYD provides contracts that support collaboration by community groups to alleviate family and community conditions that lead to juvenile crime.

In fiscal 2004-2005, prevention service funding was reduced by about 16 percent to CYD and the Services to At-Risk Youth (STAR) program, which provides contracts to organizations providing services to at-risk youth and family counseling and intervention services. Three other programs, At-Risk Mentoring, Healthy Families, and Parents as Teachers, were cut entirely.

Both CSSB 1 and the Senate proposal would provide \$18.6 million in funding above fiscal 2004-2005 levels to reach fiscal 2002-2003 spending levels. This would restore individual programs cuts as well as renew the three programs that were cut entirely. More than 14,000 additional children and families could be served. Supporters of program restoration cite evidence that the costs of prevention activities are returned in the short term because it costs \$34,000 per child per year to provide services for abused children. Most importantly, however, this restoration could prevent the potential harm or death of many children due to abuse or neglect.

Substance abuse block grant. Texas provided addiction treatment and prevention services to 46,563 adults and 6,404 youth in 2004. These substance abuse-related

programs are funded largely through approximately \$138 million in federal dollars provided through the federal Substance Abuse Prevention and Treatment Block Grant (SAPT). Under the rules governing this grant, states are penalized if they fail to demonstrate maintenance of effort (MOE) in maintaining substance abuse spending levels over the previous two fiscal years. For each dollar the state falls short of this MOE target, they risk losing a dollar of federal funding in penalties.

The MOE in fiscal 2003 was \$27.3 million, which was included in the fiscal 2003 budget, but \$9.6 million later was transferred from substance abuse programming by HB 7 in the 78th Legislature to fund shortfalls in other programming areas. Because Texas did not meet the MOE in 2003, the federal government assessed a \$9.6 million penalty, which the state appealed. The appeal is still pending, so it remains to be seen if further penalties will be assessed. If the penalty is maintained at nearly \$10 million, it could risk a cut of services to more than 6,300 substance abuse clients. Both CSSB 1 and the Senate proposal would meet the estimated MOE requirements with \$48 million in general revenue-related funds in fiscal 2006-07 in an effort to avoid future penalties and reductions in client services.

Immunizations. The Vaccines for Children (VFC) program provides vaccines for uninsured, underinsured, or Medicaid or CHIP children through age 18. VFC currently administers nine vaccines that prevent 13 diseases. Both CSSB 1 and the Senate proposal include \$640,185 in additional general revenue funding above fiscal 2004-05 spending to expand access to the hepatitis A vaccine to all VFC children. Supporters say that the cost for a dose of vaccine is only \$11.50 and can prevent the costs of treating hepatitis A that average between \$433 and \$1,492 per case. It also would simplify the administrative burden for VFC providers because currently they are required to differentiate

between which children in the program should get the vaccine – because they live in areas where there is a high incidence of the disease, are in school, or are federally-mandated – and those who are not.

CSSB 1 also includes \$5 million to pay for PCV-7 vaccine, which prevents pneumonia and meningitis from pneumococcal streptococcus at a cost of \$206 per four-dose series. Invasive diseases related to these strains led to a 14 percent mortality rate among adult patients in 2002, and children under the age of 2 are at a higher risk of contracting such infections. The incidence rate of these invasive diseases declined by 70 percent between 1998 and 2002 following the administration of PCV-7 through a federal program. VFC requested an additional \$3 million beyond CSSB 1 levels to administer this vaccine to all its participants. The Senate proposal includes the full \$8 million for the effort. Supporters say that given the severity of the diseases involved, PCV-7 should be funded for all VFC participants.

County Indigent Health Care Program. Counties are an important part of the health care safety net as their hospital districts, public hospitals, or indigent health care programs pay for medical care for very-low-income residents. The Texas Constitution requires counties to provide medical care for their poorest residents, and the state assists counties that pay for care through a county indigent health care program (CIHCP) by reimbursing them for a portion of their costs above 8 percent of their county general revenue tax levy. CSSB 1 includes \$10.1 million in general revenue for CIHCP reimbursement, a reduction from the level appropriated in fiscal 2004-05 due to one-time receipts from an unexpended balance in another program in 2004. The Senate proposal would appropriate \$14.1 million, also a reduction. Rider 70 in the DSHS budget would continue the allocation limit of 35 percent of funds to any one county.

Child Protective Services

Agency: Department of Family and Protective Services

Background

In response to highly publicized cases of child death and instances in which children were subjected to abuse or neglect despite involvement by the state's Child Protective Services (CPS), Gov. Perry issued Executive Order RP35 directing the Health and Human Services Commission (HHSC) to review and reform the CPS system. The Office of the Inspector General performed 2,221 case reviews to determine the source of problems in the CPS system, and in cases where further action was required, the primary finding was that excessive caseloads led to early closure or mishandling of investigations. The HHSC system reforms were based on the inspector general's findings as well as the input of both internal and external stakeholders.

In 2003, Texas had a population of about 6 million children. Over the course of that year, CPS received 186,000 reports alleging abuse and neglect. CPS completed more than 131,000 cases from which it confirmed that about 78,000 children had been subject to abuse or neglect. Since that time, reports of abuse and neglect have continued to rise. Despite the fact that additional funding for staff, including caseworkers, has been provided in each session subsequent to 1995, when 607 FTEs were cut through the appropriations process, average caseloads for investigators still have risen from 47.9 per month in November 2001 to the current level of 74 per month.

CSHB 1 – \$253.1 million general revenue-related increase from fiscal 2004-05 spending

CSSB 1 and CSHB 10 by Pitts, the supplemental appropriations bill, include an increase of \$253.1 million in general revenue-related funds and \$317.1 million in all funds over fiscal 2004-05 spending. The total of 1,524 additional FTEs in fiscal 2006 and 1,828 in fiscal 2007 would include not only additional caseworkers but also clerical and technical support, specialized forensic

investigators, and additional highly trained intake call screeners. These new FTEs would undergo enhanced training and would be utilized among different agency strategies to meet the reform goals established by the HHSC.

The reforms would strengthen investigations with highly trained staff, including staff with law enforcement backgrounds, that would provide thorough forensic investigations and screen calls to determine which will not require further investigation. This would require an additional \$32.3 million in general revenue-related funds and 424 FTEs in fiscal 2006 and 799 in fiscal 2007.

For those cases requiring CPS intervention, 817 FTEs in fiscal 2006 and 1,529 in fiscal 2007 would be added at a cost of \$108.7 million in general revenue-related funds in order to support quality casework. These figures represent the appropriations and FTE requirements projected to reduce the investigator caseload to 45, a 40 percent reduction. Included in the \$108.7 million in general revenue-related funds would be measures to retain these new workers, including improving pay and training and providing the staff with additional tools such as mobile tablet personal computers.

Further reforms are intended to improve services to families and children through privatization of both case management and substitute care. This would cost an estimated \$58.9 million in general revenue-related funds over the biennium with the addition of 63 FTEs in fiscal 2006 and a reduction of 814 in fiscal 2007. The fiscal 2007 FTE reduction would reflect the transition to contracting with community based agencies for such services as substitute care, family reunification, adoption, and preparation for adult living programs. Independent administrators would be used to secure and manage these services. These independent administrators would be subject to strict contract management accompanied by increased administrative support. These measures to increase management accountability would cost \$16 million in general revenue-related funds and add 183 FTEs in fiscal 2006 and 259 in fiscal 2007.

An additional \$13.8 million in general revenue-related funds and 37 FTEs in fiscal 2006 and 55 FTEs in fiscal 2007 would handle the intake needs for the projected growth in

child abuse reports and also pay for the increased foster care funding associated with more child removals. Finally, \$22.7 million in general revenue-related funds would be used to prevent the maltreatment of children through targeted prevention services for at-risk families and additional support programs for foster care youth between the ages of 18 and 21.

Supporters say CSSB 1 would provide much-needed funding to correct the failings of the current CPS system. Privatizing case management through contracts with community-based organizations would free CPS to focus on performing effective investigations. The infrastructure already is in place for privatization because about 75 percent of child placement already is performed through private homes. Reducing caseloads for caseworkers by 40 percent would allow them to devote the time necessary to make determinations that are in the best interest of Texas children.

Opponents say reducing the caseload to 45 per month would not go far enough to provide investigators the time to properly investigate cases. Stakeholders recommend that caseloads be reduced to between 12 and 15 cases per investigator for thorough and accurate investigations to take place. Until this level of caseload reduction is obtained, there is no way to assure that CPS can properly protect children in the system.

Senate proposal - \$108.9 million general revenue-related increase from fiscal 2004-05 spending

The Senate proposal includes an increase of \$108.9 million in general revenue-related funds and \$138.3 million in all funds. Many of the provisions of the Senate proposal align with those of the House, but most notably, differences arise in the level of privatization each proposal would fund as well as the number of FTEs necessary to carry out the reforms. Because the Senate proposal is based upon the reforms in SB 6 by Nelson, the total number of FTEs funded would be 799 in fiscal 2006 and 711 in fiscal 2007. These numbers are less than half of the total number of FTEs to be funded in CSSB 1.

In addition, the Senate proposal includes funding estimates for the privatization of only substitute care, meaning CPS would maintain authority to make case determinations and decisions regarding what services children will receive. The balance of reducing 232.2 FTEs for substitute care services and correspondingly increasing the number of FTEs for licensing and oversight responsibilities for more private facilities would create a \$9.7 million savings to general revenue-related funds over spending on substitute care in fiscal 2004-05.

Supporters say the Senate proposal provides for much needed changes to the CPS system without the risks associated with pursuing immediate privatization of case management. Among the few states that have attempted such a wide-scale privatization effort, increases in the cost of case management services have approached 300 percent over prior funding. Privatization of case management endangers children because their care should not be left to organizations motivated by profit. Finally, privatization of these services would impose increased liability on the state because, while ultimate responsibility for child outcomes still would fall on the state, CPS no longer would have control over case decision-making. Supporters of the Senate proposal say it is more judicious in proposing a pilot program that would provide data to assess the extent to which privatization would benefit the children of Texas.

Opponents say \$138 million is not enough to fund the reforms proposed in SB 6. Because SB 6 did not state a target number to which monthly caseloads would be reduced, the Senate proposal provided funding for specialized staff, yet did not include money for enough new caseworkers to effectively reduce caseloads. In order to ensure that caseworkers could thoroughly investigate each case, funding for as much as double the FTEs provided for in the Senate proposal should be appropriated. By providing only \$138 million, this proposal would prevent any of the positive outcomes associated with the CPS reform measures in SB 6 from occurring.

Adult Protective Services

Agency: Department of Family and Protective Services (DFPS); Department of Aging and Disability (DADS)

Background

Adult Protective Services (APS) is responsible for providing a system for the investigation of reports of abuse, neglect and exploitation of vulnerable adults while making available services to alleviate and prevent the recurrence of cases of maltreatment. However, numerous reports of elderly individuals living in horrific conditions while under the supervision of APS prompted a complete review of the agency. Gov. Perry issued Executive Order RP33 in April 2004 to study a possible systemic reform of APS, limited strictly to individuals in their own homes, not in state institutions. The study looked at all aspects of the agency, including an independent review of cases. The November 2004 report released by HHSC found that caseworkers were not assessing client cases appropriately. The old mental capacity tool, consisting of a handful of questions, was found to be ineffective, and inconsistently applied and allowed cases to be closed early without intervention. The report outlined a \$34.1 million reformation plan for APS that would fund additional direct delivery staff and reduce caseloads, strengthen training and management, and deploy new technology to assist caseworkers in the field over the next three years.

The reform effort also includes the transfer of the state's guardianship program from DFPS to DADS. Under SB 6 by Nelson, as passed by the Senate, a proposed "Guardianship Alliance Program" would move the guardianship program to the local government level under an opt-out system. Funds generated from a filing fee increase on new deeds and real estate records would be given to local or regional "guardianship alliance boards," which also would raise money from local governments and charities. The boards would be responsible for recruiting and training guardians. Any local government declining to participate in the new guardianship program would be billed for implementation costs incurred by the state.

For fiscal 2004-2005, APS received \$68.9 million. The bill pattern for APS has changed and the funding for fiscal 2006-07 is in DFPS Strategies A.3.1, A.3.2 and A.3.3.

CSSB 1 – \$20.9 million increase from fiscal 2004-05 spending

For adult protective services reforms, including guardianship services, CSSB 1 would provide an increase of \$20.9 million in all funds, totaling \$89.8 million for the biennium, for increased direct delivery staff, and program support.

Senate proposal – \$44 million increase from fiscal 2004-05 spending

Funding under the Senate proposal for adult protective services reforms, including guardianship services, includes an increase of \$44 million in all funds, including \$44.6 million in general revenue-related funds (because the fiscal 2004-05 funding level includes more federal funds). The funding increase relates to programs and activities at DFPS (\$12.5 million in general revenue-related funds), the Office of Court Administrations (\$9.9 million in general revenue-related funds), and HHSC (\$0.7 million in general revenue-related funds). DADS would receive \$8.1 million for the transfer of the responsibilities of the guardianship program from DFPS. The funding increases provide for additional in-home direct delivery services, emergency client services, adult guardianship services, program support, and automation. The proposal would support 104 new FTE positions in fiscal 2006 and an additional 63 new FTE positions in fiscal 2007. Most of the positions would be for in-home and guardianship program caseworkers.

Supporters say accountability needs to be enhanced. The agency needs additional direct delivery staff to meet increased demand for services in the APS MH/MR Investigations Program. If increased funds are not appropriated, current caseload sizes cannot be maintained. Higher caseloads will result in employee burnout and high turnover. Higher turnover leads to more training costs and further affects caseloads, resulting in declining quality in investigations that places the agency at risk for potential liability and inclusion in litigation concerning the care of persons served in MH/MR settings.

Mental health services funding

Agency: Department of State Health Services (DSHS)

Background

In 2003, the 78th Legislature significantly reorganized the state's health and human services system. Mental health services funding dropped by about 3.5 percent, or \$50 million, from fiscal 2002-03. HB 2292 by Wolgemuth restricted access to state mental health services by redefining eligibility criteria that serve only those patients diagnosed with bipolar disorder, schizophrenia, or major clinical depression. About 17,000 people who were receiving services for other illnesses, including anxiety or obsessive-compulsive disorder, no longer qualify for care.

Decreases in funding to mental health services affected state mental hospitals that provide emergency care for suicidal or potentially violent individuals. Although only 55 percent of inpatient beds currently are in use, reductions in staff caused by the 2003 cuts have resulted in an over-capacity of 110 percent. As a result, a significant number of patients have been transferred across the state for placement in state hospitals or have been diverted to local jail facilities because state hospitals have been unable to accommodate them.

The 78th Legislature also ordered HHSC to conduct a study on the feasibility of closure and consolidation of certain state hospitals and schools. A final draft analysis released in February 2005 found that it is not economically feasible for lawmakers to close any state hospitals or schools because most of the facilities have a bonded debt that would have to be paid off before a sale could occur. In most cases, the debt on the bond far exceeds the current market value of the property, which would result in no realization of economic gain.

For fiscal 2004-2005, mental health services funding is budgeted at about \$883.5 million in all funds, with an estimated mental health state hospital budget of \$537 million.

CSSB 1 – \$36.8 million increase from fiscal 2004-05 spending for mental health services \$10 million for state hospitals

CSSB 1 would increase funding for mental health services, under DSHS strategies B.2.1 and B.2.2 to \$725.9 million for fiscal 2006-07. It would not recommend closing any state hospitals or schools. To increase capacity, under strategy C.1.3, the mental health state hospital and community hospital system would receive \$547 million in all funds, with an additional 286 FTEs under the proposal.

Senate proposal – \$44.1 million increase from fiscal 2004-05 spending for mental health services \$9 million increase for state hospitals

The Senate proposal would increase funding of mental health services to \$733.2 million for fiscal 2006-07. It would not recommend closing any state hospitals or schools. The mental health state hospital would receive \$546 million for the biennium.

Supporters say the state should attempt to restore the 2003 budget cuts and provide additional funding for more intensive programs that pay for community services such as attendant care, physical therapy, support employment and group home placement. Recent studies suggest that untreated mental illness costs Texas \$16.6 billion per year in lost wages, mortality costs, and family revenue due to wages lost while caring for mentally ill family members. In addition, lack of funding for mental health services has shifted billions of dollars in costs to local taxpayers due to increased ER visits at local hospitals. Persons with mental illness should receive care based on need, not specific diagnoses. They can lead productive lives with the proper treatment, but receiving that treatment is almost impossible under current funding levels. Increasing state hospital staffing is critical because the demand on hospitals is reaching crisis proportions.

Opponents say that the current funding system for mental health services should remain in place because the state has not had the opportunity to fully evaluate the results of adjustments in funding.

Quality assurance fee for ICF/MRs and nursing homes

Agency: Department of Aging and Disabilities (DADS)

Background

In SB 1839 by Moncrief, the 77th Legislature in 2001 authorized the establishment, collection and enforcement of a quality assurance fee (QAF) by HHSC for intermediate care facilities for persons with mental retardation (ICF/MR) and for other state facilities for the mentally retarded. The fee is based on the number of Medicaid-eligible bed days and gross receipts reported by the facility. HHSC sets a daily fee in an amount capped at 6 percent of an ICF/MR's total annual gross receipts in Texas, the total of all compensation paid for services, excluding charitable contributions. The quality assurance fee is an allowable cost for reimbursement under Medicaid. Combined with federal matching funds, the funds can be appropriated to support or maintain an increase in Medicaid reimbursement for institutions or to offset allowable expenses in Medicaid. The statutory fee assessment authority given to HHSC is set to expire September 1, 2005. If the assessment is allowed to expire in 2005, approximately \$103 million in general revenue-dedicated funds and \$155 million in federal funds will be lost in fiscal 2006-07, requiring replacement of state revenue to maintain services.

The quality assurance fee for ICF/MRs is estimated to generate \$108.6 million in revenue for fiscal 2004-2005.

CSSB 1 – Continue QAF for ICF/MRs

Continuing the quality assurance fee on ICF/MRs would generate \$109 million in revenue for fiscal 2006-2007.

Supporters say the fee assessed on ICF/MRs should continue because nearly all ICF/MRs are publicly funded and the fee on ICF/MR beds would be paid by the state Medicaid program, which would draw down additional federal matching funds.

Other proposal - Continue QAF for ICF/MRs and expand QAF to nursing home facilities

Under HB 2498 and 2499 by Isett, the use of a quality assurance fee would be expanded to nursing home facilities. Based on an assessment of 6 percent on the gross receipts reported by nursing facilities, estimated funds collected from expanding the QAF to nursing homes could total approximately \$226 million a year in fiscal 2006-07. Of those funds, about 94 percent of the revenue would come from assessments on the gross receipts of Medicaid-participating nursing homes. Some nursing home facilities with a limited number of Medicaid beds might be able to obtain waivers to the fee. Based on a model considered in 2001, the net biennial revenue estimate from a 6 percent assessment on nursing home gross receipts would yield approximately \$347.5 million, after taking into account the state's share of a Medicaid rate offset. If all of the net nursing home quality assurance fee funds were to be used as state match, an additional \$533.9 million in federal funds could be obtained in fiscal 2006-07.

Supporters say Medicaid is the primary source of funding for the nursing home industry. Although a few private-pay beds would have to pay the bed fee, versus the majority where the fee would be covered by Medicaid, the private beds also would benefit from the additional federal funds. Compensation for services in nursing homes pays for all operations of the home. If nursing homes had higher compensation, all beds – Medicaid and private-pay – would benefit.

At least 33 states currently assess quality assurance fees on nursing homes. States that have imposed nursing home provider taxes generally have done so to provide relief to the nursing home industry in a time of Medicaid cutbacks. Some states, including North Carolina and Oregon, have obtained waivers of broad-based and uniformity Medicaid regulations. The waivers are designed to mitigate the impact on facilities that have few Medicaid beds or none because there would be no benefit to them.

The revenues and enhanced federal matching assistance are necessary for nursing homes to meet the actual costs of providing care to Medicaid recipients. Increased funding

allows nursing homes to improve the quality of care they provide through, among other measures, increased staffing and training to meet standards set by both state and federal regulations.

Opponents say because about 80 of the 1,100 nursing homes in Texas are substantially private-pay, a bed fee on nursing homes would be a tax on some private payors. These private payors would be facing the burden of an added fee, but would see no benefit.

Burdening patients using personal assets and income to pay for nursing home care hastens them towards Medicaid eligibility, thereby increasing the roles of state and federally assisted patients.

Provider tax mechanisms, although legal, unduly shift the balance of the financial burden for the Medicaid program to the federal government.

CHIP funding

Agency: Health and Human Services Commission

The Children's Health Insurance Program (CHIP) serves children in low-income families who do not qualify for Medicaid. It is not an entitlement program, but federal funds pay 75 cents and state funds pay 25 cents of every dollar in the program. The eligibility income limit is 200 percent of the federal poverty level (FPL) or \$31,340 for a single mother with two children. The health and human services reorganization that resulted from HB 2292 by Wohlgenuth in 2003 also made changes to the state programs under the purview of HHS agencies, including CHIP.

The reorganization bill maintained the income eligibility level for CHIP but imposed a series of policy changes. HB 2292:

- established an asset test for eligibility;
- eliminated "income disregards" – expenses that drop a family's income to the eligibility level, such as child care expenses or child support payments;
- reduced continuous eligibility from 12 to six months, requiring families to become recertified every six months;
- expanded the 90-day waiting period to all applicants;
- increased cost-sharing; and
- eliminated dental, vision, and other services not required under federal law.

The elimination of income disregards and certain services, the increase in cost-sharing, and the installation of the 90-day waiting period were implemented during the fall of 2003. The change in continuous eligibility also began incrementally that autumn, and as of June 2004, all CHIP recipients now have six months continuous eligibility. HHSC, in response to HB 2292, planned to implement an increase in the monthly premiums paid by some CHIP participants based on their income levels but halted enforcement pending a more comprehensive approach.

As a cost-saving measure, HHSC has proposed rules - modeled on those for the food stamp program - to implement the asset-test requirement for families with incomes above 150 percent of FPL. The proposed limit is \$5,000 on all liquid assets, excluding a home, cars, and some types of retirement, burial, and other accounts. Limits on the value of cars would be \$15,000 for the first vehicle, then \$4,650 for any others. The final asset-test rules went into effect in August 2004.

CSSB 1 – \$24.8 million reduction in general revenue-related funds, \$6.7 million increase in all funds

CSSB 1 assumes a decline in caseload from roughly 339,000 in 2005 to 331,000 in 2007, due to the continuation of policy changes made in 2003. The estimate for fiscal 2007 caseload is about 50,000 fewer than estimated by HHSC. CSSB 1 assumes that continuous eligibility would be maintained at six months and that cost-sharing would be implemented in three tiers ranging from \$50 to \$100 based on income, which families would pay in semi-annual installments. It would include a restoration of vision, dental, and hospice benefits.

Supporters of the funding level in CSSB 1 say that it would ensure that CHIP serves the children who need it and whose family income makes them eligible. Continuing six month continuous eligibility prevents children who no longer are eligible for CHIP from staying on the rolls longer than they are truly eligible based on family income level. If a family's income rises, the child should not remain in the state program and that slot should go to another needy child.

According to an analysis of CHIP and Medicaid re-enrollment trends since 2003, the reasons families fail to re-enroll are similar to those in previous years and more frequent eligibility recertification has not discouraged families from submitting renewals. HHSC also found that the new eligibility requirements accounted for only 12 percent of families who did not re-enroll.

Supporters also say that this proposal makes CHIP a richer benefit package now that the state is not in as dire of

a financial position as it was two years ago. By restoring vision and dental benefits, children in low-income families would be able to obtain the glasses and teeth cleanings they need for good health.

Opponents of the proposal in CSSB 1 say that this funding level fails adequately to support children in low-income families. The cuts made in 2003 resulted in dramatic caseload reductions from 500,000 kids in September 2003 to 339,000 kids in 2005. Continuing those policies will ensure that more children - at least 8,000 - lose their health benefits in the coming biennium. Since it is unnecessary to further thin the CHIP rolls, advocates say that policies such as asset testing, shorter eligibility periods, and cutting benefits serve only to make it more difficult for some of the state's most vulnerable residents to access affordable healthcare.

This funding level may result in a waitlist for CHIP, caution critics. Even though CSHB 10 by Pitts includes a supplemental appropriation for CHIP for fiscal 2005, there is no guarantee that the state will continue that practice if more eligible children enter the program in fiscal 2006-07 than are envisioned. CHIP is not an entitlement like Medicaid and it is well within the state's authority to establish a waitlist or other mechanism to control growth in the program.

Senate proposal – \$4 million reduction in general revenue-related funds, \$78.3 million increase in all funds

The Senate proposal includes the same assumptions as CSSB 1 but would not restore the hospice benefit. It would restore mental health services.

Supporters of the Senate proposal say that mental health services are an important part of health care and should be part of CHIP. Early, appropriate treatment for mental health problems in children can be particularly effective in improving outcomes later in life.

Other proposals – \$93 million increase from fiscal 2004-05 to restore benefits to 2003 levels

Supporters of full restoration say that it would generate \$536 million in federal matching dollars, ensuring that Texas' low-income children would get quality health care and the Texas economy would benefit from additional federal funds. Specific restorations above CSSB 1 and the Senate proposal would include eliminating the 90-day waiting period so that families could enroll and get care immediately. Those advocating elimination of the 90-day wait say it is simply a cost-saving measure that hinders efficient delivery of health care. Many families are prompted to apply for coverage when their child needs health care. Waiting for the coverage to begin postpones needed services. Another restoration would be reducing the cost of co-payments so that families whose income cannot support higher co-payments are not priced out of the program. Eliminating the asset test also would ensure that family income was the primary determinant for eligibility given that health care costs are budgeted into the family income, not the value of the family's car.

Returning to 12-month continuous eligibility is vital, according to supporters of full restoration. One of the best aspects of the CHIP program was that it had moved children into a stable health-care environment. Children received a full year of immunizations and checkups, which held costs down in a managed-care environment. Shortening the eligibility period costs the state more in the long run, they say.

Restoring Medicaid services

Agency: Texas Health and Human Services Commission

Background

Among the cuts made by the 78th Legislature to Medicaid were a reduction in services offered to adult Medicaid clients. While the program largely is driven by federal requirements, the state has some discretion in the types of services and the populations served. The services cut in 2003 included mental health services, such as counseling; podiatric care; chiropractic care; eyeglasses; and hearing aids. An average of 895,000 adults in Texas are expected to receive Medicaid in fiscal 2006-07.

For non-pregnant adults, eligibility for Medicaid is limited in Texas to two groups: aged and disabled and cash assistance recipients. Aged and disabled includes individuals in nursing homes and the community who have very low income. For example, a single individual who receives Social Security must have income below \$545 per month to qualify for Medicaid. Cash assistance recipients must have incomes below 17 percent of the federal poverty level, or \$132 per month for an individual, to qualify. Nursing home residents have even lower effective incomes because the cost of their care is offset by any pension or Social Security income, and they receive only \$45 per month.

CSSB 1 – \$62 million in general revenue-related funds in Article 11

from fiscal 2004-05 levels, \$96 million in federal funds in Article 11

CSSB 1 includes restoration of funding for Medicaid optional services in Article 11. If approved, the funding would be in HHSC Strategy Goal B Medicaid. This level of funding would pay for:

- mental health services and psychologists (\$44.6 million in general revenue-related funds);
- chiropractors (\$0.8 million in general revenue-related funds);

- podiatrists (\$4.3 million in general revenue-related funds);
- hearing aids (\$1.2 million in general revenue-related funds);
- vision care (\$5.6 million in general revenue-related funds); and
- the impact on managed care for these new services.

Supporters say these services are important to recipients, but they are optional under federal Medicaid guidelines. It is appropriate for the state to pay for them if sufficient funding is available. Otherwise, mandated populations and services should get funded first.

Opponents say that the House should fund these services, not put them in Article 11 where they must compete with many other funding demands from all parts of the state budget. Each of these services is important to Medicaid clients and is not reliably available elsewhere in the community.

Mental health services can be the most important health services for some people, especially those whose behavioral health may prevent them from gaining the traction they need to gain employment or take care of themselves. Adults on cash assistance should not be prevented from obtaining services that could be the key to financial independence from the state, and the elderly should not be left to battle depression or other illnesses that may make it difficult to participate in their own care.

Chiropractors most often care for people with back injuries, which can lead to loss of employment in the general population or reduced mobility in the elderly. While Medicaid clients still would be treated for back injuries without it, chiropractic care is less expensive, less invasive, and more continuous than that offered through an emergency room or surgery practice.

Podiatrists often care for people with diabetes because that disease can cause atrophy of the vascular system and lead to sores or necrosis that can result in amputation of feet and limbs. Podiatrists can help diabetic clients manage their diabetes so that it does not proceed to a level where costly surgery and prosthetics are needed.

Vision and hearing care are particularly important to the elderly population served by Medicaid. If their glasses or hearing aids break, they cannot afford new ones, especially if they live in nursing homes and have only \$45 to spend each month. Quality of life in later years can be linked directly to the ability to see and hear. Some private programs can try to get glasses or hearing aids for the elderly, but there are not enough private contributions to get glasses and hearing aids for the more than 600,000 elderly and disabled Medicaid recipients.

Senate proposal – \$11.1 million in general revenue-related funds
increase from fiscal 2004-05 levels, \$27.8 million in additional federal funds

The Senate proposal would fund only podiatric care, hearing aids, and vision benefits. Supporters of this level of funding say that hearing aids and vision care are important to the elderly in nursing homes, and podiatric care directly improves care for diabetics. Other than those needs in the Medicaid program, other resources can and do pick up where the state leaves off.

Restoring Medicaid provider rates

Agency: Health and Human Services Commission

Background

Texas' Medicaid program is divided into two service-delivery models: fee-for-service and Medicaid managed care. Under fee-for-service, HHSC contracts with physicians, hospitals, pharmacies, and medical transporters to serve Medicaid clients. All professional reimbursement rates are the same, regardless of geography or medical specialty, except that the 77th Legislature in 2001 appropriated an increase for high-volume providers. Reimbursement rates depend on the amounts appropriated for that purpose and generally lag behind the rates set by other health care payors.

The 78th Legislature in 2003 reduced reimbursement rates for all providers by 2.5 percent in fiscal 2004-05 in conjunction with other reductions in eligibility and services. The rate cut was applied to both providers, primarily physician services, and to hospitals for inpatient medical care. At the current funding level, Medicaid reimbursement rates average about 70 percent of Medicare reimbursement.

Medicaid is budgeted under HHSC's Goal B at about \$23.1 billion in all funds for fiscal 2004-05, of which about \$2.3 million is associated with the state Medicaid administrative office.

CSSB 1 – \$177 million increase in general revenue-related funds in Article 11 *from fiscal 2004-05 levels, \$270 million in federal funds in Article 11*

CSSB 1 would appropriate a 2.5 percent rate restoration for providers and hospitals in fiscal 2006-07, which would bring their rates back up to the levels in 2003.

Supporters of restoring rates to current levels say that providers are Texas' health care safety net and that paying them lower rates creates holes in service. Medicaid

recipients who cannot get appointments with primary-care physicians wait until their conditions worsen or else visit emergency rooms immediately. Providers and hospitals cannot hold on forever. Underpaying Medicaid provider rates does the most harm to patients in the most vulnerable parts of the state. A doctor practicing in a high-poverty area may have a clientele of entirely Medicaid patients.

Texas should stop leaving federal match dollars for other states to pick up. The state receives federal matching funds for the money the state spends, and each dollar gets recycled through the community. By not adequately funding Medicaid services, Texas forfeits federal revenue and dampens its own economic prosperity.

Supporters of raising Medicaid provider rates say that the Legislature could go even further. A legislative task force in 2001 was charged with evaluating rate setting in general and for the border region. It recommended that the Legislature appropriate an additional \$1 billion over four years and then peg rates to a Medicare inflation factor to ensure that they do not fall behind in the future.

Senate proposal – \$0 change *from fiscal 2004-05 levels*

The Senate proposal would not include any funds to restore provider rate cuts in Medicaid. A few providers, ICF-MR service providers, and community care service providers at DADS would receive increases, but the large group of providers and hospitals that were cut by 2.5 percent in 2003 would not.

Supporters of not restoring rates say it is disingenuous to say that all providers did not receive an increase because the state has renegotiated rates with managed care organizations over the past two years, which often has resulted in higher rates paid for managed care. By 2007, 70 percent of Medicaid clients will be part of a managed care organization, so negotiated rates will apply to the majority of providers.

Opponents say that even if some providers who participate in managed care received rate increases, it would

represent only 40 percent of Medicaid clients' services today and would not capture providers working in rural areas where managed care may not exist. Also, both CSSB 1 and the Senate proposal found funding for CHIP provider rate restorations, acknowledging the need for adequately reimbursing the providers who care for Texas' neediest citizens.

Public Education Overview

Public education, the largest single function funded by the state, accounts for 27 percent of the total budget and 41 percent of general revenue-related spending. Nearly all public education funding is appropriated to the Texas Education Agency (TEA), including funding for the State Board of Education. The State Board for Educator Certification, Texas School for the Deaf, and Texas School for the Blind and Visually Impaired also receive state funds. Other major budget items under Article 3 pay for the Teacher Retirement System (TRS).

For fiscal 2006-07, CSSB 1 proposes total funding of \$39.9 billion for public education. This would represent an increase of 15.2 percent in all funds from fiscal 2004-05. General revenue-related spending would increase about \$4.7 billion, or 19.2 percent, to \$29.2 billion.

Background

School districts generate about 60 percent of all funding for public education through local property taxes, and state and federal funds pay for the remainder. Over the past decade, Texas public schools' average daily attendance (ADA) has increased by about 2 percent each year. At this rate, enrollment is expected to increase by about 82,000 students per year. Education funding will support nearly 4.3 million students in public schools during fiscal 2004-05.

State funding is distributed to school districts through the Foundation School Program (FSP) using weights and adjustments based on student and district characteristics to account for varying costs of educating different types of students and other factors. Funding for the maintenance and operation of school districts is divided into two tiers. In Tier One, all districts receive a "basic allotment" of \$2,537 per student in average daily attendance for the first 86 cents of local tax effort. Tier Two guarantees districts that they will earn \$27.14 per weighted student per penny of local tax effort between 87 cents and \$1.50. Districts with wealth below a certain threshold receive additional state aid to help them reach their "guaranteed yield."

To achieve equity, the current system requires most property-wealthy districts (also known as Chapter 41 districts) to deliver property tax revenues to the state in excess of \$305,000 per student under a system sometimes referred to as "Robin Hood." This "recapture" revenue, which is expected to exceed \$2.4 billion in fiscal 2006-07, is redistributed to property-poor districts, which constitute nearly 90 percent of Texas' 1,000-plus school districts.

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

Public Education spending comparisons (millions of dollars)

| Type of funds | Expended/budgeted 2004-05 | Recommended CSSB 1 | Biennial change | Percent change |
|-------------------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue-related | \$24,475.4 | \$29,184.8 | \$4,709.3 | 19.2% |
| Federal | 7,441.7 | 8,079.6 | 637.9 | 8.6 |
| Other | 2,683.4 | 2,609.8 | (73.6) | (2.7) |
| All funds | 34,600.5 | 39,874.2 | 5,273.6 | 15.2 |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

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

Recent court decision. In September 2004, State District Judge John Dietz of Austin ruled that the state's school finance system is unconstitutional because school districts lack meaningful discretion in setting local tax rates, effectively establishing a prohibited state property tax, and because the cost of providing an adequate education exceeds the funds available to districts through current funding formulas. Judge Dietz also found that the system for funding school facilities violates constitutional standards for equity between property-wealthy and property-poor school districts. Judge Dietz has given the Legislature until October 1, 2005, to address the problems detailed in his findings of fact and conclusions of law, which were issued on November 30, 2004. The Texas Supreme Court has accepted a direct appeal of the case to expedite a final decision, which is not expected before the end of the 2005 regular legislative session.

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

TRS provides retirement benefits, group insurance, and death, survivor and disability benefits for employees of public school districts and institutions of higher education. The 78th Legislature in 2003 appropriated \$4.1 billion to TRS for fiscal 2004-05, an increase of 4 percent, largely to cover a solvency shortfall for TRS-Care, the health insurance plan for 182,000 public school retirees and dependents. The \$4.1 billion appropriation included a solvency supplement of \$163 million and a \$516 million transfer from the state's rainy day fund.

Significant changes to TRS-Care have helped prevent a recurrence of the 2003 solvency shortfall. SB 1369 by Duncan and HB 3459 by Pitts raised the state contribution from 0.5 to 1 percent and the active employee contribution from 0.25 to 0.5 percent and added cost-sharing provisions requiring a new monthly contribution by school districts of between 0.25 percent and 0.75 percent of payroll. TRS tightened the provider network, increased TRS-Care premiums by 33 percent, increased office visit co-payments, and instituted a three-tiered drug co-payment. TRS also restructured premiums to take into account a retiree's years of service and Medicare coverage.

The 77th Legislature in 2001 created TRS-ActiveCare, a state-funded group health insurance plan for public school employees. The plan initially covered employees in small and medium-sized districts but was opened to all districts beginning with the 2003-04 school year. As of January 2005, the plan had 1,034 participating entities with more than 263,000 covered employees and dependents. The state contributes an allotment of \$75 per month per participating employee, which is distributed to school districts through the Foundation School Program. School districts must contribute at least \$150 per month toward each participating employee's health coverage, for a combined state and local contribution of \$225 per month for each participating employee. The state also funds a health insurance passthrough of \$500 per month for full-time employees and \$250 per month for part-time employees, which can be used to pay for health insurance or for other purposes. HB 3459 by Pitts, enacted by the 78th Legislature, will restore the passthrough to the previous level of \$1,000 for all employees on September 1, 2005, unless modified this session.

Permanent School Fund. Stocks, bonds, and royalties from mineral leases on state land constitute the nearly \$20 billion Permanent School Fund (PSF), an endowment fund established by the Texas Constitution to be a permanent source of funding for public education. PSF investments have rebounded since 2002, when they were valued at \$17 billion, but still are valued at less than they were in 1999, when the fund hit an all-time high of \$22.5 billion. Prior to 2004, dividend and interest from the PSF were deposited into the Available School Fund (ASF) to

fund textbook purchases, the state technology allotment, and an annual per capita distribution to school districts. In 2003, the Legislature enacted and the voters approved HJR 68, which redefines the PSF distribution to the ASF. Instead of being based solely on dividend and interest income, the distribution is based on the rate of total return on all investment assets of the PSF. This total return policy is expected to enhance distributions from the PSF to the ASF by accessing equity capital gains that previously had to remain in the corpus of the fund. According to TEA, the total return policy is expected to generate an additional \$378 million in income to the ASF during fiscal 2004-05.

PSF-backed bonds. The PSF also provides a guarantee for bonds issued by local school districts, which allows districts to save money by paying lower interest rates on the money they borrow. In August 2004, PSF assets guaranteed \$32.1 billion in bonds issued by school districts, an increase of 9.7 per cent over 2003. While the amount of PSF-backed bonds is within the limit prescribed by the Texas Education Code, it has reached a second guarantee limit of \$34.3 billion established by an Internal Revenue Service letter ruling. TEA has appealed the letter ruling to the IRS, but has had to prioritize districts' bond guarantee requests. This results in additional fees or interest costs for school districts that are denied guarantees.

Facilities. The state Instructional Facilities Allotment (IFA), created in 1997, provides a guaranteed yield for tax effort for new facilities, allowing poorer districts to generate the same revenue per penny of tax effort as wealthier districts generate for new debt. For fiscal 2004-05, the Legislature appropriated nearly \$1.5 billion for facilities, the same amount as the previous biennium. Because rising property values increased the districts' share of these programs, about \$115 million was left to cover new debt. Of this amount, \$20 million was awarded in new IFA grants in fiscal 2005, and the rest was used to roll forward the eligibility date for the Existing Debt Allotment (EDA) of the FSP, which helps school districts pay "old" debt for construction and facilities.

Reductions in TEA programs in fiscal 2004-05. The 78th Legislature fully funded the amount needed to

meet the state's obligation to pay for public schools through the Foundation School Program (FSP) but made significant cuts to TEA programs financed outside the FSP. Reductions were made to the Optional Extended Year Program, Student Success Initiative, Reading/Math/Science Initiative, and Disciplinary Alternative Education Programs. The After School Initiative, funded at \$25 million in fiscal 2002-03, was eliminated, but schools that qualified for this program were identified as eligible for a share of an \$85 million federal grant. TEA's funding for agency administration was reduced by about \$30 million, a decrease of 20 percent from appropriations in fiscal 2002-03, and the number of FTEs was reduced from 860.5 in 2003 to 766.2 for fiscal 2004-05.

Federal funds. Federal education funds for Texas are expected to reach \$8 billion in fiscal 2006-07, an increase of more than 8 percent over fiscal 2004-05. About one-fourth of these federal funds pay for free and reduced-priced lunch and breakfast programs. Federal funding for No Child Left Behind (NCLB) programs, which has increased significantly since 2001, is distributed primarily to school districts as Title I funding for low-income students. In fiscal 2006-07, Title I funding is expected to increase 7 percent over fiscal 2004-05, from \$2.4 billion to \$2.6 billion. Texas expects to receive about \$480 million in NCLB funds for the preparation, training, and recruiting of teachers, about \$45 million for the development and implementation of assessments, and \$84 million for educational technology. Funding for some NCLB programs, such as Safe and Drug-Free Schools, may be significantly reduced or eliminated. Other federal funding goes to programs for students with disabilities (\$1.8 billion for fiscal 2006-07), dropout prevention (\$220 million), and adult education and family literacy (\$132 million).

Budget highlights

Foundation School Program. CSSB 1 would appropriate \$24.9 billion in all funds for the Foundation School Program in fiscal 2006-07, a 12.8 percent increase over fiscal 2004-05 appropriations of \$22 billion. A \$1.3 billion increase in general revenue funds would fully fund the state's obligation for the FSP, including enrollment growth, include \$1.6 million to meet equity standards, and

provide an additional \$200 million for facilities funding. It also would “roll in” programs previously funded outside the FSP, including textbooks, technology funding, and the teacher health insurance passthrough. Textbook funding of \$327 million would include textbook purchases deferred from fiscal 2005 and continuing textbook contracts in fiscal 2006-07. An additional \$360 million for new textbooks scheduled to be purchased in fiscal 2006 is included in Article 11. Technology funding of \$230 million, currently distributed to school districts as a separate technology allotment, would be rolled into the FSP and reduced by \$11.5 million, or five percent. Funding of \$548 million for the teacher health insurance passthrough, currently distributed to school districts by the Teacher Retirement System, would be transferred to TEA and also rolled into the FSP.

A contingency appropriation of \$3 billion would fund the provisions of HB 2 by Grusendorf, et. al. or similar legislation relating to public school finance. Rider 81 directs LBB to make all necessary adjustments to public education agencies, strategies, methods of finance, measures and riders necessary to implement the legislation.

School finance equity. CSSB 1 would raise the guaranteed yield for Tier 2 districts from \$27.14 per weighted student per penny of tax effort to \$29.12 in fiscal 2006 and \$29.85 in fiscal 2007 to meet all current statutory requirements for the FSP and to maintain the court-accepted level of equity within the school finance system. School districts not receiving state aid under the guaranteed yield would continue to receive the \$110 per weighted student that they received in fiscal 2004-05.

While CSSB 1 would maintain full funding distributed to school districts through the FSP, TEA programs funded outside the FSP would be reduced overall by 5 percent. These include kindergarten and pre-kindergarten programs, Windham School District, High School Initiative, the Texas Reading, Math, and Science Initiatives, Regional Education Service Centers, Advanced Placement, and Early High School Graduation Scholarship Programs. CSSB 1 in Article 11 would restore funding for kindergarten and pre-kindergarten programs and the Windham School District. The Senate proposal would provide full funding for

kindergarten and pre-kindergarten programs, High School Initiative, and Advanced Placement and would direct the LBB to conduct a performance review of the Windham School District.

Student Success Initiative. Under Education Code, sec. 28.0211, third and fifth grade students must pass the reading and mathematics sections of the TAKS test to be promoted to the next grade. Beginning with the 2007-08 school year, this requirement will apply to eighth-grade students. School districts are required to provide intensive instruction for students who have failed to pass the TAKS test three times, regardless of whether the student has been promoted to the next grade or retained at the same grade level. The requirements that students must pass the TAKS in order to be promoted to the next grade apply only if the education commissioner certifies each year that sufficient state funds have been appropriated outside the FSP to provide the required accelerated instruction programs.

In its base request, TEA sought \$158.5 million to fund the Student Success Initiative to provide accelerated instruction in reading and math for third- and fifth-grade students who have failed the TAKS test three times. This would be a 3.7 percent reduction from \$165 million in fiscal 2004-05, which in turn was a reduction from \$230 million in fiscal 2002-03. Most of the fiscal 2004-05 reductions affected the teacher training component of the program, although the program received \$18 million in federal funds for teacher training.

For fiscal 2006-07, TEA has requested as an exceptional item \$250.8 million, or \$500 per student, to fund the expansion of the Student Success Initiative into grades six and seven in preparation for the requirement, beginning in spring 2008, that eighth graders pass the TAKS in order to be promoted. This would include \$86 million for reading instruction, \$144 million for mathematics instruction, and \$20 million for teacher training.

CSSB 1 does not include additional funding to expand the Student Success Initiative to grades 6 and 7, but Rider 48 would direct TEA to include students unlikely to pass the eighth grade TAKS in reading and math as eligible for current program funding. CSSB 1 in Article 11 would

provide \$250.8 million, or \$500 per student, to fund the extension of the Student Success Initiative to grades 6 and 7.

The Senate proposal would provide \$185.4 million, or \$400 per student, to fund the extension of the Student Success Initiative into grades 6 and 7.

TRS retiree health insurance. For fiscal 2006-07, TRS requested supplemental funding of \$257 million to cover increases in the cost of prescription drugs and medical benefits in TRS-Care, the health insurance program for public school retirees. This supplemental funding request assumes that TRS will receive \$116 million in reimbursements for Medicare Part D, Prescription Drug Benefit.

CSSB 1 would divide the responsibility for these projected costs between the state, active teachers, and school districts. There would be no increase in premiums for retired employees. CSSB 1 would provide \$76.6 million for TRS-Care in fiscal 2007, while another \$76.6 million for fiscal 2006 is included in CSHB 10 by Pitts. The contribution rate for active employees would increase from 0.5 percent to .65 percent of salary, and the school district contribution rate would increase from 0.4 percent of active employees' total payroll to 0.55 percent.

Supporters say active employees and school districts should share the burden of rising health care costs for retirees rather than depending entirely on the state to cover all cost increases. Opponents say active teachers and school districts already have assumed a greater share of these costs as a result of increases last session when the Legislature faced a budget shortfall. This, combined with the reduction in the health insurance passthrough, has increased the overall cost of benefits for school districts and active employees. This session, the state should assume the full cost of increases in retiree health care costs rather than again shifting part of these costs to school districts and active employees.

TRS pension fund. The TRS pension fund currently has an unfunded liability of \$11 billion, primarily due to investment losses between 2001 and 2003. Although investment returns improved in 2004, actuaries say it would

take an infinite number of years to amortize TRS liabilities. To be considered actuarially sound, a pension system must be able to amortize all its liabilities over 31 years. Government Code, sec. 811.006 prohibits the Legislature from granting increases in benefits to annuitants unless the pension fund is considered actuarially sound. Actuaries say for fiscal 2006-07, the state's contribution rate would have to increase to 8.11 percent of payroll to meet this threshold. Supporters of shoring up the TRS pension fund note that TRS serves more than one million active and retired members, about one in 20 Texans. Improvements in pension benefits are unlikely in the coming decade, they say, without a dramatic upswing in market conditions or an increase in the state's contribution rate, which has declined from 8.5 percent to the constitutional minimum of 6 percent of payroll (Texas Constitution, Art. 16, sec. 67 (b)(3)). Opponents point to the increase in early retirements as a factor in the overall soundness of the pension fund and maintain that changes should be made to discourage early retirements before the state commits to an increase in its contribution rate to the pension fund. The pension fund has been in worse shape before and has been able to recover, some say. In view of other urgent budget needs, the most prudent course would be to wait for market conditions to improve.

CSSB 1 would provide \$2.3 billion to fund TRS pensions at the state's current contribution rate of 6 percent of payroll and would maintain the 90-day delay for retirement benefits, which is scheduled to expire on August 31, 2005.

The Senate proposal would appropriate an additional \$57.1 million to increase the state's contribution rate to 6.12 percent in fiscal 2006. However, the Senate proposal is based on the assumption that early retirement would be restricted.

Transferring SBEC to TEA. This session, the Legislature once again will consider whether to continue the State Board for Educator Certification (SBEC) or return its functions to TEA. Lawmakers created SBEC in 1995 to regulate and oversee public school teachers' preparation, certification, continuing education, and standards of conduct. Before 1995, TEA performed

those functions. In its 2002 review of SBEC, the Sunset Advisory Commission recommended continuing SBEC as a separate agency, stressing the state's continuing need for an independent entity to oversee teacher preparation and certification. During the 2003 regular session, SB 265 by Lucio would have transferred teacher certification to TEA and continued until 2015 a smaller SBEC board with more limited authority. SB 265 died in the House, and the 78th Legislature enacted HB 2455 by Chisum, et. al., which continued SBEC until 2005 and directed the board to enter into a memorandum of understanding with TEA to consolidate administrative functions and services. HB 2455 also required the Sunset Commission to revisit its 2002 recommendation to continue the agency. In 2004, the Sunset Commission again recommended continuing the agency for 12 years, citing a continuing need to ensure that elementary and public schools have access to well prepared educators. TEA and SBEC have entered into a memorandum of understanding to consolidate administrative functions.

CSSB 1 assumes that all SBEC operations would be transferred to TEA, along with 52 of SBEC's 53 FTEs. The SBEC board would remain in place under TEA. The program would receive \$12 million in federal NCLB funds for the Texas Beginning Educator Support System (TxBESS), which supports mentoring for beginning teachers.

The Senate proposal would not transfer SBEC funding to TEA but would retain at TEA \$12 million in federal NCLB funds for teacher training. The Senate would provide full funding for other SBEC operations.

Renovations for the Texas School for the Blind and Visually Impaired (TSBVI). TSBVI is seeking \$42 million in general obligation bond proceeds to fund new facilities and renovations to its Austin campus. New buildings would include an elementary residential complex, a residential duplex and fourplex, a swimming pool, playgrounds, and an elementary gymnasium, as well as renovations to three student dormitories, two school buildings, a recreation center, and minor repairs to other buildings. Many of the existing facilities were constructed in 1916 and pose safety and health risks.

The 77th Legislature in 2001 authorized, and voters approved, via Proposition 8, new general obligation bond authority for repair and construction projects for a number of state agencies, including TSBVI. The Legislature must approve the specific project.

Both CCSB 1 and the Senate proposal would issue \$42 million in bonds for TSBVI construction and renovations.

Funding for school facilities debt

Agency: Texas Education Agency

Background

Most new school facilities are financed by bonds approved by local school district voters, backed by the Permanent School Fund (PSF), and paid by local property-tax revenues. As districts have addressed pent-up demands to expand and upgrade their facilities, voter-approved debt for Texas schools has risen from less than \$10 billion in 1992 to more than \$32 billion in August 2004. School debt has grown most substantially in fast-growth suburban school districts.

The state has assumed a growing portion of the debt service on school bonds since the late 1990s, when the Legislature created the Instructional Facilities Allotment (IFA) and the Existing Debt Allotment (EDA), which form the facilities funding component or “third tier” of the Foundation School Program.

The IFA is a competitive program that provides equalized state aid to help qualified school districts pay debt service for new instructional facilities, additions, and renovations. IFA recipients must match state aid with local taxes. Low-wealth districts generally receive priority, but some districts that normally would not qualify for IFA may qualify if they have experienced rapid enrollment growth over several years. The IFA is a sum-certain appropriation, meaning that once TEA has allocated all appropriated funds through the application process, it can allocate no more. The 78th Legislature in 2003 did not appropriate any new funding for IFA for the 2003-04 school year but authorized TEA to direct \$20 million in funding for new IFA grants for the 2004-05 school year if funds became available. Because rising local property values reduced the state’s obligation for current IFA and EDA commitments, the state was able to cover its existing obligations with about \$115 million remaining for new debt. Of this, \$20 million was used for new IFA grants. Only 18 of the 190 eligible districts that

applied for IFA assistance in 2004-05 school year received funds. TEA has asked for \$150 million to fund \$50 million in new IFA awards in each year of fiscal 2006-07.

The EDA is an equalized funding program that helps qualified school districts pay “old” debt, defined as debt for which a district made payments before August 31, 2003. EDA provides a guaranteed yield of \$35 per student per penny of debt tax effort up to 29 cents per \$100 of valuation. No application is required for a district to receive an allotment. Districts with lower wealth per student have a greater share of their debt paid by the EDA. As the EDA rolls forward, it covers any debt that the sum-certain IFA appropriation to help finance new debt may have “missed” in the previous biennium. The 78th Legislature in 2003 “rolled forward” the EDA eligibility cutoff date to cover two more years of debt. HB 3061 by Hill would roll forward the eligibility cutoff for two more years, while SB 797 by Lucio would roll it forward automatically each biennium. Providing two more years of debt assistance for EDA would cost an estimated \$180 million.

CSSB 1 – \$200 million increase for facilities funding

CSSB 1 would appropriate \$1.56 billion for facilities funding in fiscal 2006-07, an increase of \$100 million over fiscal 2004-05. The amount needed to meet the state’s obligation under current law is expected to be \$98 million lower than fiscal 2004-05 because the growth in local property values has reduced the state’s share of facilities funding, but the House Appropriations Committee added \$200 million to fund IFA and EDA.

Senate proposal – \$180 million increase for EDA and \$150 million increase for IFA through contingency rider

The Senate proposal would appropriate \$1.5 billion for facilities funding to meet current law obligations, including an increase of \$180 million for EDA. It also would include \$150 million for new facilities funding through the IFA in a rider contingent on the enactment of SB 2 or similar school finance legislation.

Supporters say the state should increase facilities funding beyond the amount required to maintain existing commitments. Failure to provide sufficient facilities funding for districts that cannot raise adequate funds locally has widened the equity gap for districts that already are struggling to keep up with enrollment growth. In the school finance case now pending before the Texas Supreme Court, District Judge John Dietz, in determining that the current system for funding facilities violates constitutional standards for equity, identified the lack of consistent funding for IFA and EDA as a contributing factor.

Opponents say the EDA and IFA are largely responsible for the rapid increase in school districts' bonded indebtedness over the past decade. These programs were intended to be temporary measures to deal with pent-up demand for facilities and should not be continued year after year as another entitlement program. EDA funding should be restricted to instructional facilities so that state funds are not used to pay for football stadiums and other noninstructional facilities.

Health insurance passthrough for school employees

Agency: Texas Education Agency (TEA)

Background

In 2001, the 77th Legislature enacted HB 3343 by Sadler, creating a state-administered health insurance program for teachers and other public school employees. The program originally had four major components: a statewide group health care plan (TRS ActiveCare) that initially included small and mid-sized districts but since has expanded to include all districts; a state allotment of \$900 (\$75 per month) per employee distributed by TEA through the Foundation School Program; a requirement that school districts contribute at least \$150 per month towards each employee's health coverage cost; and a \$1,000 per year passthrough, paid by the state, for every school district employee. Employees received \$83.33 per month (\$1,000 per year as a passthrough), which could be used to purchase additional coverage, pay premiums for dependent coverage, deposit into a health care reimbursement account, or be taken as cash. In fiscal 2002-03, the \$1,000 passthrough was funded at \$588.7 million.

In 2003, the 78th Legislature enacted HB 3459 by Pitts, eliminating the passthrough for administrators and reducing it to \$500 per year for full-time employees and \$250 per year for part-time employees. The bill will restore the full \$1,000 passthrough for all employees beginning September 1, 2005.

In its Staff Performance Report to the 79th Legislature, the LBB proposed maintaining the passthrough at fiscal 2004-05 levels in order to save the state \$650 million for fiscal 2006-07. The total cost of restoring the full passthrough for all employees is estimated to be \$1.1 billion.

CSSB 1 – \$548 million

CSSB 1 would transfer \$548 million from TRS to TEA to fund the passthrough at the fiscal 2004-05 funding level of \$500 for full-time employees and \$250 for part-

time employees. Passthrough funds would be distributed to districts through the FSP. HB 2 would eliminate the passthrough for all employees and require school districts to increase pay for teachers, nurses, counselors and librarians by the lesser of \$3,000 or 44 percent of the district's increase in maintenance and operations revenue from the 2004-05 school year.

Senate proposal – \$548 million and \$314 million through contingency rider

The Senate proposal would appropriate \$548 million to TEA to fund the passthrough at the fiscal 2004-05 level of \$500 per year for full-time employees, \$250 per year for part-time employees, and zero for administrators. It would provide an additional \$314 million in a rider contingent on the enactment of SB 2 or similar legislation to restore the passthrough to \$1,000 for teachers, librarians, counselors and nurses only.

Supporters say CSSB 1 would maintain the state's current commitment to fund the passthrough, which is funded in addition to the state contribution of \$900 per employee towards the cost of health insurance. School districts would continue to have the option of maintaining or increasing the passthrough for some or all employees. According to the LBB, the current level of funding is about the amount spent on health insurance by employees who participate in a cafeteria plan.

Opponents say the state should keep its promise to help fund health care costs for school employees by restoring the full \$1,000 passthrough for all employees. According to TRS, under current law, 586,000 non-administrative school staff are expected to receive the higher passthrough scheduled to resume September 1, 2005. School employees, particularly those who are paid the least, such as janitors and bus drivers, depend on the passthrough to help cover health insurance costs, and some have had to drop coverage because they cannot afford it without the full passthrough.

Delaying payments for textbooks

Agency: Texas Education Agency (TEA)

Background

Under Texas Constitution, Art. 7, sec. 3, the state is required to provide free textbooks for children attending public schools. Textbooks are reviewed and adopted by the State Board of Education (SBOE), and districts purchase approved textbooks using state funds appropriated to TEA for this purpose. The appropriated funds are deposited into the State Textbook Fund from the Available School Fund. The SBOE determines the cost of textbooks as part of the adoption process. Early in the adoption process, the SBOE issues requests for publishers to bid for new materials, called a proclamation. The SBOE sets a maximum price for textbooks in each subject area. Funds are appropriated and textbooks are purchased about four years after this proclamation is issued.

In fiscal 2004-05, TEA's funding request for textbooks and other instructional materials was \$653 million, an increase of more than 14 percent from the previous biennium and double the appropriation for textbooks just three biennia earlier. In the face of significant budget shortfalls, the Legislature decided to provide partial funding for textbooks in fiscal 2004-05, appropriating \$344 million, deferring \$145 million in purchases of some English as a second language and all career and technology textbooks until fiscal 2006-07, and implementing measures to reduce overall costs. For fiscal 2006-07, TEA requested \$714 million for textbooks, which assumes no purchases of new textbooks in the second year of the biennium.

CSSB 1 – \$327 million in general revenue-related funds, plus \$360.5 million in Article 11

CSSB 1 would provide \$327 million in general revenue-related funds for textbook purchases deferred from fiscal 2005 and all continuing contracts, but would not

provide \$378 million for textbooks scheduled for purchase in fiscal 2006. Article 11 includes \$360.5 million to fund most textbooks scheduled to be purchased in fiscal 2006. These include textbooks for languages other than English (\$42 million), health education (\$129 million), and fine arts (\$189 million) but does not include funding for textbooks for physical education (\$18 million).

Senate proposal – \$327 million in general revenue-related funds, plus \$378 million in Article 11

The Senate included in Article 11 \$378 million for textbooks scheduled to be purchased in fiscal 2006. The Senate added a rider requesting the SBOE to forego the issuance of all proclamations of textbook purchases until the Legislature has implemented reforms to the system of procuring and purchasing textbooks.

Supporters say the state will continue to pay for textbooks needed to support core educational subjects but should have the option of delaying the purchase of textbooks for other subjects that are not required and for which textbooks may not even be needed, such as physical education. The state is not obligated to purchase every textbook for which a proclamation was issued. Textbook publishers have enjoyed significant profits in recent years. These publishers should be able to absorb the losses caused as a result of delaying textbook purchases.

Opponents say the state cannot continue to balance its books by delaying textbook purchases indefinitely. While delaying textbook purchases helped the state through the fiscal 2004-05 budget crisis, it has compounded the funding demand of instructional materials for fiscal 2006-07. The 2006 textbooks have been produced by publishers and fully reviewed and adopted by SBOE. Deferring this purchase would delay their use by two years and leave publishers at risk for millions of dollars in textbooks that they developed and printed in good faith.

Higher Education Overview

Public higher education institutions funded by the state include 35 universities, 50 community and junior college districts, one technical college system with four main campuses, and three lower-division state colleges. Funding also goes to nine public health-related institutions, which operate a total of seven state medical schools, three dental schools, and numerous other allied health and nursing units. The private Baylor College of Medicine also receives state funding, as do seven institutions in the Texas A&M System that conduct research and other programs in agriculture, engineering, transportation, and science.

Compared to current funding, CSSB 1 would increase overall funding for higher education by about \$536.0 million, or 3.2 percent, in fiscal 2006-07. General revenue-related funding would decrease by about \$39.1 million, or 0.2 percent.

Background

Public general academic institutions depend on state funding to varying degrees. Some are funded almost entirely by state appropriations, while others rely heavily on external support. Institutions receive direct appropriations via funding formulas and non-formula appropriations. Direct appropriations made to institutions are lump sums, and unlike other state agencies, with few exceptions, higher education entities are not required to spend appropriations

within a specified funding strategy. Nearly 60 percent of all direct state appropriations for general academic institutions are allocated via two funding formulas and a supplement for each formula. One formula addresses instruction and operations, and the other addresses infrastructure. The formulas and supplements are based primarily on enrollment. In addition, general academic institutions have access to funds that are not reflected in the state appropriation process. Examples of this include designated tuition and incidental fees, auxiliary operations, grants, and gifts.

Universities also receive state funding through non-formula sources, including funding for institutional enhancement, special items funding for projects specifically identified by the Legislature as needing support, debt service for tuition revenue bonds, and appropriations from constitutional funds. Other non-formula sources include indirect cost recovery income from research grants and contracts, funding for certain staff benefits, and excellence funding. In 2003, the 78th Legislature allowed institutions to retain 100 percent of the indirect cost return on research. Prior to that, institutions were allowed to retain 50 percent.

Health-related institutions receive state funding through formula and non-formula appropriations. Examples of non-formula funding are revenue generated from patient care, institutional enhancement, special items, constitutional funds, indirect cost recovery, and appropriations for

Higher Education spending comparisons (millions of dollars)

| Type of funds | Expended/budgeted 2004-05 | Recommended CSSB 1 | Biennial change | Percent change |
|-------------------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue-related | \$12,545.8 | \$12,506.7 | \$(39.1) | (0.2)% |
| Federal | 339.7 | 328.0 | (11.7) | (3.4) |
| Other | 4,053.0 | 4,639.8 | 586.8 | 14.5 |
| All funds | 16,938.6 | 17,474.5 | 536.0 | 3.2 |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

employee benefits. Health-related institutions also receive interest earnings from tobacco-settlement funds. Baylor College of Medicine receives funding equivalent to the per-student cost of public medical school education.

Public community and technical colleges receive nearly all of their state appropriations through formulas based on contact (classroom) hours. No state funding is provided for physical plant operations and maintenance or for facilities. Like general academic and health-related institutions, community colleges receive general revenue contributions for employee benefits. Public community colleges also have their own authority to raise revenue through property taxes.

The Permanent University Fund (PUF) backs bonds for construction and capital purposes at most of the institutions within the University of Texas (UT) and the Texas A&M University systems. Income from PUF investments, distributed through the Available University Fund (AUF), is used for debt service at the eligible institutions and for excellence funding at UT-Austin, Texas A&M-College Station, Prairie View A&M, and the UT and A&M system offices. The Higher Education Fund (HEF) provides funding for capital purposes and debt service at 30 other institutions that are not eligible for AUF funding. The HEF is supported by general revenue appropriations.

In 2001, the 77th Legislature created the Texas Excellence Fund and the University Research Fund in an effort to support excellence and research at general academic institutions. The 78th Legislature in 2003 abolished both funds and created a single Research Development Fund to promote increased research capacity at eligible universities.

Debate about higher education funding in Texas centers on a number of issues, including:

- providing an adequate level of higher education funding to create a properly trained workforce that is prepared for jobs of the future;
- striking the appropriate balance of funding between taxpayers and those who pay tuition to enable universities to meet the growing demand for their services and to keep Texas institutions competitive with those in other states; and
- maintaining a racially, ethnically, and economically diverse student body to compensate for traditional low rates of college participation among Hispanics and African-Americans and, in turn, to prevent a decline in average levels of educational attainment

In response to these concerns, the Texas Higher Education Coordinating Board (THECB) in 2000 adopted the state's higher education plan, *Closing the Gaps*, which focuses on steps the state should take to increase rates of higher education participation and graduation, the number of nationally recognized programs at institutions, and the amount of funded research. Two specific goals are to enroll 590,000 students by 2015 and to increase by 50 percent the number of degrees and certificates awarded.

Enrollment issues. More than one million students were enrolled in Texas public higher education institutions in fall 2004. Approximately 557,000 students were enrolled in community, technical and state colleges, 482,000 in four-year institutions, 18,000 in health-related institutions. In addition, some 113,000 students were enrolled in private institutions of higher education. The rate of enrollment growth at both public and private institutions has increased over the past two years, with most of the growth occurring in lower-division, two-year institutions.

Tuition. The Legislature sets in statute the fees and tuition charged by public higher education institutions. The statewide average for mandatory fees is \$586 per semester. The statutory tuition rate for the 2004-05 academic year is \$48 per credit hour for Texas residents, which will increase to \$50 per credit hour in 2005-06 following a scheduled \$2 increase. Nonresident tuition is based on the average of nonresident tuition rates in the five most populous states other than Texas. In addition to the statutory rate, which all universities must charge, institutions charge "designated" tuition (formerly called the building use fee). Designated tuition is set by each institution's governing board and may vary within individual systems. Prior to the 2003 regular session, designated tuition could not exceed the statutory rate.

In 2003, the Legislature enacted HB 3015 by Morrison, which deregulated designated tuition and allowed each public university's board of regents discretion to set designated tuition at an amount the board considers necessary for the institution's effective operation. Institutions must set aside for financial assistance to resident undergraduate students 20 percent of any increase in designated tuition above \$46 per semester credit hour. All general academic institutions have increased designated tuition, generating a total of \$263 million since deregulation began, of which roughly \$52.7 million will be set aside in financial aid. Eleven universities are at or below \$46 per semester credit hour. Institutions reported that the increases went to fund development and expansion of faculty, salary compensation, preservation of facilities, and student aid.

Budget highlights

CSSB 1 would allocate \$17.5 billion in all funds to higher education in fiscal 2006-07, an increase of 3.2 percent over fiscal 2004-05. CSSB 1 would allocate \$105 million for general academic institutions for semester credit hour growth of 4.9 percent. An additional \$67 million would be distributed through established formulas. General revenue-related funds would be allocated to support an increase of \$52 million for tuition revenue bond debt service. CSSB 1 would allocate \$18.3 million to health-related institutions for full-time student growth of 6.9 percent. The bill would appropriate an increase in general revenue-related funds of \$36.6 million for tuition revenue bond debt service. Non-formula general revenue-related funding for general academics and health-related institutions would be set at 95 percent of fiscal 2004-05.

The Senate would allocate \$18.5 billion in all funds to higher education in fiscal 2006-07, an increase of 9.3 percent over fiscal 2004-05. General revenue-related funding would be \$13.5 million, a 7.9 percent increase over fiscal 2004-05. The Senate proposal would allocate an additional \$198.2 million for general academic institutions to be distributed through the established formulas. Health-related institutions would receive an additional \$40 million for the established formula plus an additional \$43.3 million

in general revenue-related funds for tuition revenue bond debt service. Non-formula general revenue-related funding would be set at 100 percent of fiscal 2004-05.

Dramatic enrollment growth supplement rider.

CSSB 1 would provide additional formula funding for institutions that experience dramatic enrollment growth, including \$2.1 million for general academic institutions, \$4.5 million for two-year institutions, and \$6 million for nursing programs at all institutions. Institutions that grow by more than 3 percent per year, or 6 percent overall, would receive additional allocations from funds set aside for this purpose by THECB. The dramatic enrollment growth supplement threshold for two-year institutions would be lowered from 15 percent to 10 percent a year. Article 11 would allocate \$20 million for fiscal 2006-07 for dramatic enrollment growth in nursing.

Tuition regulation. CSSB 1 would not impose a tuition cap, but the Senate would cap designated tuition for public institutions at \$94 per semester credit hour. Supporters say that a limit is necessary because some institutions have raised designated tuition too high, too fast. Opponents argue that an institution's tuition has many components, including required fees, and that capping designated tuition will encourage institutions to simply raise their fees and potentially decrease the amount set aside for financial aid, since 20 percent of designated tuition above \$46 per semester credit hour is used for student financial assistance.

Medical education. Most of the state's nine health-related institutions provide undergraduate programs in medical and dental education, biomedical sciences, nursing, pharmacy and other allied health programs. Many of these institutions also partner with teaching hospitals to provide residency training, also called Graduate Medical Education (GME), which physicians must complete after medical school to obtain state licensure and specialty certification.

Texas pays for a portion of the cost of GME by making Medicaid payments to teaching hospitals. A majority of state GME funds are distributed by the THECB in "trusteed funds" set aside specifically for this purpose. The state does not provide any formula funding on a per-student basis for

medical residents. Other sources of revenue come from local government funds, clinical practice plans, patient care revenues, local hospital district taxes, hospital reserves, private grants, donations, Disproportionate Share Hospital funds, and Medicare.

In fiscal 2004-05, funding to THECB for GME was reduced by 37 percent and Medicaid funding was eliminated. The number of Medicare-supported residency slots has not increased since 1996. In addition, teaching costs have increased because changes in accreditation standards require additional supervision of residents.

CSSB 1 would allocate \$3.6 million to THECB for GME for fiscal 2006-07. This represents a decrease from fiscal 2004-05 of almost \$192,000, or 5 percent. Funding for residency programs would be \$22 million in all funds for fiscal 2006-07, an 11 percent decrease from fiscal 2004-05. Article 11 includes \$11.2 million for additional residency positions and \$88.5 million for faculty costs of GME in fiscal 2006-07.

Opponents say CSSB 1 does not provide sufficient funding to support the residency positions that Texas needs. GME is the most cost effective method of recruiting and retaining physicians in Texas. The Legislature should provide consistent funding for this program by adopting a formula funding allocation for faculty costs and resident support, they say.

Border health. CSSB 1 would appropriate \$2.1 million to the University of Texas Health Science Center's Laredo Extension Campus and \$16.8 million to the university's Regional Academic Health Center (RAHC), which serves four counties in the lower Rio Grande Valley. Article 11 would appropriate \$3.7 million to the Laredo Extension Campus and \$3 million for RAHC for the biennium, in addition to \$30 million for funding educational programs and research programs at RAHC and the Laredo Extension Campus.

CSSB 1 would allocate \$5 million for fiscal 2006-07 to Texas Tech University Health Science Center for the medical school in El Paso. Article 11 would allocate \$61.5 million for the medical school for fiscal 2006-07. The

governor office proposed adding \$68.7 million in general revenue-related funds for the medical school in El Paso.

CSSB 1 would allocate \$275,689 for fiscal 2006 to Texas A&M University - Kingsville for the Irma Rangel College of Pharmacy. Article 11 would appropriate an additional \$13.1 million for fiscal 2006-07. Consistent with the governor's proposal, the institution requested \$13 million for operation of the pharmacy and \$3.1 million to restore to the Texas A&M System funding it provided for the school's 2005 start-up funds.

The Senate proposal would allocate \$2.1 million to the Laredo Extension Campus for fiscal 2006-07 and includes an additional \$3 million in Article 11. The Senate proposal would allocate \$16.8 million to the RAHC for fiscal 2006-07. Additionally, the Senate proposal would appropriate \$11 million to the medical school in El Paso and \$1.9 million to the Irma Rangel College of Pharmacy for fiscal 2006-07.

Supporters say the state needs to continue to invest in the medical programs in South Texas, the most medically underserved region in Texas. With 105 physicians per 100,000 citizens, the physician-to-citizen ratio in this rapidly-growing region is well below the state and national averages of 190 and 286 per 100,000 citizens, respectively.

Proportionality for community colleges. The state typically pays employee benefits only for those employees whose salaries are paid out of general revenue. If a portion of the salary is funded from general revenue, only that portion of benefits is paid by the state. Community colleges, however, currently do not use this method of proportional cost sharing, or "proportionality," in using general revenue to pay for benefits for most employees. According to LBB, no Texas entities other than community colleges that receive state appropriations use employee job function in determining eligibility for state-funded employee benefits. Community colleges have used this method of reporting eligibility since they joined the Employees Retirement System in the early 1990s. However the 78th Legislature applied "proportionality" to physical plant and maintenance employees.

LBB staff performance recommendations included applying cost-sharing provisions to state contributions for employee health benefits and recommended a reduction of \$106 million from group health insurance appropriations for the biennium to be redirected through the funding formula. In effect, this would take money from a “restricted” source and place it in an “unrestricted” source that would increase formula funding to most community colleges.

CSSB 1 would not apply proportionality to benefits for community college employees for fiscal 2006-07. It would reduce the general revenue-related funds allocation by \$106 million from fiscal 2004-05 and allocate it to the health insurance group fund for community colleges.

The Senate proposed phasing in proportionality beginning in fiscal 2007 by requiring community colleges to pay 12.5 percent of employee benefit costs. This would increase incrementally by 25 percent over the next three biennium. The Senate would allocate \$92.7 million to the group insurance fund for employee benefit costs for fiscal 2006-07.

Supporters say community colleges should not be exempt from a state policy that applies to every other state-funded entity. Opponents say community colleges are already struggling to control costs and to keep tuition down for students of modest means. If they are forced to pay these employee benefit costs, community colleges would have to use supplemental funds, reduce benefits, or eliminate them altogether for certain employees. Other less favorable options include raising tuition or the local tax rate.

Higher Education Fund (HEF). The HEF provides funding for capital improvement projects and debt service at 30 institutions that are not eligible for AUF funding. Created as a counterpart to the Permanent University Fund for institutions outside the University of Texas and Texas A& M University systems, the HEF was intended to build a corpus of \$2 billion that would generate funding for these institutions. Until 2002, about \$50 million in general revenue per year was appropriated toward this corpus, and its current value is \$430 million. In fiscal 2004-05, the Legislature did not appropriate any funds to the corpus.

CSSB 1 would allocate \$350 million to the HEF in fiscal 2006-07 and would not fund contributions to the permanent trust fund corpus. Article 11 includes additional general revenue-related funding of \$50 million in each year of fiscal 2006-07 to be applied to the corpus.

The Senate included \$175 million in fiscal 2006-07 HEF funding in Article 11.

Opponents say the HEF needs additional funding because annual allocations have not increased since 1997. Because institutions can issue bonds up to 50 percent of their HEF allocations, increasing appropriations to the HEF allows institutions more leverage for issuing bonds. HEF-backed bonds are an excellent way to finance the costs of major repairs and renovation because they provide a more predictable and dependable source of funding. THECB recommends allocating an additional \$87.5 million to the annual HEF allocations to the institutions to account for enrollment growth and inflation costs and to strive for parity with the AUF.

Office for Civil Rights Priority Plan. In 1999, then-Gov. Bush and the Office for Civil Rights (OCR) agreed to improve programs and facilities at Prairie View A&M University and Texas Southern University (TSU), the state’s two Historically Black Colleges and Universities. The plan, which is scheduled to end in 2008, provides for certain degree programs to be established and funded until deficiencies are corrected.

CSSB 1 would allocate \$20.8 million in OCR funding to TSU for fiscal 2006-07, and Prairie View A&M would receive \$26 million for the biennium. This represents a 5 percent decrease from fiscal 2004-05. Article 11 would allocate an additional \$12.8 million to TSU and an additional \$2 million to Prairie View A&M for fiscal 2006-07.

The Senate would allocate OCR funding to TSU and Prairie View A&M at about the same level of funding as in fiscal 2004-05. TSU would receive \$21.8 million, and Prairie View A&M would receive \$27.6 million for the biennium.

The institutions have asked that funding for fiscal 2006-07 be restored to 100 percent of fiscal 2004-05 funding. They say that by not fully funding the plan, the state is defaulting on the original agreement to strengthen the universities.

Tuition revenue bonds. Tuition revenue bonds are used to finance construction and repair of classroom facilities and other university buildings. Although the authorization and issuance of TRBs is not contingent on an appropriation for related debt service, using general revenue funds to reimburse institutions has been legislative practice since 1971, when TRBs first were authorized. The 78th Legislature in 2003 changed prior policy by appropriating TRB debt service for interest only for TRBs issued after March 31, 2003. For fiscal 2006-07, the institutions have indicated they will need \$376.6 million in total debt service appropriations for TRBs issued through the end of fiscal 2005. Universities have requested a total of \$3.7 billion in new TRB authorization.

Both CSSB 1 and the Senate proposal would appropriate \$367.9 million in fiscal 2006-07, a 30.7 percent increase over fiscal 2004-05, for the payment of principal

and interest for TRBs. Requests for new TRBs are included in Article 11, which states that beginning with bonds issued after March 31, 2003, the Legislature will continue to appropriate funds to pay for interest only and would reduce funding by \$57.7 million in general revenue-related funds. The Senate's recommendation to fund an additional \$100 million in tuition revenue debt service is included in Article 11.

Supporters say the state should not make a continued commitment to funding both principal and interest for TRBs because institutions should be asked to assume a share of the long-term cost of facilities funding. These costs will only continue to rise as institutions issue more TRBs, and the state should not have to assume the entire financial burden. Opponents say if institutions are required to absorb the principal portion of the debt service for future tuition revenue bonds, they will spend money intended for other purposes or raise tuition to cover the increased costs. This is a departure from established tradition and would inhibit long-term commitments by institutions to maintenance and facilities.

Funding for financial aid

Agency: Texas Higher Education Coordinating Board

Background

In 1999, the 76th Legislature created the TEXAS Grants program, administered by THECB. To qualify for these grants, students must be Texas residents who are recent graduates, meet financial eligibility guidelines, and complete the recommended or advanced high school curriculum. According to THECB, the average family income for most grant recipients is \$40,000 per year. Grant amounts for students at public higher education institutions are based on statewide tuition and fees, and grants for students at private institutions are based on tuition and fees at comparable public institutions, which can amount to several thousand dollars per semester.

THECB's fiscal 2004-05 budget included \$324 million for TEXAS Grants. According to higher education officials, it was \$188 million less than was needed to fully fund all eligible new and returning students. The program requires that funding go first to returning students because the law guarantees that students can keep receiving the grant as long as they maintain a 2.5 grade-point-average and a certain course load. As a result, nearly 30,000 new students in 2004 did not receive the grant, and nearly 49,000 in 2005 will not get the award. The average grant is about \$1,500 and 215,000 awards have been issued to date, serving about 115,000 students.

The 77th Legislature in 2001 established TEXAS Grants II for students attending community and technical colleges. To qualify for these grants, students must meet financial eligibility guidelines but are not required to complete the recommended high school curriculum, which is now required to receive a high school diploma.

The Tuition Equalization Grant (TEG) program was designed to broaden institutional choice for low- and middle-income students by providing assistance in meeting the higher tuition charges at private and independent

institutions. In the 2003-04 academic year, more than 27,000 students received awards. TEG funding was cut by \$12 million each year of the current biennium, allocating a total of \$140.9 million.

The 78th Legislature created Texas B-on-Time (BOT). It offers loans with interest rates of zero for students who recently graduated from high school having completed the recommended high school curriculum. Loans made to students who graduate "on time" from a four-year university with a 3.0 grade-point-average are forgiven. Each higher education institution must set aside 5 percent of any designated tuition increase over \$46 per semester credit hour for the loan program. Although the THECB was appropriated the tuition set aside funds, it did not receive any general revenue funding for BOT for fiscal 2004-05. Because it takes time to build up sufficient funds from the tuition set-aside, to date, no funds have been distributed. THECB was able to fund the program for the first two years from savings realized from refinancing bonds from the Hinson-Hazlewood College Student Loan Program and will serve around 18,500 students.

CSSB 1 – \$1.6 million decrease for TEXAS Grants \$904,029 decrease for TEXAS Grants II \$7 million decrease for TEG \$0 change for B-on-Time

CSSB 1 proposes appropriating \$322.8 million for fiscal 2006-07 to TEXAS Grants, (Strategy B.1.9) which will serve about 50,327 students in 2006, and about 50,327 students in 2007. This is a reduction from \$324.4 million for fiscal 2004-05.

CSSB 1 would allocate \$8.8 million for TEXAS Grants II for fiscal 2006-07, a decrease of 9 percent from fiscal 2004-05.

Proposed fiscal 2006-07 funding for TEG (Strategy B.1.1.) is \$134 million, down from \$141 million in fiscal 2004-05, and represents a decrease of 5 percent.

CSSB 1 proposes no general revenue-related funding for BOT. Financial aid set-asides from increases in

designated tuition are expected to generate about \$10.8 million for the biennium.

The bill allocates \$9.3 million to the College Work Study Program (B.1.2) for the biennium, which would represent funding at 106 percent more than fiscal 2004-05 levels. Article 11 includes \$321.8 million in additional funding for TEXAS Grants and BOT programs.

Supporters say by maintaining funding at close to fiscal 2004-05 levels, CSSB 1 represents a strong commitment to the TEXAS Grants program while ensuring that other higher education programs that experienced significant reductions in fiscal 2004-05, such as graduate medical education and residency programs, are not reduced further. It also would allow a modest increase in the college work study program, which can be effective at increasing student retention.

Need-based grants are the state's most effective tool for stimulating college participation because they make ongoing commitments to students who continue to meet academic standards. Experience has shown that this can improve student retention. Supporters say loans are the least expensive type of aid for the state, but the most expensive for students. Many students, particularly low-income students, have an aversion to borrowing money, even for an investment such as higher education. Since most students have to work, graduating "on time" is very difficult. Besides, if students meet the requirements of loans such as BOT and graduate on time, federal tax laws require students to pay taxes on the loan just as if it were income.

Opponents say fully funding TEXAS Grants makes it necessary to sacrifice other important higher education programs. For example, CSSB 1 proposes to emphasize TEXAS Grants at the expense of BOT. BOT loans offer a strong incentive for students to take a full course load and graduate on time, thus creating more funds for new students. They require fewer general revenue dollars because revenue from loans repaid by borrowers who do not meet the forgiveness requirements can be used to fund future loans.

Supporters of decreased funding for TEXAS Grants II say this program could become an important tool in closing the gaps in participation in higher education, since at least 60 percent of the new students enrolling in college during the next 11 years are expected to begin their studies at two-year institutions. This program could provide the support for these students to continue their education.

Other opponents question the use of public funds for TEG to support private education when resources to support public higher education institutions are limited. Also, recipients of grants for private institutions do not have the same academic requirements as recipients of need-based grants and loans for public institutions.

Senate proposal

The Senate recommends combining TEXAS Grants, TEXAS Grants II, BOT, and College Work Study strategies into one financial aid strategy. It would allocate \$419.5 million to financial aid with recommended minimum funding for each program. An additional \$80 million for all student financial aid programs appears in Article 11.

Supporters say giving THECB flexibility in awarding financial aid to students would allow the agency to put money where it is needed and to meet the needs of more students. Financial aid counselors have said the programs are too rigid and that some students may have fallen through the cracks because they do not meet these strict requirements.

Other proposals

The governor proposed combining the best elements of the TEXAS Grant and BOT programs into one financial aid system. The appropriation to THECB would be increased by \$65.9 million in general revenue to enhance the funding of the joint programs. THECB recommended providing an additional \$321.8 million in funding for TEXAS Grants and BOT. In addition to the \$10.8 million proposed in CSSB 1 for fiscal 2006-07, the THECB expects to receive unexpended balance carry-over authority for BOT funds from fiscal 2004-05. THECB estimates about \$21 million would be available for BOT loans in fiscal 2006-07.

Article 4 Overview

The Texas court system includes two high courts, 14 intermediate appellate courts, 424 state district courts, and more than 2,600 county, city, and justice-of-the-peace courts. The state funds all functions of the Supreme Court and the Court of Criminal Appeals and most functions of the 14 courts of appeals. Some of the 13 appellate courts outside of Austin also receive some funding from the counties in which they are located. The state provides no funding for local courts. Most judicial functions for trial courts are funded locally, including the cost of all court personnel (other than judges' salaries) and the courts' capital and operating expenses.

The state pays the salaries of all 504 appellate and district judges, provides courtrooms for the three appellate courts based in Austin, and covers travel expenses for any district judge whose district covers more than one county. The state also pays the entire salaries of 153 district and county attorneys and partial salaries of two assistant district attorneys.

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

For fiscal 2006-07, CSSB 1 proposes total funding of \$450.5 million for the judiciary, or less than 1 percent of all

state spending. This would represent an increase of about \$21.8 million, or 5.1 percent, in all funds from fiscal 2004-05. General revenue-related appropriations would total \$357.7 million, an increase of 2.9 percent.

Background

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

Budget highlights

CSSB 1 would fund the Texas Supreme Court, Court of Criminal Appeals, the 14 intermediate courts of appeal, and the district courts at or above fiscal 2004-05 levels. In testimony before the House Appropriations Committee,

Article 4 spending comparisons (millions of dollars)

| Type of funds | Expended/budgeted 2004-05 | Recommended CSSB 1 | Biennial change | Percent change |
|-------------------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue-related | \$347.6 | \$357.7 | \$10.1 | 2.9% |
| Federal | 0.1 | 0.1 | 0.0 | 8.3 |
| Other | 81.0 | 92.7 | 11.8 | 14.5 |
| All funds | 428.7 | 450.5 | 21.8 | 5.1 |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

these agencies stressed the need to maintain a speedy disposition of cases in light of a growing case load. Other agencies, including the State Law Library, Office of the State Prosecuting Attorney, and the State Commission on Judicial Conduct saw an overall cut in funding from fiscal 2004-05 levels.

Salary increase for judges. Government Code, sec. 659.012 defines the pay rate of all state judges. Each judge's salary is tied to the salary of the justices on the Supreme Court. Justices on the Court of Criminal Appeals earn as much as Supreme Court justices, while appellate court justices earn 95 percent of a Supreme Court justice's salary, and district court judges earn 90 percent of a Supreme Court justice's salary.

Contingent on the enactment of HB 1001 by Luna or similar legislation, CSSB 1 in Article 11 would appropriate \$39 million to the Comptroller of Public Accounts for a salary increase for state judges. HB 1001 would increase district judges' salaries from \$101,700 a year to \$125,000 a year. The judges on the 14 courts of appeal would see a salary increase from \$107,000 a year to \$137,500. Finally, the bill would raise judges' salaries on the Supreme Court and Court of Criminal Appeals from \$113,000 per year to \$150,000. In addition to the salary increase, the chief or presiding judge of each court would receive \$2,500 more than the other judges. To fund the salary increase, HB 1001 by Luna would increase filing fees by \$35 in civil cases and impose an additional \$2 court cost on anyone convicted of an offense other than a parking or pedestrian offense.

Supporters say that a pay raise is necessary to maintain a high quality judiciary. Texas ranks 39th among states in the average salary paid to judges. Because judges can make significantly more money in the private sector, the current salary discourages judges from remaining on the bench. The learning curve for a judge can be from two to three years; a high turnover rate leads to an inefficient judiciary and affects the quality of our judicial system.

Opponents say that pay in the private sector is an unreasonable standard by which to set a judge's salary because pay in a private law firm is vastly higher than that

of most other occupations, even in other areas of the legal profession. Individuals are attracted to the bench not for the salary but out of a desire to serve the public. At current salary levels, judges already earn more than most Texans. The state has more pressing needs, such as children's health care and education, that require the state's limited financial resources.

SB 368 by Duncan also would authorize a pay increase for state judges comparable to that proposed in HB 1001. To fund the salary increase, the bill would increase court costs for those convicted of an offense by \$7 and increase filing fees in civil cases by \$37. SB 368 passed the Senate on March 30.

Visiting judges. The Visiting Judge Program allows the use of former and retired judges to assist elected judges with heavy dockets. CSSB 1 would appropriate \$7.3 million to the comptroller's Judiciary Section for the Visiting Judge Program. This amount equals the amount funded in fiscal 2004-05. In 2003, the 78th Legislature cut funding to the program by 67 percent, from \$21.9 million to \$7.3 million. CSSB 1 would not restore funding to fiscal 2002-03 levels.

Contingent on the enactment of SB 978 by Barrientos, the Judiciary Section of the Comptroller's Department would receive an additional \$3 million for the Visiting Judge Program. SB 978 would expand participation in the Model Fines Collection Program, a program operated through the Office of Court Administration that helps to ensure payment of fines, fees, and other court costs. In addition, CSSB 1 would place a request for \$2 million in Article 11 to fund visiting judges in district courts.

Supporters of restoring funding to fiscal 2002-03 levels say that the Visiting Judge Program is a cost-effective alternative to adding trial courts and has proven to be an efficient way of relieving judges' over-burdened dockets.

Opponents of the increase say that the program undermines the electoral system of accountability to constituents. Visiting judges have not been elected by the citizens of the communities they visit, and some in fact may have lost a recent election.

Witness expenses. Witness expense funds are used by prosecutors to reimburse witnesses for traveling costs they incur when called to testify in criminal proceedings other counties. CSSB 1 would appropriate \$1 million above the fiscal 2004-05 funding level to the comptroller's Judiciary Section for witness expenses, which would restore funding for witness expenses to its fiscal 2002-03 level of \$2.2 million. The 78th Legislature cut funding for witness expenses in the fiscal 2004-05 budget by \$1 million from the fiscal 2002-03 appropriation.

As a result of the funding cuts by the 78th Legislature, the fund was exhausted prematurely during fiscal 2004, requiring counties to use their own funds to reimburse witnesses for traveling expenses. Proponents of the increase say that adequate funding levels are necessary to ensure a speedy disposition of justice. When sufficient funds are not

available to pay witness expenses, prosecutors are forced to delay criminal trials until the next fiscal year when the funds are replenished. Prosecutors say that in some cases they have been forced to abandon prosecutions because of lack of funds for key witnesses.

Actual innocence training. CSSB 1 would appropriate \$300,000 to the Court of Criminal Appeals to be allocated to actual innocence training. The funding would be used to train criminal defense attorneys, prosecutors, and judges on case law and processing of inmate claims of actual innocence – claims of innocence by inmates who say they were wrongly convicted. It represents 30 percent of the Court of Criminal Appeals requested amount of \$1 million. Money in the training fund comes primarily from court costs and fees imposed on criminal offenders.

Article 5 Overview

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

CSSB 1 would appropriate \$6.96 billion in general revenue-related funds for Article 5 in fiscal 2006-07, an increase of about \$348 million or 5 percent, from fiscal 2004-05. Article 5 agencies would receive 6 percent of all funds and 10 percent of general revenue-related funds in fiscal 2006-07, about 1 percent less than their share in the current biennium.

Background

Texas criminal justice system population projections. Growth in the state's criminal justice spending has been driven mainly by increases in the number

of adult offenders incarcerated in state facilities. According to current projections, this trend should continue in fiscal 2006-07.

From 1989 to 2000 Texas' adult correctional capacity – mainly in prisons, state jails, and transfer facilities – more than tripled. In fiscal 1998, the state began to contract with counties for temporary bed space. In fiscal 2001, the state began to reduce its use of contracted beds, and by fiscal 2002 the state was housing all offenders in state facilities.

Many factors contribute to the demand for correctional beds, including the crime rate. The LBB reports that the total number of reported crimes in Texas increased 0.5 percent between 2002 and 2003 and has been rising since 2000, but due to increases in the state's total population, the overall crime rate (number of crimes reported per 100,000 population) decreased 1 percent in that time.

Other important factors contributing to the demand for correctional beds include the types of criminal sentences prescribed by the Legislature and imposed by the courts, rates of parole and probation, and rates of revocation of parole and probation.

The parole population also is projected to increase in the upcoming years, according to the LBB. In fiscal 2005, the parole population is projected to grow by almost 1 percent

Article 5 spending comparisons (millions of dollars)

| Type of funds | Expended/budgeted 2004-05 | Recommended CSSB 1 | Biennial change | Percent change |
|-------------------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue-related | \$6,615.9 | \$6,964.1 | \$348.2 | 5.3% |
| Federal funds | 404.6 | 286.7 | (117.9) | (29.1) |
| Other funds | 1,151.9 | 1,154.7 | 2.7 | 0.2 |
| All funds | 8,172.4 | 8,405.4 | 223.0 | 2.9 |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

and will increase by higher percentages in subsequent years. Under the LBB's current projections, the parole population will rise from 76,577 in the beginning of fiscal 2005 to an average of 80,460 in fiscal 2007, an increase of 5 percent. The LBB assumed that the parole approval rate – the portion of inmates released on parole relative to the total number of inmates considered for parole – in fiscal years 2005 to 2010 would hold steady at the fiscal 2004 rate of 30.5 percent.

While the prison and parole populations are projected to grow in the next few years, the LBB estimates that the state's adult community supervision (probation) population would decrease during that time. The LBB estimated a drop in the felony probation population by a little over 0.5 percent each year through 2010. This would mean that the number of felony probationers under direct supervision would drop from about 156,817 in the beginning of fiscal 2005 to a monthly average of 154,316 through the end of fiscal 2007.

During the 2005 legislative session, there has been much discussion about an increase in the rate and number of felony probationers who have been incarcerated following the revocation of their terms of probation. According to the LBB, this population increased 18 percent (from 22,164 to 26,239) between fiscal 2001 and fiscal 2004.

About 94 percent of felony probationers who have their probation revoked are sent to prison or a state jail, according to the LBB's January 2005 report *Statewide Criminal Justice Recidivism and Revocation Rates*. Probation revocations are a significant contributor to state prison admissions, making up 30 percent of annual admissions. The LBB reports that 55 percent of felony revocations typically are for technical violations and 45 percent involve probationers being arrested or convicted of new offenses.

Capacity in state correctional facilities. The Texas prison system is operating near capacity after about two years of being able to house all offenders sentenced to state facilities without having to procure beds in county or private facilities. The latest projections show that in the summer of 2005, Texas will run out of prison space, and offenders will be backlogged in county jails awaiting transfer to state facilities. Under Government Code, sec.

499.121, the state has a 45-day deadline for moving prisoners from county jails to state facilities once they have been sentenced to a state facility and all processing for the transfer has been completed.

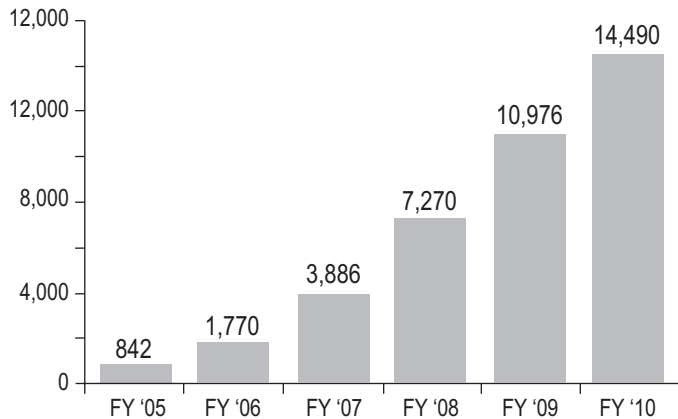
As of December 2004, total adult correctional capacity stood at 154,702, according to the LBB, but because of the need to house inmates appropriately and for flexibility in moving inmates, some of those beds are not actually available. TDCJ's operational capacity generally is considered to be 97.5 percent of total capacity, which put the agency's operational capacity at 150,834.

The 97.5 percent figure for operational capacity is a system-wide average. Some facilities, especially traditional prisons, often operate at close to 100 percent of capacity, while other facilities such as state jails, transfer facilities, substance abuse treatment facilities, and beds used for the mentally retarded offender program may operate at below 97.5 percent of capacity. Some of this variation stems from the way facilities are designed. A state jail, for example, may house inmates in a dormitory-style facility containing empty beds that are not available for offenders sentenced to prison. In other cases, beds in specific facilities may be empty because of statutory and agency policy restrictions on housing certain types of inmates together. For example, Government Code sec. 501.112 prohibits TDCJ from housing minimum- and maximum-security inmates together.

The LBB estimates that demand for adult correctional beds by the end of fiscal 2005 will exceed capacity by 842 offenders (see Fig. 1, opposite page). The estimated population exceeding capacity will climb to 1,770 by the end of fiscal 2006 and 3,886 by the end of fiscal 2007. Among the many factors that could alter these projections would be changes in penalties for criminal offenses and new programs or incentives for alternatives to incarceration.

Juvenile offender populations and state capacity. The capacity of state facilities to house juvenile offenders also has grown over the past decade. In 1995, TYC facilities contained space for 1,686 juveniles. By 2005, that capacity had grown to 4,576.

Figure 1: Projected adult prison population annually exceeding operating capacity



Source: Adult and Juvenile Correctional Population Projections, January 2005, Legislative Budget Board

The LBB estimates that by the end of fiscal 2005, TYC's population will be 4,971, outstripping its total capacity of 4,576. Each fiscal year through 2010, TYC's population will be larger than its capacity, with the shortage of beds estimated at 543 by the end of fiscal 2007. For the current biennium, TYC is planning to contract for beds to meet its capacity needs.

The LBB reports that the primary factor driving the growth in TYC's population is an increase of about 1.6 percent annually in the number of juveniles being sent to TYC. However, the overall growth of TYC's population also is influenced by the amount of time that offenders are in state custody. For most offenses, TYC has discretion in determining an offender's length of stay. From fiscal 2002 to fiscal 2004 the average length of stay of youths in TYC facilities dropped from 18.6 months to 17.4 months.

Only a small percentage of youths referred to the juvenile justice system are sent to TYC. The rest are handled locally by juvenile probation departments or juvenile courts. The LBB estimates that the number of juveniles receiving one of the three types of supervision by local juvenile departments will increase from 41,450 in fiscal 2005, to 41,934 in fiscal 2006, to 42,527 in fiscal 2007. However, the TJPC reports that the actual average daily population of juveniles under supervision for the first six months of

fiscal 2005 has exceeded the LBB estimates. The actual number of juveniles under the three types of supervision was 42,166 for the first six months of fiscal 2005 while the LBB estimated that the end-of-year number for fiscal 2005 would be 41,450. TJPC's projections for fiscal 2006-07 also exceed the LBB projections for that period.

Budget highlights

CSSB 1 would increase overall general revenue-related Article 5 spending by \$348 million from fiscal 2004-05 levels. This amount reflects adjustments that certain criminal justice agencies would receive to accommodate projected increases in offender populations.

Adult Corrections: TDCJ administration and programs

CSSB 1's fiscal 2006-07 general revenue-related appropriation for the Texas Department of Criminal Justice, \$4.7 billion, would represent a 2.4 percent increase from its fiscal 2004-05 funding. In general, TDCJ would receive funding at fiscal 2004-05 levels for basic housing and security operations and increases in funding for contracted capacity and parole supervision to deal with projected increases in the prison and parole operations.

CSSB 1 would fund several of TDCJ's strategies for probation programs and offices at the fiscal 2004-05 level and then add about \$55.5 million in new money for probation programs and probation officers. No correctional officer positions would be eliminated, according to TDCJ.

The agency requested, but did not receive in CSSB 1, \$2.3 million more for Central Administration, which would have maintained funding at the fiscal 2004-05 level. According to the agency, budget reductions by the 78th Legislature resulted in the elimination of 126 positions from central administration in areas such as executive and division administration, financial business operations, payroll, human resources, internal audit, and legal services. TDCJ reports that CSSB 1 would result in the loss of another 31 positions in central administration.

TDCJ Rider 82 would require TDCJ to enter into an agreement with a sole provider for three years to install and maintain an inmate telephone system at five minimum-security facilities. The state revenue from the system would be dedicated to the Crime Victims Compensation Fund (CVCF). Rider 54 in the fiscal 2004-05 general appropriations bill and Rider 51 in the fiscal 2006-07 Senate proposal authorize, but do not require, the implementation of a similar pilot project for state jails.

TDCJ capacity. CSSB 1 would appropriate \$63.7 million for TDCJ to contract for temporary capacity through fiscal 2007 to meet population projections in excess of available state beds. Historically, the state has been able to contract for beds at a rate of about \$40 per day. The bill would appropriate no funds to build new state facilities.

TDCJ Rider 71 would divide the contracting money into six-month increments and direct TDCJ to funnel any money not needed for contracted capacity in each period to probation programs designed to divert offenders from prison. Before the last transfer of the biennium, TDCJ would be required to get the approval of the Legislative Budget Board and the Governor's Office. Senate Rider 78 also requires funds not used for contracting during a six-month period to be transferred to probation diversion programs but also includes a requirement that TDCJ receive approval from the LBB and the Governor's Office before any transfer. Under the Senate's rider, TDCJ would have to include a written report of the average number of contracted beds in the preceding six months and the actual contracting costs.

Supporters of this proposal say that by leasing space from the counties Texas could avoid committing resources to building and operating new prison beds that may not be needed in the future. New funding in the bill to support probation programs should reduce the number of direct sentences to prison and the number of probationers who are incarcerated for probation violations, they argue, thus reducing the state's need for prison beds. CSSB 1 would allow TDCJ to lease beds as needed to ensure that prisoners did not become backlogged in county jails in violation of the statutory 45-day deadline, supporters say.

Substance abuse treatment in prisons. CSSB 1 would continue funding in-prison substance abuse programs at the fiscal 2004-05 level. The bill would spend \$72.5 million to continue these programs for about 6,000 offenders in TDCJ facilities and to provide programs for about 4,347 offenders who have been released.

Some criminal justice analysts believe that this level of funding would be inadequate and that funding cuts in the fiscal 2004-05 budget should be restored. Following cuts of \$31.8 million from the fiscal 2002-03 funding level, the agency eliminated substance abuse treatment programs in state jails, substance abuse education and counseling programs at institutional prisons, and outpatient counseling for parolees along with 283 positions in these areas. Critics argue that recidivism rates for offenders needing treatment could increase without additional funding for these programs, which would result in greater demand for prison beds.

Supervision and treatment for adult parolees. CSSB 1 would fund TDCJ's parole supervision at slightly less than the fiscal 2004-05 level. The bill would add about \$4.6 million to the fiscal 2004-05 amount to handle projected increases in the parole population. These funds pay for parole officers and the operation of parole offices. However, TDCJ Rider 84 would require the agency to develop a program that places low-risk offenders who have been on active parole supervision for at least three years in a program that requires only annual supervision status. The bill assumes that this would result in a savings to the agency of about \$9.5 million. It would reduce the funding in TDCJ's parole supervision strategy by that amount and reduce the agency's number of FTEs by 160 over the biennium.

TDCJ Rider 85 would require the agency to request proposals from private vendors to operate pre-parole transfer facilities that provide secure, community-based housing for offenders nearing release on parole. If the proposals cost less than TDCJ's daily cost-per-bed to contract for temporary capacity, the agency would be required to contract for the expansion of pre-parole transfer facilities, and funds would be transferred from the agency strategy for contracted capacity to the strategy for residential pre-parole facilities.

Juvenile Corrections: TYC and TJPC administration and programs

CSSB 1 would decrease general revenue-related funding for the Texas Youth Commission by 0.2 percent to \$427.1 million, from the fiscal 2004-05 level. The agency would see increases in certain areas dealing with housing and supervision to handle a projected increase in the number of juvenile offenders.

Under CSSB 1, the Texas Juvenile Probation Commission would see its overall general revenue-related funding increase 1.8 percent to \$187.9 million. About \$2.6 million of the increase would provide funding to local juvenile probation departments for a projected increase of about 1,077 in the number of juveniles under supervision by local probation departments. The agency requested, but CSSB 1 would not fund, an additional \$6 million for increased mental health services for juvenile probationers. The Senate proposal includes this funding.

Texas Youth Commission capacity. CSSB 1 would appropriate \$36.9 million to TYC to contract for beds to meet its need for space that is in addition to beds in state-operated facilities. Because the projected growth in the TYC population for the 2006-07 biennium, about 1.6 percent annually, has slowed compared with projected growth for fiscal 2004-05 and because space in the new 672-bed McLennan County State Juvenile Correctional Facility will be available by the end of the year, the agency's number of beds under contract care is projected to drop. CSSB 1 includes increases for strategies involving health care services and psychiatric services.

In CSSB 1, \$3 million of the \$36.9 million that the agency would receive in strategy A.1.3. is set aside to contract as necessary to keep its population at 97.5 percent of total capacity. The Senate proposal does not include this funding. TYC Rider 21 would allow the agency to contract for up to 350 beds at any time but would allow contracts for additional beds only when TYC's population exceeded 97.5 percent of capacity or if beds were needed due to an emergency situation that caused a reduction in the number of youths that could be safely housed in TYC-operated facilities and if agreements could be reached that

were beneficial to the state. If the residential population in fiscal 2006 and 2007 were below appropriated levels, Rider 21 would allow the agency to use up to \$3 million for information resource maintenance and PC replacements and up to \$1.2 million for caseworker career ladder enhancements.

Increase for growth in Juvenile Justice Alternative Education Programs (JJAEPs). A request for \$13.4 million to the Texas Juvenile Probation Commission to fund the operation of JJAEPs appears in CSSB 1's Article 11 list. This would bring the total increase over the fiscal 2004-05 level to \$15.5 million since the LBB base budget included a \$2.1 million increase to account for population growth. The commission would use these funds to pay counties for the daily attendance of students required by statute to attend JJAEPs. The Senate proposal placed this request on the Article 11 list.

The 26 Texas counties with populations greater than 125,000 are required to work with school districts to establish JJAEPs for certain students who are expelled from school for serious on-campus or school-related offenses listed in Education Code, sec. 37.007. These students often are referred to as "mandatory" students. Schools have discretion about expelling and referring additional "discretionary" students. Other students may attend JJAEPs as ordered by a juvenile court, by choice, or under other circumstances. Funding for JJAEPs comes from the Foundation School Fund, and Texas Education Agency (TEA) Rider 37 would require TEA to transfer the funds for JJAEPs to TJPC.

In fiscal 2004-05, TJPC received \$14 million for the daily attendance of mandatory students, and the increase in CSSB 1 would be used to meet projected increases in attendance days by these students. TJPC is required to fund student attendance days at JJAEPs at \$59 per day.

During the 2003-04 school year, the number of mandatory student attendance days increased by 21.5 percent over the previous school year, according to the agency. The average annual increase in these attendance days for the previous four years was 6.4 percent. In the first half of the 2004-05 school year, attendance days for these

students has increased by 45 percent over the same period in the previous year. In December 2004, TJPC funded 10,277 attendance days compared with 7,722 attendance days in December 2002.

Neither CSSB 1 nor the Senate proposal would fund an agency request for \$2 million for JJAEP summer school.

Department of Public Safety

Under CSSB 1, the Department of Public Safety's appropriation for fiscal 2006-07 would be \$863.3 million. This represents a reduction of 12.5 percent from its fiscal 2004-05 budget.

Image verification technology for driver's licenses. CSSB 1 does not include an agency request for \$7.4 million to implement image verification technology. HB 2337 by Cortez would authorize image verification technology and allow DPS to collect fees to fund the program. Funding for this project would come under Driver License Reengineering.

Image verification technology would enable DPS to compare all of the photographs on licenses and identification cards in its system to verify that each person holds a license or identification card in only one name. According to DPS, this would combat identity theft and driver's license fraud. The technology would alert DPS to any instance when a person attempted to establish a false identity and would ensure that DPS did not issue licenses or identification cards to those persons. The information collected would be stored on DPS's secure computer system and, according to DPS, would be available to other agencies only with DPS approval and supervision.

Opponents of this program contend that the technology effectively would allow the government to create a colossal database of its citizens' faces, facilitating the intrusion of the government into the lives of average citizens while doing little to target or thwart criminals. These critics also fear that the image verification system would greatly expand DPS's ability to use personal information. The law currently restricts use of thumbprints to, for example, license issuance, child support collection, and the U.S. Selective

Service. However, DPS intends to share image information with other government agencies, and opponents argue that computer hackers or other criminals also could gain access to this information.

Driver's license reengineering. CSSB 1 would appropriate \$15.9 million to fund salary and operating costs related to upgrading the driver's license system. HB 2 by Krusee, enacted by the 78th Legislature during its third called session, appropriated \$40.1 million for DPS to implement the driver's license reengineering (DLR) project, including 28 new FTEs. However, this funding did not include salary and operating costs for years beyond fiscal 2005. DPS now requests funding for those FTEs to implement the program permanently, in addition to funding required to maintain the system. Funding for the DLR project would come under Driver License Reengineering.

Annual costs that arise from the system include online verification of social security numbers with the Social Security Administration when the agency issues driver's licenses to first-time applicants and advanced security features on the driver's license, including microprinting, that are designed to combat identity theft.

DPS has covered the majority of the \$40.1 million required to implement the DLR project through a \$1 fee applied to vehicle registration sales, also authorized by HB 2. The agency's ability to fund the project through this fee expires on August 31, 2005, after which time DPS will experience a shortfall in the funding required to implement the system. The \$15.8 million requested represents both the shortfall that this fee would no longer cover and the annual costs associated with the program.

Hidalgo County crime lab and crime lab personnel. CSSB 1 does not include an agency request for \$29.9 million to build a new regional office in Hidalgo County. The request appears on the Article 11 list. Funding for this request would be allocated to the DPS Physical Plant strategy. The Senate proposal does not include funding for the construction of this office. The agency's request for the construction was increased to \$34 million after the Texas Building and Procurement Commission finalized estimated construction costs. According to DPS, this new facility

would house several offices, including a new driver's license office, additional highway patrol personnel, and a new crime laboratory to replace the current DPS lab in McAllen, which would relieve some of the burden on the Austin Crime Laboratory.

CSSB 1 would appropriate \$5.6 million to hire crime lab personnel to help reduce case backlogs. DPS would receive funding for 38 new FTEs in fiscal 2006 and an additional 12 new FTEs in fiscal 2007, for a total of 50 new FTEs by the end of the biennium. DPS Rider 52 would reduce the number of crime lab FTEs by 50 when the backlog was eliminated. Funding for this request would come under Crime Labs. The Senate proposal also would appropriate \$5.6 million for 50 new crime lab FTEs during fiscal 2006-07. The Senate proposal does not include a rider to reduce the number of crime lab FTEs.

Criminal Intelligence Bureau. The Senate proposal would appropriate \$8.4 million for a reorganization within the Special Crimes Service. A new division in the Criminal Intelligence Bureau would focus on homeland security and counter-terrorism and would have 51 new FTEs. Funding

for this program would come under Special Crimes. Thirty-one of the new FTEs would be state-funded, and 20 of the new FTEs would be funded by a one-time federal grant. CSSB 1 would also provide \$8.4 million for the Special Crimes strategy and would authorize 51 new FTEs.

Texas Alcoholic Beverage Commission

CSSB 1 would appropriate \$61.3 million for fiscal 2006-07 to the Alcoholic Beverage Commission. This represents an increase of 1.9 percent over the fiscal 2004-05 funding level. Some programs would be funded at or slightly above the fiscal 2004-05 level, including enforcement and licensing and investigation.

The Sunset Advisory Commission has made various recommendations about TABC. TABC has indicated that it would need 119 new FTEs to implement these recommendations. Funding for these FTEs was not included in the LBB's recommendations. CSSB 1 would appropriate funding for 48 FTEs for the implementation of the Sunset recommendations. The Senate proposal would appropriate funding for 119 new FTEs, including 65 FTEs for Enforcement and 36 FTEs for Compliance.

Increasing funding for probation programs and supervision

Agency: Texas Department of Criminal Justice (TDCJ)

Background

After a person has been convicted of a criminal offense or after a defendant has pled guilty or *nolo contendere*, judges are authorized under Code of Criminal Procedure, art. 42.14 to suspend the imposition of the sentence and place defendants on community supervision, also called probation. Judges have broad authority to impose conditions on probationers, including requiring that probationers regularly report to probation officers, be tested for drugs or alcohol, attend treatment or education programs, gain employment, and be confined in a local or state correctional bed.

Probationers are supervised by the 121 local Community Supervision and Corrections Departments (CSCDs). The state's approximately 3,400 Community Supervision Officers are employees of local judicial districts. They supervise probationers and monitor their compliance with court-ordered conditions and report to judges if probationers violate the conditions of their probation. Other duties include conducting visits to probationers' homes or workplaces.

The Community Justice Assistance Division (CJAD) division of TDCJ distributes funding to local CSCDs, develops standards and practices for the local departments to follow, approves local Community Justice Plans and budgets, audits local programs and finances, and trains and certifies probation officers.

TDCJ, through CJAD, distributes four types of funding to local probation departments and programs:

- Basic supervision funds are distributed through a formula to local departments to cover the costs of basic operations. Departments are given 70

cents per day for 182 days for offenders placed on probation for misdemeanor offenses. In general, departments receive funding for felony offenders based on the number of offenders they have under direct supervision for felony offenses relative to the number statewide. These funds pay for probation officers, support staff, and office expenses. CJAD was appropriated \$203.3 million in Strategy A.1.1, Basic Supervision, for these grants in fiscal 2004-05.

- Diversion funds are distributed through grants to local departments to divert offenders from state facilities by funding community-based treatment or correctional programs. In fiscal 2004-05, CJAD was appropriated \$122.6 million in Strategy A.1.2, Diversion Programs, for these grants.
- Community corrections funds are distributed through a formula based on an area's percentage of felons under direct felony supervision and its percentage of the state's population. These monies fund a category of local programs and items such as specialized caseloads for probation officers and residential treatment facilities. For fiscal 2004-05, the Legislature appropriated about \$85.2 million under Community Corrections, Strategy A.1.3.
- Some treatment funds are distributed through a grant program called Treatment Alternatives to Incarceration, which provides community-based substance abuse counseling and treatment for probationers. In fiscal 2004-05, CJAD received \$28.0 million for this in Strategy A.1.4.

Other TDCJ programs can include probationers but are not limited to them. For example, TDCJ receives funding, through Strategy B.1.1., Special Needs Projects, that can be used for mental health services for probationers being served in community-based programs and for a jail diversion program. The agency also operates in its facilities the Substance Abuse Felony Punishment (SAFP) program for offenders sentenced to the program as a condition of probation. The treatment component of the SAFP program is funded in Strategy C.2.5.

On average, each Texas probation officer with a regular caseload directly supervises 116 offenders and indirectly supervises an average of 36 offenders. Offenders that they are “indirectly” supervising may have absconded from supervision, may live out of state, or for some other reason are not actively being monitored by the officer. Some probation officers have lower caseloads because they supervise special types of offenders, such as sex offenders or mentally ill offenders. These officers generally have average direct supervision caseloads of about 56 offenders.

The LBB estimates that the cost per day for supervising an offender on probation is \$2.27. State appropriations contribute \$1.09 per offender per day toward this cost. The remaining \$1.18 per day is paid by offenders, who are assessed a fee when placed on probation. The total cost of probation for an individual may be greater due to other costs such as treatment programs. Some probationers in community corrections facilities also pay additional fees, about \$16 million statewide. Probationers also pay fees for victim restitution, about \$48 million in fiscal 2003, and court costs and fines, about \$68 million in fiscal 2003, according to CJAD.

CSSB 1 and Senate proposal – \$55.5 million increase from fiscal 2004-05

CSSB 1 and the Senate proposal would appropriate \$55.5 million in new funds above the fiscal 2004-05 level to TDCJ for probation programs and supervision.

About \$20 million of this would pay for 500 new beds that would serve about 1,500 offenders per year, 3,000 over the biennium, and would be used for residential treatment and for sanctioning offenders. About \$7.2 million would fund outpatient substance abuse treatment for about 2,000 offenders per year or 4,000 for the biennium. About \$28.2 million would provide funds to local probation departments for 350 to 400 new probation officers so that the average direct supervision caseload could be reduced from 116 cases per probation officer to about 95 cases per officer. TDCJ Rider 74 would require that these funds be targeted to reducing caseloads for medium- and high-risk offenders. TDCJ’s Diversion Programs, funded in Strategy A.1.2., would receive the funds.

TDCJ Rider 71 would divide into six-month increments \$63.6 million being appropriated to the agency to contract as needed for temporary bed space (Strategy C.1.10.) and would direct TDCJ to funnel any money not needed for contracted capacity in each period to the agency’s probation programs in Strategy A.1.2., which are designed to divert offenders from prison. Senate Rider 78 also requires funds not used for contracting during a six-month period to be transferred to probation diversion programs.

Supporters say the new funding in CSSB 1 would strengthen Texas’ community supervision system so that it could more effectively supervise and rehabilitate probationers. The bill would target the new funding to programs and policies that judges and probation officers say are necessary to strengthen the system and that have worked to reduce probation revocations in some counties. A strong, effective probation system would enhance public safety and could encourage judges to place and keep appropriate offenders on probation rather than send them to prison. This would help the state reserve its prison space for violent and habitual criminals.

Keeping low-level offenders in the community allows them to hold a job and retain job skills while enabling them to stay connected to their families and community resources such as churches. Sending these low-level offenders to prison can turn them into hardened criminals who are alienated from the community and who commit other offenses upon their return.

CSSB 1 would make financial sense because if the number of offenders being sent to state facilities does not drop, the state could find itself spending even larger sums than those in CSSB 1 to lease beds or to build and operate new prisons.

Problems with the current probation system. Current problems, including a shortage of treatment programs and correctional beds to house probationers in the communities and high caseloads for probation officers, often result in judges not placing appropriate offenders on probation. These issues can cause judges to send offenders to state facilities because they find the local options for treatment and corrections insufficient and because they

feel that probation officers cannot supervise offenders adequately. An increase in court sentences directly to prison is the primary driving force behind the projected growth in the state's prison population, according to the LBB.

Another problem that results from a lack of community resources for sanctioning probationers is that some judges who feel they have no better alternative will revoke offenders' probation and send them to prison for what is termed a "technical" violation of their probation terms. Technical violations can include a wide range of behavior, including showing up late for an appointment with a probation officer, missing a treatment or counseling session, not paying a probation fee, or failing a drug or alcohol test. Revocations of felony probation terms increased 18 percent between fiscal 2001 and 2004, according to the LBB. About 55 percent of these revocations are for technical violations and the rest primarily for new arrests or convictions.

A 2001 committee formed by TDCJ-CJAD of judges, prosecutors, and probation representatives that looked at technical violations found that a decline in resources for probation was associated with an increase in technical revocations. From fiscal 1995 to 2004, state appropriations for probation were cut 4.3 percent and felony revocations increased 44.4 percent.

Treatment and residential facilities. CSSB 1 would give options to judges when sentencing probationers or considering probation revocations by funding outpatient treatment for 2,000 probationers per year along with 500 beds for residential treatment or corrections. These 500 beds could serve an estimated 1,500 offenders annually. Judges could use them for short-term incarceration of probationers and for sanctioning probationers who violate the terms of their probation but who judges believe should not be sent to a state prison. The state could use the \$20 million to lease existing beds owned by counties, cities, or private vendors that are not currently in use. For example, the state could lease some or all of a 300-bed facility that Harris County owns but does not have the funds to operate.

Judges use diversion programs when they are available. However, there is now an average wait of three to six months for a bed in a local community corrections facility

or the state Substance Abuse Felony Punishment Facilities (SAFP) programs for substance abuse treatment. Other community residential programs have similar waiting lists. A 2004 survey by TDCJ's probation division reported that 84 percent of judges surveyed said that they would be more likely to use probation as sentencing option and as an alternative to revocation if more residential facilities were available.

Caseloads. CSSB 1 also would address concerns among judges and probation officers about high caseloads. TDCJ would be able to send \$28.2 million to local departments so that they could hire some 350 to 400 probation officers and reduce the average direct supervision caseload of medium- and high-risk offenders from 116 offenders per officer to 95 per officer. This would allow probation officers to have more contact with offenders and to hold them more accountable for their actions. In the 2004 TDCJ survey, directors of local probation departments ranked smaller caseloads as their highest funding priority. Judges surveyed ranked smaller caseloads as their next funding priority after more treatment and facilities.

Successful models. A pilot project in Fort Bend County that has implemented policies similar to those that CSSB 1 would fund so far has proven successful in reducing the number of probationers from the county who are being sent to state facilities following technical violations of probation. Under the program, the state gave the county's local probation department \$363,000 to reduce caseloads for officers supervising high- and medium-risk probationers, to increase monitoring and field contacts, to institute the use of timely, graduated sanctions and incentives, to allow intensive judicial participation and monitoring, and to increase treatment and other programs. So far, the county, which had 212 felony revocations in fiscal 2004, has seen a 31 percent reduction in felony revocations to prison, due mainly to a 58 percent reduction in revocations for technical violations. The county has also seen a 57 percent increase in community service hours and a 7.9 percent increase in the collection of probation fees.

CSSB 1 also could help reduce probation revocations with TDCJ Rider 76, which states that it is the intent of the Legislature that CJAD encourage local probation

departments to employ a progressive sanctions model, like that used in Fort Bend County and El Paso. The rider also requires CJAD to give preference, to the extent possible, to departments that use the model when it distributes money for diversion programs. In general, progressive sanctions models assign increasingly severe penalties or more intensive treatment, short of revoking probation and sending the offender to prison, for subsequent or multiple technical violations. The El Paso probation department, which has components of a progressive sanctions model, high judicial involvement, treatment, and alternatives to revocation, has a low technical revocation rate. While El Paso has 4.8 percent of all felons under probation supervision in Texas, it is responsible for only 2 percent of the state's technical revocations.

Opponents say the state should not commit almost \$56 million to probation programs that it has no assurances will work and for which it has no solid estimates about the effect of increased funding. Alternatives to incarceration have not entirely been successful in the past. Courts historically have not taken full advantage of available alternatives to incarceration, and the public often demands that their elected officials – including judges – present a tough stance on crime by locking up offenders. The state would do better to spend money on things that it knows will address crime problems.

The state should not base a major criminal justice policy initiative in large part on the results from the small, short-term pilot project in Fort Bend County. The project has been underway only for about six months, and it is unclear whether the results could be duplicated statewide, especially given the diversity of the state and the large size of probation populations in some urban counties.

Other opponents say CSSB 1 would not go far enough in addressing the needs of Texas' underfunded and sometimes ineffective probation system. To meet the needs of probationers and to provide judges with adequate alternatives to probation, the state should fund closer to 4,000 residential substance abuse treatment beds – not the 500 contemplated by CSSB 1. Probation caseloads should be reduced to a ratio closer to 75 to 1, and the state should spend more money on specialized caseloads for special-needs offenders, such as those with mental illness. These funding increases need to be coupled with policy changes, such as shorter probation terms and early discharge from probation for offenders who are doing well.

The state should use caution in deciding to reduce the broad class of technical revocations. These can include serious violations such as failing a drug or alcohol test that properly merit a prison sentence following the revocation of probation.

Increasing funding for prison health care and psychiatric care

Agency: Texas Department of Criminal Justice (TDCJ)

Background

In 1993, the 73rd Legislature created the Correctional Managed Health Care Committee (CMHCC) and charged it with developing a managed health care system for prison inmates. TDCJ contracts through the committee with the University of Texas Medical Branch at Galveston (UTMB) and the Texas Tech University Health Sciences Center (TTUHSC) to provide the statewide managed care network. UTMB's contract covers about 119,000 of the state's approximately 150,000 inmates, and TTUHSC's contract covers the remainder. In January 2004, the universities took over the routine health care contracts for offenders housed in 10 of the state's private facilities.

Texas' correctional managed care program is similar to health maintenance organizations that operate in the open market. It includes a statewide network of providers and set rates for services, called capitation rates. Inmates have access to a full range of medical, dental, and psychiatric services. The system includes ambulatory care clinics at each prison unit, infirmaries at locations across the state, regional medical facilities operated by the two universities for inmates with more serious medical problems, specialty-care hospitals, and chronic care clinics for inmates with illnesses such as HIV, hepatitis, and diabetes. Both universities use telemedicine, which allows distant medical specialists to evaluate inmates without the need to transport them.

The federal court ruling in *Ruiz v. Johnson*, (cause number H-78-987) originally filed in 1972, found constitutional violations in several areas of Texas' prison system and instituted federal court oversight beginning in

1980. Among other changes, the court ordered the state to increase the availability of medical care for inmates. Federal court oversight ended in June 2002.

Inmate health care costs have been rising, and the most significant factors driving these costs, according to CMHCC, are an aging inmate population and changing standards of care for some diseases and disorders, especially hepatitis C. The number of offenders age 55 or older, some 8,000 inmates, represents about 4.9 percent of the total inmates in state facilities. In fiscal 2004, these inmates accounted for 21.2 percent of hospital billed charges and had an average of 3.5 onsite medical encounters per month while other inmates had an average of 1.2 encounters monthly, according to CMHCC. The elderly inmate population grew 22.8 percent from 2003 to 2005, according to the CMHCC.

About 19,000 inmates have hepatitis C, according to the CMHCC, and about 28.8 percent of new offenders committed to TDCJ test positive for hepatitis C, according to one study. The national average cost annually to treat hepatitis C is \$18,000 to \$34,000, according to one national study. For each inmate receiving treatment for hepatitis C, Texas spends an average of \$4,400 annually on drugs alone.

The CMHCC also reports an increase in the demand for services. Estimates from fiscal 2003 to fiscal 2005 show the number of hospital admissions at UTMB rising 13.5 percent, in-person clinic visits increasing 13.1 percent, and emergency room visits increasing 35.7 percent.

The CMHCC, through TDCJ's budget, requested about \$74.9 million more than the amount recommended in the LBB base budget, which would have been about the amount funded in fiscal 2004-05. The committee said the funds and amounts needed are:

- \$39.6 million for base funding adjustment to maintain current services;
- \$3.4 million for operating costs for the expansion of a secure medical facility in Lubbock;
- \$11.3 million for the increased needs of the aging inmate population;
- \$13.3 million for treating hepatitis C;

- \$2 million to replace major x-ray and imaging equipment;
- \$1.9 million to expand dialysis services;
- \$1 million to maintain current service levels at private facilities; and
- \$2.2 million for a study to analyze the outcomes of psychiatric drugs.

TDCJ Rider 80 would reduce the agency's managed care appropriation (Strategy C.1.8.) by \$1.6 million for fiscal 2006-07, contingent on the enactment of HB 1093 by Turner, or similar legislation, which would authorize certain sex offenders to be released on medically recommended intensive supervision. Also contingent on enactment of HB 1093, or similar legislation, the Department of Aging and Disability Services' general revenue appropriation for nursing facilities payments (Strategy A.6.1.) would increase by \$382,743 and its appropriation of federal funds for this strategy would increase by \$587,967 over the amount in CSSB 1.

CSSB 1 – \$50 million increase from fiscal 2004-05 in Article 11

CSSB 1 would appropriate \$687.5 million to TDCJ in fiscal 2006-07 for correctional managed care and psychiatric care under strategies C.1.7 and C.1.8, an increase of \$6.1 million above the fiscal 2004-05 level. This increase is for the costs of health care that the universities began providing in January 2004 for offenders in some private facilities. The supplemental appropriations bill, CSHB 10, would give TDCJ an additional \$31.8 million for managed care, bringing its total for fiscal 2004-05 to \$713.3 million. CSSB 1 places an additional \$50 million for needs identified by the CMHCC on the Article 11 list.

Supporters say the \$50 million increase in Article 11 would be adequate to provide a constitutional level of care for inmates. Although it would not fund the CMHCC's entire request, it would address the most important needs and be enough to avoid renewed costly litigation and the potential reimposition of federal oversight.

The funds in Article 11 would ensure that universities are adequately compensated through their contracts.

Without this increase in funding, continued operating losses by the universities could be managed only by reducing services that unacceptably could lower quality of care. A \$50 million increase would allow the CMHCC to adjust its base to maintain current services, to operate an addition to the secure medical facility in Lubbock, and adequately to address its needs for the aging population and hepatitis C management.

Of the \$50 million, \$39.6 million would go to meet the committee's top priority of adjusting its base level of funding so the universities could maintain the current level of medical services. This adjustment is necessary because the university providers say that, despite reductions in services and staff, they will spend about \$31.8 million more than they will earn in fiscal 2004-05 to provide the required level of health care.

This \$31.8 million shortfall is due mainly to a reduction in revenue, an increase in demand for services, and an increase in operating costs, according to the CMHCC. CSHB 10, the supplemental appropriations bill, would give TDCJ \$31.8 million to pay for this shortfall in the fiscal 2004-05 biennium, but CSSB 1 does not account for this increase in the funding for correctional managed care. Part of the Article 11 funding would be used to make this adjustment to the base for fiscal 2006-07.

The \$50 million in Article 11 also includes the \$3.4 million necessary to operate a completed 48-bed expansion of a medical facility in Lubbock. These beds are necessary to meet the need for a secure medical facility in the area. If the facility does not open, inmates will have to be transported to other facilities, increasing costs and raising security issues.

With the increase in funds proposed in Article 11, the providers could address some of the needs of the growing elderly population. The universities would be able to evaluate the needs of elderly offenders and target funds to the most important areas.

The Article 11 funds also would allow the providers to treat more inmates with hepatitis C and to change treatment protocols, if appropriate. Putting additional money into

hepatitis C treatments is necessary to help the state avoid violating the legal standard of deliberate indifference that often is applied in inmate health care. This standard questions whether the state knows it has a problem and whether it is ignoring it. With funding in CSSB 1, the state would not be ignoring the problem of hepatitis C.

Other proposals – \$74.9 million increase from fiscal 2004-05

Supporters say the state should provide an additional \$74.9 million for inmate health care to ensure that TDCJ maintains a constitutional prison health care system. The \$50 million in additional funds in Article 11 of CSSB 1 would not go far enough in addressing the state's inmate health care needs, and without adequate funding it may be difficult for the university providers to continue their contracts to provide inmate care. Because of the unique capabilities of the universities' health care systems – such as special pricing on prescription drugs – it is unlikely that another provider could deliver the same services to the state for less.

Needs that could go unmet without the full \$74.9 million in funding include the ability fully to keep pace with the projected increase in the population that must be treated for hepatitis C and the new standards of care for the disease. Currently, inmates who have tested positive for hepatitis C are monitored and treatments begin only when certain indicators are detected. Projections show that the population that should begin treatment will be increasing greatly in the next few years, and the state needs to provide enough money to address this population growth. In addition, recommended treatments for the disease are changing and could be more expensive than treatments currently being provided.

CSSB 1 also would not address the need to replace x-ray and imaging equipment. Much of this equipment is more than 20 years old and is difficult to maintain or repair. If older equipment is not replaced, inmates at some facilities will have to be transferred to other facilities when images are needed, and the universities could not take advantage of telemedicine that requires newer technology.

CSSB 1 would not fund the operating costs for an expansion of dialysis services. A Texas City facility providing dialysis services for women inmates has been opened to meet the demand for services, but without the requested funding the universities will have to operate the facility using funds that are needed for other health care priorities.

The \$50 million in Article 11 also would not fund an increase in the amount needed to provide the current level of medical services at private prisons or funding for the Texas Medical Algorithm Project, a study to examine the outcomes experienced with different types of psychiatric drugs.

Senate proposal – \$35 million increase from fiscal 2004-05

Supporters say an increase of \$35 million in the appropriation for inmate health care would be enough for the state to continue to provide a constitutional level of care and to cover the existing programs. The prison system has an obligation to show its share of fiscal restraint and inmate health care should not be exempt.

Pay raises for DPS peace officers and other schedule C employees

Agency: Texas Department of Public Safety (DPS)

Background

CSSB 1 includes pay raises and stipends for DPS schedule C employees (peace officers). DPS has 3,416 schedule C employees.

DPS requested \$107.3 million in fiscal 2006-07 to implement a pay raise and stipends for all commissioned (schedule C) and non-commissioned (schedules A and B) staff. The DPS proposal has two parts. First, DPS would create a \$5,000 salary disparity within each rank to address salary compression (which is the small difference in pay between officers at the bottom of a particular rank and those at the top of the same rank), and a \$6,000 disparity between each rank. Second, DPS would award two types of stipends for commissioned (schedule C) officers. The educational stipend would increase the monthly salary of those officers who hold associate degrees by \$100, bachelors degrees by \$200, and masters degrees by \$300. The Commission on Law Enforcement Officer Standards and Education certificate stipend would increase the monthly salary of those officers who hold intermediate certificates by \$100, advanced certificates by \$200, and masters certificates by \$300.

CSSB 1 – \$15.3 million increase from fiscal 2004-05 in Article 11

In Article 11, CSSB 1 would appropriate \$15.3 million in a lump sum to DPS for fiscal 2006-07 to implement a pay raise and stipends for all of its peace officers. DPS would work out the details of pay raises and stipends under CSSB 1 with the comptroller. Article 11 also would appropriate funds for non-DPS schedule C employees, including peace officers at TPWD, TABC, and TDCJ.

Senate proposal – \$62.3 million increase from fiscal 2004-05

The Senate proposal would appropriate \$62.3 million to DPS in fiscal 2006-07 to implement a pay raise and stipends for all DPS peace officers. The cost of the Senate proposal would be about \$47 million more than the cost of Article 11 of CSSB 1.

There are three stipends under the Senate proposal. The education stipend would provide an additional \$50 per month over base pay for an associate degree, \$100 for a bachelors degree, and \$150 for a masters degree. The Commission on Law Enforcement Officer Standards and Education certificate stipend would provide an additional \$50 per month for intermediate certificates, \$100 for advanced certificates, and \$150 for masters certificates. Finally, a bilingual stipend would provide an additional \$50 per month for those officers who speak a language in addition to English. Officers would be limited to receiving either the education stipend or the certificate stipend.

Rider 52 of the Senate proposal would require DPS to develop physical fitness and appearance standards that must be met by any commissioned officer before receiving a pay raise specifically authorized by the bill.

Supporters say the proposed pay raises and stipends are necessary to increase recruitment and retention among officers. DPS loses many officers – especially those in rural areas – each year to major Texas cities. These losses come after DPS has spent thousands of dollars to train these officers. In order for DPS to compete with city police departments, DPS must offer higher wages.

The current peace officer annual starting salary is \$1,482 below the state average for city police departments, and the maximum annual salary is \$17,368 below the state average for city police departments. DPS officers receive no incentive pay except overtime pay. The pay raises and stipends proposed by DPS were determined by analyzing the pay of law enforcement agencies in Austin, Dallas, Fort Worth, Houston, and San Antonio. The pay raises and stipends are intended to enable DPS to compete with Texas cities.

Many of DPS's recruitment and retention problems are exacerbated by the fact that DPS officers generally work in rural areas, so officers often must relocate to begin work. Because of a lack of officers in rural areas, there is inadequate backup and immediate help from supervisors. DPS officers are "on-call" employees and are not additionally compensated for times when they are called into work. There also are limited employment opportunities in rural areas for families of officers.

As a result of these factors, the number of well qualified applicants has decreased while the number of recruits needed has increased. The increased funding would help

DPS reverse these trends. Higher starting salaries would bring the pay of officers closer to the statewide average. By increasing the salary disparity *within* each rank, DPS officers would have greater incentives for advancement. By increasing the salary disparity *between* each rank, DPS intends to reward officers who stay for longer periods. DPS testified that these pay raises and stipends are its top budgetary priority this biennium.

Opponents say every state agency experiences problems with high employee turnover, and the situation at DPS is no more severe than at other agencies.

Article 6 Overview

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

Natural resource agencies are funded largely by general revenue and general revenue-dedicated funds. Some, like TCEQ, are funded mainly by fees, while TDA is supported primarily by general revenue. However, for fiscal 2006-07, federal funds would account for approximately 13 percent of all Article 6 funds and at least 10 percent of the budget for all agencies except for GLO and the river compact commissions.

The Senate proposal would spend \$2.3 billion in all funds for fiscal 2006-07 under Article 6, a 1.6 percent decrease from fiscal 2004-05 levels and \$66 million more than funding recommended in CSSB 1.

Budget highlights

CSSB 1 proposes to spend about \$2.2 billion in all funds for Article 6 agencies in fiscal 2006-07, 4.4 percent less than in fiscal 2004-05. General revenue-related spending would total nearly 1.6 billion, a 3.7 percent decrease from fiscal 2004-05.

Coastal erosion control. CSSB 1 would appropriate \$29 million in general revenue-related funds in fiscal 2006-07 for coastal erosion control projects, contingent on enactment of legislation to establish a dedicated funding source for such projects. This amount would maintain existing operations of the coastal erosion program.

In fiscal 2004-05, coastal erosion control, a trustee program within the GLO, received a total of \$38.4 million in all funds. Even with the contingent appropriation, the fiscal 2006-07 appropriation in CSSB 1 would be \$9.4 million less than funds appropriated in fiscal 2004-05.

The Senate proposal would appropriate \$48 million in general revenue-related funds to the GLO coastal erosion control grant program, an amount that also

Article 6 spending comparisons

(millions of dollars)

| Type of funds | Expended/budgeted 2004-05 | Recommended CSSB 1 | Biennial change | Percent change |
|-------------------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue-related | \$1,643.9 | \$1,582.7 | \$(61.2) | (3.7)% |
| Federal | 320.5 | 280.1 | (40.4) | (12.6)% |
| Other | 358.9 | 357.6 | (1.3) | (0.4)% |
| All funds | 2,323.3 | 2,220.4 | (102.9) | (4.4)% |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

would be contingent on a dedicated revenue source. This additional appropriation would aid in drawing down federal matching funds for the program.

HB 2417 by Chisum would authorize the Legislature to appropriate money from the Coastal Erosion Fund in excess of interest for erosion response projects.

Various bills have been filed to raise money under the contingency rider, including:

- HB 3128 by Eiland, which would impose various charges, including a coastal property transaction fee, a surcharge on coastal windstorm insurance, a tax on coastal hotel and rental properties, and fees on fuels and oils, among other fees;
- HB 3248 by Ritter, which would impose similar fees, as well as others such as a fee on tickets for certain commercial passenger boat trips; and
- HB 3252 by Ritter, which would impose a fee on beverage containers.

Feral hog containment. CSSB 1 would appropriate \$500,000 to TDA for feral hog abatement as an Article 11 item as funds became available. The Senate proposal would fund this pilot program directly in the agency's budget. This appropriation would fund an interagency contract with the Texas Cooperative Extension, a Texas A&M University System service agency, to develop a pilot program in four geographic areas that would apply legal control methods such as trapping to reduce the feral hog population.

Supporters of a pilot program argue that feral hogs are a large and growing problem in Texas, and the state should investigate methods to address what has become an epidemic in many rural parts of the state. Feral hogs root up seed, devour plants, crush quail eggs, attack baby lambs, and tear down fences, destroying livelihoods and damaging agricultural output in the process. The state has never dedicated any funds to such a problem, and a

modest pilot program would allow TDA to identify the most cost-effective containment strategies that could be employed in the future.

Regional water planning. CSSB 1 would appropriate about \$6.7 million to TWDB for regional water planning. TWDB's role in producing the state and regional water plans was initiated under SB 1 by Brown, 75th Legislature, in 1997. According to the agency, this planning process provides for the orderly development, management, and conservation of the state's water resources with the goal of securing the state's water needs for an expanding population. The Senate proposal includes \$8.3 million in all funds for regional water planning, which would partially restore a reduction in this program in fiscal 2004-05.

Supporters of additional funding argue that underfunding the state's water planning efforts could hinder the security of Texas water resources in the face of a growing population. The water planning process is conducted on a five-year schedule, and the state could risk falling behind schedule without additional support for this strategy.

Water resource management account. CSSB 1 adopts the LBB recommendation to replace \$38 million in general revenue and \$2 million in federal funds with \$40 million in funds from the Water Resource Management Account (Fund 153) to fund TCEQ's water programs, including the Dam Safety and Water Quality programs, through the fiscal 2006-07 biennium.

Supporters say this transfer of funding sources would free up \$38 million in general revenue-related funds and utilize an unexpended fund balance in Fund 153. According to the agency, the \$2 million in earned federal funds are not restricted for use on water programs and would be redirected elsewhere in the budget. However, opponents warn that the unexpended balance in the Water Resource Management Account is not sufficient to finance the agency's water programs for the long term. The fund balance in the Water Resource Management Account would deplete during the

fiscal 2008-09 biennium, potentially leaving the agency's water programs without a funding source. At that point, the agency either would need to increase fees or make substantial programmatic cuts in order to sustain the water programs, barring the subsequent appropriation of general revenue by future legislatures. Fee increases would affect any entity with a wastewater treatment plant, primarily industries and municipalities.

Local park grants

Agency: Texas Parks and Wildlife Department

Background

The Texas Parks and Wildlife Department (TPWD) makes grants to local governments from the Texas Recreation and Parks Account (TRPA) 467 to cover half the costs of developing local parks or recreational or open-space areas. The primary source of funding for TRPA, a dedicated account in general revenue, comes from sales taxes on the sale, storage, or use of sporting goods. The uses of this account are matching grants for planning, acquisition, or development of local parks and grants for recreation, conservation, or education programs for underserved populations. A portion also may be used to fund indoor recreational facility grants.

There is a statutory cap on the amount the state can allocate from sporting goods sales tax revenues to TPWD. Because of the way these funds are divided among TPWD accounts, the most TRPA could receive from sporting goods sales tax revenue in a biennium is \$31 million. In addition to TRPA funding, the Local Parks Grants strategy (B.2.1) also is funded with federal dollars. President Bush's 2006 proposed budget recommends elimination of federal funds for local park grants.

CSSB 1 and Senate proposal – \$10.4 million decrease from fiscal 2004-05

Both CSSB 1 and the Senate proposal would appropriate \$19.8 million in all funds to this program, which is a reduction of about \$10.4 million or 35 percent from fiscal 2004-05 levels. When faced with proposing a budget for fiscal 2006-07 that was lower than the fiscal 2004-05 budget, TPWD proposed achieving most of its budget reduction from the Local Park Grants strategy, since few of the agency's other programs involve general revenue.

Under both CSSB 1 and the Senate proposal, only \$9.34 million of the \$31 million from the sporting goods sales tax deposited into TRPA would be appropriated for this strategy. An additional \$1.12 million from TRPA would be appropriated for the Boating Access strategy (B.2.2), bringing the total sporting goods sales tax revenue to \$10.46 million. The balance for the Local Park Grants strategy includes \$9.6 million in federal funds and \$865,000 in other TRPA balances.

At the \$19.8 million funding level, TPWD could award about 94 grants during fiscal 2006-07. If the \$9.6 million in federal funds were eliminated from the \$19.8 million all-funds appropriation, however, only \$10.2 million in state funds would remain for the local parks initiative, compared to the \$30.2 million in all funds that was appropriated in fiscal 2004-05.

The Senate proposal contains a provision in Article 9, sec. 13.17, to dedicate up to \$3 million from the local parks initiative to a single project – a community-operated world birding center on South Padre Island.

Supporters say that although local park grants have been popular, continuing the grants at the fiscal 2004-05 funding level would take needed general revenue away from higher priorities. Local governments should bear the primary responsibility for local parks. Even though the state likely will receive \$31 million in sporting goods sales tax revenue, and even though this money can be deposited into the TPRA, the Legislature should not appropriate the entire \$31 million when other programs need this funding.

Opponents say that with continuing urban and suburban development, the state needs to devote more money to protect open spaces and help maintain and develop local recreational areas for the majority of its citizens. As the costs of land, services, and materials increase, city and county funds are stretched too thin to meet the recreational needs of their populations in metropolitan or small community areas. The local park grants are necessary to help fulfill these needs.

The Local Park Grants program has a dedicated funding stream, because the comptroller continues to transfer the \$31 million per biennium required by statute from the sporting goods sales tax into the TRPA. The funds should be used for their designated purpose.

If federal funds fell through and the Senate proposal prevailed, then a single project could gain up to 29 percent of the \$10.2 million appropriated for local park grants. This greatly would limit the number of local parks that could be served by this appropriation.

Funding for state parks projects

Agency: Texas Parks and Wildlife Department

Background

The State Parks Division of the Texas Parks and Wildlife Department (TPWD) is responsible for overseeing more than 630,000 acres of land, including 119 state parks, historic sites and natural areas. State parks represent the largest budget function at TPWD, with almost 30 percent of the agency's budget in fiscal 2005 allocated for state parks. State park operations are funded through TPWD strategy B.1.1, which includes operation of existing state parks, historic sites, and natural areas.

The primary revenue sources that support state parks are park entrance fees, the sporting goods sales tax, and bond revenue. The 77th Legislature in 2001 authorized, and voters approved, via Proposition 8, \$101.5 million in new general obligation bond authority for critical repairs and improvements at state parks, wildlife management areas, and hatcheries. TPWD received the first bond appropriation of \$36.7 million during fiscal 2002-03. No bond appropriations were made for fiscal 2004-05.

For fiscal 2006-07, TPWD requested additional support for a variety of projects that would require various methods of financing, including bond funding.

CSSB 1 – \$18.1 million, plus \$2.1 million in supplemental appropriations

CSSB 1 would appropriate \$18.1 million in Prop. 8 bonds for critical repairs at TPWD facilities such as state parks. CSHB 10, the supplemental appropriations bill, would appropriate \$2.1 million in general revenue for fire safety repairs on the observation deck of the San Jacinto Monument.

Senate proposal – \$27 million

The Senate proposal recommends \$27 million in funding for the following state parks related projects:

- Critical repairs at TPWD facilities such as state parks including utility and building repairs – \$18.1 million in Prop. 8 bonds.
- Levi Jordan Plantation major development project – \$0.9 million in Prop. 8 bonds.
- Admiral Nimitz Museum repairs – \$0.8 million in Prop. 8 bonds.
- Fire safety repairs at the observation deck of the San Jacinto Monument – \$2.1 million in Prop. 8 bonds.
- Maintenance of funding for state park operations at fiscal 2004-05 levels, including support for park services and hours of operation – \$5.1 million.

Supporters say funding in CSSB 1 would pay for some of the most important priorities. Making critical repairs is an important part of keeping state parks healthy. For example, the San Jacinto Monument, a unique tribute to the decisive battle of the Texas Revolution, is in dire need of fire safety upgrades that are essential to the continued popularity and vitality of this visitor destination. Voters approved the bonding funding method for these critical repairs years ago. TPWD is entitled to receive another \$64.8 million in bond funds, and CSSB 1 and CSHB 10 would appropriate only another \$20.2 million for state parks projects. Certainly the state can afford this portion of TPWD projects that the voters agreed to finance.

Supporters of the Senate proposal say that Texas state parks are chronically under funded. While Texas ranks fourth nationally in state park acreage, it ranks 49th in per capita spending on parks. This lack of spending creates problems for a growing and aging state park system, which

include aging vehicles, reduced hours of operation, reduced maintenance, aging monuments, and reduced numbers of park wardens. If funding is not appropriated now to provide critical aid to parks, the problems will multiply and may become too expensive to solve in the future.

State parks provide a good return on investment for Texas and attract visitors from out of state. State parks attracted 8.2 million non-local visitors and increased sales in the local communities by \$792 million. If these destinations are not funded, Texas could lose tourism dollars.

Opponents say that while state parks are nice to have, it would not be prudent to fund special parks projects considering other priority needs. As an alternative to requesting additional funds, state parks should attempt to become more self-sufficient by enhancing revenue streams through such strategies as raising entrance fees.

Complying with federal air quality standards

Agency: Texas Commission on Environmental Quality (TCEQ)

Background

The Texas Emissions Reduction Plan (TERP) was established in 2001 (SB 5 by Brown, 77th Legislature) to pay for incentive-based compliance with federal air-quality standards through fees and surcharges. To replace TERP's primary funding stream – an out-of-state-vehicle inspection fee invalidated by a 2002 court decision – the 78th Legislature in 2003 created or expanded various fees by which the program is funded, including a fee on vehicle title certificates, surcharges on the purchase and lease of construction equipment, and a surcharge for diesel vehicles manufactured in 1997 or later. According to the LBB, revenues in the TERP account are projected to increase from \$143 million in fiscal 2004 to an estimated \$158 million in fiscal 2007.

TCEQ has requested \$56 million in additional funding for programs to improve air quality in Texas cities and to ensure compliance with U.S. Environmental Protection Agency (EPA) mandates. This request includes:

- \$51 million in additional funding for compliance efforts under the Texas Emissions Reduction Plan (TERP)
- \$5 million for Texas Air Quality Study II (TexAQS II)

The \$51 million for TERP is a request for additional funding beyond the LBB's recommended level for the fiscal 2006-07 biennium and would appropriate all revenues deposited to the TERP fund (Fund 5071). The \$5 million for TexAQS II is a request for funds from the Clean Air Account (Fund 151).

CSSB 1 – \$51.7 million increase for TERP in Article 11

CSSB 1 would appropriate \$51.7 million for additional TERP funding as an Article 11 item, slightly higher than the original request. These funds would begin the process of bringing the Houston/Galveston/ Brazoria and Dallas/ Fort Worth areas into compliance with the new eight-hour federal Clean Air Act ozone standards when they take effect in 2007 and make similar improvements in other affected counties. The \$51.7 million in additional TERP funding would aid Texas in the development of an eight-hour State Implementation Plan (SIP), which is due to be submitted to the EPA by June 2007. CSSB 1 included this item in Article 11 and would fund it contingent on additional revenue becoming available. The Senate proposal does not include this additional funding.

Supporters of increased funding for TERP say that additional resources are necessary to ensure compliance with the eight-hour EPA ozone standards. These standards will affect a much larger portion of the state than the current one-hour air quality standards, including Austin, Beaumont/Port Arthur, Corpus Christi/Victoria, Dallas/Fort Worth, Houston/Galveston/Brazoria, San Antonio, and Tyler/Longview. The \$51.7 million would be used to support two TERP grant programs – reductions in nitrous oxide emissions and New Technology Research and Development (NTRD). TCEQ estimates that the \$51.7 million would provide additional reductions in nitrous oxide emissions of 5.02 tons per day. The funds would allow the NTRD program to provide additional grants for research and development, which would support the development of advanced engine and retrofit technologies and increased building and appliance efficiencies.

By providing additional funding for TERP in advance of the eight-hour ozone standard deadline, the amount of reductions required later could be reduced significantly. Currently, a number of control measures are being evaluated for inclusion in the eight-hour SIP, including: a

ban on idling at airport terminals, reductions in emissions from industries, an additional requirement for engines at oil and gas facilities, an adoption of California's more stringent consumer product rules, truck stop electrification, and restrictions on the use of lawn care equipment. The appropriation of \$51.7 million additional dollars to TERP could reduce the amount of emission reductions required by such measures in the SIP. Compliance with the federal Clean Air Act is linked to certain federal funds that the state receives. If Texas fails to comply with EPA standards on air quality, the federal government reserves the right to deny Texas much needed highway funding.

Opponents say that TERP already is receiving adequate funding to ensure compliance with Clean Air Act standards.

Senate proposal – \$5 million for TexAQS II

The Senate would appropriate \$5 million to TCEQ for TexAQS II from the Clean Air Account (Fund 151) under Strategy A.1.1. The data obtained from TexAQS II would be used to help bring Texas into compliance with the eight-hour ozone standards. CSSB 1 would not fund TexAQS II.

Supporters of TexAQS II say the study would help Texas develop more efficient and cost-effective air quality management strategies to incorporate into the SIP, including addressing uncertainties concerning pollution transported into Texas versus pollution that is produced internally. Data collected also would improve TCEQ's ability to accurately estimate meteorological conditions present during ozone episodes that could be applied to TCEQ's existing modeling episodes. The study would draw upon the expertise of more than 200 experts around the nation from universities, state and federal agencies, environmental organizations, and private industry.

Funding for water infrastructure in economically distressed areas

Agency: Texas Water Development Board (TWDB)

Background

In 1989, the Legislature enacted SB 2 by Santiesteban, which established the Economically Distressed Areas Program (EDAP) to be administered by TWDB. EDAP provides financial assistance in the form of grants, loans, or grant/loan combinations to bring water and wastewater services to *colonias*, primarily along the Texas/Mexico border. The program funds construction, acquisitions, and improvements to water supply and wastewater collection and treatment facilities, including all necessary engineering work. Maintenance and operations must be funded by the applicant. All political subdivisions in affected counties are eligible to apply.

Under the program, an economically distressed area is defined as an area where there was an established residential subdivision on June 1, 1989, that has inadequate water supply or wastewater systems and lacks the financial resources to improve those systems. EDAP projects must be located in economically distressed areas within affected counties. Affected counties are defined as those next to an international border or those with a per capita income at least 25 percent below the state average and an unemployment level at least 25 percent above the state average. Thirty-four counties were eligible to participate in the program as of September 2004.

In fiscal 2004-05, TWDB received \$2.7 million to administer EDAP (strategy B.1.2). Debt service payments for EDAP under TWDB Non-Self Supporting G.O. Water Bonds (strategy A.1.1) totaled \$29.5 million.

CSSB 1 – \$25 million in bonds, \$4 million in general revenue-related funds

CSSB 1 would authorize issuance of \$25 million in EDAP general obligation bonds. These bonds would be supported by about \$4 million in additional general revenue for debt service.

Supporters of increased EDAP funding say that many *colonia* residents continue to lack water and wastewater infrastructure, and these funds would help meet those needs. Without additional funding, many residents of unincorporated and economically distressed areas will be forced to continue to live in communities lacking the most basic infrastructure that most Texans take for granted. The constitutional authority for this \$25 million in bonds already exists, and the Legislature should apply these funds to this important purpose.

Opponents of CSSB 1 point to the \$77 million worth of water and wastewater projects to which TWDB has committed yet is unable to fund due to increasing construction costs. Without full funding of these projects, about 15,000 residents in economically distressed areas will not have adequate water and wastewater service. To meet the needs of *colonia* residents, new funding should be made available. SJR 27 and SB 964 by Lucio, which have been referred to the Senate Intergovernmental Relations Committee, would satisfy this purpose by authorizing \$500 million in new bonding authority and imposing a fee on water and wastewater users to pay for the program.

Other opponents say that the EDAP program should be allowed to sunset. Since EDAP was created in 1989, TWDB has received \$542 million in state and federal funds to provide assistance under the program. Continuing to extend water lines to unincorporated areas could prove counterproductive, since it effectively encourages people to move into the regions that are

costly to serve. The state should search for other ways to address the *colonia* problem, such as expanding grants and tax credits for low-income housing or providing counties with the authority to regulate and develop unincorporated areas.

Senate proposal – \$25 million in general revenue-related funds in Article 11

The Senate proposal also would provide \$25 million for EDAP. However, the Senate would fund this proposal with general revenue as an Article 11 item. Supporters say providing \$25 million in general revenue this biennium would leave an additional \$25 million in bonding authority for future projects that would be available without the need for additional constitutional authorization.

Article 7 Overview

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

The House Appropriations Committee in CSSB 1 proposes to spend \$18.6 billion for fiscal 2006-07 under Article 7, about 13.5 percent of the total state budget. Overall funding for these agencies would increase by \$2.9 billion, or about 18.4 percent above the current level. General revenue-related funding would decline by \$22.1 million, or 3.2 percent.

The Senate proposal would appropriate \$18.6 billion in all funds for fiscal 2006-07 under Article 7.

Federal funds account for about 50 percent of appropriations for Article 7 as a whole. Most of the federal funds are appropriated to TxDOT for highway programs, but federal funding also accounts for a significant portion of the budgets of TWC, TDHCA, and ORCA. Another 45 percent of Article 7 spending comes from “other” funds, including funds for TxDOT, TWC and TDHCA.

Budget highlights

Texas Department of Transportation. TxDOT is funded largely through dedicated accounts and federal funds, with general revenue-related funds accounting for only about 4 percent of the agency’s total budget. Approximately half of TxDOT’s budget consists of funds received from the federal government. TxDOT also is financed largely by revenue collected from the state’s 20-cent per gallon tax on gasoline, which is deposited into the State Highway Fund (Fund 6).

The enactment by the 78th Legislature of HB 3588 by Krusee marked the end of the “pay-as-you-go” method of financing highways in Texas. HB 3588 gave TxDOT the authority to issue bonds, create extensive toll projects to repay such bonds, and establish Regional Mobility Authorities (RMAs) to help plan and implement toll projects around the state.

The overall TxDOT budget would increase by approximately \$2.9 billion, or 24 percent, from \$12.2 billion in fiscal 2004-05 to \$15.1 billion for fiscal 2006-07. The overall budget increase consists of \$1.5 billion from the Texas Mobility Fund, \$250 million from the State Highway

Article 7 spending comparisons

(millions of dollars)

| Type of funds | Expended/budgeted 2004-05 | Recommended CSSB 1 | Biennial change | Percent change |
|-------------------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue-related | \$683.2 | \$661.1 | \$(22.1) | (3.2)% |
| Federal | 8,353.0 | 9,458.2 | 1,105.3 | 13.2 |
| Other | 6,647.0 | 8,444.4 | 1,797.4 | 27.0 |
| All funds | 15,683.2 | 18,563.8 | 2,880.6 | 18.4 |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

Fund (Fund 6), and \$1.1 billion in federal reimbursements. According to TxDOT, the majority of this budget increase would be used to fund highway construction, maintenance, and design, as well as right-of-way acquisition.

Aircraft Pooling Board. TxDOT rider 32 would place the Aircraft Pooling Board's (APB) assets on the market to be sold. In 2003, Gov. Perry vetoed a \$7.4 million appropriation to the APB, effectively eliminating the agency. The APB possesses a number of assets, including 11 aircraft, which would be sold under CSSB 1 in order to generate additional revenue for the state. Preliminary estimates suggest that the sale of the airplanes alone could bring in at least \$13.9 million, of which \$2 million would be used to pay off the board's debt.

Supporters of abolishing the APB say the state could avoid future maintenance costs by using private charter services. Sale of the APB's assets would net almost \$14 million, more than enough to pay off the \$2 million in the board's debt service obligations. Shutting down the agency would save more than \$1 million per biennium in ongoing costs. Maintaining an aging fleet of aircraft would increase service costs and safety risks in the future.

Supporters of keeping the APB say aircraft pooling is the safest and most economical way to provide aircraft services to state agencies. Any initial savings from abolishing the APB would be offset by higher costs that state agencies would have to pay under contracts with private companies. Spending additional funds to replace the APB's fleet would reduce the agency's long-term costs, as new aircraft are less costly to maintain and yield a lower ratio of maintenance cost to revenue generated. A fleet upgrade also would address safety concerns regarding the aging fleet.

Project RIO. Project Reintegration of Offenders (Project RIO) is a statewide employment referral program designed to reintegrate ex-offenders and adjudicated youth into the labor force. It is a collaborative partnership among three state agencies: the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission (TYC), and the Texas Workforce Commission (TWC). Post-release Project RIO services are provided through the TWC.

TWC employment and training services for Project RIO participants may include such activities as: job readiness training; job referral; placement services; agency referral for food stamp assistance; and referral to job training services.

CSSB 1 would appropriate \$12.9 million to Project RIO for fiscal 2006-07, about \$3.5 million, or 21 percent, less than the funding level in fiscal 2004-05. Supporters say that while this proposed funding is less than the amount received in fiscal 2004-05, it is enough to make Project RIO work. The amount saved from programs that formerly helped fund the project, such as TANF, would be better spent elsewhere. In addition, \$2.8 million in federal funds that the state appropriated for this project last biennium is not available for this strategy. TDCJ administers a variety of rehabilitation and reentry programs that should be sufficient to take care of prisoners' reintegration needs.

The Senate proposal would appropriate \$16 million to Project RIO for fiscal 2006-07, approximately \$372,000 less than the funding level in fiscal 2004-05. This total would include about \$3 million requested by TWC above the \$13 million appropriated in the LBB base budget. The Senate would allocate this additional money by reducing the Skills Development Fund appropriation for fiscal 2006-07 by \$10.2 million and applying these funds to other programs, including \$3 million for Project RIO. SB 1177 by Staples, if enacted, would restore the Skills Development Fund by transferring to it the entire remaining balance – \$10.2 million – of the Smart Jobs Holding Fund.

Supporters say that it is important to maintain Project RIO's level of funding from fiscal 2004-05. This program positively affects public safety and the Texas economy and ultimately will result in reduced recidivism. According to a Criminal Justice Policy Council report in 2000, adult releasees who were employed had a 17 percent lower recidivism rate than those not employed. These figures prove that Project RIO helps reduce the state recidivism rate, therefore saving the state incarceration costs for those who might have been repeat offenders.

Funding for At-Risk Child Care

Agency: Texas Workforce Commission (TWC)

Background

The Texas Workforce Commission (TWC) subsidizes child-care costs for some low-income families so parents can work or attend training or educational classes. Parents who are classified as at-risk of receiving public assistance, and who are not eligible for two income-based TWC child care options through Temporary Assistance to Needy Families (TANF), may receive funding. TANF is a federal welfare block grant program enacted in 1996 that focuses on moving recipients into employment while providing time-limited assistance. TWC administers TANF child care programs in Texas. In awarding child-care funds, TWC must give priority to current and recent TANF recipients before serving at-risk families.

**CSSB 1 –
\$77.1 million reduction from fiscal 2004-05
\$12.3 million in Article 11
\$17 million in Article 11**

CSSB 1 would appropriate \$331.3 million to At-Risk Child Care (Strategy A.3.3) for fiscal 2006-07, \$77.1 million, or 19 percent, less than funding for fiscal 2004-05. This appropriation represents an increase of \$10.4 million in general revenue funds but a decrease of \$87.4 million in federal and other funds. CSSB 1 also includes two general revenue recommendations for At-Risk Child Care in Article 11, one that would appropriate \$4.2 million and draw down an additional \$8.1 million in federal funds and one that would appropriate \$5.8 million and draw down \$11.2 million in federal funds.

Supporters say that although this proposed funding is less than the program received in fiscal 2004-05, it still would be enough to make the project work. While child care for at-risk families is an important priority, the state has too many other immediate needs in areas such as education and health care to justify any additional spending in this area.

**Senate proposal –
\$57.1 million reduction from fiscal 2004-05**

The Senate proposal would appropriate \$351.3 million to At-Risk Child Care for fiscal 2006-07, which is \$57.1 million, or 14 percent, less than funding for fiscal 2004-05. This appropriation represents \$19.9 million more than the amount in CSSB 1, of which \$6.8 million would come from general revenue. The Senate would allocate this additional money by reducing the Skills Development Fund appropriation for fiscal 2006-07 by \$10.2 million and applying these funds to other programs, including \$6.8 million for at-risk child care. SB 1177 by Staples, if enacted, would restore the Skills Development Fund by transferring to it the entire remaining balance – \$10.2 million – of the Smart Jobs Holding Fund.

Supporters say that the state should fund at least the amount proposed by the Senate to support this valuable program. The additional \$19.9 million would allow the restoration of child-care services to about 2,300 children that would have been cut from the program under the LBB base budget.

Opponents say that even the Senate proposal is insufficient to fund at-risk child care services adequately. Thousands of children are on waiting lists for these services across the state. Failure to provide child care for these at-risk families could lead to increased TANF caseloads.

Funding for skills development

Agency: Texas Workforce Commission (TWC)

Background

The Skills Development Fund (SDF), administered by TWC, assists businesses and labor unions by creating job training programs in partnership with public community and technical colleges. Under such programs, a business or consortium of businesses works with a community or technical college to develop customized skills training for the business's workforce. SDF grants fund the program, the college administers the grant and the training, and the partner businesses guarantee jobs for graduates.

CSSB 1 – \$4.3 million reduction from fiscal 2004-05 \$19.1 million in Article 11

CSSB 1 would appropriate to the Skills Development Fund (Strategy A.2.1) \$20 million for fiscal 2006-07, about \$4.3 million, or 18 percent, less than the funding level in fiscal 2004-05. An additional \$19.1 million appears in Article 11.

Supporters say that this funding would continue to maintain the program and provide skills development services for 18,000 people over the course of fiscal 2006-07.

Opponents say that decreasing funding levels will not allow TWC to serve as many workers and businesses as in previous years, which could be detrimental to the Texas economy.

Senate proposal - \$14.5 million reduction from fiscal 2004-05

The Senate proposal would appropriate to the Skills Development Fund \$9.9 million for fiscal 2006-07, about \$14.5 million, or 40 percent, less than the funding level in fiscal 2004-05.

Supporters say this proposal, coupled with pending legislation, would be a prudent way to provide funding for the skills development program without over-committing general revenue funds. The state can afford to commit only about \$9.9 million in general revenue funds to the Skills Development Fund. Although this program is important, the extra funds can come from other sources, such as the unemployment compensation trust fund or employers.

Opponents say this level of funding is not adequate to keep the program effective. Other legislation may or may not provide the additional funding necessary to keep the Texas workforce highly trained and competitive.

Governor's proposal – \$29.3 million increase from fiscal 2004-05

The governor's budget proposed appropriating an additional \$29.3 million in general revenue to increase the Skills Development Fund appropriation to \$49.3 million for fiscal 2006-2007.

Supporters say the Skills Development Fund has provided a strong incentive for employers to expand their companies or relocate to Texas, which has helped improve the economic condition of the state and for all Texans. Since the inception of the Skills Development Fund in 1996, more than 139,000 workers have received customized job training services for nearly 2,500 businesses in Texas. The proposed funding increase would train more than 25,000 additional trainees over the course of the biennium.

Opponents say the state can not afford to dedicate this amount to the skills development program. Other proposals would supplement the skills development program with non-general revenue funds.

Other proposals

TWC requested \$29.3 million in additional Skills Development funds for a total funding level of \$49.3 million for fiscal 2006-07. TWC proposed that \$10.2 million of the requested funding come from the entire remaining balance in the Smart Jobs Holding Fund (fund 5069).

Supporters say the mission of Smart Jobs was job training, but the program ended in 2000 in the wake of an accounting scandal that prompted lawmakers to abolish its parent agency, Texas Department of Economic Development in 2003. Currently, a balance of \$10.2 million remains unobligated. Using these funds for the skills development program would be in keeping with the original mission of the Smart Jobs fund.

Opponents say the \$10.2 million would be better spent on other budget priorities.

SB 1177 by Staples would create an account to fund the TWC skills development program. A portion of the unemployment insurance tax collected from employers would be allocated to this fund. An appropriation contingent upon the enactment of SB 1177 is part of the TWC bill pattern in the form of TWC Senate Rider 32. This rider designates the appropriation of \$10.2 million, which represents the balance from the Smart Jobs fund, for the purpose of the TWC skills development program for fiscal 2006-07. The enactment of SB 1177, combined with the funds proposed by the Senate, would result in a total appropriation of \$20.1 million for skills development, the same amount proposed in the LBB base bill.

Article 8 Overview

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

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

Fiscal 2006-07 funding for Article 8 as proposed in CSSB 1 would total \$697.8 million, less than 1 percent of the overall state budget, including \$679.3 million in general revenue-related funds. Overall funding would increase by almost 4.2 percent from fiscal 2004-05.

Budget highlights

The Article 8 budget no longer reflects more than \$12 million that was associated with the budgets of the Boards of Public Accountancy, Architectural Examiners, and Professional Engineers that now are involved in the Self-Directed, Semi-Independent Agency Program. The Board of Barber Examiners and the Cosmetology Commission also are not reflected because their funding and FTEs would be transferred to the Texas Department of Licensing and Regulation.

Regulatory agencies proposed decreasing their budgets by reducing FTEs and travel expenditures and deferring salary increases and capital expenditures. However, many agencies expressed concern that the proposed cuts would result in less oversight of licensees, potentially leading to more complaints by consumers. Agencies also projected increases in the time required to resolve complaints filed against licensees.

Another major concern expressed by Article 8 agencies are high turnover rates due to a lack of salary parity between agency employees and other professionals in the same fields. In particular, many executive directors have not had pay increases since 1999, and requests for salary

Article 8 spending comparisons (millions of dollars)

| Type of funds | Expended/budgeted 2004-05 | Recommended CSSB 1 | Biennial change | Percent change |
|-------------------------|------------------------------|-----------------------|--------------------|-------------------|
| General revenue-related | \$647.7 | \$679.3 | \$31.5 | 4.9% |
| Federal | 6.1 | 4.9 | (1.2) | (20.1) |
| Other | 15.6 | 13.6 | (2.0) | (13.1) |
| All funds | 669.5 | 697.8 | 28.2 | 4.2 |

Source: Legislative Budget Board, Summary of House Committee Substitute for Senate Bill 1, March 2005

increases for 17 of these officers appear in Article 11. Heavy workloads also contribute to turnover. Last session, many agencies received increased licensing responsibilities yet were required to maintain or reduce their total FTEs. In order to maintain FTEs, agencies have employed a number of tactics, including deferring capital improvements that in many cases already were past due in fiscal 2004-05.

Using System Benefit Fund dollars to draw federal Medicaid funds. The System Benefit Fund (SBF) was created by the Texas Electric Choice Act in 1999 and is administered by the Public Utility Commission (PUC). The majority of SBF disbursements are used for the low-income discount program, which is authorized to provide a discount of between 10 percent and 20 percent for federal food stamp or Medicaid recipients and customers whose income is at or below 125 percent of the federal poverty level. In addition it can be used for energy efficiency programs, customer education, and the school funding loss mechanism, a program that compensates the Texas Education Agency for the statewide net loss in the property values of electric generation facilities attributable to electric utility restructuring.

LBB's 2005 *Staff Performance Report* made recommendations regarding the use of SBF funds. The report projected that if the Utilities Code were amended to stipulate that medical assistance for low-income individuals was the first priority use of the System Benefit Fund, the funds could be used either to replace general revenue or to obtain up to \$616.2 million in federal Medicaid matching funds. The SBF provides the only funding for low-income citizens that currently does not leverage any federal matching dollars, and 58 percent of discount recipients already are Medicaid recipients. Use of SBF funds for Medicaid or any purpose other than those listed above would require a statutory change.

CSSB 1 would not use SBF funds for Medicaid. However, the Senate proposal would use \$34.6 million in excess of the comptroller's estimate for the SBF fund balance to draw down federal funds in the Medicaid program. CSSB 1 would continue funding for the low-income discount program with a total of \$146.4 million in appropriated funds for fiscal 2006-07, and an additional

\$19.6 million could be appropriated contingent on expansion of the competitive market. The PUC would draw an additional \$7.8 million in SBF funds for other programs. The Senate proposal would not fund the low-income discount program and would only use \$7.25 million in SBF funds for other PUC programs.

A number of bills filed this session, if enacted, would influence the use of SBF funds. Most would either expand the low-income discount for new populations or programs or stipulate the use of SBF funds for medical purposes for the needy. HB 554 by Turner would increase the pool of people eligible to receive the discount program and prevent use of the fund for purposes other than those outlined within the bill. HB 2468 by F. Brown would expand use of the fund for the Medical Assistance Program. Other bills propose using the fund to pay for discounts to individuals who are seriously ill or disabled.

Board of Nurse Examiners. HB 2208 by Allen, enacted by the 78th Legislature, authorized the Board of Nurse Examiners to conduct full DPS and FBI background checks on candidates for licensure. Since that time, background checks conducted upon the initial licensure of registered nurses (RNs) have uncovered criminal records in 11 percent of searches. However, due to funding restrictions, licensed vocational nurse (LVN) candidates did not receive the same checks. Data from surrounding states reflects that background checks conducted on LVNs have revealed criminal records at rates of between 13 percent and 17 percent. Among other criminal activities, background checks have revealed sexual offences and felony drug convictions.

CSSB 1 would fund background checks for all new licensees, including a new appropriation for LVN background checks. Because most nurses received their licenses prior to the enactment of HB 2208, the agency requested funds to conduct random checks over the next 10 years on all nurses that did not receive them upon licensure. CSSB 1 would approve funding to conduct the first 20 percent of these background checks. The total proposed funding for background checks, including 5 FTEs for administrative support, would cost \$2.9 million. These funds would be obtained through an increase in fees charged to nurses, including the \$39 cost of a background check.

Supporters say that the background checks will protect the safety of patients because the board will be able to identify nurses who may be more inclined to commit offenses against patients and medical institutions. However, some argue that the number of FTEs allotted is not sufficient. The checks will uncover more cases that will require investigation, and there will be additional administrative duties associated with taking and processing the thumbprints required for these background checks. Others argue that it would be imprudent to increase licensing fees at a time when medical facilities are attempting to reduce barriers to hiring qualified nurses. The burden of paying for background checks should fall on the employer, not the nurse.

Regulatory response riders. Contingency riders enable agencies that regulate segments of the financial services industry to spend additional revenue if warranted by changes in industry conditions. Because these agencies are self-leveling, they automatically raise any additional revenue required through fee increases. Spending pertaining to these riders is subject to approval by the governor and the LBB.

Funding and FTE caps in the fiscal 2006-07 budgets for the Department of Banking, Savings and Loan Department, and Credit Union Department reflect the continuation of those agencies' regulatory response riders at fiscal 2004-05 budgeted levels. Only one of these riders, that for mortgage broker regulation under the Savings and Loan Department, was implemented over the last biennium to fund an additional 15 FTEs for inspection of the mortgage broker industry.

TexasOnline. TexasOnline serves regulatory agencies through the provision of online registration, license renewal, financial transactions, and other e-government functions. Article 8 agencies are required to use TexasOnline services unless they obtain a waiver that is granted based upon agency size. Funding for TexasOnline is reflected in agency budgets as a passthrough line item that includes a \$5 fee assessed to the licensees of each agency. Under CSSB 1, TexasOnline funding would include a total of \$5.8 million for TexasOnline agency passthroughs.

Supporters say TexasOnline is a useful service that reduces costs and makes agency web-sites more consistent and user-friendly. Opponents say that \$5 fee is unfair because it is charged to licensees regardless of whether they use the service. Many agencies contend that they could realize greater cost savings by contracting independently for services or using internal staff members to maintain web services.

Office of Patient Protection. HB 2985 by Allen, enacted by the 78th Legislature, created the Office of Patient Protection (OPP) to represent the interests of consumers in matters before health licensing agencies. While the office is attached administratively to the Health Professions Council, it is governed by an independent executive committee. By serving as an ombudsman for consumer complaints at licensing agencies, the OPP helps consumers obtain information about the status of complaints and represents them in appeals on agency decisions.

While CSSB 1 would fund the OPP at \$1.25 million, an increase of nearly \$400,000 over fiscal 2004-05 spending, the Senate proposal would abolish the OPP by removing the funding for this program from the Health Professions Council budget. In addition, one FTE would transfer to the Health and Human Services Commission (HHSC) to act as an ombudsman for consumer complaints. Supporters of the Senate proposal contend that the OPP is unnecessary because it duplicates services provided by the HHSC. Supporters of CSSB 1 say consumers need an advocate to protect them if the health professions boards overrepresent the interests of the professions they regulate. Because the HHSC does not oversee any licensing of health professionals, it lacks the expertise and proper resources to meet the needs of consumers.

Transfer of barber and cosmetologist regulation

Agencies: Texas State Board of Barber Examiners, Texas Cosmetology Commission, Texas Department of Licensing and Regulation

Background

The Texas Cosmetology Commission (TCC) is responsible for the licensing of more than 220,000 cosmetologists and 22,000 students. The State Board of Barber Examiners (TSBBE) regulates more than 17,000 licensees and 30 barber schools. Due to the similarities between these professions, there has been debate over the past several sessions as to whether these agencies should be merged.

Both agencies currently are under review by the Sunset Advisory Commission and have undergone audits conducted by the State Auditor's Office (SAO). The SAO cited several issues, including alleged gross fiscal mismanagement on the part of the TCC. In light of findings that reflect a failure on the part of both agencies to properly carry out their regulatory duties, the Sunset commission recommended the transfer of authority over barber and cosmetologist licensing to the Texas Department of Licensing and Regulation (TDLR). TDLR currently regulates more than 220,000 licensees falling into 22 different professions. The Sunset commission estimates this transfer would provide a \$1.1 million savings in general-revenue related funds over fiscal 2006-07.

CSSB 1 - \$760,000 decrease from fiscal 2004-05 levels

CSHB 1 would follow the Sunset recommendation to place the regulatory duties previously performed by TCC and TSBBE under the authority of TDLR. The agencies' budgets would be zeroed out, and 49 FTEs and \$5.2 million would transfer to TDLR, creating a savings of \$760,000 over fiscal 2004-05 spending. The Senate proposal also would move the agencies to TDLR.

Supporters say TDLR is a highly efficient agency that quickly will resolve the operational deficiencies that exist in the TCC and the TSBBE. In the long term, the state will realize additional cost savings beyond the Sunset estimates because of the increased technological and operational expertise that TDLR affords. The ultimate mission of the agencies that regulate the licensing of barbers and cosmetologists is to ensure public safety, and this best can be done under the authority of a well managed agency such as TDLR.

Other proposals - \$0 change from fiscal 2004-05 levels

Supporters of TCC and TSBBE say they should remain independent agencies receiving the same or increased funding over fiscal 2004-05 estimated spending. Combining the two agencies under TDLR would jeopardize public health. Regardless of TDLR's intention to appropriately cross-train its investigators, these investigators will not possess the critical expertise learned through first-hand industry experience. Additionally, TDLR has no prior experience administering practical exams such as the one required for the 22,000 cosmetology students seeking to obtain their licenses.

Any regulatory failures on the part of TCC or TSBBE were due to the fact that for many years the agencies have not received funding sufficient to purchase much-needed technology or to hire enough staff to accommodate the large number of professionals they license. Decreased funding and FTEs under TDLR only would exacerbate these issues.

If TCC and TSBBE cannot remain independent, then they should be merged into a single agency and not housed under TDLR. The similarities between the professions would ease this transition, and the allied professions together could maintain an independent voice to advocate their needs. Adding 265,000 licensees to TDLR would double the agency's size, and it is not equipped to handle such a sudden burden. In addition to the administrative burden on TDLR, barbers and cosmetologists would not be fairly represented if they each had one voice on a super-board that governed the operations of 24 licensing areas in total.

Article 9 Overview

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

- employee salaries and benefits;
- travel;
- capital budgets;
- per-diem payments;
- contract workers;
- publications; and
- information resource projects.

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

CSHB 1 would delete from Article 9 many provisions of past budget acts that the 78th Legislature codified in statute. It also would conform riders to actions taken by the 78th Legislature after the enactment of the general appropriations act for fiscal 2004-05. The Senate proposal for Article 9 includes provisions for state employee and peace officer pay raises.

Major provisions

Tobacco-settlement funds. An informational rider (Art. 9, sec. 10.0) lists tobacco-settlement appropriations and distributions from the permanent funds and endowments.

For fiscal 2006-07, CSHB 1 would appropriate slightly more than \$1.1 billion in tobacco funds, about the same as in fiscal 2004-05. CSSB 1 would place no additional money in the permanent trust funds or endowment funds. Interest from the trust funds and endowments would be appropriated for their stated purposes, as noted in the method-of-finance section for each agency.

Travel compensation. CSSB 1 would amend the state reimbursement rate in sec. 5.04 for use of an employee's personal or leased vehicle to match the rate set by the Internal Revenue Service under federal income tax regulations, as opposed to a fixed rate as in previous biennia.

Notice to LBB of contracts. Sec. 7.05 would require a state government entity that entered into a series of contracts that add up to more than \$500,000 per fiscal year to notify LBB. An existing rider requires notification of all contracts over \$500,000 but does not aggregate totals by vendor.

Prescription drug importation study. CSSB 1, through sec. 10.09, would authorize ERS to collect \$12,500 in funding from 20 state agencies with health care expenditures to study the cost-effectiveness and feasibility of a drug importation program. The study would consider safety, plans used by other states, federal statutory requirements, and potential foreign sources of drugs in addition to the cost-effectiveness of a program. The 20 agencies would include TEA, HHSC, TxDOT, TDCJ, and others.

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