

Topics for the 84th Legislature

- 3 Taxes and revenue
- 4 Business and economic development
- 5 Criminal justice and public safety
- 7 Health and human services
- 9 Public education
- 11 Higher education
- 11 Energy, environment, and natural resources
- 13 Transportation
- 14 Government organization
- 15 Regulatory issues
- 16 Judiciary and civil jurisprudence

The Texas Legislature will consider a wide variety of topics when it convenes in regular session on January 13, 2015. Among other prominent issues, lawmakers are expected to consider proposals to modify taxes, consolidate health and human services agencies, revise criminal punishments, improve low-performing schools, manage groundwater resources, and fund highways, higher education, and border security operations. A total of 20 agencies will be under Sunset review in areas that include health and human services, family and protective services, administrative hearings, and workforce development. This report highlights many, although by no means all, of the issues the 84th Legislature may consider during its 2015 regular session.

Appropriations and spending

When the 84th Legislature writes the state budget for fiscal 2016-17, it will consider agency spending requests in the context of expected state revenue. Some requests for state spending are discussed in this report under specific topic categories.

In January 2015, the comptroller's *Biennial Revenue Estimate, 2016-17* will report the amount of revenue available for appropriation by the Legislature. State revenue for fiscal 2014-15 is expected to be greater than was anticipated in the comptroller's revenue estimate used to certify the budget for the current fiscal biennium. In December 2013, the comptroller estimated that the state would end fiscal 2014-15 with a cash balance of about \$2.6 billion, and that estimate will be updated in January. By other estimates, the state may end the year with a larger cash balance.

State agencies were instructed to submit baseline spending requests for general revenue and general revenue dedicated funds that were no greater than funds expended in fiscal 2014 and budgeted for fiscal 2015. Agencies also had to submit plans showing potential general revenue and general revenue dedicated spending cuts of 10 percent, in two 5 percent increments, as part of their fiscal 2016-17 requests.

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Funds for certain programs were exempted from these baseline requirements, including amounts necessary to maintain funding for the Foundation School Program and to maintain current benefits and eligibility in Medicaid, the Children's Health Insurance Program, the foster care program, the adoption subsidies program, and the permanency care assistance program, which provides financial support under certain circumstances to relatives and others who become foster parents.

Under the Texas constitutional spending cap, state spending not constitutionally dedicated to particular purposes cannot increase from one biennium to the next beyond the rate of growth in statewide personal income adopted by the Legislative Budget Board (LBB) unless the cap is waived by a majority vote of both houses of the Legislature. On December 1, the LBB adopted a projected state personal income growth rate of 11.68 percent from fiscal 2014-15 to fiscal 2016-17. Subject to revisions in the revenue forecasts and subsequent appropriations, this limits spending from non-dedicated tax revenue in fiscal 2016-17 to \$94.3 billion, up from \$84.4 billion in fiscal 2014-15.

Legislators may consider proposals to use the state's Economic Stabilization Fund ("rainy day fund") for the fiscal 2016-17 budget and for fiscal 2015 spending. The Joint Select Committee to Study the Balance of the Economic Stabilization Fund recently determined \$7 billion to be a sufficient minimum balance for the fund.

Strategic fiscal review of certain agencies. In August, Speaker Straus directed the House Appropriations Committee to examine the responsibilities, costs, and operating practices at 11 state agencies as part of a process called Strategic Fiscal Review. The committee was charged with reviewing the agencies' services and use of state funds and whether they could fulfill their missions with fewer employees and resources.

As part of the review, the LBB will collect detailed data on each agency's programs and examine alternative program funding, the relationship of programs to each agency's mission and statutes, each agency's implementation of directives, and the use of constitutional and general revenue dedicated funds. The agencies, listed below, represent all budget articles and received about 21 percent of the all-funds appropriations in fiscal 2014-15, according to the LBB.

- Trusted programs within the Office of the Governor;
- Department of Information Resources;
- General revenue-funded programs at the Department of Assistive and Rehabilitative Services;
- Higher Education Coordinating Board;
- System offices of general academic institutions;
- Available University Fund;
- Texas State Law Library;
- Juvenile Justice Department;
- Department of Public Safety;
- Department of Transportation; and
- Public Utility Commission.

Lawmakers may consider legislation requiring certain agencies, such as those under Sunset review, to undergo the Strategic Fiscal Review.

Supplemental appropriations for fiscal 2015. The Legislature will consider additional spending for fiscal 2015. General revenue funding for Medicaid-related entitlement programs is expected to run out in 2015, requiring an estimated supplemental appropriation of \$971.2 million. Other supplemental needs also could be considered.

Dedicated revenue. Lawmakers may discuss the use of statutorily dedicated accounts in the state budget. Government Code, sec. 403.095 requires the comptroller to include in the estimate of funds available for general-purpose spending the amounts in general revenue dedicated accounts expected to exceed appropriations from those accounts. Of \$12.3 billion in total available general revenue dedicated funds in fiscal 2014-15, the 83rd Legislature appropriated \$7.3 billion, leaving about \$5 billion in these funds unspent but counted toward budget certification, according to the LBB's *Fiscal Size Up, 2014-15 Biennium*.

Lawmakers may consider proposals to stop using fees and dedicated accounts for purposes other than those for which they were originally intended. Other proposals could include reducing revenue collection in these accounts by lowering or suspending fees.

Spending limits. Legislators may consider imposing limits on expenditure growth, including proposals to limit the rate of expenditure growth to the rate of inflation plus the rate of population growth or another

measure related to these metrics. Another proposal would exempt certain appropriations used for state debt from the constitutional limit on spending.

Taxes and revenue

The 84th Legislature may consider several tax proposals, including modifying the margins tax and adding requirements for imposing new taxes or increasing tax rates. Lawmakers also may consider tax proposals to address the latest round of school finance litigation. Revenue from local school property taxes and the margins tax are major sources of funding for public education, and changes in those taxes could affect the amount of revenue available to support Texas schools.

Property taxes. Lawmakers may consider proposals to address several property tax issues, including appraisal reform, sales price disclosures, and tax exemptions.

Residential property appraisal. Legislators may consider lowering the cap on how much the appraised value of a residence homestead may increase each year. Under the Texas Constitution and state law, the appraised taxable value of a residence may not increase more than 10 percent annually. Lawmakers may consider a proposed constitutional amendment to lower the cap to 5 percent or 3 percent.

Commercial property appraisal. The 84th Legislature may consider ways to address concerns about differences between the appraised value and market value of commercial properties. Proposals could emerge to modify the appeals process by narrowing the definition of what constitutes a comparable commercial property. Other proposals could require price disclosures on all real estate sales.

Replacing local property taxes. Legislators may consider reducing or eliminating local property taxes that fund the maintenance and operations (M&O) of public schools and increasing the state sales tax to replace these revenues. The Legislature also may examine broadening the base of the sales tax to include food, real estate sales, and certain services as taxable items. Other proposals could include asking voters to approve a constitutional amendment eliminating local M&O property taxes in favor of a new statewide property tax for this purpose.

Property tax lending. The Legislature may consider bills to address concerns about certain practices in the growing property tax lien lending industry. Tax lien lenders offer to pay overdue property taxes for homeowners facing foreclosure, but some critics say high interest rates and being the first to be repaid if the home goes into foreclosure create a disincentive for these lenders to work with borrowers to pay off the debt. Lawmakers may consider requiring a waiting period before a homeowner facing foreclosure could finalize a tax lien loan.

Homestead property tax exemption. Lawmakers may consider proposals to increase the mandatory \$15,000 exemption on the value of a homeowner's primary residence for school property taxes.

Margins tax. Changes to the margins tax, also known as the franchise tax, may be considered. The tax is imposed on businesses for the privilege of operating in Texas, and businesses may calculate the amount they owe through various formulas. Businesses primarily engaged in retail or wholesale trade are taxed at a lower rate than all other businesses. Proposals may emerge to phase out or eliminate the tax or to make permanent the temporary margins tax rate reductions set to expire on January 1, 2016. The temporary reductions, enacted in 2013 through HB 500 by Hilderbran, cut the margins tax rates in tax years 2014 and 2015 for both categories of businesses subject to the tax. Lawmakers also may consider simplifying the formulas used to calculate taxes owed or expanding exemptions for certain businesses.

Supermajority for tax increases. The 84th Legislature may consider proposals to require that all tax rate increases or new taxes receive a vote of two-thirds of the members of each house, or it may consider requiring supermajority approval for specific taxes only.

Motor vehicle sales and use tax. The Legislature may investigate redirecting some or all of the revenue from the motor vehicle sales tax to the Texas Department of Transportation or the State Highway Fund (Fund 6). Currently, 75 percent goes to general revenue and 25 percent to the Foundation School Fund.

Motor fuel sales tax. Lawmakers may consider proposing a constitutional amendment to change the 20 cent-per-gallon tax on gasoline or diesel fuel, including indexing the tax to the consumer price index so it keeps up with inflation. Currently, 75 percent of the revenue from

this tax goes to the State Highway Fund and 25 percent to the Available School Fund. Lawmakers may consider allocating all revenue from the fuel sales tax to the State Highway Fund.

Business and economic development

Lawmakers may consider proposals to change the way the state awards tax incentives to attract businesses to Texas, including those in the technology industry. Other topics may include proposals to change state minimum wage requirements and to address the overpayment of unemployment benefits.

Incentive funds. Lawmakers may debate the use of state funds to attract businesses to locate or expand in Texas. Texas has several programs that award grants or tax incentives to private industry, including the Texas Enterprise Fund, Emerging Technology Fund, and Texas Moving Image Industry Incentive Program. The 84th Legislature could discuss proposals to abolish or restructure those funds and other economic development programs. Following a recent state audit report of the Texas Enterprise Fund that identified weaknesses in oversight, the 84th Legislature could discuss proposals to increase oversight, make the grant decision process more transparent, and ensure that companies are meeting job-creation targets.

Under Tax Code, ch. 313, local school districts may grant tax abatements to encourage capital investment and job creation. After an audit of four districts, state auditors concluded that the districts relied on self-reporting from businesses to certify that the number of jobs required in their tax abatement agreements were created. Proposals could emerge to require independent verification of the number of jobs created by businesses that enter into chapter 313 agreements with school districts.

Lawmakers also could consider proposals to improve oversight and transparency of the Major Events Trust Fund and Events Trust Fund, which provide funds designed to attract national conventions and sporting events, such as the Super Bowl and Formula 1 racing.

Worker and wage issues. Proposals may emerge to require employers to use the federal E-Verify system to check whether potential employees are allowed by law to work in the United States. Some would require only public employers, such as the state, to use the system while

others would include contractors and subcontractors doing business with public employers or other employers. In December 2014, Gov. Rick Perry ordered state agencies to use E-Verify to determine the work eligibility of current and prospective employees. The order expands use of the system from 17 state agencies that already were using it to all state agencies under the governor's office, as well as contractors and subcontractors working for those agencies.

Legislators also may examine the misclassification as independent contractors of workers who are employees. Proposals could emerge to amend or broaden the penalty that can be imposed on those who misclassify workers on public works projects.

Lawmakers may consider proposals to prohibit local governmental entities from requiring a certain minimum wage in contracts with private companies. They also may discuss raising the minimum wage paid to Texas workers and repealing the state law that prohibits cities from requiring higher minimum wages than those established by the state, which follows the federal wage rate.

The Legislature could examine recent efforts by cities and states to prohibit certain employers from asking applicants about their criminal history on initial job applications. These initiatives often are called "ban-the-box" laws in reference to the box on employment applications that asks about criminal convictions. Because these laws apply only to initial contact with potential employees, they allow employers to obtain information on applicants' criminal histories later in the process. Such laws may make exceptions for certain professions, such as law enforcement or public education. Some ban-the-box proposals might apply only to government employers, while some might extend to those in the private sector.

Lawmakers may consider proposals to revise the time frames for filing lawsuits to recover back pay for certain discriminatory compensation decisions.

Unemployment. Proposals may emerge to address overpayment of unemployment benefits, including a proposal that ties payment for the first week of unemployment, or the "waiting week," to finding employment or exhausting benefits, rather than making the payment automatically available after the third week of unemployment.

Technology investment. Proposals may emerge to adjust tax and regulatory policy to promote investment and growth in technology industries. The 83rd Legislature in 2013 established tax incentives for certain research and development activities, data centers, and cable television and Internet services. In the upcoming session, legislators may tweak existing tax incentive programs or explore other ways to facilitate expansion of the technology industry in Texas.

Criminal justice and public safety

Lawmakers may consider new criminal offenses and changes to the state's criminal procedures. Some proposals may seek to ensure detailed vetting before a new crime is established or a punishment is increased. For example, discussions could include whether to expand the information required about the estimated cost of a new crime. Criminal offenses outside the Penal Code could be examined to see if they are too broad, would be better handled by civil law, or are unnecessary because they involve actions that are covered by other criminal statutes. Proposals may emerge to eliminate some of these offenses from state law.

Drug and alcohol offenses. The Legislature could consider reducing penalties for low-level marijuana or other drug possession by non-dangerous offenders or for younger defendants. Some proposals would use savings from prosecuting drug possession cases to increase funding for drug abuse education and treatment. Debate on this issue could center on requiring probation, treatment, or education programs in some cases, as well as expanding the use of drug courts in low-level possession cases.

Lawmakers may debate requiring judges to order a person convicted of driving while intoxicated (DWI) to install an ignition interlock device following a first conviction. Other proposals could include making first-time DWI cases eligible for deferred adjudication, a form of probation in which a judge delays determining guilt while the defendant serves probation and which can result in the defendant's acquittal.

Proposals may emerge to review the granting of probation in intoxication manslaughter cases, highlighted by a 2013 case of a 16-year-old who received probation for a crash that killed four and injured two. These could

include eliminating the use of probation in cases of intoxication manslaughter or allowing it to be imposed only by juries.

Property offenses. Legislation to adjust the monetary and damage thresholds that define punishments for property crimes could be considered. The thresholds has not been adjusted since they were established in a 1993 revision to the Penal Code. Proposals could include adjusting the thresholds for inflation and raising the ceiling on class C misdemeanors so that lower-value property crimes would not be class B misdemeanors, which can be punished with jail time.

Revenge porn. Texas may join an increasing number of states considering legislation to address what is known as "revenge porn." The term usually refers to electronic distribution of sexually explicit images of someone without the subject's permission. Proposals could mirror criminal laws recently enacted in other states that prohibit posting or distributing sexually explicit images without the subject's permission. Another approach could be to create a cause of action for civil damages.

Electronic privacy. The 84th Legislature could consider electronic privacy, including proposals to require search warrants for law enforcement officers to obtain location data or digital content from cell phones and other wireless communications devices. Discussions may include technologies used to monitor the location of individuals, such as RFID chips, and devices that gather data from all cellphones in an area.

Legislators also may debate the use of automatic license plate readers by law enforcement. These systems can read and record license plate numbers taken from digital photographs and check them against databases. Proposals may include prohibiting the systems from recording the images of people, requiring that they capture only data necessary to identify a vehicle, restricting the use of captured information, and establishing rules to govern the retention of such information.

Civil asset forfeiture. Proposals to change the state's laws governing civil asset forfeiture might include:

- requiring assets or proceeds from their sales to be shared with the state or sent entirely to the state, rather than allowing local law enforcement agencies to retain them;

- expanding what must be included in currently required audit reports to include information about the crime on which a seizure was based and the result of any charges in the case;
- requiring a conviction before property can be forfeited; and
- setting a minimum value on what can be forfeited.

Other proposals could be to revise the burden-of-proof requirements in forfeiture hearings, including increasing the burden that prosecutors must meet.

Adult prison, probation, and parole. Lawmakers may consider topics related to prison, probation, and parole, including prison health care, correctional officer pay, and capital punishment procedures.

Prison health care. Lawmakers may address a request for more funding for health care delivered to the state's offender population. The state universities that provide the care have said that an additional \$174.8 million for fiscal 2016-17 is needed to maintain operations and to ensure effective care and the necessary delivery of services.

Correctional and parole officer pay. Proposals may emerge to increase the pay of correctional officers to address a shortage in the field. As of October 2014, the Texas Department of Criminal Justice (TDCJ) reported a vacancy rate of 13.9 percent, or roughly 3,630 officers.

Offender reentry. Lawmakers may discuss the expansion of the state's system for transitioning offenders from prison to society. TDCJ has requested \$4 million for 50 more reentry coordinators, with 40 of the positions to expand services for parolees, including those in halfway houses, and the rest as special needs reentry coordinators focusing on offenders with mental health needs.

State jails. Several proposals could be considered to change the imposition of punishments for state-jail felonies. One proposal would give the TDCJ, rather than judges, authority to award credits to people confined in state jails for participating in programs. Other proposals include reducing state-jail terms for some offenses and requiring probation in some state-jail felony cases.

Capital punishment. The Legislature could consider bills dealing with information about the manufacturers or suppliers of drugs for lethal injections used in imposing the death penalty. Proposals could range from protecting

information about the drugs from public disclosure to requiring that such information be made public. Under Texas Code of Criminal Procedure, art. 43.14, death sentences must be carried out by lethal injection, and proposals could emerge to allow other execution methods.

Diversions from criminal justice system.

Lawmakers may debate proposals to divert some offenders with mental health or substance dependency issues from the criminal justice system to special courts, treatment or counseling, or other alternatives to incarceration. The use of risk assessments in determining these diversions could be explored.

Juvenile justice. Legislators could evaluate the operations of the Texas Juvenile Justice Department (TJJD), established in 2011 by the 82nd Legislature. The new agency was created after two agencies were abolished — the Texas Youth Commission and the Texas Juvenile Probation Commission. Proposals could address how the duties of the two agencies are being integrated and whether some of the agency's programs should be eliminated.

Lawmakers may debate the effectiveness and expansion of programs and grants to divert youths from the TJJD and the juvenile justice system, including proposals for local communities, rather than the state, to handle certain youth offenders.

Legislators may debate whether 17-year-olds will be subject to the adult or juvenile criminal justice system. Currently, crimes committed by those age 17 and older are handled through the adult criminal justice system. Proposals may be considered to raise the age of adult criminal jurisdiction to 18, to raise the age for misdemeanors only, or to allow judicial discretion for some offenses. These proposals may be examined in conjunction with current law that allows juveniles at least 14 years old who have committed certain felony offenses to be transferred from juvenile to adult court.

Criminal records and procedure. Lawmakers may examine the state's laws on the nondisclosure and expunction of criminal records. Under nondisclosure, a person receiving a discharge and dismissal from deferred adjudication probation who also meets other conditions may ask the court to prohibit criminal justice agencies from disclosing to the public the person's criminal history record. With an expunction, criminal records are destroyed. Proposals could include expanding those eligible to use

nondisclosure and expunction, reducing the waiting time before nondisclosure could be requested, prohibiting the practice of waiving the right to pursue nondisclosure in plea agreements, and allowing automatic expunction in some cases.

Proposals for revising criminal procedure may be considered, including requiring the electronic recording of custodial interrogations. In response to a court ruling denying a post-conviction request for DNA testing, legislators may consider amending laws governing DNA testing of crime scene evidence to expand access to testing.

Border security and illegal immigration. The 84th Legislature may address funding for border security and proposals to expand or make permanent Department of Public Safety (DPS) operations on the border. In June, the governor, lieutenant governor, and speaker of the House directed DPS to increase law enforcement operations in Texas border counties. In July, the governor deployed up to 1,000 Texas National Guard troops to the border to support DPS operations focusing on criminal activity in the Rio Grande Valley, including drug cartel and human smuggling operations.

In December 2014 the LBB voted to transfer \$86 million from other state agencies and programs to fund border security operations through August 2015. The House Select Committee on the Fiscal Impact of Texas Border Support Operations is monitoring the DPS operations to determine their impact on the state's economic resources and infrastructure and to develop legislative proposals to address budgetary issues relating to border operations.

Lawmakers may debate the role of state and local law enforcement in enforcing federal immigration laws. Some may propose prohibiting local rules that limit cooperation with federal immigration enforcement efforts, such as adopting policies that create so-called "sanctuary cities."

Human trafficking. The Legislature could discuss the issue of human trafficking, especially ways to increase services such as housing, mental health, and medical care for trafficking victims and to address labor trafficking. Lawmakers may discuss continuing the Human Trafficking Prevention Task Force, which is set to expire in 2015.

Wrongful convictions. Lawmakers may debate whether Texas should create a commission to examine

wrongful convictions, sometimes called an innocence commission. The debate may address the structure and powers of such a commission, which could include studying individual cases of wrongful convictions and recommending changes in law.

Health and human services

The budget and the Sunset review of the state's health and human services (HHS) agencies are likely to drive much of the discussion of state HHS programs. Lawmakers may prioritize proposals to increase access to mental health and women's health services.

Medicaid cost containment. Legislators may continue to debate cost containment for Medicaid and the Children's Health Insurance Program (CHIP) this session. Proposals may center on ways to reduce Medicaid fraud, waste, and abuse and to improve accountability in the Office of the Inspector General.

Medicaid expansion and the ACA. Lawmakers may debate whether to expand the Medicaid program to parents and childless adults under age 65 with incomes below 133 percent of the federal poverty level. In Texas, Medicaid now is generally limited to low-income children, as well as seniors, pregnant women, and people with disabilities. Under the federal Affordable Care Act (ACA), from 2014 to 2016 the federal government would cover 100 percent of the Medicaid costs of newly eligible persons. This would drop to 90 percent by 2020. States would be responsible for the administrative costs of the expansion. A 2012 U.S. Supreme Court decision made Medicaid expansion under the ACA voluntary for states.

Lawmakers may discuss pursuing a sec. 1115 waiver, as some other states have done, in order to implement a Texas-specific Medicaid reform or to convert Texas' Medicaid system into a block grant program. This waiver would be in addition to the state's current sec. 1115 transformation waiver. Other proposals may include expanding the state's Health Insurance Premium Payment program, which helps families pay for private health insurance if at least one family member is eligible for Medicaid. Gov. Rick Perry said in a June 2012 letter to U.S. Secretary of Health and Human Services Kathleen Sebelius that he opposed Medicaid expansion, and bills filed in 2013 to expand Medicaid or apply for a waiver were not enacted.

Sec. 1115 transformation waiver. The 84th Legislature may discuss renewing the state's sec. 1115 transformation waiver, which funded more than 1,000 health care innovation projects created using Delivery System Reform Incentive Payments. The waiver also provided billions of dollars to offset the cost to hospitals of delivering uncompensated care. Lawmakers may discuss continuing state appropriations to fund Medicaid hospital payments through the Medicaid Disproportionate Share program.

Mental health. During the interim, legislative committees studied gaps in the current mental health system and made recommendations to better coordinate services across agencies and programs. Lawmakers in 2015 may consider recommendations to move mental health and substance abuse programs from the Department of State Health Services to the Health and Human Services Commission (HHSC), to train all school personnel in mental health first aid, and to increase diversion of individuals with a mental illness from emergency rooms and jails. Lawmakers also may discuss creating a grant program at HHSC to support community mental health programs for veterans.

Health care workforce. The size, composition, and role of Texas' health care workforce could be discussed by the 84th Legislature. Topics might include how to ensure adequate numbers of health care professionals are educated in Texas and working in all parts of the state and whether to expand the scope of practice for health professionals such as advanced practice nurses.

Foster care redesign. Lawmakers may consider changes to the redesign of the foster care system that began in 2010. During the interim, legislative committees studied the implementation of foster care redesign and reviewed efforts by the Texas Department of Family and Protective Services (DFPS) to reduce child fatalities. In 2014, new reports of deaths of children in foster care and the voluntary termination of one private contract have raised questions about whether private contractors have been adequately monitored and how they can be held accountable for children under their care.

Topics also may include standardizing foster parent training and family trauma screenings across child placement agencies, increasing retention and effectiveness of Child Protective Services workers, and providing additional support for youth transitioning out of the foster care system.

Drug testing and work requirements. During the interim, legislative committees studied strategies to reduce substance abuse in Texas and evaluated the Temporary Assistance for Needy Families (TANF) program structure. The 84th Legislature may debate whether to require drug screening for TANF recipients and additional ways to ensure that benefits are used for their intended purpose.

HHS Sunset review. The state's HHS agencies will undergo Sunset review this session. Several Sunset recommendations that lawmakers may consider are described below.

Centralizing HHS programs. In 2003, the 78th Legislature partially consolidated HHS agencies, but the management of Medicaid and other programs remains divided among several state agencies. Lawmakers may consider moving the administration of Medicaid and other HHS programs under HHSC. The consolidation would be designed to improve program oversight and delivery of care while reducing administrative expenses, according to the Sunset Advisory Commission.

Closing state-supported living centers (SSLCs). Legislators may act on a Sunset recommendation designed to improve quality and reduce the cost of care delivered to residents of SSLCs. Alleged civil rights violations at the centers, including abuse, serious neglect, and deaths, are the subject of a settlement agreement with the U.S. Department of Justice that requires Texas to make improvements to center services according to a timetable. As part of this process, lawmakers may consider closing the Austin center and identifying five further centers to close by 2022. Proposals may emerge to move residents of SSLCs into community-based settings that could deliver equivalent care at a lower cost, according to the Sunset Advisory Commission.

Changes to the Department of Family and Protective Services (DFPS). The 84th Legislature also may consider the Sunset Commission's recommendations for DFPS, which include increasing support for Child Protective Services caseworkers, creating a long-range plan for implementation of foster care redesign, developing a consistent method for measuring provider quality, and improving the agency's collection and evaluation of data.

Other Sunset proposals. Other proposals that emerged from the Sunset review process include:

- consolidating women's health and family planning into a single program;
- fully integrating behavioral health services into managed care organizations statewide;
- streamlining the Office of Inspector General's hearing process for payment holds based on credible allegations of fraud and clarifying the office's payment hold authority;
- requiring Department of Aging and Disability Services to set by rule progressive sanctions for serious or repeated violations by long-term care providers; and
- requiring the Department of Assistive and Rehabilitative Services to integrate administration, management, and oversight of the divisions for rehabilitation services and services for people who are blind to eliminate duplication and better serve customers.

Public education

Lawmakers will be monitoring the Texas Supreme Court's consideration of the state's appeal of a district court ruling that set a July 1, 2015, deadline for the Legislature to correct what the court said were constitutional deficiencies in school funding. While the Supreme Court may remove the deadline pending its ruling, the 84th Legislature may consider the district court ruling in adopting policies for educating the state's 5 million school children.

Proposals to improve chronically low-performing schools could be discussed, including some to allow the state to take over local school districts. The Legislature may consider proposals to expand school choice, including tax breaks for businesses that provide scholarships for certain students to attend private schools. State laws on truancy and failure to attend schools also could be debated. In addition, the Texas Education Agency (TEA) will undergo limited Sunset review in 2015.

School finance. Following an August 2014 district court ruling that the state's school finance system is unconstitutional, lawmakers may consider altering how the state funds public schools. The district court ruled that the system functions as an unconstitutional state property tax, that overall funding levels are inadequate, and that funds are not distributed in an equitable manner. The state is seeking a review of the ruling by the Texas Supreme Court.

Many observers believe that the Legislature will wait for a Texas Supreme Court ruling before addressing the overall funding structure. However, lawmakers could consider certain changes, such as funding levels for economically disadvantaged students and English language learners. Changes to laws governing the collection, recapture, and redistribution of local property tax revenue also could be debated.

Low-performing schools. The 84th Legislature may consider various proposals to address consistently low-performing schools and districts. These may include giving the commissioner of education additional authority to order changes in governance of a failing campus. Proposals also may emerge to reduce the number of years that a campus must be identified as unacceptable before parents may submit a written petition for repurposing, alternative management, or closure.

Lawmakers may consider proposals to restructure and simplify the home-rule process. Voters can use this process to restructure a school district into a home-rule school district. A home-rule school district may adopt its own governing structure and exempt itself from certain education laws. Lawmakers may consider proposals to change the requirements for developing a proposed home-rule charter and holding an election on the proposed charter.

Legislators also may debate proposals to provide transportation or otherwise make it easier for a student to attend a school other than the one assigned by the district based on where the student lives.

Pre-kindergarten. Lawmakers may discuss proposals to provide pre-kindergarten classes to more children and to improve the quality of pre-kindergarten programs. Discussion could include whether funding should be provided for all 4-year-olds or targeted to certain students and programs, as well as whether programs should be full-day or half-day.

Teacher evaluations. Lawmakers may consider proposals to revise requirements for districts in evaluating teachers. These may include using student test scores to measure the teacher's impact on student academic growth. The U.S. Department of Education has granted TEA a waiver through the 2014-15 school year from requirements that teacher evaluations include a measure of student success. TEA is piloting a new evaluation system

in some districts and charters beginning with the 2014-15 school year. For teachers of grades or subjects assessed by the State of Texas Assessments of Academic Readiness (STAAR), the pilot evaluation system will include measures of student growth based on student scores on those exams.

Testing and accountability. The Legislature may consider proposals to reduce state-mandated testing requirements in grades 3-12 to conform to the minimum requirements in federal law. The federal No Child Left Behind act requires students to be tested in reading and math in each of grades 3 through 8 and at least once during grades 10 through 12. Texas law requires additional testing.

Legislators may discuss proposals to address high school students who are at risk of not graduating because they have not passed a required STAAR exam. Proposals could be considered to create school-based review committees to look at students' coursework and other performance measures to determine if they should graduate despite not having met the testing requirements.

Lawmakers also may consider changes to the accountability system that rates schools and districts. Proposals could emerge to rate school campuses on an A-F letter grade standard.

Truancy. Legislators may discuss whether failure to attend school should remain a class C misdemeanor offense in the Education Code. Proposals could emerge to adjudicate juvenile truancy as a civil offense. Current law requiring mandatory court filings when students have failed to attend school on a certain number of days could be debated. Lawmakers may consider proposals to encourage more prevention and intervention at the school level before a case could be referred to court. Debate on this issue likely will weigh whether school districts need the option of a court's involvement as a consequence for students who fail to attend school even after their school's efforts to intervene and remediate the truant behavior.

Teacher health care. The 84th Legislature may respond to a funding shortfall of about \$727 million in TRS-Care, the state's health insurance program for retired teachers. In addition to making budgetary decisions related to the shortfall, lawmakers may consider proposals to change the statutory contribution rates that provide funds for the program, revise eligibility requirements, or otherwise restructure the program.

The Legislature also may debate proposals to improve the affordability of TRS-Active Care, which provides health insurance for employees in 1,118 school districts, according to TRS. Premiums for TRS-Active Care have increased significantly to levels that some say are unaffordable for teachers participating in the plan. Proposals could include changing state and district contribution levels, eliminating certain coverage requirements, and combining the health programs for active and retired teachers.

School choice. Lawmakers could debate measures to introduce vouchers or otherwise use public money to pay private school tuition for some Texas schoolchildren. Such a program could be targeted to students who attend low-performing schools or who have special educational needs. A related issue for debate could be providing tax credits for businesses that contribute scholarships for certain students to attend qualifying private schools.

Online learning. Proposals may emerge to expand opportunities for students to enroll in online learning. The Legislature may consider changing laws that allow school districts to limit the number of courses in which a student may enroll during a semester and to deny enrollment in an online course if the district offers a substantially similar course. In addition, lawmakers could discuss a provision in HB 1926 by K. King, enacted in 2013, which placed a moratorium on new fully online schools. Another possible issue for debate is whether State Board of Education oversight and review of online curriculum and learning materials should be increased.

TEA Sunset review. The TEA will undergo a limited scope Sunset review this session. Sunset staff has recommended several changes that the Legislature may consider. Proposals include:

- improving TEA oversight of the student assessment contract;
- requiring TEA to develop policies to increase public and stakeholder involvement;
- transferring regulation of the private driver training industry to the Texas Department of Licensing and Regulation;
- granting TEA greater authority to merge insolvent school districts;
- abolishing the State Board for Educator Certification and transferring its powers and duties to the commissioner of education; and

- establishing a five-year renewal process in statute for educator preparation programs.

Higher education

Higher education topics during the 84th Legislature are expected to focus on funding issues. Lawmakers may debate proposals to develop a funding model that places more emphasis on outcomes than enrollment and to issue tuition revenue bonds for higher education capital funding projects. Proposals also may emerge to authorize some community colleges to offer baccalaureate degrees in certain applied sciences and technology fields.

Funding. Proposed legislation may include incorporating outcomes-based funding as a supplement to enrollment-based funding for higher education institutions. Proposals may emerge to establish a funding pool, separate from and in addition to enrollment-based funds, that would be distributed to public higher education institutions based on performance in several areas of student success. Student success measures might include degrees awarded, graduation rates, and student retention.

Community college degree offerings. Lawmakers may consider proposals to authorize certain community colleges to offer applied baccalaureate degrees that address workforce needs. SB 414 by Ellis, enacted in 2013, directs the Texas Higher Education Coordinating Board to study the feasibility of expanding four-year degree offerings at the state's community colleges. Based on the study, the board is recommending that community colleges be allowed to offer baccalaureate degrees in specified areas, such as nursing and applied sciences, as long as a job market need has been demonstrated and the colleges meet certain criteria.

Capital project funding. The 84th Legislature may consider issuing tuition revenue bonds (TRBs) to fund capital projects at state higher education institutions. Universities and colleges pledge revenues from tuition or other sources to service debt from these bonds. Among others, the University of Texas and University of Houston systems may seek authorization of TRBs for campus construction and development projects. The Legislature has not approved any TRBs since 2009.

Course credit. Lawmakers may review proposed legislation that would allow students to earn college credit

toward their degree requirements for certain massive open online courses, or MOOCs, such as those offered by edX, Inc. They also may discuss proposals for a credit-by-exam policy that would require state institutions to award credit universally to students whose scores on advanced placement tests are 3 or greater.

Tuition waivers. The Legislature may consider reimbursing institutions for certain tuition and fee exemptions, such as those granted by the Hazlewood Act, which waives certain higher education costs for veterans and their children. Currently, state institutions absorb the cost for students who use this exemption. Proposed legislation might also aim to promote use of the tuition and fee waiver granted to former foster youth.

Tuition regulation. Proposals may emerge to restore the Legislature's authority to regulate tuition rates at the state's public universities. Tuition at these institutions has been deregulated since 2003, when the 78th Legislature enacted HB 3015 by Morrison.

Texas Dream Act. Lawmakers may consider proposals to revise or repeal the Texas Dream Act, which allows certain undocumented high school graduates to pay in-state tuition rates to attend public institutions of higher education in Texas.

Transferability. The Legislature may review proposals designed to facilitate transfer of student credits from one public institution of higher learning to another. Proposed legislation may require that all public colleges and universities use a common course numbering system, in which equivalent courses at different institutions have the same course designations. Currently, participating in the Texas Common Course Numbering System is voluntary for the state's postsecondary institutions.

Energy, environment, and natural resources

Prominent topics in energy, environment, and natural resources may include new requirements for common carrier eminent domain authority, proposals to deal with emissions from vehicles and power plants, and dedicating additional funding to state and local parks. Lawmakers also may consider proposals to manage groundwater resources and to increase the state's water supply through desalination.

Oil and gas production. Lawmakers may consider proposals to curb methane emissions from natural gas and oil production by limiting the deliberate burning off of excess gas, known as “flaring.” While natural gas that reaches the surface of an oil field as a by-product of hydraulic fracturing can be captured and stored through a pipeline, the low price of natural gas and a shortage of pipeline materials in rural parts of the state have hampered pipeline construction and led to an increase in flaring, which affects the environment through the emission of carbon dioxide and methane gases. Proposals to limit flaring may include requiring the oil industry to complete the gas gathering pipelines before production can begin.

Other proposals might include prohibiting city ordinances that ban hydraulic fracturing and expanding efforts to use Texas Emission Reduction Plan (TERP) funds to reduce emissions from vehicles and equipment used in hydraulic fracturing operations. Lawmakers may discuss whether gas wells that are hydraulically fractured should be certified as high-cost, gas-producing wells, which would make them eligible for a severance tax exemption.

Power generation capacity. In response to the federal Clean Power Plan to reduce carbon pollution from power plants, the Legislature may consider expanding efforts to encourage energy efficiency, renewables, and the increased use of natural gas. Proposals also may emerge to end state subsidies, such as tax credits and property tax limitations, for wind power and other renewables.

Lawmakers may consider proposals to enhance energy market rules to ensure that distributed and utility-scale solar energy is purchased at fair market value when produced at peak times.

Eminent domain among pipeline operators. The 84th Legislature may consider a proposal to reform common carrier eminent domain authority that would be modeled on a newly adopted Texas Railroad Commission rule. The rule requires pipeline companies to document in their permit applications that the pipeline would be available to the general public in order to receive rights as a common carrier. Common carrier rights include the power of eminent domain.

Power plant emissions. The Legislature may take steps to prepare for compliance with proposed federal regulations on carbon emissions from electric generating

units. The federal Clean Power Plan, as proposed, would require Texas to reduce its carbon dioxide emissions from power plants by 39 percent from 2012 levels by 2030. The rules are set to be finalized in June 2015, and state implementation plans (SIPs) would be due to the Environmental Protection Agency by June 2016. Lawmakers may grant authority to an agency, such as the Texas Commission on Environmental Quality (TCEQ), to develop a SIP, or the state may choose to challenge the rules in court once they are finalized.

Vehicle emissions. Lawmakers may consider proposals to use unspent funds from TERP and the Low Income Repair and Assistance Program (LIRAP). Some fees collected that are dedicated to TERP and LIRAP have been withheld in recent years, and proposals may emerge to dedicate the unspent funds for their intended purpose of reducing vehicular emissions.

Radioactive waste disposal and storage. Lawmakers may debate whether to permit a high-level radioactive waste disposal or storage facility in Texas. Texas currently has a low-level radioactive waste compact with Vermont but does not have a high-level waste disposal or storage facility.

Contested case hearings. Lawmakers may consider expediting the contested case hearings process for environmental permits. This process allows someone who would be adversely affected by certain facilities or activities to challenge that project’s environmental permit from TCEQ.

Water. The Texas State Soil and Water Conservation Board will undergo a limited scope Sunset review to evaluate its implementation of the Sunset Advisory Commission’s recommendations to the 82nd Legislature. The review would ensure that the board’s brush control efforts focus on enhancing water supply and that it has developed a system to rank and prioritize enhancement projects based on need for conservation and potential water yield.

Groundwater management. Legislators may consider expanding the role of the Texas Water Development Board (TWDB) in the management of groundwater resources. Proposals may include giving the TWDB more regulatory authority to substantively review a district’s management plan, as well as the authority to resolve issues between regions when their water management plans conflict.

Legislators may debate the role of the TWDB in substantive review of the desired future conditions (DFCs) of an aquifer and a district's permitting process. Some proposals may include efforts to ensure that groundwater is viewed as a shared resource by prohibiting a district from setting a DFC with a very limited amount of available water and then awarding permits only to existing users.

Proposals may emerge to grant TWDB the regulatory authority to better address disputes between landowners and groundwater districts.

Members of the 84th Legislature may debate whether the use of water for recreational purposes constitutes a critical, necessary use of this resource, and whether recreation and other forms of economic development should be recognized as such by river authorities and state water planners.

Because of the large amounts of water used in hydraulic fracturing, lawmakers may revisit how the exemption of oil and gas drilling or exploration from the groundwater permitting process would apply to groundwater wells used for fracking. Members may propose removing the oil and gas exemption and instead applying an expedited permitting process.

Desalination and aquifer storage and recovery.

Proposals may emerge to encourage the use of desalination and aquifer storage and recovery to increase the state's water supply. Those seeking to promote widespread adoption of desalination may propose designating brackish groundwater production zones and establishing an uncontested permitting process at the level of the groundwater conservation district once the zone has been designated. Other proposals may require groundwater conservation districts to provide automatic renewal of permits as long as compliance and consistency of the permit terms is maintained.

Proposals to encourage development of aquifer storage and recovery projects may include building a legal and regulatory framework to guide the regulation of wells in a project area, the protection of rights to stored water, and the role of groundwater conservation districts in such projects.

State and local parks. Proposals may emerge to use revenue generated by the sales tax on sporting goods for its intended purpose by fully funding state and local parks. Revenue generated by this portion of the tax

is statutorily allocated to the Texas Parks and Wildlife Department to fund state parks and provide matching grants to local governments to develop new parks.

Transportation

In 2015, lawmakers are expected to continue debating measures to fund the construction and maintenance of state highways, including proposals to dedicate Fund 6 dollars exclusively to transportation and to secure another source of funding for the Department of Public Safety and other agencies. Other topics for consideration could include measures to address damage to roads associated with energy production, as well as proposals designed to curb unsafe driving.

Highway finance funding shortfall. The Texas Department of Transportation (TxDOT) has projected a need of \$5 billion to pay for highway repair, maintenance, and mobility projects not currently covered in its budget. Proposition 1, which received voter approval in the November general election, amended the Texas Constitution to allow for the allocation to the State Highway Fund (Fund 6) of a portion of general revenue from oil and gas production that currently goes to the rainy day fund. The portion of this revenue allocated for public roadways in fiscal 2015 is estimated at \$1.7 billion. According to the agency, while the passage of Proposition 1 will provide a dedicated funding stream for highway construction and maintenance, it will not fully address the state's highway funding needs.

Fund 6 is the state's primary highway funding mechanism, collecting the vast majority of highway-related revenue from federal reimbursements, state motor fuels taxes, motor vehicle registrations, and various fees. The Legislature may appropriate money from Fund 6 for various highway-related purposes in accord with limits established in state law and the Texas Constitution. To address anticipated shortfalls in highway funding, state lawmakers may consider dedicating to highway construction and maintenance all of the money from Fund 6 that is designated for public roadways, rather than using some of it for other highway-related purposes, such as Department of Public Safety (DPS) law enforcement. Proposals may emerge to fund those agencies that currently receive Fund 6 dollars, such as DPS, by other means, such as general revenue or a dedicated revenue stream from the collection of fees.

Legislators may consider appropriating funds to pay down outstanding bond debt related to transportation. This could free up agency funds for transportation projects.

Road damage from oil and gas production.

Lawmakers may debate how state and local authorities could recoup the costs for damage to roads associated with oil and gas production in the Permian Basin, Eagle Ford Shale, and Barnett Shale areas. One proposal could require that a portion of the state oil severance tax, which goes directly to the rainy day fund and the Permanent School Fund, be allocated to improve and repair the roads in the counties or cities where the oil was produced. Another proposal could include adjusting the fee structure for oversized and overweight vehicles.

Texting while driving. Lawmakers may consider legislation to reduce distracted driving, including behaviors such as text-messaging behind the wheel. Proposals could include punishing such behavior with a criminal or civil penalty.

Red light cameras. Lawmakers may seek to restrict or prohibit use of cameras to impose civil penalties for traffic offenses.

Driver Responsibility Program. Legislators may consider changes to the state's Driver Responsibility Program, which authorizes DPS to impose surcharges on drivers who commit certain traffic offenses. The surcharges are in addition to other fees or penalties related to the offense, and a driver's license can be suspended for failing to pay surcharges. Revenue from the program goes into the Designated Trauma Facility and EMS Fund and the general revenue fund. Proposals could include:

- reducing surcharges or limiting the time frame during which they could be applied;
- requiring DPS to increase or expand amnesty programs;
- requiring DPS to increase or expand programs that reduce surcharges for low-income drivers;
- changing how drivers are notified of surcharges;
- revising which offenses are subject to the surcharges;
- giving DPS more ways to increase compliance; and
- eliminating the program.

Government organization

The Legislature may consider proposals to address state employee health and retirement benefits. Other topics in government organization may center on changes to election and campaign finance laws.

State employee retirement. Lawmakers may consider proposals to address funding of the Employees Retirement System, which is not actuarially sound and is scheduled to run out of money as soon as 2055, according to the agency. Proposals might involve increasing contributions and reducing retirement benefits for current employees. Other approaches could involve replacing the current defined benefit plan with a defined contribution plan or a hybrid system.

State employee health benefits. Lawmakers may review proposals for a consumer-driven health plan for state employees, such as a high-deductible health plan with a health savings account. In order to incentivize employees to choose a high-deductible plan, lawmakers may discuss changes to the state's insurance funding strategy, which currently pays 100 percent of the cost for employee-only coverage and 50 percent for dependent coverage.

Elections. Lawmakers may discuss proposals to raise the offense of fraud through ballot theft from a state-jail felony to a third-degree felony. Similar legislation, SB 554 by Campbell, appeared on the May 21, 2013, general state calendar but was not considered on the House floor.

Campaign finance. Legislators may debate whether certain nonprofit groups are subject to reporting requirements under the Texas Election Code. In October, the Ethics Commission adopted a rule defining certain groups as political committees that are required to disclose contributors and expenditures if more than 25 percent of the group's annual expenses were for political expenditures or more than 25 percent of its annual contributions were political contributions. Proposals to change this rule could be debated. SB 346 by Seliger, approved by the 83rd Legislature, would have created reporting requirements under the Election Code for persons or groups that did not meet definitions of political committees but accepted political contributions and made political expenditures meeting certain thresholds. SB 346 was vetoed by the governor.

Legacy modernization. As directed by HB 2738 by Elkins, enacted by the 83rd Legislature, the Department of Information Resources (DIR) performed a study to evaluate state agencies' technology efficiency and make recommendations about the state's aging information technology infrastructure. The Legislature may consider giving DIR statutory authority to develop a strategy for modernizing certain state agencies' inefficient or outdated technology systems, also known as "legacy systems."

Cooperative contracts. Lawmakers may review proposals that would revise the DIR's cooperative contracts program, including expanding its customer base to include quasi state agencies, private schools and universities, and volunteer fire departments. The cooperative contracts program offers purchasing contracts for certain technology products and services to various public entities, such as state agencies and local governments. DIR negotiates discounts with vendors and allows eligible entities to buy from them. The House committees on Technology and on Government Efficiency and Reform were jointly charged this interim with studying the program.

Regulatory issues

Proposals to change the regulation of alcohol, firearms, and gambling are expected to feature prominently during the coming legislative session. In addition, lawmakers may consider proposals to change the regulation of payday and auto title lending.

Alcohol regulation. Lawmakers could explore several proposals dealing with the regulation and sale of alcohol, including repealing laws that restrict alcohol sales on Sunday. Proposals to allow liquor package stores to open on Sunday and to allow big-box retail chains to obtain package store permits could be debated. Legislators also may consider changes to the current requirements in the three-tier system for manufacturing, distributing, and selling alcohol to allow a small, or *de minimis*, overlap in ownership of these type of businesses. Currently, no overlapping ownership is allowed among the three tiers.

Guns. Legislators may debate allowing concealed handgun licensees to carry handguns in places they are currently prohibited, including college campuses. Twenty states ban carrying concealed weapons on college

campuses, according to the National Conference of State Legislatures. Legislators also could consider allowing people to carry their handguns in the open, with or without a concealed handgun license.

Gambling. The Legislature may consider ideas generated by the Legislative Committee to Review the Texas Lottery and Texas Lottery Commission. The 83rd Legislature charged the committee with studying the elimination of the lottery and the consequences of phasing it out, including the impact on the state budget. The committee's November 2014 report recommended that the Legislature continue the lottery and that the Lottery Commission study certain aspects of lottery sales and advertising. The committee also made several recommendations on charitable bingo, including the establishment of statutory minimum amounts that bingo operators would have to give to charities based on a location's gross gaming revenue.

The Legislature may debate a recent Texas Racing Commission rule allowing betting on what is called "historical racing." The rule allows the use of electronic machines to wager on previously run races for which identifying information has been concealed. In November, a judge ruled that the commission exceeded its authority by approving the rule. Legislative proposals could include prohibiting historical racing or it giving the commission explicit authority to allow it.

Payday and auto title lending. Lawmakers may consider proposals to reform payday and auto title lending by imposing additional regulations on entities that offer these small-dollar loans, which are regulated by state law as credit access businesses (CABs). Proposed legislation may limit interest rates or fees charged by CABs or the amount borrowers may take out based on their monthly income.

Home equity loans. The Legislature may consider changes to current regulations on home equity loans. Proposals may emerge to address concerns regarding fee caps, power of attorney, and loan refinancing options.

Debit surcharges. Legislators may consider giving more power to state agencies to better enforce laws banning surcharges on debit and credit card transactions.

Judiciary and civil jurisprudence

In the areas of judiciary and civil jurisprudence, lawmakers may consider proposals to change the use of court-ordered guardianships, as well as processes governing judicial and grand jury selection. Proposals also may emerge to address the practices of patent assertion entities.

Guardianships. The use of guardianships by courts for elderly and other Texans could be discussed by the 84th Legislature, with proposals for guardianship alternatives and revisions to current rules governing guardianships debated. The use of supported decision-making, rather than traditional guardianships, could be considered.

Grand jury selection. Proposals may emerge to change Texas' system for picking grand jurors. Under current law, district court judges choose between two methods of grand jury selection. Under the "key man" system, the judge appoints a jury commissioner, who then chooses the grand jurors. The other method involves selecting and summoning between 25 and 125 potential grand jurors in the same way that jurors are summoned for civil cases in district courts. Proposals could include eliminating the key man system and having all grand jurors chosen by random selection.

Judicial selection. Lawmakers may discuss findings and recommendations of the Joint Interim Committee on Judicial Selection that was established by the 83rd Legislature. The committee was charged with studying how appellate court, district court, and statutory and probate court judges are selected in Texas.

Patent abuse protections. Texas lawmakers may follow those in other states who have addressed practices of patent assertion entities that some consider abusive. Proposed legislation might define "good faith" and "bad faith" patent claims, or lawmakers might consider enacting a "loser pays" system for patent cases, in which the loser in a lawsuit pays the opponent's litigation costs.

E-filing. Requests for funding to implement e-filing systems for Texas courts could be considered by the Legislature. The phasing in of e-filing began in January 2014 and will be required for all courts by July 1, 2016.

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