

CSHB 1:

The House Appropriations Committee's Proposed Budget for Fiscal 2008-09

The House Appropriations Committee reported CSHB 1 by Chisum, the general appropriations bill for fiscal 2008-09, on March 21. The committee reported the bill by the following vote:

24 ayes – Chisum, Guillen, Branch, B. Brown, F. Brown, Chavez, Crownover, Darby, J. Davis, England, Gattis, Harper-Brown, Hopson, Isett, Jackson, Kolkhorst, Lucio, McClendon, McReynolds, Otto, Riddle, Taylor, Van Arsdale, Zerwas

2 nays – Allen, Noriega

1 present not voting – Turner

2 absent – Dukes, Menendez

The proposed state budget would appropriate \$150 billion in all funds, an increase of 5.3 percent from the amount estimated to be spent in fiscal 2006-07. The general revenue-related portion, \$79 billion, would be about 10.7 percent more than in fiscal 2006-07.

When property tax relief funding proposed in HB 2 by Chisum is added to the spending recommendations in CSHB 1, total spending for fiscal 2008-09 would be \$164 billion, of which \$85 billion would be general revenue-related funds.

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

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Fiscal 2008-09 Budget Overview

CSHB 1 by Chisum would authorize total spending of \$150.1 billion, an increase of 5.4 percent from the current biennium. General revenue-related spending would increase \$7.7 billion, or 10.8 percent, to \$79 billion, including \$72.5 billion of undedicated or “pure” general revenue.

Federal funds would increase by \$510.4 million, and “other” funds would decrease by \$551.2 million. The federal funds increase would be driven mainly by health and human services (HHS), public education, and business and economic development. The decrease in “other” funds would be driven by HHS, public education, public safety and criminal justice, and natural resources.

CSHB 1 would increase spending in fiscal 2008-09 by \$1.4 billion for public education, \$1.7 billion for HHS, \$764 million for business and economic development, \$2.3 billion for higher education, \$204 million for regulatory agencies, and \$18 million for the judiciary. However, it would

decrease overall spending by \$228 million for public safety and criminal justice, \$15 million for natural resources, and \$8 million for legislative agencies.

The proposed spending levels in CSHB 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 2007, presented LBB’s baseline budget estimate. This estimate reflects the cost of continuing in fiscal 2008-09 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 10 percent for the coming biennium. Many of these reductions were restored in the LBB base bill, with a 5 percent reduction in administrative expenses

Biennial spending comparisons (millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended 2008-09	Biennial change	Percent change
CSHB 1				
General revenue-related	\$71,345.6	\$79,042.5	\$7,697.0	10.8%
Federal	49,037.0	49,547.4	510.4	1.0
Other	22,049.5	21,498.3	(551.2)	(2.5)
All funds	142,432.1	150,088.3	7,656.2	5.4
HB 2 by Chisum				
Property tax relief funding	2,230.4	14,191.1	11,960.7	536.3
CSHB 1 + HB 2				
Grand total	144,662.5	164,279.4	19,616.9	13.6

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

at most agencies. Calculations also included funding for student enrollment growth and public education initiatives enacted in the 79th Legislature's third called session, higher caseloads in the state-federal Medicaid program and the Children's Health Insurance Program (CHIP), and other funding obligations.

The LBB base budget totaled \$147.6 billion from all funding sources, a 2.1 percent increase from fiscal 2006-07, and \$75.8 billion in general revenue-related spending, a 3.1 percent increase. The base budget falls short of the amounts requested by agencies for the biennium. Without the changes imposed by the LBB, and including exceptional items, agencies requested \$176.9 billion in all funds and \$91.3 billion in general revenue-related funds, a funding level 24 percent greater in all funds and 28 percent greater in general revenue-related funds than the estimated spending in fiscal 2006-07. Compared to the amounts proposed by the LBB in the base bill, CSHB 1 would include a net \$2.5 billion increase in all funds and a \$3.2 billion increase in general revenue.

NOTE: In this report, comparisons to fiscal 2006-07 spending reflect LBB's adjustments to fiscal 2007 spending estimates. The term "general revenue-related funds" refers to the combined total of general revenue and general revenue-dedicated funds. It does not include proposed fiscal 2007 spending in CSHB 15 by Chisum, the supplemental appropriations bill.

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 \$4.3 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 2005, the 79th Legislature appropriated almost \$1.1 billion from the rainy day fund for a number of budget areas, including Child Protective Services, Medicaid, CHIP, and public education.

CSHB 1 also would replace for certain programs appropriations from the rainy day fund in fiscal 2006-07 with general revenue in fiscal 2008-09. The bill would include \$591.3 million in general revenue in fiscal 2008-09 for Child Protective Services changes in the budget of the Department of Family and Protective Services to replace rainy day fund money in fiscal 2006-07. Additionally, the bill would replace \$309.6 million in rainy day fund money in fiscal 2006-07 with general revenue in fiscal 2008-09 for textbook funding in the Texas Education Agency budget.

Replacing deferred payments. CSHB 1 would include \$1.1 billion in general revenue-related funds to move forward payments from the Foundation School Program to school districts from the first month of the fiscal 2010 biennium (September 2009) to the last month of the fiscal 2009 biennium (August 2009). In 2003, the Legislature shifted forward the final month's payment for fiscal 2004-05 into the following biennium as a one-time spending deferral in order that the budget could be certified. CSHB 1 would undo that shift.

Unappropriated funds. According to LBB, CSHB 1 would leave \$4.2 billion in general revenue funds unappropriated in fiscal 2008-09. After subtracting the additional supplemental appropriations in CSHB 15 by Chisum and adding the comptroller's \$4.3 billion projected balance in the rainy day fund, CSHB 1 would leave approximately \$9 billion in available funds unappropriated for fiscal 2008-09.

Federal funds. Federal funds would account for about 33 percent of the state budget under CSHB 1. Health and human services, business and economic development (mostly transportation), and education account for 95 percent of federal funds in the budget. The federal budget currently under consideration could include significant changes in the funding that states receive for certain

programs, 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.

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 2008-09, CSHB 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.

Article 11 list. CSHB 1 includes an Art. 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 the Senate proposals include the list, which will be reconciled in conference committee and could result in the funding of some items.

The Art. 11 list in CSHB 1 totals \$4.5 billion. Items on the list include \$190.3 million in HHS, \$1.2 billion split between public and higher education, as well as requests for salary increases for state employees and peace officers, and funds for state parks.

Employee compensation. In Art. 11, CSHB 1 includes a recommendation of \$600 million in general revenue-related funds for salary increases for state employees. The proposal would provide \$421 million for a 2.5 percent or \$75 per month minimum across-the-board pay raise for most employees for both years of the biennium, starting January 1, 2008. This pay raise would include higher education non-faculty employees, who did

not receive the pay raise authorized by the Legislature in fiscal 2006-07. The proposal would increase pay for Texas Department of Criminal Justice (TDCJ) staff and Texas Youth Commission staff by an additional 4 percent in fiscal 2008-09. It also would increase pay for Department of Family and Protective services staff by 5 percent in fiscal 2008 and 1 percent in fiscal 2009. The proposal also would include targeted salary increases for exempt positions, law enforcement personnel, and other targeted positions.

The Art. 11 proposal would include \$70 million to increase longevity pay from \$20 to \$30 per month for every two years of service for an employee’s first 10 years. Beyond the first 10 years, longevity pay would remain \$20 per month for every two years of service.

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 2007, Comptroller Susan Combs estimated that general revenue-related funds available for certification would total \$82.5 billion during fiscal 2008-09. 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.

Other bills under consideration by the 80th Legislature 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.

The growth of spending from nondedicated tax revenue from one biennium to the next may not exceed the LBB’s official estimate of the state’s economic growth rate, defined as the growth in statewide personal income. On January 11, 2007, LBB adopted an estimated growth rate of 13.11 percent from fiscal 2006-07 to fiscal 2008-09. This means that appropriations from state tax revenue not dedicated by the Constitution may total no more than \$62.8 billion in fiscal 2008-09, based on the estimated fiscal 2006-07

appropriation of \$55.5 billion of nondedicated tax revenue. However, under SCR 20 by Ogden, which was signed by the governor on February 23, 2007, the 80th Legislature overrode this cap, allowing the Legislature to appropriate up to \$14.2 billion of undedicated state tax revenue over the constitutionally required spending cap for school property-tax reduction.

HB 2 by Chisum, which passed the House on February 20, 2007, and has been referred to the Senate Finance Committee, would appropriate \$14.2 billion to the Texas Education Agency under the foundation school program to fund school district property tax rate reductions.

Supplemental appropriations for fiscal 2007.

CSHB 15 by Chisum would make supplemental appropriations to some agencies and reduce appropriations to others for fiscal year 2007, as well as fiscal 2008-09. For fiscal 2007, the bill would generate a net savings in general revenue of \$216.7 million. For fiscal 2008-09, the supplemental appropriations in the bill would cost \$224.4 million in general revenue-related funds.

For fiscal 2007, the bill would include appropriations to:

- Texas Department of Criminal Justice to fund salaries, health care, and other costs;
- Texas Building and Procurement Commission for deferred maintenance and other construction costs; and
- Department of Information Resources to fund one-time data center services contract payments.

For fiscal 2008-09, CSHB 15 would include appropriations to:

- HHS to fund the restoration of Medicaid and CHIP programs to fiscal 2003 levels;
- Department of Family and Protective Services for the continuation of child protective services reform; and
- Department of Aging and Disability Services for community-based services.

Article 1 Overview

The nearly two dozen agencies within Art. 1 perform some of the core operations of state government. They include:

- 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 Art. 10.

For Art. 1 agencies, CSHB 1 proposes to spend about \$3.7 billion in all funds for fiscal 2008-09 or 2.4 percent of the total state budget, including \$2.6 billion in general revenue-related funds. Total appropriations would increase by \$66.7 million, or 1.9 percent, from fiscal 2006-07.

Budget highlights

Employees Retirement System

The Employees Retirement System (ERS) administers benefits programs, including retirement benefits and health insurance for state employees. For fiscal 2008-09, CSHB 1 proposes total funding of \$3 billion for ERS. This would represent an increase of \$314.6 million in all funds, an 11.4 percent increase over fiscal 2006-07.

Retirement benefits. In 2003, the total value of the ERS pension fund dropped below the level at which it was determined to be “actuarially sound.” 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 granting benefit increases unless the pension fund is actuarially sound. Between 1989 and 2001, the state’s contribution rate declined from 7.4 percent to the constitutional minimum of 6 percent

Article 1 spending comparisons (millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	\$2,390.2	\$2,588.2	\$198.0	8.3%
Federal	881.5	697.6	(183.9)	(20.9)
Other	330.6	383.1	52.5	15.9
All funds	3,602.3	3,668.9	66.7	1.9

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

of payroll (Texas Constitution, Art. 16, sec. 67 (b)(3)). In an effort to move the pension system toward actuarial soundness, the 79th Legislature in 2005 increased the state's contribution to 6.45 percent of payroll. Based on an actuarial evaluation on August 31, 2006, the state would have to contribute an additional \$89.8 million per year, or 7.3 percent of payroll, for the ERS pension fund to reach actuarial soundness.

CSHB 1 would appropriate \$771.9 million in all funds for fiscal 2008-09 for the ERS pension fund. This is based on a state contribution rate of 7.3 percent, which is expected to be sufficient to make the pension fund actuarially sound but would not provide additional revenue specifically for an annuity increase.

Supporters say the state should return the pension fund to actuarial soundness to meet its long-term obligations to its retirees and to enable their eligibility for an annuity increase or "13th check." Even though active state employees have received pay raises, retirees have not had an annuity increase since 2001. According to supporters, many retired state employees live on fixed incomes and struggle with the rising cost of food, health care, and other necessities.

Opponents say increasing the state contribution rate to 7.3 percent would be overly generous in the face of other competing state budget needs. Before considering such an increase, other options, such as increasing the employee contribution to 6.4 percent, should be explored. Retirees have no guarantee that their annuity payments will increase or that they will be entitled to a "13th check." An increase in benefits should be considered only if the financial markets perform well and the employee contribution increases, say opponents.

Health insurance. CSHB 1 would allocate \$2.1 billion in all funds for fiscal 2008-09, an increase of 6 percent to cover the cost of employee and retiree group health insurance at 2007 state contribution rates. This would assume spending down the entire ERS insurance fund balance, which assumes an 8 percent health care inflation rate. In its revised funding request, ERS sought an increase

of \$77 million in all funds over the fiscal 2006-07 level to cover the cost of employee group health insurance with an assumption of a 9.1 percent growth rate in health insurance costs.

Supporters of the higher funding level argue that CSHB 1's assumption of a 8 percent growth rate in health costs is too conservative. If health insurance costs increase at a higher rate, as they have in recent years, ERS may have to make benefit design changes to make up these costs.

Texas Emergency Services Retirement System

The Office of the Fire Fighters' Pension Commissioner administers the Texas Emergency Services Retirement System (TESRS), which currently provides retirement, disability, and survivor benefits to members of 180 volunteer fire departments and 4,550 volunteer emergency services personnel and 2,274 retirees who have elected to participate. The state by law is required to appropriate funds to the system equal to one-third of the total annual contributions by participating departments. During fiscal 2003, the fund became actuarially unsound as contributions were not sufficient to cover normal costs and amortization of unfunded liabilities. To offset some of the unfunded liability, the Legislature in fiscal 2006-07 provided a contribution of \$1.4 million to the pension fund.

CSHB 1 would authorize a one-time payment to the TESRS pension fund of \$8.8 million, the amount actuaries say is needed to pay off the unfunded accrued actuarial liabilities and thus reduce the state's future liabilities. Another proposal would provide \$2.2 million to offset unfunded liabilities incurred during fiscal years 2003-05 when the state did not meet its statutory obligation to the fund.

Supporters of the House proposal say it would ensure that the state meets its obligation to volunteer emergency workers who, in many parts of the state, provide the only available emergency services. A one-time appropriation of \$8.8 million would be the most cost-effective way to make

the fund actuarially sound. Paying off the unfunded liability incrementally over the next 21 years would cost \$6.2 million more than making this one-time payment. Making a payment of only \$2.2 million would reduce the unfunded liability but would require continued financial support for the next 13 years.

Opponents of the House proposal favor an incremental approach to dealing with unfunded liabilities. They say the \$2.2 million payment would be a better use of limited state funds in light of other pressing state budget needs.

Office of the Attorney General

CSHB 1 would appropriate \$960 million in all funds to the Office of the Attorney General (OAG) for fiscal 2008-09, an increase of nearly 1 percent over fiscal 2006-07 funding. This includes \$523.3 million in general revenue-related funds, a 12.5 percent increase over fiscal 2006-07.

The bill would provide \$66 million in general revenue for the biennium to offset federal funds. Beginning in October 2007, the OAG anticipates a reduction in federal funding for the agency's child support program as a result of the federal Deficit Reduction Act of 2005, which eliminated federal matching funds for child support incentive payments.

Sex offender apprehension unit. CSHB 1 would allocate \$3.6 million in general revenue to establish a sex offender apprehension unit within the OAG's fugitive unit. The bill would authorize the addition of 27 FTEs to identify, locate, and arrest convicted sex offenders who have failed to comply with mandated sex offender registration requirements. Rider 23 of CSHB 1 would direct the OAG to coordinate with the Department of Public Safety, Texas Department of Criminal Justice, the Board of Pardons and Paroles, and any other state law enforcement agency for the apprehension of sex offenders.

Supporters say the OAG's fugitive unit has arrested 324 convicted sex offenders since its inception in 2003. The OAG anticipates that the staffing increase would enable the unit to arrest an additional 652 convicted sex offenders

in fiscal 2008-09. In many of these cases, jurisdictional issues make it difficult to depend on local law enforcement agencies to make arrests, so supporters argue that a statewide law enforcement presence is needed.

Opponents say that while the apprehension of convicted sex offenders is important, it should be the responsibility of local law enforcement agencies rather than the OAG.

Medicaid fraud litigation. CSHB 1 would provide \$5.3 million in general revenue, including 17 additional FTEs, to pursue civil Medicaid fraud litigation. The OAG requested \$12.2 million and 41 additional FTEs to pursue about 140 open cases and investigations. A modified Rider 8 in CSHB 1 would authorize the OAG to use forfeited attorneys' fees to fund additional civil Medicaid fraud efforts.

Supporters of the funding level in CSHB 1 say it is sufficient to allow the agency to make progress on pending cases. If these cases generate attorneys' fees, the OAG would have the authority to provide additional resources.

Opponents say the state should fully fund this effort in order to vigorously pursue all of the pending cases at this time. This initiative, in which Texas has taken a national lead, has the potential to generate significantly more money in attorneys' fees than it would cost to provide full funding.

Governor's trusted programs

Texas Enterprise Fund. CSHB 1 would appropriate \$120 million in general revenue-dedicated funds to the Texas Enterprise Fund (TEF), with an additional appropriation in Art. 11 of \$62 million in general revenue. The governor's proposal requests a total appropriation of \$182 million in general revenue for TEF.

The 78th Legislature created TEF in 2003 as a "deal-closing" fund within the Governor's Office to entice businesses to expand in or relocate to Texas. Money may be awarded only with the prior written approval of the lieutenant governor and the speaker of the House, to

whom recipients must report annually. In 2005, the 79th Legislature enacted HB 1938 by Ritter, which requires the governor to enter into written agreements specifying terms and conditions of the grant award and requires an enterprise to repay the grant and related interest to the state if it fails to meet performance targets. In fiscal 2006-07, TEF has awarded \$45.1 million in grants to 13 entities, primarily for business incentives.

In 2005, the 79th Legislature created the Skills Development Fund (SDF) as a funding mechanism for TEF and for a skills development program. HB 2421 by Chavez required that an assessment of one-tenth of 1 percent be collected from employers as part of existing unemployment insurance and deposited in the SDF. This assessment can be used for TEF and the skills development program provided that the unemployment trust fund is funded at or above its statutorily defined floor.

HB 48 by Chavez, which passed the House on March 27, would retain the current percentage of funding designated for TEF from the SDF and repeal the increase in the TEF percentage scheduled for September 1, 2007. CSHB 1 contains a contingency rider in Art. 11 that would reduce the appropriation to TEF by \$12.8 million in general revenue-dedicated funds upon enactment of HB 48.

In 2003, TEF received a start-up appropriation of \$295 million from the rainy day fund to provide cash grants for a variety of economic stimulus programs. In fiscal 2006-07, TEF received \$182.3 million, of which \$141 million was general revenue and \$41.5 million was from the SDF.

Supporters say TEF should be funded fully because it has been an effective means of attracting economic investment and jobs to the state. Grants awarded since December 2006 have created more than 44,000 jobs and generated more than \$15 billion in capital investments. The fund has helped Texas create jobs while other states have lost them, and its benefit to the economy has provided increased revenue for other important government programs.

Opponents say TEF grants are a form of corporate welfare that have done little to help the state and its residents. The fund 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 under-funded.

Emerging Technology Fund. CSHB 1 would appropriate \$75 million in general revenue and \$25 million in general revenue-dedicated funds (unexpended balances from 2007) to the Emerging Technology Fund (ETF). The governor requested \$300 million in all funds for ETF. Although the 79th Legislature approved an appropriation of \$200 million in all funds for fiscal 2006-07, ETF received \$100 million in all funds, reflecting a reduced appropriation of \$100 million from the rainy day fund.

In 2005, through the enactment of HB 1765 by Morrison, the 79th Legislature created ETF to promote research and development in emerging technological industries such as semiconductors, biotechnology, aerospace, computer and software technology, and petroleum refining and chemical processes to develop and diversify the Texas economy.

Fifty percent of the fund is to be used for incentives for private or nonprofit entities to collaborate with the state's public or private institutions of higher education on emerging technology projects. Twenty-five percent of the fund amount is to be used to match funding from research sponsors other than the state, including federal research sponsors. The remaining 25 percent is to acquire new or enhance existing research superiority at the state's public institutions of higher education.

Supporters say full funding is needed to continue recruiting the best scientists and researchers and attracting quality high-tech jobs. For example, through ETF the state has recruited one of the world's leading cancer researchers who specializes in biomedical technology.

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

Courthouse preservation

CSHB 1 would designate \$84 million in bond proceeds for fiscal 2008-09 to the Texas Historical Commission's courthouse preservation program. The bill would return the method of finance for the courthouse program to general obligation bonds from federal Transportation Equity Act for the 21st Century (TEA 21) enhancement funds, which were never awarded during fiscal 2006-07. The debt service on these bonds would be \$8.3 million in general revenue for fiscal 2008-09. Another proposal would appropriate \$45 million in general revenue for fiscal 2008-09.

Supporters say a change in the method of finance is necessary to save the preservation program. No courthouses received grants during fiscal 2006-07 because federal TEA-21 funds, which normally are used to finance transportation-related projects at the state level, never were awarded. The state should not continue to jeopardize this nationally recognized preservation effort by making disbursement of money dependent on federal approval. The state could restore up to 25 courthouse projects with the proposed \$84 million in bond proceeds, while other proposals would fund fewer than half as many projects. Currently, 16 counties have plans and specifications ready to renovate their courthouses but have been awaiting grants since 2005.

Opponents of the funding proposal in CSHB 1 say that while courthouse preservation is a commendable endeavor, it does not directly affect much of the state's population. In addition, some preservation efforts have the effect of turning courthouses into museums rather than maintaining functional offices for county government. The state would be better off funding fewer projects, opponents say, and not increasing the state's indebtedness by such a sizeable amount.

Renovation of the de Zavala building

In 2005, the Legislature appropriated \$15.5 million in general obligation bond proceeds to the Texas Building and Procurement Commission (TBPC) and \$2.3 million in debt service to the Texas Public Finance Authority (TPFA) for the renovation and expansion of the Lorenzo de Zavala State Archives and Library Building in the Capitol complex. Architects subsequently determined that the project would cost \$21.7 million more than the original appropriation. The Texas State Library and Archives Commission (TSLAC) waited to start the renovation and expansion until the supplemental funding issue could be resolved.

For fiscal 2008-09, TSLAC requested \$21.7 million in general obligation bond proceeds to TBPC and \$1.9 million in debt service to TPFA to complete the renovation and expansion of the de Zavala building. CSHB 1 would not authorize additional funding for the de Zavala building project.

Supporters of the House proposal say that while housing irreplaceable state documents is important, the state has more urgent budget priorities and should not devote additional money to this project.

Opponents say the de Zavala building is in urgent need of additional funding for repair and renovation. The building houses valuable records, such as the national archive for the Republic of Texas, that need immediate attention and protection. Unlike other structures near the Capitol, the de Zavala building has had no substantial improvements since it opened in 1961. The proposed modernization and renovation would add more than 50 years to the life of the building, say these opponents.

Health and Human Services Overview

The health and human services (HHS) agencies in Art. 2 constitute Texas' second-largest budget function after education. HHS agencies account for 33.7 percent of the total proposed budget for fiscal 2008-09 and 25.9 percent of proposed general revenue-related spending. The proposed funding would support more than 50,000 employees. HHS agencies receive funding from multiple federal, state, and local sources.

The Health and Human Services Commission (HHSC) oversees four HHS department-level agencies following a widespread reorganization mandated by the 78th Legislature in 2003 in HB 2292 by Wohlgenuth. The commission administers eligibility determination for 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 nursing home services; community care for people with disabilities; other services for the elderly; and mental retardation services, including state schools;
- 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.

CSHB 1 would fund Art. 2 agencies at \$50.6 billion in all funds for fiscal 2008-09, over 3.6 percent more than in fiscal 2006-07. The general revenue-related portion, \$20.5 billion, would represent a 14.2 percent increase from the current biennium. In addition to funding included in Art. 2, \$1.3 billion in all funds, including \$595.4 million in general revenue-related funds, is included in Art. 9. These funds are largely attributable to increases at DADS, contingent upon enactment of a Quality Assurance Fee, and at HHSC and DSHS, contingent on the availability of funds for provider rate increases.

Article 2 spending comparisons

(millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	\$17,951.1	\$20,498.8	\$2,547.7	14.2%
Federal	29,039.8	29,585.0	545.2	1.9
Other	1,849.5	499.2	(1,350.3)	(73.0)
All funds	48,840.4	50,583.0	1,742.5	3.6

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

Budget highlights

CSHB 1 would increase overall Art. 2 spending by \$1.7 billion from fiscal 2006-07 levels. The general revenue-related increase of 14.2 percent largely would be attributable to increases in Medicaid and CHIP caseloads, a less favorable Medicaid match rate from the federal government, and a method of finance swap using \$591 million in general revenue funds in lieu of “rainy day” funds.

Medicaid funding

Medicaid, the federal-state health insurance program for the poor, elderly, and disabled, is the largest source of federal funds in the state budget. CSHB 1 would appropriate a total of \$36.9 billion in all funds and \$14.7 billion in general revenue-related funds for Medicaid spending. This represents a biennial increase of nearly 1 percent in all funds and 9.1 percent in general revenue-related funds. The all funds increase was significantly less than the general revenue increase because, among other reasons, there was an all funds decrease of approximately \$1.5 billion per year because hospital Upper Payment Limit funding was moved out of the bill pattern. The general revenue increase primarily would fund higher caseloads. Medicaid acute care accounts for the largest component of Medicaid caseloads, and acute care caseloads are anticipated to rise from 2.81 million in fiscal 2007 to 2.94 million in fiscal 2009, an increase of 4.6 percent over the biennium.

Other funding impacts include a less favorable federal match for Texas Medicaid spending and an increase of \$171.2 million in general revenue-related funds for two years of Medicare Giveback (clawback) payments to the federal government related to implementation of the Medicare Part D prescription drug program. Finally, CSHB 1 includes a \$375 million increase in general revenue-related funds to address HHSC Medicaid cost growth estimates for fiscal 2008. It does not include funding for HHSC estimates of cost growth in fiscal 2009.

Many Medicaid reforms have been proposed in the 80th Legislature to reduce the uninsured population in Texas and shift utilization of health care services to the most cost-effective service point. Medicaid reform options include:

- programs to encourage healthy lifestyles;
- premium payment assistance;
- multiple-share programs, which insure employees with premium contributions from the employer, employee, and public funds;
- Low Income Pools, which help cover uncompensated care costs;
- Medicaid buy-in or opt-out options;
- Health Opportunity Accounts; and
- managed care initiatives.

While implementation of such programs may not realize a cost savings in fiscal 2008-09, various Medicaid reform proposals may lead to long-term savings.

Provider rates overview. 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 5 percent in fiscal 2004-05 in conjunction with other reductions in eligibility and services. Federal funds became available in fiscal 2004-05 so that the effective reduction for medical professionals was about 2.5 percent. The 5 percent reduction for inpatient hospitals, however, remained in place. The 79th Legislature in 2005 restored some of the 2003 cuts – mainly those for DADS waiver service providers. Nursing facilities also received an increase of 11.75 percent, effective in January 2006.

Only 38 percent of Texas physicians currently are accepting new Medicaid patients. Those not accepting new patients frequently cite inadequate reimbursement rates as the major reason for refusing new Medicaid patients.

Ambulance rates have not risen since the adoption of a 1.5 percent increase in 1999, and ambulance rates were included in the 2.5 percent cut in 2003. This cut effectively lowered current ambulance reimbursement rates to below 1991 levels. Rider 59 under the appropriation for HHSC in Art. 2 of the fiscal 2006-07 general appropriations act charged the commission to conduct a study of Medicaid ambulance services rates in Texas and to compare Texas ambulance rates with comparable Medicare fee schedules. The resulting study showed that the Medicaid mileage reimbursement rate for ground ambulances equaled approximately 54 percent of the Medicare rate. The amount paid per basic life support transport was about 29 percent of the 2006 Medicare fee for non-emergency transport and 39 percent of the 2006 Medicare fee for emergency transport. The Texas Medicaid fee for air ambulance transports also lags behind Texas Medicare rates.

Quality assurance fee. The 79th Legislature in 2005 approved Art. 2, DADS, Rider 51 in the general appropriations act, which would have used quality assurance fees (QAFs) assessed on nursing home facilities to provide provider rate increases, contingent upon enactment of legislation authorizing the assessment of QAFs. Gov. Perry vetoed this rider, noting not only that the contingent legislation did not pass, but also that the fee would “have unfairly penalized nursing facilities that do not have Medicaid clients by imposing a tax on those facilities for which the residents would receive absolutely no benefit.”

Hospital funding mechanisms. The Medicaid Disproportionate Share Hospital (DSH) Program is a source of reimbursement to state-operated and local Texas hospitals that serve a disproportionately large number of Medicaid and low-income patients. The state puts up general revenue or intergovernmental transfer (IGT) funds from public hospitals to draw down and reallocate Medicaid funds. Upper Payment Limit (UPL) refers to a financing

mechanism through which local hospitals can use IGTs to draw Medicaid funds to pay providers the difference between the Medicaid and Medicare rates. The Medicare rate is the amount the hospital charges for services. If provider rates are inadequate, hospitals often must use DSH and UPL payments for additional funding.

Texas does not pay hospitals for all Medicaid allowable costs. The difference between the cost of all Medicaid allowable expenses and the amount Texas reimburses hospitals for these expenses is called the hospital shortfall. HHSC estimates a hospital shortfall of \$350 million in general revenue for fiscal 2008-09.

Provider rates funding. CSHB 15 by Chisum, the supplemental appropriations bill, would appropriate the following amount of general revenue funds to the indicated providers for restoration of rates to fiscal 2003 levels:

- \$108.9 million for Medicaid and CHIP medical professionals;
- \$10.8 million for community care provider rates at DADS; and
- \$3.1 million for Programs for Children With Special Health Care Needs, Maternal and Child Health Services, and Family Planning at DSHS.

CSHB 1 contains a QAF rider – Art. 9, sec. 10.09 – that would make provider rate increases contingent upon enactment of HB 3778 by Rose or similar legislation establishing a QAF on nursing facilities. HB 3778 would expand the current QAF on intermediate care facilities for the mentally retarded (ICF-MRs) to nursing home facilities. QAFs would be assessed on a per-bed basis and would be paid monthly by nursing facilities. The funds would be used to draw down additional Medicaid dollars from the federal government. HB 3778 assumes approval of a Medicaid waiver that would allow Texas to exempt continuing-care retirement communities from the assessment of a QAF. The money collected in the nursing home QAF account, together with federal matching funds, would be used to offset allowable expenses under the state Medicaid program or increase Medicaid reimbursement rates paid to institutions.

Art. 9, sec. 10.09 first would appropriate QAFs back to the Medicaid nursing facilities on which the fee was assessed. The rider, combined with the rate increases in CSHB 15, would provide for a rate increase for nursing facilities of approximately 6.5 percent above the January 2006 increase. The rider also would structure a method-of-finance swap that would free about \$200 million in general revenue funds from the DADS budget. Contingent on the availability of funds, Art. 9, sec. 10.09 would allocate a total of \$281 million in general revenue for additional provider rate increases. These increases, combined with the rate increases in CSHB 15, would lead to a dental rate increase of about 15 percent in fiscal 2008 and a 10 percent increase in fiscal 2009. Physician and other professional care rates would increase by approximately 10 percent.

Art. 11 in CSHB 1 contains an ambulance rate rider to be placed in Art. 2, Special Provisions, if funded. Contingent on enactment of an unspecified House bill, the rider would appropriate \$31.3 million in general revenue to HHSC and \$100,000 in general revenue to DSHS for fiscal 2008-09 to increase ambulance rates. Hospitals would receive no funding in CSHB 1 for a rate increase in fiscal 2008-09.

Supporters say the proposal in CSHB 1 would fund provider rate increases that are desperately needed to increase the number of providers taking new Medicaid patients before the state reaches a crisis in which no provider can afford to take them. Only 38 percent of physicians currently are accepting new Medicaid patients. Those not accepting new Medicaid patients frequently cite inadequate reimbursement rates as the major reason.

CSHB 1 would make the practical choice not to fund a hospital rate increase because in tight budgetary times, hospitals are the provider type with the greatest flexibility in tapping other funding mechanisms, including DSH and UPL payments. The implementation of many of the Medicaid reforms being considered this session would help defray the uncompensated health care costs incurred by hospitals. Finally, CSHB 1 appropriately would place contingent funding for ambulance rate increases in Art. 11, demonstrating that this rate increase is a priority that must be balanced against other pressing budgetary needs.

Supporters say using a QAF to fund provider rate increases would allow the state to draw millions of additional federal Medicaid dollars for the citizens of Texas. Nursing homes currently are underfunded, and the additional federal dollars are desperately needed to provide quality care and avoid nursing home bankruptcies.

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, according to supporters. In addition, the QAF is assessed against the nursing facility and not the patient, so there would be no direct impact on private payors.

At least 29 states currently assess quality assurance fees on nursing homes, say supporters. 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. North Carolina and Oregon already have obtained the Medicaid waiver that HB 3778 assumes will be approved, making it likely that Texas would obtain the same waiver. The waiver would exempt continuing care retirement centers (CCRC) from being assessed the provider tax and would mitigate the effects of assessing the QAF on private-pay nursing home beds by removing a large portion of those private-pay beds from the fee.

Opponents of CSHB 1 say that the rate increases included in the bill would not be enough to adequately address the extreme situation Texas faces in serving its Medicaid population. In restoring only the remaining community care provider cuts from 2003, the 87,000-person wait list at DADS could not be reduced adequately. These critics say the most unacceptable aspect of the proposals in CSHB 1 is the lack of rate increases for ambulances and hospitals. Ambulance rates are so low that many ambulance providers have been unable to stay in business. Rates are below 1991 levels, and there has been no accounting for cost growth or the increasingly expensive procedures that emergency medical staff now perform. Some rural counties have no ambulance provider and must contract with private entities to receive ambulance services.

Hospitals already are overburdened with indigent care cases. Because they are forced to use DSH and UPL payments to compensate for low provider rates, these funds are not available to address indigent care costs. Without rate increases, hospitals will continue to find alternate means of addressing the funding shortfall, including incurring bad debt, raising local taxes, and writing off funding as charity care.

Without hospital rate increases, some of the current Medicaid proposals intended to defray the cost of uncompensated care would be unfunded mandates that fail to meet their intended purpose. For example, various Medicaid reform proposals would have hospitals contribute to Low Income Pools that help cover uncompensated care costs, including subsidizing premiums for the uninsured. Without additional funding, critics say, hospitals could not contribute an amount large enough to such pools to reduce premiums enough to realize a reduction in uncompensated care costs. In other words, hospitals would face a continued shortfall of funding and yet be asked to pay more to implement measures that may not be helpful in reducing uncompensated care costs. Other proposals would provide at least \$175 million in general revenue for a hospital rate increase so that the hospital shortfall would be reduced and hospitals would have more funds available to participate in Medicaid reform measures.

Finally, opponents of CSHB 1 call the QAF a “granny tax” that would benefit Medicaid patients but not privately insured patients. They note that the QAF would place a monthly fee on all non-Medicare nursing-home beds, which includes nursing homes that do not take Medicaid patients. Forty-nine out of 1,100 nursing homes contain a significant number of private-pay beds, 22 of which contain purely private-pay beds. These homes are not connected with any health care system that could benefit from matching funds. A QAF on these nursing homes would be a tax on private payors. Even though facilities cannot impose fees directly on a billing statement, opponents argue that the private facility’s increased overhead still might cause a private payor’s bills to increase. Provider rate increases are critical issues that merit receiving full funding through general revenue that is not obtained through an unfair tax on private payors.

Minimum wage

H.R. 2, the Fair Minimum Wage Act of 2007, passed the U.S. House of Representatives on January 10, and the U.S. Senate passed its version on February 1. If H.R. 2 is enacted, the minimum wage would increase to \$5.85 per hour 60 days after enactment, then to \$6.55 per hour one year later, and finally to \$7.25 per hour the year following.

There are two components to addressing the minimum wage impact on HHS staffing – the direct impact and the “ripple” effect. Addressing the direct impact would involve compensating providers to increase all employee pay to at least the minimum wage with each federally mandated increase. Addressing the ripple effect would involve the associated increases to compensate providers to pay for employees already at or slightly above the new minimum wage values to maintain parity with the pay differential each employee had over minimum wage employees before the increase.

The enactment of federal minimum wage legislation would have a large impact on budgets at HHSC, DADS, and DFPS. HHSC estimates the minimum cost of addressing the direct impact of federal minimum wage legislation would be \$45.3 million in general revenue-related funds. The estimate of addressing all direct impact and ripple effect costs would be \$245.6 million in general revenue-related funds. The largest impact would be at DADS, which has more providers with direct-care staff than the other HHS agencies. The estimated impact at DADS alone is \$37.3 million in general revenue-related funds for direct impact and \$197.3 million in general revenue-related funds for ripple effect.

Art. 11 in CSHB 1 contains a rider regarding minimum wage increases that would be placed in Art. 2, Special Provisions. Contingent upon the enactment of federal minimum wage increases, the rider would appropriate an unspecified amount of general revenue and all funds in fiscal 2008 and fiscal 2009.

Supporters of the way CSHB 1 would address a minimum wage increase say that it does not make sense to budget for a change in federal legislation that may or may

not happen. Placing the rider in Art. 11 would allow the Legislature to assess the best use of the funds should federal minimum wage legislation not pass.

Opponents of the CSHB 1 approach say that a federal wage increase is almost inevitable, and Texas would be well served to anticipate the large amount of funds needed to address this issue during this budgeting process. Provider rates already are low, and providers cannot afford to pay for minimum wage increases without additional state funding. In addition, the rider should address the intent to fund \$245.6 million in general revenue to address the direct and ripple effect. Simply funding the direct impact of the minimum wage increase would cause resentment among employees as lower-skilled workers received the same pay as higher-skilled workers. Higher-skilled workers ultimately may quit their jobs realizing they either could receive more pay elsewhere or find a less demanding job that would pay them the same amount of money.

Wait lists

Several HHS programs — especially those delivering social, nursing, and rehabilitative services in the community — cannot serve all eligible people within current budget levels. HHS agencies employ a wait list to track people waiting for services for which funding is not immediately available. The wait lists for DADS Medicaid waiver programs are referred to as “interest lists” because eligibility is not determined until a waiver slot becomes available.

As of March 2007, the unduplicated count of individuals on the wait list for services provided through DADS, DARS, and DSHS is 92,407. Most of the combined wait list represents people waiting for home and community care waivers, non-Medicaid services, and In-Home and Family Support Program slots offered through DADS.

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. This ruling affects the home- and community-based services programs within DADS, which have a combined wait list exceeding 87,000. Since the *Olmstead* ruling, many states have faced litigation due to the length of time and number of individuals on waiting lists for services. In fiscal 2006-07, Texas appropriated \$161.6 million in general revenue to fund demographic growth and reduce wait lists by 10 percent at DADS, DARS, and DSHS.

CSHB 1 would maintain current wait list levels over the coming biennium by funding fiscal 2007 caseload numbers and appropriating funds to address demographic growth in the wait list population. An additional \$54.6 million in general revenue would be appropriated to DADS to maintain August 2007 caseload numbers. This was largely necessary due to a less favorable federal funding match. An additional \$58.8 million in general revenue-related funds would be appropriated among DADS, DARS, and DSHS to fund demographic growth. The bill would appropriate an additional \$6.3 million in general revenue-related funds to eliminate the wait list of 183 clients for DARS Comprehensive Rehabilitation Services (CRS), a program that helps people who have had traumatic brain or spinal-cord injury to re-enter the community and live as independently as possible. HHSC estimates that a wait list reduction of 10 percent at DADS and full elimination of the DARS and DSHS wait lists would cost \$117.8 million in general revenue. A 20 percent reduction at DADS and full elimination of the DARS and DSHS wait lists would cost \$202.1 million.

Supporters of funding levels in CSHB 1 say that by addressing demographic growth, it appropriately would ensure that Texas did not lose the progress made last session in reducing wait lists. The bill would not further reduce wait lists because other important budgetary concerns first must be addressed. Provider capacity is limited because the reimbursement rate structure has not kept pace with inflation, and providers have struggled with reductions in funding.

Supporters argue that CSHB 1 reflects a prudent choice in using the limited funds available to eliminate the CRS wait list for people with traumatic brain or spinal injuries. Such individuals are most in need of immediate services

because they have diminishing long-term recovery prospects the longer they wait for services. Texas does not have the provider capacity to make further wait list reductions, and significant rate increases would be required to allow providers to afford to take on additional clients.

Opponents of CSHB 1 argue that Texas has the provider capacity to effect a 10 percent reduction in wait lists, and some argue that a 20 percent reduction also is feasible, in conjunction with appropriate provider rate increases. It is unacceptable that some citizens must wait in excess of 10 years to receive services. Texas has a duty to the 92,407 citizens on its HHS wait list to provide adequate services in a timely fashion.

Funding only demographic growth would not protect Texas against *Olmstead* litigation. Citizens are better served and state dollars better spent by steadily reducing wait lists rather than being forced to conform to the settlement terms of a lawsuit. In addition, the community-based alternatives sought by 87,000 people on DADS interest lists avoid the higher costs of institutionalization by allowing informal caregivers to provide care to their loved ones in the community. A continued lack of funding for wait list reduction only would intensify the outcry for timely services.

Children's Health Insurance Program

During the 1999 regular session, SB 445 by Moncrief established CHIP to provide primary and preventive health care to low-income, uninsured children across the state. CHIP is administered by HHSC, and enrollment is limited to appropriated funds. A federal block grant is allocated for Texas CHIP spending, and the federal government provides more than 72 cents of every dollar spent on CHIP.

In 1999, CHIP eligibility was granted to children under age 19 whose family's gross income was at or below 200 percent of the federal poverty level. The income calculation included income disregards for Medicaid allowable expenses including childcare, child support, and work-related expenses. After initial eligibility determination, a child remained eligible for CHIP benefits for 12 months. A

child leaving another health plan waited 90 days to receive services under CHIP.

The 78th Legislature in 2003 made eligibility requirement and program changes to CHIP. The continuous eligibility period was reduced to six months, and income disregards were eliminated so that eligibility now is calculated using gross income. The 90-day waiting period was extended to all children who apply for CHIP, regardless of their previous insurance history. Finally, an assets test was implemented for applicants with incomes above 150 percent of the federal poverty level. The CHIP caseload reached a high of 529,211 in May 2002, and as of February 2007, CHIP served 325,479 children.

Total CHIP spending in fiscal 2008-09 would include \$540.5 million in general revenue and \$1.8 billion in all funds. This includes funding for caseload growth with estimated caseload increases from 393,802 in fiscal 2007 to 460,225 in fiscal 2009. CSHB1 would provide \$205.5 million more in general revenue-related funds, an increase of 61.3 percent over fiscal 2006-07 spending.

The largest hike in general revenue-related spending would be an increase of \$150.6 million for the CHIP Perinatal Program, which extends CHIP benefits to unborn children. The program was implemented in January 2007 and is largely responsible for anticipated caseload growth through the end of fiscal 2007. The CHIP Perinatal Program allows the state to save general revenue because it provides benefits formerly provided under Medicaid at the higher CHIP federal match rate. Other increases in general revenue spending include appropriations for cost growth in 2008 and to compensate for a less favorable federal funding match.

CSHB 1 also contains Art. 2, HHSC Rider 61 that would appropriate, contingent upon enactment of HB 109 by Turner or similar CHIP revision legislation, an additional \$89.5 million in general revenue-related funds and \$253.2 million in all funds to CHIP. HB 109 would eliminate the 90-day wait, add an income disregard for child care expenses, extend eligibility to 12 months, and increase the limits on the assets test. It is estimated that these changes would increase CHIP caseloads by 68,537 in fiscal 2008 and 102,224 in fiscal 2009.

Supporters of CHIP funding increases say the state should serve as many needy children as possible. This not only would provide better health outcomes for children but also would decrease school absenteeism and ease the burden on local taxpayers to pay for costly emergency room visits by uninsured children. CHIP caseloads dropped with the implementation of each new aspect of the changes in 2003, and HHSC attributed the decline of at least 152,000 cases to these changes. Supporters say that the proposals being considered in HB 109 and similar legislation are well crafted to return coverage to the most needy population of uninsured children that should never have lost or waited for coverage due to the 2003 reforms.

Opponents say that additional funding for CHIP would increase caseloads and make the program unaffordable as the state exceeds the money available in its federal block grant. Current eligibility criteria are appropriate, they say, and prevent abuses of the system. CHIP should be used only as a safety net for the neediest families. By assisting people with greater means, CSHB 1 would encourage reliance on government assistance, opponents say, and create difficulty in determining the truly needy when the program reaches its funding ceiling.

Child Protective Services

In 2005, SB 6 by Nelson instituted extensive changes to the state's Child Protective Services (CPS) system. These measures were crafted in response to highly publicized cases of child deaths and instances in which children were subjected to abuse or neglect despite CPS involvement. SB 6 focused primarily on enhancing investigative capacity by adding new technology and more caseworkers, forensic investigators, and highly trained intake call screeners. An investigative caseworker's average daily caseload dropped from 39.1 cases in September 2005 to the March 2007 figure of 23.7 cases. Among a variety of additional provisions, SB 6 included plans to roll out privatization of case management and substitute care services statewide.

Having assessed the progress of the changes instituted in 2005, child advocates continue to express concern about the performance of CPS. Particular focus has been

on the regulation and oversight of child placing agencies, given the recent deaths of children in foster care. Also, some advocates favor increasing family participation in the decision-making process and revisiting mandates to privatize substitute care and case management services.

DFPS developed a funding request totaling \$90.7 million in general revenue and \$9.3 million in TANF funds to address many of the current concerns. The proposal is designed to improve the quality of services delivered by DFPS through enhanced technology and program support, improve contract and licensing oversight of residential child care facilities and child placing agencies, and reduce the number of children in foster care through family preservation measures and by expediting adoption services.

CSHB 1 would fund at \$325.9 million in all funds, an increase of 33.2 percent, the continuation of measures to change CPS that were implemented by the 79th Legislature. This increase primarily would fund the annualizing of 2,523 FTEs hired during fiscal 2006-07 and maintain employee pay raises and investigative caseworker stipends. It would include an increase in general revenue spending from an estimated \$6.7 million in fiscal 2006-07 to \$281 million in fiscal 2008-09. This large increase represents a shift to funding reforms with general revenue rather than rainy day funds. The supplemental appropriations bill contains \$34.5 million in general revenue and \$65.4 million in TANF funds to implement fully the additional CPS reforms proposed by DFPS. CSHB 15 also would include \$18.7 million in general revenue and \$2.8 million in matching federal funds to staff new family-based safety service caseworkers to maintain 2007 caseloads and new statewide intake staff to maintain 2007 average hold times.

Supporters of addressing changes to CPS through supplemental appropriations say that funding CPS reform is a high priority for the 80th Legislature, and CSHB 15 would be the best vehicle to accomplish it. Because it would use fiscal 2007 unexpended funds, placing continued CPS reform in CSHB 15 would allow reforms to begin sooner than providing funding through CSHB 1. For example, the completion of adoptions has been slowed by a backlog of records that need to be redacted before the finalization of an adoption. DFPS anticipates it will take 15,000 hours

to redact 800 backlogged cases. CSHB 15 would provide funding for CPS to begin addressing the backlog in the summer rather than next fall, which would place children in their adoptive homes more quickly.

Mental health crisis services funding

Among its many provisions, HB 2292 by Wohlgemuth, enacted in 2003, directed DSHS to develop a disease-management system. Recognizing a corollary need to achieve rapid stabilization of crisis situations, DSHS commissioned the Crisis Services Redesign Committee to develop recommendations to best meet the needs of Texans with mental health problems. The committee found that mental health services in Texas are inadequate, underfunded, and poorly coordinated.

The committee issued recommendations for a Community Mental Health Crisis Services program that would provide for a range of effective community-based interventions designed to intervene in or avoid crises and the need for hospitalization. These services would include mobile outreach, 23- to 48-hour observation, crisis residential and in-home services, respite event coverage, and transportation of people in crisis to mental health hospitals. Mobile outreach provides on-call crisis workers to respond to, evaluate, and stabilize crisis situations in the community. Twenty-three to 48-hour observation includes initial psychiatric emergency services with extended observation. Respite services provide a temporary home for adults, children, or adolescents to allow time to work through issues that may contribute to the breakdown of the home. The program would cost about \$222 million per biennium.

CSHB1 would appropriate \$35.6 million to implement the measures in the Community Mental Health Crisis Services program in fiscal 2009. The funding would be allocated to community mental health centers first to address equity and then to provide funding for the program on a per capita basis.

Supporters of CSHB 1 say the Community Mental Health Crisis Services program would reduce suicides, murders, and overall costs to the criminal justice system.

According to the American Psychological Association, every dollar spent on mental health services saves \$5 in overall health care costs. The Crisis Services Redesign Committee found that in regions underserved by mental health services, the first responders to a person in mental health crisis often are police not trained to deal with such matters. The police may take the person to jail or to the emergency room rather than find a counselor to help the person through the crisis. Supporters report that police have driven people to facilities up to 12 hours away in order to reach the closest available hospital bed. Further, DSHS data demonstrate that the incidence of mental illness in the criminal justice system is 16 percent, more than six times the rate of the general population. A pilot of the Community Mental Health Crisis Services program in Bexar County demonstrated that a statewide crisis services program could result in 25,800 fewer police officer hours per month. According to supporters, this would translate to an estimated return on investment of \$9.9 million in avoidance of criminal justice costs per year.

Critics of the approach in CSHB 1 say the crisis services program should be funded beyond the amounts proposed in the bill. Proponents of additional funding say that community mental health centers could utilize fully up to \$82.3 million in general revenue. This would increase the level of services the program could provide and also fund a grant program that would allow community mental health centers to compete for additional funding to implement particular aspects of the program more extensively by catering to local needs.

Influenza pandemic preparedness

An influenza pandemic occurs when a flu virus emerges to which people have little or no immunity and for which there is no vaccine. The disease spreads easily from person to person and can lead to serious illness or death. During the past century, there have been three major influenza pandemics. The pandemic of 1918-19 was the most devastating, causing 20 to 40 million deaths worldwide.

Vaccines for a pandemic flu are not available during the first four to six months of the outbreak. In the absence

of a vaccine, antivirals are used to minimize the impact of a pandemic. An antiviral is a medication that does not cure influenza but can minimize its effects in people who are exposed. A course of antivirals treats one person for five days.

DSHS currently has almost 145,000 courses of antiviral medication available to protect first responders – nurses, physicians, EMS, and police officers – in outbreak areas. DSHS temporarily has the option of purchasing 2.3 million antiviral courses at the federal rate, minus a 25 percent subsidy per course. The federal Centers for Disease Control and Prevention (CDC) recommends this volume to cover Texas’ first responders, medical personnel, the immediately ill, and susceptible populations such as children and the elderly. Texas is allotted an additional 3.3 million courses of antiviral medication to buy from the federal government at full price.

CSHB 1 would appropriate \$22.7 million in general revenue for fiscal 2008-09 to prepare for and prevent an influenza pandemic. About \$19.2 million would be used to buy 1.3 million courses of antivirals at the reduced federal rate to cover first responders and medical personnel. Of the remaining funds, about \$2.5 million would add 33 FTEs for the 191 counties that have limited or no health departments. One million dollars would fund the enhancement of early detection and reporting of seasonal influenza through contracts with physicians who send in samples from suspected cases.

Supporters of CSHB 1 say the 1918 pandemic was a model of a worst-case scenario for which the state should prepare. Many infectious disease experts predict that a flu pandemic will hit the United States soon. The preparedness strategies in CSHB 1 follow the recommended guidelines developed by the U.S. Department of Health and Human Services in response to the National Strategy for Pandemic Influenza. Having antivirals on hand would lessen the impact of any influenza pandemic that hit Texas. On-hand antivirals would allow first responders and medical personnel to rapidly mobilize, treat, and quarantine the disease. Early treatment of medical personnel and first

responders with antivirals would be more efficient and cost effective than widespread treatment of the entire population. Also, Texas will not receive the 25 percent reduced federal rate if it does not purchase now.

Opponents of CSHB 1 contend that Texas would waste a great deal of money purchasing antivirals if an influenza pandemic did not materialize in the near future. The antiviral medication has a shelf life of only five years, and federal guidelines prevent rotation of the stock of antiviral medication as it expires. In addition, federal guidelines prevent the use of antivirals during a normal influenza season – not only for first responders, but on flu patients as well. Antiviral courses still would be available at the standard federal rate if Texas needed to purchase them later.

Other opponents of CSHB 1 believe Texas should comply fully with the recommendations of the federal agencies by appropriating \$40.2 million for flu pandemic preparedness. This would provide the full allotment of 2.3 million courses of antivirals, including courses for the immediately ill and susceptible populations. Full funding also would provide \$2.2 million for seed money to local counties to help them build their own health departments. The remaining appropriation would support new health departments, expand existing health departments to support more counties, and fill gaps in service areas.

HPV vaccinations

In February 2007, Gov. Perry issued Executive Order No. RP-65, which required HHSC to mandate human papilloma virus (HPV) vaccination for all girls prior to admission to the sixth grade. HPV, a virus contracted through sexual contact, can develop into cervical cancer. The governor’s budget would provide \$29.4 million in general revenue for DSHS and HHSC to make the HPV vaccine available through Medicaid and the Texas Vaccines for Children (TVFC) Program. The TVFC Program provides free vaccines for children who do not have insurance that pays for immunizations or whose parents cannot pay the

copays for immunization services. HB 1098 by Bonnen, which passed the House on March 14, would rescind Gov. Perry's vaccination order and prohibit HHSC from using discretionary authority to mandate HPV vaccination.

CSHB 1 does not include funding for a HPV vaccination program. In addition, Art. 11 contains a rider that would be included in Art. 2, Special Provisions. This rider would prevent any funds appropriated for Art. 2 from being used to buy or administer mandatory HPV vaccinations without prior written approval from the LBB and the governor.

Supporters of not funding an HPV vaccination mandate say that the House passage of HB 1098 by Bonnen, which would rescind Gov. Perry's vaccination mandate, reflects the understanding that HPV vaccination is a choice that must be weighed carefully. The HPV vaccine has been tested for only five years, which is not long enough to determine whether or not it is safe and effective. Funding such a vaccine on a widespread basis would not be wise at this point. In addition, supporters say, a HPV vaccination program is unnecessary because the rates of cervical cancer are low and continue to drop with new medical advances.

Supporters of not funding an HPV vaccine mandate also contend that the vaccination program could in some cases encourage young women to engage in early sexual activity by giving them the false impression that immunity from the HPV virus makes all sexual activity safer and more acceptable.

Critics of the lack of funding in CSHB 1 contend that funding an HPV vaccination program for young women would improve women's health care. They argue that the current vaccine, Gardasil, is effective on the strains of HPV that cause 70 percent of cervical cancers. Further, cervical cancer rates are highest among certain low-income populations that might not have access to the HPV vaccine without state funding. Providing state funds for a HPV vaccination program would be especially effective in improving the health of low-income women.

Integrated eligibility

In 2003, HB 2292 by Wohlgemuth directed HHSC to establish a call center, if cost-effective, for eligibility determination and recertification for TANF, food stamps, and Medicaid. HHSC also had the option of contracting with a private organization to operate the call centers. In June 2005, HHSC entered into a five-year, \$899 million contract with Accenture, LLP to operate the state's eligibility and enrollment systems for Medicaid, CHIP, food stamps, and TANF cash assistance. The contract included maintenance of TIERS, the computer system that supports eligibility determination, and an enrollment broker program for Medicaid managed care and CHIP clients. Accenture formed the Texas Access Alliance (TAA), a conglomerate of private subcontractors, to fulfill the contract. The contract was intended to provide additional modes of access for those seeking benefits, and TAA developed a web portal for people to apply over the Internet.

After performance problems were not resolved in a Travis and Hays County pilot program that began in January 2006, the state delayed plans to expand the use of the TIERS eligibility system statewide. A comptroller's report released in October 2006 recommended immediate termination of the TAA contract, citing performance issues, including the improper denial of eligible children for child health services. Responsibilities between the state and TAA were rebalanced in a new contract signed in December 2006, which was reduced to \$543 million. On March 13, the full TAA contract was terminated.

CSHB 1 includes \$1.1 billion in all funds in the Integrated Eligibility and Enrollment strategy, which was intended, in part, for operations under the TAA contract. Now that the state will reassume eligibility processing, integrated eligibility funding will be maintained at the same level. However, the state will resume responsibility for operations in November 2007. The appropriations in CSHB 1 include funds to maintain 7,200 state eligibility staff.

Public Education Overview

Public education, the largest single function funded by the state, accounts for 26.5 percent of the total budget and 36.9 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 and State Board for Educator Certification. The Texas School for the Deaf and the 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).

In its third called session in 2006, the 79th Legislature enacted HB 1 by Chisum, which provided for state aid to school districts to reduce school property taxes by one third in tax year 2007 and beyond. To replace this local tax revenue, HB 2 by Chisum would appropriate \$14.2 billion in all funds for fiscal 2008-09 to TEA to be distributed to school districts through the Foundation School Program. HB 2 passed the House on February 20 and currently is pending in the Senate Finance Committee.

For fiscal 2008-09, CSHB 1 proposes funding of \$39.8 billion in all funds for public education. This does not include funding for local property tax relief provided by HB 2 and would represent an increase of 3.8 percent in all funds from fiscal 2006-07. General revenue-related spending would increase about \$2.4 billion, or 8.9 percent, to \$29.2 billion.

The combined appropriations in CSHB 1 and HB 2 bring total state spending for public education to about \$54 billion in fiscal 2008-09.

Federal funds. Federal education funds for Texas are expected to be about \$8.5 billion in fiscal 2008-09, an increase of 1.8 percent over fiscal 2006-07. About one-fourth of these federal funds pay for free and reduced-priced lunch and breakfast programs, which are expected to increase by \$545 million. This increase likely will be offset by decreases in federal funding of \$64.9 million for certain No Child Left Behind programs and the difference resulting from one-time federal hurricane relief provided in fiscal 2006-07 in the wake of hurricanes Katrina and Rita.

Budget highlights

Most state funding, including money for facilities as well as operations and support, is distributed to school districts through the Foundation School Program (FSP). Funding for school district operations and support is distributed 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 textbooks and technology also is distributed through the FSP.

Public education spending comparisons (millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	\$26,764.9	\$29,154.1	\$2,389.2	8.9%
Federal	8,318.0	8,470.3	152.3	1.8
Other	3,304.6	2,208.6	(1,096.1)	(33.2)
All funds	38,387.5	39,833.0	1,445.4	3.8

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

FSP: Operations

CSHB 1 would appropriate \$23.4 billion in all funds for the FSP in fiscal 2008-09, a decrease of 6.7 percent from fiscal 2006-07. This would cover the cost of enrollment growth, maintain equity standards, and fund the teacher pay raise, high school allotment and other initiatives authorized in 2006 by HB 1, third called session, 79th Legislature. The increased costs associated with these new initiatives have been offset by rising local property tax revenue, which will result in a savings to the FSP. The fiscal 2008-09 appropriation to TEA also includes spending \$1.1 billion in general revenue-related funds to move forward FSP payments to school districts from fiscal 2010 to fiscal 2009, eliminating a one-time shift made in fiscal 2004-05 to defer spending to the next biennium to allow certification of the budget.

CSHB 1 would appropriate \$263 million in fiscal 2008-09 to fully fund the technology allotment, which is set in statute at up to \$30 per student in average daily attendance (ADA) or another amount set by appropriation. The fiscal 2006-07 funding level of \$115 million per year would have provided about \$26.50 per student in average daily attendance (ADA) for fiscal 2008 and \$26 per ADA in fiscal 2009. CSHB 1 would provide an additional \$33 million in general revenue to fully fund the technology allotment at \$30 per ADA.

The bill would appropriate \$505 million in all funds to fund textbook purchases, a decrease of \$125 million, or about 20 percent, from fiscal 2006-07. The funding reduction is expected because fewer textbooks were scheduled for purchase in fiscal 2008-09 than in fiscal 2006-07.

FSP: Facilities

CSHB 1 would appropriate \$1.5 billion in all funds for facilities funding, an increase of 1.7 percent. This would include \$1.33 billion for current state obligations for facilities funding, a decrease of \$189.7 million, or 12 percent. The decrease in existing obligations will occur because increases in local property values have reduced the

state's share of facilities funding obligations. The bill would authorize \$215 million in new general revenue for the two major state facilities programs, the Existing Debt Allotment (EDA) and the Instructional Facilities Allotment (IFA). Of this amount, \$150 million for the biennium would be used to "roll forward" the EDA, and \$65 million would fund new IFA grants.

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 \$37 billion in August 2005. 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 EDA and the IFA, largely in response to concerns and potential litigation about equity in facilities funding.

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, 2005. Districts with lower wealth per student have a greater share of their debt paid by the EDA, which 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. The 79th Legislature in 2005 appropriated \$180 million to "roll forward" the eligibility cutoff date and cover two more years of school facilities debt under the program.

The IFA is a competitive grant 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 79th Legislature in 2005 appropriated \$150 million for new

IFA grants – \$50 million for each year of the biennium and \$50 million in ongoing funding of first-year grants in fiscal 2009.

Supporters of increased facilities funding say the state should raise funding beyond the amount required to maintain existing commitments. Facilities are an essential component of a high quality education, and the state should strengthen its commitment to ensuring that all children have the opportunity to learn in safe, functional facilities. Failure to provide sufficient facilities funding for districts that cannot raise adequate funds locally, supporters say, has widened the equity gap for districts that already are struggling to keep up with enrollment growth.

In recent years, supporters say, rising local property values have led to reductions in the state's commitment to support facilities payments. For fiscal 2008-09, the LBB projects that the state's obligation for facilities payments will decrease by nearly \$190 million due to rising property values. Supporters say the state should use it to increase the guaranteed yield for facilities funding and provide an even higher level of funding for facilities support.

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, they say, so that state funds are not used to pay for football stadiums and other noninstructional facilities. While the amount of new money for EDA and IFA may not seem significant, opponents say the state already is providing \$1.5 billion each biennium to cover facilities costs.

Student Success Initiative

Education Code, sec. 28.0211 requires that 3rd and 5th grade students pass the reading and mathematics sections of the Texas Assessment of Knowledge and Skills (TAKS) exam before being promoted to the next grade level. Eighth graders will be subject to the same requirement in

the 2007-08 academic year. School districts are charged with providing intense, comprehensive instruction through Accelerated Reading Instruction (ARI) and Accelerated Math Instruction (AMI) programs to those students who did not successfully pass the TAKS exam. Students receive up to three opportunities to pass the exam. Each year, TEA must certify that sufficient state funds have been appropriated to provide the necessary ARI and AMI instruction for students. This funding is provided to school districts separately from the FSP as part of a TEA program called the Student Success Initiative (SSI).

CSHB 1 would appropriate \$311 million in general revenue to fund the SSI, which represents a decrease of about \$1.8 million from fiscal 2006-07. The bill does not include an additional \$138 million that TEA requested to expand the program into the 8th grade but directs TEA to use existing funds to serve students unlikely to pass the 8th grade reading and math portions of the TAKS test. Rider 44 directs TEA to use \$31.2 million of the funds appropriated for SSI to reinstate teacher training academies, which train teachers to use scientifically valid instructional practices in core academic test areas.

Supporters say the funding level in CSHB 1 is adequate. The state should not continually spend more on the SSI without ensuring that funds are being used wisely and reaching the neediest students. A better approach than the significant infusion of funds requested by TEA, they say, would be to provide more limited but targeted funding to reinstate teacher training academies. These academies proved highly effective in giving teachers the tools they need to help students succeed before they were eliminated as part of budget cuts in 2003.

Critics say the SSI should receive increased funding to meet the growing need for intensive instruction as more students become subject to mandatory passing requirements. If the state is going to require that students pass the TAKS test in order to be promoted to the next grade, it must commit sufficient resources to ensure that students have the assistance they need. Schools, too, are affected by tougher accountability standards and need additional state support so that their students can meet these standards.

TRS pension fund

The Teacher Retirement System (TRS) provides retirement benefits, group insurance, and death, survivor and disability benefits for employees of public school districts and institutions of higher education. CSHB 1 would appropriate \$4.2 billion in all funds to TRS, an increase of about \$717 million, or 20 percent above fiscal 2006-07 spending.

CSHB1 would appropriate \$700 million in all funds in fiscal 2008-09 for payroll growth and to increase the state contribution rate to the TRS pension fund from 6 percent to 6.7 percent of payroll. Actuaries predict this would be sufficient to make the pension fund “actuarially sound,” which would enable TRS to authorize an annuity increase for retirees. The bill does not include funding to directly provide a benefit increase.

Government Code, sec. 811.006 prohibits the Legislature from granting benefit increases to retirees unless the pension fund is considered “actuarially sound,” meaning that the pension system is able to amortize all of its liabilities over 31 years. Based on the fund’s valuation on February 28, 2007, actuaries estimate that an increase in the state contribution rate to 6.6 percent of payroll would be sufficient to make the fund actuarially sound.

Supporters of increasing the state contribution rate say retirees have not had a benefit increase since 2001 and should not have to wait another two years or more until market gains are sufficient for the pension fund to be determined actuarially sound. Since the last benefit increase, retirees living on fixed incomes have struggled with higher costs for health care, food, and other necessities.

In view of other urgent budget needs, some advocate increasing the state contribution rate to only 6.4 percent of payroll, as recommended by the LBB. Even at this level, improving market conditions, changes in TRS investment strategies, and new TRS eligibility requirements adopted in 2005 eventually should lead the fund to become actuarially

sound, they say, and allow TRS to grant annuity increases by 2010. If the state increases its contribution, the percentage of payroll contributed by active employees also should increase.

Other programs

Teacher salaries and incentive programs.

CSHB1 would provide sufficient funding to maintain teacher salary increases and incentive programs approved in HB1, third called session, 79th Legislature. According to the LBB, the two teacher incentive programs represent the largest program funding increase to TEA. Combined funding would increase from \$100 million in fiscal 2007 to \$582 million in all funds in fiscal 2008-09. The bill would provide \$100 million per year for the Awards for Student Achievement program, which provides teacher incentives to schools with high concentrations of educationally disadvantaged students and \$382 million for the biennium to fund new incentive programs developed by school districts.

Supporters of this funding say the new incentive programs would reward the best teachers and provide an incentive for teachers to work with educationally disadvantaged students.

Opponents say average teacher salaries in Texas should be raised to at least the national average before incentive programs are funded.

Dropout prevention. CSHB 1 would provide \$50 million in general revenue in fiscal 2008-09 for a new high school improvement and dropout prevention program. The new funding would be used to provide research-based instructional support to high schools serving students at risk of dropping out of school with the goals of improving high schools and reducing dropouts.

Early childhood education. CSHB 1 would provide \$198.6 million to fully fund TEA’s request for prekindergarten and early childhood education programs.

Supporters say this funding is needed to continue providing preschool programs to help young children learn English before they start school and increase their chances of success.

Opponents say this funding level is not sufficient to meet the demand for high quality preschool education for low-income and non-English speaking children. Additional funding for early childhood education pays huge dividends in later years by helping to reduce dropout and crime rates among young people.

Higher Education Overview

Public institutions of higher education funded by the state include the Texas Higher Education Coordinating Board (THECB), general academic institutions, health-related institutions, two-year institutions, and Texas A&M University service agencies.

CSHB 1 would appropriate \$20.9 billion in all funds for higher education institutions in fiscal 2008-09, an increase of \$2.3 billion, or 12.6 percent, over the expended amount in fiscal 2006-07. Art. 3 higher education institutions would receive \$14.4 billion in general revenue-related funds in fiscal 2008-09, about 8.5 percent more than their share in the current biennium. A large portion of funding increases for higher education would focus on three areas: student financial aid; funding for community colleges; and funding for the health-related institutions. The bill would allocate \$6.1 billion in all funds for general academic institutions, an increase of 5.4 percent over the current biennium. CSHB 1 also would allocate \$7.3 billion in all funds to health-related institutions, an increase of 19.6 percent over fiscal 2006-07 appropriations. Community colleges would receive \$1.7 billion in general revenue-related appropriations, representing an increase of 3.4 percent over fiscal 2006-07 expenditures.

Budget highlights

Funding higher education institutions

Background. Higher education institutions generally receive state appropriations through two main avenues – formula funding and special items. Institutions depend on state funding to varying degrees. Some are funded almost entirely by state appropriations, while others rely heavily on external support. Direct appropriations are made to institutions in lump sums, and unlike most other state agencies, higher education entities are not required to spend appropriations within a specified funding strategy.

General academic institutions receive direct appropriations through funding formulas and non-formula appropriations, with more than 74 percent of direct state funding allocated through two formulas – instruction and operations (I&O) and infrastructure.

The I&O formula is based primarily on enrollment. Formula appropriations include revenue from statutory tuition and fees. The statutory tuition rate, which is set by

Higher education spending comparisons (millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	\$13,243.7	14,369.5	1,125.7	8.5%
Federal	333.1	336.9	3.9	1.2
Other	5,009.1	6,220.0	1,210.9	24.2
All funds	18,585.9	20,926.4	2,340.5	12.6

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

the Legislature, is \$50 per semester credit hour for Texas residents. For budgeting purposes, revenue from statutory tuition is estimated – universities may spend the actual amount they collect in tuition.

Non-formula funding sources include special-item funding and excellence funding. Special-item funding is outside of and in addition to formula funding and generally is specific to either an institution's area of expertise or a special purpose. Institutions may use excellence funding for any purpose, including capital expenditures, teaching, research enhancement, and student financial aid. Excellence funding goes to all general academic institutions except for the University of Texas at Austin and Texas A&M University, which receive funding from the Available University Fund (AUF). Other sources of state funding include funding for tuition revenue bond payments and certain staff benefits, funds allocated to THECB, and the Higher Education Fund.

In addition, institutions have access to funds that are not reflected in the state appropriation process, which are called non-appropriated or institutional funds because institutions generate this income from external sources. Examples of this include board-authorized tuition – also known as “designated tuition” – and fees, auxiliary income, indirect cost recovery income from research grants and contracts, and gifts. In 2003, the 78th Legislature delegated authority to university system regents to set designated tuition rates.

Health-related institutions receive state funding through five formulas: I&O; infrastructure; research; graduate medical education; and mission-specific. Like general academic institutions, they receive a majority of general revenue-related support through the I&O formula. They also receive non-formula appropriations. Examples of non-formula funding include interest earnings from tobacco-settlement funds and revenue generated from patient care and special-item funding.

Community colleges are funded based primarily on student contact (classroom) hours. More than 99 percent of general revenue-related funding is generated through a funding formula. No state funding is provided for physical

plant operations, maintenance, or facilities because those costs are borne by the institutions and usually funded by ad valorem taxes. Tuition and fees are another significant source of income for community colleges along with state funding for staff health and retirement benefits. THECB receives state funding to provide new campus funding for institutions that meet certain growth criteria.

General academics

CSHB 1 would allocate \$6.1 billion in all funds to general academic institutions, system offices, Lamar State Colleges, and Texas State Technical Colleges. This represents a 5.4 percent increase over the funding level in fiscal 2006-07. General revenue funding would increase by \$286.3 million, which includes an increase of \$26.2 million to fund a 1.1 percent rate of growth in statewide enrollments and an increase of \$235.7 million for debt service for tuition revenue bonds authorized by HB 153 by Morrison, enacted in 2006 in the third called session of the 79th Legislature. General revenue-dedicated funding would increase by 1.4 percent for a total of \$1.6 billion due to increased tuition and fees.

The funding in CSHB 1 reflects the continued phase-in of a new I&O formula methodology, adopted in 2005, that is based on actual cost data and designed to allocate funding equitably. As a result of funding allocation shifts under this new methodology, CSHB 1 would increase general revenue appropriations by \$14.1 million in hold harmless.

Critics say that as a result of tuition deregulation in 2003, tuition has risen almost 40 percent statewide, making higher education unaffordable for many Texans. They say that lawmakers should limit how much universities can raise as designated tuition or allocate more funding to universities so that dramatic hikes in tuition are not necessary.

Governor's plan. Gov. Perry has proposed a higher education plan that would total \$9.8 billion for fiscal 2008-09, including an increase in general revenue funding of \$711 million. The plan calls for incentive funding based on degrees awarded, the introduction of university exit

exams, increases in financial aid, elimination of special-item funding, creation of alternative programs to address nursing shortages, and increased accountability for universities.

Texas Competitive Knowledge Fund. CSHB 1 would establish the Texas Competitive Knowledge Fund and allocate funding to all of the 35 general academic institutions for research. A total of \$115.6 million would be distributed among the institutions in amounts proportional to their research expenditures. Of these funds, \$49.4 million would be new general revenue, and \$65 million would be moved from the institutional enhancement strategies of the University of Texas at Austin, Texas A&M University, the University of Houston, and Texas Tech University to the new fund and redistributed. None of these institutions would end up with less funding as a result.

Supporters of the new fund say it would help all general academic institutions – rather than just a few – to invest in expanding research.

Critics say the funding is a good first step but would not reduce the gap between under-funded and well-funded institutions.

Health-related institutions

Background. Most health-related institutions offer undergraduate medical, nursing, pharmacy, allied health, and dental programs. In addition, these institutions provide residency training, also called graduate medical education (GME), to new physicians. Currently, a majority of state GME funds are distributed by THECB.

CSHB 1 would appropriate \$7.3 billion in all funds to health-related institutions, which represents an increase of \$1.2 billion, or 19.6 percent, over the fiscal 2006-07 level. General revenue appropriations would increase by \$208.6 million and include an additional \$22.3 million to fund a 7.3 percent rate of growth in student enrollment and a net increase of \$64.2 million for debt service for tuition revenue bonds authorized by HB 153 by Morrison, enacted in 2006. Other increases include \$37.9 million in general revenue-

related funding for GME for a total of \$72.7 million. The bill would transfer most of the GME funds from THECB and distribute them directly to the health-related institutions. It would appropriate \$47.9 million in general revenue-related funding for the Texas Tech Health Sciences Center El Paso Medical School and \$6.3 million in general revenue-related funding for the Texas A&M University Health Science Center Irma Rangel School of Pharmacy.

CSHB 1 would appropriate to THECB a total of \$14.7 million in general revenue-related funds for the professional nursing shortage reduction program for the health-related institutions. Rider No. 40 in the THECB bill pattern would allow the allocation of up to \$1.5 million to community college nursing programs each year. An increase of \$18.7 million in general revenue-related funds would be added to fund the new nursing graduate weight and increase the biomedical science weights in the I&O formula to generate more funding for these disciplines. Baylor College of Medicine, which receives per student funding from THECB, would be allocated \$88.5 million for fiscal 2008-09.

Other funds for health-related institutions would increase by slightly more than \$1 million because of an increase in income from patient care, mostly attributable to the University of Texas M.D. Anderson Cancer Center.

Supporters of increased funding for health-related institutions say this investment is necessary to address a shortage of health professionals that only will intensify as the state in general, and the elderly population in particular, continues to grow. According to the Department of State Health Services, the state has about 43,000 physicians to treat 23 million people, which ranks Texas 45th in the nation in physicians per 100,000 residents. In 2005, Texas medical schools produced 1,260 graduates, while 3,200 physicians retired that same year. Not only does Texas have the highest rate of uninsured adults in the nation, but the state is facing epidemics of obesity, diabetes, and heart disease. Nursing schools report that thousands of qualified applicants are turned away each year because there is not enough faculty to teach them. All of these factors, supporters say, make increased funding for health-related institutions a top priority.

Others argue that CSHB 1 should restore the Medicaid GME program eliminated by the 78th Legislature in 2003, which resulted in a loss of federal matching funds for state dollars spent on GME. Restoration of this program would reclaim a federal match of 60 percent to the state's 40 percent appropriation. HHSC originally requested \$81 million in general revenue-related funds to restore Medicaid GME.

Other proposals. Part of Gov. Perry's higher education plan calls for a Texas Nursing Initiative, a \$56.8 million effort to increase the number of nursing graduates. The first component would be a \$40 million pilot project aimed at producing more registered and licensed vocational nurses. The second component would allocate \$16.8 million for the Nursing Innovation Grant Program to promote creative ways to educate, recruit, and retain nursing students and faculty.

Community colleges

CSHB 1 would allocate \$1.7 billion in general revenue-related funding in fiscal 2008-09 to community colleges, including \$9.7 million to hold harmless 97 percent of their funding from the previous biennium. General revenue would increase by \$55.1 million and include \$42.4 million in new formula funding.

Supporters of CSHB 1 say that continued support for community colleges is critical because they are the gateway for many students entering higher education. While contact hours have decreased in recent years, the number of students attending community college is increasing. Recent trends that have resulted in a reduction in contact hours among a reported 62 percent of community college districts soon may change. For example, there may be a surge of new community college students in 2008 as the first group of high schoolers graduates under the required recommended curriculum. In the meantime, the hold harmless provision would be necessary to ensure that community colleges did not experience significant funding decreases due to the current lower levels of contact hours. Also, community colleges are sensitive to fluctuations of the economy. If the

economy slows in the near term, as many experts predict, more people likely will seek higher education or workforce training at the community college level.

Funding for financial aid

Background. THECB coordinates Texas higher education and administers various student financial aid and state-funded trustee programs. In order to give the board more flexibility in meeting the needs of Texas students, the 79th Legislature in 2005 combined four financial aid programs – TEXAS Grants, Texas Educational Opportunity Grant (formerly TEXAS Grants II), College Work Study, and the B-on-Time (BOT) program – into one student financial aid strategy. Funding for these student financial aid programs for fiscal 2006-07 was \$371.4 million.

The 78th Legislature in 2003 created the BOT, which offers interest-free loans for students who recently graduated from high school after completing the recommended curriculum. Loans made to students who graduate "on time" from a four-year university with at least a 3.0 GPA are forgiven. The BOT has not received any general revenue-related funds to date. Each university must set aside 20 percent of any designated tuition increase over \$46 per semester credit hour and dedicate 5 percent of that amount for the loan program. The remaining 15 percent must be used for institutional financial aid. The total set aside for BOT for fiscal 2006-07 was about \$20.6 million, and the estimated set-aside for BOT in fiscal 2008-09 is about \$40 million.

The Tuition Equalization Grant (TEG) program helps needy Texas students pay the difference between the tuition charged at private or independent colleges and tuition at a comparable public institution. The 79th Legislature appropriated \$105.8 million in general revenue-related funds for each year of the current biennium for TEG. Of that amount, \$17.8 million was used in fiscal 2006 and an estimated \$11.7 million will be used in fiscal 2007 to meet obligations to TEXAS Grant recipients at private universities as that program is being phased out at those

institutions. TEG awarded \$87.2 million in financial aid to 30,035 Texas students in fiscal 2006 and will award \$94.2 million to almost 32,000 students in fiscal 2007.

CSHB 1 would appropriate \$1.2 billion in all funds to THECB for fiscal 2008-09. General revenue-related appropriations for financial aid would increase by \$150.5 million in fiscal 2008-09, for a total of \$545.2 million. Of these additional funds, \$135 million would be allocated as follows:

- \$120 million to the TEXAS Grants program;
- \$5 million to the BOT;
- \$5 million to college work study; and
- \$5 million to the Texas Education Opportunity Grant program.

The total number of students served by TEXAS Grants would be about 96,800 for fiscal 2008-09, which would fund about 65 percent of eligible students. If tuition and fees increased more than 5 percent a year, then fewer students would be served. In addition, the Designated Tuition Set Aside Financial Aid program would receive \$15 million and be available to institutions as a state match to the 15 percent set-aside.

Other allocations to THECB would include \$23.6 million in general revenue-related funds to implement the College Readiness Initiative Strategy, as required by HB 1, third called session, 79th Legislature.

The bill would move the TEG program to the financial aid strategy and fund the program at \$211.7 million for fiscal 2008-09, which is about the same amount it received in the current biennium.

In its original request, THECB requested a total of \$737.6 million for financial aid for students, saying that adequate aid for students is essential for meeting the goals of Closing the Gaps by 2015. Much of the funding would have been directed to the TEXAS Grants program, which has awarded more than 327,000 grants totaling \$832 million since the program's inception in 1999. SB 1176 by Ellis would dedicate \$897 million to the program.

Other proposals. Some financial aid experts have proposed moving the BOT program to the Texas Guaranteed Student Loan Corporation, a nonprofit organization that administers federal higher education loan programs. They say the BOT program is underutilized because the process of receiving a loan is cumbersome and time consuming. Because the Texas Guaranteed Student Loan Corporation already is set up to administer loans, these advocates say it would streamline the process of receiving loan money and encourage more students to take advantage of the program.

The governor's plan would restructure state-funded financial aid programs and allocate \$362.8 million in new funding for them. It would increase need-based and performance-driven financial aid and create new aid programs geared toward technology, college work study, and nursing. In addition, three existing aid programs would be consolidated into a new program called the Tuition Assistance Grant, and funding for the new program would total \$492.2 million. The BOT would receive an allocation of \$405.3 million for fiscal 2008-09. The governor's plan also would move financial aid administration from THECB to the Texas Guaranteed Student Loan Corporation.

Tuition revenue bonds

Background. Tuition revenue bonds (TRBs) are issued by institutions for which future revenue (tuition and fees) is pledged for repayment of the bonds. The Legislature must authorize bond issuance, and bond proceeds are used to finance construction, renovation projects, equipment, and infrastructure. Although the authorization and issuance of TRBs is not contingent on an appropriation for the debt service, using general revenue funds to reimburse institutions for principal and interest on the debt has been legislative practice since 1971, when TRBs were first authorized. The 78th Legislature in 2003 changed that policy by appropriating TRB debt service for interest only for TRBs issued after March 31, 2003. The 79th Legislature did not authorize any new TRBs until the third called session in 2006 (HB 153 by Morrison).

CSHB 1 would fund debt service for principal and interest for TRBs authorized by HB 153 at \$307.3 million in general revenue-related funds. The bill would fund existing debt service at \$371.2 million.

Funding for Historically Black Colleges and Universities

Background. In 2000, Gov. George W. Bush and the federal Office for Civil Rights (OCR) agreed to a plan to improve programs and facilities at Prairie View A&M University (PVAMU) and Texas Southern University (TSU), the state's two Historically Black Colleges and Universities (HBCUs). The \$75 million funding commitment, which began in fiscal 2002 and is scheduled to end in fiscal 2007, provides funding to establish and strengthen academic programs, infrastructure upgrades, and institutional support at the two universities.

CSHB 1 would allocate \$15.5 million to PVAMU and \$6.25 million to TSU in OCR funding for fiscal 2008-09. In their original budget requests, PVAMU and TSU requested \$25 million and \$19.7 million, respectively.

Supporters say that the funding proposal in CSHB 1 would complete the original agreement and signal a continued commitment to program enhancement at these universities. Funding for HBCUs must continue to sustain and enhance the programs begun under the agreement between OCR and the state. Both schools are integral in the state's higher education plan, *Closing the Gaps*, which calls for increasing student enrollment by 2015. These funds are needed until enrollment increases enough to generate formula funding. Without OCR funding, the universities would have to increase designated tuition and cut faculty and programs.

Critics say the OCR funding proposed for TSU falls short of making up for the budget cuts of 2003. The amount contained in CSHB 1 would not add any new funding for the costs associated with ongoing OCR programs. The university has a continuing obligation to support these programs, but they have not had enough time to mature

and support themselves financially. If the programs were abandoned, the gains and investment the state has made would be forfeited.

Other proposals. Some advocate appropriating \$25 million for each institution for fiscal 2008-09. These funding levels would be comparable to appropriations in previous state budgets.

Due to a budget shortfall, TSU has requested an emergency appropriation of \$16.5 million for the remainder of fiscal 2007 in order to make emergency maintenance repairs, address deferred maintenance, and pay outstanding expenses. Gov. Perry has established a panel to develop a long-term plan for TSU.

CSHB 15 by Chisum, the supplemental appropriations bill, would allocate \$13.6 million to TSU for the remainder of fiscal 2007. In addition, HB 1173 by Coleman would change TRB projects that were authorized in HB 153 by Morrison, third called session, 79th Legislature. The bill would redirect existing TRB funds, which TSU has not yet received, to address current deferred maintenance projects.

Advanced Research Program

Background. The Advanced Research Program (ARP) is a competitive, peer-reviewed grants program. It emphasizes research that provides the basis for new knowledge and discovery leading to technological and medical advances.

Gov. Perry vetoed the program's funding of \$9.5 million in 2003. He said that institutions still would be able to conduct more research because they could retain 100 percent of their indirect cost recovery from externally funded research grants.

CSHB 1 would allocate a total of \$8.3 million in general revenue-related funding to the Advanced Research Program for fiscal 2008-09. An additional \$5 million has been placed in Art. 11. THECB originally requested a total of \$75 million for this program.

Critics of the level of funding in CSHB 1 contend that basic research is chronically underfunded. Almost all basic research is done at higher education institutions, and without it, the ability to conduct applied research for emerging technologies suffers. State-supported research also attracts a three to one ratio in federal and other matching funds, making ARP funding a good investment for Texas.

Constitutional funds

AUF. The Available University Fund (AUF) consists of proceeds from the Permanent University Fund (PUF), a state endowment based on land grants and mineral interests that total 2.1 million acres. Two-thirds of the AUF is appropriated to The University of Texas System, and one-third is appropriated to the Texas A&M System. The fiscal 2008-09 allocation to the AUF is estimated to be \$964.8 million, representing a biennial increase of \$172.3 million. The increase is due to the projected increase in distributions from the PUF investments. The current value of PUF assets is about \$11.1 billion.

HEF. The Higher Education Fund (HEF) provides general revenue funding for capital improvement projects and debt service at institutions that are not eligible for AUF funding. The Texas Constitution requires the Legislature to stop appropriating funds to the HEF when the corpus of the Permanent Higher Education Fund (PHEF) reaches \$2 billion, which is projected to happen in 2023.

CSHB 1 would allocate \$525 million in general revenue to the HEF beginning in fiscal 2008 as approved by the 79th Legislature. This would be an increase of \$175 million in general revenue-related funding over current levels. The bill would not make an allocation for the PHEF corpus, which reflects decisions by the two previous legislatures not to fund contributions to the PHEF. From fiscal 1996 through fiscal 2003, the Legislature contributed \$49.4 million per year to the PHEF.

Higher Education Group Insurance

CSHB 1 would appropriate \$964 million in all funds – \$963 million in general revenue-related funds – in fiscal 2008-09, to institutions that obtain health insurance through the University of Texas System, the Texas A&M University System, or the Employee Retirement System. This would be a general revenue increase of \$26 million above spending in the current biennium. State appropriations fund the total cost of health coverage for full-time active and retired employees and 50 percent of the cost of health coverage for spouses and dependents. An additional \$7.9 million for institutions that participate in the ERS has been placed in Art. 11.

Critics say CSHB 1 should equalize funding for health insurance premiums of higher education employees at the same rate as for state employees. Even with the increase in state funding, the state-paid contribution rates for health insurance premiums of higher education employees are 10 percent less than those paid for other state employees, and the institutions have to pay the difference.

Article 4 Overview

The Texas court system includes two high courts, 14 intermediate appellate courts, 438 state district courts, and 2,228 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 appeal. The state also pays:

- the base salaries of all 504 appellate and district judges;
- some of the travel expenses for district judges with jurisdiction in more than one county;
- salary supplements for constitutional county, statutory county, and statutory probate judges;
- salaries for child support and child protection court associate judges; and
- funding to prosecutors for salary and expenses.

Some of the appellate courts receive funding from the counties where they are located. Cities and counties cover the cost of most county, justice, and municipal court personnel and the courts' capital and operating expenses.

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 the 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 relatively constant, appellate judges have relied on increases in staff and on visiting judges to help work through dockets and avoid creating a backlog of cases.

Other state-funded judiciary functions include the Office of Court Administration (OCA), the State Law Library, the Office of the State Prosecuting Attorney, the State Commission on Judicial Conduct, the Court Reporter's Certification Board, the Judiciary Section of the Comptroller's Department, the Public Integrity Unit, and the Office of the Special Prosecutor.

For fiscal 2008-09, CSHB 1 would appropriate \$559.2 million for the judiciary, or less than one-half of 1 percent of all state spending. This would represent an increase of about 17.8 million, or 3.3 percent, in all funds from spending in fiscal 2006-07. General revenue-related appropriations would total \$424.3 million, an increase of 4.2 percent.

Article 4 spending comparisons (millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	\$407.1	\$424.3	\$17.1	4.2%
Federal	5.4	0.0	(5.4)	(100.0)
Other	128.9	135.0	6.1	4.7
All funds	541.4	559.2	17.8	3.3

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

Budget highlights

CSHB 1 would fund Art. 4 courts and agencies above fiscal 2006-07 levels. During the budget process, many courts and Art. 4 agencies requested items they said would help with the speedy disposition of cases in light of steadily growing case loads and demands for services.

In general, increases in appropriations for the judiciary fall into five areas: general staff increases; technology improvement funds; legal education funds; court staff increases; and some funding and organizational changes needed to address the increase in litigation concerning children.

Staff increases

CSHB 1 would fund staff increases for the courts. It would provide an additional \$380,000 in general revenue-related funds to the Supreme Court to provide for two staff attorneys and one deputy clerk. CSHB 1 also would fund a \$2.5 million block grant out of general revenue-related funds to the courts of appeal. This grant would be allocated by a model developed by the 14 chief justices of the courts of appeal and would provide similar funding for courts of the same size. The funds would be used to address needs identified as critical by the chief justices, including:

- restoring law clerk positions and reclassifying some clerk positions as permanent attorneys;
- recruiting attorney and non-attorney staff and increasing their salaries; and
- increasing other operating expenses.

CSHB 1 would fund five additional staff for the 5th Court of Appeals in Dallas, three additional staff for the 1st and 14th appeals courts in Houston, and one additional employee each for the 3rd (Austin), 4th (San Antonio), 9th (Beaumont), and 12th (Tyler) appeals courts.

Supporters of these funding levels say the block grant would enable salary increases necessary to attract and retain higher quality staff. In addition, reclassifying law clerks as

permanent attorneys would allow the courts to avoid the cost of training new employees only to lose them when they complete their year-long clerkships.

Opponents say that the block grant would provide inadequate funding for the needs of the courts. The courts of appeal request of \$4.7 million is necessary in order for them to continue to clear their dockets efficiently and rapidly.

Other opponents say that the courts should not move away from the long-standing model of relying on law clerks. Invaluable training experiences will be diminished if the courts are encouraged to reclassify their law clerk positions as full-time attorney positions. Historically, the courts have hired attorneys who are waiting for results from their licensing exams as researchers and writers for yearly terms. This system provides affordable labor for the courts and invaluable firsthand experience for the clerks. Additionally, these clerks help raise the overall level of academic and legal ability of the profession as these new lawyers enter all levels and areas of the law after they have completed their clerkships.

CSHB 1 also would fund one additional FTE for the Child Protection Courts Program. This funding is intended to help create an additional specialty child protection court to handle child protection cases. The funds would be administered by OCA.

CSHB 1 would not fund a request by the 4th Court of Appeals for \$110,000 over the biennium to contract with the Bexar County Sheriff's Office for the services of a full-time bailiff.

Technology funding

CSHB 1 would provide \$337,200 in general-revenue related funds for the biennium to the Supreme Court for live broadcasting of proceedings over the Internet. The bill would provide OCA with \$680,000 to provide Texas trial courts with information services and technology. These include seed grants for broadband Internet connectivity services and for funding collection and case management software.

Texas Appeals Management & E-filing System (TAMES). A proposal was made to appropriate \$2.3 million in general revenue-related funds over the biennium to OCA to set up a system for the electronic filing and management of documents and pleadings for the Texas appellate courts. This would fund computer and networking equipment and four FTEs. CSHB 1 includes TAMES funding under Art. 11.

Supporters of e-filing in the appellate courts say that it would:

- streamline the interaction between the appellate courts and the trial courts;
- simplify and improve document sharing and tracking within courts;
- streamline and reduce the cost of the document submission process for attorneys;
- increase transparency by enhancing public access to court records; and
- allow for a browser-based system for remote access, enhancing productivity.

Supporters also argue that CSHB 1 would put appellate courts on par with the largest counties in Texas, which already have implemented civil e-filing. Dallas, Harris, and Travis counties generally have found the program to be successful, and 10 other counties currently are implementing e-filing systems. Additional counties are studying implementation as well, and 98 percent of the federal courts already use e-filing. Experience with the federal system suggests that as attorneys become familiar with e-filing, they tend to prefer it. Younger and more technologically savvy lawyers and support staff are expected to embrace e-filing for its convenience and because it is cheaper for clients than printing documents and utilizing courier services.

Opponents of e-filing say that the existing system of paper filings is adequate. The American court system traditionally has relied on paper and has functioned well. If technology proponents truly are interested in improving court efficiency, state funds would be better spent by increasing court staffing levels instead.

Other opponents say the TAMES program would never be utilized adequately unless the courts adopted rules requiring the electronic submission of documents. The proposed e-filing system might not be cost effective because, given the choice most attorneys likely would continue to file paper documents as they always have.

Funding of innocence projects

Innocence projects identify, investigate, and document claims of actual innocence and work to exonerate those who have been wrongfully convicted. They also serve to educate students, citizens, and public officials about wrongful convictions, how they occur, and how they can be prevented while advocating for criminal justice system reforms to prevent wrongful convictions. Finally, they work to assist the wrongfully convicted with their adjustment back into society.

The state already funds innocence projects at law schools at the University of Houston, the University of Texas, and Texas Tech University. Rider 14 in the OCA's budget would fund each of these innocence projects at \$200,000 over the biennium. In addition, the bill would fund \$200,000 in general revenue-related funds over the biennium for Texas Southern University's Thurgood Marshall School of Law to create and maintain an innocence project.

Funding for civil commitments

CSHB 1 would provide an additional \$1.9 million in general revenue-related funds over the biennium to the Special Prosecution Unit in Walker County. This would fund an increase in the number of sex offenders civilly committed each year from 15 to 30. The additional funding would cover salaries for eight new staff and for additional expenses such as the costs of filing cases, expert testimony, and court reporters. CSHB 1 also would increase the salaries of staff in the civil division of the unit to make them competitive with those offered by similarly situated medium-sized district attorneys' offices.

Rider 8 in the budget of the Judiciary Section, Comptroller's Department would move funds for the treatment and supervision of civilly committed sex offenders from the Department of State Health Services budget to the Judiciary Section of the Comptroller's Department. The Judiciary Section then would enter into a contract with the Department of State Health Services to provide treatment and supervision for civilly committed sex offenders. This would result in a shift of \$2.8 million in fiscal 2008 and \$3 million in fiscal 2009.

Supporters of expanding the civil commitment program say Texas should appropriate more money for the commitment of sexually violent predators. The relatively small number of people being committed by the state reflects the limited resources previously allocated to these efforts and not the number of predators who should be committed. Supporters say CSHB 1 would ensure that there were enough resources so that the current statutory criteria could be applied rigorously to provide for the close supervision of all dangerous predators.

Opponents say the fiscal 2006-07 funding level, which allowed the Special Prosecution Unit to commit 15 individuals annually, is enough to remove the most dangerous sex offenders from society. A vast expansion of the program could lead to charges that it had become overly broad and to a court finding that it functioned as an additional, unconstitutional means of punishing sex offenders who had completed their sentences. Instead of expanding the civil commitment program, opponents say, it would be wiser to spend additional resources on treatment for all sex offenders.

Other opponents say the state should remove as many dangerous individuals from society as possible. CSHB 1 would not provide enough funding to the Special Prosecution Unit, which originally had asked for enough funding to increase the number of civil commitments each year from 15 to 50. The Special Prosecution Unit estimated that it could commit up to 50 individuals a year while still operating within constitutional guidelines. Concerns about the constitutionality of expanding civil commitment are exaggerated, according to these critics, because individuals under civil commitment would receive treatment while still enjoying a certain amount of freedom.

Article 5 Overview

Art. 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 Art. 5. Together, the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) are responsible for juvenile offenders and receive about 8 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, Military Facilities Commission, and two boards that license and regulate criminal-justice professionals.

CSHB 1 would appropriate \$7.8 billion in general revenue-related funds for Article 5 in fiscal 2008-09, an increase of about \$566.6 million or 7.8 percent from fiscal 2006-07. Art. 5 agencies would receive 6.4 percent of all funds and 9.9 percent of general revenue-related funds in fiscal 2008-09, about the same as their share in the current biennium.

Budget highlights

TDCJ: Increasing prison capacity, diversion, and treatment programs

Under CSHB 1, TDCJ's appropriation for fiscal 2008-09 would be \$215.8 million more than the amount in the LBB base bill, which included some increases to the agency's fiscal 2006-07 appropriation to pay for projected prison population increases. The vast majority of these additional funds would be used to address a projected need for additional prison capacity by increasing the number of state correctional beds and expanding a variety of diversion and rehabilitation programs designed to reduce the future demand for prison beds.

Since July 2005, the state's prison beds all have been occupied, and Texas has been leasing beds from counties to handle additional prisoners. As of March 2007, TDCJ had an

Article 5 spending comparisons (millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	\$7,259.7	\$7,826.2	\$566.6	7.8%
Federal	1,327.4	583.7	(743.7)	(56.0)
Other	1,292.4	1,241.3	(51.2)	(4.0)
All funds	9,879.4	9,651.2	(228.3)	(2.3)

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

operational capacity of 152,703 beds, which includes 1,916 beds under contract from counties. About 11,375 of the state beds were operated by private vendors. “Operational capacity” is calculated at 97.5 percent of bed capacity to account for the need to house inmates appropriately and for flexibility in moving inmates.

TDCJ contracted for an average of 1,338 beds in fiscal 2006. For fiscal 2007, the agency has been appropriated funds to contract for an average of 3,004 beds. If state policies remain unchanged, according to the LBB, the population of adult offenders sentenced to state prisons or jails by the end of fiscal 2008 will exceed the state’s operational capacity by 6,195, and the additional need for beds will be 8,658 by the end of fiscal 2009. 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.

CSHB 1 would address the need for additional prison beds by both increasing the state’s capacity and expanding treatment and diversion programs. During the budget process, Rep. Jerry Madden, chair of the House Corrections Committee, and Sen. John Whitmire, chair of the Senate Criminal Justice Committee, released a joint plan for spending on TDCJ’s programs and operations. It called for increases in many treatment and diversion programs and is outlined in the discussion that follows about specific budget increases.

The governor’s budget proposal would use \$125.8 million of existing bond authority to construct two medium-security facilities with 1,000 beds and would increase the amount available to contract for additional capacity by \$34.4 million over the fiscal 2006-07 amount. Gov. Perry also proposed renovating an existing facility to create 600 new beds and \$14 million for rehabilitation and parole placement options for more than 5,000 offenders.

Capacity. CSHB 1 would increase state correctional capacity by a total of 800 new substance abuse felony punishment beds. CSHB 1 also would fund 2,150

community beds for probationers and parolees and outpatient substance abuse and mental health treatment for probationers. Another proposal that was discussed during the budget process was the transfer of two facilities from the Texas Youth Commission to provide 1,200 beds for adult offenders by the beginning of fiscal 2010. CSHB 1 would give TDCJ \$3 million to renovate these facilities. Changes to the TYC budget were put on hold while revisions in the agency’s structure and policies are considered.

In its original budget request, TDCJ proposed building a 1,000-bed facility that would include 500 beds designed to treat offenders convicted of driving while intoxicated (DWI). CSHB 1 would not include funding for this facility, although the new treatment and diversion beds and funding for outpatient treatment could be used for DWI offenders. The Madden-Whitmire plan called for a 500-bed DWI treatment facility. The agency also requested \$377.7 million to build two new prisons with a total of 4,080 beds. Construction would have been completed in fiscal 2011-12, but CSHB 1 would not fund this item.

CSHB 1 would appropriate \$99.4 million for TDCJ to contract with counties for an average of 3,100 beds in fiscal 2008 and an average of 3,700 in beds through fiscal 2009. The LBB base bill included an increase in contracting money over the fiscal 2006-07 level and was designed to meet the June 2006 LBB projections for population increases. CSHB 1 decreased this amount due to the proposed increase in state correctional capacity and increases in treatment and diversion programs that are projected to lessen the need for state beds. Historically, the state has been able to contract for beds at a rate of about \$40 per day. TDCJ anticipates contracting with county jails and private vendors for these beds.

Treatment and diversion. CSHB 1 would increase biennial appropriations for offender treatment and diversion programs above the program’s fiscal 2006-07 amount. Funding for several of these programs would flow through the agency’s budget strategy for Diversion Programs and then be allocated to the individual programs by Agency Rider 83. The increases in CSHB 1 would be:

- \$30.2 million in general revenue-related funds to expand the state's 3,250 substance abuse felony punishment (SAFP) beds by 800. The agency had requested an expansion of 250 beds, and the Madden-Whitmire plan called for an additional 1,800 beds.
 - \$9.7 million in general revenue-related funds to expand the state's 537 alcohol and substance abuse treatment beds for the in-prison therapeutic program (IPTC) by 400 beds. This proposal would assign existing beds to the IPTC and would not be an increase in correctional capacity. TDCJ requested a 200-bed increase, and the Madden-Whitmire plan called for 1,500 new beds.
 - \$3.5 million in general revenue-related funds for an additional 150 halfway house beds used for offenders who are released on parole but have nowhere else to live. This matches the TDCJ request. The Madden-Whitmire plan called for 600 new beds.
 - \$27 million in general revenue-related funds for 600 residential substance abuse and mental health treatment beds. These beds would be used by local probation departments and would serve about 1,500 offenders annually due to rapid turnover. Offenders needing substance abuse treatment would receive 475 of the slots, and the remaining 125 would be reserved for mentally ill offenders. The agency requested \$11.2 million for 250 new beds, and the Madden-Whitmire plan called for 1,000.
 - \$18.4 million in general revenue-related funds to fund outpatient substance abuse treatment at local probation departments to serve 5,500 offenders on probation annually. This was included in the agency request. The Madden-Whitmire plan called for \$35 million for this item.
 - \$27.1 million in general revenue-related funds to add 1,400 intermediate sanction facility (ISF) beds, with half designated for offenders on probation and half for those on parole. Offenders can be sent to these lock-down facilities for up to 180 days by the parole board as an alternative to revoking their parole or by a judge who is sentencing a probationer. The Madden-Whitmire plan called for 2,400 of these beds.
 - \$10 million for mental health services, medications, and continuity of care to defendants in local jails and post-release treatment and supervision of persons found not guilty by reason of insanity. This was requested by the agency.
- Supporters** of the House proposal to increase capacity and expand diversion and treatment programs argue that CSHB 1 would strike the best balance of the need to add capacity while reserving beds for violent and serious offenders who should be locked up. The bill would increase state correctional capacity in secure facilities, give TDCJ the funds to contract for beds to cover the immediate need to house prisoners, and increase funding for numerous diversion and treatment programs. Supporters say this combined approach would result in fewer lower-level offenders being sent to state facilities and a lower recidivism rate among offenders, reducing the future demand for prison beds. The bill would add capacity and treatment dollars at the local level to give judges and the parole board more alternatives to state incarceration both when sentencing offenders and when considering revoking probation or parole. It also would address the backlog of offenders waiting for admission into substance-abuse treatment programs.
- The state should not rush into building new prisons without first seeing the effect of the treatment and diversion programs funded by CSHB 1. Even in a worst-case scenario in which the programs did not drive down the demand for beds, there would be plenty of space available in county and private facilities to meet state demand. Due to the availability of these beds and statutory and policy changes, there is no danger that the state would return to the days of overcrowded prisons or inmates backed up in county jails. The \$18.9 million needed annually to operate a 1,330-bed medium-security prison and the difficulty the state would have in finding correctional officers to staff them should make the Legislature extremely cautious about committing to new prisons that may not be needed.
- Some critics** of the approach proposed in CSHB 1 argue that the state should make no apologies for its tough criminal justice system and should build new prisons to cope with projected increases in the offender population.

They say that even with the new beds and the diversion and treatment programs funded by CSHB 1, the state would need additional capacity in about five years and should begin the building process now because it takes about four years from when TDCJ gets approval to when a new facility opens. While as many as six new prisons may be needed, the Legislature at a minimum for fiscal 2008-09 should authorize TDCJ to use about \$233 million in general obligation bonds to begin the process of constructing three 1,330-bed medium-security facilities, in which case TDCJ would need about \$34 million in the biennium to cover debt service on the bonds.

While some critics argue that the state should hold off a year or more on authorizing TDCJ to begin new construction, others argue that the Legislature cannot ignore the estimates for 2011 and 2012, which are based on sound, historic data and take into account the increase in treatment and diversion programs funded by CSHB 1. If the prison population proved to be lower than the projections, the state could close some of its older, outdated prisons that are harder and more expensive to operate.

Others argue that the best approach would be to evaluate the effect of the increase in treatment and diversion programs funded by CSHB 1 in one year and allow TDCJ to begin the building process only if the programs were not driving down the estimated demand for beds.

Other critics of CSHB 1 argue that the proposed spending would not go far enough and that the state should put even more resources into diversion and treatment programs. Current waiting lists for substance abuse programs may be artificially low, they say, because judges and the parole board have stopped directing offenders to such facilities due to lack of space.

TDCJ: Increased funding for prison health care

Background. In 1993, the 73rd Legislature created the Correctional Managed Health Care Committee (CMHCC) to develop 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, which is similar to health maintenance organizations that operate in the open market and offers a full range of medical, dental, and psychiatric services. UTMB's contract covers about 121,000 of the state's approximately 150,000 inmates, and TTUHSC's contract covers the remainder.

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.

Funding proposals. CSHB 1 would increase the state's spending on inmate health care by \$58.3 million in fiscal 2006-07. This increase in funding to CMHCC, through TDCJ's budget, would include:

- \$36.6 million to adjust the committee's funding base to reflect actual expenses incurred in fiscal 2006-07 for the delivery of services; and
- \$21.7 million to increase salaries.

Correctional managed health care also is expected to receive \$12.9 million in supplemental appropriations for expenses it has incurred above its fiscal 2006-07 appropriation due to an increased demand for hospital services and staff retention efforts.

CMHCC, through TDCJ's budget, requested about \$111.7 million more than its fiscal 2006-07 funding level. In addition to proposed funding in CSHB 1 to account for actual spending and salary increases, the committee requested the following:

- \$23.7 million for hospital and specialty care;
- \$7.1 million for increases in pharmacy costs;
- \$6.4 million for updated equipment including x-ray, dialysis, and dental chairs;

- \$10.4 million for repairs and renovation to the TDCJ Hospital in Galveston; and
- \$5.8 million for increased operating supplies and services costs.

Supporters of the approach in CSHB 1 argue that the \$58.3 million increase in funding for inmate health care 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 \$36.6 million increase to the CMHCC's base is necessary because, despite cost savings measures, the university providers say they will spend more than they will earn in fiscal 2006-07 to provide the required level of health care. Without this adjustment, operating losses by the universities could be managed only by reducing services, which might compromise quality of care. The growth rate of expenditures for the CMHCC is about one-half the rate for private providers.

The \$21.7 million for staff retention is necessary to address the system's difficulty in keeping staff and help reduce a vacancy rate of up to 17 percent. A high vacancy rate coupled with a high turnover rate can significantly reduce access to care, which the state must maintain at acceptable levels to meet federal requirements.

Critics of the funding levels in CSHB 1 argue that the state should meet the CMHCC's budget request to ensure that the state maintains a constitutional prison health care system. Without adequate funds, it may be difficult for the university providers to continue their contracts to provide inmate care. It is unlikely that another provider could deliver the same services to the state for less because university providers offer unique value, such as special pricing on prescription drugs.

The funding in CSHB 1 would not allow the state to keep pace with the projected increase in the elderly prison population, which comprises about 6 percent of the inmate population and is growing at an annual rate of 10 percent.

Elderly prisoners access care about three times as often as younger inmates and have higher rates of chronic disease that require more hospital and specialty care. The bill also would not address the need to replace imaging and x-ray equipment. Much of this equipment is more than 20 years old and is difficult to maintain or repair. Without newer equipment and technology, the universities cannot take full advantage of telemedicine, which could result in the unnecessary and costly transfer of inmates when images are needed.

CMHCC also needs additional funds for increases beyond its control in the cost of pharmacy services, supplies, and other services. Another issue that CSHB 1 would not address is the critical need to repair the TDCJ Hospital in Galveston, which requires a variety of repairs, including work on its security gates.

The Legislature also should fund a resumption of the program to vaccinate offenders for hepatitis B. This program was suspended in 2003 but could be resumed in fiscal 2008-09 for \$12.8 million. This would fund vaccinations for all incoming offenders and those who have entered TDCJ since the program was suspended.

Other TDCJ funding issues

Overtime. CSHB 1 would increase TDCJ's appropriation for salaries by \$40 million in general revenue-related funds for fiscal 2006-07 so that it could pay the overtime it says is necessary for employees to cover correctional officer vacancies. In January 2007, when the agency had 3,250 vacant correctional officer positions, it modified its overtime policies and began paying officers for their overtime in the next pay period instead of requiring them to bank 240 hours of overtime before receiving any payments. The \$40 million in CSHB 1, the amount requested by TDCJ, would be in addition to any lapsed salaries from vacant positions that the agency currently uses to pay overtime. The House Appropriations Criminal Justice Subcommittee directed the agency to develop a plan to reduce the use of overtime.

Utilities. CSHB 1 would increase TDCJ's appropriation for electricity, fuel, and natural gas by \$50 million in general revenue-related funds above fiscal 2006-07 spending. TDCJ requested an increase of \$83.3 million. According to the agency, even though its energy consumption has decreased slightly, its utility costs nevertheless have increased because of nationwide rate increases.

Additional chaplains. The bill would authorize the agency to hire an additional 20 chaplains, bringing the total number of chaplains serving the agency to 120. TDCJ would receive an additional \$1.4 million in general revenue-related funds for the biennium for the chaplains and an FTE cap increase of 20. The agency did not request this item.

Juvenile corrections: TYC

In fiscal 2008-09, CSHB 1 would appropriate to the Texas Youth Commission (TYC) \$440 million in general revenue-related funds, the amount in the LBB base bill. This represents a decrease of \$3.1 million, or 0.7 percent, in funding from the fiscal 2006-07 level due to projected changes in residential populations and an agency-anticipated reduction in federal funding for academic and violent-offender programs.

During the budget process, the Appropriations Committee announced that because of the potential for statutory changes and reorganization of the agency, it would approve only the LBB base recommendations at this time. The Legislature is considering numerous statutory changes to the agency as several investigations proceed into allegations of sexual abuse of youths in TYC facilities and allegations of mismanagement and corruption at the agency. Also, in October 2004, the Evins Regional Juvenile Center in Edinburg experienced disturbances involving allegations, and subsequent confirmations, of abuse that led to a September 2006 U.S. Department of Justice investigation.

During the budget process, TYC proposed a package of recommendations it said would improve the safety and conditions of confinement, including changing the

configuration of some TYC facilities, increasing minimum staff-to-youth ratios, increasing training hours, and reconfiguring open-bay dorm facilities.

Capacity. The LBB's January 2007 population projections for TYC indicate the residential population will grow moderately through fiscal 2012. LBB predicts an average daily population of 4,843 in 2007, with 381 youths in contracted capacity. In fiscal 2008, LBB predicts an average population of 4,822, with 360 youths in contracted capacity, and an average population of 4,946 with 484 in contracted capacity in fiscal 2009.

TYC requested, but did not receive, an additional \$12.3 million to adjust its appropriation for rising estimated costs in the rate it pays for contracted beds, health care services, psychiatric services, and youth treatment. The agency asked the Legislature to raise appropriated rates for contracted capacity and medical care to meet the costs it says it actually pays to receive the services.

A proposal was discussed during the budget process that would transfer two TYC facilities to TDCJ for housing adult offenders. Under the proposal, the Marlin Orientation and Assessment Unit and the John Shero State Juvenile Correctional Facility in San Saba would be transferred, resulting in a loss of 792 TYC beds. TYC estimates that if the transfer occurred, it would need \$18.4 million to replace those beds with 492 contracted beds and 300 leased from a county facility.

The agency also requested, but did not receive, \$13.3 million in general obligation bonds for construction costs to reconfigure open-bay dormitories in TYC facilities and \$34.7 million for additional contracted capacity beds that would replace beds lost during the dorm redesign.

Supporters say the reconfiguration would directly address the recent incidents within TYC by providing privacy for the youths, allowing the agency to separate younger and older youths, and creating a more manageable facility for TYC staff.

Staff, training and oversight. TYC proposed, but did not receive, \$46.9 million for an additional 835 FTEs to increase staffing to ensure that no Juvenile Correctional Officer (JCO) was left alone with a youth. This staff increase would allow the agency to implement the national standard ratio of one JCO to 12 youths, down from the current rate of one to 15 during the day and one to 24 at night.

Supporters of this proposal say it would increase safety at the facilities and the effectiveness of programs, which would help reduce the 48 percent JCO turnover rate.

The agency requested, but did not receive, \$2.8 million for an additional five weeks of training hours for direct-care staff designed to reduce turnover and potential disturbances within TYC facilities. The training, which would require an additional 26 FTEs, would focus on Texas statutes, CPR, agency regulations, communications skills, and other skills to assist with resocializing TYC youth. Among the staff who would receive additional training are JCOs, case workers, teachers, and psychologists.

The agency requested, but did not receive, \$429,944 in general revenue-related funds for fiscal 2008-09 to hire four certified peace officers within the Office of the Investigator General to investigate alleged criminal activity within TYC facilities. This request was contingent on legislative authority to implement the Office of Investigator General.

Several bills have been filed that would address some of these issues. SB 103 by Hinojosa would create an Office of Inspector General with law enforcement authority to investigate crimes in TYC facilities, require the Texas Rangers to randomly inspect TYC facilities every month, increase JCO training from 80 to 300 hours, require a staff-to-youth ratio of no more than one to 12, and separate youth by ages in the dorms. The bill was scheduled for a March 27 hearing in the Senate Criminal Justice Committee.

HB 914 by Madden would establish an Office of Inspector General at TYC, require the TYC board to appoint a commissioned peace officer as inspector general, and authorize the office to employ and commission peace officers. The bill has been reported favorably by the House Corrections Committee.

HB 2807 by Madden also would make numerous changes to TYC operations, including prohibiting the commitment to TYC of youths whose offenses were misdemeanors, changing the structure of the TYC board, and reducing the maximum age to 19 years old for a youth at TYC. This bill has been referred to the House Corrections Committee.

Treatment. The agency requested, but did not receive, \$1.2 million in general revenue-related funds to continue three substance abuse treatment programs previously funded by Violent Offender Incarceration federal funds, whose funds lapsed. This figure includes salaries for an additional 17 FTEs, which previously were funded through the federal grant.

The agency requested, but did not receive \$294,696 in general revenue-related funds to hire four additional chaplains for religious and spiritual needs of the youth.

Juvenile corrections: TJPC

Under CSHB 1 the Texas Juvenile Probation Commission (TJPC) would see its overall funding increase by \$8.5 million to \$279.5 million

Increase in funding for community programs and services. CSHB 1 would increase TJPC's funding for community corrections services by \$12.3 million in general revenue-related funds over the \$66.5 million in the LBB base bill. The funds would be used to increase grants to community-based programs and services.

Supporters of this funding say it is needed because of increases in the number of juveniles under supervision, increases in serious and violent offenses, increases in the special treatment needs of juveniles on probation, cost of living increases, and new federal requirements placed on the local juvenile probation departments, such as requiring certain types of training and reporting.

Under CSHB 1, \$8.7 million would be used for services such as sex offender treatment, intensive supervision, intensive after-hours programs, mental health and substance

abuse assessment and services, program services to youths and their families, and increased length of stay in placement. About \$3.6 million would go toward additional placements in secure, post-adjudication facilities for 200 juveniles. In fiscal 2008-09, this would translate into 146 juveniles diverted from TYC, at a savings of \$14.2 million, according to TJPC. Over the next five years, the funding would translate into an additional 635 youths diverted from TYC, saving the state \$61.8 million. The agency's request for this item was \$17.3 million, with \$12.3 million going for community services and \$5 million for 300 secure placements.

CSHB 1 also would authorize and fund two new FTEs for the agency. One position would be a mental health professional to help local juvenile probation departments with the supervision of mentally ill youths. The other would be an investigator for claims of abuse, neglect, and exploitation occurring in local juvenile facilities.

Increase for JJAEP population growth and payments. CSHB 1 would increase the TJPC's appropriation to fund the operation of Juvenile Justice Alternative Education Programs (JJAEPs) by \$3.2 million over the \$17 million recommended in the LBB base bill. Funding for JJAEPs comes from the Foundation School Fund, and TEA Rider 35 would require TEA to transfer the funds for JJAEPs to TJPC.

About \$529,000 of this increase would account for revised estimates of the number of students required by statute to attend JJAEPs. The agency estimated an even higher rate of population growth and requested an increase of \$936,035 for this item.

The remaining \$2.8 million in CSHB 1 would increase from \$59 to \$69 the amount paid by the commission to local JJAEPs per student per day. The \$59 rate was established in 1999. The agency requested an increase to \$90 per student per day in the daily rate. According to the commission, the average daily cost for a student at a JJAEP is \$125.90.

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. The population of students required to attend JJAEPs has fluctuated greatly over the last five years. For example, in the first half of the current school year, the population is 20 percent higher than last year's population over the same period.

Agency Rider 12e. would be revised to require TJCP to report on the average cost per student attendance day for JJAEP students.

Department of Public Safety

Under CSHB 1, the appropriation for the Department of Public Safety (DPS) for fiscal 2008-09 would be \$1.4 billion. This is a reduction of 31 percent from its fiscal 2006-07 budget, mainly due to a reduction in federal funds that were part of the state's response to Hurricane Katrina and Hurricane Rita. CSHB 1 would increase overall DPS funding for border security programs and additional narcotics investigators, crime analysts, Texas Rangers, and commercial vehicle enforcement officers.

REAL ID implementation. CSHB 1 would not include an appropriation for the state to implement the federal REAL ID Act, which would require the generation of secure and verifiable identification documents. Art. 11 includes a placeholder contingency rider for funding REAL ID implementation that leaves the appropriations amount blank. CSHB 1 would appropriate \$15.9 million during fiscal 2008-09 for the ongoing program for driver's license reengineering that began in 2003 when the 78th Legislature enacted HB 3588 by Krusee.

The 109th Congress enacted the REAL ID Act of 2005 that prohibits federal agencies from accepting state-issued driver's licenses or identification cards unless those documents meet minimum state security requirements. Those standards require, among other things:

- evidence that the applicant is lawfully present in the United States; and
- issuance of temporary driver's licenses or identification cards to persons temporarily present that are valid only for their period of authorized stay (or for one year where the period of stay is indefinite).

Originally, states were required to begin the implementation process by May 11, 2008, with all current holders of driver's licenses and identification to be re-certified during the next five years. On March 1, 2006, the federal Department of Homeland Security (DHS) allowed states to delay implementation until December 31, 2009. However, under the current rules, all Texans will be required to present a birth certificate, social security card, or passport to receive the new driver's licenses or identification cards before the original deadline of May 10, 2013.

DHS estimated that the cost of implementation would be \$23.1 billion for 10 years, and states would pay \$10 billion to \$14 billion of the cost. On March 1, 2007, the department announced that the states could use up to 20 percent of their State Homeland Security Grant Program Funds for implementation of Real ID. This program received \$525 million in federal fiscal year 2007, but the president's budget request would reduce the funding level to \$187 million in federal fiscal year 2008.

In its legislative appropriations request, DPS estimated that implementation would cost \$268 million for fiscal 2008-09, but during the budget process DPS testified that the amount could be \$168 million. The LBB's *Texas State Government Effectiveness and Efficiency* report includes more details on the DPS REAL ID request on pages 413-18.

The exact cost would depend on factors such as the specific requirements for the driver's licenses and identification cards. On March 1 2007, DHS issued a draft of the proposed rule being submitted for public comment. The cost also will depend on policy decisions by the Legislature such as whether to buy or lease additional DPS driver's license offices and on the hiring of additional driver's license clerks.

Supporters of funding full implementation of REAL ID in CSHB 1 argue that it would enhance national and state efforts to secure the border and fight terrorism. If the state fails to implement REAL ID, Texans would be required to show a passport to board an airplane or enter a federal building. The re-certification process and anti-fraud measures of the new cards would allow employers to determine easily whether an applicant could legally work in this country. Texas should proceed with implementation despite the proposed delay because DHS has offered no change in the 2013 deadline for full compliance.

Opponents of funding full implementation say that REAL ID is an unfunded mandate and that Texas should join a growing number of dissenting states, as proposed in HCR 148 by Isett, which would urge Texas not to comply with the REAL ID act. Making a decision on funding in CSHB 1 would be premature because of the remaining uncertainty over the federal rules. The Legislature can apply for the 18-month extension and defer the funding decision until the 81st Legislature in 2009. Also, requiring and collecting sensitive personal information would be intrusive to citizens' rights and pose a threat of identity theft and other misuse of the information.

Other opponents of the funding say that making driver's licenses more expensive and difficult to obtain only would increase the already troubling number of those who drive without a license or liability insurance.

In a related matter, CSHB 1 would take no action on a proposal in the governor's budget to transfer issuance of driver's licenses from DPS to TxDOT. The governor's proposal called for transferring DPS troopers assigned to the drivers' license offices to patrol and investigation duties, but critics of the proposal argued that issuing driver's licenses that comply with REAL ID is a law enforcement function and should remain with DPS.

Additional DPS personnel. CSHB 1 would fund DPS's exceptional items request for \$29 million in state highway funds for fiscal 2008-09 to add 181 FTEs. These positions – both commissioned and non-commissioned

– would be assigned to crime analysis, narcotics, Texas Rangers, commercial vehicle enforcement, staff services, pilots, and other divisions.

Border security. CSHB 1 would fund a proposal by Gov. Perry to spend \$102 million to expand border security operations. About \$100.3 million of these funds would go to the Department of Public Safety (DPS) and about \$2.1 million to Parks and Wildlife. The bill would place the funds in three new strategies in DPS (D.1.5. Local Law Enforcement, D.1.6. State Law Enforcement, D.1.7 State Aviation Support) and one new strategy in Parks and Wildlife (C.1.4 State Law Enforcement).

DPS Rider 59 would require the Governor’s Division of Emergency Management, which is co-located with DPS, to spend \$70.5 million of the funds to give grants to local law enforcement agencies for salaries, training, operating costs, and equipment for new commissioned officers. These funds could be used to pay overtime and per diem for local law enforcement officers, DPS officers, and Parks and Wildlife game wardens. They also could be used for operating costs, technology, and equipment for border security operations.

Rider 59 also would require DPS to spend \$7.6 million of the money for salaries, training, operating costs, and equipment for DPS officers and \$22.2 million to buy and operate four helicopters. The rider would require the Governor’s Director of Homeland Security to report to the governor and Legislature at the end of each fiscal year to justify the continuation of border security operations. CSHB 1 would not place any restrictions on the use of Parks and Wildlife’s \$2.1 million in funds.

The governor’s proposal recommends using the funds for 330 local commissioned officers, 55 state troopers, 30 game wardens, 195 equipped vehicles, and four helicopters to support activities performed by the Border Security Operations Center and the Joint Operations and Intelligence Centers, which are part of the Governor’s Office of Homeland Security.

Supporters of the funding say it is necessary to enhance public safety and supplement local crime-fighting efforts on the border with Mexico. The serious and often

violent crimes relating to drugs, kidnapping, and other activities on the border affect communities throughout the state, and this funding would help address these growing problems. The state has seen tangible, positive results from the money that already has been directed to the area, and this appropriation would build on that. By placing the money into new strategies at DPS and Parks and Wildlife, the bill would ensure that the money could be tracked and that law enforcement efforts would take place under existing agencies, instead of the Governor’s Office. CSHB 1 also would require a report to the Legislature so that the efforts could be evaluated.

Critics of the funding argue that Texas should not spend \$102 million in general revenue for border security activities, which are a federal responsibility, when the state could use the funds in many other areas. CSHB 1 already contains funding increases for DPS in Art. 5 for additional personnel and law enforcement activities. It is unclear how this additional \$100 million directed at the border region is particularly necessary when law enforcement efforts in other areas could use the additional funds to generally improve public safety.

Critics say it would be difficult to evaluate the effectiveness of this proposal. CSHB 1 is not specific about the goals of the activities and personnel being funded by this \$102 million, critics say, and it is unclear who would have authority over these efforts. The Legislature should be cautious about committing itself to an ongoing program costing \$102 million per biennium. Even the DPS rider requiring a report on the funds seems to assume the program will continue because the report is required to justify the continuation of border security operations.

Forensic Science Commission. CSHB 1 – together with CSHB 15, the supplemental appropriations bill – would appropriate the first state funds to the Forensic Science Commission. CSHB 1 would appropriate to the commission \$175,000 for fiscal 2008-09 to pay salaries, office expenses, and travel for the commission and would authorize one full-time position to support the commission’s operations.

The funds would go to the Commission on Law Enforcement Officer Standards and Education (TCLEOSE), and Rider 8 to that agency's budget would require that the commission receive \$175,000. Under Rider 8, the commission would be fully autonomous and independent of TCLEOSE, but TCLEOSE would be responsible for providing administrative support to the Forensic Science Commission to ensure it completed certain reports, including its strategic plan.

In 2005, the 79th Legislature, in HB 1068 by Driver, created the Forensic Science Commission to investigate allegations of professional negligence or misconduct that would affect the integrity of the results of a forensic analysis conducted by an accredited crime lab. The commission also was charged with requiring crime labs to report professional negligence or misconduct to the commission and developing a reporting system for that purpose. The commission comprises nine members, of which the governor appoints four, the lieutenant governor appoints three, and the attorney general appoints two. The commission appointments were completed in the early 2006.

The commission did not receive an appropriation for fiscal 2006-07. However, the Legislative Council provided funding for two of the commission's meetings in late 2006. During the budget process, the commission testified that due to lack of funding, it has been unable to develop policies and carry out its duties. The commission had submitted a request for \$757,000 for fiscal 2008-09 to hire a legal assistant, establish an office, and hire contractors to conduct independent investigations of complaints brought against crime labs.

During the budget process, both DPS and the attorney general asked that the commission not be grouped administratively with their departments because of possible conflicts of interest.

HB 2832 by Driver, now pending in the House Committee on Law Enforcement, would make statutory changes so that the commission could begin operations during fiscal 2008.

Supporters of the proposal in CSHB 1 say that this funding level would provide a starting point so that the commission could begin to review complaints against crime labs. Housing the commission within TCLEOSE would allow it to begin work without creating another full-fledged agency. One option for the commission may be to review the complaints it receives and rule whether an independent review – paid for by the agency being investigated – should proceed.

Critics of CSHB 1 say that the commission needs more funds so that it can meet all of its obligations and perhaps establish its own independent investigation facilities to adequately oversee forensic programs in Texas. As the commission continues to receive a growing number of complaints about crime labs, it needs to have resources to address those complaints.

Military Facilities Commission and Adjutant General's Department

Gov. Perry line-item vetoed the fiscal 2006-07 appropriation for the Texas Military Facilities Commission (TMFC). However, the fiscal 2006-07 rider appropriations were not vetoed. In executive order RP46, the governor said this was done so that all debt service obligations of the commission could be paid and that certain funds could be used to enter into an interagency agreement with the Adjutant General's Department to perform necessary functions. The order required the Adjutant General's Department to develop an interagency agreement with TMFC for the department to provide administrative support to the commission, undertake maintenance projects identified by the commission, and pay personnel costs associated with those projects.

The governor also directed the agencies to produce a report for his office, the LBB, and the Sunset Advisory Commission on how the two agencies could be statutorily consolidated. The report has been issued and makes a finding that while the functions of the TMFC continue to be needed, a separate agency is not needed to carry out those functions as long as the interests of the state are protected.

The majority of the TMFC staff have been employed by the Adjutant General's Department. It would take statutory changes to combine the two agencies.

CSHB 1 would approve \$86.1 million for TMFC, the amount in the LBB base budget plus \$73.4 million in all funds. About \$65.4 million would be federal funds to build four new facilities – a joint forces facility maintenance shop in Austin, a weapons range at Camp Maxey, and joint forces reserve centers in Austin and Houston. The rest would be general revenue to fund agency operations.

Article 6 Overview

Art. 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 2008-09, federal funds would account for about 13 percent of all Art. 6 funds and at least 10 percent of the budget for all agencies except for TCEQ.

CSHB 1 would spend about \$2.3 billion in all funds for Article 6 agencies in fiscal 2008-09, slightly less than in fiscal 2006-07. General revenue-related spending would total nearly \$1.8 billion, a 2.7 percent increase from fiscal 2006-07.

Budget highlights

Meeting federal air quality standards: TCEQ

Background. Under federal law, Texas must comply with U.S. Environmental Protection Agency (EPA) air quality standards to reduce ground-ozone emissions in non-attainment and near non-attainment areas. The State Implementation Plan (SIP) outlines Texas' strategy to reach compliance by certain deadlines. Much of the SIP focuses on the reduction of nitrogen oxide (NOx) emissions, the main component of ozone. Diesel engines and vehicles are the largest sources of NOx emissions. As federal law prohibits state regulation of mobile source emissions, several programs designed to reduce NOx emissions are voluntary and incentive-based, such as the Texas Emissions Reduction Plan (TERP) and the Low-Income Vehicle Repair, Replacement and Retrofit Program.

TERP was enacted in 2001 through SB 5 by Brown. In order to reduce NOx emissions in affected counties, TERP distributes grants to retrofit or replace old diesel-powered engines. Most TERP funds are derived from vehicle title

Article 6 spending comparisons (millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	\$1,776.4	\$1,824.1	\$47.8	2.7%
Federal	328.0	291.9	(36.1)	(11.0)
Other	209.9	183.5	(26.5)	(12.6)
All funds	2,314.4	2,299.5	(14.8)	(0.6)

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

transfer fees and vehicle purchase fees. The state has not yet met SIP targets to reduce NOx emissions, leading to TERP's extension from 2008 to 2013. In fiscal 2006-07, TCEQ received \$257 million for TERP.

House proposal. CSHB 1 would increase TERP funding by appropriating all expected TERP revenues collected during fiscal 2008-09, amounting to an estimated \$339 million. The bill also would appropriate \$6 million from Clean Air Account No. 151 to TERP in fiscal 2008-09 for grants and administration purposes. These amounts represent a 34 percent increase from fiscal 2006-07.

Supporters of the increase in funding for TERP say this program is an important strategy in meeting SIP targets and should be expanded.

Other proposals. SB 12 by Averitt, as passed by the Senate on March 21, would increase TERP monetary incentives for retrofitting equipment with pollution controls from \$13,000 to \$15,000. Unexpended funds in Account No. 5071 would be used to fund this component of SB 12. Revenues generated in the TERP account were higher than expected in recent years, leaving an unappropriated balance of \$181.6 million in Account No. 5071 at the end of fiscal 2007, according to the comptroller's biennial revenue estimate.

Supporters of SB 12 say TERP is an important program in ensuring the health of Texas residents, and these funds should be used to move the state closer to meeting air quality standards. TERP grants already have been successful in reducing NOx emissions in a cost-effective manner. An expansion of TERP is necessary to prevent the loss of federal funds from SIP noncompliance.

Clean School Bus Initiative: TCEQ

In 2005, the 79th Legislature enacted HB 3469 by Hochberg, which established the Clean School Bus Initiative as a TERP component to reduce school bus diesel emissions. Up to 4 percent of TERP grants for diesel emission reductions can be used to fund this initiative. However, the program received no funding in fiscal 2006-07. CSHB 1

would dedicate \$1 million from appropriated TERP funds for the Clean School Bus Initiative. This amount would pay to retrofit one school bus in each legislative district.

Those who consider the House spending proposal too low estimate that \$92.4 million is needed to retrofit all public school buses in the state of Texas to 2007 standards. Children are particularly vulnerable to the unhealthy consequences of exposure to diesel pollution, which is especially high in and around school buses. Additional funding is warranted, these critics say, because the current statute would allow the dedication of more money to this initiative. Bills introduced this session – SB 529 by Watson, et al. and HB 1291 by Hochberg – propose removing the restriction on the amount of funding dedicated to the initiative and updating the statute to reflect new technological developments.

Low-income vehicle program: TCEQ

As part of the SIP, Texas requires vehicle emissions inspections in near non-attainment and non-attainment areas. In 2001, the 77th Legislature enacted HB 2134 by Chisum, which established the Low-Income Vehicle Repair, Replacement and Retrofit Program (LIRAP) to assist low-income vehicle owners in complying with vehicle emissions standards. LIRAP distributes monetary grants to qualifying participants for vehicle repair and replacement with the intent of reducing NOx emissions. Qualifying participants receive \$600 for vehicle repair and \$1,000 for vehicle replacement. Currently, 16 counties participate in the program.

House committee proposal. In fiscal 2006-07, TCEQ received a total of \$11 million from Clean Air Account No. 151 to LIRAP. CSHB 1 would appropriate \$25 million out of the account for LIRAP in fiscal 2008-09. The account's balance is estimated at \$88.7 million at the end of fiscal 2007, according to the comptroller's biennial revenue estimate.

Other proposals. SB 12 would expand eligibility for LIRAP participation from families earning less than 200 percent of the poverty level to families earning less than 300

percent. Under SB 12, qualifying participants would receive \$2,500 for vehicle replacement and \$3,500 for replacement with a fuel-efficient hybrid vehicle. Revenues collected from LIRAP fees and deposited to Clean Air Account No. 151 would be used to fund this component of the initiative.

Supporters of SB 12 say greater incentives are needed to increase participation in LIRAP. Though the program has been successful in reducing NOx emissions, participation in the program has not been as high as anticipated. Supporters say the unappropriated balance in Account No. 151 should be geared toward programs for which the account is intended, such as LIRAP.

PST Reimbursement Program: TCEQ

CSHB 1 would decrease general revenue-dedicated funding from \$172 million to \$92 million due to the sunset of the Petroleum Storage Tank (PST) Reimbursement Program on September 1, 2008. With the program's termination, the funding source stemming from the petroleum product delivery fee will end. Additionally, the funds from PST Remediation Account No. 655 no longer will be used to reimburse clean-up costs.

Since its inception, the PST program has reimbursed tank owners and operators for the clean up of leaking storage tanks at more than 19,500 sites. Approximately 1,500 sites remain, some of which lie over the Ogallala Aquifer in West Texas. More than 200 sites already are in the state lead program, with 700 more expected to be transferred. The agency will need more money than the appropriated \$91 million to accomplish this task. Moreover, the agency will need funding to comply with a federal mandate requiring all PST sites to be inspected over the next three years. To date, no funding has been offered by the federal government to achieve this mandate.

A request for additional funding was not included in the TCEQ budget request due to the agency's desire for the legislators to determine the course of action. HB 3554 by Isett would extend the sunset of the PST Reimbursement program to August 31, 2009. To fund the program, the bill would continue collection of the petroleum products

delivery fees and the reimbursement process. However, each fee would be reduced by half. This would give the agency an estimated \$40 million per year, resulting in a total of \$133.4 million to facilitate the state lead program and other PST activities.

Parks and Wildlife funding: TPWD

Background. The Texas Parks and Wildlife Department (TPWD) manages the natural and cultural resources of Texas and provides hunting, fishing, and outdoor recreational opportunities.

In addition to a small amount of general revenue, the Legislature appropriates revenue for TPWD from several different sources, including:

- sporting goods sales-and-use tax;
- boat motor sales-and-use tax;
- unclaimed refunds of motorboat fuel tax; and
- 15 percent of boat registration and title fees.

Game, Fish and Water Safety Account No. 9 receives all funds except the sporting goods sales tax, which is reserved for state and local parks.

The sporting goods sales tax currently generates more than \$100 million each year from sales of bicycles and related supplies, hunting and firearms equipment, exercise equipment, and fishing tackle. This tax base is the primary source of general revenue-related funds for parks, but there is a current statutory allocation cap of \$32 million per year (Tax Code, sec. 151.8001(c)). In recent years, TPWD has been allocated less than the \$32 million.

Under current law, revenue from the sporting goods sales tax is distributed among three general revenue-dedicated fund accounts. State Parks Account No. 64; Texas Recreation and Local Parks Account No. 467; and Texas Parks and Wildlife Conservation and Capital Account No. 5004. Balances in these accounts have increased since fiscal 2001 because of increased tax receipts and entrance-and-use fees, while annual appropriations have been lower due to budget cuts.

In 2001, Texas voters approved Proposition 8, which authorized the Texas Public Finance Authority to issue and sell up to \$850 million in general obligation bonds for repair and construction projects at 14 state agencies, including TPWD. As of fiscal 2008-09, TPWD has identified \$406 million in repair projects at parks statewide, but only \$282.7 million in bond authority remains.

State Auditor's Office report. On March 19, 2007, the State Auditor's Office (SAO) released a report addressing operating conditions at TPWD. Their major findings include a need for better accounting of park visitation, concern about fiscal oversight of the State Parks division, prioritization of parks repair projects and standardization of repair cost estimates, and a re-evaluation of whether the growing population of Texas requires additional parkland or improving the amenities of existing state parks. Additionally, the SAO suggested that TPWD could do more to improve park revenues, such as collecting park fees after hours, improving marketing efforts, and standardizing discounts offered by park administrators.

CSHB 1 recommends \$507.2 million in TPWD appropriations for fiscal 2008-09, which would be a 1.3 percent increase in all funds. It would achieve this with a \$1 million decrease in general revenue funding while using \$81.3 million in unexpended balances in general revenue-dedicated accounts, resulting in an overall increase of \$43 million (12.6 percent) in general revenue-related funds. Appropriations for fiscal 2006-07 totaled \$500.7 million in all funds, with \$341.3 million in general revenue-related funds. Priorities in spending for the fiscal 2008-09 would include addressing a backlog in capital repair projects, accelerating debt service payments, and covering an increase in administrative costs. The bill would fund an additional 116.9 FTEs for the department.

Repair and maintenance projects: TPWD

CSHB 1 would reduce appropriations by \$2.3 million in all funds over fiscal 2006-07 levels for all TPWD repair projects. This is due, in part, to a \$3.8 million decrease in federal funds for completed repair projects and a \$2.1

million decrease in general revenue for completed repairs at the San Jacinto Monument. TPWD would receive \$2.9 million in all funds for minor repairs, a 13.8 percent decrease over the fiscal 2006-07 budget, to fund projects costing less than \$25,000 each. The House plan includes an Art. 11 recommendation of \$3.5 million from general revenue-related funds for minor repairs, contingent on enactment of HB 6 by Hilderbran.

CSHB 1 would appropriate \$49.2 million for major capital repairs in all funds, an 8 percent decrease from the fiscal 2006-07 budget, to address critical safety, health, code compliance, and structural integrity repair. Of this amount, \$16.4 would go to the Battleship TEXAS. In accordance with Rider 22, \$9.6 million of this amount will come from expected proceeds from the sale of Eagle Mountain Lake. The remaining \$5 million would come from unexpended fund balances. The House plan includes an Art. 11 recommendation of \$35.2 million for major repairs, contingent on enactment of HB 6 by Hilderbran, with \$15.7 million coming from Proposition 8 bonds and the remainder from general revenue-related funds.

TPWD would receive \$17.3 million in all funds, a 191.5 percent increase over the 2006-07 budget, to replace park vehicles, utility vehicles, mowers, tractors, capital equipment, computers, and other information technology. This amount includes an additional \$10.1 million coming from general revenue-related funds.

Rider 22 would stipulate that proceeds from the sale of Eagle Mountain Lake and the Game Warden Academy could not be used for land acquisition. CSHB 1 would appropriate no additional funds for land acquisition, although an Art. 11 recommendation, contingent on enactment of HB 6 by Hilderbran, would appropriate \$15.7 million from Texas Parks and Wildlife Conservation and Capital Account no. 5004 in fiscal 2009.

Supporters of the House proposal say TPWD has \$406 million in identified capital repair projects to complete and should not acquire new property. The repair plan would deal with the most critical repairs without increasing staff and address an aging state park vehicle fleet. While more funding could be provided to get the repairs done in six to

eight years, TPWD would need an additional \$50 million per biennium and at least 50 FTEs. While \$282.7 million remains in Proposition 8 bonds, other agencies already have requested more than is available. A continuous appropriation for repairs would assure maintenance was completed without sacrificing bond availability.

Critics of the House proposal argue that appropriating \$18.3 million in Proposition 8 bonds could speed up capital repairs without a cost to general revenue. The voters approved Proposition 8 bonds for exactly this type of project, and the Legislature should support allocating those funds accordingly. In addition, TPWD should determine the best use of land sale proceeds, as stipulated by Parks and Wildlife Code, sec. 13.009, which allows the use of land sale proceeds to acquire new property. The \$9.6 million in proceeds from the sale of Eagle Mountain Lake should not be used for repairs but rather for land acquisition. While no major acquisition program has been authorized for at least a decade, the state of Texas needs to develop 5,000 acres of new parkland within 1.5 hours of major urban areas, according to TPWD. Benefits of this approach would include increased visitor traffic at state parks, environmental protections such as water drainage, and increased property values adjacent to the parks.

Historic site repairs: TPWD

With the addition of Rider 26, TPWD would receive an additional \$12.4 million in Proposition 8 funds and \$4 million in Appropriated Receipts to begin major repairs for the Battleship TEXAS, which is moored at the San Jacinto Battleground. Federal Transportation Improvement funds were expected to provide \$16 million, but the application was denied. The plan would include steel hull replacement and permanently housing the ship on a dry berth to reduce long-term maintenance costs. The rider calls for quarterly updates to the LBB and the governor on the progress of the repairs and estimated budgetary needs. CSHB 1 would not provide additional funding to keep the historic Texas State Railroad fully operational at this time, although the bill does include an Art. 11 recommendation to provide \$7.6 million over the biennium.

Supporters say the Battleship TEXAS is an historic site in urgent need of repair, and when fully operational, it will support tourism, Texas heritage, and economic development. Further, non-profit groups and the private sector are motivated to provide seed capital for these projects.

Opponents say historic sites like the Battleship TEXAS cost the state more than they could hope to earn through ticket sales, and federal funds should be secured before financing the repairs with state dollars. Considering the ongoing nature of expensive repairs, it is unclear if these sites are worthy of so large an appropriation when other strategies could be supported.

TPWD: Local parks grants

In fiscal 2006-07, the Legislature appropriated \$10.1 million in general revenue-related funds for local parks grants, a program that covers half the costs of developing local parks or recreational or open-space areas. The agency supplemented these funds with \$6.2 million in federal grant funding, which has been reduced in fiscal 2008-09. The Texas Parks and Recreation Account No. 467 currently has an account balance of \$35.9 million. Under CSHB 1, TPWD would receive \$32.8 million for local parks grants in fiscal 2008-09, which is a \$19.8 million increase in general revenue-related funding over fiscal 2006-07, representing a 101.2 percent increase in all funds spending. This appropriation would bring the Texas Parks and Recreation Account No. 467 balance to \$6 million.

Supporters say CSHB 1 would shield TPWD from a \$3.3 million reduction of federal funding and restore local parks grant funding to the statutory cap. The end result would double funding for local parks grants while simultaneously reducing unexpended account balances.

Opponents say total local parks grant funding should increase, especially as the Legislature is considering HB 6 by Hilderbran et al., which would remove the cap on use of the sporting goods sales tax. These funds would provide seed capital for projects across the state that would have significant economic development impacts. Reducing the

\$35.9 million account balance in Texas Parks and Recreation Account No. 467 is a priority, but this should be done in conjunction with the \$31 million statutory allocation for the biennium, providing a larger pool of funding to support local parks initiatives. At a minimum, the \$6 million remaining in the Texas Parks and Recreation Account No. 467 should be appropriated to support local parks development.

Transfer of historic sites to the Historical Commission: TPWD

HB 7 by Hilderbran would require TPWD to transfer 25 historic sites it currently manages to the Texas Historical Commission. If that bill were enacted, Rider 24 under TPWD would transfer any additional sporting goods sales tax allocated to TPWD for management of historic sites to the Texas Historical Commission.

Article 7 Overview

Art. 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 CSHB 1 proposes to spend \$20.2 billion for fiscal 2008-09 under Art. 7, about 13.4 percent of the total state budget. Overall funding for these agencies would increase by \$764 million, or about 3.9 percent above the current level. General revenue-related funding would increase by \$17.3 million, or 2.4 percent.

Federal funds account for about 43.8 percent of appropriations for Art. 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 52.6 percent of Art. 7 spending comes from “other” funds, including funds for TxDOT, TWC and TDHCA.

Budget highlights

Transportation

Background. TxDOT is funded largely through dedicated accounts and federal funds, with general revenue-related funds accounting for only about 3.7 percent of the agency’s total budget. About 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 motor fuels, which is deposited into the State Highway Fund (Fund 6).

The enactment by the 78th Legislature in 2003 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 Trans-Texas Corridor would be funded through such a procedure, but a \$3.5 million planning contract with Cintra-Zachry, a private

Article 7 spending comparisons (millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	\$707.1	\$724.4	\$17.3	2.4%
Federal	8,798.5	8,838.3	39.8	0.5
Other	9,907.4	10,614.3	706.9	7.1
All funds	19,413.0	20,177.0	764.0	3.9

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

consortium of engineering, construction and financial firms, would not commit the state to building roads or prevent the state from choosing another contractor.

The overall TxDOT budget would increase by approximately \$983 million, or 6.3 percent, from \$15.7 billion in fiscal 2006-07 to \$16.7 billion for fiscal 2008-09. The proposed budget increase consists of \$400 million from the State Highway Fund and \$300 million each from the Texas Mobility Fund and federal reimbursements. According to TxDOT, the majority of the budget increase would be used to fund highway construction, maintenance, design, and right-of-way acquisition.

Reporting requirements. In 1991, Congress created the Transportation Enhancement Program, allowing states to distribute federal funds reimbursing local governments for projects connected with land-based “surface transportation.” The Federal Highway Administration (FHWA) determines a program’s eligibility and has revised its guidelines to include projects with some relationship to surface transportation, such as enhancement of a “travel experience,” and/or a current or historic role in transportation. Everything from building bike paths and scenic roadways to building visitor centers is eligible for funding under the program. Local government entities are required to contribute at least one-fifth of the project’s cost.

Under the six-year federal surface transportation act that expires in fiscal 2009, \$450 million – or 3 percent – of Texas’ \$14.5 billion allocation was budgeted for the enhancement program. However, in the process of enacting three bills in 2006 to fund the war in Iraq, hurricane relief, and other emergency needs, Congress cut a portion of its transportation funding to the states, resulting in a \$306 million loss of federal funds for Texas. TxDOT opted to suspend all future grants under the enhancement program, fulfilling a majority of the reduction in federal funding by forgoing \$225 million in unobligated enhancement money. FHWA recently informed the agency it will be cutting an additional \$288 million, and TxDOT has until April 19 to submit a plan to the federal government as to how it would reconcile the funding shortfall.

Under the fiscal 2006-07 state budget, TxDOT is required under seven riders to submit a variety of reports to different government representatives and entities. These reports include:

- an annual report to the Legislature on monthly ridership, revenue, and other data from all public transportation projects in Texas;
- an annual report to each member of the House and Senate on the status of all transportation projects under contract or awaiting funding, including any segment of a planned Trans-Texas Corridor project, that could affect the member’s district;
- a monthly revenue report to the governor and the LBB on state and federal funds received in the State Highway Fund (Fund 006). The agency must immediately notify the governor and the LBB in writing of any estimated change in state and federal funding and explain why the change occurred; and
- an annual report to the governor and LBB on the state’s efforts in reaching attainment with the federal Clean Air Act.

CSHB1 adds Rider 39 to TxDOT’s budget to require the agency to report any changes in federal funding to the LBB and the governor and prohibit TxDOT from forgoing federal Transportation Enhancement funds. Under the rider, TxDOT would have 10 days after receiving notice from the federal government of changes in estimated federal funds available for fiscal 2008-09 to notify the LBB and the governor in writing. If federal funding were increased, TxDOT would have to project how it would use the money. If federal funding were decreased, TxDOT would have to address how it would deal with the shortfall. TxDOT also would be required to provide to the governor and the LBB any documents it needed to submit to the U.S. Department of Transportation in response to a rescission in federal funding at least 10 days before sending those documents to Washington. If TxDOT had discretion in determining which federal funds would be rescinded, it would be required to exempt federal Transportation Enhancement funds.

The bill also adds Rider 20, merging the seven riders dealing with reporting requirements, and Rider 40, making certain appropriations contingent upon the receipt of those reports. Under Rider 40, TxDOT would be required to submit a status report on each of the reports mandated under Rider 20 annually between February 18 and April 10. If the agency failed to meet this deadline – or the individual reporting deadlines in Rider 20 – the LBB could direct the comptroller to withhold any spending authority except that needed to pay for:

- costs associated with debt service and bond proceeds;
- county payments collected from gross weight and axle fees;
- vehicle titling and registration, dealer and tow truck regulation, and enforcement of the state's lemon laws;
- public transportation and medical transportation services;
- routine and contracted maintenance;
- fulfillment of contractual obligations;
- ferry operations;
- the Texas Highway Beautification program; and
- any other constitutionally or statutorily required program.

Supporters say the changes recommended in CSHB 1 would make TxDOT more responsive and accountable to the people and their elected representatives. The agency consistently has made decisions without consulting officials who should be a party to the establishment of new policy and has failed to report its activities in a timely manner.

The changes dealing with enhancement funding would allow the governor and Legislature to ensure the agency did not excessively target one program. The agency could have made more cuts in other areas. Many communities were expecting federal funding for their projects, and the loss of funding could threaten preservation efforts for historical landmarks around the state.

The changes tying appropriations to the receipt of reports would ensure that the agency informed elected officials of its actions in a timely fashion. Legislators drafting the fiscal 2008-09 budget were without crucial information they needed to make decisions regarding

spending. The LBB had requested certain documents in October 2006 and had not received them by March, when legislators actively were assessing funding needs.

Critics argue the agency already has been compiling these reports and alerting the LBB and the governor regarding federal funding changes. The new requirements would be either duplicative or needlessly punitive, they say, and would do little to solve the problems identified by the Legislature.

The Transportation Enhancement Program is only tangentially related to transportation and should not be treated as a higher priority than most TxDOT projects aimed at reducing congestion or improving safety. Forcing the agency to cut funds from construction projects would put the state further behind in meeting the needs of Texas motorists. Additionally, the agency already has been alerting the Governor's Office and relevant committee chairmen of its plan to respond to the rescissions and currently is required to do that under one of the reporting requirements moved to Rider 20. The rider also should clarify the 10-day timeframe because the agency currently receives notice of a rescission but not an actual amount, and often official word from the federal government does not arrive until more than 10 days after that initial advisory.

TxDOT also has been filing the reports it is mandated to file, but some of the data is either difficult to determine or very labor intensive, requiring analysts to spend time breaking down budgets in a fashion the agency does not use, such as spending specific to a legislative district. Any withheld appropriations likely would come out of administrative funds, making it even more difficult to ensure that the personnel charged with compiling these reports had all the resources needed to complete them in a timely and comprehensive manner.

Toll roads and Trans-Texas Corridor. In February 2007, the State Auditor's Office (SAO) published its findings on TxDOT's activities related to the Trans-Texas Corridor (TTC) between fiscal 2002 and fiscal 2006. The audit focused primarily on the first planned stretch of road, the TTC-35, which largely would parallel Interstate 35 from the Oklahoma border through Dallas and San Antonio to Mexico.

The SAO recommended moving financial projections from TxDOT to the Comptroller of Public Accounts and allowing the SAO to audit each projection for each segment of the TTC-35. It also recommended that TxDOT:

- increase public access to information about the corridor;
- prepare a forecast for each segment of toll road that would be submitted to the governor, the Legislature, and the comptroller;
- account for state costs related to TTC-35 and post those costs on its Web site in a timely fashion; and
- submit drafts of proposed toll road contracts with private entities regarding contracts longer than four years or involving at least \$250 million in spending for review and approval by Office of the Attorney General.

CSHB 1 would add Rider 43 to TxDOT's budget, using recommendations from the auditor's report to create additional requirements for TxDOT related to toll road and Trans-Texas Corridor projects. The agency would be banned from using any appropriated money or personnel to estimate revenue for a toll project unless approved through an interagency contract with the comptroller in which the comptroller made the projections for each segment of a toll road before the agency signed an agreement with a developer. It also would be barred from implementing any master development plan if it did not include cost estimates for mid-term and long-term road facilities. The agency also would be required to:

- include in its Trans-Texas Corridor cost reports to the Legislature any indirect costs associated with the project;
- achieve transparency "to the greatest extent possible under the public information law" by making public all information related to the Trans-Texas Corridor; and
- assure that developers involved in corridor projects provide reasonable assumptions related to cost estimates and plans.

Supporters say the auditor's report shows TxDOT has not been fairly representing expected costs and revenues related to the Trans-Texas Corridor and that the agency has been anything but transparent in its planning process. The

audit found, among other things, that public funds could be used to develop the TTC-35 despite claims from the agency that state highway fund costs would be minimal.

It took TxDOT 18 months, after a ruling from the attorney general that the agency was violating the Texas Public Information Act and a lawsuit filed by Cintra-Zachry and TxDOT to keep portions of the agreement confidential, before the department posted the comprehensive development agreement for the TTC-35 on its Web site. Rider 43 would enable independent agencies, such as the SAO and the Comptroller's Office, to verify the veracity of revenue and cost projections the agency makes and move the essential information about the corridor into the public sphere, where it could be analyzed and debated. It also would create more legislative oversight, which the audit report found was lacking.

Critics say adhering to all of the recommendations would be difficult because some are nebulous, such as determining the "reasonableness" of a financial estimate or calculating and determining what constitutes an indirect cost. TxDOT already has a third party conduct its revenue estimates, and investors only recognize a few select firms as capable of analyzing these large toll projects, so mandating a role for the comptroller in the process would add another layer of bureaucracy. The agency contends that it backed Cintra-Zachry in its legal fight to ensure the integrity of the competitive process by not releasing proprietary information before the contract was finalized and that it put the document on its Web site once that occurred.

TWC skills development

The Skills Development Fund (SDF) provides funding to create local job training programs in partnership with public community and technical colleges. In 2005, the 79th Legislature enacted HB 2421 by Chavez, allocating a small percentage of unemployment taxes on Texas businesses to create a permanent funding source for the program. CSHB 1 would appropriate \$49.6 million in general revenue-related funds in fiscal 2008-09 for the SDF. This 23 percent increase over fiscal 2006-07 spending would allow TWC to train an additional 7,785 workers each year.

Currently, a certain percentage of funds deposited in the SDF can be used to provide cash grants for a variety of economic stimulus programs through the Texas Enterprise Fund (see Art. 1). HB 48 by Chavez, which passed the House on March 27, would retain in the SDF the funding scheduled to shift to the enterprise fund beginning September 1, 2007. CSHB 1 contains a contingency rider in Art. 11 that would reduce the appropriation to TEF by \$12.8 million in general revenue-dedicated funds upon enactment of HB 48.

Project RIO

Project Reintegration of Offenders (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 the TWC, Texas Department of Criminal Justice (TDCJ), and the Texas Youth Commission (TYC). TWC provides post-release Project RIO services, including such activities as job readiness training, job referral, placement services, and agency referral for food stamp assistance. CSHB 1 would appropriate \$14.7 million in general revenue-related funds for fiscal 2008-09, the same amount budgeted for the previous biennium.

Supporters of maintaining current funding levels point to the program's success as evidence that no new funding is needed. If the TWC needs additional funds, they say, it should work more closely with TDCJ and TYC to increase the program's efficiency.

Critics argue that the Legislature should provide an additional \$2.8 million for Project RIO to serve an additional 10,385 ex-offenders during the next biennium, which would allow the program to reach almost half of the state's parolee population. The program deserves increased funding, they argue, because it has demonstrated success in placing ex-offenders in the workforce and reducing recidivism.

Lottery

The Texas Lottery Commission (TLC) was established in 1991 to administer and promote the state lottery and regulate bingo. Gov. Perry, in his fiscal 2008-09 budget proposal, recommended leasing the operation of the Texas Lottery to a private entity for a 40-year period and investing the proceeds in three funds that would support health care, cancer research, and public education. The governor suggested that if the state were to sell the lottery for \$14 billion, investments from the sale could accrue as much as \$1.26 billion annually. The proposal would have a major impact on the Texas Lottery Commission (TLC), which still would oversee the operator of the lottery. The sale of the lottery would require separate legislative and/or constitutional action and is not addressed in CSHB 1.

ORCA

The Office of Rural and Community Affairs coordinates state services and acts as a liaison between the state and rural communities to help meet their needs with regard to health care and community and economic development. ORCA underwent Sunset review in 2006. Although Sunset staff recommended abolishing the agency and transferring its functions to the Texas Department of Agriculture, the full Sunset Advisory Commission recommended continuing ORCA until 2011. CSHB 1 would provide \$10.8 million in general revenue-related funds for ORCA for fiscal 2008-09, a 14.3 percent decrease from \$12.6 million spent in fiscal 2006-07. Rider 12 under the agency's budget would fund ORCA contingent on its reauthorization by the 80th Legislature.

Article 8 Overview

The state delegates much of its regulation of business professionals and service industries to Art. 8 agencies, which range in size and scope from the Public Utility Commission (PUC) to the Structural Pest Control Board. Art. 8 also includes the Insurance and Banking departments, Texas Medical Board, 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 Art. 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 2008-09 funding for Art. 8 as proposed in CSHB 1 would total \$736.3 million, less than 1 percent of the overall state budget, including \$716.5 million in general revenue-related funds. Overall funding would increase by almost 38.3 percent from fiscal 2006-07. The restoration of the low-income discount program under the PUC for certain electric customers represents about 83 percent of the overall increase from fiscal 2006-07 to fiscal 2008-09.

Budget highlights

Using SBF funds for low-income discount program

Background. In 1999, the Legislature enacted the Texas Electric Choice Act, which restructured the electric utility industry and created the System Benefit Fund (SBF) administered by the PUC. Through a 65-cent-per-megawatt-hour assessment on electric ratepayers, SBF disbursements initially provided a 10 percent discount to eligible customers — those with household incomes less than 125 percent of the federal poverty guidelines or receiving food stamps or Medicaid — in areas affected by electric retail competition. In addition, the SBF has funded energy and consumer education efficiency programs and has helped to offset school funding losses stemming from the decrease in the property values of electric generation facilities attributable to restructuring.

In 2001, the 77th Legislature enacted HB 1902 by Turner, which changed the fund from a separate trust fund to a dedicated account in the general revenue fund. In fiscal 2004-05 and 2006-07, the Legislature did not allocate SBF funds for assistance for low-income electric customers and held the money for certification of the budget because of projected budget shortfalls. The projected SBF balance at

Article 8 spending comparisons (millions of dollars)

Type of funds	Expended/budgeted 2006-07	Recommended CSHB 1	Biennial change	Percent change
General revenue-related	\$510.6	\$716.5	\$205.9	40.3%
Federal	5.4	4.8	(0.6)	(11.6)
Other	16.5	14.9	(1.5)	(9.3)
All funds	532.5	736.3	203.7	38.3

Source: Legislative Budget Board, Summary of Committee Substitute for House Bill 1, March 27, 2007

the end of fiscal 2007 is about \$408 million, and the LBB estimates the fund will accrue \$32 million in interest on that money. In addition, the LBB projects that the assessment will generate \$311 million for the SBF in fiscal 2008-09.

CSHB 1 would appropriate \$170 million from the SBF for fiscal 2008-09 to fund the low-income discount program to pay 10 percent of the monthly electricity bills for selected low-income residents. In fiscal 2008, \$80 million of this total would assist an estimated 375,000 households, and in fiscal 2009, \$90 million would aid an estimated 389,000 households.

Another proposal would shift the current fund balance of about \$408 million from Art. 8 into Art. 2, where it could be used to help pay for growth in Medicaid caseloads.

Supporters say that \$170 million to fund the low-income discount program is the appropriate level of funding. Any additional payments to the low-income discount program could take money away from other important programs.

Opponents argue that all the money generated for the SBF should be spent as intended on the low-income discount program. The additional \$141 million in projected assessments during fiscal 2008-09 should be spent on additional education about electric options and the low-income program, which was established to fund up to 20 percent of the monthly electricity bills of low-income households.

Other opponents say the Legislature should approve a supplemental appropriation in HB 15 to restore the low-income discount program during fiscal 2007 to meet the needs of low-income electricity customers during the coming summer months.

House consideration of HB 551 by Turner, which would place the SBF outside of general revenue and restore its energy assistance and education programs, has been postponed until April 2.

Article 9 Overview

Provisions in Art. 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.

Art. 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 Art. 9 many provisions of past budget acts that the 79th Legislature codified in statute. It also would conform riders to actions taken by the 79th Legislature after the enactment of the general appropriations act for fiscal 2006-07.

Major provisions

Health and Human Services. In addition to funding included in Art. 2, Art. 9 would include \$1.3 billion in all funds, including \$595.4 million in general revenue-related funds, for health and human services agencies. These funds are largely attributable to increases at the Department of Aging and Disability Services contingent upon enactment of a Quality Assurance Fee and at the Health and Human Services Commission and the Department of State Health Services contingent on the availability of funds for provider rate increases. (For a detailed analysis of these issues, see *Health and Human Services Overview*, pages 14-17.)

Tobacco-settlement funds. An informational rider (Art. 9, sec. 10.7) lists tobacco-settlement appropriations and distributions from the permanent funds and endowments. For fiscal 2008-09, CSHB 1 would appropriate slightly more than \$1.1 billion in tobacco funds, about the same as in fiscal 2006-07. CSHB 1 would place no additional money in the permanent trust funds or endowment funds. Interest from the trust funds and endowments would be appropriated for their stated purposes, as noted in the method-of-finance section for each agency.

Data center services consolidation. An informational rider (Art. 9, sec. 9.07) lists the amounts, by agency, for costs associated with data center consolidation included in the supplemental appropriations bill, HB 15 by Chisum or SB 1720 by Ogden. The rider also identifies the number of FTEs no longer necessary for affected agencies' data center operations (approximately 563 FTEs).

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