LEGISLATIVE BUDGET BOARD

Legislative Budget Board Staff Reports

PREPARED BY LEGISLATIVE BUDGET BOARD STAFF

JANUARY 2017

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The Honorable Speaker Joe Straus, Speaker of the House

Members of the Eighty-fifth Legislature, Texas House of Representatives

Speaker Straus:

As directed in your letter dated January 25, 2017, this compilation of efficiency and informational reports prepared by staff of the Legislative Budget Board is provided to the Members of the Texas House of Representatives. The 52 reports in this publication cover a variety of government programs and fiscal policy areas. Of these reports, 32 provide staff identified options to improve the efficiency of government programs and operations. These reports are the result of the evaluation and audit process established under Texas Government Code, Chapter 322.

Our staff are available to assist members as they consider the information and options presented in these reports. Staff of the Legislative Budget Board appreciates the cooperation and assistance of state agencies and other entities provided during research conducted for these reviews.

Respectfully submitted,

Ursula Parks

CONTENTS

IMPROVE AVAILABLE INFORMATION REGARDING FUNDS HELD OUTSIDE THE STATE TREASURY

The Texas Constitution prohibits state entities from expending money in the State Treasury unless the Legislature has appropriated the funds. However, not all state funds are held in the Treasury. Certain state agencies and all public institutions of higher education have specific authority to hold state funds outside the Treasury. State law allows these funds to be expended without a legislative appropriation, which limits legislative oversight and control of these state funds. It may also impair the Legislature's ability to make appropriation decisions based on all state funds available for a particular purpose or item of appropriation.

Funds held outside the Treasury consist of revenue authorized by the Texas Constitution, statute, federal law, or court order to be deposited to funds or accounts outside the Treasury, and controlled by a state agency or public institution of higher education or its oversight board or commission. Examples of such funds include trust and bond funds, college tuition, pension funds, and endowment funds. According to information reported by state agencies and institutions of higher education to the statewide accounting system, as of August 31, 2015, the cash balance in state funds held outside the Treasury is estimated to be $7.5 billion. This includes $3.6 billion for state agencies and $3.9 billion for public institutions of higher education. However, because this information is at a point-in-time and no state entity compiles a comprehensive listing of state revenues deposited to or expended from funds held outside the Treasury, the total amount of available funds is unknown. Additionally, basic information regarding these funds is not readily available (e.g., fund name, administering agency, fund type, statutory or constitutional authority for the revenue dedication or fund). By requiring the Comptroller of Public Accounts and the Legislative Budget Board, with assistance from affected state entities, to prepare a biennial report on funds held outside the Treasury, the Legislature could leverage the reported information to make appropriation decisions based on all state funds available for a particular purpose or item of appropriation.

FACTS AND FINDINGS

- ♦ One measure that serves as a proxy for the availability of funds held outside the Treasury for each agency or public institution of higher education is the estimated percentage of appropriated amounts relative to total available funds included in each agency and institution's bill pattern in the General Appropriations Act. Twenty-two agencies or institutions have 2016–17 appropriated amounts representing 25 percent or less of total available funds, more than 80 percent of which are higher education institutions.
- ♦ The Comptroller of Public Accounts recognizes four different classifications of funds held outside the Treasury—operating, custodial, bond, and trust funds. Operating funds finance the daily operations of state government, and are the most similar to funds provided through the appropriations process. If moved into the Treasury these funds would generate additional interest income to the Treasury and provide an additional source for interfund borrowing.

CONCERN

- ♦ The Legislature does not have complete information about funds held outside the Treasury, their revenue sources and allowable uses, or available account balances. A gap in information regarding all funds available for a particular agency, program, or item of appropriation may hinder the Legislature's ability to make informed appropriation decisions.

OPTION

- ♦ **Option 1:** Include a rider in the 2018–19 General Appropriations Bill that requires the Comptroller of Public Accounts and the Legislative Budget Board, with assistance from affected state agencies and institutions of higher education, to prepare a biennial report on funds held outside the Treasury.

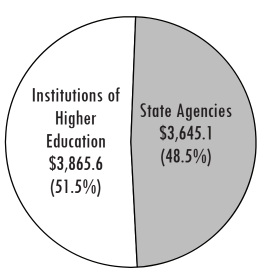
DISCUSSION

The Texas State Treasury is a depository of state money held in accounts or funds. The accounts and funds are each assigned an identifying number in the Uniform Statewide Accounting System (USAS), and pursuant to the Texas Constitution, Article VIII, Section 6, may not be disbursed unless appropriated by the Legislature. Certain state funds are held outside the Treasury. These funds consist of revenue authorized by the Texas Constitution, statute, federal law, or court order to be deposited to funds or accounts held outside the Treasury, and controlled by a state agency or public institution of higher education or its oversight board or commission. Unlike funds held in the Treasury, these funds may be expended without a legislative appropriation, which limits legislative oversight and control of state funds held outside the Treasury.

No entity in state government compiles or publishes a comprehensive list of funds held outside the Treasury. As a result, an actual count of and the total amount of state funds held outside the Treasury is not readily available. Financial data regarding some funds held outside the Treasury is reported to the state's accounting system for purposes of compiling the state's Comprehensive Annual Financial Report (CAFR). As shown in **Figure 1**, based on the information reported for the CAFR, the cash balance in funds held outside the Treasury administered by state agencies and institutions of higher education is $7.5 billion as of August 31, 2015. This estimate does not capture all funds held outside the Treasury, but only those with cash balances at a particular point-in-time. As a result, investment balances and funds with only non-cash balances as of August 31, 2015, (e.g., the Tobacco Settlement Permanent Trust Fund) are not captured in this estimate.

Some of the known accounts outside the Treasury with cash balances as of August 31, 2015, are listed in **Figure 2**.

FIGURE 1
ENDING CASH BALANCE IN REPORTED FUNDS HELD OUTSIDE THE TREASURY FOR STATE AGENCIES AND PUBLIC INSTITUTIONS OF HIGHER EDUCATION AS OF AUGUST 31, 2015



NOTE: Cash balances are self-reported by state entities and represent snapshots of these accounts at a particular point-in-time. Cash balances include cash, cash equivalents and the value of short-term investments only. Balances do not include all state funds held outside the Treasury (e.g., Tobacco Settlement Permanent Trust Fund).
SOURCES: Legislative Budget Board; Comptroller of Public Accounts.

TYPES AND CHARACTERISTICS OF FUNDS HELD OUTSIDE THE TREASURY

According to CPA, funds held outside the Treasury are structured in one of three ways—they are held by either CPA, a private financial institution, or the Texas Treasury Safekeeping Trust Company (TTSTC). TTSTC is a separate, non-state entity administratively attached to CPA, and the Comptroller serves as the Trust's Executive Director. TTSTC invests, manages, and oversees more than $50 billion in assets for state agency, higher education and local government clients, including the State of Texas Treasury Pool, and the operating funds of 25 public institutions of higher education.

CPA recognizes four types of funds held outside the Treasury—operating, custodial, bond and trust funds—and for purposes of consistency in reporting, requires state agencies to categorize their funds held outside the Treasury as one of these four types. CPA definitions for each type of fund held outside the Treasury are as follows:

- Operating funds—funds held outside the Treasury used to make general expenditures for the daily operations of state government. Examples include: self-directed, semi-independent (SDSI) agency operating funds; higher education local funds; and private donations to maintain the State Capitol and State History Museum.

- Custodial funds—funds held outside the Treasury containing assets belonging to individuals and other entities held temporarily in a custodial capacity. Examples include: accounts held in private financial institutions for residents of State Supported Living Centers and state mental hospitals; students at the State School for the Blind and Visually Impaired, and the Texas School for the Deaf; and Texas Department of Criminal Justice inmates. Other examples of custodial funds include performance bonds associated with state regulatory authority—the pledged funds provided by insurance carriers as a condition of doing business in the state or financial assurance instruments provided by waste site owners in the event of a contamination incident that requires cleanup.

- Bond funds—funds held outside the Treasury created by bond resolution requirements that specify the maintenance of separate funds to account for the bond program. Examples include: Texas Department of Housing and Community Affairs mortgage revenue bonds; Texas Water Development Board

FIGURE 2
SELECTED FUNDS AND ACCOUNTS OUTSIDE THE TREASURY WITH THE HIGHEST ENDING CASH BALANCES, AUGUST 31, 2015

(IN MILLIONS)

FUND	ENDING CASH BALANCE	TYPE	COMMENTS/EXPLANATION
University of Texas System	$1,807.2	Operating	All operating funds held outside the Treasury by institutions and units of the UT System.
Texas Public Finance Authority	$1,074.8	Bond	Proceeds from bond refundings held to meet debt service obligations.
Clean Water State Revolving Fund	$614.3	Revolving	A revolving loan program capitalized by federal grants and matched with self-supporting bonds, which provides subsidized loans to eligible communities for wastewater treatment facilities, wastewater recycling and reuse facilities, collection systems, storm water pollution control projects and nonpoint source pollution control projects. The fund consists of revenue bond proceeds, loan principal and interest payments, investment earnings and federal grants.
Catastrophe Reserve Trust Fund	$484.7	Trust	Net gains from Texas Windstorm Insurance Association (TWIA) operations.
Safe Drinking Water Revolving Fund	$219.6	Revolving	A revolving loan program capitalized by federal grants and matched with self-supporting bonds, which provides subsidized loans to eligible communities to upgrade or replace water supply infrastructure. The fund consists of loan principal and interest payments, investment earnings and federal grants.
Texas A&M University System	$218.8	Operating	All operating funds held outside the Treasury by institutions and units of the Texas A&M University System.

Sources: Legislative Budget Board; Comptroller of Public Accounts; Texas Treasury Safekeeping Trust Company.

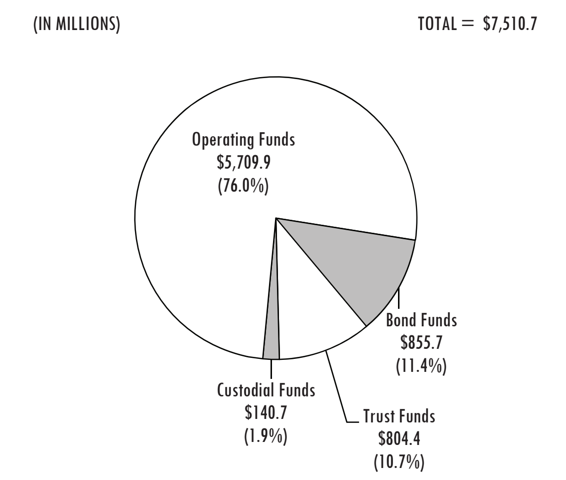
(TWDB) Clean Water and Safe Drinking Water state revolving loan programs; and the Texas Military Value Revolving Loan fund.

- Trust funds—funds held outside the Treasury in a trustee capacity for individuals, private organizations or other governmental entities such as investment, endowment and pension funds. Examples include: the Tobacco Settlement Permanent Trust and the Texas Guaranteed Tuition Plan (formerly the Texas Tomorrow Fund).

The statewide cash balance in funds held outside the Treasury as of August 31, 2015 is broken down into the four different classifications of funds recognized by CPA in **Figure 3**.

The type of fund affects the availability of its balance for appropriation purposes. Trust funds generally involve managing assets for designated beneficiaries (e.g., pension funds that are held by the state for the members and beneficiaries of defined benefit pension plans, defined contribution benefit plans and other employee benefit plans). They are not collected for the general operation of state government, but are collected, invested and spent for a specific, limited purpose and for the benefit of a specific

FIGURE 3
ENDING CASH BALANCE IN FUNDS HELD OUTSIDE THE TREASURY BY FUND TYPE, AS OF AUGUST 31, 2015



Note: Cash balances are self-reported by state entities and represent snapshots of these accounts at a particular point-in-time. Cash balances include cash, cash equivalents and the value of short-term investments only. Balances do not include all state funds outside the Treasury (e.g., Tobacco Settlement Permanent Trust Fund).
Sources: Legislative Budget Board; Comptroller of Public Accounts.

group of individuals. Custodial funds are also limited in their potential for use in the appropriations process in that they are private-purpose funds. Student Trust funds at the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, although managed and administered by the schools, consist primarily of funds deposited by parents or guardians on behalf of their child. Bond proceeds are restricted by covenants intended to ensure expenditures are consistent with the eligible uses specified for the issuance, the requirement for timely debt service payment, and compliance with federal tax and disclosure requirements. By definition, operating funds finance the daily expenditures of state government, and as such, are similar to funds provided through the appropriations process.

COMPONENT UNITS AND RELATED ORGANIZATIONS

Certain funds held outside the Treasury represent the funds of entities that are legally separate from the state government but for which state elected officials are financially accountable or that have a significant relationship with state government. State agencies or other entities established in the Texas Constitution or statute may also have requirements for administering these funds. Due to these relationships, such entities are treated as component units of state government for purposes of state financial reporting.

Examples of these component units include the two retirement systems, the Employees Retirement System of Texas and the Teacher Retirement System of Texas; TTSTC; the State Bar of Texas; the University of Texas Investment Management Company (UTIMCO); the Texas Boll Weevil Eradication Foundation; the Texas Water Resources Finance Authority (TWRFA); and the Texas Windstorm Insurance Association (TWIA). The relationship between these entities and the General Appropriations Act (GAA) varies. In some cases, the Legislature appropriates funds in the GAA to the component units; for instance to the two retirement systems for the state share of pension and healthcare plans for employees and retirees, and pass-through funds provided to the Texas Boll Weevil Eradication Foundation indirectly through an appropriation to the Texas Department of Agriculture. The Legislature also appropriates TWRFA funds to the Texas Water Development Board (see **Figure 7**). In other cases, the GAA does not include appropriations to a component unit. For many of these entities, the connection or overlap between the funds available to them and funds appropriated in the GAA for a similar or related purpose may only be known by affected agencies and institutions.

IMPLICATIONS OF DEPOSITING FUNDS OUTSIDE THE TREASURY

The fiscal implications of depositing revenue or funds in accounts held outside the Treasury are two-fold. First, the state forgoes interest and investment income that would accrue if such funds were held in the Treasury. Second, funds held outside the Treasury do not require appropriation prior to expenditure, which limits legislative oversight and control.

INTEREST AND INVESTMENT INCOME, INTERFUND BORROWING AND CERTIFICATION

In fiscal year 2015, state funds held outside the Treasury managed by TTSTC generated more than $102.5 million in interest and investment income. Interest or investment income earned on funds held outside the Treasury by private financial institutions is not readily available. Given the limited data reported on funds outside the Treasury by agencies and institutions, the total amount of interest or other income that is accrued by these funds cannot be estimated. For example, to provide a reasonable estimate of interest that may accrue to the Treasury, monthly data on account balances, which is not readily available, is needed.

If brought into the Treasury, certain non-Treasury funds would enhance the state's cash flow. This approach would allow the state to do additional borrowing from its own funds, in lieu of issuing short-term debt (in the form of Tax and Revenue Anticipation Notes) to bridge temporary cash flow mismatches that occur during the fiscal year. Due to available balances in the General Revenue Fund and the Economic Stabilization Fund, for the first time since 1986, the CPA did not issue Tax and Revenue Anticipation Notes to manage cash flow for fiscal year 2016. Currently, when making temporary transfers between funds held inside the Treasury for cash flow management purposes, CPA excludes trust and bond funds from borrowing due to restrictions on the use of such funds. However, operating funds presently held outside the Treasury, when combined, may be candidates for interfund borrowing (e.g., higher education local funds held by private financial institutions). If non-Treasury funds were deposited into the General Revenue Fund, some revenues and balances in excess of expenditures would be available for budget certification purposes.

LEGISLATIVE OVERSIGHT

Unlike funds in the Treasury, funds outside the Treasury may be expended without a legislative appropriation. In addition, the General Provisions in the General Appropriations Act, which establish limits or conditions for salaries, the number of Full-Time Equivalent (FTE) positions, transfers between items of appropriation, and capital budgets for appropriated funds, do not apply to funds outside the Treasury. **Figure 4** provides a side-by-side comparison of Treasury and non-Treasury funds, and identifies key differences in oversight and reporting of both.

LEGISLATIVE ACTIONS AFFECTING FUNDS HELD OUTSIDE THE TREASURY

No criteria or process exists for assessing whether an account or revenue source is more or less appropriate for placement outside the Treasury. To the extent there has been policy direction regarding the location of funds held outside the Treasury, it has varied by legislature. Beginning in fiscal year 2001, the Legislature has moved nine regulatory agencies and the fees they collect outside the appropriations process and the Treasury. During this same period, there are instances of the Legislature enacting laws that move unspent non-Treasury funds into the Treasury, and direction to budget committees to review non-Treasury funds for their potential to replace or reduce the demand for General Revenue Funds.

FIGURE 4
OVERSIGHT AND REPORTING OF FUNDS HELD INSIDE VS. HELD OUTSIDE THE TREASURY, AS OF SEPTEMBER 1, 2015

FUNDS IN THE TREASURY	FUNDS OUTSIDE THE TREASURY
Subject to the Appropriations Process: • Pursuant to Texas Constitution, Article VIII, §6, funds must be appropriated prior to expenditure • Required to submit Legislative Appropriations Request (LAR)	**Not subject to Appropriations Process:** • No Legislative Appropriations Request. However, information regarding revenue and balances in funds outside appropriations process, including funds outside the Treasury, is reported in the LAR schedule “Estimated Total of All Funds Outside the General Appropriations Act Bill Pattern Schedule” • Not included in GAA bill patterns for administering agencies or institutions except for informational listings and riders in Article III, Special Provisions Relating Only to State Agencies of Higher Education
General Provisions—General Appropriations Act apply, such as: • Limitation on State Employment Levels • Position Classification Plan (higher education exempted) • Limitation on last quarter expenditures • Certain fee increase notifications • Annual operating budget submission • Statewide Capital Planning • Limitation on expenditures –capital budget • Limitations on Appropriation transfers	**General Provisions—General Appropriations Act do not apply:** Self-directed, Semi-independent (SDSI) agencies submit operating budgets and other information to the Legislative Budget Board, the Legislature and the Governor
Comptroller Oversight: • Required use of statewide accounting system (USAS) • Comptroller of Public Accounts (CPA) assigned fund numbers • Access to expenditures, revenues, fund balance and other financial data through statewide accounting system • Fund details reported in Annual Cash Report • Statutory authority, dedicated sources and uses and primary administering agency detailed in CPA Manual of Accounts	**Comptroller Oversight:** • Voluntary use of statewide accounting system to make payments or process payroll with some exceptions (non-Treasury funds managed by the CPA) • Fund details not reported in Annual Cash Report • Unique reporting requirements for Self-Directed and Semi-Independent Agencies • Self-reported by agencies and institutions to statewide accounting system for the Comprehensive Annual Financial Report (CAFR), Reporting Requirements for Annual Financial Reports of State Agencies and Universities — CPA Fiscal Policies and Procedures (FPP) A.036 • Self-reporting by state agencies of funds in categories prescribed by CPA FPP S.009, Requirements for Local Operating Funds and Associated Local Funds • Reported in agency or institution’s individual Comprehensive Annual Financial Reports–Reporting Requirements for Annual Financial Reports of State Agencies and Universities — CPA Fiscal Policies and Procedures (FPP) A.036

SOURCES: Legislative Budget Board; Comptroller of Public Accounts.

Past Legislatures have considered options to use funds held outside the Treasury to reduce the demand on the General Revenue Fund. Both the Senate and House have included interim charges to identify opportunities for greater use of funds held outside the Treasury in the state budget, particularly when budget shortfalls are expected. At such times, funds held outside the Treasury have been seen as a potential additional funding source to replace or reduce demand on the General Revenue Fund or provide a gain in funds available for budget certification by moving funds into the General Revenue Fund. Two past examples of legislative actions which moved funds into the Treasury and their fiscal impact are summarized in **Figure 5**. In both instances, the Legislature moved funds into the Treasury and appropriated those funds for a state program or purpose. By depositing 9-1-1 Service fees into the Treasury and into the General Revenue Fund, the state realized a gain in funds available for certification. As for the abolished Cultural Endowment Fund, the transfer of the fund balance into the General Revenue-Dedicated Commission on the Arts Operating Fund No. 334 equaled the one-time increase in appropriations and as such was revenue-neutral.

SELF-DIRECTED, SEMI-INDEPENDENT AGENCY PROJECT ACT AND RELATED LEGISLATION

In contrast to the actions described in **Figure 5**, the Legislature has moved funding for certain regulatory agencies outside the appropriations process and their dedicated license and fee revenue outside the Treasury. This began with the enactment of the Self-Directed, Semi-Independent (SDSI) Agency Project Act in 2001, which moved three occupational licensing boards—the Texas State Board of Public Accountancy, the Texas Board of Professional Engineers and the Texas Board of Architectural Examiners—outside the appropriations process and their dedicated fees outside the Treasury. The Eighty-first and Eighty-second Legislatures granted SDSI status to four financial regulatory agencies in 2009 and the Texas Real Estate Commission and Appraiser Licensing and Certification Board in 2011, respectively. The Eighty-third Legislature also provided SDSI status to two divisions within the Texas Department of Insurance.

Fees and funds collected by each SDSI agency are deposited in interest-bearing accounts held by the Texas Treasury Safekeeping Trust Company. With the exception of the Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board, each SDSI agency is required to submit an annual budget for approval to its governing board. SDSI agencies are not required to obtain approval for their budgets from the Legislature. However, all SDSI agencies except the three established through the SDSI Project Act, are required to submit their approved budget, salary information, travel expenses, annual operating plan, and all revenues and expenses each year to the Legislative Budget Board, the Governor, and the Legislature. In addition, all SDSI agencies submit activity reports detailing license fees, licensee populations, changes in regulatory jurisdiction, and changes to administrative rules for the previous biennium to the Legislature and the Governor before the start of each legislative session.

FIGURE 5
SELECT LEGISLATIVE ACTIONS MOVING FUNDS INTO THE TREASURY, FISCAL YEARS 1999 AND 2009

House Bill 1983, Seventy-sixth Legislature, 1999

Moves 9-1-1 fees into the Treasury. Emergency service fees and wireless service fees are deposited in the state Treasury after the distribution of funds to emergency communication districts that do not participate in the regional councils of government (COGs) program administered by the Commission on State Emergency Communications. The 9-1-1 Service Fee Account No. 5050 was established as a dedicated account in the General Revenue Fund to receive those funds. Money in the account may be appropriated only for planning, development, provision of 9-1-1 service, or enhancement of the effectiveness of service or for contracts with COGs. State 9-1-1 funds no longer go directly to COGs nor to the commission, as under prior state law.

Fiscal Impact. Revenue gain to Treasury, estimated to be $75.4 million for the 2000–01 biennium. House Bill 1, General Appropriations Act, 2000–01 Biennium, appropriated $58.6 million to regional councils of government for 9-1-1 services.

House Bill 2242, Eighty-first Legislature, Regular Session, 2009

Abolishes the Cultural Endowment Fund, a fund outside the Treasury, and transfers the fund balance into the Treasury. The Cultural Endowment Fund had not accomplished its purpose of providing a sustainable source of financial support for the Texas Commission on the Arts—a fundraising goal of $200 million by 2005. The Eighty-first Legislature dissolved the Cultural Endowment Fund and transferred the fund balance to the Commission on the Arts Operating Fund No. 334, a dedicated account within the General Revenue Fund.

Fiscal Impact. Revenue gain to Treasury, estimated one-time gain of $5.4 million for the 2010–11 biennium. Senate Bill 1, General Appropriations Act, 2010–11 Biennium, included a one-time appropriation increase of $5.4 million in fiscal year 2010 for grants to arts organizations.

Source: Legislative Budget Board.

FUND CONSOLIDATION

Fund consolidation is a process intended to eliminate most statutory funds and revenue dedications. The Legislature has passed a fund consolidation bill each biennium since 1995 that specifies which accounts and dedications, whether in or outside the Treasury, are established or retained. The Eighty-fourth Legislature, 2015, passed legislation that established five accounts outside the Treasury. These were all exempted from elimination by House Bill 6, the fund consolidation bill passed by the Eighty-fourth Legislature. Since fund consolidation began, 23 accounts have been established outside the Treasury and exempted from fund consolidation. At least two of these accounts subsequently expired as shown in **Figure 6**. However, these accounts do not represent an actual count of funds held outside the Treasury because funds established prior to 1995 and funds and accounts which may have been consolidated or eliminated in subsequent legislative sessions are not included.

FIGURE 6
FUNDS, ACCOUNTS AND DEDICATIONS ESTABLISHED OUTSIDE THE TREASURY BY FUND CONSOLIDATION BILLS
FISCAL YEARS 1995 TO 2015

FUND CONSOLIDATION BILL	FUND/ACCOUNT	AGENCY	ESTABLISHING BILL	FUND TYPE
House Bill 3050, Seventy-fourth Legislature, 1995	Operating Fund for State Revolving Funds	Water Development Board	House Bill 3050	Bond
House Bill 2948, Seventy-fifth Legislature, 1997	None	None	None	N/A
House Bill 3084, Seventy-sixth Legislature, 1999	None	None	None	N/A
House Bill 3088, Seventy-seventh Legislature, 2001	Capitol Renewal Trust Fund	State Preservation Board	House Bill 2796	Trust
	Department of Public Safety Historical Museum and Research Center Account	Department of Public Safety	House Bill 335	Operating
	Texas Excellence Fund (1)	Texas Higher Education Coordinating Board	House Bill 1839	Endowment/trust
	University Research Fund (1)	Texas Higher Education Coordinating Board	House Bill 1839	Endowment/trust
House Bill 3318, Seventy-eighth Legislature, 2003	Spaceport Trust Fund	Governor	Senate Bill 275	Trust
Senate Bill 1605, Seventy-ninth Legislature, 2005	Motor Sports and Racing Trust Fund (2)	Governor	Senate Bill 150	Trust
House Bill 3107, Eightieth Legislature, 2007	Texas Tomorrow Fund II Undergraduate Education Trust Fund (3)	Comptroller of Public Accounts	House Bill 3900	Investment/trust
	Texas Health Opportunity Pool Trust Fund (4)	Health and Human Services Commission	Senate Bill 10	Trust
	Events Trust Fund for Certain Municipalities and Counties (5)	Governor	Senate Bill 1523	Trust
House Bill 4583, Eighty-first Legislature, 2009	Special Fund for Special Rangers	Comptroller of Public Accounts	House Bill 2062	Custodial
	Chris Kyker Endowment for Seniors Fund	Health and Human Services Commission	House Bill 610	Endowment/trust
Senate Bill 1588, Eighty-second Legislature, 2011	Scholarship Trust Fund for Fifth-Year Accounting Students	Texas State Board of Public Accountancy	Senate Bill 777	Trust
	Revenue dedication—deposit fees collected for the examination of insurers and actuaries to an account with the Texas Treasury Safekeeping Trust Company	Texas Department of Insurance	Senate Bill 1291	Operating

FIGURE 6 (CONTINUED)
FUNDS, ACCOUNTS AND DEDICATIONS ESTABLISHED OUTSIDE THE TREASURY BY FUND CONSOLIDATION BILLS
FISCAL YEARS 1995 TO 2015

FUND CONSOLIDATION BILL	FUND/ACCOUNT	AGENCY	ESTABLISHING BILL	FUND TYPE
	All dedications or rededications of revenue to an account of a SDSI agency with the Texas Treasury Safekeeping Trust Company	Texas Real Estate Commission Texas Appraiser Licensing and Certification Board	Senate Bill 1000	Operating
House Bill 6, Eighty-third Legislature, 2013	Governor's Mansion Renewal Trust Fund	State Preservation Board	Senate Bill 201	Trust
	Texas Health Insurance Pool Account (6)	Texas Department of Insurance	Senate Bill 1367	Trust
	Incremental Hotel-Associated Revenue Suspense Trust	Comptroller of Public Accounts	Senate Bill 748	Trust
	Texas Home Visiting Program Trust	Health and Human Services Commission	Senate Bill 1836	Trust
	Glenda Dawson Donate Life—Texas Registry Fund	Texas Department of Public Safety	Senate Bill 1815	Trust
House Bill 6, Eighty-fourth Legislature, 2015	County Road Oil and Gas Trust Fund	Comptroller of Public Accounts	House Bill 2521	Trust
	Success Contract Payments Trust Fund	Comptroller of Public Accounts	House Bill 3014	Trust
	Special Olympics Texas Trust Fund	Department of Aging and Disability Services	Senate Bill 272	Trust
	State Cemetery Preservation Trust Fund	State Preservation Board	Senate Bill 574	Trust
	Texas ABLE Savings Plan Trust Fund	Comptroller of Public Accounts	Senate Bill 1664	Trust

NOTES:
(1) The Texas Excellence Fund and the University Research Fund both expired on August 31, 2005.
(2) Administration of fund transferred from the Comptroller of Public Accounts to the Governor, Economic Development and Tourism Division, by Senate Bill 633, Eighty-fourth Legislature, 2015.
(3) Fund currently closed for enrollment. Prepaid tuition plan currently accepting enrollment, the Texas Tuition Promise Fund, went into effect September 1, 2008.
(4) Fund never established due to waiver from federal government not being received.
(5) Title of fund changed from Sporting Trust Fund for Certain Municipalities and Counties by Senate Bill 1515, Eighty-first Legislature, Regular Session, 2009. Administration of fund transferred from the Comptroller of Public Accounts to the Governor, Economic Development and Tourism Division, by Senate Bill 633, Eighty-fourth Legislature, 2015.
(6) All Texas Health Insurance Pool policies were cancelled effective March 31, 2014.
SOURCES: Legislative Budget Board; Comptroller of Public Accounts.

FUNDS HELD OUTSIDE THE TREASURY AND THE APPROPRIATIONS PROCESS

Legislators may not be aware of funds held outside the Treasury, their history, purpose or use, revenue dedications, expenditures or available balances. The gap in information regarding all funds available for a particular agency, program or item of appropriation affects the Legislature's ability to make informed appropriation decisions. Funds held outside the Treasury are not the only state funds that are expended without a legislative appropriation. There are funds held within the Treasury that the Legislature has chosen not to include in the General Appropriations Act (GAA), such as bond proceeds and associated interest and sinking funds with appropriation authority provided by the Texas Constitution.

Funds held outside the Treasury and the appropriations process affect appropriation decisions for certain articles, agencies, and programs. These connections between funds held outside the Treasury and items funded in the GAA are present throughout the state budget, for instance:

- administrative costs and debt service obligations for financial assistance programs at the Texas Water Development Board is in the GAA, but not the state monies that provide the assistance;

- the bond proceeds that finance the loans, grants or interest subsidies for water projects qualifying for financial assistance are outside the appropriations process. These bonds are held in accounts inside and outside the Treasury;
- when the Legislature authorizes higher education institutions to issue tuition revenue bonds, the bond proceeds are not included in the GAA, but the General Revenue Funds to pay debt service obligations are;
- when determining formula funding for higher education the Legislature considers tuition, including designated (deregulated) tuition and other own source revenues held outside the Treasury by higher education institutions.

However, this occurs on an ad hoc basis. A review of funds held outside the Treasury to determine which strategies, programs and items funded in the GAA could be an allowable expense during each appropriations cycle may identify alternative revenue sources that could reduce the demand for General Revenue Funds.

Figure 7 shows some examples of connections between funds outside the Treasury and programs or strategies with an identical, similar, or related purpose that are appropriated funds in the current GAA.

Figure 8 shows cash balances in funds outside the Treasury as of August 31 for fiscal years 2013, 2014, and 2015. Higher education funds held outside the Treasury, as measured by the cash balance on August 31, have declined. Cash balances in these accounts, which include designated (deregulated) tuition, may be due to the timing of revenue collections and expenditures. This is consistent with the year-end balances in higher education current accounts held in the Treasury that include revenue from statutory tuition. As for the trend in funds managed by state agencies, the increase in cash balances reported on August 31 between fiscal years 2014 and 2015 is due primarily to one of the state's component units, the Texas Windstorm Insurance Association.

Based on information available for the past three fiscal years, cash balances in certain non-Treasury accounts that fund programs similar to those financed by the GAA, as measured on August 31, have declined. The declining balance in the Texas Water Resources Finance Authority (TWRFA) fund is consistent with the Water Development Board's practice of transferring TWRFA receipts into the Treasury to fund the administrative and operating costs of related financial assistance programs as well as other agency activities. In addition, agency expenditures of TWRFA receipts routinely exceed the loan repayments and interest earnings that are the fund's main revenue sources.

The year-end cash balance in funds held outside the Treasury available to the State Preservation Board (SPB) to fund maintenance and operations at the Capitol, the State History Museum and other facilities that the agency oversees has declined as well, but not consistently. In the 2012–13 biennium, the availability of non-Treasury funds to support

FIGURE 7
COMPARISON OF SELECT FUNDS HELD OUTSIDE THE TREASURY AND SIMILAR OR RELATED PROGRAMS FUNDED IN THE GENERAL APPROPRIATIONS ACT, 2016–17 BIENNIUM

FUND OUTSIDE THE TREASURY	CASH BALANCE AS OF AUGUST 31, 2015	SIMILAR OR RELATED PROGRAM 2016–17 GAA	APPROPRIATED AMOUNT 2016–17 GAA	AGENCY/ INSTITUTION
Clean Water and Safe Drinking Water State Revolving Funds	$833.9 million	Program and debt administration costs	$9 million in Federal Funds	Texas Water Development Board
Texas Water Resources Finance Authority	$21.8 million	Program administrative and other operating costs	$8.6 million in Other Funds (Appropriated Receipts)	Texas Water Development Board
Boll Weevil Foundation	$97.2 million	Grant to the Foundation for Boll Weevil Eradication	$14 million in General Revenue Funds	Texas Department of Agriculture
Capitol and Museum Trust Funds	$11.9 million	Capitol Building Maintenance and Management and Operations of the State History Museum	$33.4 million in General Revenue Funds	State Preservation Board

NOTE: GAA = General Appropriations Act.
SOURCES: Legislative Budget Board; Comptroller of Public Accounts; Texas Treasury Safekeeping Trust Company.

FIGURE 8
ENDING CASH BALANCE IN SELECTED REPORTED FUNDS HELD OUTSIDE THE TREASURY, FISCAL YEARS 2013 TO 2015

(IN MILLIONS)	ENDING CASH BALANCES AS OF		
FUND	AUGUST 31, 2013	AUGUST 31, 2014	AUGUST 31, 2015
All Funds Held Outside the Treasury Administered by State Agencies	$2,883.3	$2,630.1	$3,645.1
Texas Water Resources Finance Authority (TWRFA) Fund	$34.2	$27.2	$21.8
State Preservation Board–Capitol and Museum Trust Funds	$15.3	$11.0	$11.9
All Funds held Outside the Treasury Administered by Public Institutions of Higher Education	$4,383.4	$4,255.6	$3,865.6

NOTE: Cash balances self-reported by agencies and institutions and represent snapshots of these accounts at a particular point-in-time. Cash balances include cash, cash equivalents and the value of short-term investments only. Does not include all state funds outside the Treasury (e.g., Tobacco Settlement Permanent Trust Fund).
SOURCES: Legislative Budget Board; Comptroller of Public Accounts

operations and maintenance costs resulted in a one-time reduction in General Revenue Funds appropriated to the SPB.

APPROPRIATIONS COMPARED TO TOTAL AVAILABLE FUNDS

Since the 2006–07 biennium, each General Appropriations Act (GAA) has provided a comparison of amounts appropriated in the GAA to total funds available for the biennium for each agency and public institution of higher education. Each bill pattern in the GAA contains the following statement:

"This bill pattern represents an estimated __ percent of this agency's estimated total available funds for the biennium."

Figure 9 shows the estimated percentage that appropriated amounts represent of total funds available for the 2016–17 biennium by article or function. Certain investment funds and funds held in trust for individuals to support future obligations, the state's pension trust funds and the Permanent School Fund, are excluded from this calculation.

This estimated percentage is based on information self-reported by state entities in their legislative appropriations requests. They are instructed to include revenue authorized by the Texas Constitution, statute, federal law, or court order that is deposited in funds or accounts held within or outside the state Treasury, that is within the control of the agency or its oversight board or commission, and that is not appropriated by the Legislature in the GAA. Examples of what may be reported as total available funds include endowments, trust funds, bond proceeds, reserve funds, and revolving loan funds. Although estimates of beginning balances and biennial revenue collections for available funds are provided, estimated expenditures out of available funds are not collected. In addition, the schedule does not require agencies and public institutions of higher education to differentiate between funds

FIGURE 9
ESTIMATED PERCENTAGE APPROPRIATED AMOUNTS REPRESENT OF TOTAL FUNDS AVAILABLE BY ARTICLE/ FUNCTION OF STATE GOVERNMENT, 2016–17 BIENNIUM

FUNCTION/ARTICLE	ESTIMATED PERCENTAGE
General Government – Article I	51.9%
Health and Human Services – Article II	81.0%
Education – Article III	
Higher Education	27.8%
Public Education	86.0%
Judiciary – Article IV	96.0%
Public Safety and Criminal Justice – Article V	100.0%
Natural Resources – Article VI	40.8%
Business and Economic Development – Article VII	93.0%
Regulatory – Article VIII	100.0%
Total	**68.6%**

NOTE: Funds outside the appropriation process set aside to support future obligations (e.g., pension trust funds) are excluded from this calculation. Information submitted by agencies and institutions on funds outside the appropriations process is self-reported.
SOURCE: Legislative Budget Board; Legislative Appropriations Requests, 2016–17 Biennium.

outside the appropriation process that are held in the Treasury and those held outside the Treasury.

There are funds in the Treasury that the Legislature has chosen to not include in the GAA, (e.g., bond funds with appropriation authority provided by the Texas Constitution). Consistent with Texas Constitution, Article VIII, Section 6, many of the funds outside the appropriations process are held outside the Treasury. The availability of revenue sources outside the appropriations process and the Treasury varies by article, with the lowest percentages of appropriated amounts relative to total available funds occurring among higher education institutions. Public institutions of higher education represent 18 of the 22 (81.8 percent) agencies and institutions with an estimated percentage of appropriated to total available funds of less than 25.0 percent for the 2016–17 biennium. The sole agency other than the retirement systems with a proportion of appropriated to total available funds comparable to institutions of higher education is the Water Development Board at 6.0 percent.

The majority of funds available to higher education that are outside the appropriations process are also held outside the Treasury. The primary revenue sources for higher education held outside the Treasury include: tuition not regulated by the Legislature known as designated tuition; fees from intercollegiate athletics, student housing, and other services managed as self-supporting activities known as auxiliary enterprises; and donor, grant, endowment and other income.

IMPROVE AVAILABLE INFORMATION REGARDING FUNDS OUTSIDE THE TREASURY FOR APPROPRIATIONS PURPOSES

The GAA includes information regarding the total funds available to an agency; however, this information does not distinguish between funds outside the appropriations process and funds held outside the Treasury. Agencies report more detailed information through their Legislative Appropriations Requests (LARs), including the statutory or constitutional authority for each fund, dedicated revenues and allowable uses for the current and upcoming biennia. However, LARs do not incorporate expenditures, or identify programs or strategies in the GAA which represent allowable uses of the funds. A gap in information regarding all funds available affects the Legislature's ability to make appropriation decisions regarding a particular agency, program or item of appropriation for which funds outside the Treasury are available.

Option 1 would include a rider in Article IX of the 2018–19 General Appropriations Bill to require the Comptroller of Public Accounts and the Legislative Budget Board, with assistance from affected state agencies and public institutions of higher education, to prepare a biennial report on funds held outside the Treasury. The report would contain the following information: the legal basis for each fund or revenue source; allowable uses of the fund or its dedicated revenue sources; similar or related programs funded in the appropriations bill which represent an allowable use of the fund; estimated or actual revenues, expenditures, and encumbrances by fiscal year for the most recent, current and upcoming biennia; and the estimated cash and investment balances in the fund at the end of the most recent prior, current and upcoming biennia. The report would be available to the Legislature no later than the last day in February of each year in which a regular session of the Texas Legislature convenes.

This option would consolidate information regarding these funds into a single report and make the information more accessible to policy makers for appropriation purposes.

FISCAL IMPACT OF THE OPTION

Option 1 would not have a significant fiscal impact. Any additional workload would be managed by existing staff and resources. The option would increase transparency of funds held outside the Treasury by the Legislature, and also assist the Legislature in identifying potential revenue sources that could partially offset the demand for General Revenue Funds in the appropriations process.

The House introduced 2018–19 General Appropriations Bill includes a rider implementing Option 1.

FURTHER REDUCE RELIANCE ON GENERAL REVENUE–DEDICATED ACCOUNTS FOR CERTIFICATION OF THE STATE BUDGET

General Revenue–Dedicated accounts are subaccounts within the General Revenue Fund that are for the deposit and accounting of revenues dedicated for a particular purpose. Since 1991, unappropriated General Revenue–Dedicated account balances have been counted as available to certify appropriations from the General Revenue Fund. Certification of appropriations is required by the Texas Constitution, Article III, Section 49a. In 1991, the Texas Comptroller of Public Accounts counted $540.0 million in General Revenue–Dedicated account balances as available to certify appropriations of General Revenue Funds. Reliance on General Revenue–Dedicated accounts for certification increased as accounts were added and revenue collections in many accounts exceeded appropriations. By 2011, the amount of General Revenue–Dedicated account balances available to certify appropriations of General Revenue Funds had reached $4.9 billion.

Since that time, the Legislature has reduced the amount of General Revenue–Dedicated account balances counted for certification to $3.5 billion. Reducing the amount of General Revenue–Dedicated account balances that may be counted toward certification has consequences in terms of complying with the constitutional provision that limits appropriations in any biennium to revenue estimated to be available by the Comptroller of Public Accounts. Consequences of this reduction also affect appropriation and revenue decisions the Legislature may make.

FACTS AND FINDINGS

- ♦ The practice of counting unappropriated General Revenue–Dedicated balances as available for certification enables the Legislature to appropriate smaller amounts from these dedicated accounts for their statutory purpose, leaving fund balances to facilitate compliance with the pay-as-you-go limit and to help fund budget priorities. This practice has led to the accumulation of large balances in multiple accounts.
- ♦ In 2015, the Legislature acted to further reduce reliance on balances in General Revenue–Dedicated accounts counted to certify the state budget by incorporating certain appropriation decisions into the Eighty-fourth Legislature, General Appropriations Act, 2016–17 Biennium, and passing certain measures in House Bills 6 and 7. The aggregate effects of these efforts is an estimated $1.1 billion reduction in the amount of General Revenue–Dedicated account balances counted as available for certification, from $4.6 billion to $3.5 billion for the 2016–17 biennium.
- ♦ The Texas Comptroller of Public Accounts counted $3.5 billion in the balances of 129 General Revenue–Dedicated accounts as available to certify appropriations of General Revenue Funds for the 2016–17 biennium.
- ♦ Due to General Revenue Fund cash flow requirements and outstanding obligations at the end of each biennium, it is not practical to reduce the balances in all General Revenue–Dedicated accounts to zero.

OPTION

- ♦ **Option 1:** Continue to implement measures to reduce reliance on General Revenue–Dedicated accounts for certifying appropriated General Revenue Funds by exempting certain accounts from counting toward certification, adjusting revenue, increasing appropriations, or modifying uses of dedicated revenue. The extent to which the Legislature implements measures to reduce reliance on balances should be tempered by prevailing fiscal conditions.

DISCUSSION

General Revenue–Dedicated accounts are subaccounts within the General Revenue Fund that are dedicated for a particular purpose or that receive revenue dedicated for a particular purpose. More than 200 of these accounts have been established. General Revenue–Dedicated accounts first were established through fund consolidation, a process intended to eliminate most statutory funds and revenue dedications.

The Seventy-second Legislature, First Called Session, 1991, initiated the fund consolidation process. The consolidation was intended to proceed in two steps. The first step occurred on August 31, 1993, when 281 special funds were brought into the General Revenue Fund as General Revenue–Dedicated accounts. In addition to establishing General Revenue–Dedicated accounts, this legislation added the Texas Government Code, Section 403.095. Subsection b of this provision made unappropriated revenues in these dedicated accounts available for general governmental purposes and certification of appropriations from the General Revenue Fund by the Texas Comptroller of Public Accounts (CPA), pursuant to the Texas Constitution, Article III, Section 49-a, also known as the pay-as-you-go limit. This provision limits appropriations for any biennium, except in certain circumstances, to the amount of revenue estimated to be available by CPA. In 1991, General Revenue–Dedicated accounts increased the amount available for certification by $540.0 million.

The second step in the fund consolidation process was scheduled to occur August 31, 1995, when all General Revenue–Dedicated accounts and statutory dedications of the revenue in those accounts were to be abolished. Ninety-seven of the 281 accounts that existed were abolished, but the Seventy-third Legislature, 1993, and the Seventy-fourth Legislature, 1995, exempted most dedicated accounts from being abolished and continued most revenue dedications. The accounts remained as General Revenue–Dedicated accounts, and since then the Legislature has established additional accounts. Although the fund consolidation process never was completed, during each biennium since 1995, the Legislature has enacted a fund consolidation bill that extended the Texas Government Code, Section 403.095, and specified which accounts and dedications are established or retained.

Since the initial elimination of accounts in 1995, General Revenue–Dedicated balances typically have not been transferred into the General Revenue Fund and have not been appropriated for general purposes. The balances, however, have been counted as available for certification of appropriations of General Revenue Funds. The practice of counting unappropriated General Revenue–Dedicated Funds balances as available for certification enables the Legislature to appropriate smaller amounts from these dedicated accounts for their statutory purpose, leaving fund balances to facilitate compliance with the pay-as-you-go limit and to help fund budget priorities. This practice has led to accumulations of large balances in multiple accounts.

The state's reliance on General Revenue–Dedicated accounts for certification increased significantly since 1991, reaching $4.9 billion in 2011. Since that time, the Legislature has taken steps to reduce the account balances counted for certification. **Figure 1** shows the number of General Revenue–Dedicated accounts and the amount counted from them for certification of appropriations of General Revenue Funds for each biennium.

FIGURE 1
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION OF APPROPRIATIONS FROM THE GENERAL REVENUE FUND, 1991 TO 2015

LEGISLATIVE SESSION	ACCOUNTS	AMOUNT AVAILABLE FOR CERTIFICATION (IN MILLIONS)
Seventy-second, 1991	278	$540
Seventy-third, 1993	281	$940
Seventy-fourth, 1995	184	$1,310
Seventy-fifth, 1997	192	$1,137
Seventy-sixth, 1999	202	$1,339
Seventy-seventh, 2001	241	$1,625
Seventy-eighth, 2003	245	$2,197
Seventy-ninth, 2005	254	$2,752
Eightieth, 2007	256	$3,080
Eighty-first, 2009	265	$3,666
Eighty-second, 2011	260	$4,949
Eighty-third, 2013	224	$4,171
Eighty-fourth, 2015	129	$3,479

SOURCE: Comptroller of Public Accounts.

REQUIRED REVIEW OF GENERAL REVENUE–DEDICATED ACCOUNTS

The Eighty-third Legislature, Regular Session, 2013, directed the Legislative Budget Board (LBB) to monitor and evaluate dedicated revenue counted for certification of appropriations from the General Revenue Fund and to develop recommendations to reduce reliance on dedicated revenue for certification. House Bill 7, Eighty-third Legislature, Regular Session, 2013, required the LBB to develop and implement a process to review the dedication, appropriation, and accumulation of General Revenue–Dedicated Funds. The legislation required the LBB to incorporate into budget recommendations appropriate measures to reduce reliance on available dedicated revenue for certification. The LBB also was required to include plans to further reduce reliance for the subsequent six years.

One tool to evaluate the practice of counting General Revenue–Dedicated accounts for certification is CPA's Report on *Use of General Revenue Dedicated Accounts*, which

CPA releases after the end of each regular legislative session. This report provides definitive information regarding the revenues, appropriations, and balances of each General Revenue–Dedicated account that is counted to certify appropriations of General Revenue Funds. The report also informs the public, provides transparency to the state budget, and is required by law.

The following sections summarize actions taken by the Legislature relating to counting dedicated revenue toward certification of appropriated General Revenue Funds; analysis of this practice, including some counting of dedicated revenue that does not materially affect the level of appropriation or ultimate use of the account's revenue.

GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED FOR CERTIFICATION FOR THE 2016–17 BIENNIUM

In the January 2015 *Biennial Revenue Estimate* for the 2016–17 biennium, CPA estimated that beginning balances in General Revenue–Dedicated accounts would be $4.9 billion, and that revenue collections in those accounts would total $6.5 billion. The Legislature appropriated $7.8 billion from General Revenue–Dedicated accounts. After accounting for the appropriations and legislative actions that would change the amount of revenue deposited into the accounts, and updates in the October 2015 *Certification Revenue Estimate* (CRE), CPA estimated that $3.5 billion in General Revenue–Dedicated account balances was available to certify appropriations of General Revenue Funds. Absent legislative action, the amount of General Revenue–Dedicated Funds available for certification would have increased to $5.7 billion. The $3.5 billion counted for certification from General Revenue–Dedicated accounts was 3.3 percent of the $106.0 billion General Revenue Funds budget for the 2016–17 biennium.

Figure 2 shows the amount of revenue in General Revenue–Dedicated accounts counted to certify appropriations of General Revenue Funds for the 2016–17 biennium. Ten select General Revenue–Dedicated accounts with the highest estimated balances available for certification are shown individually. The estimated balances in those 10 accounts total $2.5 billion, or 70.4 percent of the total $3.5 billion available for certification in dedicated accounts.

Detailed information regarding the amount of each General Revenue–Dedicated account balance available for certification for the 2016–17 biennium is shown in the appendices.

FIGURE 2
GENERAL REVENUE–DEDICATED ACCOUNT BALANCES AVAILABLE TO CERTIFY APPROPRIATIONS OF GENERAL REVENUE FUNDS, 2016–17 BIENNIUM

(IN MILLIONS)

ACCOUNT	AMOUNT COUNTED
(1) Texas Emissions Reduction Plan Account No. 5071	$1,246.3
(2) Employment and Training Investment Holding Account No. 5128	$259.8
(3) Clean Air Account No. 151	$246.0
(4) 9–1–1 Service Fees Account No. 5050	$138.3
(5) Petroleum Storage Tank Remediation Account No. 655	$135.4
(6) Solid Waste Disposal Fees Account No. 5000	$130.3
(7) Physician Education Loan Repayment Program Account No. 5144	$82.6
(8) Subsequent Injury Account No. 5101	$73.7
(9) Oil and Gas Regulation and Cleanup Account No. 5155	$72.7
(10) Game, Fish, and Water Safety Account No. 9	$65.5
Total of top ten accounts	**$2,450.6**
Other General Revenue–Dedicated accounts counted for certification	$1,028.2
Total amount counted for certification from General Revenue–Dedicated accounts for the 2016–17 biennium	**$3,478.7**

NOTE: Available balances in certain accounts shown are required for cash flow purposes or to fund long-term obligations. See pages 6 to 8 for more on the categorization of account balances.
SOURCE: Comptroller of Public Accounts.

ACTIONS TO REDUCE RELIANCE ON GENERAL REVENUE–DEDICATED ACCOUNTS BY THE EIGHTY-FOURTH LEGISLATURE, 2015

The Eighty-fourth Legislature, 2015, acted to further reduce reliance on balances in General Revenue–Dedicated accounts to certify the state budget by incorporating certain appropriation decisions in the General Appropriations Act (GAA), 2016–17 Biennium, and by passing certain measures in House Bills 6 and 7. Selected measures in the 2016–17 GAA and House Bills 6 and 7 are shown in **Figure 3**.

In the October 2015 CRE, the CPA estimated that the 2015 ending balance in General Revenue–Dedicated accounts available for certification was $4.6 billion. The aggregate impact of these legislative actions shown in **Figure 4** is an estimated $1.1 billion reduction in the amount of General

FIGURE 3
SELECT MEASURES REDUCING GENERAL REVENUE–DEDICATED REVENUE COUNTED FOR CERTIFICATION OF APPROPRIATIONS OF GENERAL REVENUE FUNDS, 2016–17 BIENNIUM

BILL	ACCOUNT/FUND	MEASURE	REDUCTION (IN MILLIONS)
House Bill 1, 2016–17 Biennium (appropriations contingent on House Bill 7)	System Benefit Account No. 5100	Set discounts for low-income utility rate relief at rates sufficient to exhaust balance and end the low-income utility rate discount program by August 31, 2016, as required by law	$227.0
	Designated Trauma Facility and EMS Account No. 5111	Appropriate remaining revenue in account and amounts transferred from the abolished Regional Trauma Account No. 5137 for uncompensated trauma care and eligible Medicaid expenses	$195.8
	Volunteer Fire Department Assistance Account No. 5064	Appropriate portion of balance for state contribution to the Texas Emergency Services Retirement System and grants to volunteer fire departments	$26.2
	Sexual Assault Program Account No. 5010	Expand allowable uses of the account to include human trafficking enforcement and prevention and appropriate funds for enforcement to the Texas Department of Public Safety and to the Trusteed Programs within the Office of the Governor to establish a Child Sex Trafficking Prevention Unit	$11.9
	Texas Commission on Law Enforcement Account No. 116	Expand allowable uses of the account to include training on incident-based crime reporting and appropriate funds to the Texas Department of Public Safety to provide grants for training on incident-based crime reporting	$1.0
House Bill 6	University current accounts and nine other General Revenue–Dedicated accounts	Exempt available balance in each account from counting toward certification	$579.6
House Bill 7	Petroleum Storage Tank Remediation Account No. 655	Reduce petroleum product delivery fee	$21.6
	Texas Emissions Reduction Plan Account No. 5071	Reduce 2.0% diesel surcharge to 1.5%	$32.5
	Physician Education Loan Repayment Account No. 5144	Repeal Medical School Tuition Set-aside	$0.9
		Redirect the allocation of smokeless tobacco products tax to the General Revenue Fund for appropriation for healthcare purposes only if beginning balance is sufficient to fund appropriations and other direct and indirect costs	$64.9
	Clean Air Account No. 151	Clarify that $2 of two-year vehicle inspection fee is allocated to the Texas Mobility Fund No. 365	$5.9
	Educator Excellence Innovation Fund No. 5135	Abolish fund and transfer balance to the General Revenue Fund	$21.6
	Designated Trauma Facility and EMS Account No. 5111	Portion of Red Light Camera receipts from abolished Regional Trauma Account No. 5137 to Designated Trauma Facility and EMS Account No. 5111 (biennial revenue: $32.2 million)	N/A
		Abolish Regional Trauma Account No. 5137; transfer balance to Designated Trauma Facility and EMS Account No. 5111 (actual fiscal year 2015 ending balance: $97.4 million)	N/A
		Reduce certain Driver Responsibility Program surcharge amounts by 50.0% for offenders that come into compliance with applicable laws	CBD
	Various General Revenue–Dedicated License Plate Accounts	Balances and receipts from remaining General Revenue–Dedicated license plate accounts to License Plate Trust Fund No. 802	$1.8

NOTE: CBD = Cannot be determined.
SOURCE: Legislative Budget Board.

FIGURE 4
ESTIMATED AGGREGATE IMPACT OF LEGISLATIVE ACTIONS TO REDUCE RELIANCE ON GENERAL REVENUE–DEDICATED ACCOUNTS FOR CERTIFICATION OF THE GENERAL APPROPRIATIONS ACT, 2016–17 BIENNIUM

(IN MILLIONS)	
Beginning balance in General Revenue–Dedicated Accounts, as of September 1, 2015	**$4,605.0**
Estimated change in General Revenue–Dedicated Account Balances due to House Bill 1, the General Appropriations Act, 2016–17 Biennium	($407.0)
Estimated change in General Revenue–Dedicated Account Balances due to House Bill 6	($573.5)
Estimated change in General Revenue–Dedicated Account Balances due to House Bill 7	($142.1)
Revenue estimate revision in the Certification Revenue Estimate, October 2015	($3.7)
Total reductions	**($1,126.3)**
Estimated balances in General Revenue–Dedicated accounts available for certification of 2016–17 biennial appropriations of General Revenue Funds	$3,478.7

NOTES:
(1) Totals may not sum due to rounding.
(2) The $4.6 billion estimated beginning balance reflects the Comptroller's October 2015 Certification Revenue Estimate and represents an update of the $4.9 billion estimated beginning balance in the January 2015 Biennial Revenue Estimate.
SOURCE: Texas Comptroller of Public Accounts.

Revenue–Dedicated account balances counted as available for certification, from $4.6 billion to $3.5 billion for the 2016–17 biennium.

FUND CONSOLIDATION BILLS

During each session since 1995, the Legislature has passed a fund consolidation bill. Each fund consolidation bill provided that funds, accounts, and dedications nominally established by bills passed in that regular session were abolished and became part of the General Revenue Fund, unless they were explicitly exempted from being abolished in the fund consolidation bill. House Bill 3050, Seventy-fourth Legislature, 1995, set an expiration date for the Texas Government Code, Section 403.095, of August 31, 1997. Each subsequent fund consolidation bill has included a two-year extension of this section. Enacted fund consolidation bills are shown in **Figure 5**.

House Bill 6, Eighty-Fourth Legislature, 2015, the fund consolidation bill, authorizes the establishment of eight General Revenue–Dedicated accounts, eight special funds (Other Funds) in the state Treasury, five funds outside the Treasury, and one account in the General Revenue Fund. **Figure 6** shows the funds and accounts established by the Eighty-fourth Legislature and the primary administering agency.

House Bill 6, 2015, abolished one account and a revenue dedication contained in legislation passed by the Eighty-fourth Legislature, 2015. The new license plate account, the Volunteer Advocate Program License Plates, established by

FIGURE 5
FUND CONSOLIDATION BILLS
FISCAL YEARS 1995 TO 2015

BILL	LEGISLATIVE SESSION
House Bill 3050	Seventy-fourth, 1995
House Bill 2948	Seventy-fifth, 1997
House Bill 3084	Seventy-sixth, 1999
House Bill 3088	Seventy-seventh, 2001
House Bill 3318	Seventy-eighth, 2003
Senate Bill 1605	Seventy-ninth, 2005
House Bill 3107	Eightieth, 2007
House Bill 4583	Eighty-first, 2009
Senate Bill 1588	Eighty-second, 2011
House Bill 6	Eighty-third, 2013
House Bill 6	Eighty-fourth, 2015

SOURCE: Legislative Budget Board.

Senate Bill 354, Eighty-fourth Legislature, 2015, was not exempted from abolishment in House Bill 6. Also, the dedication of sales and excise taxes paid on wine sold in Texas for higher education institutions established by Senate Bill 881, Eighty-fourth Legislature, 2015, was abolished by House Bill 6.

House Bill 6, 2015, also included provisions specifying that Texas Government Code, Section 403.095(b), does not apply to nine General Revenue–Dedicated accounts and the account of each institution of higher education in the General Revenue Fund that includes tuition and other fees. Removing these account balances from among those counted

FIGURE 6
FUNDS, ACCOUNTS, AND DEDICATIONS ESTABLISHED BY THE EIGHTY-FOURTH LEGISLATURE, 2015

FUND OR ACCOUNT	AGENCY	ESTABLISHING BILL
General Revenue Fund		
Tax Rate Conversion Account No. 5159	Texas Education Agency	House Bill 7
General Revenue–Dedicated Account		
Environmental Radiation and Perpetual Care Account No. 5158	Texas Commission on Environmental Quality	House Bill 6
Disabled Veterans Local Government Assistance Account No. 5160	Fiscal Programs within the Office of the Comptroller of Public Accounts	House Bill 7
Governor's University Research Initiative No. 5161	Trusteed Programs within the Office of the Governor	House Bill 7
Texas Farm and Ranch Lands Conservation Account No. 5162	Texas Parks and Wildlife Department	House Bill 1925
Mathematics and Science Teacher Investment Account No. 5163	Higher Education Coordinating Board	Senate Bill 686
Truancy Prevention and Diversion Account No. 5164	Trusteed Programs within the Office of the Governor	Senate Bill 1296
Wine Industry Development Account No. 5165	Texas Department of Agriculture	Senate Bill 880 Senate Bill 881
Deferred Maintenance Account No. 5166	Texas Facilities Commission	Senate Bill 2004
Other Funds		
TexasSure Fund No. 161	Texas Department of Insurance	House Bill 6
Floodplain Management Fund No. 330	Texas Water Development Board	House Bill 6
Children of Deceased Peace Officers Scholarship Fund No. 178	Department of Public Safety	House Bill 530
Texas Research University Fund No. 180	Higher Education Coordinating Board	House Bill 1000
Texas Comprehensive Research Fund No. 181	Higher Education Coordinating Board	House Bill 1000
Core Research Support Fund No. 182	Higher Education Coordinating Board	House Bill 1000
Permanent Fund Supporting Graduate Medical Education No. 179	Higher Education Coordinating Board	Senate Bill 18
Texas Department of Motor Vehicles Fund No. 10	Department of Motor Vehicles	Senate Bill 1512
Outside the State Treasury		
County Road Oil and Gas Trust Fund No. 808	Comptroller of Public Accounts	House Bill 2521
Success Contract Payments Trust Fund No. 809	Comptroller of Public Accounts	House Bill 3014
Special Olympics Texas Trust Fund No. 847	Department of Aging and Disability Services	Senate Bill 272
State Cemetery Preservation Trust Fund No. 902	State Preservation Board	Senate Bill 574
Texas Achieving a Better Life Experience Savings Plan Trust Fund No. 907	Comptroller of Public Accounts	Senate Bill 1664

NOTE: Four of the new accounts have deferred implementation dates: The Truancy Prevention and Diversion Account and Special Olympics Texas Trust Fund on January 1, 2016; the Texas Department of Motor Vehicles Fund on September 1, 2016 (fiscal year 2017); and the County Road Oil and Gas Trust Fund on September 1, 2017 (fiscal year 2018). All other newly established accounts, funds, and related revenue dedications had either an immediate effective date or took effect on September 1, 2015.
SOURCE: Comptroller of Public Accounts.

as available for certification reduced the amount counted for the 2016–17 biennium by a total of $579.6 million.

COUNTING GENERAL REVENUE–DEDICATED ACCOUNTS FOR CERTIFICATION

Counting dedicated revenue for certification of appropriations of General Revenue Funds affects various accounts differently and results in two distinct, but related, issues. The first issue is transparency. Counting balances for certification pursuant to the Texas Government Code, Section 403.095, authorizes the Legislature to appropriate more General Revenue Funds than would be allowed in the absence of unappropriated General Revenue–Dedicated account balances. This practice also results in the appearance that revenue dedicated for a specific purpose is being spent for general purposes. This issue applies to all General Revenue–Dedicated accounts, even if counting revenue in the account for certification has little or no substantive effect on the account's operation, administering agency, or programs funded by the account.

The second issue is that some revenue deposited to General Revenue–Dedicated accounts and dedicated for a particular purpose is not being appropriated fully, causing the balances in those accounts to accumulate. This issue affects some, but not all accounts.

For many accounts, dedicated revenue is appropriated and spent for its dedicated purpose. The balances in these accounts that are counted for certification are primarily the result of the timing of revenue collections and spending. These accounts have predictable cash balances at the end of each biennium. The balances do not significantly accumulate across the long term. For these accounts, counting the balances for certification of appropriations of General Revenue Funds has little or no effect on the accounts' level of appropriations, operation, administering agency, or programs. Typically, these accounts do not require further action by the Legislature to modify revenue, appropriations, or revenue or account dedication.

HIGHER EDUCATION CURRENT ACCOUNTS

Higher education current accounts, which are General Revenue–Dedicated accounts whose primary revenue source is statutory tuition, are examples of this type of account. The funds in these accounts may be used only for the support, maintenance, and operation of the institutions. Balances in these accounts are caused by the timing of revenue collections and expenditures, and the year-end balances have been predictable. Counting balances in current accounts to certify appropriations of General Revenue Funds does not affect the operation of the accounts or the institutions administering the accounts. House Bill 6, Eighty-fourth Legislature, 2015, removed these account balances, estimated to be $385.2 million for the 2016–17 biennium, from those counted as available for certification.

SELF-LEVELING ACCOUNTS

Counting General Revenue–Dedicated balances for certification does not materially affect self-leveling accounts, accounts in which revenue collection are linked to appropriations levels. An example is the General Revenue–Dedicated Account No. 36, Department of Insurance Operating (Account 36). The account is self-leveling and funded through fees and insurance maintenance taxes imposed by the Texas Department of Insurance (TDI). TDI adjusts the rates of its maintenance taxes to cover the cost of appropriations funded with the maintenance tax. House Bill 6, Eighty-fourth Legislature, 2015, removed this account balance, estimated to be $148.9 million for the 2016–17 biennium, from those counted as available for certification.

FEDERAL ACCOUNTS

Another group of accounts that are not affected materially by being counted for certification are the General Revenue–Dedicated accounts that are designated as federal accounts. These accounts receive deposits of state and federal revenue, but most of the revenue is federal. Federal restrictions apply to the use of these accounts. CPA considers the balances to be obligated for spending on federal programs. From these 19 accounts, $185.6 million was available for certification of appropriations of General Revenue Funds for the 2016–17 biennium.

ACCOUNTS REQUIRING MINIMUM BALANCES FOR CASH FLOW

In addition to the accounts described previously, many accounts maintain balances at the end of each fiscal year to pay for encumbrances against the accounts and to enable the administering agencies to manage cash flow imbalances within the fiscal year. LBB staff identified 67 General Revenue–Dedicated accounts that had year-to-date expenditures in excess of year-to-date revenue collections during fiscal year 2015. For example, there are 12 General Revenue–Dedicated Accounts where expenditures exceeded revenue collections in each month of fiscal year 2015. Without the existing account balance, expenditures from these accounts could not be made. Those balances are replenished once revenue collections catch up with expenditures during the fiscal year. The 66 accounts identified would have needed combined beginning balances of at least $183.9 million to support fiscal year 2015 cash flow patterns. Therefore, if the Legislature reduces the unappropriated balances of these accounts to zero at the end of a fiscal year, the revenue collections in these accounts would be insufficient for expenditure needs.

ACCOUNTS REQUIRING BALANCES FOR LONG-TERM OBLIGATIONS AND INFRASTRUCTURE NEEDS

Some accounts with accumulated balances are intended to fund infrastructure demands and long-term state obligations. According to CPA, the balance in the General Revenue–Dedicated Account No. 5050, 9–1–1 Services Fee (Account 5050), available for certification of appropriations of General Revenue Funds for the 2016–17 biennium was $138.3 million. However, this balance and subsequent revenues deposited into the account are required to fund the cost of maintaining 9-1-1 services and for multiyear implementation of Next Generation 9-1-1 Services. Similarly, a portion of the $135.4 million CPA-estimated balance in the General Revenue–Dedicated Account No. 655, Petroleum Storage Tank Remediation, may be required to fund $82.6 million in projected cleanup and monitoring costs. These costs are related to releases at 366 petroleum-contaminated sites that were reported to the Texas Commission on Environmental Quality on or before December 1998. Another example, the General Revenue–Dedicated Account No. 5128, Employment and Training Investment Holding, is funded by an assessment levied on state employers and based on wages paid. Balances in the account are transferred to the Unemployment Compensation Trust Fund as needed to maintain a sufficient balance in the trust account to fund state obligations for unemployment compensation claims.

FURTHER REDUCE RELIANCE ON GENERAL REVENUE–DEDICATED ACCOUNTS

CPA does not count all General Revenue–Dedicated accounts in the General Revenue Fund as available for certification of appropriations due to constitutional, federal, or trust restrictions. In addition, some accounts have no ongoing sources of revenue, and the balances are unpredictable.

As described previously, the Eighty-fourth Legislature, 2015, excluded certain General Revenue–Dedicated accounts as available for certification of appropriations of General Revenue Funds for the 2016–17 biennium. The accounts excluded are among the least affected by the practice of counting balances for certification. **Figure 7** shows each account that the Eighty-fourth Legislature excluded and the amount that would have otherwise been counted as available for certification for the 2016–17 biennium.

However, the exclusion of these accounts from those counted as available for certification of appropriations of General Revenue Funds expires September 1, 2017, unless reauthorized by the Eighty-fifth Legislature, 2017. For most of these accounts, the dedicated revenue is appropriated and spent for its authorized purpose. The balances in these accounts that are counted for certification are primarily the result of the timing of revenue collections and spending, as is the case with the self-leveling Account 36 and the university current accounts. The purpose of a trust account is to retain the corpus and limit expenditures to the earnings on the corpus. This limitation typically is done with the intent of providing a long-term, sustainable source of funding or to save and invest for a future or long-term obligation. For the accounts excluded by House Bill 6, Eighty-third Legislature, 2015, counting their balances for certification of appropriations of General Revenue Funds has little to no effect on the accounts' level of appropriations, operation, administering agency, or programs; these accounts, generally, do not require further action by the Legislature to modify revenue, appropriations, or revenue or account dedication.

The Legislature could also choose to exclude additional accounts from among those with balances counted as available for certification of appropriations of General Revenue Funds for the 2016–17 biennium. Other General Revenue–Dedicated accounts for which this practice similarly has little to no effect on the accounts' level of appropriations, operation, administering agency, or programs could be addressed in this way. **Figure 8** shows accounts that the Legislature could consider excluding, the amount available for certification of appropriations for the 2016–17 biennium, and an account description.

Option 1 would continue the implementation of measures to reduce reliance on General Revenue–Dedicated account balances for certification of General Revenue Fund appropriations by exempting certain accounts from counting toward certification, adjusting revenue, increasing appropriations, or modifying uses of dedicated revenue. The extent to which the Legislature implements measures to reduce reliance on General Revenue–Dedicated account balances for certification of the state's budget should be tempered by prevailing fiscal conditions.

ACCOUNT-SPECIFIC MEASURES

For some accounts, revenue has been collected for a particular purpose and has not been appropriated fully for that purpose. The balances in those accounts accumulate as a result of

FIGURE 7
ACCOUNTS EXEMPTED BY HOUSE BILL 6, EIGHTY-FOURTH LEGISLATURE, 2015, FROM COUNTING TOWARD CERTIFICATION OF APPROPRIATIONS FROM THE GENERAL REVENUE FUND, 2016–17 BIENNIUM

ACCOUNT	ACCOUNT DESCRIPTION	AMOUNT AVAILABLE FOR CERTIFICATION (IN MILLIONS)
University current accounts (52 accounts)	• Accounts are fully appropriated • Timing of tuition collection and expenditures results in predictable year-end balances • Revenue Source: tuition, other fees, and charges	$385.2
Texas Department of Insurance Operating Account No. 36	Self-leveling account • Texas Department of Insurance sets maintenance tax rate to cover appropriations • Timing of tax due date results in year-end balance • Revenue Source: maintenance tax	$148.9
Lifetime License Account No. 544	Trust or endowment account: • Only interest and earnings on corpus may be expended • Revenue Source: lifetime hunting, fishing, and combination licenses	$25.8
Tobacco Permanent Health Funds (5 accounts)	Trust or endowment account(s): • Accounts established by the Seventy-sixth Legislature, 1999 • Account corpus consists of deposits from Tobacco Settlement Proceeds held in fund outside the Treasury managed by the Comptroller of Public Accounts (through the Texas Treasury Safekeeping Trust Company) • Revenue Source: interest/investment earnings only • Estimated appropriation and unexpended balance authority within the biennium for four of the accounts • Accounts dedicated for health-related programs at the Department of State Health Services and rural hospital grants at the Texas Department of Agriculture, may expend available earnings only • Accounts eligible to retire bonds that finance the Cancer Prevention and Research Institute of Texas may expend the corpus and earnings	$6.5
Child Abuse Neglect and Prevention Operating and Trust Accounts (2 accounts)	Trust accounts • Child Abuse Neglect and Prevention Operating Account No. 5084 • Child Abuse Neglect and Prevention Trust Account No. 5085 • Revenue Source: portion of marriage license fee • Funds from the trust account may be transferred to the operating account at any time; however, no more than the amount appropriated for the operating account for the fiscal year may be transferred	$13.3
Total		**$579.6**

NOTE: Totals may not sum due to rounding.
SOURCES: Legislative Budget Board; Comptroller of Public Accounts.

revenue collections exceeding appropriations. The accumulation of dedicated revenue in these accounts could be addressed by implementing account-specific measures such as decreasing the amount of revenue deposited to the accounts, increasing appropriations for their dedicated purpose, expanding the dedication of the allowable use of the accounts, or transferring balances from the accounts. Increasing appropriations for the dedicated purpose can be addressed in the appropriations process. Reducing revenue deposited to an account, expanding the allowable uses of the account, or transferring account balances typically requires statutory change, although some streams are controlled by appropriation or rule.

As directed by House Bill 7, Eighty-third Legislature, Regular Session, 2013, LBB staff considered measures to reduce reliance on available dedicated revenue for certification in developing options for the 2018–19 General Appropriations Bill. As the starting point for budget deliberations during the

FIGURE 8
EXAMPLES OF GENERAL REVENUE–DEDICATED ACCOUNTS TO CONSIDER FOR EXEMPTION FROM CERTIFICATION OF APPROPRIATIONS FROM THE GENERAL REVENUE FUND FOR THE 2018–19 BIENNIUM

ACCOUNT	DETAILS	AMOUNT AVAILABLE FOR CERTIFICATION FOR THE 2016–17 BIENNIUM (IN MILLIONS)
Federal accounts (19 accounts)	Federal restrictions on use of account(s)	$185.6
Employment and Training Investment Holding Account No. 5128	Long-term obligations	$259.8
Petroleum Storage Tank Remediation Account No. 655	Long-term obligations, self-leveling account	$135.4
Texas B-on-Time Student Loan Account No. 5103	Account expires	$25.5

SOURCES: Legislative Budget Board; Comptroller of Public Accounts.

Eighty-fifth Legislature, the Governor and LBB required each agency to reduce their base appropriation levels by 4.0 percent. This affected the amount of appropriations from General Revenue–Dedicated accounts included in the development of the appropriations bills at the beginning of the Eighty-fifth Legislature, 2017. To the extent the appropriations bills include appropriations from General Revenue–Dedicated accounts that exceed estimated revenue in those particular accounts or amounts appropriated in the 2016–17 GAA, the General Revenue–Dedicated account balances available for certification are reduced. The appendices shown in **Figure 9** provide more details.

FIGURE 9
CONTENTS OF APPENDICES

APPENDIX	SUMMARY
Appendix A	General Revenue–Dedicated Accounts counted toward certification, 2016–17 biennium accounts, by estimated balance
Appendix B	General Revenue–Dedicated Accounts counted toward certification, 2016–17 biennium accounts with legal citation, by account number
Appendix C	General Revenue–Dedicated counted toward certification, 2016–17 biennium, with administering agency, by function

SOURCE: Legislative Budget Board.

APPENDIX A:

GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM ACCOUNTS BY ESTIMATED BALANCE

ACCOUNT NAME	ACCOUNT NUMBER	ESTIMATED REVENUE COLLECTIONS 2016–17 BIENNIUM	2016–17 GENERAL APPROPRIATIONS ACT	ADJUSTMENTS, RESTRICTIONS, OTHER APPROPRIATIONS	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
Emissions Reduction Plan	5071	$209,977,000	$238,485,872	$208,314,000	$1,246,328,128
Employment and Training Investment Holding	5128	$202,000,000	$3,772,460	($48,591,714)	$259,825,826
Clean Air	151	$227,917,000	$211,840,771	($5,872,000)	$245,961,229
9-1-1 Service Fees	5050	$101,092,000	$119,160,732	$-	$138,312,268
Petroleum Storage Tank Remediation	655	$49,913,000	$47,878,427	($21,600,000)	$135,436,573
Solid Waste Disposal Fees	5000	$18,982,000	$10,986,324	$-	$130,251,676
Physician Education Loan Repayment Program	5144	$65,738,000	$33,800,000	($65,738,000)	$82,611,000
Subsequent Injury	5101	$14,728,000	$10,936,705	$-	$73,678,295
Oil and Gas Regulation and Cleanup	5155	$144,470,000	$149,172,513	$13,317,097	$72,715,584
Game, Fish, and Water Safety	9	$269,401,000	$258,944,765	($14,689,321)	$65,456,914
Volunteer Fire Department Assistance	5064	$37,332,000	$63,537,965	$-	$57,964,035
Federal Health and Health Lab Funding Excess Revenue(3)	273	*	*	*	$43,762,000
Hazardous and Solid Waste Remediation Fees	550	$51,454,000	$52,000,718	$-	$42,669,282
Commission on State Emergency Communications	5007	$39,700,000	$36,165,227	$-	$36,515,773
Quality Assurance	5080	$123,313,000	$140,000,000	$-	$34,642,000
Food and Drug Registration	5024	$16,500,000	$16,080,489	$-	$31,364,511
Low-Level Radioactive Waste	88	$2,000,000	$3,642,049	$-	$29,865,951
Hotel Occupancy Tax for Economic Development	5003	$-	$-	$-	$29,233,000
Vital Statistics	19	$10,559,000	$10,011,547	$-	$27,501,453
Asbestos Removal Licensure	5017	$8,500,000	$8,059,470	$-	$27,232,530
Texas B-On-Time Student Loan	5103	$122,000,000	$128,756,365	($122,000,000)	$25,528,635
Criminal Justice Planning	421	$44,972,000	$60,988,656	$-	$25,180,344
Federal Civil Defense and Disaster Relief (3)	221	*	*	*	$24,169,000
Waste Management	549	$65,585,000	$75,333,353	$-	$23,798,647
Sexual Assault Program	5010	$22,762,000	$22,680,229	$-	$22,628,771
Dry Cleaning Facility Release	5093	$8,101,000	$7,589,434	$-	$22,455,566
EMS, Trauma Facilities, Trauma Care Systems	5108	$8,000,000	$4,793,573	$-	$21,339,427
Governor's Office Federal Projects (3)	224	*	*	*	$21,214,000
Texas Commission on Law Enforcement	116	$18,193,000	$21,007,658	$-	$20,471,342
Workforce Commission Federal (3)	5026	*	*	*	$17,045,000

APPENDIX A: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS BY ESTIMATED BALANCE

ACCOUNT NAME	ACCOUNT NUMBER	ESTIMATED REVENUE COLLECTIONS 2016–17 BIENNIUM	2016–17 GENERAL APPROPRIATIONS ACT	ADJUSTMENTS, RESTRICTIONS, OTHER APPROPRIATIONS	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
Department of Public Safety Federal (3)	222	*	*	*	$16,680,000
Motorcycle Education	501	$2,785,000	$4,125,000	$-	$16,497,000
Artificial Reef	679	$-	$-	$94,916	$14,100,916
Food and Drug Retail Fee	341	$5,200,000	$4,241,736	$-	$13,499,264
Emergency Radio Infrastructure	5153	$20,027,000	$20,482,662	$-	$12,992,338
Breath Alcohol Testing	5013	$1,973,000	$3,025,000	$-	$12,045,000
State Parks	64	$99,498,000	$105,748,738	$5,749,976	$10,317,238
Texas Military Federal(3)	449	*	*	*	$8,977,000
Railroad Commission Federal(3)	5041	*	*	*	$8,624,000
Texas Commission On Environmental Quality Occupational Licensing	468	$4,384,000	$4,123,854	$-	$8,575,146
Texas Capital Trust	543	$1,867,000	$579,605	$-	$7,981,395
Operating Permit Fees	5094	$72,000,000	$76,569,196	$-	$7,970,804
Texas Recreation and Parks	467	$-	$-	$-	$7,226,000
Comprehensive Rehabilitation	107	$35,185,000	$35,185,000	$-	$7,009,000
Disaster Contingency	453	$-	$-	$6,100,000	$6,914,000
Federal Disaster	92	$-	*	*	$6,313,000
Federal Health, Education & Welfare (3)	148	*	*	*	$6,089,000
State Owned Multicategorical Teaching Hospital	5049	$8,796,000	$9,809,765	$-	$5,367,235
Unemployment Compensation Special Administration	165	$25,940,000	$24,882,379	$-	$4,844,621
Public Assurance	5105	$6,431,000	$5,160,451	$-	$4,816,549
Rural Volunteer Fire Department Insurance	5066	$2,930,000	$2,932,857	$-	$4,711,143
Large County and Municipal Recreation and Parks	5150	$-	$-	$-	$4,543,000
Bureau of Emergency Management	512	$4,600,000	$6,108,446	$-	$4,510,554
Certification of Mammography Systems	5021	$2,500,000	$2,658,869	$-	$3,374,131
Community Affairs Federal (3)	127	*	*	*	$2,878,000
Attorney General Law Enforcement	5006	$660,000	$930,979	$-	$1,977,021
Shrimp License Buy Back	5023	$168,000	$-	$-	$1,738,000
Home Health Services	5018	$14,128,000	$44,169,679	$-	$1,452,321
Office of Rural Community Affairs Federal (3)	5091	*	*	*	$1,418,000
Medicaid Recovery 42 U.S.C. § 1396P	5109	$5,000,000	$18,000,000	$-	$1,371,000

APPENDIX A: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS BY ESTIMATED BALANCE

ACCOUNT NAME	ACCOUNT NUMBER	ESTIMATED REVENUE COLLECTIONS 2016–17 BIENNIUM	2016–17 GENERAL APPROPRIATIONS ACT	ADJUSTMENTS, RESTRICTIONS, OTHER APPROPRIATIONS	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
Business Enterprise Program	492	$1,220,000	$1,707,602	$-	$1,210,398
Coastal Protection	27	$20,745,000	$23,368,960	$60,388	$1,200,428
Environmental Testing Laboratory Accreditation	5065	$1,700,000	$1,674,406	$-	$1,101,594
Private Sector Prison Industries	5060	$-	$587,269	$596,269	$1,000,000
Water Resource Management	153	$128,872,000	$132,496,653	($6,315,648)	$948,699
Cancer Prevention and Research	5136	$-	$-	$-	$860,000
Federal Public Welfare Administration (3)	117	*	*	*	$742,000
Coastal Public Lands Management Fee	450	$520,000	$443,492	$-	$688,508
Federal Child Welfare Service	37	*	*	*	$672,000
Oyster Sales	5022	$448,000	$710,884	$-	$615,116
Texas Racing Commission	597	$17,014,000	$19,381,546	$1,408,592	$420,046
Children with Special Healthcare Needs	5009	$-	$-	$-	$391,000
Non-Game and Endangered Species Conservation	506	$36,000	$99,341	$-	$376,659
Watermaster Administration	158	$3,400,000	$4,717,671	$-	$374,329
Workplace Chemicals List	5020	$2,100,000	$7,089,570	$-	$298,430
DARS Federal (3)	422	*	*	*	$245,000
Parks and Wildlife Conservation and Capital	5004	$-	$-	$-	$225,000
Texas Preservation Trust	664	$530,000	$530,000	$-	$219,000
Inaugural	472	$-	$-	$-	$163,000
Federal Public Library Service (3)	118	*	*	*	$148,000
Private Beauty Culture School Tuition Protection	108	$-	$40,000	$-	$138,000
Texas Spill Response	452	$-	$-	$-	$119,000
Motor Carrier Act Enforcement Federal(3)	582	*	*	*	$77,000
Fire Prevention and Public Safety	5138	$-	$-	$-	$49,000
Alamo Complex	5152	$614,000	$623,000	$20,240	$20,240
Healthy Kids Successor	5074	$-	$-	$-	$17,000
Medical School Tuition Set Aside	542	$-	$-	$-	$16,000
Barber School Tuition Protection	5081	$-	$10,000	$-	$10,000
Federal Land and Water Conservation (3)	223	*	*	*	$7,000
Peace Officer Flag	5059	$-	$500	$-	$3,500

APPENDIX A: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS BY ESTIMATED BALANCE

ACCOUNT NAME	ACCOUNT NUMBER	ESTIMATED REVENUE COLLECTIONS 2016–17 BIENNIUM	2016–17 GENERAL APPROPRIATIONS ACT	ADJUSTMENTS, RESTRICTIONS, OTHER APPROPRIATIONS	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
Go Texan Partner Program	5051	$-	$1,134,000	$-	$0.3
Commission on the Arts Operating	334	$-	$907,122	$299,122	$-
State Lease	507	$-	$6,957,000	$-	$-
Public Health Services Fees	524	$27,362,000	$34,985,801	$4,627,801	$-
Federal Surplus Property Service Charge	570	$2,604,000	$5,655,080	$1,664,080	$-
Bill Blackwood Law Enforcement Management Institute	581	$7,768,000	$10,302,719	$187,719	$-
Crime Stoppers Assistance	5012	$924,000	$1,684,294	$537,294	$-
Center For Study and Prevention of Juvenile Crime and Delinquency	5029	$4,400,000	$13,158,035	$158,035	$-
Excess Benefit Arrangement, Teacher Retirement System	5031	$-	$129,000	$-	$-
Animal Friendly Plates (1)	5032	$-	$295,000	$-	$-
Attorney General Volunteer Advocate Program Plates (1)	5036	$-	$12,000	$-	$-
Texas Special Olympics License Plates (1)	5055	$-	$-	$-	$-
Fair Defense	5073	$52,400,000	$67,145,334	$5,005,334	$-
Correctional Management Institute and Criminal Justice Center	5083	$4,048,000	$4,358,943	$209,943	$-
Perpetual Care	5096	$1,160,000	$5,585,000	$-	$-
System Benefit (1)	5100	$-	$333,944,832	$5,893,832	$-
Economic Development Bank	5106	$8,400,000	$19,084,276	$7,429,276	$-
Designated Trauma Facility and EMS	5111	$205,000,000	$348,381,103	$128,702,103	$-
Childhood Immunization	5125	$96,000	$289,614	$183,614	$-
Be a Blood Donor Plates (1)	5134	$-	$27,000	$-	$-
Educator Excellence Innovation (1)	5135	$-	$-	($92,261,000)	$-
Regional Trauma (1)	5137	$32,206,000	$-	($128,694,000)	$-
Specialty License Plates General (1)	5140	$134,000	$286,000	$-	$-
Jobs and Education for Texans (JET)	5143	$-	$-	$-	$-
Low-Level Radioactive Waste Disposal Compact Commission	5151	$-	$1,166,578	$691,578	$-
Choose Life Plates (1)	5154	$-	$16,000	$-	$-
Statewide Electronic Filing System	5157	$37,040,000	$45,512,708	$4,495,708	$-
Environmental Radiation and Perpetual Care (2)	5158	$-	$13,000,000	$13,000,000	$-
Tax Rate Conversion (2)	5159	$-	$-	$-	$-

APPENDIX A: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS BY ESTIMATED BALANCE

ACCOUNT NAME	ACCOUNT NUMBER	ESTIMATED REVENUE COLLECTIONS 2016–17 BIENNIUM	2016–17 GENERAL APPROPRIATIONS ACT	ADJUSTMENTS, RESTRICTIONS, OTHER APPROPRIATIONS	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
Disabled Veterans Local Government Assistance (2)	5160	$-	$-	$-	$-
Governor's University Research Initiative (2)	5161	$-	$40,000,000	$40,000,000	$-
Texas Farm and Ranch Lands Conservation (2)	5162	$-	$-	$-	$-
Mathematics and Science Teacher Investment (2)	5163	$-	$-	$-	$-
Truancy Prevention and Diversion (2)	5164	$-	$-	$-	$-
Wine Industry Development (2)	5165	$-	$600,000	$600,000	$-
Deferred Maintenance (2)	5166	$-	$387,718,848	$387,718,848	$-
Article IX Adjustment	Various				($20,710,078)

NOTES:
(1) Account abolished or repealed.
(2) Account created and exempted from consolidation by the Eighty-fourth Legislature.
(3) Estimated appropriations - revenues and appropriations not included in totals (*).
SOURCES: Legislative Budget Board; Comptroller of Public Accounts.

APPENDIX B:

GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM ACCOUNTS WITH LEGAL CITATION, BY ACCOUNT NUMBER

ACCOUNT NUMBER	ACCOUNT NAME	LEGAL CITATIONS	DATE OF CREATION	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
9	Game, Fish, and Water Safety	TEX. PARKS & WILD. CODE ANN. Sec. 11.032, Sec. 11.031, Sec. 11.033, Sec. 11.034, Sec. 11.044, Sec. 12.303	1979	$65,456,914
19	Vital Statistics	TEX. HEALTH & SAFETY CODE ANN. Sec. 191.0045, Sec. 191.005	1927	$27,501,453
27	Coastal Protection	TEX. NAT. RES. CODE ANN. Sec. 40.151	1991	$1,200,428
37	Federal Child Welfare Service	TEX. FAM. CODE ANN. Sec. 264.008	1945	$672,000
64	State Parks	TEX. PARKS & WILD. CODE ANN. Sec. 11.035, Sec. 11.044	1931	$10,317,238
88	Low-Level Radioactive Waste	TEX. HEALTH & SAFETY CODE ANN. Sec. 401.249	1991	$29,865,951
92	Federal Disaster	Title 42 U.S.C. Sec. 5121 Et. Seq.	1957	$6,313,000
107	Comprehensive Rehabilitation	TEX. HUM. RES. CODE ANN. Sec. 111.060	1991	$7,009,000
		TEX. LOC. GOV'T CODE ANN. Sec. 133.102		
108	Private Beauty Culture School Tuition Protection	TEX. OCC. CODE ANN. Sec. 1602.464	1991	$138,000
116	Texas Commission on Law Enforcement	TEX. LOC. GOV'T CODE ANN. Sec. 133.102	1977	$20,471,342
		TEX. OCC. CODE ANN. Sec. 1701.156		
117	Federal Public Welfare Administration	TEX. HUM. RES. CODE ANN. Sec. 22.002	1941	$742,000
118	Federal Public Library Service	TEX. GOV'T CODE ANN. Sec. 441.006	1953	$148,000
127	Community Affairs Federal	TEX. GOV'T CODE ANN. Sec. 2306.071	1971	$2,878,000
129	Hospital Licensing	TEX. HEALTH & SAFETY CODE ANN. Sec. 241.025	1959	$18,015,877
146	Used Oil Recycling	TEX. HEALTH & SAFETY CODE ANN. Sec. 371.061	1991	$19,791,773
148	Federal Health, Education & Welfare	TEX. HUM. RES. CODE ANN. Sec. 22.005	1959	$6,089,000
151	Clean Air	TEX. HEALTH & SAFETY CODE ANN. Sec. 382.0335, Sec. 382.051866, Sec. 382.0622(b), Sec. 382.220	1991	$245,961,229
153	Water Resource Management	TEX. WATER CODE ANN. Sec. 26.0291(f)	1961	$948,699
158	Watermaster Administration	TEX. WATER CODE ANN. Sec. 11.3291, Sec. 12.113	1967	$374,329
165	Unemployment Compensation Special Administration	TEX. LAB. CODE ANN. Sec. 203.002, Sec. 203.003, Sec. 203.005, Sec. 203.201, Sec. 203.202, Sec. 203.203	1936	$4,844,621
221	Federal Civil Defense and Disaster Relief	TEX. GOV'T CODE ANN. Sec. 418.023	1951	$24,169,000
222	Department of Public Safety Federal	General Appropriations Act	1965	$16,680,000
223	Federal Land and Water Conservation	TEX. PARKS & WILD. CODE ANN. Sec. 11.037, Sec. 11.044	1965	$7,000
		U.S. Public Law 88-578 at 16 U.S.C., § 460-8		

APPENDIX B: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS WITH LEGAL CITATION, BY ACCOUNT NUMBER

ACCOUNT NUMBER	ACCOUNT NAME	LEGAL CITATIONS	DATE OF CREATION	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
224	Governor's Office Federal Projects	U.S. Public Law as cited in the Federal Contract	1968	$21,214,000
273	Federal Health and Health Lab Funding Excess Revenue	TEX. HEALTH & SAFETY CODE ANN. Sec. 12.011	N/A	$43,762,000
334	Commission on the Arts Operating	TEX. GOV'T CODE ANN. Sec. 444.027, Sec. 444.032(c)	1993	$-
341	Food and Drug Retail Fee	TEX. HEALTH & SAFETY CODE ANN. Sec. 437.0125(e)	1993	$13,499,264
421	Criminal Justice Planning	TEX. GOV'T CODE ANN. Sec. 772.006	1971	$25,180,344
		TEX. LOC. GOV'T CODE ANN. Sec. 133.102		
		TEX. CRIM. PROC. CODE ANN. art. 102.056		
422	DARS Federal	TEX. GOV'T CODE ANN. Sec. 403.011	1971	$245,000
449	Texas Military Federal	TEX. GOV'T CODE ANN. Sec. 437.111	1973	$8,977,000
450	Coastal Public Lands Management Fee	TEX. NAT. RES. CODE ANN. Sec. 33.015	1973	$688,508
452	Texas Spill Response	TEX. WATER CODE ANN. Sec. 26.265	1975	$119,000
453	Disaster Contingency	TEX. GOV'T CODE ANN. Sec. 418.073	1975	$6,914,000
467	Texas Recreation and Parks	TEX. PARKS & WILD. CODE ANN. Sec. 11.044, Sec. 24.002, Sec. 24.003, Sec. 24.004, Sec. 24.005, Sec. 24.006, Sec. 24.007	1979	$7,226,000
468	Texas Commission On Environmental Quality Occupational Licensing	TEX. WATER CODE ANN. Sec. 37.009	1979	$8,575,146
472	Inaugural	TEX. GOV'T CODE ANN. Sec. 401.003	1979	$163,000
492	Business Enterprise Program	TEX. HUM. RES. CODE ANN. Sec. 91.014	1983	$1,210,398
		TEX. LAB. CODE ANN. Sec. 355.011		
501	Motorcycle Education	TEX. TRANSP. CODE ANN. Sec. 662.011	1983	$16,497,000
506	Non-Game and Endangered Species Conservation	TEX. PARKS & WILD. CODE ANN. Sec. 11.052, Sec. 11.044	1983	$376,659
507	State Lease	TEX. GOV'T CODE ANN. Sec. 403.011, Sec. 1232.004	1983	$-
512	Bureau of Emergency Management	TEX. HEALTH & SAFETY CODE ANN. Sec. 773.060 (b)	1983	$4,510,554
524	Public Health Services Fees	TEX. HEALTH & SAFETY CODE ANN. Sec. 12.035	1983	$-
542	Medical School Tuition Set Aside	TEX. EDUC. CODE ANN. Sec. 61.539	1985	$16,000
543	Texas Capital Trust	TEX. NAT. RES. CODE ANN. Sec. 31.158	1985	$7,981,395
		TEX. HEALTH & SAFETY CODE ANN. Sec. 533.084		
		TEX. GOV'T CODE ANN. Sec. 2201.001		

APPENDIX B: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS WITH LEGAL CITATION, BY ACCOUNT NUMBER

ACCOUNT NUMBER	ACCOUNT NAME	LEGAL CITATIONS	DATE OF CREATION	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
549	Waste Management	TEX. HEALTH & SAFETY CODE ANN. Sec. 361.132	1985	$23,798,647
550	Hazardous and Solid Waste Remediation Fees	TEX. HEALTH & SAFETY CODE ANN. Sec. 361.133	1985	$42,669,282
570	Federal Surplus Property Service Charge	TEX. GOV'T CODE ANN. Sec. 2175.370 OP. TEX. ATTORNEY GENERAL NO. JM-479	1986	$-
581	Bill Blackwood Law Enforcement Management Institute	TEX. EDUC. CODE ANN. Sec. 96.64(1) TEX. LOC. GOV'T CODE ANN. Sec. 133.102	1987	$-
582	Motor Carrier Act Enforcement Federal	TEX. TRANSP. CODE ANN. ch. 644	1987	$77,000
597	Texas Racing Commission	TEX. REV. CIV. STAT. ANN. art. 179e Sec. 3.09, art. 179e Sec. 6.08	1987	$420,046
655	Petroleum Storage Tank Remediation	TEX. WATER CODE ANN. Sec. 26.3573, Sec. 26.3574	1989	$135,436,573
664	Texas Preservation Trust	TEX. GOV'T CODE ANN. Sec. 442.015	1989	$219,000
679	Artificial Reef	TEX. PARKS & WILD. CODE ANN. Sec. 89.041	1989	$14,100,916
5000	Solid Waste Disposal Fees	TEX. HEALTH & SAFETY CODE ANN. Sec. 361.014	1989	$130,251,676
5003	Hotel Occupancy Tax for Economic Development	TEX. TAX CODE ANN. Sec. 156.251(d)	1981	$29,233,000
5004	Parks and Wildlife Conservation and Capital	TEX. PARKS & WILD. CODE ANN. Sec. 11.043, Sec. 11.044	1993	$225,000
5006	Attorney General Law Enforcement	TEX. CRIM. PROC. CODE ANN. art. 59.06 TEX. GOV'T CODE ANN. Sec. 402.005	1993	$1,977,021
5007	Commission on State Emergency Communications	TEX. HEALTH & SAFETY CODE ANN. Sec. 771.072(f), Sec. 771.077	1993	$36,515,773
5009	Children with Special Healthcare Needs	TEX. HEALTH & SAFETY CODE ANN. Sec. 35.008, Sec. 35.007	1989	$391,000
5010	Sexual Assault Program	TEX. GOV'T CODE ANN. Sec. 420.008	1993	$22,628,771
5012	Crime Stoppers Assistance	TEX. LOC. GOV'T CODE ANN. Sec. 133.102 TEX. GOV'T CODE ANN. Sec. 414.010	1990	$-
5013	Breath Alcohol Testing	TEX. CRIM. PROC. CODE ANN. art. 102.016 TEX. LOC. GOV'T CODE ANN. Sec. 133.102	1990	$12,045,000
5017	Asbestos Removal Licensure	TEX. OCC. CODE ANN. Sec. 1954.056(e)	1987	$27,232,530

APPENDIX B: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS WITH LEGAL CITATION, BY ACCOUNT NUMBER

ACCOUNT NUMBER	ACCOUNT NAME	LEGAL CITATIONS	DATE OF CREATION	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
5018	Home Health Services	TEX. HEALTH & SAFETY CODE ANN. Sec. 142.010	1979	$1,452,321
5020	Workplace Chemicals List	TEX. HEALTH & SAFETY CODE ANN. Sec. 505.016, Sec. 506.017	1993	$298,430
5021	Certification of Mammography Systems	TEX. HEALTH & SAFETY CODE ANN. Sec. 401.427, Sec. 401.426	1993	$3,374,131
5022	Oyster Sales	TEX. HEALTH & SAFETY CODE ANN. Sec. 436.103	1993	$615,116
5023	Shrimp License Buy Back	TEX. PARKS & WILD. CODE ANN. Sec. 11.044, Sec. 77.120	1995	$1,738,000
5024	Food and Drug Registration	TEX. HEALTH & SAFETY CODE ANN. Sec. 145.010, Sec. 431.224, Sec. 431.276, Sec. 431.204	1989	$31,364,511
5026	Workforce Commission Federal	TEX. GOV'T CODE ANN. ch. 403	1996	$17,045,000
5029	Center For Study and Prevention of Juvenile Crime and Delinquency	TEX. LOC. GOV'T CODE ANN. Sec. 133.102	1997	$-
5031	Excess Benefit Arrangement, Teacher Retirement System	TEX. GOV'T CODE ANN. Sec. 825.517	1997	$-
5032	Animal Friendly Plates (1)	TEX. HEALTH & SAFETY CODE ANN. Sec. 828.014	1997	$-
5036	Attorney General Volunteer Advocate Program Plates (1)	TEX. TRANSP. CODE ANN. Sec. 502.292	1997	$-
5041	Railroad Commission Federal	TEX. NAT. RES. CODE ANN. Sec. 81.01012	1998	$8,624,000
5049	State Owned Multicategorical Teaching Hospital	TEX. GOV'T CODE ANN. Sec. 466.408	1999	$5,367,235
5050	9-1-1 Service Fees	TEX. HEALTH & SAFETY CODE ANN. Sec. 771.071(e), Sec. 771.077, Sec. 771.079(c), Sec. 771.0711	1999	$138,312,268
5051	Go Texan Partner Program	TEX. AGRIC. CODE ANN. Sec. 46.008	1999	$0
5055	Texas Special Olympics License Plates (1)	TEX. HEALTH & SAFETY CODE ANN. Sec. 533.018	2001	$-
5059	Peace Officer Flag	TEX. OCC. CODE ANN. Sec. 1701.161(c)	2001	$3,500
5060	Private Sector Prison Industries	TEX. GOV'T CODE ANN. Sec. 497.056	2001	$1,000,000
5064	Volunteer Fire Department Assistance	TEX. GOV'T CODE ANN. Sec. 614.104, Sec. 614.105	2001	$57,964,035
5065	Environmental Testing Laboratory Accreditation	TEX. WATER CODE ANN. Sec. 5.807	2001	$1,101,594
5066	Rural Volunteer Fire Department Insurance	TEX. GOV'T CODE ANN. Sec. 614.075	2001	$4,711,143

APPENDIX B: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS WITH LEGAL CITATION, BY ACCOUNT NUMBER

ACCOUNT NUMBER	ACCOUNT NAME	LEGAL CITATIONS	DATE OF CREATION	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
5071	Emissions Reduction Plan	TEX. TAX CODE ANN. Sec. 151.0515, Sec. 152.0215 TEX. HEALTH & SAFETY CODE ANN. Sec. 386.251, Sec. 386.056, Sec. 386.252 TEX. TRANSP. CODE ANN. Sec. 501.138, Sec. 502.358, Sec. 548.5055	2001	$1,246,328,128
5073	Fair Defense	TEX. GOV'T CODE ANN. Sec. 41.258, Sec. 79.031 TEX. LOC. GOV'T CODE ANN. Sec. 133.102	2001	$-
5074	Healthy Kids Successor	S.B. 236 and H.B. 3088, 77th Leg., R.S., § 4(c)	2001	$17,000
5080	Quality Assurance	TEX. HEALTH & SAFETY CODE ANN. Sec. 252.206	2001	$34,642,000
5081	Barber School Tuition Protection	TEX. OCC. CODE ANN. Sec. 1601.3571	2001	$10,000
5083	Correctional Management Institute and Criminal Justice Center	TEX. EDUC. CODE ANN. Sec. 96.645(d) TEX. LOC. GOV'T CODE ANN. Sec. 133.102	2001	$-
5091	Office of Rural Community Affairs Federal	TEX. GOV'T CODE ANN. ch. 487	2001	$1,418,000
5093	Dry Cleaning Facility Release	TEX. HEALTH & SAFETY CODE ANN. Sec. 374.101	2003	$22,455,566
5094	Operating Permit Fees	TEX. HEALTH & SAFETY CODE ANN. Sec. 382.0622(b-1)	2003	$7,970,804
5096	Perpetual Care	TEX. HEALTH & SAFETY CODE ANN. Sec. 401.003(11), Sec. 401.109, Sec. 401.307, Sec. 401.305	2003	$-
5100	System Benefit (1)	TEX. UTIL. CODE ANN. Sec. 39.903(a), Sec. 39.9039	2003	$-
5101	Subsequent Injury	TEX. LAB. CODE ANN. Sec. 403.006(a)	2003	$73,678,295
5103	Texas B-On-Time Student Loan	TEX. EDUC. CODE ANN. Sec. 56.0092	2003	$25,528,635
5105	Public Assurance	TEX. OCC. CODE ANN. Sec. 153.0535	2003	$4,816,549
5106	Economic Development Bank	TEX. GOV'T CODE ANN. Sec. 489.105	2003	$-
5108	EMS, Trauma Facilities, Trauma Care Systems	TEX. HEALTH & SAFETY CODE ANN. Sec. 773.006	2003	$21,339,427
5109	Medicaid Recovery 42 U.S.C. § 1396P	TEX. GOV'T CODE ANN. Sec. 531.077	2003	$1,371,000
5111	Designated Trauma Facility and EMS	TEX. TRANSP. CODE ANN. Sec. 542.4031, Sec. 542.406, Sec. 707.007, Sec. 707.008 TEX. HEALTH & SAFETY CODE ANN. Sec. 780.003	2003	$-
5125	Childhood Immunization	TEX. HEALTH & SAFETY CODE ANN. Sec. 192.0021, Sec. 194.005	2005	$-

APPENDIX B: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS WITH LEGAL CITATION, BY ACCOUNT NUMBER

ACCOUNT NUMBER	ACCOUNT NAME	LEGAL CITATIONS	DATE OF CREATION	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
5128	Employment and Training Investment Holding	TEX. LAB. CODE ANN. Sec. 204.122	2005	$259,825,826
5134	Be a Blood Donor Plates (1)	TX. HEALTH & SAFETY CODE ANN. § 162.016	2005	$-
		TX. TRANSP. CODE ANN. § 504.641		
5135	Educator Excellence Innovation (1)	TX. EDUCATION CODE ANN. § 21.703	2006	$-
5136	Cancer Prevention and Research	TEX. HEALTH & SAFETY CODE ANN. Sec. 102.201	2007	$860,000
5137	Regional Trauma (1)	TX. HEALTH & SAFETY CODE ANN. § 782.002	2007	$-
5138	Fire Prevention and Public Safety	TEX. HEALTH & SAFETY CODE ANN. Sec. 796.011	2007	$49,000
5140	Specialty License Plates General (1)	TX. TRANSP. CODE ANN. § 504.801	2007	$-
5143	Jobs and Education for Texans (JET)	TEX. EDUC. CODE ANN. Sec. 134.002	2009	$-
5144	Physician Education Loan Repayment Program	TEX. EDUC. CODE ANN. Sec. 61.5391	2009	$82,611,000
5150	Large County and Municipal Recreation and Parks	TEX. PARKS & WILD. CODE ANN. Sec. 11.044, Sec. 24.052	2009	$4,543,000
5151	Low-Level Radioactive Waste Disposal Compact Commission	TEX. HEALTH & SAFETY CODE ANN. Sec. 401.251	2011	$-
5152	Alamo Complex	TEX. NAT. RES. CODE ANN. Sec. 31.454	2011	$20,240
5153	Emergency Radio Infrastructure	TEX. GOV'T CODE ANN. Sec. 411.403	2011	$12,992,338
5154	Choose Life Plates (1)	TEX. TRANSP. CODE ANN. § 504.662 TEX. GOV'T CODE ANN. § 402.036	2011	$-
5155	Oil and Gas Regulation and Cleanup	TEX. NAT. RES. CODE ANN. Sec. 81.067, Sec. 81.068	2011	$72,715,584
5157	Statewide Electronic Filing System	TEX. GOV'T CODE ANN. Sec. 51.852	2013	$-
5158	Environmental Radiation and Perpetual Care (2)	TEX. HEALTH & SAFETY CODE ANN. Sec. 401.301, Sec. 401.306	2015	$-
5159	Tax Rate Conversion (2)	TEX. EDUC. CODE ANN. Sec. 42.262	2015	$-
5160	Disabled Veterans Local Government Assistance (2)	TEX. LOC. GOV'T CODE ANN. Sec. 140.011	2015	$-
5161	Governor's University Research Initiative (2)	TEX. EDUC. CODE ANN. Sec. 62.165, Sec. 62.168	2015	$-
		TEX. GOV'T CODE ANN. Sec. 490.101		
5162	Texas Farm and Ranch Lands Conservation (2)	TEX. PARKS & WILD. CODE ANN. Sec. 84.008	2015	$-
5163	Mathematics and Science Teacher Investment (2)	TEX. EDUC. CODE ANN. Sec. 61.9837	2015	$-
5164	Truancy Prevention and Diversion (2)	TEX. CRIM. PROC. CODE ANN. art. 102.015	2015	$-
		TEX. GOV'T CODE ANN. Sec. 103.021(26)		

APPENDIX B: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
ACCOUNTS WITH LEGAL CITATION, BY ACCOUNT NUMBER

ACCOUNT NUMBER	ACCOUNT NAME	LEGAL CITATIONS	DATE OF CREATION	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM
5165	Wine Industry Development (2)	TEX. AGRIC. CODE ANN. Sec. 50B.003	2015	$-
5166	Deferred Maintenance (2)	TEX. GOV'T CODE ANN. Sec. 2165.401, Sec. 2165.403	2015	$-

NOTES:
(1) Account abolished or repealed.
(2) Account created and exempted from consolidation by the Eighty-fourth Legislature.
SOURCES: Legislative Budget Board; Comptroller of Public Accounts.

APPENDIX C:

GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
GENERAL REVENUE–DEDICATED ACCOUNTS WITH ADMINISTERING AGENCY, BY BUDGET ARTICLE

ACCOUNT NUMBER	ACCOUNT NAME	PRIMARY ADMINISTERING AGENCY	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM	BUDGET ARTICLE
118	Federal Public Library Service	Texas State Library and Archives Commission	$148,000	I
224	Governor's Office Federal Projects	Trusteed Programs Within the Office of the Governor	$21,214,000	I
334	Commission on the Arts Operating	Texas Commission on the Arts	$-	I
421	Criminal Justice Planning	Trusteed Programs Within the Office of the Governor	$25,180,344	I
472	Inaugural	Secretary of State	$163,000	I
507	State Lease	Texas Public Finance Authority	$-	I
570	Federal Surplus Property Service Charge	Texas Facilities Commission	$-	I
664	Texas Preservation Trust	Texas Historical Commission	$219,000	I
5003	Hotel Occupancy Tax for Economic Development	Trusteed Programs Within the Office of the Governor	$29,233,000	I
5006	Attorney General Law Enforcement	Attorney General	$1,977,021	I
5007	Commission on State Emergency Communications	Commission on State Emergency Communications	$36,515,773	I
5010	Sexual Assault Program	Attorney General	$22,628,771	I
5036	Attorney General Volunteer Advocate Program Plates (1)	Attorney General	$-	I
5050	9-1-1 Service Fees	Commission on State Emergency Communications	$138,312,268	I
5106	Economic Development Bank	Trusteed Programs Within the Office of the Governor	$-	I
5136	Cancer Prevention and Research	Cancer Prevention and Research Institute of Texas	$860,000	I
5154	Choose Life Plates (1)	Attorney General	$-	I
5160	Disabled Veterans Local Government Assistance (2)	Comptroller - Fiscal Programs	$-	I
5161	Governor’s University Research Initiative (2)	Trusteed Programs Within the Office of the Governor	$-	I
5164	Truancy Prevention and Diversion (2)	Comptroller - Fiscal Programs	$-	I
5166	Deferred Maintenance (2)	Texas Facilities Commission	$-	I
		Subtotal, Article I	**$276,451,177**	

APPENDIX C: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
GENERAL REVENUE–DEDICATED ACCOUNTS WITH ADMINISTERING AGENCY, BY BUDGET ARTICLE

ACCOUNT NUMBER	ACCOUNT NAME	PRIMARY ADMINISTERING AGENCY	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM	BUDGET ARTICLE
19	Vital Statistics	Department of State Health Services	$27,501,453	II
37	General Revenue Account - Federal Child Welfare Service	Department of Family and Protective Services	$672,000	II
107	Comprehensive Rehabilitation	Health and Human Services Commission	$7,009,000	II
117	Federal Public Welfare Administration	Department of Aging and Disability Services	$742,000	II
129	Hospital Licensing	Department of State Health Services	$18,015,877	II
148	Federal Health, Education & Welfare	Texas Education Agency	$6,089,000	II
273	Federal Health and Health Lab Funding Excess Revenue	Department of State Health Services	$43,762,000	II
341	Food and Drug Retail Fee	Department of State Health Services	$13,499,264	II
422	DARS Federal	Department of Assistive and Rehabilitative Services	$245,000	II
512	Bureau of Emergency Management	Department of State Health Services	$4,510,554	II
524	Public Health Services Fees	Department of State Health Services	$-	II
5009	Children with Special Healthcare Needs	Department of State Health Services	$391,000	II
5017	Asbestos Removal Licensure	Department of State Health Services	$27,232,530	II
5018	Home Health Services	Department of Aging and Disability Services	$1,452,321	II
5021	Certification of Mammography Systems	Department of State Health Services	$3,374,131	II
5022	Oyster Sales	Department of State Health Services	$615,116	II
5024	Food and Drug Registration	Department of State Health Services	$31,364,511	II
5032	Animal Friendly Plates (1)	Department of State Health Services	$-	II
5049	State Owned Multicategorical Teaching Hospital	Department of State Health Services	$5,367,235	II
5055	Texas Special Olympics License Plates (1)	Department of Aging and Disability Services	$-	II
5074	Healthy Kids Successor	Health and Human Services Commission	$17,000	II
5080	Quality Assurance	Department of Aging and Disability Services	$34,642,000	II
5108	EMS, Trauma Facilities, Trauma Care Systems	Department of State Health Services	$21,339,427	II
5109	Medicaid Recovery 42 U.S.C. § 1396P	Health and Human Services Commission	$1,371,000	II
5111	Designated Trauma Facility and EMS	Department of State Health Services	$-	II
5125	Childhood Immunization	Department of State Health Services	$-	II
5134	Be a Blood Donor Plates (1)	Department of State Health Services	$-	II
5137	Regional Trauma (1)	Health and Human Services Commission	$-	II
		Subtotal, Article II	**$249,212,419**	

APPENDIX C: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
GENERAL REVENUE–DEDICATED ACCOUNTS WITH ADMINISTERING AGENCY, BY BUDGET ARTICLE

ACCOUNT NUMBER	ACCOUNT NAME	PRIMARY ADMINISTERING AGENCY	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM	BUDGET ARTICLE
542	Medical School Tuition Set Aside	Texas Higher Education Coordinating Board	$16,000	III
581	Bill Blackwood Law Enforcement Management Institute	Sam Houston State University	$-	III
5029	Center For Study and Prevention of Juvenile Crime and Delinquency	Prairie View A&M University	$-	III
5031	Excess Benefit Arrangement, Teacher Retirement System	Teacher Retirement System of Texas	$-	III
5064	Volunteer Fire Department Assistance	Texas Forest Service	$57,964,035	III
5066	Rural Volunteer Fire Department Insurance	Texas Forest Service	$4,711,143	III
5083	Correctional Management Institute and Criminal Justice Center	Sam Houston State University	$-	III
5103	Texas B-On-Time Student Loan	Texas Higher Education Coordinating Board	$25,528,635	III
5135	Educator Excellence Innovation (1)	Texas Education Agency	$-	III
5144	Physician Education Loan Repayment Program	Texas Higher Education Coordinating Board	$82,611,000	III
5159	Tax Rate Conversion (2)	Texas Education Agency	$-	III
5163	Mathematics and Science Teacher Investment (2)	Texas Higher Education Coordinating Board	$-	III
		Subtotal, Article III	**$170,830,813**	
5073	Fair Defense	Office of Court Administration	$-	IV
5157	Statewide Electronic Filing System	Office of Court Administration	$-	IV
		Subtotal, Article IV	**$-**	
92	Federal Disaster	Department of Public Safety	$6,313,000	V
116	Texas Commission on Law Enforcement	Texas Commission on Law Enforcement	$20,471,342	V
221	Federal Civil Defense and Disaster Relief	Department of Public Safety	$24,169,000	V
222	Department of Public Safety Federal	Department of Public Safety	$16,680,000	V
449	Texas Military Federal	Texas Military Department	$8,977,000	V
453	Disaster Contingency	Department of Public Safety	$6,914,000	V
501	Motorcycle Education	Department of Public Safety	$16,497,000	V
582	Motor Carrier Act Enforcement Federal	Department of Public Safety	$77,000	V
5012	Crime Stoppers Assistance	Trusteed Programs Within the Office of the Governor	$-	V
5013	Breath Alcohol Testing	Department of Public Safety	$12,045,000	V
5059	Peace Officer Flag	Texas Commission on Law Enforcement	$3,500	V

APPENDIX C: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
GENERAL REVENUE–DEDICATED ACCOUNTS WITH ADMINISTERING AGENCY, BY BUDGET ARTICLE

ACCOUNT NUMBER	ACCOUNT NAME	PRIMARY ADMINISTERING AGENCY	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM	BUDGET ARTICLE
5060	Private Sector Prison Industries	Texas Department of Criminal Justice	$1,000,000	V
5153	Emergency Radio Infrastructure	Department of Public Safety	$12,992,338	V
		Subtotal, Article V	**$126,139,180**	
9	Game, Fish, and Water Safety	Parks and Wildlife Department	$65,456,914	VI
27	Coastal Protection	General Land Office	$1,200,428	VI
64	State Parks	Parks and Wildlife Department	$10,317,238	VI
88	Low-Level Radioactive Waste	Texas Commission on Environmental Quality	$29,865,951	VI
146	Used Oil Recycling	Texas Commission on Environmental Quality	$19,791,773	VI
151	Clean Air	Texas Commission on Environmental Quality	$245,961,229	VI
153	Water Resource Management	Texas Commission on Environmental Quality	$948,699	VI
158	Watermaster Administration	Texas Commission on Environmental Quality	$374,329	VI
223	Federal Land and Water Conservation	Parks and Wildlife Department	$7,000	VI
450	Coastal Public Lands Management Fee	General Land Office	$688,508	VI
452	Texas Spill Response	Texas Commission on Environmental Quality	$119,000	VI
467	Texas Recreation and Parks	Parks and Wildlife Department	$7,226,000	VI
468	Texas Commission On Environmental Quality Occupational Licensing	Texas Commission on Environmental Quality	$8,575,146	VI
506	Non-Game and Endangered Species Conservation	Parks and Wildlife Department	$376,659	VI
543	Texas Capital Trust	General Land Office	$7,981,395	VI
549	Waste Management	Texas Commission on Environmental Quality	$23,798,647	VI
550	Hazardous and Solid Waste Remediation Fees	Texas Commission on Environmental Quality	$42,669,282	VI
655	Petroleum Storage Tank Remediation	Texas Commission on Environmental Quality	$135,436,573	VI
679	Artificial Reef	Parks and Wildlife Department	$14,100,916	VI
5000	Solid Waste Disposal Fees	Texas Commission on Environmental Quality	$130,251,676	VI
5004	Parks and Wildlife Conservation and Capital	Parks and Wildlife Department	$225,000	VI
5020	Workplace Chemicals List	Texas Commission on Environmental Quality	$298,430	VI
5023	Shrimp License Buy Back	Parks and Wildlife Department	$1,738,000	VI
5041	Railroad Commission Federal	Railroad Commission of Texas	$8,624,000	VI

APPENDIX C: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
GENERAL REVENUE–DEDICATED ACCOUNTS WITH ADMINISTERING AGENCY, BY BUDGET ARTICLE

ACCOUNT NUMBER	ACCOUNT NAME	PRIMARY ADMINISTERING AGENCY	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM	BUDGET ARTICLE
5051	Go Texan Partner Program	Department of Agriculture	$0.3	VI
5065	Environmental Testing Laboratory Accreditation	Texas Commission on Environmental Quality	$1,101,594	VI
5071	Emissions Reduction Plan	Texas Commission on Environmental Quality	$1,246,328,128	VI
5091	Office of Rural Community Affairs Federal	Department of Agriculture	$1,418,000	VI
5093	Dry Cleaning Facility Release	Texas Commission on Environmental Quality	$22,455,566	VI
5094	Operating Permit Fees	Texas Commission on Environmental Quality	$7,970,804	VI
5096	Perpetual Care	Texas Commission on Environmental Quality	$-	VI
5150	Large County and Municipal Recreation and Parks	Parks and Wildlife Department	$4,543,000	VI
5151	Low-Level Radioactive Waste Disposal Compact Commission	Texas Low-Level Radioactive Waste Disposal Compact Commission	$-	VI
5152	Alamo Complex	General Land Office	$20,240	VI
5155	Oil and Gas Regulation and Cleanup	Railroad Commission of Texas	$72,715,584	VI
5158	Environmental Radiation and Perpetual Care (2)	Texas Commission on Environmental Quality	$-	VI
5162	Texas Farm and Ranch Lands Conservation (2)	Parks and Wildlife Department	$-	VI
5165	Wine Industry Development (2)	Department of Agriculture	$-	VI
		Subtotal, Article VI	**$2,112,585,709**	
127	Community Affairs Federal	Texas Department of Housing and Community Affairs	$2,878,000	VII
165	Unemployment Compensation Special Administration	Texas Workforce Commission	$4,844,621	VII
492	Business Enterprise Program	Texas Workforce Commission	$1,210,398	VII
5026	Workforce Commission Federal	Texas Workforce Commission	$17,045,000	VII
5128	Employment and Training Investment Holding	Texas Workforce Commission	$259,825,826	VII
5140	Specialty License Plates General	Texas Department of Motor Vehicles	$-	VII
5143	Jobs and Education for Texans (JET)	Texas Workforce Commission	$-	VII
		Subtotal, Article VII	**$285,803,845**	

APPENDIX C: (CONTINUED)
GENERAL REVENUE–DEDICATED ACCOUNTS COUNTED TOWARD CERTIFICATION, 2016–17 BIENNIUM
GENERAL REVENUE–DEDICATED ACCOUNTS WITH ADMINISTERING AGENCY, BY BUDGET ARTICLE

ACCOUNT NUMBER	ACCOUNT NAME	PRIMARY ADMINISTERING AGENCY	BALANCE COUNTED FOR CERTIFICATION 2016–17 BIENNIUM	BUDGET ARTICLE
108	Private Beauty Culture School Tuition Protection	Texas Department of Licensing and Regulation	$138,000	VIII
597	Texas Racing Commission	Texas Racing Commission	$420,046	VIII
5081	Barber School Tuition Protection	Texas Department of Licensing and Regulation	$10,000	VIII
5100	System Benefit (1)	Public Utility Commission	$-	VIII
5101	Subsequent Injury	Texas Department of Insurance	$73,678,295	VIII
5105	Public Assurance	Texas Medical Board	$4,816,549	VIII
5138	Fire Prevention and Public Safety	Texas Department of Insurance	$49,000	VIII
		Subtotal, Article VIII	**$79,111,890**	
VARIOUS	Article IX Adjustments	**Subtotal, Article IX**	**($20,710,078)**	IX

NOTES:
(1) Account abolished or repealed.
(2) Account created and exempted from consolidation by the Eighty-fourth Legislature
SOURCES: Legislative Budget Board; Comptroller of Public Accounts

OVERVIEW OF THE TEXAS SPENDING LIMIT

The Texas Constitution, Article VIII, Section 22, restriction on appropriations, commonly referred to as the spending limit, was established by the passage of a constitutional amendment in 1978. The limit was intended to restrict the growth of tax-funded appropriations that are not dedicated by the constitution from growing faster than the estimated rate of growth of the state's economy. The spending limit does not apply to appropriations funded with nontax revenues or appropriations funded with tax revenues if the constitution requires the revenue to be spent for a specific purpose.

The constitution requires the Legislature to define the growth of the state's economy through general law. As a result, the Legislature established the Texas Government Code, Section 316.002, which requires Texas personal income to be used as the measurement of the state's economy.

The following discussion provides an overview of the methodology used to calculate the spending limit, the effect on the budget, and the relationship with other constitutional limits on spending.

FACTS AND FINDINGS

- ♦ The spending limit is one of four constitutional limits restricting appropriation authority.
- ♦ The spending limit was intended specifically to limit growth in tax-funded appropriations.
- ♦ The spending limit restricts the growth of all state appropriations funded with tax revenues that are not dedicated by the constitution, regardless of the method of finance.
- ♦ When the amount and type of revenue funding appropriations change, the amount of appropriations funded with tax revenue that are not dedicated by the constitution will correspondingly change. Consequently, the amount of appropriations subject to the limit is not finalized until actual revenue collections are finalized at the end of the biennium.
- ♦ When adjusted for growth in Texas personal income, appropriations restricted by the spending limit have decreased since the limit was implemented.

DISCUSSION

During the late 1970s, taxpayers nationwide experienced tax increases beyond their abilities to pay these increases. As a result, many states passed legislation restricting tax growth as part of a nationwide taxpayer revolt. Texas passed its tax relief package (House Joint Resolution 1, Sixty-fifth Legislature, Second Called Session, 1978), including the establishment of the Texas Constitution, Article VIII, Section 22, spending limit.

The spending limit originally was constructed as a taxpayer protection to restrict the growth of tax-funded appropriations. It was not intended to restrict growth of appropriations required by the constitution or appropriations funded with nontax revenue, such as fees or federal receipts.

In addition to establishing the spending limit, the relief package established other taxpayer relief and protection measures, including: a mandatory school homestead exemption; a mandatory school exemption for the elderly and disabled; a tax freeze exemption for the elderly; a personal property exemption; an exemption for qualified agricultural land; a local option tax exemption for the disabled; a protection of school districts against lost revenues through the operation of school funding formulas; and truth-in-taxation provisions.

CONSTITUTION, ARTICLE VIII, SECTION 22

The spending limit is established in the Texas Constitution, Article VIII, Section 22. The limit prohibits appropriations funded with state tax revenues that are not dedicated by the constitution from growing faster than the estimated rate of growth of the state's economy.

IMPLEMENTATION AND GROWTH RATE

The constitution instructs the Legislature to provide procedures to implement the spending limit, which the Legislature did in the Texas Government Code, Chapter 316. The 10-member Legislative Budget Board (LBB) is required to hold a public hearing no later than December 1 before each regular legislative session to establish the limit for the upcoming biennium. Before this public hearing, the LBB is required to publish a description of the methodology and sources used to calculate the limit. At the public hearing, the LBB is required to identify appropriations subject to the limit in the current biennium, adopt a growth rate to apply to the current appropriations, and identify the resulting limit for the next biennium.

After adoption, the LBB submits the motion to the Spending Limit Committee for approval. The committee includes the Governor, Lieutenant Governor, Speaker of the House, and the Comptroller of Public Accounts (CPA). If the committee does not act within 10 days, the motion is treated as if the committee had adopted the motion as submitted.

The Texas Government Code, 316.002(b), requires the LBB to use growth in Texas personal income as the measurement of growth in the state's economy. In the absence of action by the LBB to adopt a spending limit, the growth rate shall be treated as if it were zero. The growth period is prospective, both to align with the budget period and the revenue forecast supporting the budget, and also in response to constitutional language requiring an "estimated" growth rate. Once adopted by the LBB, the growth rate does not change. However, the spending limit on the next biennium is updated to reflect appropriation and revenue changes, certified by CPA, in the base biennium. The base biennium refers to the biennium that the growth rate is applied to when establishing the spending limit for the next biennium.

APPROPRIATIONS RESTRICTED BY THE SPENDING LIMIT

The spending limit restricts the growth of appropriations funded with state tax revenues that are not dedicated by the constitution. The spending limit does not restrict the growth of appropriations funded with nontax revenues or appropriations funded with tax revenues if the constitution requires the tax revenue to be spent for a specific purpose. The revenue source funding the appropriations determines if the appropriations are restricted by the spending limit; the purpose and method of finance of the appropriation are not relevant.

The spending limit does not directly restrict the growth of existing taxes or the initiation of new taxes. But the appropriation of significantly increased tax revenues likely would exceed the spending limit without a vote by the Legislature to exceed the limit. For example, if the Legislature passed a significant tax increase, it would likely have to pass a resolution to exceed the limit to appropriate those tax revenues.

APPLICATION TO STATE METHODS OF FINANCE

The spending limit restricts growth of all appropriations from state tax revenues that are not dedicated by the constitution, regardless of method of finance (MOF). This restriction includes appropriations from General Revenue Funds, General Revenue–Dedicated Funds, and Other Funds. Federal Funds receive federal revenues and are not restricted by the spending limit because the funds do not contain state tax revenue.

GENERAL REVENUE FUNDS

General Revenue Funds is the MOF for general-purpose spending. General Revenue Funds appropriations are financed with revenues in the following funds: General Revenue Fund (No. 0001), Available School Fund (No. 0002), State Instructional Materials Fund (No. 0003), Foundation School Fund (No. 0193), and Tobacco Settlement Fund (No. 5040). CPA refers to revenues in these funds collectively as General Revenue–Related revenues. Many different types of revenues are deposited to these funds, but only deposits of tax revenues that are not dedicated by the constitution are restricted by the spending limit when funding appropriations.

For example, General Revenue Funds appropriations funded with sales taxes, motor vehicle sales taxes, and franchise taxes are restricted by the spending limit. General Revenue Funds appropriations funded with nontax revenues such as lottery proceeds, licenses, fees, fines, penalties, interest, and investment income are not restricted by the spending limit.

The constitution requires some tax revenues to be appropriated for a specific purpose. Appropriations financed with tax revenues that are dedicated by the constitution are not restricted by the spending limit. For example, the Texas Constitution, Article VIII, Section 7-a, dedicates 75.0 percent of motor fuel taxes to transportation and the remaining 25.0 percent to education. Those transportation and education appropriations required by the constitution are examples of appropriations not restricted by the spending limit. Similarly, 25.0 percent of occupation taxes, including oil and natural gas production taxes, are constitutionally dedicated to education by the Texas Constitution, Article VII, Section 3(a). Those appropriations are also not restricted by the spending limit. However, the remaining 75.0 percent of occupation taxes are not dedicated; consequently, appropriations funded with those taxes are restricted by the spending limit.

Figure 1 shows General Revenue–Related revenue estimates, as estimated in CPA's *2018–19 Biennial Revenue Estimate*, January 2017, by total revenue, constitutionally dedicated tax revenue (not subject to the limit), nontax revenue (not subject to the limit), and tax revenue not constitutionally dedicated (subject to the limit). **Figure 1** shows that

FIGURE 1
GENERAL REVENUE–RELATED STATE REVENUE BY SOURCE, 2018–19 BIENNIUM

(IN MILLIONS)	TOTAL 2018–19	TAX REVENUE DEDICATED BY THE CONSTITUTION	NON-TAX REVENUE	TAX REVENUE NOT DEDICATED BY THE CONSTITUTION
TAX COLLECTIONS				
Sales Taxes	$57,262			$57,262
Motor Vehicle Sales and Rental Taxes	$9,866			$9,866
Motor Fuels Taxes	$1,943	$1,867		$76
Franchise Tax	$5,994			$5,994
Insurance Taxes	$5,129	$1,208		$3,921
Natural Gas Tax	$1,703	$426		$1,277
Cigarette and Tobacco Taxes	$1,194			$1,194
Alcoholic Beverage Taxes	$2,627			$2,627
Oil Production and Regulation Taxes	$4,731	$1,183		$3,548
Inheritance Tax	-			-
Utility Taxes	$905	$184		$721
Hotel Occupancy Tax	$1,158			$1,158
Other Taxes	$161	$40		$121
TOTAL TAXES	**$92,673**	**$4,908**	**-**	**$87,765**
REVENUE BY SOURCE				
Tax Collections	$92,673	$4,908	-	$87,765
Licenses, Fees, Fines, and Penalties	$2,733		$2,733	
Interest and Investment Income	$2,614		$2,614	
Lottery Proceeds	$2,485		$2,485	
Sales of Goods & Services	$246		$246	
Settlements of Claims	$1,015		$1,015	
Land Income	$28		$28	
Contributions to Employee Benefits	$0		$0	
Other Revenue Sources	$4,676		$4,676	
TOTAL REVENUE	**$106,470**	**$4,908**	**$13,797**	**$87,765**

SOURCES: Legislative Budget Board; Comptroller of Public Accounts' *Biennial Revenue Estimate*, January 2017.

$87.8 billion, or 82.4 percent, of total 2018–19 General Revenue–Related revenue estimates are from tax revenue not dedicated by the constitution and are subject to the spending limit when funding appropriations.

PROPERTY TAX RELIEF FUND

The Property Tax Relief Fund (Other Funds) includes certain deposits of motor vehicle sales taxes, franchise taxes, and tobacco taxes. The Texas Government Code, Section 403.109, statutorily dedicates those tax revenues to funding property tax relief. Because those revenues are statutorily dedicated, not constitutionally dedicated, appropriations funded with those revenues are restricted by the spending limit.

ECONOMIC STABILIZATION FUND AND STATE HIGHWAY FUND

The Texas Constitution, Article III, Section 49-g, requires CPA to transfer an amount of General Revenue Funds deposits to two Other Funds, the Economic Stabilization Fund (ESF) and the State Highway Fund (SHF), based on the amount of oil and natural gas production taxes deposited to the General Revenue Fund during the previous fiscal year.

The revenue transferred to the ESF is not constitutionally dedicated because Article III, Section 49-g (m), authorizes the revenue to be appropriated "at any time and for any purpose" with a two-thirds vote of each legislative chamber.

Consequently, appropriations funded with tax revenues transferred to the ESF are restricted by the spending limit.

Conversely, revenue transferred to the SHF is constitutionally dedicated by Article III, Section 49-g (c), to transportation. Appropriations from the SHF funded with this transferred revenue are constitutionally dedicated and thus are not restricted by the spending limit.

Additionally, the Texas Constitution, Article VIII, Section 7(c), requires certain sales tax revenue (effective September 1, 2017) and certain motor vehicle sales tax revenue (effective September 1, 2019) to be deposited to the SHF and to be appropriated only to: (1) construct, maintain, or acquire rights-of-way for public roadways other than toll roads; or (2) repay the principal and interest on General Obligation bonds issued, as authorized by the Texas Constitution, Article III, Section 49-p. Because the constitution requires these revenues to be appropriated for a specific purpose, these appropriations will not be restricted by the spending limit.

REVENUE AND APPROPRIATION CHANGES AFFECTING THE SPENDING LIMIT

The amount of appropriations subject to the spending limit change when either appropriation authority changes or when the amount or type of revenue that is funding the appropriations changes. Changes during the base biennium will impact the amount that the base biennium is less than the spending limit. These changes also impact the spending limit for the next biennium because it is grown from the amount of appropriations subject to the limit during the base biennium.

SUPPLEMENTAL APPROPRIATIONS

Texas budgets on a biennial basis. Each regular session, the Legislature reviews the budget passed by the previous Legislature (the current budget) and determines if adjustments are needed to the current budget. Appropriation adjustments to the current budget are made every session in the supplemental appropriations bill, which can either increase or decrease appropriations.

The supplemental appropriations bill changes total appropriation authority for the current budget and must fit within the current biennium's spending limit. Those supplemental appropriations combine with existing appropriations, passed by the previous Legislature, to establish a new base for calculating the next biennium's spending limit. Because the current biennium is the base for the next biennium, the appropriation change will carry forward when calculating the spending limit for the next biennium. Consequently, additional base appropriations will increase the spending limit for the next biennium. Conversely, an appropriations savings will decrease the spending limit for the next biennium.

For example, if the Eighty-fifth Legislature, 2017, increases 2016–17 biennial appropriations subject to the spending limit, those supplemental appropriations would have to fit within the current 2016–17 biennial spending limit. Those fiscal year 2017 supplemental appropriations would be combined with existing 2016–17 appropriations to establish a new base for calculating the 2018–19 biennial spending limit.

CHANGES IN REVENUE ESTIMATES

The spending limit restricts the growth of appropriations funded with certain tax revenues. A change in revenue independently affects the amount and type of revenues available to fund appropriations. Therefore, in isolation and absent appropriation changes, if tax revenue subject to the spending limit increased, then a larger portion of the budget would be funded with tax revenue that is subject to the limit.

For example, in isolation, if sales tax collections exceed sales tax estimates by $1.0 billion, then a larger portion of the budget would be funded with sales tax revenue, which is subject to the limit. Therefore, it is possible for appropriations subject to the spending limit to increase (or decrease) without any changes in appropriations, only changes in revenue estimates.

FINAL CALCULATION

Final appropriations subject to the spending limit will not be known until after all revenue for the biennium is collected. Appropriations financed with revenue subject to the limit could increase if final tax revenue collections not dedicated by the constitution are greater than estimated or if nontax revenue collections (or constitutionally dedicated tax revenue) are less than estimated.

TAX RELIEF AND THE SPENDING LIMIT

Absent constitutional or statutory implications, tax cuts in isolation do not affect appropriation amounts. However, changes in the amount or type of revenue collections affect the levels of appropriations funded with tax revenues that are subject to and not subject to the spending limit. For example, cutting sales tax revenues would reduce the percentage of tax revenue subject to the spending limit in the General Revenue Fund compared to nontax revenue. As a result, a smaller portion of existing General Revenue Funds appropriations would be funded with revenue subject to the spending limit, resulting in additional spending capacity within the spending limit. However, the entire sales tax cut would cost the pay-as-you-go limit, pursuant to the Texas Constitution, Article III, Section 49a. (See the section regarding the spending limit's Relationship to Other Constitutional Limits.)

PROPERTY TAX CUTS

Texas does not levy property taxes. All property taxes are levied by local taxing jurisdictions. Consequently, the state cannot cut property taxes. The state must require local taxing jurisdictions to cut property taxes, resulting in less property tax revenue for local jurisdictions.

School districts use local property tax revenue, along with state funds, to provide educational services. The Foundation School Program is the state's principal vehicle for distributing state aid to school districts. School funding formulas result in the state making up most, but not all, local revenue reductions. Directing local school districts to cut property taxes would reduce local school district property tax revenue. As a result, school funding formulas would trigger additional General Revenue Funds appropriations through the Foundation School Program to offset property tax revenue lost to school districts. These new General Revenue Funds appropriations would be subject to the spending limit to the extent that they are funded with tax revenue that is not dedicated by the constitution.

It is important to note that a piece of legislation resulting in a tax cut simply reduces revenue and is not an appropriation of any kind. It is not the property tax cut itself that is subject to the spending limit; it is the additional appropriations required by law to replace lost school district revenues that are subject to the limit.

FRANCHISE TAX CUTS

The Property Tax Relief Fund (Other Fund) serves as one of several methods of financing for the Foundation School Program. The Property Tax Relief Fund is funded with revenues resulting from a package of legislation passed by the Seventy-ninth Legislature, Third Called Session, 2006, to provide property tax rate reductions. The amounts deposited to the Property Tax Relief Fund are essentially the amounts generated by the increase in those taxes, with the greatest contributions coming from the franchise tax. The fund also receives deposits of certain motor vehicle sales taxes and tobacco taxes. Those revenues are statutorily dedicated; therefore, appropriations from the Property Tax Relief Fund funded with those tax revenues count against the spending limit. Any shortfall of revenue in the Property Tax Relief Fund would trigger additional offsetting General Revenue Funds appropriations to cover the shortfall to the Foundation School Program.

A franchise tax cut would reduce franchise tax revenues deposited into and appropriations from the Property Tax Relief Fund. Reducing appropriations from the Property Tax Relief Fund, in isolation, would reduce appropriations subject to the spending limit. However, school funding formulas would shift the appropriations, equaling the amount of the shortfall, from the Property Tax Relief Fund to the General Revenue Fund. The resulting General Revenue Funds appropriation would count against the spending limit to the extent that it is financed with tax revenue that is not dedicated by the constitution. In sum, a margins tax cut would result in a spending limit savings to the Property Tax Relief Fund and a spending limit cost to the General Revenue Fund. The overall change in appropriations subject to the spending limit would not be significant.

COMPLIANCE WITH THE SPENDING LIMIT

Figure 2 shows the spending limit and appropriations subject to it for each biennium since the limit was implemented. Appropriations have never exceeded the spending limit. However, during three biennia (1988–89, 1990–91, and 1992–93), the Legislative Budget Board did not adopt a growth rate, which prevented the setting of a spending limit. During those biennia, appropriations from tax revenue not dedicated by the constitution grew 5.4 percent, 21.8 percent, and 14.6 percent, respectively. In 1991, in response to litigation, the Legislature passed the Texas Government Code, Section 316.002(e), which sets the growth rate at zero percent if the Board does not adopt a growth rate.

Part of the 1992–93 biennial increase in appropriations subject to the limit (14.6 percent) resulted from the last major net tax increase in Texas. Facing a $4.9 billion shortfall, the Seventy-second Legislature, 1991, enacted three major pieces of revenue-raising legislation: an omnibus tax bill, a fiscal management bill, and a state lottery. House Bill 11, Seventy-second Legislature, First Called Session, 1991, the omnibus bill, raised $2.7 billion in new revenues by increasing various taxes and fees. Of that amount, $2.1 billion was available for spending from General Revenue Funds in the 1992–93 biennium. The largest single revenue item in the bill was an increase in the motor fuels tax. Appropriations financed with

FIGURE 2
THE TEXAS CONSTITUTION, ARTICLE VIII, SECTION 22, SPENDING LIMIT, 1982–83 TO 2016–17 BIENNIA

(IN MILLIONS)

BIENNIUM	BASE APPROPRIATIONS FROM TAX REVENUE NOT DEDICATED BY THE CONSTITUTION	ADOPTED PERSONAL INCOME GROWTH RATE	ARTICLE VIII SPENDING LIMIT	APPROPRIATIONS FROM TAX REVENUE NOT DEDICATED BY THE CONSTITUTION	AMOUNT BELOW THE LIMIT
1982–83	$11,420.2	33.00%	$15,188.9	$14,993.7	$195.2
1984–85	$14,993.7	28.60%	$19,281.9	$18,418.6	$863.3
1986–87	$18,418.6	18.50%	$21,826.0	$19,213.5	$2,612.6
1988–89	$19,213.5	none adopted	none adopted	$20,242.6	
1990–91	$20,242.6	none adopted	none adopted	$24,662.4	
1992–93	$24,662.4	none adopted	none adopted	$28,270.5	
1994–95	$28,270.5	13.43%	$32,067.2	$32,058.6	$8.6
1996–97	$32,058.6	13.98%	$36,540.4	$35,761.5	$778.9
1998–99	$35,761.5	11.12%	$39,738.2	$39,487.9	$250.3
2000–01	$39,487.9	13.44%	$44,795.1	$44,795.0	$0.1
2002–03	$44,795.0	14.09%	$51,106.6	$47,476.3	$3,630.3
2004–05	$47,476.3	11.83%	$53,092.8	$49,932.8	$3,160.0
2006–07	$49,932.8	11.34%	$55,595.2	$54,808.3	$786.9
2008–09	$54,808.3	13.11%	$76,184.6	$71,632.2	$4,552.4
2010–11	$71,632.2	9.14%	$78,179.4	$70,934.7	$7,244.7
2012–13	$70,934.7	8.92%	$77,262.1	$76,999.1	$262.9
2014–15	$76,999.1	10.71%	$85,245.7	$84,677.7	$568.1
2016–17	$84,677.7	11.68%	$94,568.0	$92,918.2	$1,649.8

NOTE: The 2008–09 spending limit includes an additional $14.2 billion authorized by Senate Concurrent Resolution 20, 80th Regular Session (2007), to cover the cost of reduced local revenues resulting from property tax rate reductions. State appropriations financing these property tax rate reductions are included in 2007–17 appropriation totals. 2016–17 amounts include appropriation totals from the Legislative Budget Board's *House Summary of Legislative Budget Estimates*, January 2017, and revenue totals from the Comptroller's *Biennial Revenue Estimate for 2018–19*, January 2017.
SOURCE: Legislative Budget Board.

these additional motor fuels taxes did not affect the spending limit because the revenues are constitutionally dedicated. However, House Bill 11 also increased the franchise tax, expanded the sales tax base, and increased the motor vehicle sales tax. Appropriations financed with these tax increases would have counted against the spending limit if one had been adopted for the 1992–93 biennium.

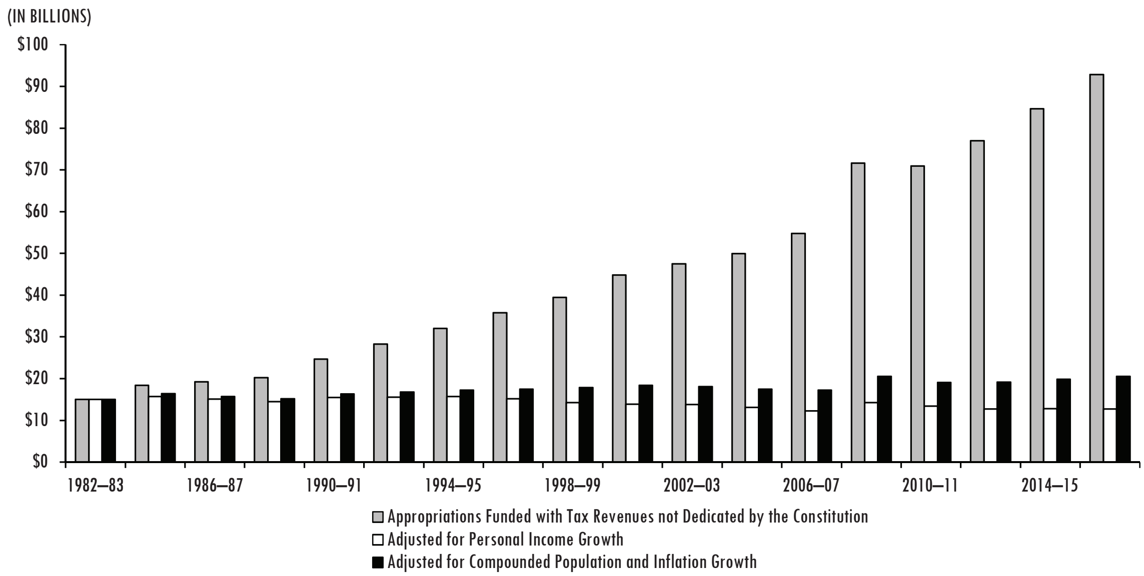
The only time the Legislature voted to raise the spending limit was with Senate Concurrent Resolution 20, Eightieth Legislature, 2007. The resolution authorized additional state appropriations to offset local revenue losses resulting from $14.2 billion in state required local property tax rate reductions. The property tax rate reductions were initiated by House Bill 1, Seventy-ninth Legislature, Third Called Session, 2006. The reductions were partially offset by increased franchise, tobacco, and motor vehicle sales taxes. Combined, the tax package resulted in a net tax cut to taxpayers but a net tax increase to the state as a portion of school funding obligations shifted from local districts to the state.

EFFECTS OF THE SPENDING LIMIT

Figure 3 shows growth in appropriations from state tax revenues not dedicated by the constitution since the spending limit was implemented in the 1982–83 biennium. Appropriations subject to the limit totaled $15.0 billion in the 1982–83 biennium and have grown by $77.9 million, or 519.7 percent, to $92.9 billion in the 2016–17 biennium.

When biennial appropriations totals are adjusted into 1982–83 biennial dollars based on Texas personal income growth, 2016–17 appropriations subject to the limit total $13.0 billion, a decrease of $2.0 billion, or 13.0 percent. This analysis shows that appropriations from state tax revenues not dedicated by the constitution have decreased when adjusted for actual personal income growth, even

FIGURE 3
TRENDS IN APPROPRIATIONS SUBJECT TO THE STATE SPENDING LIMIT, 1982–83 TO 2016–17 BIENNIA



Source: Legislative Budget Board.

with the resolution to raise the limit in the 2008–09 biennium. If the additional appropriations authorized by the resolution were excluded, the 2016–17 biennial appropriations subject to the limit would total $79.7 billion, and $11.2 billion after adjustment for Texas personal income growth since the 1982–83 biennium, a decrease of $3.8 billion, or 25.4 percent.

When adjusted for compounded growth in population and inflation since the 1982–83 biennium, 2016–17 biennial appropriations subject to the limit total $20.6 billion, an increase of $5.6 billion, or 37.3 percent. If the additional appropriations authorized by the resolution in the 2008–09 biennium were excluded, 2016–17 biennial appropriations subject to the limit would total $17.7 billion after adjustment for compounded growth in population and inflation, which is an increase of $2.7 billion, or 17.8 percent.

RELATIONSHIP TO OTHER CONSTITUTIONAL LIMITS

Texas has three other constitutional restrictions on spending: the pay-as-you-go limit, the debt limit, and the welfare spending limit. The pay-as-you-go limit and the spending limit restrict a broad spectrum of appropriations and work together to restrict spending. The debt limit and the welfare spending limit restrict specific appropriations.

PAY-AS-YOU-GO LIMIT

The Texas Constitution, Article III, Section 49a, pay-as-you-go limit was approved by voters in November 1942. It requires all appropriations to be within estimates of available revenue in the fund from which the appropriations are made. However, the commonly called pay-as-you-go limit restricts only General Revenue Funds appropriations.

The pay-as-you-go limit equals the amount of revenue that CPA certifies is available to fund General Revenue Funds appropriations. This amount includes the beginning balance in the General Revenue Fund, collections deposited to the General Revenue Fund, and, as a result of funds consolidation, unappropriated General Revenue–Dedicated Funds account balances available for certification. Comparatively, most tax revenue not dedicated by the constitution, the basis for the spending limit, is deposited into the General Revenue Fund. Approximately 80.0 percent to 85.0 percent of revenue deposited into the General Revenue Fund is tax revenue not dedicated by the constitution.

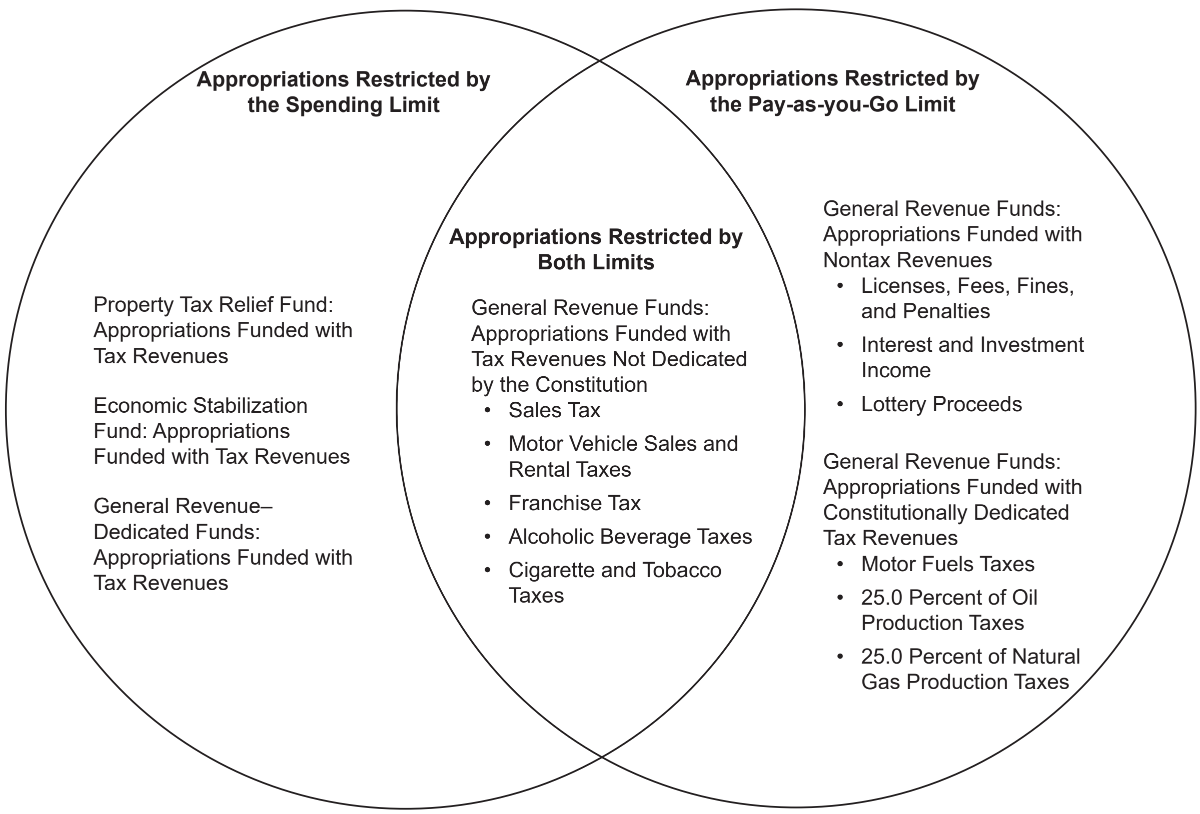
Appropriations from two other large funds, the Property Tax Relief Fund and the Economic Stabilization Fund, are not used to certify General Revenue Funds appropriations and, therefore, are not included in CPA's calculation of available revenue for the pay-as-you-go limit. However, as noted, appropriations from those funds are restricted by the spending limit. The State Highway Fund (Other Fund) does not collect tax revenue that is not dedicated by the constitution. Therefore, appropriations from this fund are not restricted by either limit.

Figure 4 shows categories of appropriations restricted by the spending limit and the pay-as-you-go limit. **Figures 5** and **6** show the portion of the 2016–17 biennial State Funds Budget that is restricted by both limits. The total 2016–17 biennial State Funds budget—which consists of General Revenue Funds, General Revenue–Dedicated Funds, and Other Funds—totals $144.3 billion, 64.4 percent of which is restricted by the spending limit, and 74.9 percent of which is restricted by the pay-as-you-go limit. The largest portion of the State Funds Budget that is not restricted by either limit are State Highway Fund appropriations. Appropriations for the 2016–17 biennium for the State Highway Fund total $12.2 billion, which is 8.5 percent of the State Funds Budget.

DEBT LIMIT

The Texas Constitution, Article III, Section 49-j, debt limit was approved by voters in November 1997. The debt limit restricts the authorization of additional state debt if, in any fiscal year, the resulting annual debt service payable from the unrestricted General Revenue Fund exceeds 5.0 percent of

FIGURE 4
CATEGORIES OF APPROPRIATIONS RESTRICTED BY THE SPENDING LIMIT AND THE PAY-AS-YOU-GO LIMIT



Appropriations Restricted by Neither Limit

General Revenue–Dedicated Funds: Appropriations Funded with Nontax Revenues

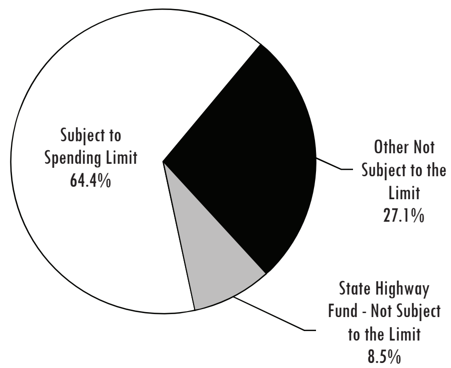
State Highway Fund Appropriations

Mobility Fund Appropriations

Federal Fund Appropriations

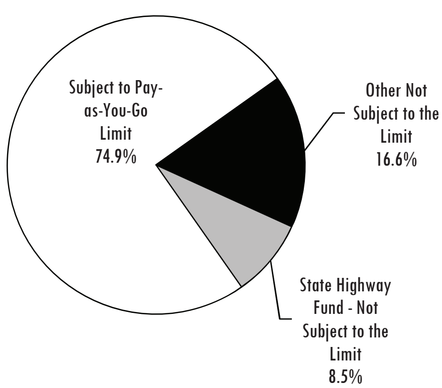
Source: Legislative Budget Board.

FIGURE 5
STATE APPROPRIATIONS RESTRICTED BY THE SPENDING LIMIT, 2016–17 BIENNIUM



SOURCE: Legislative Budget Board.

FIGURE 6
STATE APPROPRIATIONS RESTRICTED BY THE PAY-AS-YOU-GO LIMIT, 2016–17 BIENNIUM



SOURCE: Legislative Budget Board.

the average annual unrestricted General Revenue Funds for the previous three years.

As of the end of fiscal year 2016, the Bond Review Board reported that the debt service ratio for issued debt was 1.36 percent. For the same period, the debt service ratio for authorized but unissued debt was 2.37 percent.

WELFARE SPENDING LIMIT

The Texas Constitution, Article III, Section 51-a, welfare spending limit was approved by voters in August 1945. It provides that the state funds appropriated for assistance grants on behalf of needy dependent children and their caretakers (i.e., Temporary Assistance for Needy Families (TANF)) must not exceed 1.0 percent of the state budget in any biennium.

The 2016–17 biennial All Funds state budget totals $216.2 billion, which sets the welfare limit at $2.2 billion. State funds appropriated for TANF grants during the 2016–17 biennium total $96.5 million, which is $2.1 billion less than the limit.

OVERVIEW OF OIL AND GAS INDUSTRY CONTRIBUTIONS TO THE TEXAS ECONOMY AND STATE REVENUE

The oil and gas industry is an important sector of the Texas economy. This industry has become increasingly important during the previous five years, spurred by advances in drilling technologies and well stimulation techniques. The industry contributes to the overall Texas economy and to the amount of tax and nontax revenue collected to fund Texas state and local government entities.

FACTS AND FINDINGS

- ♦ The Texas oil and gas industry is more volatile than other areas of the state's economy. The industry relies greatly on capital, and the product price can be difficult to forecast.
- ♦ The oil and gas industry contributed 12.3 percent of Texas' real gross state product and supported 261 thousand jobs in calendar year 2015.
- ♦ Severance tax collections totaled a record high of $5.8 billion in fiscal year 2014, but have decreased to $4.2 billion in fiscal year 2015 and $2.3 billion in fiscal year 2016.
- ♦ Direct sales tax collections from the oil and gas industry totaled approximately $2.0 billion for calendar year 2014 and $1.4 billion for calendar year 2015.
- ♦ The widespread use of horizontal drilling and hydraulic fracturing to extract oil and gas from rock formations in Texas has resulted in higher property appraisal values near production areas. In tax year 2014, school districts levied approximately $1.86 billion in property taxes on oil and gas properties.

DISCUSSION

The three main types of hydrocarbon resources are crude oil, natural gas, and natural gas liquids from underground reservoirs. Upstream oil and gas industry refers to companies and individuals involved in the exploration for and subsequent removal of these three hydrocarbons. Midstream industry refers to companies involved in transporting hydrocarbons from areas of production to various locations such as refineries, storage facilities, or distributors. Downstream industry refers to companies and individuals involved in refining and processing hydrocarbons into end-use products. While the midstream and downstream oil and gas industry also contribute to economic activity and government revenue, this report will focus only on the upstream oil and gas industry.

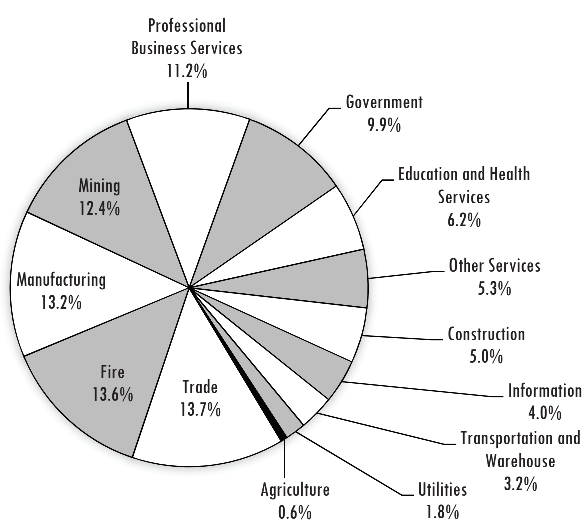
ECONOMIC CONTRIBUTIONS

The oil and gas industry contributes to Texas' economy by adding value and employment, and by contributing to the growth of other industries.

VALUE ADDED

For calendar year 2015, the oil and gas industry in Texas produced inflation-adjusted market value of final goods and services totaling approximately $181.9 billion. This amount composed 12.3 percent of Texas' real gross state product (GSP), more than five times higher than the corresponding concentration of 2.4 percent for the U.S. economy. Texas is among five U.S. states that have a share of GSP produced by the oil and gas sector that is higher than 10.0 percent. **Figure 1** shows the distribution of real GSP by industry.

FIGURE 1
TEXAS GROSS STATE PRODUCT BY INDUSTRY
CALENDAR YEAR 2015



SOURCE: U.S. Bureau of Economic Analysis.

Growth in the oil and gas industry is more volatile than the overall Texas economy, as shown in **Figure 2**. This variability is due to the capital-intensive nature of the business and the underlying volatility of the product price. Beginning in the middle of the first decade of the 2000s, advancements in technology rapidly improved the industry's ability to recover hydrocarbons from certain types of rock formations, particularly shale formations. Combined with high crude oil and natural gas liquids (NGL) prices after the 2007 to 2009 recession, these new production techniques induced large capital expenditures by the industry in Texas, which correspondingly led to output gains and GSP increases in the industry greater than the industrywide average since calendar year 2012. Growth started to slow in the first half of calendar year 2015 in response to collapsing commodity prices within the industry.

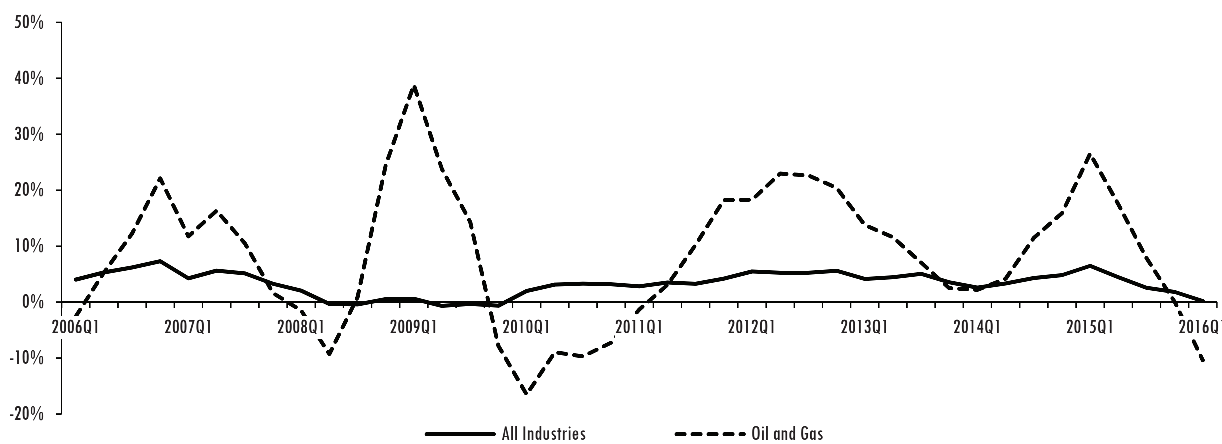
Another important consideration regarding the amount of value added to the Texas economy by the oil and gas industry are the spillover effects from the sector. These effects include employment and demand induced in other sectors of the economy by spending and employment from oil and gas companies. Spillover effects are primarily determined by the amount of intermediate inputs an industry uses from all other industries to produce a good or service. The U.S. Bureau of Economic Analysis (BEA) estimates these effects for different industries and in different regions of the country, producing statistics known as direct effect (DE) and final demand (FD) multipliers. These multipliers are important to distinguish how an increase or decrease in the economic activity of one industry will affect the overall state economy. For example; if an industry's FD – value added multiplier equals 1.5, then a $100 increase in the industry's output delivered to final demand (sales) should lead to a $150 increase in the state's total value added (GSP).

The oil and gas industry has relatively small spillover effects regarding FD multipliers. BEA estimates show that the oil and gas extraction industry has the lowest multiplier for output, earnings, and employment among all 63 business industries measured. These multipliers are somewhat higher in the Support Activities for Mining industry, but still in the bottom half of Texas industries. Therefore, a decrease in sales in the oil and gas industry will not have as large of an effect on the overall Texas economy as a sales decrease in other industries. Conversely, the DE multiplier for employment is relatively high, estimated at 3.76, which is the ninth-highest DE for an industry in Texas. For every job established in the oil and gas industry, the BEA estimates approximately 3.76 jobs will be established in the state. This high estimate can partially be explained by productivity in the industry; output per job is relatively high in the oil and gas industry, compared to other parts of the economy.

EMPLOYMENT

As of August 2016, direct employment in the oil and gas industry totaled 215,500. The sector's employment has decreased 29.8 percent since a peak in December 2014, approximately the same timeframe in which the rapid decrease in crude oil prices began. However, this decrease followed a 74.7 percent increase in employment since the most recent nationwide recession ended in 2009. Statewide,

FIGURE 2
TEXAS REAL GROSS STATE PRODUCT GROWTH RATES, CALENDAR YEARS 2006 TO 2016, FIRST QUARTER



SOURCE: U.S. Bureau of Economic Analysis.

industry employment represents only 1.8 percent of the 12.0 million total jobs in Texas. This share has remained relatively constant, fluctuating from 1.3 percent to 2.6 percent since 1991. On a national level, Texas oil and gas industry employment represents less than half (48.0 percent) of total industry jobs in the U.S.

Figure 3 shows total oil and gas industry employment since 1991 split into the two major subsectors: Support Activities for Mining and Oil and Gas Extraction. The recent decrease in employment has been more concentrated in Support Activities, decreasing 38.9 percent since the 2014 peak. In comparison, employment in Extraction has decreased 12.0 percent. The relatively smaller decreases from recent peaks in oil and gas employment (29.8 percent) and crude oil production (12.2 percent) are in contrast to the corresponding decrease from the peak in crude oil prices (57.7 percent) and decrease in the number of active rotary rigs drilling for oil and gas in the state (74.4 percent).

The oil and gas industry is the highest-paid sector in Texas. As shown in **Figure 4**, as of the first quarter in 2016, average weekly wages in the industry were $2,927, more than double the statewide weekly average across all industries of $1,066. Higher wages lead to greater personal consumption expenditures by employees in the industry, and thus the relatively large DE employment multiplier in the industry discussed previously.

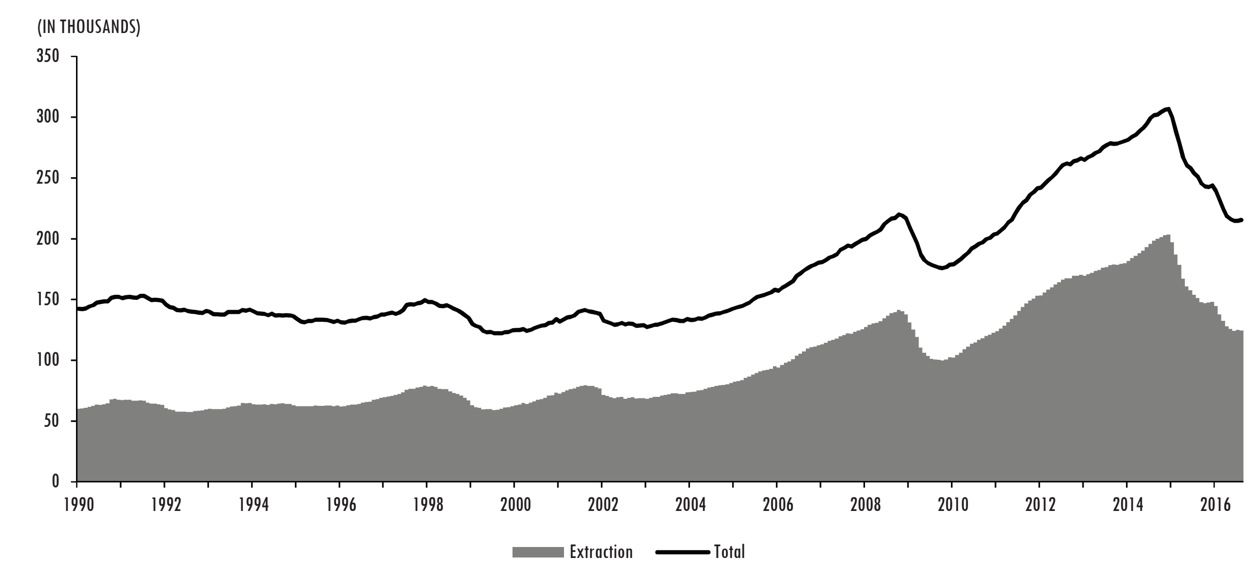
STATE REVENUE CONTRIBUTIONS

SEVERANCE TAXES

Texas imposes a tax on the value of oil and gas produced in the state, typically known as severance taxes because they are intended to tax the right to sever various hydrocarbons from below ground to produce a marketable product. The tax rates are 4.6 percent (since 1951) of the value of crude oil and condensate and 7.5 percent (since 1969) of natural gas and casinghead gas, which is produced with crude oil. However, the effective rates are lower due to several exemptions and exclusions from the tax provided to producers. These taxes are ad valorem; therefore, revenue is a function of production levels and commodity prices. **Figures 5** and **6** show crude oil and natural gas production and price levels since the 1970s. Production of oil and gas in Texas had been decreasing overall for 30 years until a recent turnaround began in 2011, spurred by the advance of new drilling technologies. However, around the turn of the century, commodity price increases offset the lost production and led to an increase in severance tax revenue.

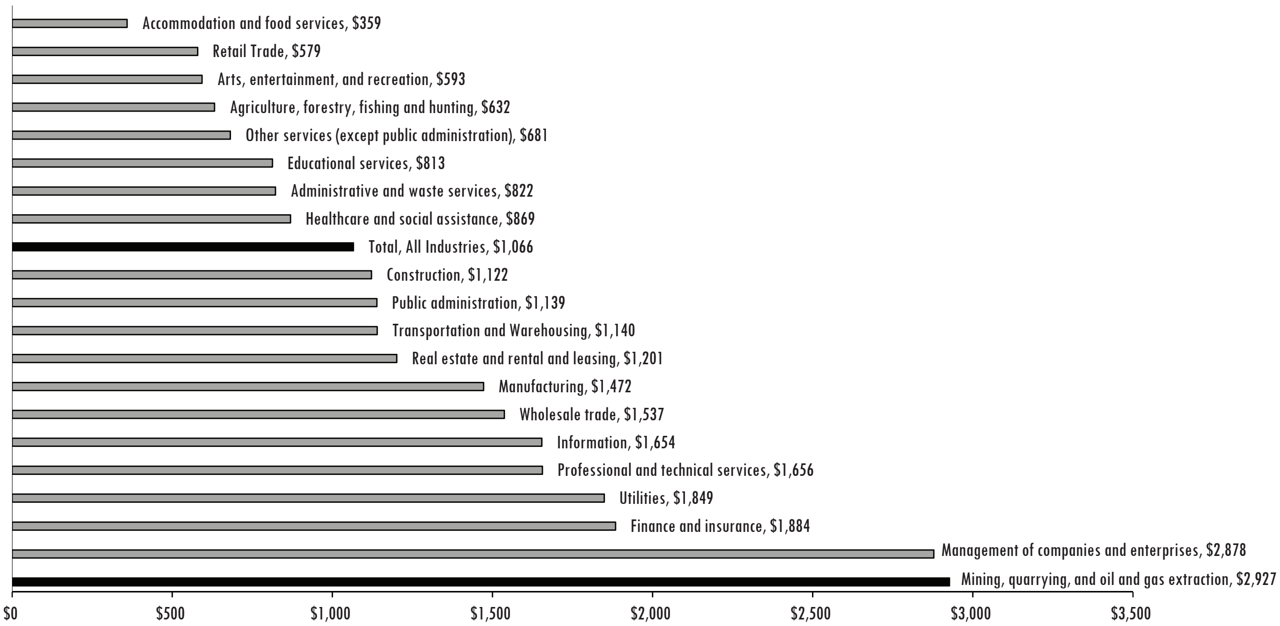
Severance taxes have historically been the most volatile source of state revenue. As shown in **Figure 7**, severance taxes made up nearly 30.0 percent of all Texas taxes in the early 1980s, which made state finances vulnerable to the oil price collapse of the late 1980s. Reliance on this revenue stream decreased during subsequent decades, even while total severance tax

FIGURE 3
TEXAS OIL AND GAS SECTOR EMPLOYMENT, FISCAL YEARS 1990 TO 2016



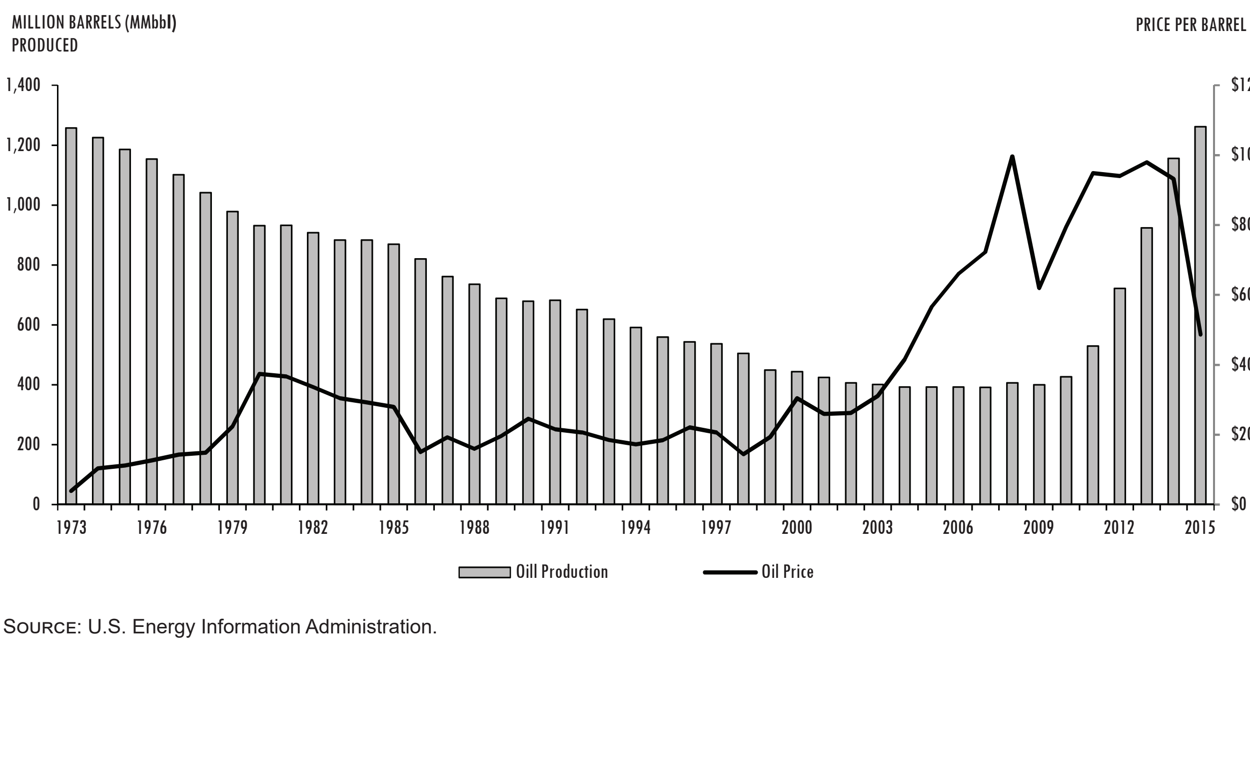
SOURCE: U.S. Bureau of Economic Analysis.

FIGURE 4
TEXAS AVERAGE WEEKLY WAGES, CALENDAR YEAR 2016, FIRST QUARTER



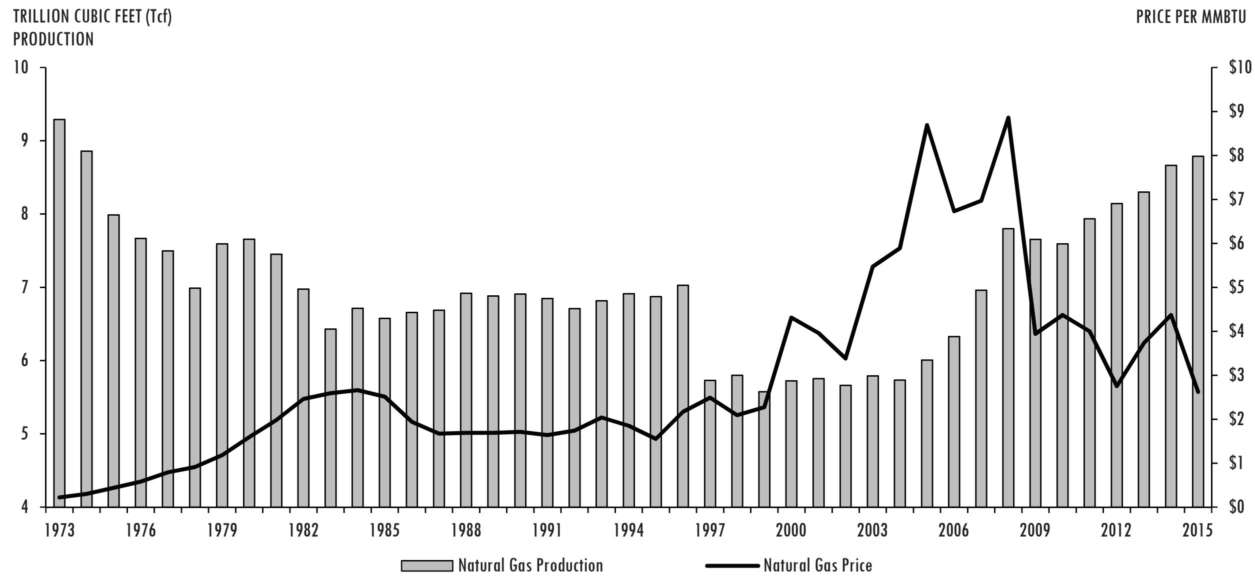
SOURCE: U.S. Bureau of Economic Analysis.

FIGURE 5
TEXAS ANNUAL OIL PRODUCTION AND PRICE, CALENDAR YEARS 1973 TO 2015



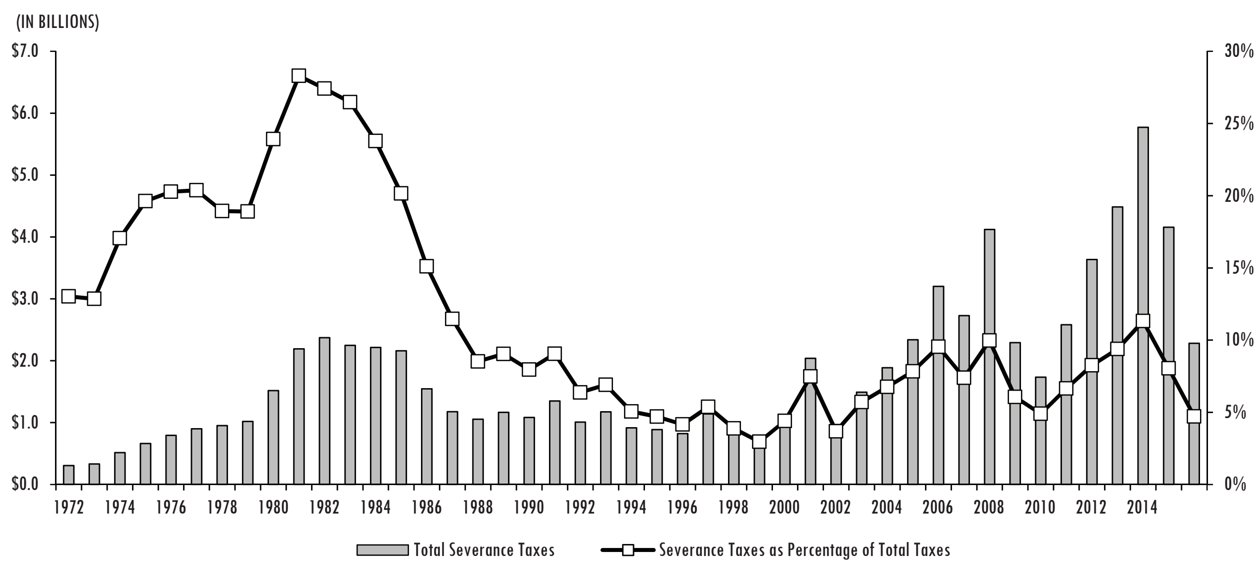
SOURCE: U.S. Energy Information Administration.

FIGURE 6
TEXAS ANNUAL NATURAL GAS PRODUCTION AND PRICE, CALENDAR YEARS 1973 TO 2015



SOURCE: U.S. Energy Information Administration.

FIGURE 7
TEXAS SEVERANCE TAX COLLECTIONS, FISCAL YEARS 1973 TO 2016



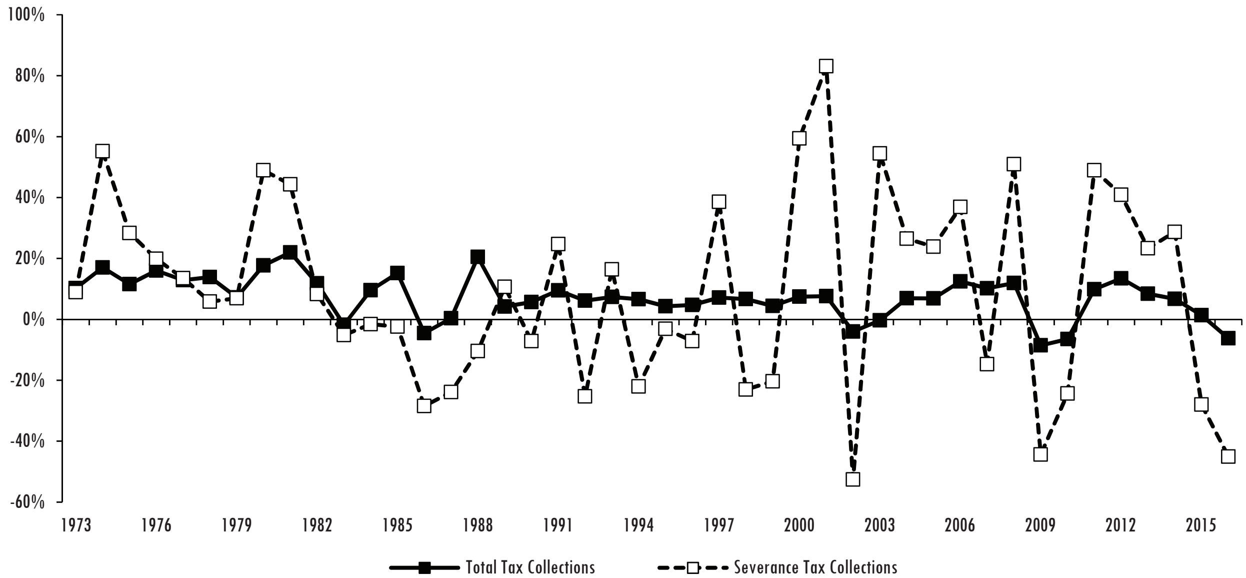
SOURCE: Texas Comptroller of Public Accounts.

collections have increased, due to the diversification of the Texas revenue structure during the same period. However, budgetary dependence has increased slightly since 2010 due to recent strong production levels.

Figure 8 shows that severance taxes typically increase or decrease at rates several times greater than the growth rate of total tax collections. Because of this volatility, forecasting severance tax revenue is challenging and can lead to discrepancies from forecasts used to make appropriations decisions to actual revenue collections.

Oil production tax decreased 40.8 percent in fiscal year 2016. However, the monthly year-over-year (YOY)

FIGURE 8
TEXAS SEVERANCE TAX GROWTH RATES, FISCAL YEARS 1973 TO 2016



SOURCE: Texas Comptroller of Public Accounts.

percentage decreases have been less than the corresponding decreases in the price of crude oil and the number of drilling rigs operating in Texas would suggest. **Figure 9** shows the YOY change in collections since November 2014, the first month this measure decreased since the last peak in oil price, and the compounded change in the West Texas Intermediate oil price and active drilling rigs.

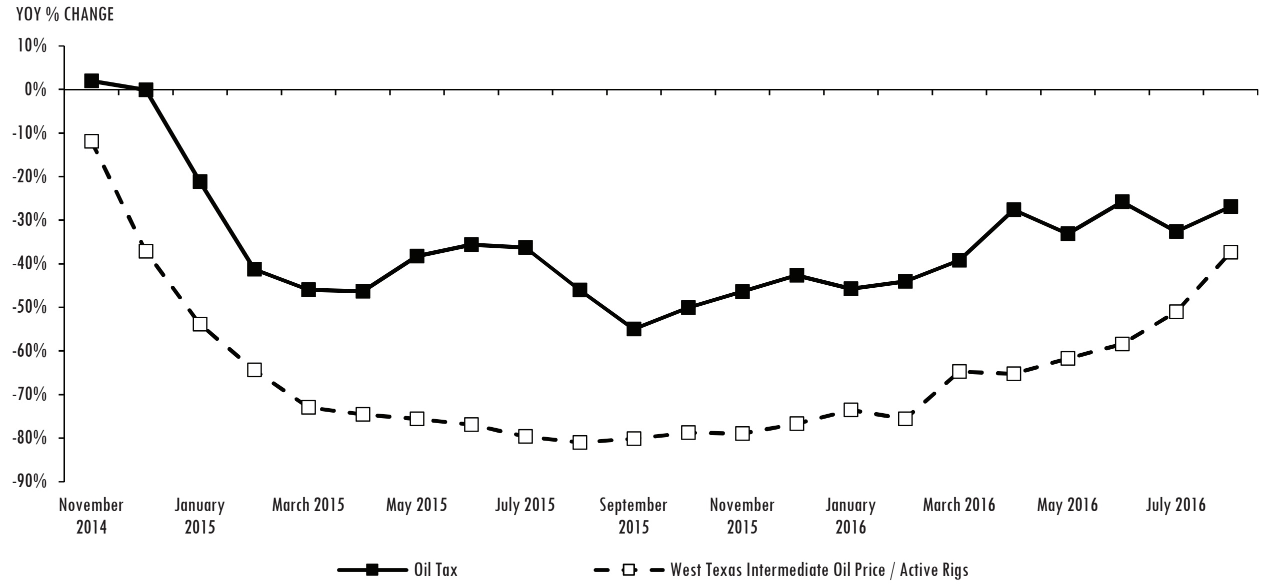
Ordinarily, these rates of change would be expected to approximately equal each other. The number of active drilling rigs should be a rough proxy for production, and tax collections are a percentage of market value, that is, price multiplied by production. However, for much of fiscal years 2015 and 2016, the compounded decreases in price and number of drilling rigs was nearly double the decrease in oil production tax, primarily due to a new development in the industry—rapid increases in drilling rig productivity.

Figures 10 and **11** show the number of active drilling rigs in the two largest producing areas in the state: the Eagle Ford shale play in south Texas and the Permian Basin region in west Texas. **Figures 10** and **11** also show the production per rig for each area. Production per rig is measured as the number of barrels of oil produced per day (bpd) from new wells drilled by an average rig in the month. Both regions have seen a large decrease in the number of drilling rigs since their recent peaks: a decrease of 85.1 percent in the Eagle Ford region, and a decrease of 64.8 percent in the Permian Basin. However, since fiscal year 2010, the production per rig has increased 2,201.8 percent in the Eagle Ford and 380.5 percent in the Permian Basin. Improvements in drilling and producing technology have combined to keep overall production relatively stable, despite the decrease in the number of active drilling rigs. This stability consequentially led to a smaller decrease in overall oil production tax revenue.

DIRECT SALES TAX

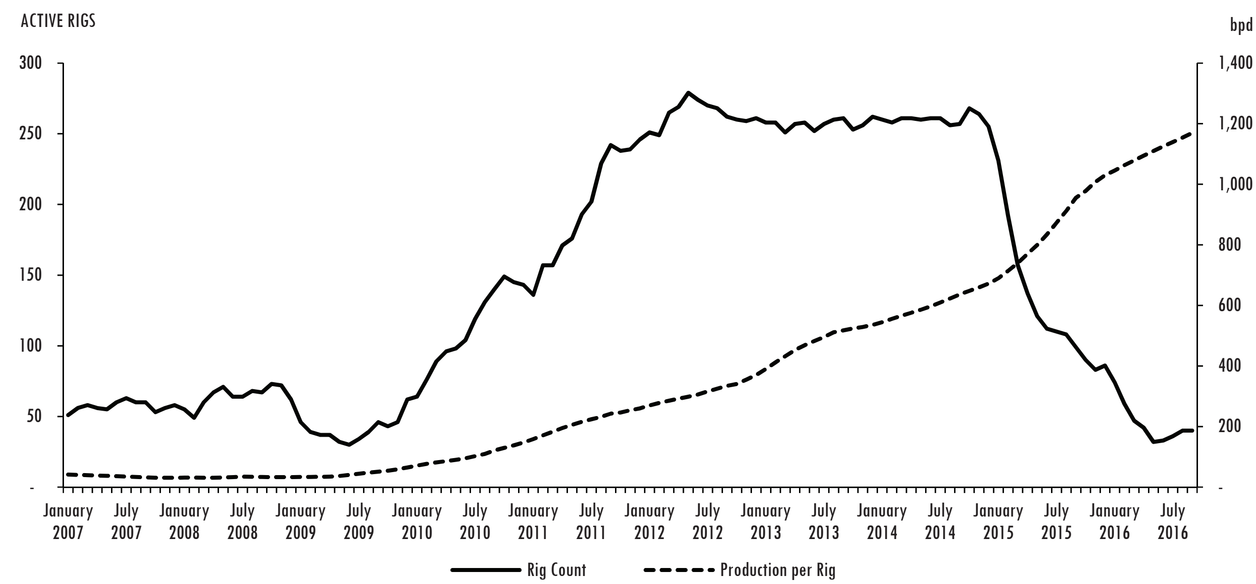
In calendar year 2014, retail outlets classified in the Mining, Quarrying, and Oil and Gas Extraction industry accounted for 7.1 percent of all taxable sales in Texas. This number has grown from slightly more than 1.0 percent in 2004 (**Figure 12**) as the cost of materials for extracting oil and gas has increased with the advent of horizontal drilling and hydraulic fracturing. These sales can be viewed as the direct contribution from the industry to Texas sales tax collections, the state's largest revenue source. Direct sales tax collections from the oil and gas industry totaled approximately $2.0 billion for calendar year 2014. Taxable sales in the industry began to slow in the first half of calendar year 2015 as the number of wells drilled decreased. Firms that service the industry were forced to reduce the cost of supplies sold when faced with lower demand. Taxable sales in this sector during calendar year 2015 decreased 30.6 percent from calendar year 2014 and contributed 4.9 percent of all taxable sales in the state. The pace of decrease has increased in early calendar year

FIGURE 9
TEXAS OIL PRODUCTION TAX COLLECTIONS, FISCAL YEARS 2014 TO 2016



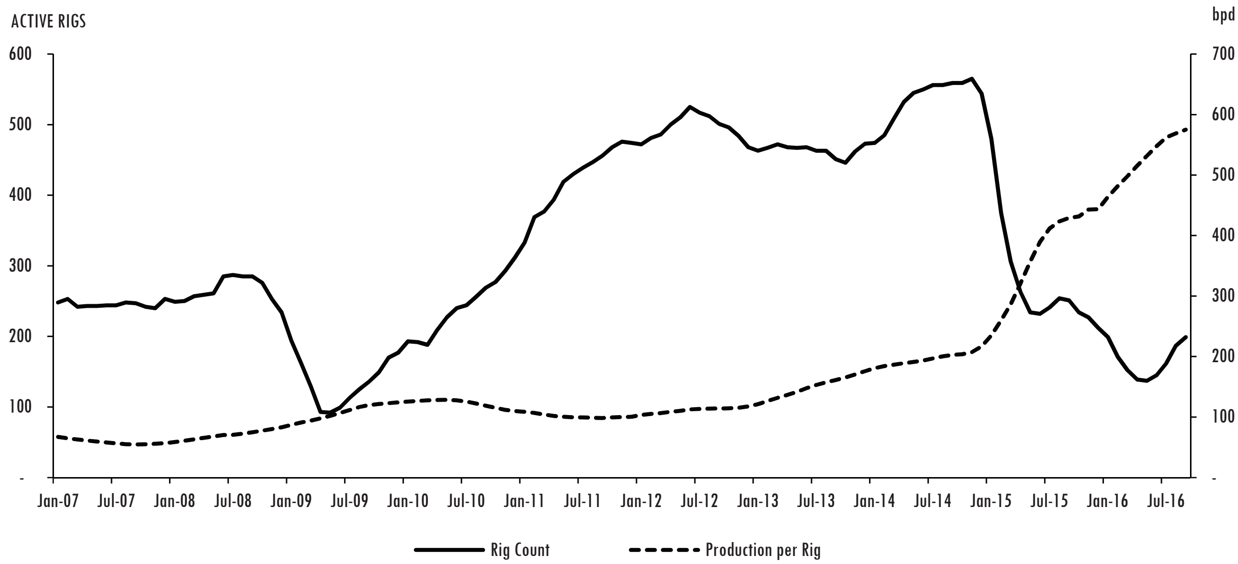
NOTE: The percentage of year over year (YOY) change is shown since November 2014, which was the first month this measure decreased since the last peak in oil price.
SOURCES: Texas Comptroller of Public Accounts; Baker Hughes; U.S. Energy Information Administration.

FIGURE 10
EAGLE FORD SHALE PLAY PRODUCTION, FISCAL YEARS 2007 TO 2016



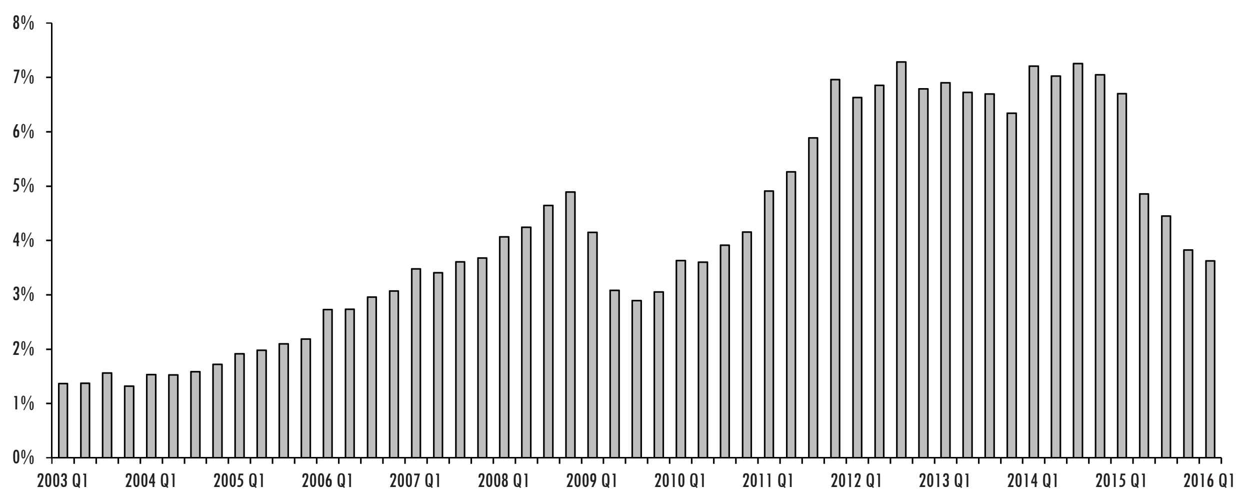
SOURCE: U.S. Energy Information Administration.

FIGURE 11
PERMIAN BASIN REGION SHALE PLAY PRODUCTION, FISCAL YEARS 2007 TO 2016



SOURCE: U.S. Energy Information Administration.

FIGURE 12
TEXAS MINING SECTOR PERCENTAGE OF TOTAL TAXABLE SALES, CALENDAR YEARS 2003 TO 2016, FIRST QUARTER



SOURCE: Texas Comptroller of Public Accounts.

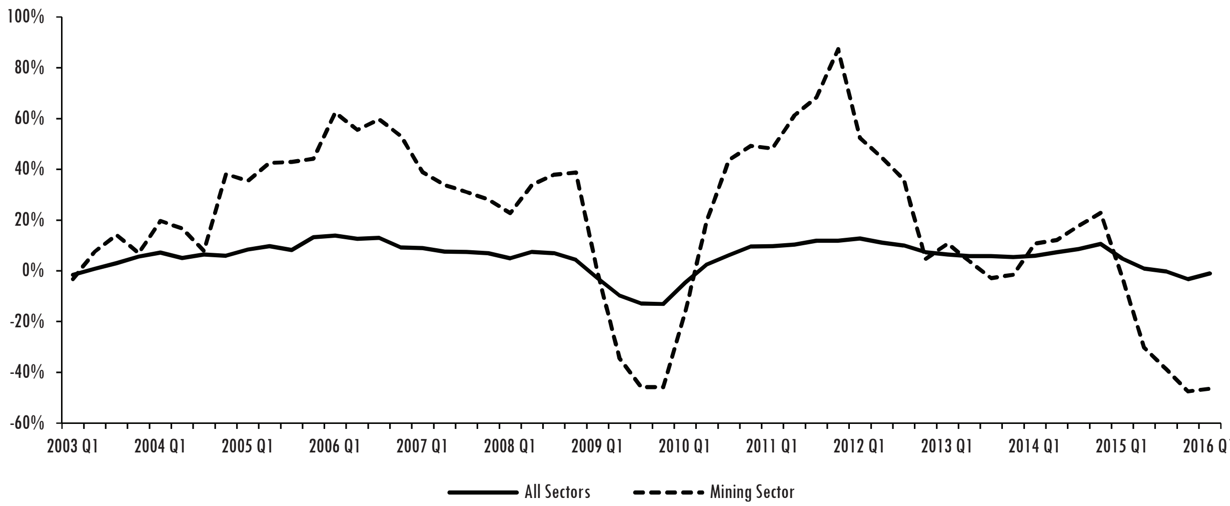
2016;the first quarter of 2016, the most recent data available, shows a decrease of 46.5 percent from the same period in calendar year 2015.

Similarly to oil and gas prices and to oil and gas production taxes, growth rates of taxable sales are highly volatile in the industry. **Figure 13** shows the YOY growth rates of taxable sales by calendar quarter from the previous decade for the oil and gas industry and across all combined sectors of the Texas economy. Volatility, as measured by the standard deviation of growth rates during the period, was 424.9 percent greater in the oil and gas industry relative to the entire economy.

INDIRECT SALES TAX

In addition to sales tax directly paid by oil and gas producers for materials used in their operations, the industry is also responsible for indirect increase in sales tax. This indirect

FIGURE 13
QUARTERLY GROWTH RATE OF TEXAS TAXABLE SALES, FISCAL YEARS 2003 TO 2015



Source: Texas Comptroller of Public Accounts.

contribution is attributable to the large population surges and wage increases in drilling areas and the associated increase in spending from oilfield workers. Although these indirect effects can be difficult to measure precisely, the increase in county sales tax collections for different parts of the state shows these effects. Counties located either wholly or partially on top of the Eagle Ford Shale in south Texas or the Permian Basin in west Texas averaged annual sales tax increases of 49.6 percent in calendar year 2012 and 50.8 percent in calendar year 2011, compared with average annual increases of 14.4 percent and 11.0 percent during the same two years in counties not located in these areas. **Figures 14** and **15** show annual changes in county sales tax collections for calendar years 2011 and 2012. As **Figures 14** and **15** show, the counties with the largest annual increases during the last two years are located primarily on either the Eagle Ford or the Permian Basin shale plays.

These indirect effects also are evident in reverse. In calendar year 2015, the beginning of a slump in the oil and gas industry, sales tax collections in the same counties located on the Eagle Ford and Permian Basin shale plays decreased by 9.4 percent. This decrease was a significantly worse performance than collections in all other counties, which increased on average 2.9 percent in 2015.

FRANCHISE TAX

In the 2011 franchise tax report year, the Mining industry (primarily composed of oil and gas extraction companies) paid $320.3 million in the state franchise tax. This amount accounted for 8.0 percent of all 2011 franchise tax collections. Although more than 18,000 entities filed returns in this industry, 75.0 percent of the tax was paid by the 69 largest taxpayers (those with gross receipts of more than $1.0 billion). In 2010, the year upon which 2011 franchise tax liability is based, this industry accounted for 8.9 percent of Texas' GSP. By the 2014 franchise tax report year, the amount of franchise tax paid by the Mining industry had decreased to $290.3 million, 6.4 percent of all franchise tax paid during the year.

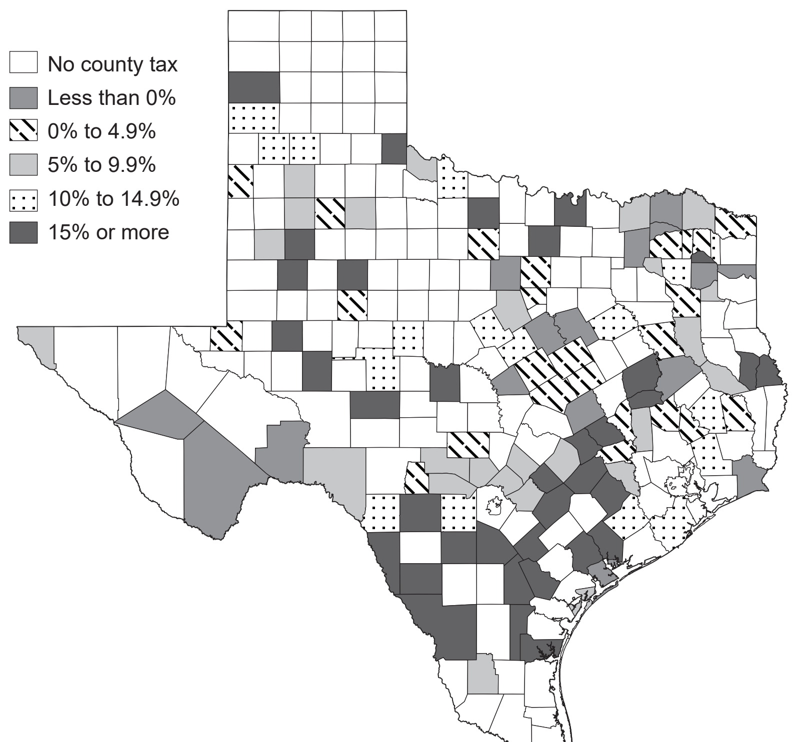
The Mining industry was the largest benefactor of the 2006 franchise tax reform. In fiscal year 2007 (the last year of the earned surplus tax liability calculation), the industry paid 16.1 percent of the total tax. In fiscal year 2011, the industry paid 8.0 percent of the total tax, which used a margin tax liability computation. This 50.0 percent reduction in the proportion of total tax paid was the largest of any industry in 2011.

One of the primary goals of the franchise tax reform was to make the amount of tax paid by an industry more closely reflect the amount an industry contributed to the Texas economy. As a result of the revised franchise tax, the disparity from the industry's amount of tax paid to its contribution to the GSP has decreased by 76.0 percent.

SCHOOL PROPERTY TAX

In addition to the state taxes mentioned previously, the oil and gas industry also pays property taxes to local taxing jurisdictions including school districts (ISDs), cities, counties, and special

FIGURE 14
ANNUAL CHANGE IN TEXAS COUNTY SALES TAX COLLECTIONS, CALENDAR YEAR 2011



SOURCE: Texas Comptroller of Public Accounts.

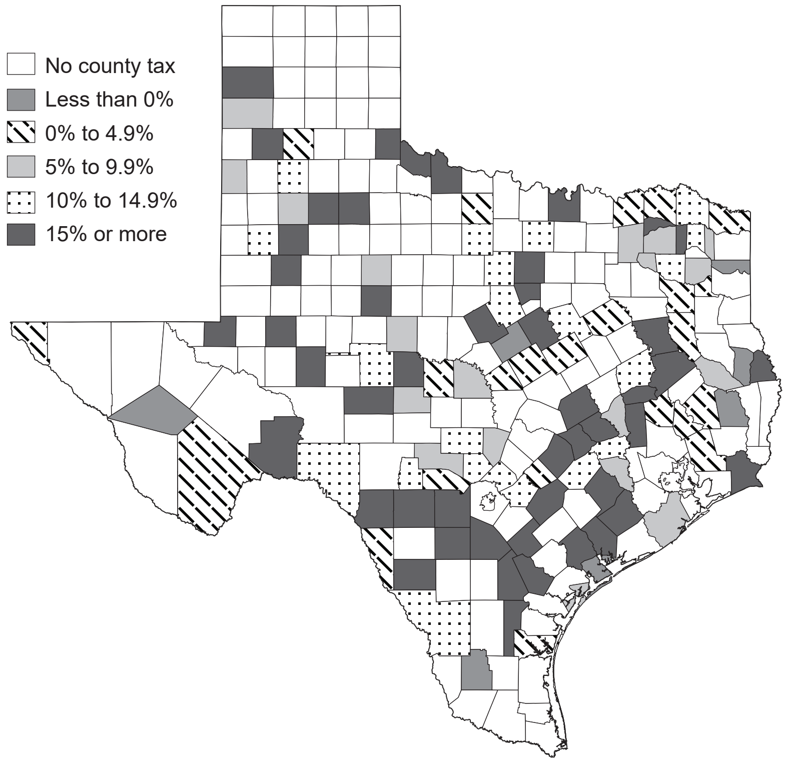
purpose districts. Detailed industry-level data is not available for the cities, counties, and special purpose districts. However, data on school district levies, which contributes approximately 60.0 percent of all property tax levies in Texas, is categorized into several types of properties. Information for property appraised as Oil and Gas properties is tracked at the independent school district level.

In tax year 2014, school districts levied approximately $1.86 billion in property taxes on oil and gas properties, which accounted for 6.9 percent of all school district property tax levies. **Figure 16** shows that total appraised value increased rapidly from tax year 2002 before slowing during tax year 2008 with the onset of the financial crisis. Oil and gas appraisals' share of the total has also increased. However, because the appraised value is calculated based on the present value of oil and gas under the property using discounted future income (and thus estimates of future oil and gas prices), these appraisals are subject to the same volatility as other revenue streams related to the industry. Similarly to the tax and sales growth rates shown in **Figure 8** and **Figure 13**, **Figure 17** shows this volatility compared to the relatively low volatility of total appraisals. In addition, new drilling technology has resulted in large appraisal increases in certain areas of the state where oil and gas in shale deposits is successfully produced in large quantities. For example, Karnes City ISD, located in the middle of the Eagle Ford shale play, has seen increases in its appraised oil and gas property values from tax years 2011 to 2013 of 221.0 percent, 381.0 percent, and 118.0 percent, respectively. However, Karnes City ISD oil and gas property values decreased by 11.0 percent in 2015.

OTHER REVENUE

Oil and gas producers are also liable for several nontax payments to the state. These payments primarily consist of lease payments, royalty payments, and lease bonuses for the rights to produce oil and gas on state-owned land. State land typically may be leased to any person or company for the purpose of prospecting or exploring for, producing, storing, caring for, transporting, preserving, selling, and disposing of oil and gas. Bids for these leases include a royalty of at least one-eighth of the gross production of oil or gas or a cash bonus of at least $10 per acre. For fiscal year 2015, oil and gas lease bonus payments on state lands totaled $179.8 million, and

FIGURE 15
ANNUAL CHANGE IN TEXAS COUNTY SALES TAX COLLECTIONS, CALENDAR YEAR 2012

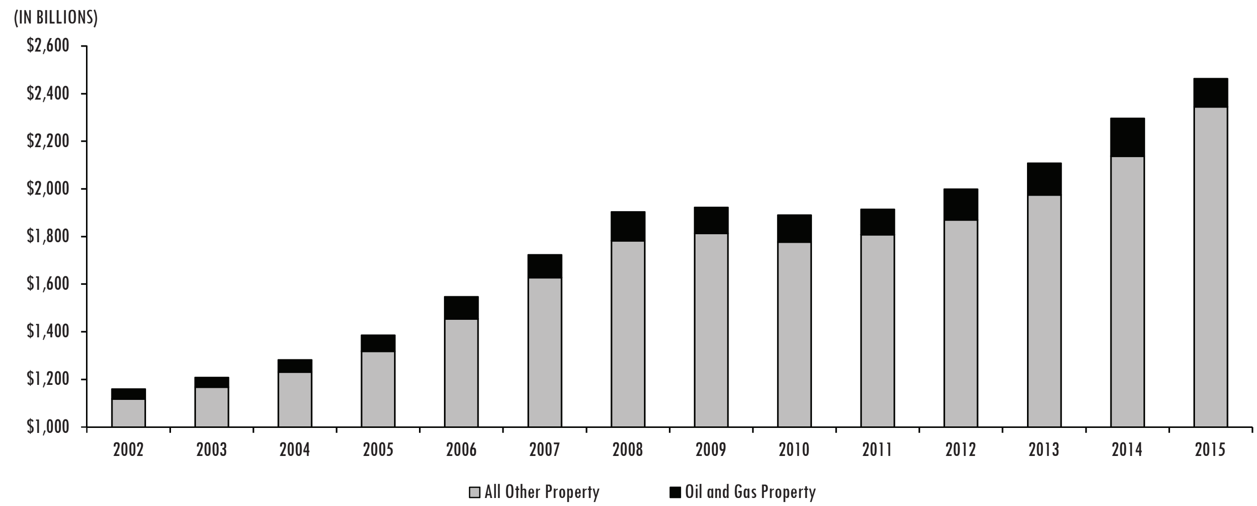


SOURCE: Texas Comptroller of Public Accounts.

royalty payments on these lands totaled $1,196.6 million. Although these amounts were less than fiscal year 2014 collections by 37.6 percent and 14.2 percent, respectively, they were significantly higher than the historical average level of collections. Of these payments, 96.0 percent are made on lands owned by either the Permanent University Fund or the Permanent School Fund, much of which is invested in various financial markets by the Funds. The remaining 5.0 percent of payments is made on lands owned by the Texas Parks and Wildlife Department or other state agencies.

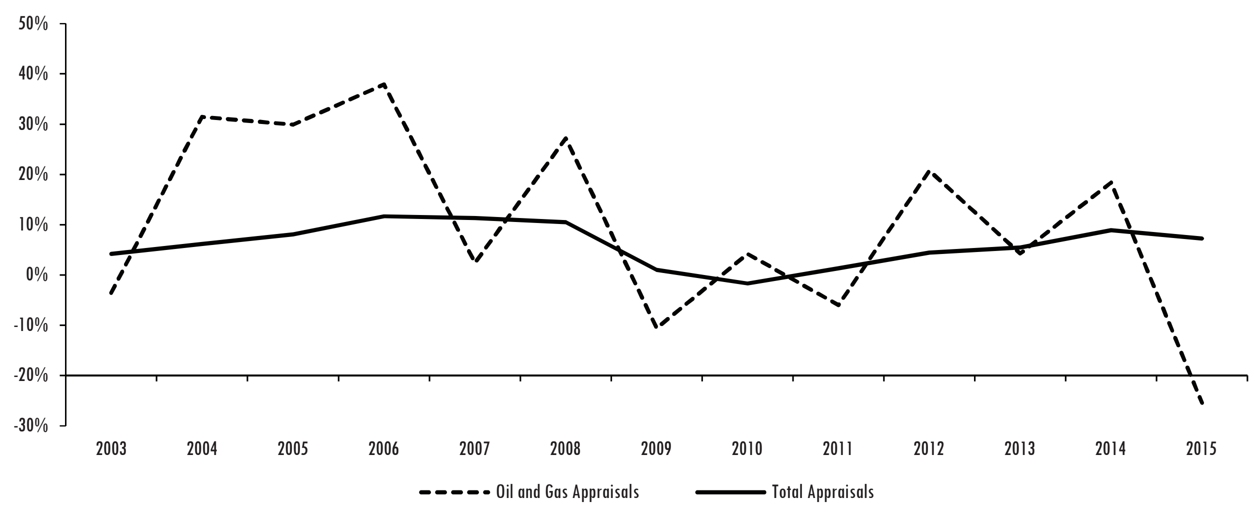
Figure 18 shows the total amount of revenue classified as Land Revenue that has been collected by the state since fiscal year 1986. Oil and gas bonuses and royalty payments account for approximately 90.0 percent to 95.0 percent of the total revenue in this category.

FIGURE 16
TOTAL APPRAISED VALUE OF TEXAS PROPERTY, TAX YEARS 2002 TO 2015



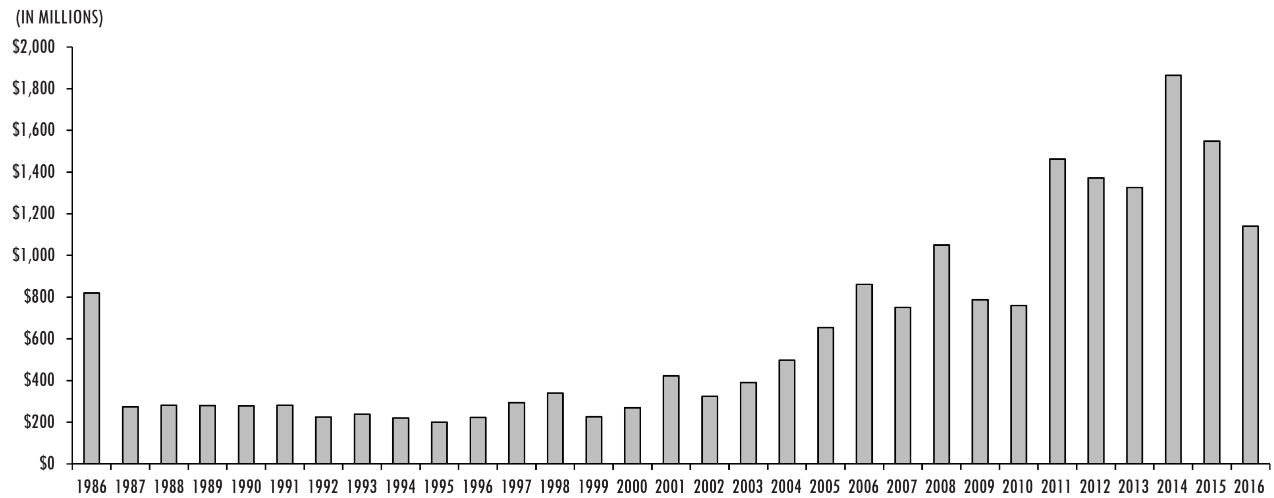
SOURCE: Texas Comptroller of Public Accounts.

FIGURE 17
ANNUAL TEXAS PROPERTY VALUE GROWTH RATES, TAX YEARS 2003 TO 2015



SOURCE: Texas Comptroller of Public Accounts.

FIGURE 18
ALL FUNDS LAND REVENUE, FISCAL YEARS 1986 TO 2016



SOURCE: Texas Comptroller of Public Accounts.

OVERVIEW OF TEXAS EXPORTS DURING CALENDAR YEAR 2015

Goods and services produced in Texas and sold in foreign countries represented 16.0 percent of the total Texas economy in calendar year 2015. Texas has ranked as the largest exporting state in the country in total dollar value of exports every year since 2002. Texas ranks third, behind Louisiana and Washington, in having the largest percentage of a state economy based on exports. This relatively large exposure to international markets presents the Texas economy with larger risks from the overall decrease in the demand for and relative competitiveness of U.S. exports during calendar year 2015.

Two important events occurred during 2015 that could greatly affect one of the largest Texas export product categories, Oil and Gas. Construction of several natural gas liquefaction plants along the U.S. Gulf Coast neared completion during 2015, paving the way for the first liquefied natural gas exports from Texas. In December 2015, the U.S. Congress repealed certain provisions of the Energy Policy and Conservation Act, that had, since 1975, banned most exports of crude oil from the United States. These developments could substantially increase exports of the largest two hydrocarbon products produced in Texas and correspondingly benefit the state economy. However, both developments also face challenges that could suppress this potential growth, at least in the short term.

FACTS AND FINDINGS

- ♦ Exports of goods and services from Texas totaled $251.1 billion in calendar year 2015, a 12.8 percent decrease from the previous year.
- ♦ During calendar year 2015, Texas exporters were hindered by two exogenous factors: the rapidly appreciating value of the U.S. dollar and a slowing in the economic growth of several of the state's largest trading partners.
- ♦ Recent events will have important effects on the exports of natural gas and crude oil from Texas.

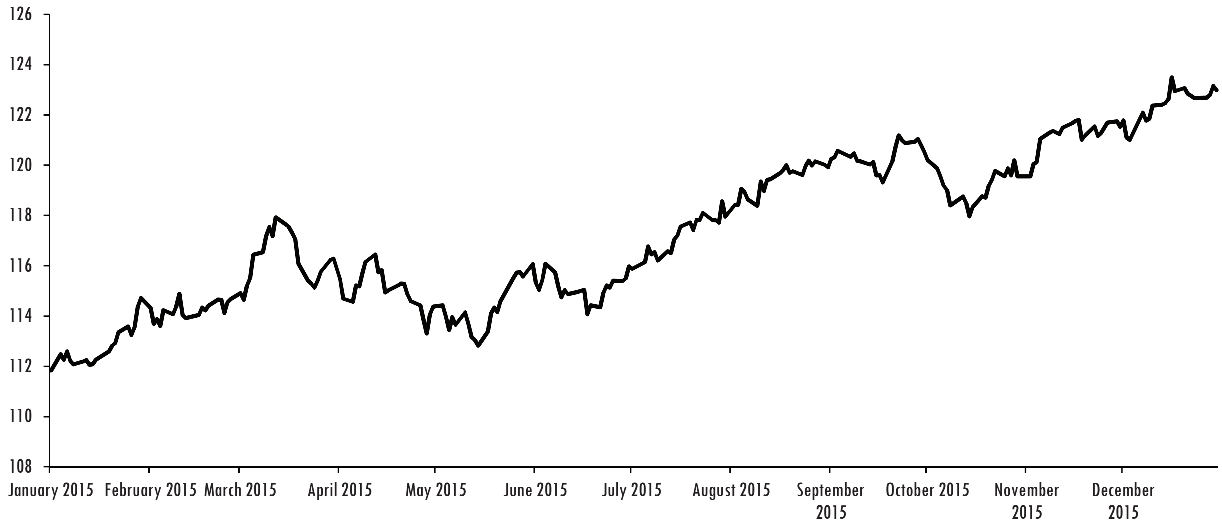
DISCUSSION

After five consecutive years of export growth, the total value of Texas goods and services sold across U.S. borders decreased in calendar year 2015 for the first year since 2009. The total dollar value of all goods and services produced in Texas and sold in foreign countries was $251.1 billion in calendar 2015, a 12.8 percent decrease from the $288.1 billion sold in calendar 2014. In addition, Texas underperformed the U.S. as a whole for the first year since 2007, with the total value of all U.S. exports decreasing by only 7.2 percent in 2015 to $1,504.6 billion. Among the 50 states, Texas' 2015 performance ranked thirty-ninth in percentage change from the previous year. Rapid appreciation of the U.S. dollar in 2015, shown in **Figure 1**, the fastest in more than three decades, put tremendous strain on the competitiveness of Texas products in international markets. The value of the U.S. dollar, (as measured by the St. Louis Federal Reserve's Trade Weighted U.S. Dollar Index, increased by 12.6 percent during calendar year 2015, the largest annual increase since 1984. The strength of U.S. currency makes Texas goods and services more expensive for foreign buyers and thus reduces their demand for Texas products. As shown in **Figure 2**, the value of the U.S. dollar and the value of Texas exports typically have an inverse relationship. Aside from currency markets, slower overall world economic growth also contributed to the relative weakness of both U.S. and Texas exports in 2015. According to the International Monetary Fund (IMF), total world economic output (as measured by Real Gross Domestic Product) increased by 3.1 percent in 2015, a decrease from the 4.0 percent average during the past five years, but still much improved from the 2008 and 2009 financial crisis years. It is worth noting that the two largest Texas trading partners, Mexico and Canada, who combine to purchase almost half of all Texas exports, both experienced GDP growth rates of less than the worldwide average, at 2.5 percent and 1.2 percent, respectively, during 2015. The IMF projects a stabilization of the U.S. dollar (fluctuating in a +/- 2.0 percent range) for calendar 2016 and global growth increasing slightly to 3.2 percent, which should slow the decrease in export value from Texas producers in the upcoming calendar year.

EXPORTS BY INDUSTRY

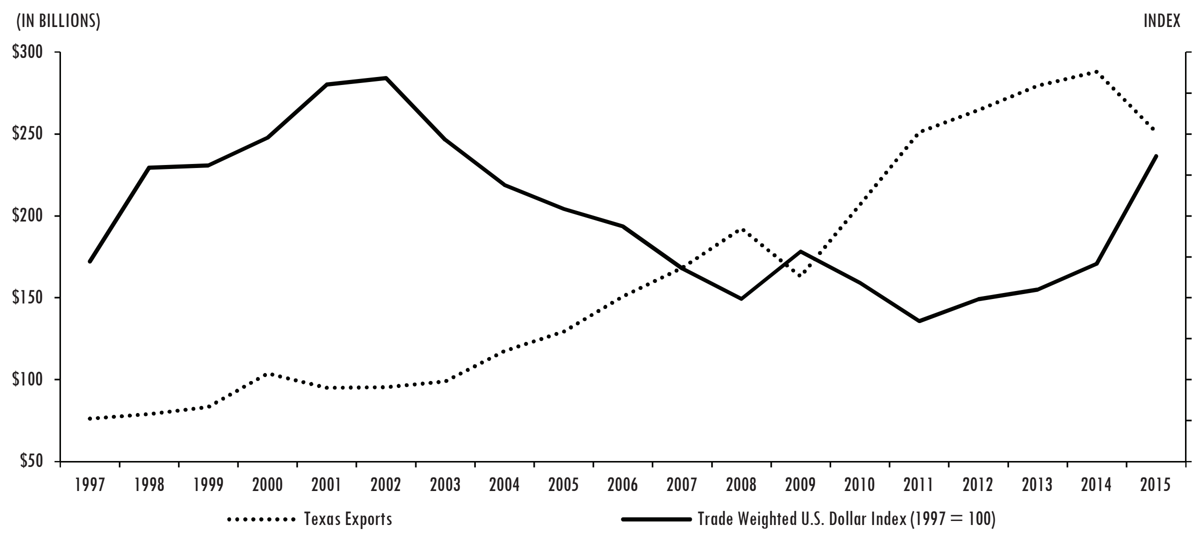
Among the North American Industrial Classification (NAICS) categories, Computer and Electronic Products became the leading export industry in Texas, with a value of $45.4 billion in 2015, or 18.1 percent of the Texas total. Computer and Electronics displaced Petroleum and Coal Products, which had previously been the largest export

FIGURE 1
TRADE WEIGHTED U.S. DOLLAR INDEX, CALENDAR YEAR 2015



NOTE: The index represents a weighted average of the foreign exchange value of the U.S. dollar against the currencies of 26 major U.S. trading partners. A value of 100 represents the value of the index in January 1997.
SOURCE: Federal Reserve Economic Data.

FIGURE 2
TEXAS EXPORTS VALUE COMPARED TO U.S. DOLLAR, CALENDAR YEARS 1997 TO 2015



SOURCE: World Institute for Strategic Economic Research WISERTrade; Federal Reserve Economic Data.

industry for each of the past four years and totaled $44.1 billion in 2015. The Chemicals industry accounted for $39.9 billion of Texas exports. Collectively, these top three industries accounted for more than half of all Texas imports during the year. Other large export industries in 2015 include Machinery (e.g., Electrical), Transportation Equipment, and Oil and Gas, which sold $24.8 billion, $23.2 billion, and $13.4 billion worth of goods in other countries. Of the 29 major NAICS industry groups with export data, only six increased in 2015, while the other 23 decreased relative to their 2014 levels. In terms of growth rates, the top three performing industries in 2015 were Fish and Other Marine Products, Wood Products, and Furniture and Fixtures, which grew 18.7 percent, 10.3 percent, and 4.8 percent, respectively.

Conversely, the fastest contracting industries during the year were Minerals and Ores, Oil and Gas, and Petroleum and Coal Products, whose value decreased by 32.5 percent, 28.6 percent, and 24.0 percent, respectively. **Figure 3** shows export data for the largest exporting industries in Texas during 2015.

EXPORTS BY STATE

Texas continues to be the largest exporter among U.S. states, a position it has had since 2002. State exports were 16.7 percent of the U.S. total in 2015, a decrease from 17.8 percent in 2014. This decrease in the Texas share of U.S. total represented the first decrease since 2003. Texas' largest state competitors, in order, are California, Washington, New York, Illinois, and Florida, which exported $165.4 billion, $86.4 billion, $80.6 billion, $63.4 billion, and $53.8 billion worth, respectively, of goods and services in 2015. Eight states had increases in their exports in 2015, and the other 42 had varying decreases. The top three fastest-growing export states in 2015 were Hawaii, Nevada, and Utah; the slowest-growing were Wyoming, North Dakota, and Louisiana. At -12.8 percent, the 2015 export growth rate in Texas was less than the -7.2 percent rate of growth in the U.S. as a whole for the first year since 2007. Texas ranked thirty-ninth among all 50 states. **Figure 4** shows export data for the 10 states that are the largest exporters in the U.S. for 2015.

EXPORTS BY COUNTRY

The two largest buyers of Texas goods, Mexico and Canada, purchase a significant portion of the total amount of goods that the state exports. In 2015, Texas exporters sold $94.5 billion (a decrease of 7.8 percent from 2014) and $25.4 billion (a decrease of 18.9 percent from 2014) worth of goods and services in Mexico and Canada, respectively. These amounts constituted 47.8 percent of the total value of all exports during the year. Other top markets for Texas exporters included China, South Korea, and Brazil, which purchased $11.6 billion, $8.1 billion, and $7.2 billion, respectively, of the state's exports. In terms of percentage increases, the fastest-growing export markets among major trading partners in 2015 were Antigua, Slovenia, and Lithuania, which imported $337.7 million, $97.4 million, and $75.8 million, respectively, more of Texas goods and services in 2015 than they did in 2014. **Figure 5** shows export data for the 10 largest Texas export markets worldwide.

LIQUEFIED NATURAL GAS EXPORTS

Texas natural gas production averaged 24.0 billion cubic feet per day (Bcf/d) during calendar year 2015, which was 26.0 percent of total U.S. production. This production represents a 38.0 percent increase during the last 10 years. This increase is due in large part to drilling technological advances that have made large quantities of natural gas locked in shale and other rock formations, commercially viable to produce. Such production previously was thought to be uneconomical. The large production increases have been concentrated in the following states and formations: Pennsylvania–Marcellus; Ohio–Utica; Texas–Barnett, Eagle Ford, and Permian; and Louisiana–Haynesville. During the same period, growth of total U.S. commercial and residential consumption has increased only 27.0 percent, leading to an excess of supply over demand. Most of that growth was due to natural gas

FIGURE 3
TEXAS EXPORTS BY INDUSTRY, CALENDAR YEARS 2014 AND 2015

	VALUE (IN BILLIONS)		PERCENTAGE CHANGE		PERCENTAGE OF TEXAS TOTAL	
INDUSTRY	2014	2015	2014 FROM 2013	2015 FROM 2014	2014	2015
Computers and Electronic Products	$46.6	$45.4	(1.4%)	(2.7%)	16.2%	18.1%
Petroleum and Coal Products	$58.1	$44.1	(4.2%)	(24.0%)	20.2%	17.6%
Chemicals	$46.1	$39.9	(3.6%)	(13.4%)	16.0%	15.9%
Machinery (e.g., Electrical)	$29.9	$24.8	5.8%	(16.9%)	10.4%	9.9%
Transportation Equipment	$23.2	$23.2	(2.4%)	(0.4%)	8.1%	9.2%
Oil and Gas	$18.7	$13.4	103.0%	(28.6%)	6.5%	5.3%
Electrical Equipment and Appliances	$13.2	$12.9	4.8%	(1.9%)	4.6%	5.1%
Fabricated Metal Products	$11.2	$10.0	9.6%	(10.7%)	3.9%	4.0%
All Other Industries	$41.1	$37.4	3.5%	(8.9%)	14.3%	14.9%
Total	**$288.1**	**$251.1**	**3.1%**	**(12.8%)**	**N/A**	**N/A**

SOURCE: World Institute for Strategic Economic Research WISERTrade.

FIGURE 4
TOP 10 STATES WITH LARGEST EXPORTING VALUES, CALENDAR YEARS 2014 AND 2015

	VALUE (IN BILLIONS)		PERCENTAGE CHANGE		PERCENTAGE OF U.S. TOTAL	
STATE	2014	2015	2014 FROM 2013	2015 FROM 2014	2014	2015
Texas	**$288.1**	**$251.1**	**3.1%**	**(12.8%)**	**17.8%**	**16.7%**
California	$173.8	$165.4	3.4%	(4.9%)	10.7%	11.0%
Washington	$90.6	$86.4	10.9%	(4.6%)	5.6%	5.7%
New York	$88.5	$80.6	2.6%	(9.0%)	5.5%	5.4%
Illinois	$68.3	$63.4	3.2%	(7.1%)	4.2%	4.2%
Florida	$58.5	$53.8	(3.3%)	(8.0%)	3.6%	3.6%
Michigan	$55.9	$53.2	(4.6%)	(4.9%)	3.5%	3.5%
Ohio	$52.2	$50.7	2.8%	(3.0%)	3.2%	3.4%
Louisiana	$64.8	$49.2	2.5%	(24.1%)	4.0%	3.3%
Pennsylvania	$39.4	$40.4	(2.0%)	(2.4%)	2.5%	2.6%
U.S. Total	**$1,620.5**	**$1,504.6**	**2.7%**	**(7.2%)**	**N/A**	**N/A**

SOURCE: World Institute for Strategic Economic Research WISERTrade.

FIGURE 5
TOP 10 LARGEST TEXAS EXPORT MARKETS, CALENDAR YEAR 2014 AND 2015

	VALUE (IN BILLIONS)		PERCENTAGE CHANGE		PERCENTAGE OF TEXAS TOTAL	
COUNTRY	2014	2015	2014 FROM 2013	2015 FROM 2014	2014	2015
Mexico	$102.6	$94.5	1.6%	(7.8%)	35.6%	37.6%
Canada	$31.3	$25.4	20.1%	(18.9%)	10.9%	10.1%
China	$10.9	$11.6	0.9%	6.1%	3.8%	4.6%
South Korea	$8.9	$8.1	13.2%	(9.2%)	3.1%	3.2%
Brazil	$11.8	$7.2	9.1%	(39.0%)	4.1%	2.9%
Netherlands	$8.8	$6.8	(7.9%)	(21.9%)	3.0%	2.7%
Colombia	$7.3	$6.0	2.8%	(17.3%)	2.5%	2.4%
Japan	$5.5	$5.1	8.3%	(8.2%)	1.9%	2.0%
Singapore	$5.6	$4.9	(2.4%)	(11.7%)	1.9%	2.0%
Belgium	$4.6	$4.6	(0.7%)	0.0%	1.6%	1.8%
Texas Total	**$288.1**	**$251.1**	**3.1%**	**(12.8%)**	**N/A**	**N/A**

SOURCE: World Institute for Strategic Economic Research WISERTrade.

displacing coal in power generation. The resulting excess of natural gas supplies has led to several large companies making or planning capital expenditures aimed at increasing exports of U.S. natural gas.

In 2015, the U.S. exported 4.9 Bcf/d of natural gas, or 5.0 percent of total production, almost all of which was shipped to Mexico and Canada by pipeline. To make natural gas exportable by means other than pipeline, it must be liquefied by lowering the temperature of the gas to approximately -260° F. Liquefaction of the gas reduces the volume by 99.8 percent, making it suitable for transport by ship, rail, or truck. The gas must then be shipped to a location with a regasification (regas) terminal at the importing destination. Before the production boom during the last 10 years, the U.S. was predicted to consume more natural gas than was domestically produced. Subsequently, several regas facilities were constructed along the Atlantic and Gulf coasts. However, since the supply and demand balance has now reversed, several of these facilities are adding liquefaction capabilities known as liquefaction trains to export the gas by ship to global markets. The following five facilities are expected to export liquefied natural gas (LNG) from the U.S. in the next three to four years:

- Cheniere Energy – Sabine Pass LNG: Located in southwest Louisiana, across the Texas border from Port Arthur on the Sabine River. Sabine Pass is the only liquefaction facility currently operating in the U.S., and it shipped its first LNG cargo in February 2016. Only one train is fully commissioned (operational); however, Cheniere plans to construct five more trains. When complete, Sabine Pass LNG will process and export up to 3.5 Bcf/d;

- Cheniere Energy – Corpus Christi LNG: Located on the La Quinta Channel on the northeast side of Corpus Christi Bay. Of the five, this is the only facility that is a new, or greenfield project, and not an expansion of an existing regas facility. Construction began in May 2015, and the first train is expected to begin operation in 2018. When completed in 2021, the facility will have five trains with total export capacity of 2.9 Bcf/d;

- Freeport LNG: Located on Quintana Island, southeast of Freeport. Construction of the liquefaction facilities began in November 2014, and the first train is expected to be operational in September 2018. When complete in 2021, Freeport LNG will have four trains with total export capacity of 2.4 Bcf/d;

- Cameron LNG: Located on the western shore of the Calcasieu Ship Channel, approximately 20 miles south of Lake Charles, Louisiana. Construction of the liquefaction facilities began in October 2014, and the first train is expected to be operational in early 2018. When complete, Cameron LNG will have five trains with total export capacity of 3.5 Bcf/d; and

- Dominion Cove Point LNG: Located on the western shore of the Chesapeake Bay, approximately 70 miles south of Baltimore, Maryland. Construction of the liquefaction facilities began in October 2014 and is expected to be operational in late 2017. Dominion Cove Point will have total export capacity of 0.8 Bcf/d.

These facilities are the only five U.S. facilities that have begun LNG export-related construction. Several other liquefication projects are seeking regulatory approval or final investment decisions, so export capacity could increase further. When operational in 2021, the combined export capacity of these five facilities will be 13.1 Bcf/d. For a sense of scale, that amount is more than half of the total natural gas produced in Texas.

Global imports of LNG reached 32 Bcf/d in 2015. Although this amount represented a 2.0 percent increase from 2014, the growth has been less than forecast by the International Energy Agency (IEA), an organization that works to improve energy opportunities for its members. Asian countries are the largest consumers of LNG, with nearly three-quarters of all global shipments of LNG arriving in Asian ports. Japan is the largest importer of LNG, with 11.0 Bcf/d, or 34.0 percent of all global imports, in 2015. Japanese buyers have contracted for much of the U.S. LNG to be shipped from these five projects, in particular Cameron LNG. Other large importers include South Korea (4.3 Bcf/d), China (2.4 Bcf/d), and India (1.9 Bcf/d). The opening of the expanded Panama Canal in June 2016 will reduce LNG shipping costs from Texas to Asian markets and make Texas-sourced gas more cost-competitive with its top LNG-producing rivals: Qatar, Australia, and Indonesia. In addition to greatly reducing the distance the LNG needs to travel, the number of ships available to ship LNG will be expanded. Before the canal's expansion, 10.0 percent of the global LNG fleet could travel through it; however, more than 90.0 percent will be able to after the expansion is complete.

Asian markets represent the bulk of potential export destinations. However, Europe and South America are expanding their uses of natural gas. European countries import approximately two-thirds of the natural gas they consume, with more than half of that shipping by pipeline from Russia. Recent actions by Russia have spurred a desire to diversify their imported gas suppliers. European countries imported more than 4.0 Bcf/d of LNG in 2015, and demand is expected to increase, particularly because the continent already has a large amount of regasification infrastructure built, much of which is unused. In addition to Europe, several South American countries are expected to increase their consumption of LNG, most notably Brazil and Argentina. The first shipment of U.S. LNG from the five leading facilities (specifically from the Sabine Pass facility) was made to Salvador, Brazil.

Besides the expected new U.S. LNG supply coming online from 2015 to 2020, several other large liquefaction facilities, primarily in Australia, have combined to result in a global supply excess. This excess has the potential to hinder Texas LNG export prospects. The Australian LNG projects were started a few years before the U.S. competitors and are expected to have total capacity of 4.4 Bcf/d by the end of 2016. Canada is also considering adding liquefaction capability on its western coast to export a surplus of domestically produced gas to importers, primarily in Asia. In the short term, supply growth is expected to outweigh new demand growth, thus putting downward pressure on LNG prices.

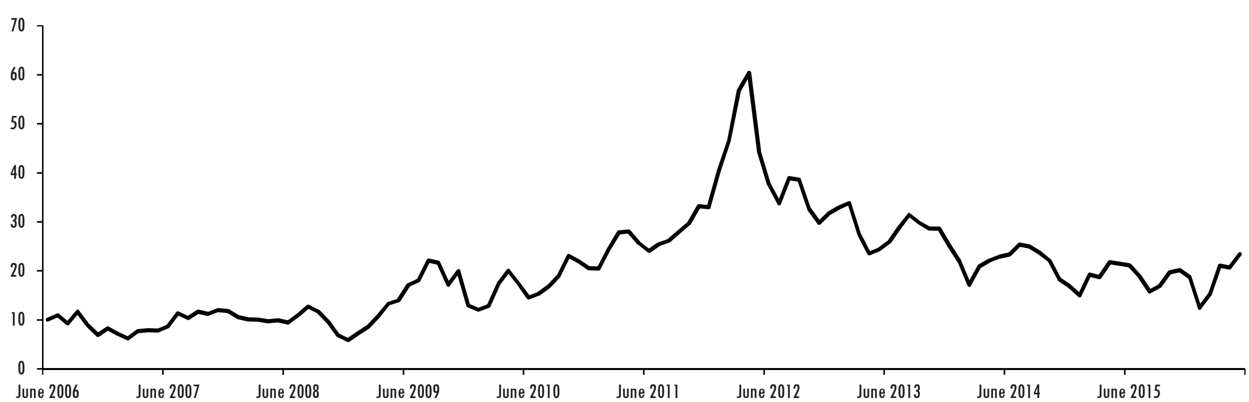
In addition to the short-term LNG supply excess, the two-years-long decrease of crude oil prices also represents a setback for potential Texas LNG exports. It is helpful to understand that, internationally, the price of LNG is typically linked to the energy-equivalent price of crude oil. However, domestic producers receive a price that is usually tied to the price at Henry Hub in Louisiana and is independent of crude oil prices. **Figure 6** shows the ratio of international crude oil prices to U.S. natural gas prices during the last 10 years. The higher this ratio is, the more attractive it becomes for Texas producers to export their natural gas as LNG instead of selling the gas domestically. The large spike in 2011 and 2012 primarily spurred the development of the five projects mentioned previously. These types of projects typically enter into long-term purchase agreements that essentially lock in prices during a period of many years. Therefore, the U.S. liquefaction facilities in development should not be adversely affected by the subsequent decrease of the crude-to-gas ratio caused by recent crude oil price decreases. However, several liquefaction expansions previously announced by other companies will probably be delayed or cancelled because of these recent price movements and the excess LNG supply.

CRUDE OIL EXPORTS

As previously discussed, exports of unprocessed crude oil from the U.S. typically have been statutorily banned for the last four decades. The original ban was made in response to the 1973 Organization of the Petroleum Exporting Countries (OPEC) oil embargo to the U.S. and the corresponding shortage of oil in the U.S. Despite the ensuing normalization of crude oil trade after the embargo ended, the ban has remained; however, market conditions made the ban largely irrelevant until recently. U.S. consumption of crude oil has remained greater than domestic production since the 1980s, making the country a large net importer of oil. In certain circumstances, producers have been granted an exception to the regulations and exported crude oil outside the country (almost all of which has gone to Canada), but these instances have been rare; exports have averaged only 1.5 percent of domestic production since the ban took effect. The economic justification is that, as long as domestic demand exceeds supply, U.S. producers have no incentive to export crude oil unless the price in international markets exceeds the cost of transport.

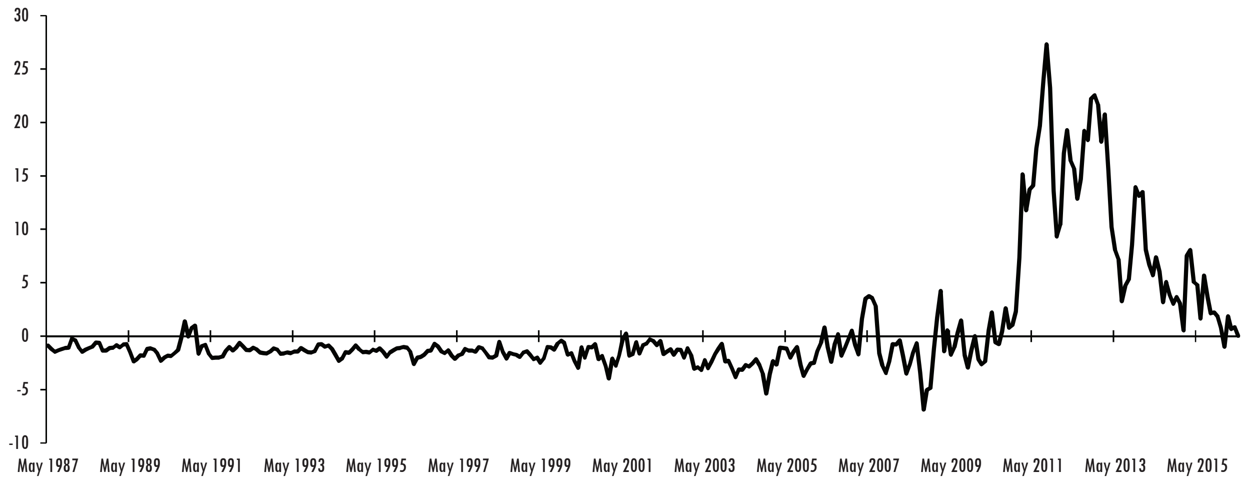
This price differential has typically been represented by the spread between the Brent crude price (approximately what producers could receive internationally) and the West Texas Intermediate, (WTI) crude price (approximately what producers could receive domestically). **Figure 7** shows this differential during the past three decades. As **Figure 7** shows, before 2010, the spread has been essentially zero, providing producers little incentive for the export of U.S. crude oil. However, the beginning of the U.S. shale oil boom in 2010 led to an oversupply of certain types of U.S. crude in some areas of the country and a corresponding spike in the

FIGURE 6
GLOBAL CRUDE-TO-DOMESTIC-GAS PRICE RATIO, JUNE 2006 TO MAY 2016



SOURCE: Federal Reserve Economic Data.

FIGURE 7
BRENT–WEST TEXAS INTERMEDIATE CRUDE OIL PRICE SPREAD, MAY 1987 TO MAY 2016



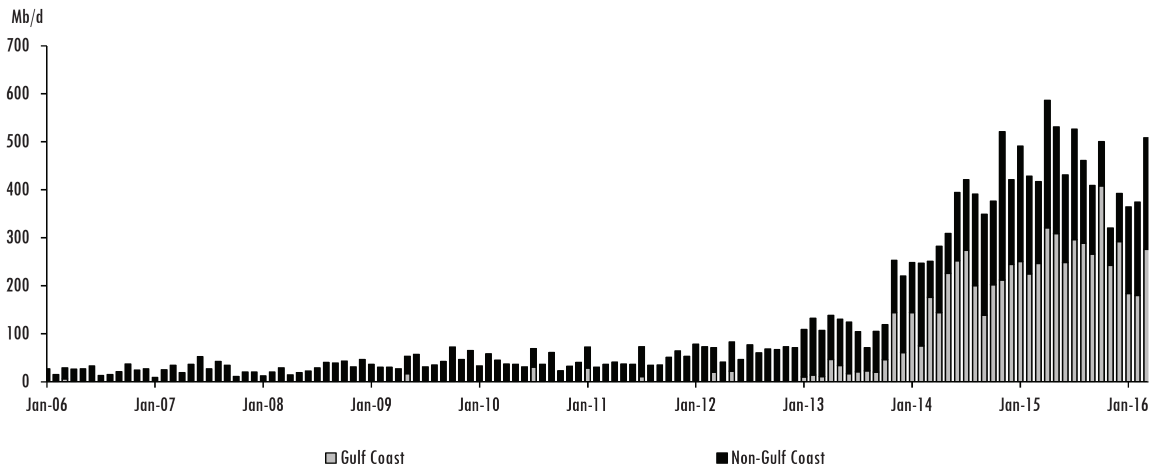
SOURCE: Federal Reserve Economic Data.

Brent–WTI spread. The spread reached a high of $27.0 per barrel in late 2011, substantially greater than the cost of shipping to foreign markets. Unsurprisingly, U.S. producers began to push for relief from the crude export restrictions that had previously garnered little attention.

Relief for exporters from the federal ban has come in two parts. First, in summer 2014, the Bureau of Industry (BIS) relaxed certain interpretations of what constituted processing, or refining crude oil. The export ban only applies to crude, or unprocessed, oil; refined petroleum products have never been subject to the ban. The BIS ruled that a certain type of ultra-light crude oil, known as condensate, would qualify as processed (making it not subject to the export ban) if the condensate passed through a stabilization unit at the wellhead. Almost all condensates are extracted from the crude oil stream using a stabilizer anyway. Therefore, the ruling enabled the export of most produced condensates. Second, in December 2015, the U.S. repealed the crude oil export ban in its entirety. This repeal has made the export of all types of crude oil legal to almost any international market. **Figure 8** shows total U.S. crude oil exports during the last decade.

Before the repeal of the export ban at the end of 2015, almost all of the U.S. exports have been to Canada, and most have been condensate. Crude oil produced in Canada is extremely heavy and often cannot flow through pipelines without being diluted by a lighter-weighing oil. The result is that Canada has instituted a strong need for U.S. condensates. After the BIS ruling in 2014, several small shipments of U.S. condensate have also shipped to refineries in Europe and Asia. However, the repeal of the ban has coincided with the decrease of the Brent–WTI spread from historic highs to the indicators' long-term average of approximately zero (see **Figure 7**). Demand for U.S. condensate is expected to keep U.S. exports of crude oil higher than normal (approximately 500 Mb/d, an increase from less than 100 Mb/d). However, the potential economic benefit to Texas from selling crude oil at much higher prices in the international market will not be realized as long as the Brent–WTI spread remains at its 2015 low level.

FIGURE 8
U.S. CRUDE OIL EXPORTS, JANUARY 2016 TO MARCH 2016



NOTE: Gulf Coast exports are primarily from Texas and Louisiana.
SOURCE: Energy Information Administration.

OVERVIEW OF ISSUES RELATED TO APPRAISALS OF DEALER'S HEAVY EQUIPMENT INVENTORY

Property taxes are based on the appraised value for a given property. Unless otherwise provided by law, appraised values are required to represent market value, which is statutorily defined as the value for which the property would likely sell on January 1 of a given tax year. In 1993, the Legislature established new appraisal protocols for inventory held for sale by motor vehicle dealers. In accordance with the new special inventory appraisal protocols, the value of inventory held for sale was based on total annual sales instead of the value of inventory on a lot. These special inventory appraisal protocols were applied in subsequent years to inventory held by dealers of manufactured housing, boats, and heavy equipment. In response to litigation and changing business practices, the definition of heavy equipment inventory has been expanded to include inventory held for lease. This amended definition has resulted in increased litigation, decreased property tax, and increased state contributions to the Foundation School Program, relative to the previously used appraisal methodology.

FACTS AND FINDINGS

- ♦ Dealer's heavy equipment is the only class of inventory that applies a special inventory appraisal methodology to leased items.
- ♦ The application of special inventory appraisal protocols to heavy equipment and subsequent modifications of the appraisal protocols have resulted in inconsistent appraisals of similar property and litigation.

DISCUSSION

Property taxes are locally assessed taxes used to fund the operations of local government entities and pay for schools, streets, roads, police, and other locally provided services. According to the Comptroller of Public Accounts (CPA), property taxes are the largest source of tax revenue in Texas. In fiscal year 2013, more than $45.0 billion in property tax revenue was collected, representing almost half of total state and local tax revenues. Unlike other local governmental entities which can also collect sales taxes and fees, school districts' only source of local tax revenue is the property tax.

The Texas Constitution, Article VIII, includes basic parameters for property taxes. These parameters include:

- property taxes must be equal and uniform;
- typically, property must be assessed at its fair cash market value, or the price for which it would sell when both buyer and seller seek the best price and neither is pressured to buy or sell;
- each property in a county must have a single appraised value that is used by all of the taxing entities within the county;
- all property is taxable unless federal or state law exempts it from the tax; these exemptions may exclude all or part of a property's value from taxation; and
- property owners have a right to reasonable notice of increases in the appraised value of and tax estimates for their properties.

APPRAISAL OVERVIEW

Property taxes are based on the appraised value for a given property. To simplify property appraisals and ensure uniform appraisals, the Legislature established a system of central appraisal districts in 1981. According to CPA, before the Legislature established appraisal districts, thousands of governmental taxing entities appraised property and imposed taxes independently, resulting in wide disparities in value. As property tax levies increased and the state began to base more aid to school districts on property values, centralized local appraisal became necessary.

The Texas Tax Code, Chapter 6, requires appraisal districts to appraise all property subject to property taxes in Texas. Unless otherwise provided by law, appraised values must represent market value, which is defined as the value for which the property would likely sell on January 1 of a given tax year. The Texas Constitution requires appraisals to be equal and uniform, meaning that similar properties are taxed similarly.

Three standard approaches are used to determine market value:

- market approach – uses sales of similar properties to estimate the value of properties that have not sold; for instance, sales in a residential neighborhood can be used to estimate the value of all properties in the neighborhood, assuming the sales are adjusted for differences in property characteristics such as size, age, location, etc.;

- income approach – uses the net income from a property used for business purposes to estimate the price a potential buyer would pay for commercial property; and
- cost approach – first determines the cost necessary to replace the property, and then depreciates that value based on the age and condition of the property to arrive at an estimate of the market value.

Any one approach may be used, or all three may be calculated and reconciled to arrive at a single value.

CPA has several responsibilities in relation to local property appraisal and tax assessment. Within CPA, the Property Tax Assistance Division (PTAD) conducts the Methods and Assistance Program to review the governance, taxpayer assistance, and operating procedures, and the appraisal standards, procedures, and methodology of each county appraisal district every two years.

PTAD provides information and educational tools on property tax issues to taxpayers, property owners, appraisal districts, appraisal review boards, taxing units, other state agencies, and the Legislature. PTAD also publishes the *Texas Property Tax Assistance Property Classification Guide*, which provides guidelines for classifying property. **Figure 1** shows tax year 2013 taxable and market value in the CPA's property categories. Market value represents the appraised value of a property or the price a property would sell for in the current market to the extent that appraisal districts collect that information. Taxable value includes adjustments for statutorily authorized reductions of appraised value such as homestead exemptions, appraisal value limitations, and special appraisal protocols for agricultural or open-spaced lands. Special inventory appraisal protocols and value reductions due to appraisal protests are reflected in market value.

FIGURE 1
MARKET AND TAXABLE PROPERTY VALUES BY PROPERTY CATEGORY, TAX YEAR 2013

(IN MILLIONS)

CATEGORY		MARKET VALUE	TAXABLE VALUE
A:	Single-family Residences	$992,795.7	$812,359.8
B:	Multifamily Residences	$104,145.5	$104,077.6
C:	Vacant Lots	$39,344.4	$39,057.5
D1:	Qualified Agricultural Land	$228,959.5	$13,122.9
D2:	Nonqualified Agricultural Land	$5,764.5	$5,764.5
E:	Farm and Ranch Improvements	$64,991.7	$55,394.1
F1:	Commercial Real	$317,584.9	$317,584.9
F2:	Industrial Real	$104,583.3	$75,733.9
G:	Oil, Gas, and Minerals	$133,472.4	$133,472.4
H:	Vehicles	$102.3	$102.3
J:	Utilities	$58,231.4	$58,231.4
L1:	Commercial Personal	$135,481.1	$135,481.1
L2:	Industrial Personal	$119,028.2	$91,637.5
M:	Mobile Homes and Other Personal	$5,760.3	$3,840.8
O:	Residential Inventory	$7,174.4	$7,174.4
S:	Special Inventory	$5,474.6	$5,474.6
Other		$544.1	$544.1
Total		**$2,323,438.3**	**$1,859,053.7**

NOTE: Totals might not sum due to rounding.
SOURCE: Texas Comptroller of Public Accounts, Biennial Property Tax Report, Tax Years 2012 and 2013.

FOUNDATION SCHOOL PROGRAM AND LOCAL REVENUES

In Texas, the responsibility for public school funding is shared between the state and the local school district. Funding is guaranteed on a per student basis. The difference between local tax collections and the guaranteed amount per student is provided by the state. The Foundation School Program (FSP) is the state's primary program to provide funding to public school districts and allow them to meet required educational standards for kindergarten through twelfth-grade education.

Because of the shared school funding relationship, the state has a vested interest in local property tax collections, and the local property appraisals upon which school district property tax assessments are based. According to the Texas Education Agency, when property values decrease, it results in a cost to the state. To the extent property values are lower than they otherwise might be due to current market conditions, appraisal appeals, tax exemptions, or applying special appraisal methods, the financial responsibility of the state increases.

APPRAISAL OF COMMERCIAL AND INDUSTRIAL INVENTORY

The value of inventory held by businesses for the purpose of generating revenue is subject to the property tax. The owner of a store is taxed based on the estimated value of any merchandise that store has on hand for sale at a given time. Statute requires appraisal districts to establish procedures for the equitable and uniform appraisal of inventory for taxation. Inventory is typically classified as either L1: Commercial Personal Property or L2: Industrial Personal Property. According to the Texas Tax Code, Section 23.12, aside from exceptions in statute, the market value of inventory is the price for which it would sell as a unit to a purchaser who would continue the business. Appraisal districts appraise the inventory of each business as of January 1 of a given year. The districts mail a notice of appraised value to each property owner by May 1. Business owners pay property taxes based on the appraisal district's appraisal of the inventory's value and the tax rates of applicable taxing jurisdictions.

In 1993, motor vehicle dealers expressed concern to the Legislature that the inventory appraisal approaches specified in statute were not compatible with the industry's standard business practices. Dealers contended that inventory of motor vehicle dealerships turns over frequently; therefore, the value on a lot on any given day would not accurately represent the average value of inventory. To address this concern, the Legislature classified the inventory of motor vehicle dealers as special inventory and passed special inventory appraisal protocols that were intended to estimate the value of a motor vehicle dealer's inventory on a typical day. The Legislature later adjusted the special inventory appraisal protocols to apply to additional types of inventory.

APPRAISAL OF SPECIAL INVENTORY

The new appraisal protocols established by Senate Bill 878, Seventy-third Legislature, 1993, for inventory held by motor vehicle dealers also established a new property category, Category S: Special Inventory. Before those amendments, motor vehicle dealers' inventory was appraised as Category L1: Commercial Personal Property. According to the House Research Organization, some opponents of legislation to establish special inventory appraisal protocols expressed concerns that separate protocols for a few types of property would represent a piecemeal approach to appraising inventory, which could result in unintended consequences and increase the risk of appraisals being unequal. Supporters of the legislation indicated that new appraisal protocols for motor vehicle inventory would establish uniformity and reliability in appraising inventories. Supporters expressed that the new protocols would reduce opportunities for dealers to shift inventory to avoid taxation and would provide a more equitable means of assessing the size and value of inventory by averaging inventories during the entire year. These protocols also would improve an appraisal district's ability to verify inventory because the district could compare dealer-reported sales information with title certificates filed. Senate Bill 878 states:

- dealer is defined as a person who regularly and actively buys, sells, or exchanges vehicles at an established and permanent location;
- special inventory is defined as inventory held for resale (excluding fleet transactions), sales to other dealers, and sales of medium-duty or heavy-duty trucks;
- market value is defined for property tax purposes as total annual sales from special inventory for the 12-month period corresponding to the previous tax year, divided by 12;
- dealers are required to collect a unit property tax on each unit sold from a special inventory; this tax is equal to one-twelfth of the most recent county aggregate tax rate for the county in which the inventory is located; and
- dealers are required to deposit the unit property tax into an escrow account managed by the county tax assessor-collector for the prepayment of special inventory property taxes each month.

These special inventory appraisal protocols resulted in some inventory not being subject to taxation in a given year because the value of any qualifying special inventory held for sale but not sold in a year is not included in the appraised value of the dealer's property. The unit property tax made it easier for dealers to directly pass on the property taxes associated with any car in inventory to a customer. Holding the unit property tax in an escrow account benefits local governments by providing a reliable and verifiable revenue stream. The Seventy-fourth Legislature, 1995, applied the special inventory appraisal protocols to inventory held by retailers of boats. The Seventy-fifth Legislature, 1997, applied the special inventory appraisal protocols to inventory held by dealers of heavy equipment and dealers of manufactured housing. **Figure 2** shows the four types of special inventory.

FIGURE 2
SPECIAL INVENTORY CATEGORIES IN THE TEXAS TAX CODE, FISCAL YEAR 2016

CATEGORY	SECTION	ESTABLISHED	LAST MODIFIED	DEALER DEFINITION	SALES PRICE DEFINITION	INCLUDES INVENTORY HELD FOR LEASE
Motor Vehicle	23.121	1993	2013	A person who regularly and actively buys, sells, or exchanges vehicles at an established and permanent location.	The total amount of money paid or to be paid for the purchase of a motor vehicle.	No
Vessel and Outboard Motor (Boats)	23.124	1995	2009	A person who holds a dealer's and manufacturer's number issued by the Texas Parks and Wildlife Department, or is authorized by law or an interstate reciprocity agreement to purchase vessels or outboard motors in Texas without paying the sales tax.	The total amount of money paid or to be paid for the purchase of a vessel or an outboard motor.	No
Heavy Equipment	23.1241	1997	2013	A person engaged in the business of selling, leasing, or renting heavy equipment.	The total amount of money paid or to be paid to a dealer for the purchase of an item of heavy equipment; or, for a lease or rental, the total amount of the lease or rental payments.	Yes
Manufactured Housing	23.127	1997	2009	A person who is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale, exchange, or lease-purchase to consumers; and who sells, exchanges, or lease-purchases at least two manufactured homes to consumers in a 12-month period.	The total amount of money paid or to be paid to a retailer for the purchase of a unit of manufactured housing, excluding any amount paid for the installation of the unit.	No

NOTE: Sellers of manufactured housing are referred to as retailers instead of dealers.
SOURCE: Legislative Budget Board.

DEALER'S HEAVY EQUIPMENT INVENTORY

Heavy equipment is typically understood to mean heavy-duty vehicles used for construction, excavation, or agriculture, such as bulldozers, excavators, road graders, and backhoes. The Legislature has amended how heavy equipment inventory is appraised several times since 1997. **Figure 3** shows how the protocols for appraising heavy equipment held as inventory have changed since 1997. Before 1997, heavy equipment inventory was appraised as L2: Industrial Personal Property, and its appraised value was based on the price for which it would sell as a unit to a purchaser who would continue the business, as of January 1 of a given year.

DEALER'S HEAVY EQUIPMENT INVENTORY FROM 1997 TO 1999

The Seventy-fifth Legislature, 1997, applied the special inventory appraisal methodology used for automobile and boat dealers to dealers of heavy equipment. Senate Bill 759, Seventy-fifth Legislature, 1997, applied the following definitions for the purposes of appraising heavy equipment inventory:

- dealer is defined as a person engaged in the business of selling heavy equipment in the state;
- heavy equipment is defined as self-propelled, self-powered, or pull-type equipment, including farm equipment or a diesel engine, that weighs at least 3,000 pounds and is intended to be used for agricultural, construction, industrial, maritime, mining, or forestry uses;
- total annual sales are defined as the total of the sales price for each sale from a dealer's heavy equipment inventory in the same calendar year;

FIGURE 3
CHANGES TO METHODOLOGY FOR APPRAISING HEAVY EQUIPMENT INVENTORY, FISCAL YEARS 1997 TO 2016

PERIOD	VALUATION OF SALE INVENTORY	VALUATION OF LEASE INVENTORY	VALUATION OF LEASE INVENTORY WITH PURCHASE OPTION	CONCERNS
Before 1997	Market value of items held on January 1	Market value of items held on January 1	Market value of items held on January 1	Inventory turns over frequently, so the value on a lot on any given day would not accurately represent the average value of inventory.
1997 to 1999	Total annual sales divided by 12	Market value of items held on January 1	Market value of items held on January 1	Some leased items with purchase options were subject to both the lease and sales methodologies.
1999 to 2011	Total annual sales divided by 12	Market value of items held on January 1	Total annual lease receipts and future considerations less subsequent sales divided by 12	Some leased items with purchase options were leased multiple times and therefore taxed multiple times in the same year.
2011 to 2016	Total annual sales divided by 12	Total annual lease receipts divided by 12	Total annual lease receipts and future considerations less subsequent sales divided by 12	Using different special inventory appraisal methods for inventory that is leased versus inventory that is sold results in unequal appraisals for similar items.

NOTE: Concerns were expressed by dealers, appraisal districts, or the Legislature.
SOURCE: Legislative Budget Board.

- subsequent sale is defined as a dealer-financed sale of an item of heavy equipment that, at the time of the sale, has been the subject of a dealer-financed sale from the same dealer's heavy equipment inventory in the same calendar year; and
- market value is defined for the purpose of property taxes as total annual sales, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the preceding tax year, divided by 12.

DEALER'S HEAVY EQUIPMENT INVENTORY FROM 1999 TO 2011

Senate Bill 1435, Seventy-sixth Legislature, 1999, modified the definition of total annual sales for dealer's heavy equipment to include a lease or rental with the option to purchase. This legislation also specified that, for a lease or rental with the option to purchase, sales price includes the total amount of the lease or rental payments plus any final consideration, excluding interest. The change was an attempt to remedy incidents of double taxation. Heavy equipment was frequently leased before sale. If an item was leased on January 1, and an option to purchase was subsequently exercised, the value of the item of inventory would be included in the dealer's Category L2: Industrial Personal property and also as Category S: Special Inventory. Senate Bill 1435 was not expected to result in a significant fiscal impact to the state or units of local government. However, some dealers and appraisal districts disagreed about which transactions qualified as subsequent sales. Some dealers of heavy equipment contended that if an option to purchase was not exercised, then each subsequent lease represented a subsequent sale that could be deducted from the dealer's special inventory market value calculation. Appraisal districts disagreed with this approach, resulting in litigation.

In Briggs Equipment Trust v. Harris Central Appraisal District, 2009, the First Court of Appeals ruled that multiple heavy equipment leases or rentals with options to purchase should not be considered as subsequent sales. The ruling required each rental with a purchase option to be treated as a normal sale, increasing the market value of heavy equipment in some instances. This ruling resulted in new concerns about double taxation. Each lease with a purchase option was treated as a sale, even if it was leased multiple times in a given year. The result was that an item of inventory could be taxed multiple times.

DEALER'S HEAVY EQUIPMENT INVENTORY FROM 2011 TO 2016

House Bill 2476, Eighty-second Legislature, Regular Session, 2011, was intended to reduce the instances of leased items with a purchase option being taxed multiple times in the same year. The bill accomplished the following:

- modified the statutory definition of total annual sales to include lease and rental payments received for each lease or rental of heavy equipment inventory in a 12-month period, in addition to the total of sales price for each sale from a dealer's heavy equipment inventory in a 12-month period;
- required dealers to collect the applicable property tax from renters;
- reduced the minimum weight threshold to qualify as heavy equipment from 3,000 to 1,500 pounds;
- modified the definition of subsequent sale to clarify that the term does not include a rental or lease with an unexercised purchase option; and
- modified the statutory definition of dealer to include businesses that lease or rent heavy equipment in addition to businesses that sell heavy equipment.

In legislative hearings, supporters described the bill as a result of careful negotiations among appraisal districts, CPA, and heavy-equipment dealers. These supporters indicated that the bill would make the assessment and collection of property taxes on heavy equipment rental companies more uniform and efficient.

Following the enactment of House Bill 2476, the number of items of inventory that qualified for the special inventory appraisal methodology increased. Total taxable value was reduced by expanding the number of qualified dealers, applying the methodology to lighter items, and applying the methodology to all items of leased heavy equipment. Previously, leased heavy equipment was taxed at full market value as industrial personal property, if no purchase option was included, or as special inventory at full sales price if a purchase option was included. Applying the special inventory appraisal protocols to leased heavy equipment significantly reduced taxable value relative to the sales price methodology, because lease revenue tends to be significantly lower than revenue from sales. In one example, a dealer claimed that 43 leased natural gas compressors qualified as heavy equipment. Using the leased value methodology to estimate market value results in taxable value of $197,000. The appraisal district asserted that these items were industrial personal property and appraised the compressors at a value of $6.7 million. These provisions are the subject of ongoing litigation.

LITIGATION

According to information provided by the Texas Association of Appraisal Districts, applying the special inventory appraisal protocols to leased heavy equipment inventory resulted in litigation challenging $2.5 billion in taxable value from tax years 2012 to 2014. Dealers of heavy equipment involved in this litigation have disputed approximately $800.0 million in appraisal district estimates of heavy equipment inventory value for each of the three years. This dispute amounts to $19.5 million in property taxes statewide each year, of which $10.7 million is school property taxes. Litigation has centered on three issues: the constitutional requirement for equal and uniform taxation, taxable situs (the jurisdiction in which the property is taxed), and the classification of natural gas compressors as heavy equipment.

The Texas Constitution, Article VIII, requires that all taxable property is taxed equally and in proportion to its value. Typically, this requirement means that property is appraised at market value, and that significantly similar items should be taxed at similar values. Appraisal districts argue that using different valuation methods for inventory that is leased versus inventory that is sold is unreasonable, arbitrary, and capricious. The districts hold that one month's rent inherently cannot be the market value of the item being leased. District courts typically have sided with appraisal districts on the constitutionality of the lease provisions. Appellate courts have ruled on six separate cases to date: remanding the case back to the district courts in two of the cases; and reversing district court rulings and siding with the dealers in the other four cases.

Taxable situs is the jurisdiction in which an item of property is taxed. For example, a house in central Austin is appraised by Travis Central Appraisal District and subject to the taxes of the taxing jurisdictions in which it is physically located. The taxable situs of inventory typically is considered to be the location at which the inventory is held as of January 1 of a given year. Typically, this consideration results in the inventory being appraised in the appraisal district where the dealer's commercial operations are located. However, leased heavy equipment inventory is often not located in the county in which the dealer's commercial operations are based on January 1. Before the passage of House Bill 2476, Eighty-second Legislature, Regular Session, 2011, this equipment was appraised as industrial personal property in the district in which it was located. House Bill 2476 applied the special appraisal protocols to qualifying leased equipment.

Instructions on the Dealer's Heavy Equipment Inventory Declaration Texas Property Tax Form directed dealers to submit the declaration to the appraisal district for the jurisdiction in which the dealer operated. This direction led to some dealers reporting special inventory that was physically located in another jurisdiction to local appraisal districts. Consequently, some taxable situs had historically been in the jurisdiction of an appraisal district that is different from the district in which the dealers were operating. In these instances, filing the declaration with the dealer's local appraisal district had the effect of moving the taxable situs of the inventory to another jurisdiction, which shifted taxable value among local taxing jurisdictions. The districts in which the property is located objected to this and held that taxable situs should remain in the county in which the property is physically located. The district courts have ruled that taxable situs should remain in the county in which the property is located. The appellate courts have upheld those rulings in each of the six cases on which they have ruled.

Statute defines heavy equipment as self-propelled, self-powered, or pull-type equipment, including farm equipment or a diesel engine, that weighs at least 1,500 pounds and is intended to be used for agricultural, construction, industrial, maritime, mining, or forestry uses. According to appraisal districts, as a result of applying the special inventory appraisal protocols to leased heavy equipment, property owners have begun classifying natural gas compressors as heavy equipment. Some appraisal districts have held that natural gas compressors do not qualify as heavy equipment because they are not self-propelled. District and appellate courts have consistently rejected the appraisal districts' position.

OVERVIEW OF ENFORCEMENT AND COLLECTION OF HOTEL OCCUPANCY TAXES ON SHORT-TERM RENTAL PROPERTIES

The state requires hotel operators to collect the hotel occupany tax from guests who rent a room or space costing $15 or more each day. From calendar years 2013 to 2015, the number of hotels filing the state's hotel occupancy tax increased 20.2 percent. However, 82.1 percent of the increase was due to hotels with revenue below the threshold for filing the monthly tax and with four or fewer rooms available to rent. At the end of calendar year 2015, these lower-volume hotels represented half of all state hotel occupancy tax filers. It is likely that many of these new hotels are short-term rentals. A short-term rental is all or part of a residence that is rented out for less than 30 days at a time. The Texas Comptroller of Public Accounts does not maintain information related to hotel occupancy tax collections specifically from short-term rentals.

FACTS AND FINDINGS

- ♦ An increasing number of hotel occupancy tax filers that interact with the Texas Comptroller of Public Accounts are likely to be individuals for whom short-term rental leasing is not their primary source of income and who are not professional hotel operators. This likelihood increases the risk of noncompliance by tax filers.
- ♦ In the third quarter of calendar year 2013, 5,422 hotels for which quarterly hotel occupancy taxes were filed had four or fewer rooms to rent. In the third quarter of calendar year 2015, Texas had 7,512 such filers, a 38.5 percent increase.
- ♦ Quarterly hotel occupancy tax collections from hotels with four or fewer rooms to rent accounted for 2.0 percent of all hotel occupancy tax revenue collected in the third quarter of calendar year 2015.

DISCUSSION

The state imposes a hotel occupancy tax on the rental of a room or space in a hotel that costs $15 or more each day. The tax applies not only to hotels and motels, but also to bed and breakfasts, condominiums, apartments, and houses. The Eighty-fourth Legislature, 2015, amended statute to define a short-term rental as the rental of all or part of a residential property to a person who is not a permanent resident; the amended statute specifically includes these rentals in the definition of a hotel. Cities, certain counties, and special purpose districts are authorized to impose an additional local hotel tax on sleeping rooms that costs $2 or more each day, which is collected by the local taxing authority. The state's hotel tax rate is 6.0 percent of the cost of a room. The Texas Comptroller of Public Accounts (CPA) is responsible for collecting and enforcing the state portion of the tax. Although the state requires businesses engaged in the sales or lease of tangible goods and taxable services to obtain a sales tax permit, the state does not require hotel operators to obtain a hotel tax permit. Businesses that report the hotel tax are required to complete a hotel occupancy tax questionnaire, a CPA tax form.

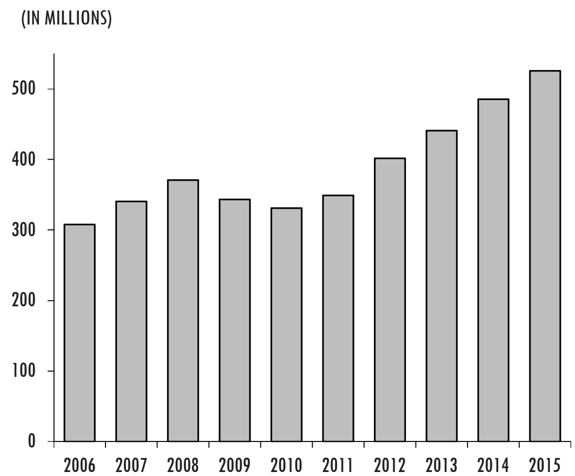
Individuals that lease their houses, or rooms in their houses, are required to collect the hotel tax from purchasers in the same way a hotel or motel must collect hotel tax from its purchasers. Property management companies, online travel companies, and other third-party rental companies may also be responsible for collecting the hotel tax. According to CPA, a third-party service is required to collect and remit state hotel tax on the entire amount the service collects from the purchaser for the right to occupy the rental property. State hotel tax is due on the total amount paid by the purchaser, including any incremental costs or fees that the service adds to the cost of the rental.

According to CPA data, state hotel tax has made up approximately 1.0 percent of total state tax collections from fiscal years 2006 to 2015. As **Figure 1** shows, from fiscal years 2006 to 2015, total state hotel tax collections increased from $308.0 million to $525.8 million. This amount is an increase in hotel tax revenue of 70.7 percent.

SHORT-TERM RENTALS OVERVIEW

Short-term rentals are part of what is often referred to as the sharing economy. The sharing economy is characterized by technology platforms that facilitate on-demand access to goods or services, including ride-hailing apps like Uber or Lyft, online marketplaces like Etsy, and home-sharing services for short-term rentals like Airbnb or HomeAway. Short-term rentals are typically a portion or the entirety of a residence, either a single-family home, a condo, or an apartment that is rented out for short periods of time. Some of these rentals are owner-occupied, and some are not. The

FIGURE 1
STATE HOTEL OCCUPANCY TAX COLLECTION
FISCAL YEARS 2006 TO 2015



SOURCE: Texas Comptroller of Public Accounts, Revenue Watch: General Revenue–related Funds, historical data.

rentals can be operated by homeowners who are trying to earn supplemental income or by property management companies for which leasing short-term rentals is the primary business. Some of these rentals are advertised on classified advertising websites such as Craigslist, and some are rented through third-party booking websites. Airbnb and HomeAway are the two largest such booking websites. Airbnb provides advertising, booking, limited insurance, and billing and collections services. HomeAway provides advertising and an encrypted network through which a rental operator and purchasers make arrangements for payment and accommodation. The number of short-term rentals that are operated in Texas is not tracked by any state agency. However, as of May 2016 more than 300 of these rental were shown on the third-party booking website Airbnb for each of the five largest cities in Texas. Austin, Houston, San Antonio, and the Dallas–Fort Worth area also each showed more than 300 such listings on HomeAway in May 2016.

The state does not license hotels, including short-term rentals, although it does require businesses that report the hotel tax to complete CPA's hotel occupancy tax questionnaire. CPA does not track hotel tax collections related to these rentals. For the purpose of this Legislative Budget Board (LBB) staff analysis, it is assumed that short-term rentals meet the requirements to file quarterly. Statute requires hotel operators to remit the state hotel tax monthly, unless the amount owed is less than $500 for each month in a calendar quarter or $1,500 for the quarter. A hotel with taxable revenue of $25,000 or less in a quarter meets the quarterly filing requirement. The second assumption in this analysis is that short-term rentals have four or fewer rooms available for rent. As **Figure 2** shows, from the third quarter of calendar year 2013 to the third quarter of calendar year 2015, the number of hotels that fit these criteria increased 38.5 percent. Total taxable receipts from these hotels increased by 57.6 percent. The number of hotels that met these criteria before

FIGURE 2
ESTIMATED HOTEL OCCUPANCY TAXES ATTRIBUTED TO SHORT-TERM RENTALS, CALENDAR YEARS 2013, THIRD QUARTER, TO 2015, THIRD QUARTER

QUARTER	NUMBER OF SHORT-TERM RENTALS	TAXABLE RECEIPTS (IN MILLIONS)	TAX (IN MILLIONS)
2013, Third Quarter	5,422	$30.2	$1.8
2013, Fourth Quarter	5,771	$16.3	$1.0
2014, First Quarter	5,827	$17.3	$1.0
2014, Second Quarter	6,002	$30.6	$1.8
2014, Third Quarter	6,493	$38.9	$2.3
2014, Fourth Quarter	6,893	$21.1	$1.3
2015, First Quarter	7,370	$23.0	$1.4
2015, Second Quarter	7,520	$40.2	$2.4
2015, Third Quarter	7,512	$47.6	$2.9

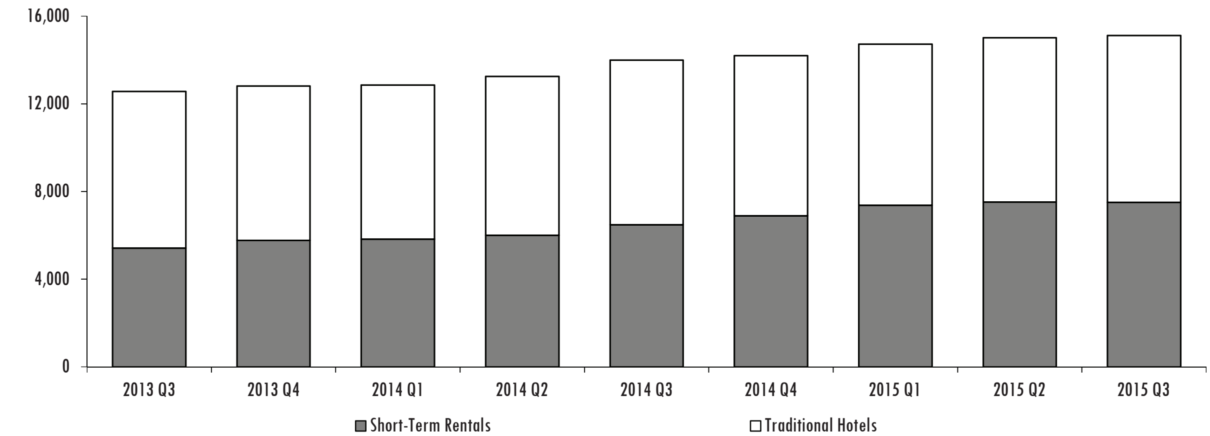
NOTE: Analysis assumes all hotels with four or fewer accommodations for which quarterly taxes were filed are short-term rentals.
SOURCE: Legislative Budget Board analysis of Comptroller of Public Accounts data.

the increased activity related to third-party booking websites is unknown because of the lack of historical data.

As **Figure 3** shows, in the third quarter of calendar year 2013, hotels identified as short-term rentals constituted 43.1 percent of all hotels. By the third quarter of calendar year 2015, these rentals made up 49.7 percent of all hotels.

Although the proportion of hotels that are identified in this analysis as short-term rentals has increased recently, the proportion of hotel tax from these rentals is small. As **Figure 4** shows, $2.9 million of the total $142.6 million of state hotel tax in the third quarter of calendar year 2015 came from such rentals. This amount represents 2.0 percent of total hotel tax collections, an increase from 1.5 percent in the third quarter of calendar year 2013. Hotel tax revenue from these rentals is more volatile than tax revenue from traditional hotels. **Figure 5** shows that changes in hotel tax

FIGURE 3
ESTIMATED SHORT-TERM RENTALS AND TRADITIONAL HOTELS FOR WHICH STATE HOTEL OCCUPANCY TAX WAS FILED CALENDAR YEARS 2013, THIRD QUARTER, TO 2015, THIRD QUARTER



NOTE: Analysis assumes all hotels with four or fewer accommodations for which quarterly taxes were filed are short-term rentals.
SOURCE: Legislative Budget Board analysis of Comptroller of Public Accounts data.

FIGURE 4
STATE HOTEL OCCUPANCY TAX REVENUE BY SOURCE CALENDAR YEARS 2013, THIRD QUARTER, TO 2015, THIRD QUARTER

(IN MILLIONS)

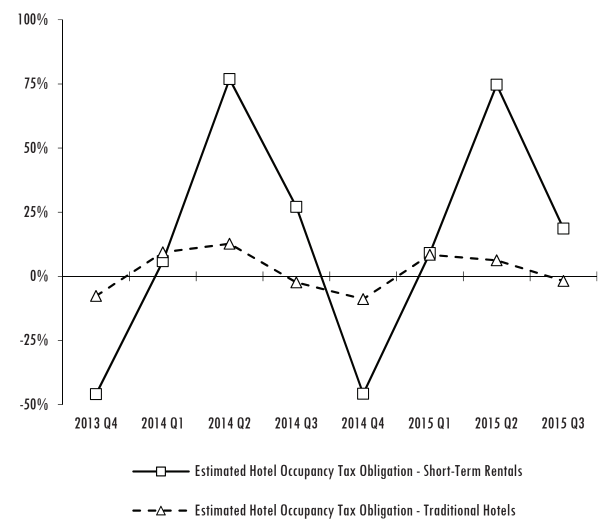
QUARTER	RENTALS	HOTELS	TOTAL
2013, Third Quarter	$1.8	$122.7	$124.5
2013, Fourth Quarter	$1.0	$114.0	$114.9
2014, First Quarter	$1.0	$124.7	$125.7
2014, Second Quarter	$1.8	$139.9	$141.7
2014, Third Quarter	$2.3	$136.0	$138.4
2014, Fourth Quarter	$1.3	$124.8	$126.1
2015, First Quarter	$1.4	$135.3	$136.7
2015, Second Quarter	$2.4	$142.8	$145.2
2015, Third Quarter	$2.9	$139.7	$142.6

NOTE: Analysis assumes all hotels with four or fewer accommodations for which quarterly taxes were filed are short-term rentals.
SOURCE: Legislative Budget Board analysis of Comptroller of Public Accounts data.

revenue from each source follow a similar pattern of fluctuation, but the percentage change in hotel tax related to short-term rentals is greater.

During the past two years, the composition of hotels responsible for filing the hotel tax with the state has shifted. The number of hotels with four or fewer accommodations for which quarterly tax was filed, which this analysis has identified as potential short-term rentals, has increased.

FIGURE 5
CHANGE IN HOTEL OCCUPANCY TAX REVENUE FROM THE PREVIOUS QUARTER, BY SOURCE, CALENDAR YEARS 2013, FOURTH QUARTER, TO 2015, THIRD QUARTER



NOTE: Analysis assumes all hotels with four or fewer accommodations for which quarterly taxes were filed are short-term rentals.
SOURCE: Legislative Budget Board analysis of Comptroller of Public Accounts data.

These hotels typically have a smaller tax liability compared to larger hotels—$380 compared to $18,360 on average in the third quarter of calendar year 2015. However, these hotels represent approximately half of all hotels for which state hotel tax was filed. An increasing number of hotel tax filers that contact CPA are likely to be individuals for whom rental leasing is not their primary source of income and who are not professional hotel operators. This likelihood increases the risk of noncompliance by hotel tax filers.

PAYMENT AND ENFORCEMENT OF HOTEL OCCUPANCY TAXES

All hotel operators are required to complete and mail a paper copy of the hotel occupancy tax questionnaire to CPA. The form, which can be downloaded from CPA's website, is used to gather information about the nature of the business that operates the hotel. The tax filer is required to file a hotel tax return either monthly or quarterly depending on the amount of taxes owed. Filers for hotels that owe less than $500 in state hotel tax for each calendar month or $1,500 for a calendar quarter, are required to remit the tax by the twentieth day of the month following the end of the quarter. Filers for all other hotels are required to remit monthly. CPA encourages hotel tax filers to file electronically; however, filers for hotels that paid less than $10,000 in the previous fiscal year are authorized to use paper filing. Tax filers for all hotels are required to file each filing period, even if no taxes are due. The Eighty-fourth Legislature, 2015, appropriated $32.0 million in the 2016–17 biennium to CPA to improve and modernize tax filing services and systems, in an effort to increase tax filer compliance.

According to CPA, a short-term rental booking service is required to collect and remit state hotel tax on the entire amount the service collects from the purchaser for the right to occupy the rental property. State hotel tax is due on the total amount paid by the purchaser, including any incremental costs or fees that the service adds to the cost of the rental. As of December 2016, short-term rental booking services are not collecting and remitting state hotel tax on behalf of such operators.

CPA enforces the hotel tax through regular audit activities. The agency has indicated that the increase in small, low-volume hotels has not had any effects on its monitoring activities as these activities are designed to detect noncompliance regardless of the size of the entity. CPA enforces hotel tax noncompliance by following up on complaints, canvassing activities, conducting Internet research, making unannounced visits at businesses, and working with local taxing authorities. CPA works with local taxing authorities to identify businesses permitted for the local hotel tax, but not for the state hotel tax. The effectiveness of this approach to ensure compliance from short-term rentals depends on each local taxing authority's ability to identify and regulate this type of rental. In some cases, local taxing authorities provide CPA with a list of hotels in the local taxing authorities' hotel tax system, and CPA compares that information to data in its system. CPA uses this information to generate audit leads. According to CPA, from fiscal years 2011 to 2015, the agency audited 738 hotels statewide and made tax adjustments totaling approximately $11.2 million.

CPA is auditing the third-party booking service HomeAway for compliance with the state sales and use tax. HomeAway does not owe state hotel tax on users' advertising fees because the service's activities are limited to charging users for advertising space, and purchasers deal directly with the owner or manager of the rental property. The owners or property managers who list properties with the service are required to collect and remit state hotel tax.

The third-party booking service Airbnb operates with a different business model, which is similar to the model used by businesses such as Hotels.com. Services such as Hotels.com enter into an agreement with a hotel to advertise the hotel on a website. The hotels invoice the service a certain amount per hotel room. The service then adds a markup to the invoiced charge. The price at which the hotel room is advertised on the website is the marked-up price. CPA's position is that these services owe hotel tax on the total amount charged to the purchaser, including the amount remitted to the hotel and the additional markup. Litigation between CPA, Hotels.com and similar entities is pending until resolution of the City of San Antonio's class-action suit against Hotels.com LP, which is on appeal to the U.S. Court of Appeals, Fifth Circuit.

Purchasers that use Airbnb pay the service for the short-term rental of a property. Airbnb, in turn, withholds a fee and remits the balance of the rental payment to the rental operator. Airbnb's position is that it is not required to collect and remit hotel tax because it does not own, manage, operate, or control a hotel, but instead is an intermediary between the rental operator and the purchaser. Although Airbnb maintains that the operator is the entity required to collect and remit hotel tax, the service has contacted CPA and offered to voluntarily collect and remit hotel tax for short-term rentals in Texas. As of December 2016, CPA was in discussion with the service to require it to collect and remit the state hotel tax.

LOCAL REGULATION OF SHORT-TERM RENTALS

Municipalities may license and regulate short-term rentals. For example, the City of Austin requires all such rentals to be licensed by the city and places restrictions on the number of these rentals that can operate in different regions of the city, depending on whether or not the rental property is owner-occupied. Austin requires short-term rental operators to pay a notification fee in the first year of operation and an annual licensing fee of $236. The city requires proof of payment of the prior year's local hotel tax before the renewal of a short-term rental license. The city restricts the number of nonowner-occupied short-term rentals to 3.0 percent of the detached single-family and dual-family residential units within a census tract. A City of Austin audit found that owners of these rentals are not fully aware of tax reporting requirements, which increases the risk they will not correctly pay the hotel taxes owed to the city. The audit found that tax filers were equally likely to overpay the tax as they were to underpay. The city regulates these rentals through its Code Department, and hotel tax payments are managed through its Finance Department. The city authorizes filers to file and pay hotel taxes online or by filing paper forms. To pay online, tax filers submit the tax forms in one system and make a payment through an additional external system. In February 2016, the City of Austin modified its regulations of short-term rentals. The new regulations:

- provide for increased inspection and enforcement of properties;
- increased the notification fee from $50 to $157 for new short-term rentals;
- create an occupancy limit of no more than 10 adults or 6 unrelated adults;
- prohibit advertising by non-licensed short-term rentals;
- prohibit assemblies or group activities other than sleeping from 10 p.m. to 7 a.m.; and
- ban nonowner-occupied short-term rentals beginning in April 2022.

The city's new regulations have been challenged in court by short-term rental operators. The litigation is ongoing. The Texas Office of the Attorney General has joined the case on behalf of the property owners challenging the new regulations.

As of March 2016, Dallas did not have a formal framework for licensing or regulating short-term rentals. A 2011 City of Dallas audit report found that the city did not have processes and procedures in place to specifically address these rentals. As a result, it is unlikely that such rental operators were registered with the city and paying local hotel tax. According to a September 2015 Dallas Observer article, only three of the 700 short-term rentals in Dallas that were available for booking on the Airbnb service at the time were registered with the city, and two of those have paid local hotel tax. **Figure 6** shows the top 10 cities in Texas that have hotel tax filers identified in this LBB staff analysis as potential short-term rentals, and whether the city regulates short-term rentals. As **Figure 6** shows, in the third quarter of calendar year 2015, Austin had the most hotel tax filers identified as this type of rental in the state. Dallas had 4.1 percent as many hotel tax filers identified as these rentals as Austin did, despite the two cities having similar numbers of these rentals listed on the Airbnb service. This disparity indicates that developing a formal process for regulating short-term rentals is related to increased hotel tax compliance. The rentals included in this LBB staff analysis occurred prior to the changes in the City of Austin's regulations. It is unclear what effect the new regulations will have on the number of short-term rentals that operate legally and the level of compliance with the hotel tax.

FIGURE 6
TOP TEN TEXAS CITIES WITH THE LARGEST NUMBER OF ESTIMATED SHORT-TERM RENTAL HOTEL OCCUPANCY TAX FILERS, CALENDAR YEAR 2015, THIRD QUARTER

CITY	RENTALS	REGULATES RENTALS
Austin	1,100	Yes
Galveston	806	Yes
Port Aransas	781	Yes
Corpus Christi	521	As Bed and Breakfast
South Padre Island	478	Yes
Rockport	429	No
Fredericksburg	203	As Bed and Breakfast
New Braunfels	157	Yes
Surfside Beach	144	No
San Antonio	120	No

NOTE: Analysis assumes all hotels with four or fewer accommodations for which quarterly taxes were filed are short-term rentals.
SOURCE: Legislative Budget Board analysis of Comptroller of Public Accounts data.

OVERVIEW OF STATE FUNDING OF CONVENTION CENTER FACILITIES UTILIZING QUALIFIED HOTEL PROJECTS

Eligible municipalities in Texas have an economic development tool that allows them to use certain tax revenues for the development of convention center facilities. These projects are referred to as "qualified hotel projects." Hotel tax revenue generated by the construction or expansion of a convention center hotel can be used to pay for obligations related to the development of the project. Additionally, certain cities are authorized to rebate their local hotel occupancy tax, local sales and use tax, local mixed beverage tax, and local ad valorem taxes, as well as being entitled to a rebate of state hotel occupancy taxes and state sales and use taxes for 10 years after the project is built and open for occupancy.

FACTS AND FINDINGS

- In fiscal year 2015, approximately $12.1 million in state tax revenue was allocated for qualified hotel projects in Texas.
- Currently the cities of Dallas, Fort Worth, and San Antonio receive allocations of state sales and use tax, and state hotel occupancy tax associated with qualified hotel projects.
- House Bill 1964, Eighty-fourth Legislature, 2015, extended authority to use qualified hotel projects to the cities of El Paso, Frisco, Nacogdoches, Odessa, Round Rock, and Tyler.

DISCUSSION

Beginning with Houston in the early 1990s, several Texas cities contend that having a convention center is only one component necessary to attract investment. Equally important is having enough hotel rooms near a convention center to attract larger conferences and more investment to the local economy. Consideration of that goal lead to the enactment of legislation that authorizes certain eligible municipalities to rebate local hotel occupancy tax, local sales and use tax, local mixed beverage tax, and local ad valorem taxes. Along with the local taxes, certain municipalities are entitled to a rebate of state sales and use taxes (6.25 percent) and state hotel occupancy taxes (6.00 percent) associated with a qualified hotel project pursuant to the Texas Tax Code, Section 151.429(h), and Sections 351.102(b) and (c). A qualified hotel project can include the hotel and ancillary businesses, (restaurants, shops, and parking facilities) within 1,000 feet of a convention center facility. To qualify for the tax benefits, businesses must be owned by, or on land owned by, the city or a nonprofit corporation acting on the city's behalf.

The Texas Tax Code, Section 351.001(7), defines eligible central municipalities. Eligible central municipalities as well as other municipalities described by Section 351.102(b) are entitled to state sales tax and state hotel tax associated with a qualified hotel project pursuant to Section 151.429(h) via Section 351.102 (c). Furthermore, Section 151.429(h), states the owner of a qualified hotel project shall receive a rebate, refund, or payment of 100.0 percent of the sales and use taxes paid or collected by the qualified hotel project or businesses located in the qualified hotel project and 100.0 percent of the hotel occupancy taxes paid by persons for the use or possession of or for the right to use or possession of a room or space at the qualified hotel project during the first ten years after the hotel is open for initial occupancy. Cities submit a request for tax rebates to the Comptroller of Public Accounts along with documentation verifying that the qualified hotel project is eligible for rebates. Such funds are deposited in a suspense account outside the state Treasury to be paid to the owner of the qualified hotel project.

Qualified hotel projects are an established economic development tool for local government. Cities assert that these convention center hotels assist downtown revitalization and aid in making city centers more attractive for investment. The first qualified hotel project was initiated by legislation passed by the Seventy-third Legislature, 1993, which authorized the city of Houston to pledge its hotel tax for hotels within 1,000 feet of a city-owned convention center or a historic hotel within one mile of a city-owned convention center. This legislation also authorized the owner of a qualified hotel project to receive a rebate of state sales and use taxes and state hotel taxes generated from the project for 10 years. At the time, Houston was seeking to develop more hotel rooms near its newly built convention center along with restoring the historic Rice Hotel. Since its inception, legislation governing qualified hotel projects has been expanded several times to allow other municipalities to use these revenue streams.

Figure 1 shows allocations of state tax revenue to qualified hotel projects. Houston did not receive any allocations of

FIGURE 1
ALLOCATIONS OF STATE TAX REVENUE TO QUALIFIED HOTEL PROJECTS, FISCAL YEARS 2010 TO 2015

FISCAL YEAR	REVENUE ALLOCATED (IN MILLIONS)
2010	$8.9
2011	$9.9
2012	$12.9
2013	$15.6
2014	$13.6
2015	$12.1

NOTE: Allocated revenue includes total state sales and use tax, and state hotel occupancy tax.
SOURCE: Comptroller of Public Accounts

state taxes in fiscal year 2015 as its projects are beyond the 10-year time period allowed in statute; however, Houston continues to use this program with a number of proposed projects expected to be completed before 2017. Dallas, Fort Worth, and San Antonio currently use qualified hotel projects to expand facilities around their convention centers and receive allocations of state sales and use tax and state hotel occupancy tax associated with these projects. Dallas and Fort Worth also have a unique tool pursuant to the Texas Tax Code, Sections 351.1015 and 351.1065, that occasionally is confused with the usual manner in which qualified hotel projects work. The Texas Tax Code, Section 351.1015, allows both Dallas and Fort Worth to establish project-financing zones to fund a convention center facility, multipurpose arena or venue, and related infrastructure. The cities may receive the incremental increase in revenue from state and local sales, hotel, and mixed beverage taxes for a period of up to 30 years from hotels located in a project-financing zone.

During the Eighty-fourth Legislature, 2015, the authority to use qualified hotel projects was expanded to several municipalities. House Bill 1964 amended statute to add the cities of El Paso, Frisco, and Nacogdoches as eligible central municipalities allowing them to receive a rebate of state sales and use tax and state hotel occupancy tax for qualified hotel projects along with local sales, hotel occupancy, mixed beverage, and local ad valorem taxes. The legislation also authorized the cities of Odessa, Round Rock, and Tyler to receive the same tax rebates that eligible central municipalities receive for qualified hotel projects. The rebated taxes may also be pledged for bonds issued for a hotel project. These cities are still in the planning phase and as such will not receive allocations until the hotel project is completed. **Figure 2** shows municipalities that could qualify for tax rebates based on population and geographic limitations set forth in statute. The figure does not indicate whether the municipality owns or plans to own a convention center facility and if it has adopted a capital improvement plan to expand or construct a convention center.

FIGURE 2
MUNICIPALITIES QUALIFYING UNDER POPULATION AND GEOGRAPHIC REQUIREMENTS FOR TAX REBATES
FISCAL YEAR 2016

MUNICIPALITY	AUTHORIZING STATUTE TEXAS TAX CODE	CURRENTLY RECEIVING STATE TAX REVENUE FOR QUALIFIED HOTEL PROJECTS
Amarillo	§351.102(b)	No
Arlington	§351.001(7)(A)	No
Austin	§351.001(7)(A) and §351.102(b)	No
Carrollton	§351.001(7)(C)	No
Corpus Christi	§351.001(7)(B)	No
Dallas	§351.001(7)(A) and §351.001(7)(C)	Yes
El Paso	§351.001(7)(E)	No
Fort Worth	§351.001(7)(A) and §351.001(7)(C)	Yes
Frisco	§351.001(7)(C)	No
Garland	§351.001(7)(A) and §351.102(b)	No
Grand Prairie	§351.001(7)(A), §351.001(7)(C), and §351.102(b)	No
Houston	§351.102(a)	No (Utilized previously to finance projects, but no current projects in fiscal year 2016)
Irving	§351.001(7)(A)	No
Nacogdoches	§351.001(7)(D)	No
Odessa	§351.102(b)	No
Pasadena	§351.001(7)(A)	No
Plano	§351.001(7)(A)	No
Round Rock	§351.102(b)	No
San Antonio	§351.001(7)(A)	Yes
Tyler	§351.001(7)(A)	No

NOTE: Figure includes municipalities that could qualify based on population and geographic limitations only. To qualify each city would need to own or plan to own a convention center facility and adopt a capital improvement plan to expand or construct a convention center.
SOURCES: Legislative Budget Board; Comptroller of Public Accounts.

IMPROVE TRANSPARENCY OF FUNDING FOR THE HEALTH PROFESSIONS COUNCIL

The Health Professions Council provides administrative support to the Texas agencies that license and regulate certain professions, most of which are health-related. Pursuant to statute, its services are funded via prorated assessments from participating agencies rather than a direct appropriation.

A rider in the Eighty-fourth Legislature, General Appropriations Act, 2016–17 Biennium, details total contributions by participating agencies and specific contributions for one service. This rider is incongruent with the Health Professions Council's governing statute regarding which agencies pay prorated assessments for services. This complicates the budget process and inhibits oversight. Amending statute to authorize the agency to be funded through additional methods of finance would provide the Legislature discretion when making funding decisions.

CONCERNS

- ♦ Multiple factors, including a requirement to fund the Health Professions Council via prorated assessments, limit transparency and restrict the Legislature's discretion in funding the agency.
- ♦ Statute requires the Health Professions Council to be funded by prorated assessments from the member agencies defined in the Texas Occupations Code. This requirement is incongruous with the General Appropriations Act, which appropriates money to the Health Professions Council from agencies not included in the governing statute.

OPTIONS

- ♦ **Option 1:** Amend statute to authorize other methods of finance for the Health Professions Council in addition to prorated assessments. This amendment would provide the Legislature with discretion to continue the agency's funding mechanism or to directly fund a particular service or the agency.
- ♦ **Option 2:** Amend statute to authorize the Health Professions Council to provide services to and be funded by assessments from agencies named in the rider regarding the Health Professions Council in the General Appropriations Act, Article VIII, Special Provisions.

DISCUSSION

The Health Professions Council (HPC) provides administrative support to its member regulatory and licensing agencies, most—but not all—of which are health-related. It also provides service and assistance to consumers and clients of those regulatory agencies. HPC does not license or regulate any professions itself.

The agency was established as a result of a recommendation in a 1992 Texas Sunset Advisory Commission (SAC) staff report. SAC's intent was to realize the benefits of consolidating multiple regulatory boards while maintaining the ability of members of a profession to manage the profession. Senate Bill 674, Seventy-third Legislature, 1993, established HPC. The Texas Occupations Code, Chapter 101, Subchapter A, governs the agency and describes its composition, primary responsibilities, and method of finance.

HEALTH PROFESSIONS COUNCIL COMPOSITION

The Health Professions Council's membership is defined in statute and consists of one member appointed by each of the following agencies:

- Texas Board of Chiropractic Examiners;
- Texas State Board of Dental Examiners;
- Texas Optometry Board;
- Texas State Board of Pharmacy;
- Texas State Board of Podiatric Medical Examiners;
- Texas Board of Veterinary Medical Examiners;
- Texas Medical Board;
- Texas Board of Nursing;
- Texas State Board of Examiners of Psychologists;
- Texas Funeral Service Commission;
- Executive Council of Physical Therapy and Occupational Therapy Examiners;
- Texas Department of State Health Services Professional Licensing and Certification Unit; and
- the Office of the Governor.

Except for the Governor's office and the Department of State Health Services (DSHS) Professional Licensing and Certification Unit, HPC member agencies are located in the same building in downtown Austin. As of August 31, 2015, the regulatory boards statutorily connected to the HPC licensed or registered 908,979 practitioners or facilities, including 82,551 newly licensed or registered in 2015.

Before the 2013 legislative session, the DSHS Professional Licensing and Certification Unit included 23 regulatory bodies. Senate Bill 202, Eighty-fourth Legislature, 2015, transferred four of these regulatory bodies to the Texas Medical Board. The bill also transferred 11 others to the Texas Department of Licensing and Regulation during the 2016–17 and 2018–19 biennia and discontinued the regulation of 3. Senate Bill 200, Eighty-fourth Legislature, 2015, transferred the remaining DSHS occupational licensing programs to the Health and Human Services Commission by the end of the 2016–17 biennium.

HEALTH PROFESSIONS COUNCIL RESPONSIBILITIES

The Texas Occupations Code, Chapter 101, defines three responsibilities for HPC. Member agencies' contributions for these services are not based on usage and are included in their appropriations.

These statutory responsibilities include a toll-free telephone complaint system to provide assistance and referrals for persons making a complaint related to a state-regulated profession. According to HPC's 2016 Annual Report, the complaint line receives an average of 2,250 calls per month, approximately 500 of which are routed to HPC staff. The Funeral Service Commission is statutorily excluded from this service.

HPC is required to establish a training program for appointees to the governing bodies of state agencies that regulate health professions. The program's curriculum is specific to the governing body. Appointees are required to complete the training program before Senate confirmation. HPC's third statutory responsibility is to produce an annual report of enforcement actions taken by member regulatory agencies, recommendations for statutory changes to improve the regulation of a profession, and other information and recommendations that HPC deems necessary.

HPC has also adopted initiatives not specified in statute but which the agency has deemed consistent with its legislative mandate. These discretionary initiatives are funded by contributions from member and other agencies who have opted to use the particular service. These services include a shared information technology program, a shared website administrator, a shared document imaging service, and a shared regulatory database.

HPC's Information Technology Support Service Program (ITSS) uses a full-time-equivalent position from the Texas Optometry Board to oversee the acquisition and use of information technology (IT) for that board, six other HPC boards, and two other agencies, the Office of Public Insurance Council and the Texas Board of Professional Geoscientists. This arrangement enables the smaller regulatory agencies to afford IT support that otherwise would be more expensive and redundant.

HPC also provides a website administrator to assist members in updating the design, infrastructure, and security of their websites. Other services include Laserfiche, a shared document imaging system; and a regulatory database shared among a subset of HPC members, the Texas State Board of Plumbing Examiners, and the Texas Board of Professional Land Surveying.

Costs of HPC's discretionary services are shared by participants and proportional to their use. For instance, the cost of the shared regulatory database is split according to the number of licensees associated with each participating agency. A change in the number of member agencies who subscribe to a service affects its cost for all participants. A service may become more expensive for the remaining agencies when a participating agency withdraws from it. A participating agency faced with higher costs for its share of a service may choose to absorb those costs or request exceptional item funding for the increase. No statutory provision authorizes the Legislature to directly fund any portion or all of an individual service at HPC.

Figure 1 shows the services HPC expects to provide to participating agencies during the 2018–19 biennium.

METHOD OF FINANCE

The Texas Occupations Code requires HPC's budget to be funded through prorated assessments collected from the member agencies defined in statute. The agency was appropriated $2.1 million in Interagency Contracts for the 2016–17 biennium.

The Texas Government Code requires agencies providing any services to another agency to enter into a written agreement or contract before providing the services. The agreement or contract must specify the kind and amount of services or resources to be provided, the basis for computing costs, and the maximum cost during the period of the agreement or contract. Situations that cost less than $50,000 are excluded from these requirements. Most of the agencies that participate in HPC services contribute less than $50,000 per year. HPC and several of the agencies whose participation exceeds $50,000 have indicated that they do not have written contracts as required by statute. Instead, services provided to all agencies are laid out in a single memorandum of understanding (MOU) signed by most of the participating agencies. The MOU does not include information regarding costs nor the entirety of HPC's services. It also excludes the Board of Professional Land Surveying, the Office of Public Insurance Counsel, and the Board of Plumbing Examiners, the latter of which contributes more than $50,000 to HPC. These three agencies are cited in the Eighty-fourth Legislature, General Appropriations Act (GAA), 2016–17 Biennium, Article VIII, Special Provisions, as participating in certain HPC services. The Texas Board of Professional Geoscientists, which joined during the 2016–17 biennium, is excluded from the MOU and HPC's 2016–17 GAA, Special Provisions rider. As a result, transparency regarding costs for HPC's services is limited, which inhibits oversight.

The 2016–17 GAA, Article VIII, Special Provisions, Section 3(a), shows the total transfers from participating agencies for all services as of the start of the biennium. Section 3(b) shows the subset of those transfers that fund the shared regulatory database. The provision does not include information on which agencies participate in other services. Except for information about the shared database, the provision does not differentiate the cost of HPC's statutorily required services from its discretionary services. **Figure 2** shows HPC funding according to Article VIII, Special Provisions, Section 3.

Neither the LARs nor the bill patterns in the GAA of member agencies show HPC costs by service or total contribution. HPC's member agencies' LARs for the 2016–17 biennium included language referring generally to HPC's exceptional item requests. However, the LARs did not indicate whether or to what extent the member agencies' budgets would be affected by decisions made for HPC. HPC's LAR included rider drafts that indicate exceptional item costs by member agency, though not for services included in its baseline request. This lack of information complicates the process of increasing or decreasing member agencies' budgets when

FIGURE 1
HEALTH PROFESSIONS COUNCIL SERVICES BY PARTICIPATING AGENCY, 2018–19 BIENNIUM

AGENCY	ADMINISTRATIVE AND STATUTORY SERVICES	REGULATORY DATABASE	ITSS	WEB ADMINISTRATOR	LASERFICHE
Board of Chiropractic Examiners	X		X		X
Texas State Board of Dental Examiners	X	X		X	X
Optometry Board	X	X	X	X	X
Board of Pharmacy	X	X		X	X
Board of Podiatric Medical Examiners	X		X	X	X
Board of Veterinary Medical Examiners	X		X	X	
Texas Medical Board	X				
Texas Board of Nursing	X			X	X
Board of Examiners of Psychologists	X	X	X	X	X
Funeral Service Commission	X	X	X	X	X
Executive Council of Physical Therapy and Occupational Therapy Examiners	X		X	X	X
Department of State Health Services	X				
Board of Professional Land Surveying		X			
Board of Plumbing Examiners		X			
Board of Professional Geoscientists			X		
Office of Public Insurance Counsel			X		
Total participating agencies	**12**	**7**	**9**	**9**	**9**

NOTE: ITSS = Information Technology Support Service Program.
SOURCE: Health Professions Council.

FIGURE 2
ARTICLE VIII SPECIAL PROVISIONS RIDER AMOUNTS APPROPRIATED FOR TRANSFER TO THE HEALTH PROFESSIONS COUNCIL, 2016–17 BIENNIUM

AGENCY	§3(A) – TRANSFERS FOR ALL SERVICES	§3(B) – TRANSFERS FOR DATABASE SERVICES
Board of Chiropractic Examiners	$39,622	NA
Texas State Board of Dental Examiners	$518,254	$441,372
Optometry Board	$54,778	$24,863
Board of Pharmacy	$668,797	$551,454
Board of Podiatric Medical Examiners	$25,816	NA
Board of Veterinary Medical Examiners	$60,423	NA
Texas Medical Board	$59,567	NA
Texas Board of Nursing	$138,721	NA
Board of Examiners of Psychologists	$104,676	$52,630
Funeral Service Commission	$86,659	$37,199
Executive Council of Physical Therapy and Occupational Therapy Examiners	$64,827	NA
Department of State Health Services	$23,692	NA
Board of Professional Land Surveying	$24,058	$24,058
Board of Plumbing Examiners	$266,202	$266,202
Office of Public Insurance Counsel	$13,282	NA
Total	**$2,149,374**	**$1,397,778**

Source: Legislative Budget Board.

appropriation decisions are made regarding HPC. Option 1 would amend the Texas Occupations Code to include a provision authorizing other methods of finance for funding HPC. This provision would not preclude continued funding via prorated assessments. But it would give the Legislature the option to directly fund the agency or individual initiatives from General Revenue Funds.

HPC's governing statute requires that its budget is provided by the regulatory agencies cited in the Texas Occupations Code. Limiting contributions to the member agencies named in statute excludes the Board of Plumbing Examiners, the Board of Professional Land Surveying, the Office of Public Insurance Counsel, and the Board of Professional Geoscientists. All of these agencies receive services from HPC. These additional agencies, with the exception of the Board of Professional Geoscientists, are referenced in the 2016–17 GAA, Article VIII, Special Provisions, but the incongruity between statute and rider inhibits transparency. Option 2 would amend statute to authorize HPC to provide services to and be funded by the agencies included in the Article VIII, Special Provisions, rider.

FISCAL IMPACT OF THE OPTIONS

Option 1 would amend statute to include an option to fund HPC with additional methods of finance. HPC is funded by General Revenue Funds appropriations to other agencies. Assuming equivalent reductions are made to the budgets of participating agencies, directly funding HPC would not have a cost, except to the extent that the Legislature may provide direct funding for exceptional items or new initiatives.

Option 2 would amend the Texas Occupations Code to authorize HPC to provide services and be funded by agencies other than those already named in statute. This option would not have a fiscal impact.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

SUPPORT AND ENFORCE CONTRACTING BEST PRACTICES

As of January 2017, Texas state agencies and institutions of higher education reported more than 30,000 contracts, valued at $92.8 billion. Contracting best practices, including statute and regulations, are guiding principles that the state uses to minimize risk in the procurement of goods and services. Despite the value of these standards, means are limited to ensure that state agencies follow them. Furthermore, Texas' contract oversight system has certain structural gaps that limit the state's ability to mitigate risk. Efforts to educate and certify procurement staff should be supported by more robust enforcement mechanisms.

FACTS AND FINDINGS

- Agencies must use centralized purchasing provided by the Comptroller of Public Accounts or the Department of Information Resources for certain purchases. However, many types of purchases are delegated to agencies to carry out directly or exempted altogether from centralized purchasing authority.

- Various agencies and interagency work groups review some agency contracts, but their recommendations are either nonbinding or limited in scope, including:
  - the Department of Information Resources reviews and approves statements of work for certain information technology contracts valued from $50,000 to $1.0 million;
  - the Contract Advisory Team reviews solicitation documents for contracts valued at more than $10.0 million and issues nonbinding recommendations; for fiscal years 2015 and 2016, these recommendations were accepted by agencies half of the time; and
  - the Quality Assurance Team monitors major information resource projects and reviews and approves contract amendments for monitored projects that exceed 10.0 percent of the contract amount.

- Findings of existing oversight entities are difficult to enforce, including:
  - the State Auditor's Office audits contracts to identify contracting weaknesses and provides recommendations to mitigate risks, but has neither the responsibility or authority to enforce implementation of corrective actions; and
  - Legislative Budget Board staff reviews have discovered several contracts with unmitigated risks in fiscal year 2016; no mechanism exists to compel an agency to implement recommendations to address these risks.

CONCERNS

- Contract Advisory Team recommendations on procurements are non-binding, and no entity regularly monitors agency implementation to ensure final contracts address risks identified by the team.

- Contract oversight efforts are fragmented. As a result, some delegated contracts are not subject to oversight and risks inherent in contracting may not be detected, deterred, or mitigated.

- Contracting best practices, including statute, regulations, and the Comptroller of Public Accounts' State of Texas Contract Management Guide, are difficult to enforce.

- The lack of oversight limits the ability to monitor and enforce legislative direction.

OPTIONS

- **Option 1:** Amend the 2018–19 General Appropriations Bill to require the Contract Advisory Team to provide the Legislative Budget Board with the results of its reviews within 10 days of their completion, along with agency responses to the team's recommendations.

- **Option 2:** Amend the 2018–19 General Appropriations Bill to enhance Quality Assurance Team oversight by including reviews of contracts under its review valued at more than $10.0 million before execution and by requiring Quality Assurance Team approval before such contracts can be executed.

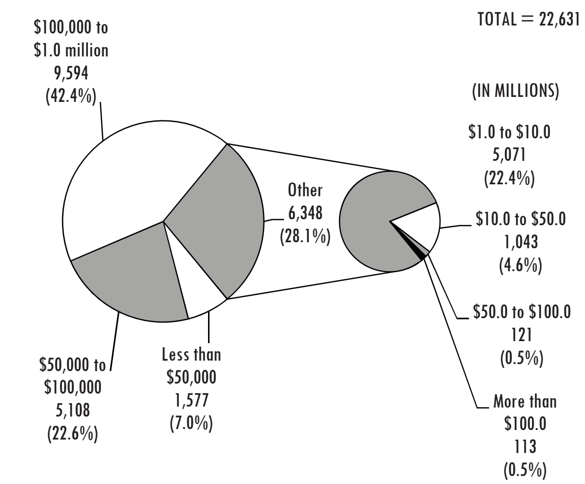
- **Option 3:** Amend statute to establish Legislative Budget Board responsibilities for contract oversight in the Texas Government Code to review contracts, submit recommendations, and pursue corrective actions.

- ♦ **Option 4:** Amend statute to provide the Legislative Budget Board with enforcement mechanisms to address repeated agency noncompliance with contracting best practices.

DISCUSSION

In fiscal year 2016, Texas state agencies and institutions of higher education reported approximately 22,600 contracts, valued at $82.6 billion. These contracts are shown in **Figures 1** to **3**, and generally span multiple fiscal years. As of January 2017, reported contracts increased to more than 30,000 with a value of $92.8 billion. With a 2016–17 All Funds state budget of $209.1 billion, this level of contract activity represents a significant portion of the state's planned biennial expenditures.

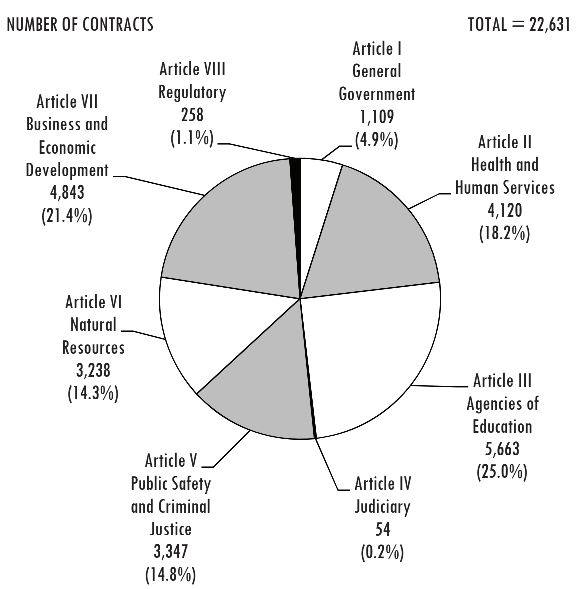
FIGURE 1
REPORTED STATEWIDE CONTRACTS BY VALUE
FISCAL YEAR 2016

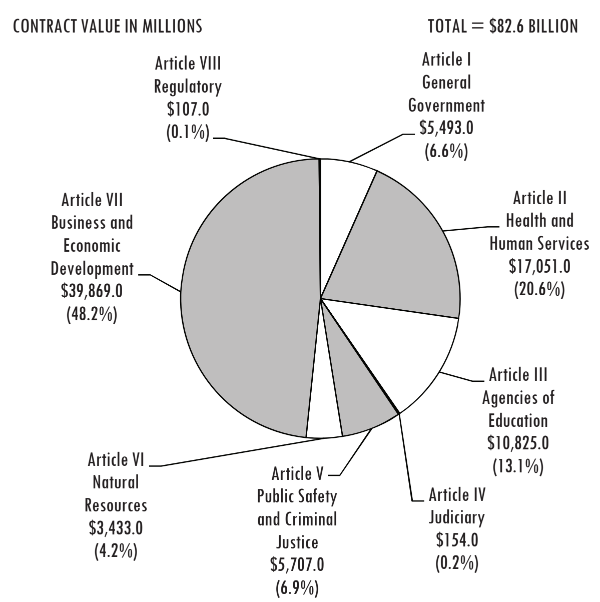


NOTE: Reported contracts include delegated and centralized purchases, contracts awarded in previous budget periods, and contracts paid for by all methods of finance, including nonappropriated funds outside the Treasury.
SOURCE: Legislative Budget Board.

Texas state government's purchasing and contracting structure contains centralized and decentralized elements. Statute authorizes the Comptroller of Public Accounts (CPA) and the Department of Information Resources (DIR) to provide centralized purchasing services to support state agencies and institutions of higher education. CPA primarily focuses on commodity supplies, materials, and services. DIR specializes in technology, including commodity software and hardware, telecommunications equipment and services, and technology-related services. Agencies are required to use these centralized support services in certain circumstances, but many types of purchases are either delegated to agencies

FIGURE 2
REPORTED STATE CONTRACTS BY FUNCTION, FISCAL YEAR 2016





NOTE: Reported contracts include delegated and centralized purchases, contracts awarded in previous budget periods, and contracts paid for by all methods of finance, including nonappropriated funds outside the Treasury.
SOURCE: Legislative Budget Board.

FIGURE 3
TOP 10 STATEWIDE VENDORS BY CONTRACT VALUE AND PROCUREMENT CATEGORY, FISCAL YEAR 2016

(IN MILLIONS)

VENDOR	CONTRACTS	TOTAL VALUE	AVERAGE VALUE
Information Technology			
1. Atos Government IT Outsourcing Services LLC	1	$1,334.1	$1,334.1
2. AT&T Corporation	10	$980.9	$98.1
3. IGT Global Solutions Corporation	1	$861.0	$861.0
4. Texas NICUSA LLC	3	$811.4	$270.5
5. Maximus Inc.	2	$543.9	$272.0
6. Deloitte Consulting LLP	2	$361.4	$180.7
7. Accenture LLP	5	$224.9	$45.0
8. Oracle America Inc.	23	$195.3	$8.5
9. SHI Government Solutions Inc.	108	$188.4	$1.7
10. Northrop Grumman Systems Corporation	5	$174.1	$34.8
Services			
1. Parkland Community Health Plan Inc.	2	$2,346.9	$1,173.5
2. North Tarrant Express Mobility Partners LLC	2	$2,009.6	$1,004.8
3. NorthGate Constructors	1	$1,097.0	$1,097.0
4. AGL Constructors	1	$1,061.5	$1,061.5
5. Zachry-Odebrecht Parkway Builders	1	$1,040.0	$1,040.0
6. Maximus Inc.	4	$855.6	$213.9
7. SouthGate Mobility Partners LLC	1	$847.6	$847.6
8. Flatiron/Dragados LLC	1	$803.0	$803.0
9. Accenture LLP	1	$737.1	$737.1
10. Pegasus Link Constructors LLC	1	$722.1	$722.1
Construction			
1. Williams Brothers Construction Co., Inc.	28	$2,434.8	$87.0
2. Webber LLC	26	$1,383.4	$53.2
3. James Construction Group LLC	38	$1,034.8	$27.2
4. Austin Bridge & Road LP	40	$654.0	$16.4
5. Hunter Industries Ltd.	88	$549.3	$6.2
6. The Lane Construction Corporation	21	$538.9	$25.7
7. OHL USA, Inc.	9	$533.3	$59.3
8. J.D. Abrams, LP	15	$516.0	$34.4
9. Anderson Columbia Co., Inc.	38	$487.1	$12.8
10. APAC-Texas Inc.	100	$346.1	$3.5
Commodities			
1. Morris & Dickson Co., LLC	12	$1,110.7	$92.6
2. W.W. Grainger, Incorporated	2	$60.5	$30.3
3. Ben E. Keith	8	$55.5	$6.9
4. TIBH	152	$53.8	$0.4

FIGURE 3 (CONTINUED)
TOP 10 STATEWIDE VENDORS BY CONTRACT VALUE AND PROCUREMENT CATEGORY, FISCAL YEAR 2016

(IN MILLIONS)

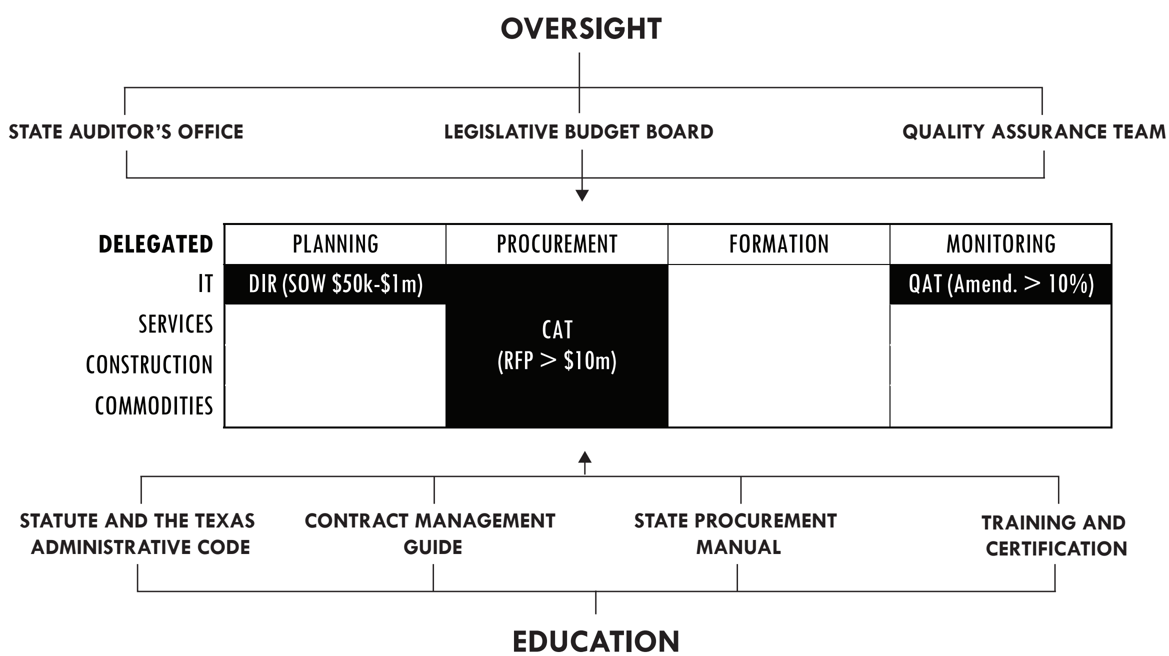
VENDOR	CONTRACTS	TOTAL VALUE	AVERAGE VALUE
Commodities (continued)			
5. Taste 'N Tell International LLC	19	$46.8	$2.5
6. Morpho Trust Inc.	4	$42.0	$10.5
7. Biomedical Solutions Inc.	3	$39.0	$13.0
8. Original Bradford Soap Works	13	$33.6	$2.6
9. Elekta Holding Us Inc.	1	$30.0	$30.0
10. 3M Cogent Inc.	3	$29.2	$9.7

NOTES:
(1) Categories based on reported National Institute of Governmental Purchasing Commodity/Services Code.
(2) Reported contracts include delegated and centralized purchases, contracts awarded in previous budget periods, and contracts paid for by all methods of finance, including nonappropriated funds outside the Treasury. Contracts exclude public and state entities.
SOURCE: Legislative Budget Board.

to carry out directly or exempted altogether from centralized purchasing authority.

Texas employs two basic methods for increasing consistency and preventing risk across state contracting: education and oversight. This system is shown in **Figure 4**. Education and purchaser certification disseminates contracting best practices (including statute, regulations, and CPA's State of Texas Contract Management Guide) to improve state contracting from the ground up. To that end, CPA revised its Texas Contract Management Certification Training for state procurement staff in 2015. These revisions emphasize ethics, information technology (IT), and procurement techniques.

FIGURE 4
OVERVIEW OF APPROVAL AND OVERSIGHT OF DELEGATED STATE PURCHASING BY CONTRACT PHASE AND TYPE OF PURCHASE



NOTE: IT = Information Technology; DIR = Department of Information Resources; SOW = Statements of Work; CAT = Contract Advisory Team; RFP = Requests for Proposals; QAT = Quality Assurance Team; Amend. = Amendments.
SOURCE: Legislative Budget Board.

As a result of delegated purchasing, agencies and institutions must establish their own purchasing and contracting departments and ensure that staff are trained and certified to make delegated purchases consistent with state law and best practices. Some state entities, such as the Health and Human Service Commission (HHSC), manage billions of dollars in often complex contracts. Other agencies are smaller and have few or no staff solely dedicated to procurements and contracting. According to CPA, of the 101 state agencies that participated in its 2016 statewide procurement survey, 43.0 percent had less than 1.0 full-time-equivalent (FTE) position dedicated to procurement. The varied nature of Texas' system makes appropriately managing the risk inherit in contracting difficult, time-consuming, and resource- intensive.

Another method for increasing consistency in state contracting practices is through centralized oversight. Oversight can include preliminary reviews and follow-up enforcement. Preliminary reviews provide advice to agencies on applying best practices before key milestones in complex and risky procurements. The centralized nature of this support minimizes the resources needed, increases consistency, and mitigates risks before they occur.

Enforcement is an oversight function that helps to identify trends and improve contracting. This type of oversight includes audits, desk reviews, and analysis, which are typically conducted after contracts are entered. Effective enforcement ensures that the lessons learned from past contracting mistakes remain within institutional knowledge, and that remedies are deployed consistently. Taken together, preliminary reviews and enforcement enable the state to provide support to agencies before, during, and after a contract.

Structural gaps in Texas' contract oversight system limit its effectiveness. Preliminary risk mitigation is limited, and oversight entities are constrained in how they enforce contracting best practices after violations are identified. A result of these shortcomings is that certain types of risk are repeatedly introduced to state contracts. Analysis by the State Auditor's Office (SAO) and Legislative Budget Board (LBB) staff has identified systemic risks that appear across multiple contracting phases, which are shown in **Figure 5**.

Despite the recurrence of these risks, mitigation activities are limited to certain phases and to certain types of procurements. The state lacks a comprehensive system to regularly review and approve some high-risk contracts, and lacks sufficient means to enforce contracting best practices. The result is that little centralized follow-up is offered to support and enforce contracting best practices across all agencies.

PRELIMINARY CONTRACT REVIEWS

Effective contract oversight should mitigate risk before it is introduced. This mitigation is best accomplished through preliminary reviews that precede key contracting milestones. Contract risk mitigation is limited by structural issues within the state's contract review system, which are shown in **Figure 6**. Texas' oversight system does not proactively review all high-risk phases across all types of contracts.

As shown in **Figure 6**, DIR and the Quality Assurance Team (QAT) review certain IT services and projects within the planning and monitoring phases of the contract management process. The Contract Advisory Team (CAT) looks at solicitations for procurements valued at more than $10.0 million, but it issues nonbinding recommendations. Agency compliance with recommendations is not regularly monitored to ensure the final executed contract addresses risks identified by CAT. As a result, the contract formation phase is not subject to any regular review or oversight. Furthermore, no oversight entities are authorized to review non-IT contract amendments during the monitoring phase, nor is there a mechanism through which contract terms and conditions are reviewed before they are executed.

Contract formation is a crucial phase because contract terms and conditions define the parties' legal relationship. Any

FIGURE 5
MAJOR RISKS IN CONTRACTING, BY CONTRACTING PHASE

PLANNING	PROCUREMENT	FORMATION	MONITORING
Failure to conduct a thorough risk assessment before outsourcing services.	Failure to document vendor selection criteria and best value standards.	Crucial terms and conditions that protect the state are left out during negotiation.	Poorly defined amendment and Change Order procedures lead to scope creep and cost increases.
Failure to assess agency needs and link them with contract deliverables.	Conflicts of interest when selecting vendors are not always adequately tracked.	Risk management procedures are not clearly defined.	Vendor performance is not consistently monitored or reported to the Comptroller.

Note: These represent most common types of risk for each stage of contract and not an exhaustive list.
Source: Legislative Budget Board.

FIGURE 6
PRELIMINARY CONTRACT REVIEWS OF DELEGATED PURCHASES BY PHASE AND TYPE OF PURCHASE

DELEGATED	PLANNING	PROCUREMENT	FORMATION	MONITORING
IT	DIR (SOW $50k-$1m)	CAT (RFP > $10m)		QAT (Amend. > 10%)
SERVICES				
CONSTRUCTION				
COMMODITIES				

NOTE: IT = Information Technology; DIR = Department of Information Resources; SOW = Statements of Work; CAT = Contract Advisory Team; RFP = Requests for Proposals; QAT = Quality Assurance Team; Amend. = Amendments.
SOURCE: Legislative Budget Board.

issues that arise at this point cannot be easily overcome by after-the-fact risk management or contract administration. Amendments are an additional source of significant risk. Amendments change terms and conditions of a contract and could alter a contract's scope or increase a contract's cost. Although each oversight component has evolved to address a specific need, overall the system fails to address many high-risk areas.

REVIEWS OF CERTAIN CONTRACT STATEMENTS OF WORK-PLANNING PHASE

Senate Bill 20, Eighty-fourth Legislature, 2015, established a preliminary review process for IT service-based contracts. Reviews are focused on statements of work (SOW), which define the scope of what a contractor will do for the state. The legislation requires agencies to submit SOW for IT service contracts valued from $50,000 to $1.0 million to DIR for review. DIR reviews SOW to ensure that they are consistent with the master contract DIR negotiated with the vendor. Each SOW must be reviewed, approved, and signed by DIR for the contract to be valid. This approval and signature is required before any funds can be expended on the project.

A result of this approval authority is that DIR has greater ability to ensure consistent application of contracting best practices. From September 1, 2015, to May 2016, DIR reviewed 63 total SOW, 27 of which were substantially reworked and an another 22 rejected, withdrawn, or deemed out of scope. DIR reports that agencies are receptive to their assistance, and that noticeable improvements in consistency have been realized.

There are obstacles, however, to duplicating this model statewide. DIR's considerable IT expertise is a unique strength in these SOW reviews. Contract planning requires institutional knowledge and subject matter expertise. Writing a good SOW requires detailed knowledge of how state program goals link to the services being purchased. If a contract oversight entity is required to review SOW, it must also have similarly detailed knowledge. In addition, DIR SOW reviews are conducted on cooperative contracts whose terms and conditions are already negotiated by DIR. This negotiation provides DIR unique insight into the execution of these SOW, because each will be structured to operate within DIR master contracts.

Although SOW reviews would be difficult to duplicate in other types procurements, some features of this model could be emulated to improve contract oversight. For instance, the preliminary nature of DIR's reviews enables the agency to identify contracting issues before they arise. Furthermore, DIR's authority to approve SOW before contract execution helps to ensure that master contracts are used as intended.

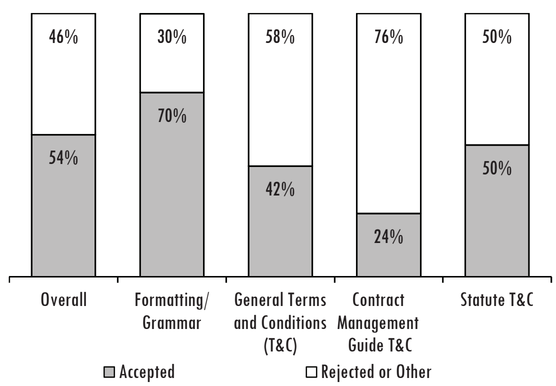
REVIEWS OF REQUESTS FOR PROPOSALS– PROCUREMENT PHASE

CAT is an interagency work group formed in 2001 that includes six members from HHSC, CPA, DIR, the Texas Facilities Commission, the Office of the Governor, and one small agency with fewer than 100 employees. Since 2013, CAT has been authorized to review solicitation and contract documents for projects valued at more than $10.0 million. These reviews produce recommendations, which are returned to agencies for consideration. CAT recommendations seek to mitigate risk before agencies publicly advertise procurement opportunities. In addition, CAT assists CPA in disseminating contracting best practices to all state agencies through training and the State of Texas Contract Management Guide. CAT uses these standards during its reviews of procurements.

CAT is authorized to review solicitation and contract documents, but in practice it reviews only solicitations. CAT analyzes solicitations and returns recommendations to agencies, but these recommendations are nonbinding. Statute requires an agency to either implement CAT's findings or to return a written response explaining why the findings are not applicable to the contract. This allows an agency to dismiss CAT recommendations with little recourse.

From September 2015 to June 2016 , CAT issued 2,737 recommendations to agencies after reviewing their requests for proposals (RFP). CAT identified issues including inconsistencies with statute and the *State of Texas Contract Management Guide*, as well as general grammar and formatting issues within RFP documents. Overall, agencies agreed to implement CAT's recommendations 54.2 percent of the time. Of the recommendations that sought to address issues within the procurement's terms and conditions, 42.8 percent were accepted by agencies. **Figure 7** shows overall acceptance of CAT recommendations from September 1, 2015, to June 29, 2016.

FIGURE 7
AGENCY ACCEPTANCE RATE OF STATE CONTRACT ADVISORY TEAM RECOMMENDATIONS
SEPTEMBER 1, 2015, TO JUNE 29, 2016



SOURCES: Legislative Budget Board; Contract Advisory Team.

CAT does not have a procedure or resources to follow up on implementation of its recommendations or to challenge an agency's assertion regarding why a recommendation is not applicable, even if the team identifies significant risks within a solicitation. No other entity has access to information to allow regular monitoring of compliance with CAT recommendations to ensure the final executed contract addresses risks identified by CAT. Unlike DIR SOW reviews, agencies can proceed with a procurement without addressing CAT recommendations.

INFORMATION TECHNOLOGY PROJECT REVIEWS–MONITORING PHASE

QAT is an interagency work group that includes staff from DIR, SAO, and LBB. QAT primarily monitors risk in large-scale information technology projects with values of more than $1.0 million due to their complexity and the resulting risks these projects pose to the state. Monitoring includes requesting detailed information about projects from agencies and reporting progress to the Legislature. QAT must also review and approve contract amendments if cumulative changes affect the original contract value by 10.0 percent or more. Amendments for projects that QAT is monitoring are not valid without its approval. This approval authority allows QAT to mitigate risks in contracts that support major IT projects.

A notable case study in QAT risk mitigation was the team's review of a major amendment to the Office of the Attorney General (OAG) Texas Child Support Enforcement System 2.0 (T2) project. That project, which began in 2010, experienced severe delays and cost overruns due to poor project structure and vendor performance issues. These problems resulted in the federal government suspending its portion of T2 funding from November 2015 to March 2016. A requirement for resuming that funding was the adoption of a new governance model and a total revision of the project timeline. These substantive changes to the project came in the form of a contract amendment.

QAT monitored T2, which meant that the project was required to have major contract amendments reviewed and approved before execution. QAT, in cooperation with OAG staff, conducted a thorough review of the proposed T2 amendment and identified several major risks. These risks included poorly defined deliverables, payments linked to delivery of products instead of acceptance by the state, and reliance on litigation in the event of disagreements between the parties. The amendment, which rewrote the contracts' fundamental terms and conditions, did not sufficiently protect the state. QAT concerns were presented to OAG in June 2016.

OAG took QAT's input and used it to negotiate new amendment terms, which addressed many of the risks identified. The risk that the T2 amendment posed to the state would not have been mitigated without QAT's approval authority. That authority required terms to be revisited and protections for the state to be upheld before the amendment could be executed. The need to address QAT concerns also resulted in leverage for the state in its negotiations with the vendor. By bringing in a third party, contracting best practices became less negotiable.

Even though this approach has been effective, QAT's oversight has limitations. QAT can request contract amendments for reviews, but agencies do not routinely provided amendments if the contract value does not change by more than 10.0 percent. This inconsistency prevents the team from monitoring the details of amendments, including revisions to terms and conditions that could increase risk. Additionally, agencies are not required to submit third-party monitoring reports to QAT during reviews. These reports, including independent verification and validation, can be crucial sources of insight into IT project risks.

Despite these shortcomings, QAT amendment reviews represent an effective risk mitigation model. Expanding this model to contracts and not just amendments would address a major gap in state contract oversight. Unless amendment reviews are coupled with an approval authority, it is difficult to incentivize contracting parties to address issues to ensure the consistent application of contracting best practices.

The ultimate goal of DIR, CAT, and QAT reviews is to prevent contracting issues before they affect the execution of a state project. The state's review of contracts and correction of violations of best practices can mitigate risk before critical milestones. These types of preliminary reviews, however, have limited means of follow up. Additional oversight is also required to ensure contracting best practices are enforced in projects already under way.

OVERSIGHT AND ENFORCEMENT

In addition to preliminary DIR, CAT, and QAT reviews, LBB staff, and SAO produce findings regarding issues associated with individual contracts or agencies. The consistent application of contracting best practices ensures that agencies do not repeat errors. SAO and LBB staff findings should enable the state to build institutional knowledge, monitor ongoing risk and, when necessary, enforce contracting best practices. However, the state's contract oversight entities do not have authority to enforce contracting best practices in the event of violations.

LBB staff work with state agencies to improve transparency and mitigate risk in state contracting. LBB staff are responsible for administering a public contracts database and conducting reviews of risk in state procurements. LBB staff also initiate in-depth reviews when LBB staff or other oversight entities identify contracting risks.

The goals of LBB staff reviews are to investigate what individual practices introduce risk, and to reveal trends across state procurements. Out of 19 contracts that LBB staff reviewed in fiscal year 2016, significant findings were identified in 8. Issues among these findings range from procedural issues, such as records retention, to major failures, such as repeatedly flawed solicitations. All findings increase risk to the state and often violate the State of Texas Contract Management Guide.

LBB staff use internal analysis and the work of other state contract oversight entities to assess risk in contracting. One of these entities is SAO, an impartial legislative agency that serves as the independent auditor for Texas government. SAO staff use generally accepted auditing standards to review programs and contracting practices. The findings from these audits are presented as reports to the Legislature, agencies, and the public.

SAO audits have repeatedly identified risks in state contracting practices. From July 2012 to December 2014, SAO audited 14 contracts that presented a broad range of risks to the state. Of these 14 contracts, two demonstrated full compliance with all requirements throughout the four phases of the contract management process. Findings in the other 12 audits included poor record keeping for key project components, poor management of change orders, inadequate monitoring of contractor performance, and failure to implement adequate corrective action plans. Additional SAO audits in fiscal years 2015 and 2016 produced 196 recommendations related to contracting. The lack of monitoring and oversight is a recurring issue in these audits, which can introduce risks or defects that could affect an agency's ability to administer a project.

SAO submits reports detailing its findings to the Governor, the Lieutenant Governor, the Speaker of the House, and the legislative committee of jurisdiction. Pursuant to Texas Government Code, Chapter 321, Section 321.014, Subsections (f) and (g), agencies can either report on how they intend to implement SAO recommendations, or dispute the findings. When disputing the findings, the agency must explain why and decide whether to implement them or not. Aside from submitting a response to the SAO, the audited agency is responsible for addressing the issues that were identified.

According to legislative testimony, SAO has neither the responsibility nor the authority to enforce corrective action of its findings, and as a result, some risks may remain unaddressed. SAO periodically analyzes agency implementation of its recommendations. For instance, in April 2016, SAO reviewed how agencies implemented various audit recommendations throughout fiscal years 2014 and 2015. These recommendations covered all aspects of agency operations and were not limited to contracting. State agencies self-report their progress, and SAO takes a sample of the programs and conducts targeted audits.

Agencies self-reported that they had fully implemented 73.0 percent of SAO's recommendations. SAO followed up by auditing 13 of the fully implemented programs, and found that two of them had been partially implemented. Although SAO is able to audit and analyze agency operations, SAO should not enforce the implementation of recommendations. Doing so could compromise SAO's independence.

Generally accepted government auditing standards promulgated by the US Government Accountability Office require auditors to maintain independence. Requiring SAO to enforce their findings would shift auditors focus away from conducting thorough and impartial audits into a role where the auditor could be performing management functions on behalf of the agency. An enforcement entity separate from SAO could be utilized to prevent this sort of threat to SAO's independence from occurring.

Although LBB staff use SAO audits to help identify risks, little recourse is available for repeated noncompliance. LBB staff's practice is to collaborate with agencies in mitigating risk and correcting contracting problems. The most effective oversight is when both parties work cooperatively. However, in the event of repeated or willful noncompliance with contracting best practices, stronger and proportionate enforcement mechanisms would support compliance. For instance, when faced with agency noncompliance with contracting regulations, LBB staff currently have the ability to recommend cancelling a contract. Such a recommendation may not always be proportionate to the severity of the violation. Without clear consequences, noncompliant agencies do not have strong incentives to fix contracting issues.

STRENGTHEN CONTRACTING OVERSIGHT AND ENFORCEMENT

The Legislature previously passed provisions to improve how state agencies and institutions of higher education construct, award, and monitor contracts. Despite these improvements, several structural issues in state oversight limit the proactive mitigation of risk. Preliminary reviews do not cover the most risk-prone phases in contracting and typically lack authority to address contract risks. In addition, the ongoing mitigation of contracting risk is hampered by limited enforcement options. State contract oversight can be strengthened by supporting contracting best practices through additional reviews of high-value contracts before execution, and by providing additional enforcement options.

Option 1 would add a rider to the 2018–19 General Appropriations Bill to improve how the state oversees implementation of CAT findings by state agencies. CAT staff would be required to provide the results of their solicitation and contract reviews to LBB staff within 10 days of completion. Furthermore, CAT staff would be required to provide agency responses to those reviews within 10 days of receiving such a response.

With this information, LBB staff would have increased visibility over agency efforts to address CAT findings before executing contracts. This increased visibility would allow the Legislature to more effectively monitor agency management of risk throughout the contracting cycle and ensure execution of legislative intent. In addition, this would provide advance notice to oversight entities of any unmitigated risks before a contract is executed by a state agency.

Option 2 would amend the 2018–19 General Appropriations Bill, Article IX, Section 9.01, to extend QAT approval to include contract documents before execution. State agencies under QAT monitoring would be required to submit drafts of contracts valued over $10.0 million for review, and must obtain QAT approval before they can be executed. Furthermore, agencies would be required to regularly provide third party independent verification and validation (IV&V) and quality assurance (QA) reports for QAT monitored projects to QAT.

Option 3 would codify LBB contract oversight responsibilities and enhance LBB authority to review contracts, submit recommendations to agencies, and hold them accountable for repeated violations. Contract reviews would be based on LBB risk assessment, as well as SAO, Sunset, DIR, QAT, and CAT findings. LBB recommendations would apply remedies based on the *Texas Contract Management Guide*, the *Texas Procurement Manual*, and all applicable statutes and regulations. Agencies would be required to respond to LBB recommendations within 30 days. Agencies may either agree with recommendations and establish a corrective action plan, or contest the findings in writing. LBB would evaluate responses and conduct follow up to determine if contracting risks have been sufficiently mitigated.

The goal of LBB recommendations would be to address non-conformance with contracting best practices in collaboration with state agencies. This intervention would allow SAO audit findings to be followed up on without compromising that agency's independence. Furthermore, LBB monitoring would raise visibility over agencies' efforts to address contracting issues identified by other oversight entities. Establishing a corrective action plan would create expectations which could be measured against agencies' actual performance moving forward. This would establish greater accountability for agencies and give the state grounds for remedial action in the event of repeated non-compliance.

While collaboration is the ideal method of increasing consistency with contracting best practices, there should be consequences to repeated or willful non-compliance. If agencies do not comply with contracting best practices, or unsatisfactorily execute a corrective action plan, then enforcement measures established by Option 4 would be implemented. These enforcement measures, based on existing legal authorities, would be graduated in severity and clearly defined in statute. This graduated scale of enforcement measures would introduce alternatives to contract cancellation, and provide LBB with greater discretion to implement contract oversight findings.

Enforcement measures would be used as a last resort when bilateral cooperation with LBB staff has been exhausted, and after an agency has demonstrated unwillingness to address problematic contracting practices. If LBB staff determine an agency has mitigated the contracting risk, then the associated enforcement measure could be repealed. Creating clearly defined consequences for violations would not only give oversight entities tools to uphold contracting best practices, but also reinforce existing deterrents against bad contracting practices. Unlike the current contract oversight system, state agencies would have distinct incentives to comply with oversight recommendations.

FISCAL IMPACT OF THE OPTIONS

Option 1 would require CAT staff to provide the results of their solicitation and contract reviews, as well as agency responses to those results, to the Legislative Budget Board within 10 days of completion. No significant fiscal impact is anticipated as a result of Option 1.

Option 2 would require QAT to review and approve major information resource contracts valued at more than $10.0 million. No significant fiscal impact is anticipated as a result of Option 2 since it will utilize existing resources.

Option 3 would codify Legislative Budget Board contract oversight responsibilities and authorize staff to review contracts and submit recommendations to agencies. Option 4 would codify enforcement measures for the Legislative Budget Board to utilize in the event of repeated agency noncompliance with contracting regulations. No significant fiscal impact is anticipated as a result of Options 3 and 4 since they will utilize existing resources.

The House introduced 2018-19 General Appropriations Bill includes riders to implement Options 1 and 2.

CONSOLIDATE CONTRACT REPORTING REQUIREMENTS TO INCREASE STATUTORY COMPLIANCE AND IMPROVE TRANSPARENCY

The Eighty-fourth Texas Legislature amended statute to improve the integrity of state purchasing and promote transparency in contracting. State agencies and public institutions of higher education are required to report contract information to the Legislative Budget Board as well as to post contracts on their websites. Throughout fiscal year 2016, 153 state entities reported over 22,600 contracts to the Legislative Budget Board for a total value of approximately $82.6 billion. By January 2017, the number of reported contracts had increased to over 30,000, valued at $92.8 billion. While the intent of the reporting requirements is to make more information on state contracts publicly available, the combination of new and pre-existing requirements creates duplicative work for reporting entities. Simplifying the contract reporting requirements would reduce the reporting entities' workload, and ensure more accurate and complete reporting.

FACTS AND FINDINGS

- Since 2007, the Legislative Budget Board staff has maintained a database of state contracts, which underwent substantial revision in 2015. The database is publicly available, searchable, and information can be downloaded for use by both state entities and the public.
- Senate Bill 20, Eighty-fourth Legislature, 2015, requires state entities to post contracts on their websites. One year after the bill's enactment, only eight agencies were in full compliance with all the posting requirements, and over 50 percent of Texas agencies had not posted any of the required contract information on their websites.
- Existing statutory contract reporting requirements are overly specific and apply to only certain types of contracts, creating gaps in what must be reported. Provisions in the General Appropriations Act broaden those requirements to include more contract types, but these provisions expire each biennium when the Act expires.

CONCERN

- Six different provisions in statute and the General Appropriations Act require agencies to report contracts to the Legislative Budget Board contracts database. Many contracts are not subject to reporting, and others are exempted from one of more of the requirements. The timeframes and value thresholds for reporting vary among provisions, making it difficult for agencies to understand and comply with the requirements.
- The contract reporting requirements lack of consistency leads to incomplete compliance and inaccurate data. Inaccurate and omitted contracting data reduces transparency, obstructs the Legislature's contract oversight capabilities, and limits public access to information about state contracts.

OPTION

- **Option 1:** Amend statute to consolidate reporting requirements into a single statute to simplify reporting and increase compliance. Each state agency and public institution of higher education would be required to post a link to the consolidated contract database on its website.

DISCUSSION

Over the course of several Texas Legislatures, state contract reporting requirements were amended and revised. Since 1999, the Legislative Budget Board (LBB) staff has received contract notifications from agencies, and since 2007, contract information has been stored and made available via a public database available on the LBB's website. Throughout fiscal year 2016, 153 state entities reported over 22,600 contracts to the LBB Contracts Database for a total value of approximately $82.6 billion. As of January 2017, more than 30,000 contracts, valued at $92.8 billion, were reported. There are statutory conditions that impact the completeness of this information.

Contract reporting to the LBB is required by six different reporting provisions in the Texas Government Code and the General Appropriations Act (GAA). In addition, the Eighty-fourth Legislature, 2015, required state entities to post contract information on their websites. The duplicative and complex nature of these requirements has made compliance difficult and cumbersome for state entities. As a result, implementation has been inconsistent, compromising the accuracy of data and diminishing public visibility over contracting activities.

Transparency in contracting allows the public and the Legislature to oversee how the private sector delivers state services, and how tax dollars are spent. Contracting is the mechanism that allows Texas to take advantage of market efficiencies. As more public functions are outsourced, citizens become increasingly reliant on the performance of vendors to provide services. Ineffective contract reporting makes it difficult to understand whether the state's relationship with the private sector is functioning well.

Furthermore, contracting is a major expenditure of tax dollars that can span multiple budget periods. Complex and expensive contracts can introduce significant risks to the state, and transparency is crucial to mitigating these risks. Improved compliance with contract reporting requirements would enhance the public and the Legislature's ability to track how state funds are spent and increase budgetary transparency overall.

REQUIREMENTS TO REPORT CONTRACTS

Requirements for agencies to report contracts to the LBB were introduced in fiscal year 1999 and have been expanded since through a series of statutory amendments. The LBB was charged with posting reported contracts to a centralized database in fiscal year 2007. LBB staff redesigned the database in August of 2015 and it now includes new quality control processes and customer support services. As of August 2016, the database links to the Centralized Accounting and Payroll/Personnel System (CAPPS) to make reporting to the database easier for state entities that have converted to the new centralized system. **Figure 1** shows LBB contract reporting requirements, associated reporting thresholds, and the dates of revisions for the requirements.

The cumulative effect of the actions of multiple legislatures is a reporting requirement system which could be improved to address inconsistencies. Several reporting requirements can apply to a single contract, each involving different value thresholds and reporting timeframes. For instance, a $12.0 million construction contract would be reportable pursuant to the Texas Government Code, Section 2166.2551; the GAA, Article IX, Section 7.04; and the GAA, Article IX, Section 7.12. Furthermore, existing statutory contract reporting requirements apply to only certain types of contracts, which causes gaps in what must be reported. For example, unless a service contract meets the statutory definition of "consulting" or "professional" services, it would not be reportable under current statute. Instead, provisions in the 2016–17 GAA require reporting of these contracts, but those provisions expire on August 31, 2017, unless re-enacted in the 2018–19 GAA.

Moreover, the event that triggers reporting differs based on whether the requirement is contained in the Texas Government Code or the GAA. The Texas Government Code reporting requirements are tied to the date a contract begins, while the GAA reporting requirements are tied to either the date of payment or the end of the state fiscal year. This confusion is exacerbated by numerous exemptions and special provisions.

FIGURE 1
LEGISLATIVE BUDGET BOARD CONTRACT REPORTING REQUIREMENTS, FISCAL YEARS 1999 TO 2015

TYPE OF CONTRACT	VALUE THRESHOLD	REPORTING TIMEFRAME	STATUTORY REFERENCE	YEAR ADDED/AMENDED
Professional or Consulting Services	> $14,000	10 days after award	Texas Government Code 2254.006, 2254.0301	1999, 2011
Construction	> $14,000	10 days after award	Texas Government Code 2166.2551	1999
Major Information Systems	> $100,000	10 days after award	Texas Government Code 2054.008	1999, 2011
All	> $50,000	End of fiscal year	GAA Article IX, §7.04	2003
Non-Competitive/Sole Source	> $1,000,000	10 days before payment	GAA Article IX, §7.12	2015
Emergency	> $1,000,000	48 hours after payment	GAA Article IX, §7.12	2015
All	> $10,000,000	10 days before payment	GAA Article IX, §7.12	2015

Notes:
(1) GAA = General Appropriations Act.
(2) There are numerous exemptions for these reporting requirements.
Source: Legislative Budget Board.

This makes interpretation and compliance difficult for state agencies and institutions of higher education.

ADDITIONAL REQUIREMENTS FOR PUBLIC DISCLOSURE OF CONTRACTS

In addition to enhancing contract reporting to the LBB, the Eighty-fourth Legislature, 2015, passed separate public disclosure requirements in Senate Bill 20 (SB 20). This legislation directs state agencies and public institutions of higher education to post specific contracting information on their websites to increase transparency, including all contracts and related solicitation documents, such as requests for proposals (RFP). In addition, all non-competitively procured contracts are required to be identified and a justification, referencing statutory or other authority, must be provided explaining why the contracts were not competitively procured. Finally, each state entity is required to provide an internal contract management guide.

Agencies commonly conflate disclosure requirements of SB 20 with the GAA contract reporting requirements. The consequence of this confusion is unreliable and incomplete posting of contract information. For instance, some agencies' procurement staff have made the assumption that posting contracts on their agency website pursuant to SB 20 puts their agency in compliance with GAA reporting requirements, or vice versa.

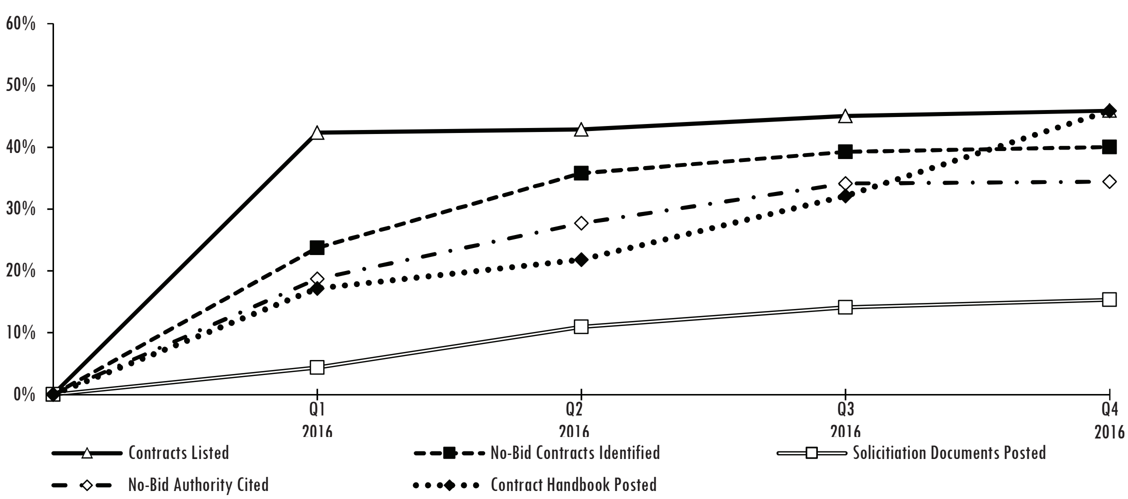
LBB staff conducted quarterly reviews of SB 20 posting compliance among Texas' state agencies and public institutions of higher education throughout fiscal year 2016. **Figure 2** shows the varied application of SB 20 contract posting requirements among 176 state entities contained within the GAA.

Within the first year, only eight state agencies fully complied with all of SB 20's contract posting requirements. Furthermore, the quality of the information varies greatly among agencies, and access to it is inconsistent. Few agencies posted the required solicitation or contract documents. Instead, most referenced an RFP number or posted a purchase order. For non-competitive procurements, agencies did not always provide the citation to the authority under which the purchase was made. A lack of systematic quality control diminishes transparency of the information provided by state agencies on their websites. The lack of consistency in implementing SB 20's contract disclosure requirements is symptomatic of structural issues in Texas contract reporting.

CONSOLIDATING THE REPORTING REQUIREMENTS

To understand common practices, in March 2016, LBB staff reviewed reporting requirements in the 20 most populous states. Most states reviewed have a single contract reporting requirement with one threshold value and deadline. Only one did not have a state contracts database to display reported contract information. (Three states only indicated term contracts, which are offered for a fixed amount of time.) All

FIGURE 2
GAA STATE ENTITIES IN COMPLIANCE WITH SENATE BILL 20 CONTRACT DISCLOSURE REQUIREMENTS, FISCAL YEAR 2016



Note: GAA = General Appropriations Act.
Source: Legislative Budget Board.

contracts databases were available through web portals, and were searchable based on a variety of factors including state agency, vendor names, and contract value. The databases contained various levels of detail for entries, with most including contract and solicitation documents.

To reduce confusion about reporting requirements and align Texas requirements with common state practices, Option 1 would consolidate existing reporting requirements into a single provision within the Texas Government Code, Section 322.020, the LBB's contract reporting statute. Option 1 would require state agencies and public institutions of higher education to report all contracts valued over $50,000 to the LBB Contracts Database within 30 days of award or modification without exception. Modification would include amendments, renewals, and extensions of existing contracts. To maintain consistency with the Office of the Governor's Finding of Fact process, all "Major Consulting Contracts" (defined by the Texas Government Code, Section 2254.021(2)) valued over $15,000 would need to be reported within the same 30-day timeframe.

GAA, (2016–17 biennium), Section 7.12 requires agencies and public institutions of higher education to provide an attestation letter for certain contracts. Option 1 would maintain these requirements, and executive directors or their designees would continue to certify that contracts valued over $10.0 million, or over $1.0 million if procured non-competitively or as a result of an emergency, were executed in accordance with the Texas Contract Management Guide, the Texas Procurement Manual, and all applicable statutes and regulations. Retaining this certification process ensures accountability on higher risk contracts and limits abuse of emergency procurement authority.

Consistent with SB 20, all state entities reporting contracts to the LBB would be required to attach signed contract and solicitation documents to each database entry. This requirement would apply to all state entities that receive appropriations regardless of the source of funds for specific procurements. This integration of SB 20's existing document posting requirements should improve consistency without the introduction of new rules.

Option 1 would also require state agencies and public institutions of higher education to post a link to the LBB contracts database on their websites. The requirement to post the link would replace the requirement for state entities to post contracts on their websites, ensuring that public users can easily find contract information in a consistent format and manner. Providing contract information in a central location minimizes duplicative effort on the part of state agencies and public institutions of higher education. In addition, the LBB requires a uniform format for reporting, which will make the information accessed by the public more complete and accurate. Posting the link on the agency homepage will also minimize the number of navigation steps required to locate contract information.

FISCAL IMPACT OF THE OPTION

Option 1 would have no significant fiscal impact but would reduce staff time previously used to post contracts to each agency website.

The House introduced 2018-19 General Appropriations Bill does not include any adjustments as a result of this option.

IMPROVE STATE AGENCY ELECTRONIC COMMUNICATION PRACTICES AND REDUCE PAPER USAGE

The state spent $49.4 million in All Funds for printing and publication-related services in fiscal year 2015. Of this amount, $4.8 million was used to purchase copy paper through the Comptroller of Public Accounts' TxSmartBuy system, an online ordering system. The state also spent $82.4 million for postage and mailing services during this period. Government organizations and the general public have been increasingly turning to digital transactions, as opposed to using paper or sending documents through the mail, to more efficiently communicate or receive information. By providing agencies with additional discretion to use more efficient methods of communication, the state could realize cost savings by reducing paper usage, increasing accessibility to state documents, and increasing efficiency in administrative services.

According to the Texas State Library and Archives Commission, state agencies and institutions are statutorily required to file more than 1,172 reports with other state agencies and the Legislature. Many of these reports are filed by multiple agencies, which may lead to approximately 14,000 reports being produced. A Senate Committee on Government Organization 2014 survey of legislators and staff found that 44.0 percent of respondents are unable to locate reports they need and 72.0 percent support a single location for reports. Providing state-required reports in a central online location would improve transparency and access to government information.

CONCERNS

- ♦ State statute requires specific methods be used to transmit or receive certain documents, such as printing or mailing. Statute also requires agencies to evaluate and improve mail operations, however, this is in the context of maintaining the use of mail services, and does not require consideration of sending documents through other means. This prevents agencies and the public from choosing the communication method that is the timeliest, most efficient, and most cost-effective.

- ♦ A Legislative Budget Board staff review of electronic communication practices at 28 state agencies found that the cost of procuring an electronic signature system is the main barrier to adoption of such technology. These systems may provide for increased administrative efficiency, timeliness, and auditability for state documents.

- ♦ A Legislative Budget Board staff review of 28 state agencies' document printing and processing found that approximately 50.0 percent did not have clearly defined policies to guide administrative document production. This increases the risk of inefficient or excessive usage of paper.

- ♦ No central repository exists to access state reports. The Texas State Library and Archives Commission administers the Texas Records and Information Locator, which collects archived agency website information; however, this system lacks user functionality, and information is not guaranteed to be up to date.

OPTIONS

- ♦ **Option 1:** Amend statute to authorize state agencies to transmit and receive documents in the most efficient manner available, provided such methods would not compromise program goals or violate federal law. Amend statute to establish a onetime reporting requirement for the Comptroller of Public Accounts, with the assistance of state agencies, to identify additional statutes that should be amended to eliminate unnecessary methods of communication prescribed in state law.

- ♦ **Option 2:** Include a rider in the 2018–19 General Appropriations Bill to require the Texas Department of Information Resources, with the assistance of state agencies, to determine the need for statewide enterprise contracts for an electronic signature and certified electronic mail system. If it is determined that such systems would be beneficial, the Texas Department of Information Resources would be required to negotiate a master contract for agency use.

- ♦ **Option 3:** Include a rider in the 2018–19 General Appropriations Bill to require all agencies to review their document production protocols and apply best practices to produce documents in the most practicable and efficient ways possible. Agencies would report any cost savings or other efficiencies achieved from implementing changes to document transmission and production practices in the agency's Legislative Appropriations Request for the 2020–21 biennium.

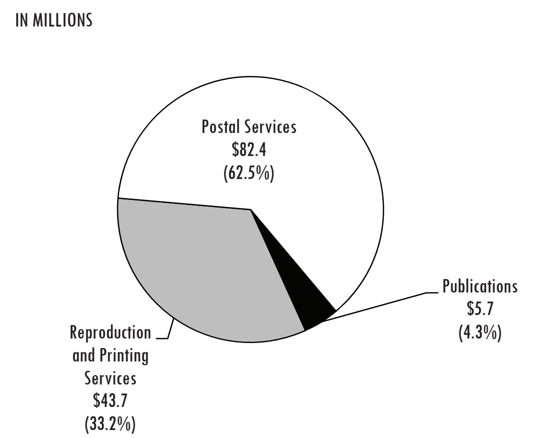
- ♦ **Option 4:** Amend statute to require state agencies and institutions to submit state reports containing nonconfidential information required through statute, rider, or other legal authority to the website Texas.Gov's Open Data Portal, and require the Texas State Library and Archives Commission to assist with the implementation and monitoring of this system.
- ♦ **Option 5:** Amend statute to codify provisions of the Texas State Library and Archives Commission's Required Reports rider, and require the Texas State Library and Archives Commission to use content on Texas.Gov's Open Data Portal to verify alignment with reports submitted to the state depository system.

DISCUSSION

Electronic communication can increase efficiency through the automation of tasks and can achieve cost savings as a result of not having to print, mail or store paper. The general public has shown an increased preference for communicating and conducting commerce electronically and through the Internet. According to Pew Research Center's report, Americans' Internet Access: 2000–2015, 84.0 percent of American adults used the Internet in 2015, up from 52.0 percent in 2000. Information from the nonprofit group Connected Texas also show mobile Internet usage among Texans has increased from 37.0 percent to 65.0 percent from 2010 to 2013. The Federal Reserve Bank stated that, as of 2014, 52.0 percent of smartphone owners with a bank account had used a mobile banking service within the past year. The Texas Department of Motor Vehicles also experienced an increase of 8.8 percent in the number of vehicle registration renewals performed online from fiscal years 2014 to 2015. Accordingly, American usage of postal mail services is decreasing. The U.S. Postal Service (USPS) projects a 7.0 percent annual reduction in the volume of first-class mail through 2020. Compared to 2011 levels, this decrease equates to a decrease in total mail volume by 25.0 percent and in first-class mail by 50.0 percent.

Legislative Budget Board (LBB) staff analysis identified the following three Comptroller of Public Accounts (CPA) accounting codes as those primarily associated with expenditures related to printing and mailing various documents: publications, reproduction, and printing services and postal services. Expenditures for these are shown in **Figure 1** and totaled $131.8 million in All Funds for fiscal year 2015. These accounting codes, however, encompass additional items not directly related to printing and mailing services, such as audiotape duplication, digitizing audio files, microfiche production, and post office box rentals. As a result, it is difficult to isolate the direct cost to the state for printing and mailing services.

FIGURE 1
EXPENDITURES RELATED TO PUBLICATION, PRINTING, AND POSTAL SERVICES, FISCAL YEAR 2015



SOURCES: Legislative Budget Board; Uniform Statewide Accounting System administered by the Texas Comptroller of Public Accounts.

Of the $49.4 million attributed to both publications and to reproduction and printing services in fiscal year 2015, CPA staff reports that $4.8 million was for paper and paper-related sales purchased exclusively through the CPA's online TxSmartBuy system. According to CPA staff, agencies are also authorized by law to contract or prepare their own solicitation for paper costs of less than $25,000.

STRATEGIES TO IMPROVE ELECTRONIC COMMUNICATION AND REDUCE PAPER USAGE

LBB staff surveyed 28 agencies with the highest expenditures for publications, reproduction and printing services, and postal services, to ascertain their uses of paper, electronic documentation, and opportunities to gain additional efficiencies in these areas. Agency responses included information on recent accomplishments in converting services or processes to electronic methods, including:

- Texas Department of Transportation: provides electronic forms, online manuals, and electronic engineering projects on internal and external websites. External customers include the general public, consultants, contractors, and vendors. According to the agency, cost avoidance for electronic access to engineering plans has saved approximately $0.5 million annually; however, efficiency savings for customers to access needed information quickly was the primary goal prompting this action;

- Teacher Retirement System: the agency is in the process of replacing physical forms through a combination of online, self-service transactions and electronic signature capabilities, which could result in the elimination of more than 600,000 forms annually. This elimination includes an estimated 175,000 electronically signed documents in the first year of implementation; and
- Health and Human Services Commission (HHSC): increased the usage of client self-service options through YourTexasBenefits.com, which enables individuals to apply for and renew their benefits, print temporary Medicaid cards, report changes to their cases, and review electronic notices. In February 2016, approximately 67.0 percent of applications to HHSC were submitted electronically. According to the agency, this increased usage has resulted in cost avoidance of $41.0 million in All Funds for call center, printing, mailing, and document imaging costs.

If state agencies take steps to do the following, they would further increase the efficiency and cost-effectiveness of state communications and reduce paper use: (1) increase use of electronic communication; (2) improve document production standards among state agencies; and (3) improve access to state publications.

CLARIFY AND REMOVE IMPEDIMENTS TO EFFICIENT COMMUNICATION

User preference may continue to drive the distribution of hard-copy documents. However, in some instances, agencies also receive customer input stating a preference to have more services, forms, and communications provided online. In certain instances, agencies are required by statute to use specific methods in the transmission or receipt of documents, such as through printing or mailing. For example, since 2003, the Texas Occupations Code, Section 1954.202, has required the Department of State Health Services to physically mail notification of upcoming license expirations to asbestos remediation license holders. The Texas Commission on Environmental Quality is also required to mail notice of a water quality-related permit application to affected mayors and health authorities, as opposed to sending more immediate notification through email. Other agencies, such as the Texas Department of Insurance, Department of Public Safety, and CPA also have statutory requirements that certain types of payments must be made through check or money order, and associated correspondence must be provided in hard copy. Statutory requirements such as these that require transmission or receipt of documents through mail or in hard copy may prevent agencies and the public from communicating in the timeliest, most efficient, and most cost-effective method. According to affected agencies, absent statutory requirements for hard-copy transmission, these types of communications could be conducted electronically without sacrificing program effectiveness.

In other cases, agency staff may have formalized the use of a particular method to receive or communicate information that is no longer necessary and could be accomplished through a more efficient method. These decisions may be influenced by staff interpretation of statutory language. **Figure 2** shows commonly used terms related to the receipt or delivery of documents that the Washington Auditor's Office (WAO) found state agencies in Washington interpreted as requiring them to physically produce or mail an item. As shown in the Merriam-Webster Unabridged Online Dictionary and in Texas statute, many of these terms can be interpreted to enable various methods of delivery, such as through electronic means. For example, some Texas agencies interpret terms such as "shall send written notice," "shall mail," and that an item must be "filed" to require the physical production of a document, whereas other agencies perceive that language to enable electronic communication instead. The meaning behind the term mail is found to be open to interpretation by certain agencies. According to WAO, selected agencies said laws and regulations required them to mail 80.0 percent of documents, although WAO identified requirements for only 26.0 percent.

FIGURE 2
SAMPLE TERMINOLOGY FOR COMMUNICATION OF DOCUMENTS, FISCAL YEAR 2016

TERM	MERRIAM-WEBSTER UNABRIDGED ONLINE DICTIONARY DEFINITION	TEXAS STATUTORY DEFINITION	REFERENCE	REQUIRES PHYSICAL DELIVERY
Copy	An imitation, transcript, or reproduction of an original work	A reproduction of a record made by any means	The Texas Health and Safety Code, §191.057	No
Deliver	To take and hand over to or leave for another; convey; to send to an intended target or destination	To sell, dispense, give away, or supply in any other manner	The Texas Health and Safety Code, §483.001	No
Document	A writing conveying information; a computer file containing information input by a computer user and usually developed with an application (as a word processor)	Information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form	The Texas Property Code, §64.001	No
Form	A printed or typed document with blank spaces for insertion of required or requested information	Not located	Not located	No
Furnish	To provide or supply	Not located	Not located	No
Letter	A direct or personal written or printed message addressed to a person or organization	Not located	Not located	No
Mail	To send by mail	To deposit for mailing with the United States Postal Service (USPS); or USPS or any other method approved by the Texas Workforce Commission to provide actual notice, including an electronic transfer system	The Texas Labor Code, §§61.001 and 201.011	USPS: Yes; Other method: No
Certified Mail	Mail for which a person must sign an official document stating that it has been received	Not located	Not located	No
Verified Mail	Not located	Any method of mailing that provides evidence of mailing; or any method of mailing for which evidence of mailing is provided by USPS or a common carrier	The Texas Property Code, §§59.001 and 209.002	No
Notice	A written or printed announcement	Oral or written communication by the owner or someone with apparent authority to act for the owner	The Texas Penal Code, §30.05	No
Notify	To give notice of or report the occurrence of	Not located	Not located	No
Send	To dispatch by a means of communication	In connection with a writing, record, or notice: to deposit in the mail or deliver for transmission by any other usual means of communication, with postage or cost of transmission provided for and properly addressed, and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable within the circumstances; or in any other way cause to be received any record or notice within the time at which it would have arrived if properly sent	The Texas Business and Commerce Code, §1.201	No

FIGURE 2 (CONTINUED)
SAMPLE TERMINOLOGY FOR COMMUNICATION OF DOCUMENTS, FISCAL YEAR 2016

TERM	DEFINITION	TEXAS STATUTORY DEFINITION	REFERENCE	REQUIRES PHYSICAL DELIVERY
Writing / written	A letter, note, or notice used to communicate a record	An expression of words, letters, characters, numbers, symbols, figures, or other textual information that is inscribed on a tangible medium or that is stored in an electronic or other medium that is retrievable in a perceivable form	The Texas Business Organizations Code, §1.002	No

NOTE: Common carrier refers to a communications common carrier found in the Texas Government Code, Section 493.0191, which is defined as a person that, for a fee, provides directly to the public or to certain members of the public the ability to transmit among points specified by the person who uses that ability, regardless of the technology used, information of the person's choosing without change in the form or content of the information transmitted.
SOURCES: Merriam-Webster Unabridged Online Dictionary, 2016; Texas statutes.

Additional information derived from LBB staff survey results include the following:

- court-related documents: agencies cited various court-related documents as needing to be filed in hard copy. However, Office of Court Administration (OCA) staff report that district, county, and appellate courts would all prefer to receive communications in electronic format. According to OCA staff, the only items that require hard-copy submission include wills, documents filed under seal or presented in camera, or anything where access is restricted by law or court order; and
- notary-public documents: Approximately 32.0 percent of agencies stated that the services of a notary public required certain documents to be received in hard copy. However, the Texas Business and Commerce Code, Chapter 322, and information posted by the Secretary of State (SOS) state that the electronic notarization of documents is also a possibility. Electronic notarizations must meet all the requirements of any other notarization, such as the requirement that the signer personally appear before the notary to acknowledge a document; however, these transactions can be recorded and communicated electronically.

To ensure that state agencies have the discretion to communicate with stakeholders in the most efficient method and to enable staff to verify and record communication, Option 1 would amend the Texas Government Code, Chapter 2051, to authorize state agencies to transmit or receive documents in the most efficient manner available and in a format prescribed by the agency. Amendments to statute would encourage agencies to adopt electronic communication methods, but without direct preference for any particular method of delivery. This option would not require agencies to switch to another communication method that could potentially hinder program delivery. Agencies would determine the appropriate method(s) based on efficiency and effectiveness, and could continue using methods that are currently described in statute if deemed appropriate for specific types of populations and clients. It is assumed that, if agencies adopt new methods of communication for documents already described in the Texas Administrative Code, agency rule making would need to occur, thereby directly enabling public input on potential changes. This option would not apply to documents tied to federal requirements or current state law requiring hard-copy delivery of materials to state-designated depository libraries, including the Texas State Library and Archives Commission (TSLAC) and the Legislative Reference Library. As discussed in Option 3, agencies would also report any cost savings or other efficiencies achieved to LBB.

Additionally, the Texas Government Code, Chapter 2176, requires state agencies in the executive branch to evaluate and improve their mail operations, including identifying and eliminating practices resulting in excessive mail costs. This statute also requires CPA to evaluate the mail operations of state agencies located in Travis County, make recommendations to identify and eliminate practices resulting in excessive mail costs, and establish minimum objectives and responsibilities for agencies to manage mail. This requirement also includes evaluating the cost-effectiveness of using alternatives to USPS for delivering state agency mail. Option 1 would also amend Chapter 2176 to require CPA, with state agencies' assistance, to identify additional statutes that should be amended to eliminate unnecessary mailing requirements or other methods agencies determine to be impediments in transmitting or receiving documents in the most efficient manner. This onetime reporting requirement by CPA would provide additional analysis to help simplify future interpretation of statute in relation to the prevailing communications clause established through Option 1.

The estimated effects of transitioning to electronic communication from present methods for a sample of state agency documents are shown in **Figure 3**. The 28 agencies surveyed identified approximately 80 documents that could be supplied in an electronic format without sacrificing program quality or delivery. Case studies have shown high adoption rates in the first biennium of implementation, such as 75.0 percent for implementing an electronic signature system for change-of-address forms in San Diego County. However, this analysis assumes an adoption rate of 33.0 percent. This rate attempts to control for uncertainties such as: agencies providing opt-in provisions versus complete electronic transition; or the potential for certain administrative services to not be good candidates for transition, such as those targeting populations with low levels of online usage. Assuming one sheet of paper per document, this rate equates to a reduction of 31.7 tons of paper in the 2018–19 biennium. Electronic delivery of these documents could have resulted statewide in a cost avoidance of $2.7 million in All Funds during this period. The environmental effects of reducing paper usage by 31.7 tons provides for a savings of 304,500 kilowatt hours (kWh) of energy, an amount equal to the average annual electric usage of 13 Texas residences, and 729,025 gallons of water, or the average annual water usage of eight Texas residences. Environmental effects are based on data derived from the Environmental Paper Network nonprofit coalition's Paper Calculator, a tool used to quantify the effects of paper usage, based on publicly available national averages. Additional cost avoidance and savings in all categories is likely, because the LBB staff survey was administered to only a portion of agencies within state government.

ADOPTION OF ELECTRONIC SIGNATURE SYSTEMS

Government organizations are increasingly using digital or electronic signatures, commonly referred to as e-signatures, in lieu of handwritten signatures in ink on paper, to improve administrative efficiency, reduce costs, and increase auditability. E-signature processes can be applied in a variety of operations, including human resources, procurement and finance. An example of this application would be the San Diego County government's initiation of a pilot program in 2013 to use electronic signatures for change-of-address forms. The program took six months to implement at a cost of $25,000. Initially, it was estimated that approximately 10.0 percent of county users would adopt the electronic signature system. In the first three months of deploying the system, and without advertising this new feature, more than 60.0 percent of address changes were performed through the online system, increasing to 75.0 percent in 2015. According to San Diego County staff, user satisfaction with the system is high, and the county is saving more than $225,000 a year by using the online system. Savings were achieved by reducing the number of employees associated with processing change-of-address forms from 3.0 full-time-equivalent positions to 1.0 position.

FIGURE 3
EXAMPLES OF MAILED ITEMS THAT AGENCIES IDENTIFIED FOR POTENTIAL ELECTRONIC TRANSMISSION AND ESTIMATED IMPACT, 2018–19 BIENNIUM

AGENCY	DOCUMENT	DELIVERY REQUIREMENT	ESTIMATED PIECES OF PAPER REDUCED (BIENNIAL)
Commission on Environmental Quality	Notice of Application for Water Quality Permit	The Texas Water Code, §26.028	63,667
Department of Licensing and Regulation	Notice for Contested Case Hearing	The Texas Occupations Code, §51.354	2,733
Department of State Health Services	Notice of Asbestos License Expiration	The Texas Occupations Code, §1954.202	1,935
Department of Transportation	First Notice of Toll Amount Due	The Texas Transportation Code, §228.0545	3,146,353
Texas Workforce Commission	Notice of Benefits Claim	The Texas Labor Code, §208.022	364,530

NOTE: Volume based on agency analysis of operations during the 2014–15 biennium and assumes one-third transitioned to electronic transmission within the 2018–19 biennium.
SOURCES: Texas Commission on Environmental Quality; Texas Department of Licensing and Regulation; Department of State Health Services, Department of Transportation, Texas Workforce Commission.

The Texas Business and Commerce Code, Chapter 322, known as the Uniform Electronic Transactions Act, provides for the legal authorization and recognition of electronic signatures. The terms electronic signature, e-signature, and digital signature are commonly used interchangeably. Digital signature refers to a particular type of electronic signature. Both terms capture the intent of a person to sign an electronic record. The Texas Department of Information Resources (DIR) and TSLAC have developed rules and guidelines for the management of electronic records. Some state agencies in Texas have pursued electronic-signature technology for various aspects of agency functions. For example, DIR is implementing electronic-signature software, anticipating approximately 850 contract documents, or approximately 5,000 individual signatures, per year will be submitted using the electronic-signature tool. DIR staff estimates that this tool (which cost approximately $50,000 for 70 administrative licenses) has resulted in administrative efficiencies, including reducing turnaround times for contract routing from approximately two weeks to two days. Additionally, some state agencies may already be using electronic signatures as standard practice without having purchased specific tools; some software products offer features that may be used to fulfill electronic-signature requirements. For example, the Quality Assurance Team (QAT) accepts Outlook correspondence as a legal and auditable electronic signature for submitted documents. The QAT includes representatives from the LBB, the State Auditor's Office, and DIR, and the group approves and reviews major information system development projects.

Security and cost are the two main impediments identified by agencies for the increased use of electronic signatures. Agencies currently using this technology did not express any associated security issues or concerns. According to the Government Finance Officers Association, electronic signatures can provide additional assurances and security compared to a paper document; with the potential to authenticate both the identity of the signer and that the document has not been altered since signed. Several agencies were uncertain whether using electronic signatures in lieu of ink-based signatures would meet legal requirements. In particular, at least two agencies responded that contract and procurement documents were not authorized to be entered into electronically. One agency specifically cited that original (interpreted as ink-based) signatures were required as part of the CPA's Contract Management Guide (CMG). According to CPA staff, the CMG does not dictate whether or not agencies use either ink or electronic signatures. The Uniform Electronic Transactions Act, however, provides for the legal recognition of electronic records, signatures, and contracts. Statute further clarifies that: contracts may not be denied legal effect solely because they are performed electronically; if the law requires a record to be in writing, an electronic record satisfies the law; and if the law requires a signature, an electronic signature satisfies the law.

Several agencies, including the Texas Department of Insurance (TDI) and the Texas Parks and Wildlife Department (TPWD), expressed interest in increasing the use of electronic signatures in their operations. These agencies and others, however, cited cost as an impediment to implementing these systems. TDI and TPWD stated that they would be interested in further using electronic signatures if a statewide enterprise contract was developed to help agencies manage costs. A bulk purchasing contract could help achieve significant pricing reductions and make this technology more feasible to be purchased by a greater number of agencies. It is assumed that other agencies that are using electronic signature systems, such as the Teacher Retirement System and the Texas Medical Board, are potentially paying more for these systems than they would within a statewide enterprise contract.

CERTIFIED ELECTRONIC MAIL DELIVERY SYSTEMS

Multiple survey respondents also stated that certain types of notifications required a certified mailing to be legally sufficient to show adequate notice. For example, the Texas Government Code, Chapter 2001, governing administrative procedures by state agencies, requires various types of notices to be mailed, including the use of certified mail. According to the State Office of Administrative Hearings (SOAH) staff, however, electronic transmittal of these notifications would be sufficient for SOAH's legal purposes. Technologies may also enable improved email tracking, which is the process of monitoring whether a message is correctly delivered and read by the intended recipient. Certain companies advertise products that can provide legal proof of delivery and have been used by entities such as the State of Kentucky, U.S. Government Accountability Office, international law firms, and the United Nations. Legal opinions stated in American Bar Association media from 2007 stated that registered email service meets federal and state laws with regard to evidentiary proof of email delivery.

Certified electronic delivery may also be significantly more affordable than the same service through USPS. In a comparison of pricing between certified email and certified postal mail, advertised services from software company RPost cost $0.15 per certified message sent, versus an estimated $2.55 cost for the postal equivalent, after state bulk purchasing discounts are applied. Additional pricing discounts may be achieved through an enterprise service agreement, which could benefit agencies interested in pursuing electronic-signature systems or sending messages through a certified email service. Option 2 would include a rider in the 2018–19 General Appropriations Bill to require DIR, with the assistance of state agencies, to determine the number of agencies that would participate in a statewide enterprise contract for a digital or electronic-signature system and certified email service. If DIR finds that sufficient demand exists, the agency would be required to issue new requests for pricing to attempt to procure such systems. If an ongoing bulk purchasing contract were put in place for electronic-signature software and licenses, agencies using electronic signatures could participate after their contracts conclude, realizing additional avoided costs to the state. Agencies should evaluate whether a legal or programmatic reason exists to necessitate the usage of electronic signatures in receiving or transmitting documents.

IMPROVE DOCUMENT PRODUCTION STANDARDS

Many agencies lack policies intended to reduce paper use. Approximately half (50.0 percent) of responding agencies did not report any clearly defined agency wide policy for document production and printing. Such policies might address double-sided printing, default word-processing settings, or processes to identify and purge duplicative data. Approximately 42.9 percent of these agencies reported policies that partially addressed these areas, and 7.1 percent had policies that addressed all document production and printing areas. This sample of administrative practices shows that a significant portion of state agencies may be able to achieve reductions in paper use by formulating or making simple adjustments to their document production and printing practices. Option 3 would include a rider in the 2018–19 General Appropriations Bill to direct all agencies to review their document production protocols and apply best practices to produce documents in the most practicable and efficient ways possible that would lead to reductions in the total volume of paper used for general office administration, publications and reproduction and printing services. This may also include changing the format of transmitting or receiving documents; such as through electronic filing rather than hard copy. Agencies would also be required to report any cost savings or other efficiencies achieved from implementing Options 1 and 3 in the agency's Legislative Appropriations Request.

Other states and entities employ best practices regarding efficient paper usage, including the Maryland Department of General Services' Printing Best Practices, the federal Environmental Protection Agency (EPA), and nonprofit environmental groups such as the Natural Resources Defense Council (NRDC). Examples of best practices in paper usage include:

- double-sided printing: enabling automatic duplexing (double-sided printing) may reduce paper usage by 30.0 percent to 50.0 percent; 39.0 percent of state agencies surveyed listed a specific, agency wide policy for implementing double-sided printing, which could result in cost avoidance of approximately $2,100 to $3,500 per million pieces of paper by state agencies;
- adjusting default word-processing features: adjusting the default line spacing in word-processing documents from 1.0 to .95 can make a document 5.0 percent shorter; reducing the default font size by 0.5 points can have the same effect. The Penn State Green Destiny Council reports that reducing margins to 0.75 inches on all sides of a page reduces usage by 4.75 percent, which equates to a cost avoidance of $112,855 per year for the university; and
- purging duplicative data: periodically reviewing and removing duplicative entries in database contact lists can avoid printing and sending documents unnecessarily to parties that are no longer interested or active within the program pool; a 1.0 percent reduction in mailings could result in cost avoidance of approximately $4,220 per million items of mail sent by state agencies.

IMPROVE ACCESS TO STATE REPORTS

The state has taken steps to increase transparency and access to agency and institution reports through the Texas State Publication Depository Program, a biennial report detailing agency reports required in statute, and online through Texas Records and Information Locator (TRAIL) and the website Texas.Gov. A summary of features of these is shown in **Figure 4**.

Although agencies are required to deposit or make accessible paper copies of all state publications, no requirement is in place to electronically submit reports to any single location. As a result, stakeholders and the public cannot access reports

FIGURE 4
OVERVIEW OF SELECT RECORDS AND INFORMATION RETRIEVAL SYSTEMS, FISCAL YEAR 2016

SYSTEM	SUMMARY
State Depository Program	Four physical copies of each state publication are distributed by agencies to TSLAC. The agency retains two, and one each is distributed to the University of North Texas and Texas Tech University.
Required Reports Publication (TSLAC)	Biennially produced index of statutorily required reports, including report description and assessment as to ongoing usefulness of report. Produced in hard copy and distributed electronically in PDF.
TRAIL	Used to search historic agency information and publications that may have been on an agency's website at the time the website was last archived.
Texas.Gov, Texas Open Data Portal	Provides government services including service registration, payment processing, and records management. The Open Data Portal hosts data sets voluntarily submitted from state agencies.

NOTE: TSLAC = Texas State Library and Archives Commission; TRAIL = Texas Records and Information Locator.
SOURCE: Legislative Budget Board.

produced by state agencies and institutions of higher education in a central online location. Furthermore, most required reports that are also data-centric are not published in a manner that facilitates analysis. The Senate Committee on Government Organization surveyed legislators and legislative staff concerning state agency-mandated reporting practices in 2014. The committee received 70 responses, of which:

- approximately 44.0 percent of respondents reported that they could not locate what they needed, which is a barrier preventing the use of state agency or higher education institution reports; and
- approximately 72.0 percent of respondents agreed that the state should provide a single point of access to state agency and institutions of higher education reports.

Although the information retrieval systems shown in **Figure 4** are useful tools, each of them has limitations.

TSLAC administers the Texas State Publications Depository Program. State agencies submit four printed copies of each publication to the program. TSLAC retains two, and one each is distributed to the University of North Texas and Texas Tech University. These publications are in hard copy only, which limits their availability.

The Eighty-fourth Legislature, General Appropriations Act, 2016–17 Biennium, Article I, TSLAC, Rider 4, requires TSLAC to prepare the biennial publication Required Reports Prepared by State Agencies and Institutions of Higher Education. This electronic publication lists reports required by statute to be prepared by agencies and submitted to other state agencies, including the Legislature. The publication includes assessments from each agency receiving a statutorily required report, affirming or denying its continued usefulness to that agency. According to TSLAC staff, the 2015 report lists 1,172 individual reports, many of which are required to be produced by each state agency or institution and could add up to approximately 14,000 reports. Providing users with a list of required reports can help to identify a report that might be useful; then the users must seek out the report to find the needed information.

Two existing systems, TRAIL and Texas.Gov, enable the public to electronically access certain state publications and data. However, both of these systems have limitations. As part of TSLAC's distribution of state publication requirements, the agency is statutorily required to maintain TRAIL. The purpose of TRAIL is to enable electronic access to state publications that have been made available to the public on behalf of a state agency. TRAIL searches and locates information collected in an archive of more than 180 Texas state agency web servers. TRAIL collects information contained on these websites and retrieves the components of each page it encounters within the entity's domain. According to TSLAC staff, TRAIL does not capture every item on agency websites, nor does it capture state publications that are not posted on the Internet. Also, this system has a lack of functionality of databases and interactive tools.

Texas.Gov is an online resource intended to provide state and local government information and services in a centralized location to the public. However, Texas.Gov does not provide access to all state publications. Senate Bill 279, Eighty-third Legislature, Regular Session, 2013, requires that a state agency and institution of higher education that posts a high-value data set on its website must provide DIR with a description of and link to the data set. DIR is required to then post this content on Texas.Gov. The agency has further augmented the functionality and capabilities of these data sets by establishing the Texas Open Data Portal within Texas.Gov.

TRAIL and the Texas.Gov Open Data Portal duplicate some information. For instance, a search in TRAIL and Texas.Gov for the term strategic plan yields results in both systems. Results found in TRAIL, however, may provide historical and not current information compared to Texas.Gov. Neither system is a comprehensive source for accessing both current and historical reports from state agencies.

According to DIR staff, state documents, reports, and data sets, could be published through the Open Data Portal, which would enable the public to search, filter, and sort items. Before the Eighty-fourth Legislature, Regular Session, 2015, DIR reviewed a subset of the processes surrounding statutorily required reports to determine how the Open Data Portal could be used to improve processes. DIR analysis noted that not all agencies publish legislatively required reports on their websites. According to DIR staff, the Open Data Portal has the capacity and functionality to publish the Required Reports Prepared by State Agencies and Institutions of Higher Education publication along with the required reports. DIR staff have also determined that the Open Data Portal could track legislative additions, deletions, and changes to required reports; collect input from individuals preparing reports and their recipients; and publish data centric reports in a raw, machine-readable data format. The contract DIR has with Texas.Gov administrators, Texas NICUSA LLC, provides for 1,500 datasets to be available on the website. According to DIR staff, as of April 2016, there are approximately 100 data sets being utilized on Texas.Gov.

Option 4 would amend the Texas Government Code, Chapter 2054, to require state agencies and institutions to submit state reports containing nonconfidential information required through statute, rider, or other legal authority to Texas.Gov's Open Data Portal. Establishing a central electronic repository to search for and access state reports would provide a transparent and accessible location for reports, and would be located alongside high-value data sets from multiple agencies that are posted on Texas.Gov and the Open Data Portal. If agencies provide report narrative information and separate corresponding data sets in a machine-readable format, the increased quality of content supplied to the public could potentially reduce future public information requests regarding those items.

TSLAC and DIR should collaborate in the overall determination and development of what information would be captured within Texas.Gov's Open Data Portal, to retain a link between the physical and electronic access to new and archived state reports, and to further assist in the Required Reports review process. The agencies also should consider other operational aspects, such as designing retention requirements for posted reports. TSLAC should assist in the implementation of this system and monitor its effectiveness. TSLAC should also repurpose TRAIL to function as an access point on TSLAC's website to content made available through the Open Data Portal.

Option 5 would amend the Texas Government Code, Chapter 441, to codify provisions of the TSLAC Required Reports rider, contingent on the enactment of Option 4, and require TSLAC to use content on Texas.Gov's Open Data Portal to verify alignment with reports submitted to the state depository system. This option considers that the process for compiling and reviewing state reports is a repeated and ongoing process. In conjunction with the Required Reports Prepared by State Agencies and Institutions of Higher Education publication provided on the Open Data Portal, a form provided through the Open Data Portal could enable agencies to self-submit information from legislation regarding new reports or changes to existing reports to help expedite TSLAC's review process.

FISCAL IMPACT OF THE OPTIONS

Option 1 would enable increased flexibility by agencies in the method of receipt and delivery of documents. This change is expected to result in cost avoidance and available staff time for agencies. Option 1 also establishes a onetime reporting requirement for CPA, with the assistance of state agencies, to identify additional statutes to be amended that would eliminate unnecessary methods of communication prescribed in state law. This estimate assumes this work could be accomplished within existing resources, as agencies and the CPA are currently required to evaluate, improve, and report on mail operations.

Option 2 would require DIR, with the assistance of state agencies, to assess the feasibility of using digital or electronic-signature systems or certified email delivery systems, and, based on the results of that research, issue requests for proposals to procure statewide enterprise contracts for such services. According to DIR staff, no significant fiscal impact is anticipated, and duties could be accomplished within existing resources. Capturing signatures electronically could lead to cost avoidance for agencies, although the amount would depend on the structure of the contract into which DIR enters, in addition to time and other efficiencies gained through modernizing these processes.

Option 3 would direct agencies to review their document-processing policies, which may result in cost avoidance, although it is not anticipated to be significant, and report any savings achieved from Option 1 and 3 in the agency's Legislative Appropriations Request for the 2020–21 biennium. Agencies could reallocate any funds saved for other purposes.

No significant fiscal impact is anticipated for Options 4 and 5, which would establish a central online repository for state reports that are required by law. According to DIR staff, the establishment of a central repository within Texas.Gov's Open Data Portal could be accomplished within existing resources. Individual reports housed on this site would not count as single data sets, and the reports would be organized in a way that all submissions within a fiscal year would count as a single data set.

The House introduced 2018–19 General Appropriations Bill includes riders to implement Options 2 and 3.

CONSOLIDATE AND INCREASE USE OF STATE-OWNED VEHICLE MAINTENANCE SHOPS

There are more than 28,000 vehicles in the State of Texas' fleet, which are distributed among 99 state agencies and institutions of higher education. During the 2014–15 biennium, $244.9 million was spent to service this fleet. Additionally, six state agencies operate 63 vehicle maintenance shops. These shops cost $28.1 million to operate during the 2014–15 biennium. An estimated 21 institutions of higher education also operated maintenance shops during this biennium.

The Comptroller of Public Accounts, with the assistance of five other state agencies, produces the Texas State Vehicle Fleet Management Plan. Since the plan's first publication in October 2000, each iteration has consistently recommended that agencies utilize the most cost-effective means available to maintain their fleets. Such methods include developing interagency agreements and establishing local agreements with municipalities for maintenance and repair services. The plan has also recommended that agencies operating maintenance shops service other state entities' vehicles when feasible and review possible cost savings of consolidating maintenance services by establishing centralized shops.

However, most agency fleets receive auto services from private, commercially owned maintenance shops, which cost more on average compared to services performed by state-operated maintenance shops. Additionally, agencies with fleets located in areas with a high concentration of state-operated maintenance shops—such as in Austin, San Antonio, and Huntsville—have the highest number of agencies using commercially owned shops. Such agencies might choose commercial shops because of the limited capacities of state maintenance shops in those areas. Encouraging state agencies to use other agencies' maintenance shops and identifying opportunities to increase shops' capacity, including by consolidating resources, would result in long-term cost savings. This would have no net fiscal impact for the 2018–19 biennium but may result in subsequent cost avoidance.

FACTS AND FINDINGS

- ♦ As of July 2016, 10 agencies and institutions of higher education own and operate 73.1 percent of the state's fleet and accounted for 88.4 percent of the total vehicle repair and maintenance costs during the 2014–15 biennium.
- ♦ During the 2014–15 biennium, 55.7 percent of auto services for the state's fleet were completed by state-operated maintenance shops, and 44.3 percent were completed by private, commercial maintenance shops.
- ♦ Of the 63 state-operated maintenance shops, 27 are in 10 cities. The shops in these 10 cities cost an average of $15.2 million each biennium to operate.

CONCERNS

- ♦ Based on information regarding repair and maintenance services reported by agencies to the Texas Comptroller of Public Accounts' Texas Fleet Management System, services performed by commercially owned shops cost the state an average of 27.0 percent more per vehicle than services performed by state-owned shops. Despite this cost, the number of vehicles serviced by state-owned shops has decreased since fiscal year 2013.
- ♦ Agencies that operate individual maintenance shops within the same geographic area may be duplicating their operating expenditures and reducing opportunities to increase the capacity of state maintenance shops.
- ♦ The Texas State Vehicle Fleet Management Plan recommends that agencies review consolidating maintenance into centralized shops for possible cost savings, but the plan does not provide any direction or strategies for implementation.

OPTIONS

- ♦ **Option 1:** Include a rider in Article IX of the 2018–19 General Appropriations Bill to encourage agencies that manage fleets to complete interagency agreements with agencies that operate maintenance shops. The interagency agreements would include interagency transfers of funds to help offset any costs that state-operated shops may incur by increasing the number of vehicles they service.
- ♦ **Option 2:** Amend statute to require the agencies that develop the Texas Fleet Management Plan to address opportunities for increasing capacity of

state maintenance shops, including by consolidating resources in areas where multiple shops exist and provide similar auto services. Any savings resulting from consolidation should be used to increase capacity. The plan would be required to include strategies for merging auto shops that have been identified for consolidation.

DISCUSSION

As of July 2016, the state had 28,034 vehicles in its fleet distributed among 37 state agencies and 62 institutions of higher education. Ten agencies and institutions of higher education manage 73.1 percent of the state's vehicle fleet, and 89 agencies and institutions of higher education manage the remaining 26.9 percent. The state's vehicle fleet has increased by 1,216 vehicles since fiscal year 2007, and 4 more state agencies are managing fleets. The average vehicle in the state's fleet is eight years old and has 71,200 miles. **Figure 1** shows the top 10 agency fleets by size, average age, and average miles.

FIGURE 1
TOP TEN LARGEST TEXAS AGENCY FLEETS, JULY 2016

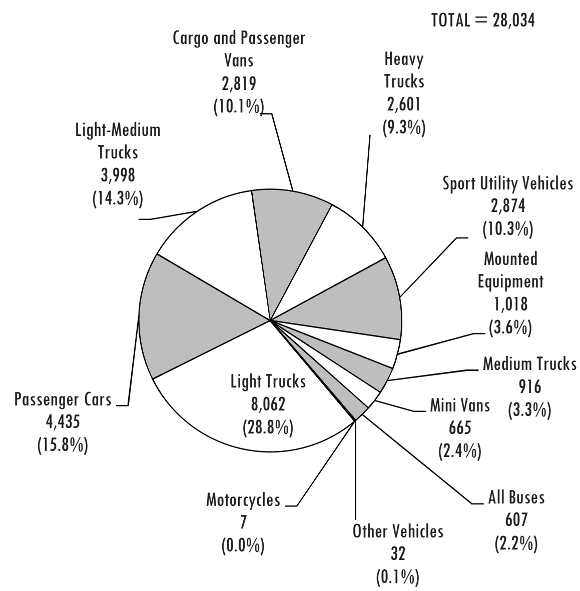
AGENCY	VEHICLES	AVERAGE AGE (IN YEARS)	AVERAGE MILES
Texas Department of Transportation	7,909	10	106,434
Texas Department of Public Safety	3,776	4	81.239
Texas Parks and Wildlife Department	2,652	8	73,466
Texas Department of Criminal Justice	2,185	8	157,761
Department of Aging and Disability Services	973	13	74,587
Texas A&M University	781	9	59,933
Department of State Health Services	687	13	76,848
University of Texas at Austin	540	11	49,005
Texas A&M Forest Service	508	6	49,817
Texas AgriLife Research	485	12	89,414

NOTE: Average miles is current as of August 2016.
SOURCE: Comptroller of Public Accounts, Office of Vehicle Fleet Management, Texas Fleet Management System, 2016.

The Comptroller of Public Accounts' Office of Vehicle Fleet Management (OVFM) administers the Texas Fleet Management System (TxFS) in partnership with a private entity. This system is the state's centralized repository for vehicle fleet data. Pursuant to the Texas Government Code, Section 2171.101, state agencies and institutions of higher education are required to report vehicle data quarterly using TxFS. Data contained in TxFS ranges from the physical description of a vehicle to the repair costs of a vehicle. This reporting system is the only consolidated data source regarding state fleets; however, the integrity and quality of data contained in TxFS is limited. In some instances, detailed data was not reported as required to TxFS. Statute also does not require data for certain types of vehicles to be recorded. Legislative Budget Board (LBB) staff analysis of fleet data is based on the information that could be extracted from this system.

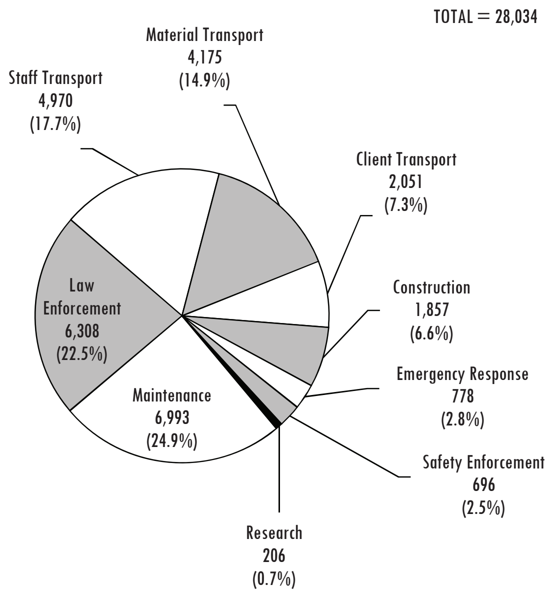
TxFS provides separate reporting categories for vehicle type and purpose. The fleet has 14 categories of vehicle types, ranging from motorcycles and buses to passenger cars and large shipping container trucks. Light-duty trucks and passenger cars are the two most common vehicle types in the state's fleet; these categories account for 44.6 percent of the total fleet. **Figure 2** shows the percentage of vehicles in each of the 14 type categories. In addition, the nine categories for vehicle purpose range from maintenance to research. **Figure 3** shows the percentage of vehicles in each of the nine purpose categories.

FIGURE 2
TEXAS STATE-OWNED VEHICLES BY TYPE, JULY 2016



SOURCE: Comptroller of Public Accounts, Office of Vehicle Fleet Management, Texas Fleet Management System, 2016.

FIGURE 3
TEXAS STATE-OWNED VEHICLES BY PURPOSE
JULY 2016



SOURCE: Comptroller of Public Accounts, Office of Vehicle Fleet Management, Texas Fleet Management System, 2016.

The state's vehicle fleet is distributed across the state. Based on TxFS data, it is estimated that more than half of the fleet is located in five cities: Austin, Houston, Dallas, College Station, and Lubbock. In these five cities, 77 agencies and institutions of higher education manage fleets. **Figure 4** shows the number of vehicles and agencies managing fleets in these cities.

FIGURE 4
TOP FIVE TEXAS CITIES BY VEHICLES IN STATE AGENCY FLEETS, JULY 2016

LOCATION (1)	VEHICLES	AGENCIES (2)
Austin	9,592	40
College Station	1,903	7
Houston	1,170	13
Lubbock	983	9
Dallas	976	8
Total	**14,624**	**77**

NOTES:
(1) Based on the limitations of data in the Texas Fleet Management System, the location of 1,068 vehicles was not able to be determined. The location of vehicles shown is based on the physical location of agencies as indicated in the Texas Fleet Management System.
(2) State agencies include state institutions of higher education.
SOURCE: Texas Comptroller of Public Accounts, Office of Vehicle Fleet Management, Texas Fleet Management System, 2016.

STATE-OPERATED MAINTENANCE SHOPS

The state has operated maintenance shops to service its vehicles for more than 50 years. As of August 2016, six agencies operated 63 maintenance shops across the state, and 21 institutions have internal maintenance shops. During the 2014–15 biennium, operating expenses for the state agency-operated maintenance shops were estimated to be more than $28.1 million in All Funds.

All state-operated maintenance shops perform routine maintenance and minor repair services, such as oil changes, inspections, and tire rotations. Some state-operated maintenance shops also have the capability to rebuild engines and transmissions, perform paint and body work, and repair vehicle frame damage. The average vehicle capacity for state agency-operated maintenance shops is 12 vehicles at a time. However, capacity at each shop varies. Each state-operated maintenance shop has an average of seven full-time-equivalent (FTE) positions working in the shop. In addition to state employees, the Texas Department of Criminal Justice uses offender laborers in its maintenance shops. **Figure 5** shows maintenance shop functions managed by the agencies that manage shops.

Institutions of higher education that operate maintenance shops mostly only service vehicles owned and operated by the institution. However, the maintenance shops operated by The University of Texas at Austin and Texas A&M University have provided services to vehicles owned and operated by other state agencies. Maintenance shops operated by institutions of higher education are generally located on campuses and have limited capacity and staff, although some contain student-workers.

TEXAS STATE VEHICLE FLEET MANAGEMENT PLAN

The Texas State Vehicle Fleet Management Plan is mandated by state law and lists policies, reporting requirements, and recommendations regarding state vehicle fleet management and maintenance shop operations. The plan is used by state agency fleet managers and others to operate in accordance with state protocol. OVFM develops the plan with the direction of the State Council on Competitive Government (CCG). OVFM also receives assistance in developing and maintaining the fleet management plan from the agencies that use the greatest number of vehicles: the Texas Department of Transportation, Texas Department of Public Safety, Health and Human Services Commission, Texas Parks and Wildlife Department, Texas Department of Criminal Justice, and representatives from certain institutions of higher education.

FIGURE 5
STATE AGENCY-OPERATED VEHICLE MAINTENANCE SHOPS, JULY 2016

AGENCY	LOCATIONS	AVERAGE CAPACITY	TOTAL CAPACITY	AVERAGE FTE POSITIONS (1)	TOTAL FTE POSITIONS (1)	BIENNIAL OPERATING COSTS (IN MILLIONS) (2)
Texas Department of Transportation	29	14	416	10.0	285.0	$14.8
Department of Aging and Disability Services	12	3	34	3.0	31.0	$3.9
Department of State Health Services	10	2	23	2.0	20.0	$1.7
Texas Department of Criminal Justice (3)	6	41	244	11.0	68.0	$2.7
Texas Department of Public Safety	5	4	22	6.0	30.0	$4.8
Texas School for the Blind and Visually Impaired	1	3	3	2.0	2.0	$0.2

NOTES:
(1) FTE=full-time-equivalent positions.
(2) Operating costs are self-reported by agencies based on average overhead expenditures from fiscal years 2010 to 2015.
(3) Offenders that provide labor in the Texas Department of Criminal Justice's maintenance shops are prohibited from being paid by state law; therefore, salaries for these positions are not included.
(4) The Texas A&M Forest Service and Texas School for the Deaf also operate vehicle maintenance shops; however, these are used for purposes other than servicing agency vehicles.
SOURCES: Texas Department of Transportation; Department of Aging and Disability Services; Department of State Health Services; Texas Department of Criminal Justice; Texas Department of Public Safety; Texas School for the Blind and Visually Impaired.

The fleet management plan was first approved in October 2000, and was most recently updated in March 2016. The plan's policies and guidelines address the appropriate number and type of state-operated vehicles, and procedures to maximize fleet use and maintenance efficiency. The plan includes minimum-use criteria and provides for a continuous review of consolidation and cost-reduction opportunities for vehicle fleets. The plan establishes data collection and agency reporting requirements in compliance with statutory requirements. Recommendations relating to state maintenance shop operations are also included in the plan.

In accordance with the state's fleet management plan, all agencies and institutions of higher education are required to properly maintain and repair vehicles as necessary to keep their fleets in proper working condition. The plan covers proper maintenance and repair of vehicles' scheduled, preventive maintenance, warranty service, and unscheduled maintenance and repair services.

The Texas State Vehicle Fleet Management Plan encourages agencies and institutions of higher education to maintain their fleets utilizing the most cost-effective means available and suggests that agencies use state or local government-operated maintenance shops, retail maintenance facilities, or state agency-contracted service locations. The plan recommends that agencies and institutions of higher education without maintenance shops establish local agreements for maintenance and repair services with state or local government-operated shops. According to the plan, municipal and state shops offer less expensive rates and often provide quicker service than large commercial operations.

TxFS collects data on vehicle maintenance and repair services for all agency fleets, ranging from costs per services to the location of the service. During the 2014–15 biennium, the state spent $244.9 million in All Funds on auto services for its fleet. This amount was a 18.3 percent decrease from the 2012–13 biennium. An average of 236,521 auto services were performed on the state's fleet each fiscal year from 2013 to 2015, and 80.4 percent of these services were performed on vehicles managed by the 10 agencies that make up most of the state's fleet. Agency fleets receive services from private and government-operated maintenance shops. To track the location of vehicle maintenance and repair services, TxFS categorizes maintenance shops into the following three categories:

- commercial – privately owned shops;
- internal – shops owned by the fleet's managing agency;
- interagency – shops in which the agency has an interagency agreement with another agency; these shops may be operated by either state or local governments.

INCREASE USE OF STATE MAINTENANCE SHOPS

Since fiscal year 2013, 57.2 percent of services performed on the state's fleet have been completed by internal maintenance shops. Almost all of these services (91.0 percent) were for vehicles that are managed by the same 10 agencies that make up 73.1 percent of the state's fleet. The remaining 9.0 percent of services were for vehicles managed by 89 agencies and institutions of higher education.

According to data in TxFS, the number of services completed by state maintenance shops has been decreasing since fiscal year 2013. The number of agencies using commercial shops has increased since fiscal year 2013. Based on TxFS data, repair and maintenance services performed by commercial maintenance shops cost the state an average of 27.0 percent more per vehicle than services performed by state-operated maintenance shops. Agencies choosing to service their vehicles at commercial maintenance shops instead of at state maintenance shops do not adhere to the Texas State Vehicle Fleet Management Plan's requirement to use the most cost-effective means available to maintain fleets.

Option 1 would include a rider in Article IX of the 2018–19 General Appropriations Bill to encourage agencies that manage fleets to enter interagency agreements with agencies that operate vehicle maintenance shops. The interagency agreements would include transfers of funds to help offset any costs the state-operated shops may incur from increasing the number of vehicles they service. Engaging in interagency agreements would assist agencies in following the requirements of the fleet management plan and enable their fleets to be serviced at more cost-effective prices. The rider would not restrict agencies from receiving services from commercial maintenance shops when necessary. Typically, agencies seek services from commercial maintenance shops for repairs that are greater than state maintenance shops' capabilities, or for activities such as making equipment ready for use and decommissioning vehicles.

IDENTIFY OPPORTUNITIES FOR SHOP CONSOLIDATIONS

Pursuant to the Texas Government Code, Section 2171.104, the agencies that develop the Texas State Vehicle Fleet Management Plan are required to address opportunities for consolidating and privatizing the operation and management of vehicles in areas where state agencies are concentrated, such as in the Capitol Complex and the Health and Human Services Complex in Austin. Since fiscal year 2010, the plan has included recommendations that agencies and institutions of higher education operating maintenance shops review possible cost savings from consolidating maintenance shops located in close proximity into a single, centralized shop.

According to the fleet management plan, consolidation may lead to cost savings by employing fewer staff, purchasing commonly used parts in bulk, decreasing need for equipment and tools, and controlling billing procedures. However, multiple agencies and institutions of higher education are operating maintenance shops in the same geographic locations. As of July 2016, 10 cities contained more than one state agency-operated maintenance shop, with Austin containing six. The cost to operate these shops each biennium is estimated to be more than $15.2 million in All Funds. **Figure 6** shows maintenance shop functions managed in each of these 10 cities.

Agencies operating individual maintenance shops within the same geographic area is incongruent with best practices in the state fleet management plan and may result in unnecessary operating costs for equipment and tools, facilities, and purchases of commonly used parts. To adhere to the best practices recommended by the plan and increase long-term cost savings for state-operated maintenance shops, the state should identify opportunities for shop consolidation within the plan. Option 2 would amend the Texas Government Code, Section 2171.104, to require those agencies that develop the Texas State Vehicle Fleet Management Plan to address opportunities for increasing capacity of state maintenance shops, including by consolidating resources in areas where multiple shops exist and provide similar auto services. Savings resulting from the consolidation of resources should be used to increase capacity of remaining maintenance shops. The plan would be required to include strategies for merging maintenance shops that have been identified for consolidation and the use of cost savings to expand capacity.

In accordance with Option 2, OVFM would work with, at a minimum, the five state agencies and the institutions of higher education that assist with developing the state fleet management plan to identify opportunities for consolidating state-operated maintenance shops. All five of these agencies perform maintenance service for their fleets. The consolidation recommendations would require CCG's approval.

FIGURE 6
TEXAS CITIES WITH MULTIPLE STATE AGENCY-OPERATED VEHICLE MAINTENANCE SHOPS, JULY 2016

LOCATION (2)	SHOPS	AGENCIES	COMBINED CAPACITY (4)	FTE POSITIONS	VEHICLES
Austin	6	5	39	49	9,592
Huntsville (1)	3	1	176	48	447
San Antonio	3	3	27	17	953
Lubbock	3	3	23	16	983
Wichita Falls	2	2	19	14	445
Corpus Christi	2	2	20	13	420
Waco	2	2	12	12	482
El Paso	2	2	15	11	500
Abilene	2	2	13	14	453
Houston	2	2	8	10	1,170

NOTES:
(1) The Texas Department of Criminal Justice is the only agency that operates maintenance shops in Huntsville.
(2) Location of vehicles is based on the physical location of agencies as indicated in the Texas Fleet Management System.
(3) The figure does not include maintenance shops operated by institutions of higher education.
(4) Combined capacity = total number of vehicles that can be serviced by the total number of shops in the designated location.
(5) Total combined capacity in figure does not equal total capacity of all state agency vehicle maintenance shops located in the state.
SOURCE: Texas Comptroller of Public Accounts, Office of Vehicle Fleet Management, Texas Fleet Management System, 2016.

FISCAL IMPACT OF THE OPTIONS

These options would have no net fiscal impact for the 2018–19 biennium, but they could result in subsequent cost avoidance for maintenance and repair of state vehicles.

Option 1 would encourage state agencies that manage fleets to use state-operated maintenance shops for vehicle maintenance and repairs. This option is expected to result in cost avoidance by increasing the number of vehicles serviced by state-operated maintenance shops, which provide lower-cost services compared to commercial maintenance shops. For example, an engine replacement repair completed by the Texas Department of Transportation's maintenance shop in San Antonio cost $11,937. According to the agency, a commercial shop provided a quote of $13,916 for the same repair. Completing this repair at the agency's maintenance shop resulted in a cost avoidance of $1,978.

Option 2 would require those agencies that develop the Texas State Vehicle Fleet Management Plan to address opportunities for increasing capacity of state maintenance shops, including by consolidating resources in areas where multiple state-operated maintenance shops are located. To the extent that consolidation occurs, agencies would experience savings because of reducing duplicative operating costs, such as equipment and tools, facilities, and purchases of commonly used parts. Any savings realized from the consolidation of resources should be used to increase capacity of state maintenance shops.

The House introduced 2018–19 General Appropriations Bill includes a rider to implement Option 1.

ABOLISH CERTAIN INACTIVE OR DUPLICATIVE ADVISORY COMMITTEES

An advisory committee is a group or entity whose primary function is advising an agency in the executive branch of state government. These committees are intended to provide additional input to agencies, broaden their perspectives, and enable greater representation in policymaking. The Texas Government Code, Chapter 2110, provides standards governing the establishment and use of most advisory committees. This statute provides the general authority and autonomy needed to form committees, which can be established in Texas statute, in federal law, or by agencies either through administrative rule or on an ad hoc basis.

Agencies are required to annually evaluate committee costs and effectiveness and report this information to the Legislative Budget Board. If an agency plans to reimburse committee member expenses, additional information must be submitted to the Office of the Governor and Legislative Budget Board to substantiate this need. A member of an advisory committee may be provided a compensatory per diem of $30 per day if authorized by law. Additionally, advisory committee members may be reimbursed for certain expenses. For fiscal year 2015, agencies expended approximately $9.1 million to support the work of advisory committee members. The Office of the Governor and the Legislative Budget Board are required to jointly identify advisory committees that should be abolished. Abolishing unnecessary committees would enable agencies to focus resources on higher policy priorities.

FACTS AND FINDINGS

- ♦ Agencies reported the existence of 287 active advisory committees. Of this amount, 22.3 percent was within Article II of the General Appropriations Act.
- ♦ For fiscal year 2015, agencies expended approximately $9.1 million to support the work of advisory committees. The largest expenditure was $4.5 million in honoraria and other operating costs paid to the Scientific Research and Prevention programs committees at the Cancer Prevention and Research Institute of Texas. Excluding this amount, committees were appropriated an average of approximately $32,706.

CONCERN

- ♦ Advisory committees are typically established as separate entities and administratively attached to a larger agency. Agencies reported that some committees have become unnecessary but continue in existence through statute, rider, or administrative rule.

OPTIONS

- ♦ **Option 1:** Amend statute to abolish 11 ongoing and inactive advisory committees.
- ♦ **Option 2:** Direct the Texas Department of Information Resources to consolidate the Telecommunication Customer Advisory Committee into the Customer Advisory Committee.
- ♦ **Option 3:** Direct the Texas Education Agency to abolish the Educational Technology Advisory Committee and the Texas Environmental Education Advisory Committee.

DISCUSSION

Advisory committees provide input to state agencies, broadening their perspectives, and enabling greater representation in policymaking. Pursuant to the Texas Government Code, Chapter 2110, an advisory committee is a committee, council, commission, task force, or other entity with multiple members that has a primary function to advise an agency in the executive branch of state government. An advisory committee may be established in state or federal law, and statute also provides state agencies general authority to establish advisory committees.

The Texas Government Code, Chapter 2110, defines other parameters of state advisory committees, such as that the composition of a committee cannot exceed 24 members. The statute also states that committees advising an agency regarding an industry or occupation that the agency regulates or directly affects must have balanced representation from the industry and from consumers. Agencies may also designate, in rule, the date on which an advisory committee established by the agency will be abolished. Although the statute provides the general standards governing the establishment and use of advisory committees, there are instances throughout statute of individually codified committees that are exempt from the provisions of this chapter.

OVERSIGHT

An agency that has an advisory committee is required by law to annually evaluate the committee's work, utility, and costs related to the committee's existence. These costs include the cost of agency staff time supporting the committee's activities. If an agency determines that committee members' expenses should be reimbursed, it must request authority to do so through the appropriations process and provide certain information to substantiate such a request to the Office of the Governor and the Legislative Budget Board (LBB). Additionally, in instances in which a committee is administratively attached to an agency, it is also subject to review by the Sunset Advisory Commission.

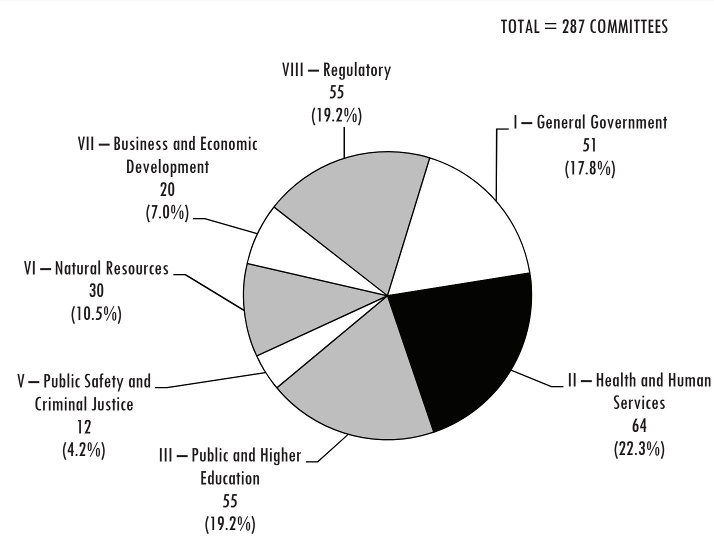
When examining advisory committees, Sunset staff report they assess: (1) the committee's vision and goals; (2) how often the committee meets; (3) whether the statutory construct of the committee enables sufficient adaptability to address the agency's evolving needs; and (4) whether the committee is duplicative or can be combined with another committee. For example, as part of the Health and Human Services Commission review in 2015, Sunset staff found 32 committees to be either unnecessary, duplicative or inactive. The Sunset Advisory Commission subsequently recommended these committees' elimination from statute. This action retains the agency commissioner's ability to establish or reestablish advisory committees in rule as needed.

DIRECT EXPENSES ASSOCIATED WITH SUPPORTING ADVISORY COMMITTEES

The Governor's office and LBB receive information on advisory committees as part of agency requests to reimburse committee members. However, a comprehensive listing of advisory committees, including those that may be active but do not receive direct state funding, is not available. This lack of information impedes evaluations of committees when attempting to identify potential consolidation opportunities or to gain an understanding of the degree to which agencies rely on external expertise on a particular topic. To address this lack of information, state agencies provided information to assist in identifying and evaluating the ongoing utility of advisory committees. Such information was provided through agencies' Strategic Planning submissions for fiscal years 2017 to 2021 to LBB and the Governor's office, and through their Legislative Appropriations Requests (LAR) submitted in 2016. Forty agencies reported the existence of 287 active advisory committees during the 2016–17 biennium. As shown in **Figure 1**, 22.3 percent of these committees advised agencies within Article II, Health and Human Services, and 19.2 percent each in Articles III and VIII, Public and Higher Education and Regulatory, respectively. The average number of members per committee was 15. Approximately 39.0 percent of all advisory committees were established from calendar years 2010 to 2016.

Figure 2 shows the amount of reimbursements made to advisory committee members for their service. For fiscal year 2015, agencies expended approximately $9.1 million to

FIGURE 1
DISTRIBUTION OF ACTIVE AGENCY ADVISORY COMMITTEES BY ARTICLE, FISCAL YEAR 2016



NOTE: No agencies within Article IV, Judiciary, contain advisory committees.
SOURCE: Agency Strategic Planning Submissions; Agency Legislative Appropriations Request Submissions.

support the work of advisory committee members. The largest expenditure was $4.5 million in honoraria and other operating costs paid with General Obligation bond proceeds to the Scientific Research and Prevention programs committees at the Cancer Prevention and Research Institute of Texas (CPRIT). The Eighty-fourth Legislature, General Appropriations Act (GAA), 2016–17 Biennium, Article I, CPRIT, Rider 3, authorizes CPRIT to provide an honorarium to members of these committees as authorized in the Texas Health and Safety Code, Chapter 102. Excluding these committees, other state advisory committees are appropriated an average of approximately $32,706 per fiscal year.

Reimbursements made to committee members are typically for items such as travel and personnel that directly provide committee support. The 2016–17 GAA, Article IX, Sections 5.07 and 5.08, provide direction regarding payments to advisory committees. These riders state that a member of an advisory committee may be provided a compensatory per diem of $30 per day if authorized by law. Additionally, advisory committee members may be reimbursed for actual expenses for meals, lodging, transportation, and incidental expenses at rates specified for state employees. Agencies indicated they provide financial reimbursement to 142 of the 287 active and ongoing advisory committees, or 49.5 percent. Unless specified in law, the agency's discretion and approval by the Legislature determine whether committee members may be reimbursed for travel expenses. Agencies may also receive direction through the GAA to limit reimbursement amounts, encourage the use of videoconferencing and teleconferencing, and to schedule meetings and locations to facilitate the participants' travel to reduce reimbursement for overnight stays.

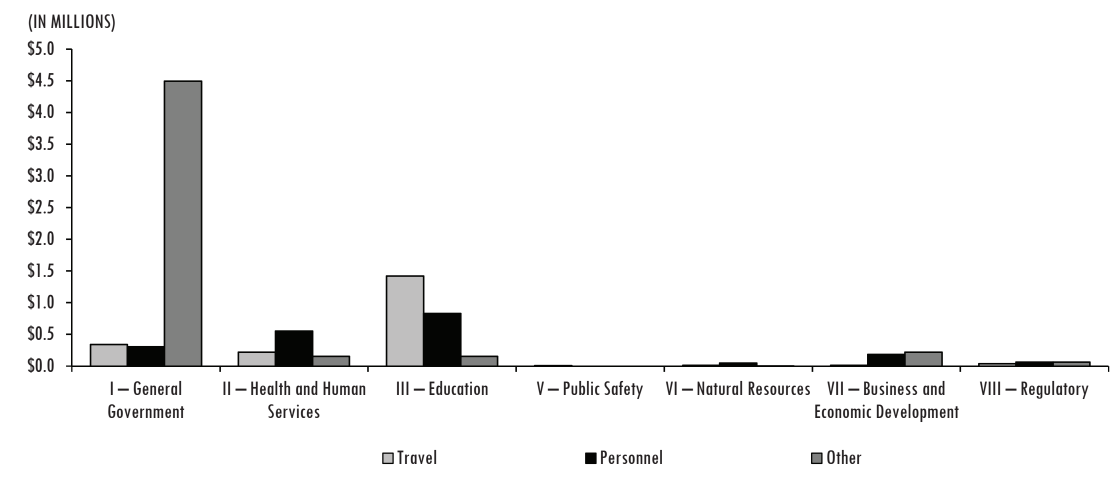
UTILITY OF CERTAIN ADVISORY COMMITTEES

Texas Government Code, Chapter 2110, requires the Office of the Governor and LBB to jointly identify advisory committees that should be abolished. LBB staff and Governor's office staff received information from agencies during the strategic planning process for the 2018–19 biennium that describe the functions of ongoing and inactive advisory committees. Through these evaluations, agencies identified committees that have become redundant and could be abolished without impeding the agency's ability to achieve its mission. Option 1 would amend statute to abolish 11 advisory committees, which are shown in **Figure 3**. As part of its LAR for the 2018–19 biennium, the Texas Education Agency requested the removal of the Communities in Schools State Advisory Committee from the rider listing agency's advisory committees for which members may be reimbursed. This was included in the introduced 2018–19 General Appropriations Bill. Most of these committees are inactive; however, two active advisory committees within the Office of the Attorney General (OAG) are described in the following sections. Abolishing unnecessary committees would enable agencies to focus resources on higher policy priorities. Agencies have statutory authority to reestablish such committees if the agencies determine a renewed need exists for additional perspective on that subject.

RESIDENTIAL MORTGAGE FRAUD TASK FORCE

The Residential Mortgage Fraud Task Force was established by the Eightieth Legislature, 2007, to form a partnership among state, federal, and local law enforcement agencies to enable the tracking and prosecution of mortgage fraud. In

FIGURE 2
ADVISORY COMMITTEE SUPPORTING COSTS BY ARTICLE, FISCAL YEAR 2015



SOURCE: Compiled from Legislative Appropriations Request submissions by the Legislative Budget Board.

FIGURE 3
SUMMARY OF OPTIONS TO ABOLISH ADVISORY COMMITTEES IN STATUTE, FISCAL YEAR 2016

AGENCY	COMMITTEE	STATUS	AGENCY COMMENTS
Comptroller of Public Accounts (CPA)	Alternative Fuels Council	Inactive	Established in 1993, the council was charged with coordinating a comprehensive program to be carried out by state agencies in support of the use of environmentally beneficial alternative fuels. Comptroller staff has conferred with staff from the General Land Office, Railroad Commission and the Texas Commission on Environmental Quality, whose agencies also serve on the council. Represented agencies agree the council is no longer needed.
	Appraisal Committee for Qualified Agricultural or Timber Land Property Tax Valuation Manuals	Inactive	Established in 1982, committee meetings are the final step in adopting changes to the manuals that control the appraisal of agricultural land and timberland. The agency would like to eliminate this formal committee approval step, while continuing to consult with affected stakeholders as the manuals are updated.
	Rain Harvesting and Water Recycling Task Force	Inactive	Established in 2003, the task force was charged with developing design recommendations to be used for state facilities that encourage rain harvesting and water recycling by state agencies. According to the agency, the committee is no longer relevant to the agency's mission.
	State Cogeneration Council	Inactive	Established in 1993, the council was charged with assisting, informing, and advising a state agency concerning the legal, technical, economic, and contractual issues related to cogeneration. According to CPA staff, cogenesation is now the normfor new gas-fired electric generating projects. As such, reviews and approvals have not been requested of the Committee. CPA staff has conferred with representatives from the Public Utility Commission, Railroad Commission, Texas Commission on Environmental Quality, and the Office of the Attorney General, whose agencies also serve on the council. Represented agencies agree the council is no longer needed.
Department of Public Safety	Advisory Oversight Community Outreach Committee	Inactive	Established in 2005, the committee is required to document trade-related incidents involving department personnel; develop strategies to improve community relations, department personnel conduct, and the truck inspection process at state ports; and act as ombudsman between the department and communities in the border area between Texas and Mexico. The agency does not find the committee of assistance. The committee has been inactive since 2008; therefore, its abolishment has no direct effects.
Office of the Attorney General (OAG)	Information Resources Steering Committee	Ongoing	The Information Resources Steering Committee was established in 1999 and oversees information resource project development for the Office of the Attorney General Child Support Division, makes strategic prioritization recommendations, and facilitates development of accurate information for the child support director. The committee may be abolished because it is duplicative of routine work performed by staff in the agency's information resources function.
	Premarital Education Handbook Advisory Committee	Inactive	The committee assisted with the development of the state's Premarital Education Handbook from 1999 to 2002. The committee is no longer relevant to the agency's mission.
	Residential Mortgage Fraud Task Force	Ongoing	The Residential Mortgage Fraud Task Force was established by the Eightieth Legislature, 2007, to form a partnership among state, federal, and local law enforcement agencies to enable the tracking and prosecution of mortgage fraud. The activities associated with the task force can continue to be accomplished through the partnerships with law enforcement agencies without a formal task force. The OAG provides legal representation to each member agency of the task force, has concurrent jurisdiction of prosecuting mortgage fraud cases with consenting counties, and can accept referrals of specific cases from local jurisdictions.
Texas Department of Insurance	Independent Review Organization Advisory Group	Inactive	The Independent Review Organization Advisory Group was established by statute during the Eighty-third Legislature, Regular Session, 2013, to advise the department and make recommendations related to the efficiency of independent review. The functional utility of this group has become ineffective, due to the passage of rules governing Independent Review Organizations and the ability of agency staff to recognize such issues.

FIGURE 3 (CONTINUED)
SUMMARY OF OPTIONS TO ABOLISH ADVISORY COMMITTEES IN STATUTE, FISCAL YEAR 2016

AGENCY	COMMITTEE	STATUS	AGENCY COMMENTS
Texas Department of Licensing and Regulation	Vehicle Protection Product Warrantors Advisory Board	Inactive	Established in 2003, the board's purpose is to advise the Texas Commission of Licensing and Regulation in adopting rules, enforcing and administering statutory requirements, and setting fees. The laws regulating the vehicle protection product program specifically define financial security requirements and disclosure requirements that protect customers. The agency states it is able to regulate this industry's small licensee population without requiring committee assistance.
Texas Education Agency	Communities in Schools State Advisory Committee (CISSAC)	Inactive	Established in 2001, this advisory committee is required to advise and provide guidance to programs operating within the auspices of the Communities in Schools network in Texas. Through collaboration with the organization's local affiliate executive directors, the agency is able to meet its statutory responsibilities related to Communities in Schools. The advisory committee has not met in several years.

Sources: Comptroller of Public Accounts; Department of Public Safety; Office of the Attorney General; Texas Department of Insurance; Texas Department of Licensing and Regulation; Texas Education Agency.

accordance with the Texas Government Code, Section 402.032, the task force is composed of nine members representing relevant state agencies. The task force is required by statute to share information and resources and to enforce administrative and criminal actions against perpetrators of mortgage fraud.

Statute requires the task force to submit an annual report to the Governor, Lieutenant Governor, and Speaker of the House of Representatives. According to OAG staff, no report or formal recommendations were made by the committee during the 2014–15 biennium. OAG staff states that, because the committee has met its mission, it is no longer needed and should be abolished. OAG staff states that the activities associated with the task force can continue to be accomplished through the partnerships with law enforcement agencies, without a formal task force. The OAG provides legal representation to each member agency of the task force, which has concurrent jurisdiction of prosecuting mortgage fraud cases with consenting counties, and can accept referrals of specific cases from local jurisdictions. OAG staff states that the task force does not add value to the process in which law enforcement investigations are conducted.

INFORMATION RESOURCES STEERING COMMITTEE

The Texas Family Code, Chapter 213, requires OAG to establish an Information Resources Steering Committee to: (1) oversee information resource project development for the agency's child support-related activities; (2) make strategic prioritization recommendations; and (3) facilitate development of accurate information for the child support director. The committee was established by the Seventy-sixth Legislature, 1999. Federal regulations require a complex information technology (IT) operation for child support; however, OAG staff recommends the committee be abolished. The rationale for this opinion is that the statute is duplicative of routine work that agency staff performs to provide agency management updates on projects, timelines, network security, and IT operations. Additionally, since the 2016–17 GAA, a rider in Article I, OAG, has directed the agency to operate a separate Executive Steering Committee for the Texas Child Support Enforcement System 2.0 (TXCSES 2.0 or T2) capital project. The T2 initiative began in 2007 to update the child support enforcement system used to establish child support orders, enforce order compliance, and collect and disburse child support payments.

COMMITTEES NOT CODIFIED IN TEXAS STATUTE

In addition to abolishing unnecessary advisory committees established in Texas statute, advisory committees have been established by certain state agencies. The following are examples of committees established by state agencies that are no longer necessary and may be abolished without amending statute.

CUSTOMER ADVISORY COMMITTEE AND TELECOMMUNICATION CUSTOMER ADVISORY COMMITTEE

The Customer Advisory Committee (CAC) was established by House Bill 2472, Eighty-third Legislature, Regular Session, 2013, to report and advise the Department of Information Resources (DIR) on the status of the agency's delivery of critical statewide services. The advisory committee includes representatives of customers who receive services from each of the department's key programs. The Telecommunications Customer Advisory Committee

(TCAC) was established as a discretionary committee by DIR in 2011, prior to legislative action that established CAC. The purpose of TCAC is to provide input on the broad direction and quality assurance actions of Communications Technology Services (CTS) from the customer perspective. According to DIR staff, TCAC has not been able to meet its mission because of a lack of customer interest in advising in telecommunications to warrant a distinct advisory council, and the council has not been effective in helping set a strategic direction. Option 2 would direct DIR to consolidate TCAC into CAC. The agency established TCAC; therefore, DIR can implement this option without statutory change. According to DIR staff, this action would provide a more holistic representation of customer input. DIR staff spent approximately 30 hours in fiscal year 2015 supporting the work of TCAC, primarily to schedule meetings, develop an agenda, and to facilitate and participate in the meetings. This time could be reduced if TCAC were consolidated within the functions of CAC.

EDUCATIONAL TECHNOLOGY ADVISORY COMMITTEE AND THE TEXAS ENVIRONMENTAL EDUCATION ADVISORY COMMITTEE

The Educational Technology Advisory Committee was established in 2004 by the Texas Education Agency (TEA) to draft the Long-Range Plan for Technology, 2006–2020. Subsequent reports on the plan, required biennially, have been produced by agency staff. According to agency staff, the committee has not met since 2006 and will not be needed until a new plan is required after 2020. The current State Board of Education may also want to use a different process for developing the Long-Range Plan for Technology. The Texas Environmental Education Advisory Committee (TEEAC) was established in 1991 through agency administrative rule to help assure that professional development in environmental education aligns to the Texas Essential Knowledge and Skills (TEKS) standards. Upon request, the committee may also advise the Commissioner of Education on environmental education issues. According to TEA staff, the committees do not currently produce any tangible documents or recommendations to TEA, are not a critical resource, nor do they have a direct effect on the agency's mission. TEA has authority to, at its discretion, discontinue these committees as well as others established through administrative rule. Option 3 would direct TEA to abolish the Educational Technology Advisory Committee and the Texas Environmental Education Advisory Committee.

FISCAL IMPACT OF THE OPTIONS

Option 1 would amend statute to abolish certain advisory committees that agencies have deemed no longer necessary. Most of these committees are inactive. Therefore, reimbursements are not made to these committee's members, and staff time is not used to support the committees. No fiscal impact is anticipated as a result of their elimination. The Residential Mortgage Fraud Task Force at the Office of the Attorney General would also be abolished as a result of Option 1. Members of this committee are estimated to receive a combined total of $2,500 in General Revenue Funds for the 2016–17 biennium. Eliminating this committee would enable the agency to reallocate these funds and 40 hours of agency staff time for other purposes. Option 2 would direct the Department of Information Resources to consolidate the Telecommunication Customer Advisory Committee and the Customer Advisory Committee. No fiscal impact is anticipated from this action. Option 3 would direct the Texas Education Agency to abolish the Educational Technology Advisory Committee and the Texas Environmental Education Advisory Committee, which would enable the agency to reallocate $7,300 in General Revenue Funds for the 2018–19 biennium for other purposes.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

OVERVIEW OF DISASTER PLANNING AND RECOVERY

Since 1953, Texas has had the most federal Major Disaster Declarations of any state. From 2008 to 2016, the President issued 13 Major Disaster Declarations for wildfires, the West fertilizer plant explosion, severe storms, tornadoes, and floods. In 2011, drought and wildfires broke state records, followed four years later by record rainfall.

In 2015, 136 counties received a federal disaster declaration. Of these counties, 27 experienced at least two federally declared disasters. According to the U.S. Natural Hazards Statistics, Texas had the highest number of weather-related fatalities (86) and injuries (725) of any state in 2015. The extreme weather of 2015 led to an estimated $451.2 million in local damages to public property in the state. Texas had an estimated $3.2 billion in property claims in 2015, making it the highest-ranked state in that year for insured losses and numbers of claims nationwide. State agencies incurred significant costs in recent years as well; the Texas Parks and Wildlife Department alone spent an estimated $30.4 million in 2015 due to storm-related damages.

Local government entities are in charge of initial response and assessment of disasters. Many local governments, however, do not have adequate plans in place for disasters. Some entities might never expect a major disaster to occur. Others lack experienced emergency managers or finance staff that understand complex federal disaster programs. Communities such as Bastrop County that have encountered multiple disasters might require additional financial aid to recover from such events.

The Governor may declare an emergency or disaster by proclamation and provide grant funds to local governments and state agencies. Disaster grants from the Governor are typically available only after appropriated funds to state and local agencies for disasters are depleted. These funds are awarded at the discretion of the Governor.

Two state entities are primarily responsible for state disaster response and recovery efforts: the Texas Division of Emergency Management, a division of the Texas Department of Public Safety, and the General Land Office. Local governments need assistance from these state agencies to understand and comply with federal disaster grant rules. The Regional Disaster Finance Coordination Program at the Texas Division of Emergency Management has provided disaster finance training to local governments since 2014. The Eighty-fourth Legislature, 2015, appropriated $1.9 million to fund 9.0 full-time-equivalent positions for this program.

Many of the federal disaster grants available to local governments require a 25.0 percent local cost share match. When a local government is unable to provide that match, the result may be a delay or denial of a community from accessing millions of dollars in federal aid. Recoveries could be improved via education and access to funds for local governments to plan for disasters, recover from disasters, and to seek federal funding for disaster recovery.

FACTS AND FINDINGS

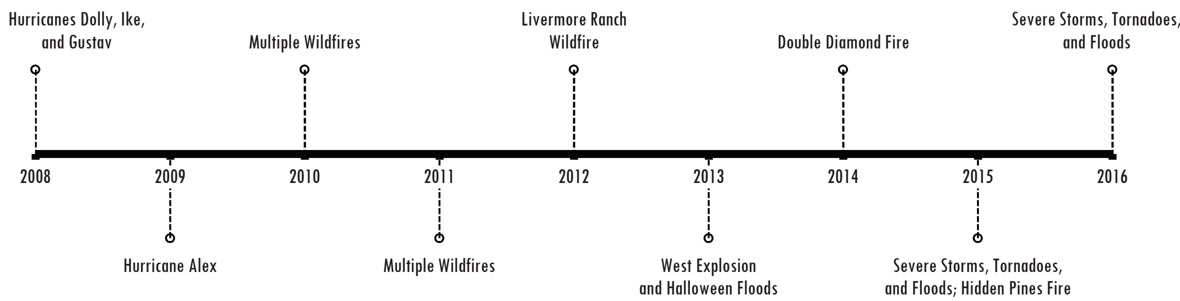
- ♦ According to various entities involved with disaster recovery in the state, many local governments do not plan effectively for disasters. Local governments may lack the financial resources and staff to develop disaster recovery plans, budget for disasters, and comply with federal disaster grant rules.
- ♦ The federal government is encouraging state and local governments to take a more active role in preparing, preventing, and paying for disasters.

DISCUSSION

Since 2008, Texas has experienced a series of disasters. Three major hurricanes hit the Gulf region from 2008 to 2010. According to the National Weather Service, the chance of a hurricane or tropical storm occurring on the Texas coast is three storms every four years. The longest period in Texas since 1829 without a hurricane was 10 years. As shown in **Figure 1**, Texas has experienced a federally declared disaster every year from 2008 to 2016. During that time, the President issued 13 Major Disaster Declarations (MDD) in Texas. These events included hurricanes, wildfires, an explosion, floods, and severe storms. Historically, Texas has received the most MDDs of any state since 1953.

In recent years, Texas weather ranged from record drought to record rainfall. The Governor of Texas issued an Emergency Disaster Proclamation for wildfires and drought in all 254 counties in December 2010. In 2011, the state experienced its worst drought and fire season on record. Nearly the entire state had extreme or exceptional drought conditions. Four

FIGURE 1
FEDERAL DISASTER DECLARATIONS IN TEXAS, CALENDAR YEARS 2008 TO 2016



NOTE: Timeline includes Major Disaster, Emergency, and Fire Management Assistance Declarations.
SOURCE: Federal Emergency Management Agency.

years later, the state had its wettest year. In 2015, Texas received more than 41 inches of rain, according to the Office of the State Climatologist, and 136 counties received federal disaster declarations. Of these counties, 27 experienced at least two federally declared disasters.

Twelve state agencies estimated $385.6 million in total wildfire costs from September 2010 to March 2014. The Eighty-third Legislature, Regular Session, 2013, appropriated $168.7 million from the Economic Stabilization Fund to state agencies for wildfire costs. It also appropriated $15.0 million to Trusteed Programs within the Office of the Governor for disaster recovery. The Insurance Council of Texas reported that the 2011 Bastrop wildfire caused $360.0 million in insured losses. The 2011 Possum Kingdom wildfire caused $150.0 million in insured losses. State agencies expended an estimated $4.1 million to respond to the 2013 fertilizer plant explosion in West. That explosion caused $100.0 million in insured losses.

Texas led the nation in private property loss and claims due to catastrophes in 2015. The Insurance Services Office, Inc., a data analysis service, estimates that Texas had $3.2 billion in property claims in 2015, making it the highest-ranked state for insured losses and numbers of claims nationwide. As shown in **Figure 2**, state agencies also incurred significant costs. For example, the Texas Department of Public Safety (DPS) incurred an estimated $46.6 million for response and recovery expenses. The extreme weather in 2015 led to an estimated $451.2 million in local damages to public property in the state, according to local disaster declaration estimates provided by counties to the Texas Department of Emergency Management (TDEM).

FIGURE 2
SELECTED STATE AGENCIES ESTIMATED DISASTER COSTS AND ASSISTANCE, MAY 2015 TO FEBRUARY 2016

AGENCY	ESTIMATED COSTS (IN MILLIONS)	EXPENDITURE(S)
Department of Public Safety	$46.6	Response and recovery expenses
Department of Transportation	$31.4	Road and bridge repairs; debris cleanup
Parks and Wildlife Department	$30.4	Damage, repairs, and cleanup at multiple state parks
Health and Human Services Commission	$23.9	Individual Assistance, Disaster Case Management
Texas A&M Forest Service	$9.7	Wildfire suppression
Department of State Health Services	$9.0	Mental health counseling, Regional Advisory Council payments, staff, and administration
Texas Military Department	$3.7	Severe weather rescue and wildfire suppression operations
TOTAL	**$154.7**	

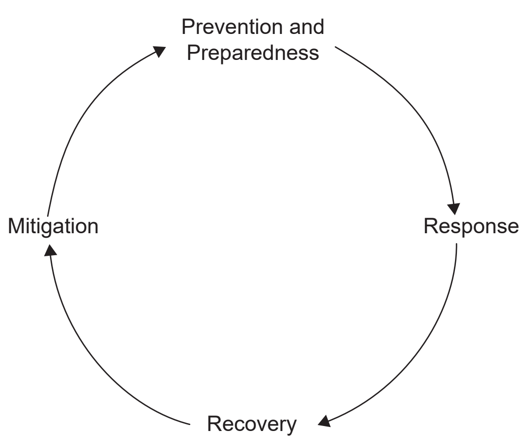
NOTE: Some of the costs shown are eligible for Federal Emergency Management Agency reimbursement.
SOURCES: Texas Department of Public Safety; Texas Department of Transportation; Texas Parks and Wildlife Department; Health and Human Services Commission; Texas A&M Forest Service; Department of State Health Services; Texas Military Department.

In addition to the fiscal impact, natural disasters have also taken a toll on human lives. According to the Texas Forest Service, the wildfires in 2011 caused 10 fatalities including four firefighters. TDEM reported that in 2013, the West explosion in April killed 15 people including 12 first responders, and injuring over 300 people. Tornadoes in May 2013 killed six people and injured hundreds, while flooding killed an additional 31 people. According to the U.S. Natural Hazards Statistics, Texas had the highest number of weather-related fatalities (86) and injuries (725) of any state in 2015.

Natural disasters continue to severely affect Texas. Four Major Disaster Declarations were issued in the state in February, March, April, and June 2016 for severe storms, tornadoes, and flooding. As of June 2016, 82 counties have received a federal disaster declaration in 2016, with 11 of those counties experiencing two disasters.

As **Figure 3** shows, disasters have different stages: preparedness and prevention; response; recovery; and mitigation. Local, state, and federal governments play a role in each stage. In general, Texas responds to disasters effectively.

FIGURE 3
DISASTER STAGES, FEBRUARY 2016



SOURCE: Adapted from Texas Department of Public Safety, Texas Division of Emergency Management, *Texas Emergency Management Executive Guide*, 2013.

ROLE OF LOCAL GOVERNMENT

In Texas, local governments are responsible for responding to disasters. By statute, county judges and mayors act as emergency management directors. Although they may appoint emergency managers, only judges and mayors may declare a local disaster. The *U.S. Department of Homeland Security's National Response Framework, Third Edition*, June 2016, describes the principles, roles, responsibilities, and coordination necessary to provide response for a disaster. The publication also describes how response efforts integrate with those of other mission areas. According to the National Response Framework, emergency managers should conduct the following:

- provide for the safety and welfare of their constituents;
- develop policies, budgets, and laws related to disaster preparedness, emergency management, and response;
- offer strategic guidance for disaster prevention, protection, mitigation, response, and recovery;
- direct response activities;
- communicate necessary information to the public; and
- seek assistance from other government entities as necessary.

The local emergency managers handle daily duties related to disaster events. They manage prevention, response, recovery, and mitigation programs. They coordinate response operations; develop mutual aid agreements; work with other governments, nongovernmental organizations, and private sector officials; educate the public; conduct damage assessments; and perform other duties.

Legislative Budget Board (LBB) staff discussed local disaster issues with the Emergency Management Association of Texas (EMAT), the University of North Texas' Emergency Administration and Planning Program (EADP), and the Texas A&M Hazard Reduction and Recovery Center (HRRC). EMAT is a statewide organization for emergency management professionals that develops and fosters information sharing and mutual support networks for phases of emergency management. EADP, the first resident degree program offered in emergency management, offers a curriculum that includes courses in emergency preparedness, response, recovery, and mitigation. HRRC provides technical support to communities regarding land use planning through the Texas Target Communities program.

Representatives from these groups and institutions identified the following concerns:

- many communities lack full-time, dedicated emergency management personnel; local officials or government staff may play many roles, especially in small or rural communities;

- budgeting for disasters is not a priority for most local governments, nor is setting aside disaster contingency funds; local governments typically prioritize immediate needs as greater than potential needs;
- some communities face challenges to pay the local match for Federal Emergency Management Agency (FEMA) projects (typically 25.0 percent); and
- FEMA rules and procedures for documentation and reimbursement can be difficult to comply with for local governments.

These emergency organization representatives also discussed that many local governments do not plan effectively for disasters. Local governments may lack the financial resources and staff to develop disaster recovery plans, budget for disasters, and comply with federal disaster grant rules. The Texas Administrative Code, Title 37, Part 1, Section 7.12, requires local and interjurisdictional emergency management agencies to complete an emergency management plan every five years, based on TDEM content standards. The agency reviews the local plans annually. Plans include basic resource information but not detailed financial or budget information. Many of the FEMA disaster grants available to local governments require a 25.0 percent local cost share match. When a local government is unable to provide that match, the result may be a delay or denial of a community from accessing millions of dollars in federal aid.

ROLE OF STATE GOVERNMENT

States "supplement local efforts before, during, and after incidents," according to the National Response Framework. In Texas, the Governor has powers and duties related to emergency events, including: addressing the dangers that disasters pose to the state and its residents; declaring a state of disaster; leading state agencies that deal with emergencies; and requesting federal assistance. State disaster grant funding may be appropriated to the Trusteed Programs within the Office of the Governor as pass-through grants to state agencies and local government entities. Certain state agencies provide disaster assistance, including managing public health threats, wildfires, and debris removal. The Legislature may provide supplemental appropriations to state agencies to pay for disaster costs.

Two state entities administer key federal disaster programs. TDEM administers FEMA programs including Public Assistance and Hazard Mitigation grants. The General Land Office (GLO) administers the Community Development Block Grant – Disaster Recovery (CDBG–DR) program, which provides supplemental housing and infrastructure funding to affected communities.

According to the HRRC, communities need access to technical support and training for effective predisaster planning. HRRC provides this support through the Texas Target Communities (TTC) program. The program has worked with more than 50 Texas communities and provided tailored plan-development, community engagement, land use, and hazard management services.

REGIONAL RECOVERY PROGRAM

The Regional Disaster Finance Coordination Program at TDEM was implemented in 2014 to give local governments the financial tools needed to recover from a disaster. The program is intended to enhance communication and coordination between disaster responders and financial managers before an emergency. The Legislature directed these changes to ensure economic stability and improve preparedness. The Eighty-fourth Legislature, 2015, appropriated $1.9 million that funded 9.0 full-time-equivalent (FTE) positions at the Regional Disaster Finance Coordination Program. From October 2014 to February 2016, TDEM trained more than 1,600 participants statewide. Coordinators are deployed to each DPS region. They offer courses to local budget and finance, emergency management, and elected officials. TDEM has proposed additional training for local governments regarding procurement, damage assessment, and debris management.

According to TDEM, "the best option to support local jurisdictions is continued training through the disaster recovery finance program." These staff perform critical roles in predisaster and postdisaster planning. As noted, before a disaster, the program's coordinators provide education and training to local governments. After a disaster, they act as "boots on the ground" and help local officials understand FEMA rules and procedures. This assistance reduces errors that may result in a loss of Federal Funds when local governments do not comply with federal regulations.

DISASTER CONTINGENCY FUND

The inability of a community to pay a 25.0 percent FEMA match could delay or reduce potential federal assistance. A Bastrop County judge testified at a Texas Senate Intergovernmental Relations Committee that local governments need state aid to recover. In recent years, the City of West and Bastrop County both requested state appropriations to pay the FEMA match. The Legislature appropriated funding for these disasters to the Trusteed Programs within the Office of the Governor through a supplemental appropriations bill. The FEMA funds were offered to Bastrop County within six weeks of the disaster, but the normal lack of a funding mechanism outside of the appropriations process for the match delayed the federal assistance by two years.

TDEM noted that when jurisdictions suffer damages repeatedly, response and recovery is more difficult. Considering the past five years of disasters, TDEM estimated that it would cost $18.7 million per year to provide local match assistance. In 2015, the U.S. Government Accountability Office (GAO) reviewed how 10 states paid for disaster costs. Nine of the 10 funded at least part of the local match; North Dakota funds its Disaster Relief Fund through a portion of oil and gas taxes.

Established in 1975, the Disaster Contingency Fund administered by TDEM is a General Revenue–Dedicated account that receives appropriated funds, gifts, grants, and loans. State and local government entities may request funding for disaster preparation, recovery, and risk financing. The funds may also be used to provide matching funds for FEMA grants to local governments that are experiencing financial hardship following a disaster declaration. Local entities may request disaster grants from the Office of the Governor, wait for FEMA aid, seek donations, or absorb costs.

ROLE OF FEDERAL GOVERNMENT

If a disaster's damages exceed a state's resources, the governor may request federal assistance. The federal government provides disaster assistance to state and local governments primarily through two agencies: FEMA and the U.S. Department of Housing and Urban Development (HUD). Both agencies provide disaster grants. **Figure 4** shows the programs each agency provides.

FEDERAL EMERGENCY MANAGEMENT AGENCY

After a disaster, FEMA may conduct Preliminary Damage Assessments with state and local governments. This information is used to determine if a disaster meets the threshold for a presidential disaster declaration. **Figure 5** shows the disaster declaration process. If local and state thresholds are met, the President may declare an Emergency or Major Disaster Declaration.

FEMA assistance is provided in the form of Individual Assistance or Public Assistance grants. Individual Assistance pays for housing, unemployment, or other personal needs up to $33,000 per household. Public Assistance assists state, local, and other eligible entities with response costs and public damage such as roads, buildings, and parks. Public Assistance grants typically reimburse recipients for 75.0 percent of eligible costs. The recipient must pay a 25.0 percent cost share. Recipients are required to submit Project Worksheets and other documentation to be reimbursed. Reimbursement can take months to years. FEMA may disallow costs if certain policies or rules are not followed.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Congress may appropriate CDBG–DR funds for certain disaster cases. These funds are supplemental disaster recovery funds that HUD administers. Funds are often used to rebuild housing and infrastructure. Some projects must benefit low-income to moderate-income persons. The state received CDBG–DR allocations totaling $3.1 billion in 2008 for Hurricanes Dolly and Ike. Texas was allocated two grants for damages from the 2011 wildfires that occurred in Bastrop County—$31.3 million in 2012 and $5.1 million in 2013.

In 2015, HUD asked 48 states and 19 local communities to compete in the National Disaster Resilience Competition. HUD made available $1.0 billion to help communities "recover from prior disasters and improve their ability to withstand and recover more quickly from future disasters" and to "avoid future disaster losses." GLO submitted an application for $583.6 million but was not awarded any funds. These Federal Funds would have been targeted for mitigation projects in Bastrop County, the City of Austin, and the City of West. HUD's decision did not contain any information on why Texas was not awarded funds.

PROPOSED CHANGES TO FEMA RULES

The federal government is evaluating proposals that could reduce the amount of federal disaster aid to state and local governments. In 2012, GAO noted the number of disaster declarations has increased in recent years due to population growth and "more active weather patterns." GAO concluded that FEMA's calculation for providing Public Assistance is "artificially low" because it does not account for inflation or adjusted per-capita income. Adjusting for those factors, Texas' threshold would increase from $35.5 million to $54.3 million, when adjusted for inflation, and $76.7 million, adjusted for per-capita income, according to Federal Funds Information

FIGURE 4
FEDERAL DISASTER PROGRAMS BY AGENCY, MARCH 2016

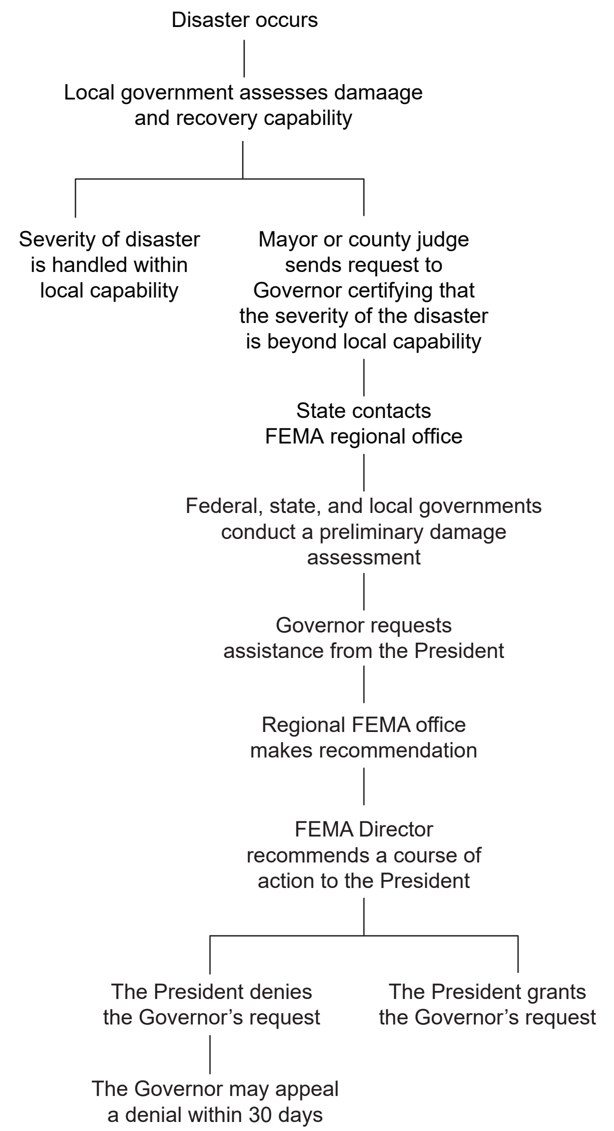
AGENCY	PROGRAM	ELIGIBILITY	ASSISTANCE AND USES
Federal Emergency Management Agency (FEMA)	Individual Assistance	Persons and households.	Temporary housing; home repair or replacement; Other Needs Assistance; U.S. Small Business Administration disaster loans; disaster unemployment assistance; legal services; tax assistance; and crisis counseling.
	Public Assistance	State and local governments. The disaster must meet state and county loss thresholds. For fiscal year 2016, Texas' statewide threshold was approximately $35.0 million. FEMA typically reimburses 75.0 percent of costs. The nonfederal share is 25.0 percent.	Categories: A – debris removal; B – emergency protective measures; C – roads systems and bridges; D – water control facilities; E – public buildings and contents; F – public utilities; and G – parks, recreational, and other.
	Hazard Mitigation	State and local governments. Grants help prevent and reduce the risk of future disasters. FEMA reimburses 75.0 percent of costs. The nonfederal share is 25.0 percent. FEMA may make 15.0 percent of the total it spends on disaster recovery available to a state for mitigation.	Projects may include wildfire protection, acquiring or demolishing flood-damaged property, or relocating structures.
	Fire Management Assistance Grants	State and local governments. Grants help mitigate, manage, and control fires. FEMA reimburses 75.0 percent of costs. The nonfederal share is 25.0 percent. Costs must meet or exceed the individual threshold for single fires or the cumulative threshold for multiple fires in one state. For fiscal year 2016, Texas' individual threshold was $1.8 million. The cumulative threshold was $5.3 million.	Categories: B – emergency protective measures; and H – firefighting activities.
U.S. Department of Housing and Urban Development	Community Development Block Grant–Disaster Recovery	State and local governments that recover from a presidentially declared disaster. These noncompetitive, formula funds supplement other disaster aid and typically benefit low-income to moderate-income persons.	Buying damaged properties in flood plains; relocation; debris removal; home and building rehabilitation; buying, constructing, or rehabilitating public facilities; code enforcement; home-ownership assistance; public services; job development or retention; and matching funds for other federal grants (within certain conditions).

Sources: Federal Emergency Management Agency; U.S. Department of Housing and Urban Development; Texas Department of Public Safety.

for States. GAO recommended that FEMA consider various approaches to measure jurisdictions' fiscal capacity.

In January 2016, FEMA announced it was considering a disaster deductible. According to the proposed federal rules, states would make a predetermined financial commitment, similar to meeting an insurance deductible before receiving Public Assistance. The proposal is meant to build resilience, reduce the costs of future events, and facilitate state and local governments' planning and budgeting. FEMA also included in the proposed rules that states could lower the deductible by establishing disaster relief funds, adopting enhanced building codes, and engaging in additional predisaster activities that reduce disaster risk. In January 2017, FEMA proposed a dollar-for-dollar credit to the state deductible for funds appropriated and deposited in a qualifying disaster relief fund. This credit can lower the deductible by up to 20 percent.

FIGURE 5
PRESIDENTIAL DISASTER DECLARATION PROCESS
FISCAL YEAR 2016



Source: Legislative Budget Board staff adaptation from Texas Department of Public Safety, Texas Division of Emergency Management, *Texas Emergency Management Executive Guide*, 2013.

MAXIMIZE DEEPWATER HORIZON OIL SPILL FUNDS

The Deepwater Horizon oil spill in April 2010 was the largest offshore oil spill ever in the United States. It released more than 200 million gallons of oil into the Gulf of Mexico and oiled at least 1,300 miles of shoreline. It negatively affected the economies, environment, and ecology of Gulf Coast states. Due to the spill-related litigation and legislation, the State of Texas will receive more than $1.1 billion from private companies, the federal government, and nonprofit institutions. While federal law, court settlements, and other agreements dictate how the state may use some funds, Texas will also receive $152.0 million in unrestricted compensation for economic damages. These funds may be used for any purpose and will be deposited in the state Treasury through the final payment in 2033. The Texas Legislature could direct the $152.0 million in economic damages for the long-term benefit of the Gulf Coast region. Depositing these payments into a trust fund could generate an estimated $195.3 million in interest by 2033 if no funds were expended until that date.

CONCERN

- Settlement agreements do not direct how $152.0 million in economic damages should be used. Currently these funds are deposited as General Revenue Funds into the state Treasury and are not required to be invested for the long-term benefit of the Gulf Coast region.

OPTIONS

- **Option 1:** Amend statute to establish the Texas Gulf Recovery Trust Fund as Other Funds in the state Treasury but outside the General Revenue Fund. The trust fund would pay for ecological, environmental, or economic projects that benefit the Gulf Coast region using economic damage payments and earned interest. Amend statute to direct the Texas Treasury Safekeeping Trust Company to invest the economic damages with a targeted annual return of 8.0 percent.
  - **Alternative A:** Invest the $151.8 million in economic damages, as the state receives them through 2033, with the Texas Treasury Safekeeping Trust Company. In 2033, the funds, along with interest, would be available to the Legislature for the purposes set forth in the Texas Gulf Recovery Trust Fund.
  - **Alternative B:** Direct the Texas Treasury Safekeeping Trust Company to issue a settlement revenue bond guaranteed by the future payments from the settlement. Invest the proceeds of the bond along with other settlement funds received in the same manner as described in Alternative A.
- **Option 2:** As an alternative to Option 1, direct the Texas Treasury Safekeeping Trust Company to issue a settlement revenue bond as described in Alternative B; however, the proceeds of the bond would be deposited into a General Revenue–Dedicated Funds account. The funds would be available for certification purposes and appropriation by the Legislature.

DISCUSSION

On April 22, 2010, an explosion on the Deepwater Horizon (DWH) oil rig caused the largest oil spill in U.S. waters. For almost 90 days, nearly 4.9 million barrels of oil and natural gas leaked into the Gulf of Mexico. Oil spread from Texas to Florida, which disrupted the economies, ecology, and coastal environments of five coastal states.

The DWH spill led to a number of lawsuits, as well as federal legislation. The federal Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act) was enacted in 2012 as a result of the spill. The RESTORE Act establishes the distribution methodology for settlement payments and defines allowable uses of funds distributed. Due to various lawsuits, agreements, and federal law, the State of Texas will receive an estimated $1.1 billion from different sources, with the majority from settlements with BP PLC (previously named British Petroleum). Additional settlements were reached with Transocean Offshore Deepwater Drilling, Inc. (Transocean), and Anadarko Petroleum Corp. (Anadarko).

The funds have different uses and purposes. **Figure 1** shows the type and allowable uses for the several sources of funds. **Figure 2** shows the distribution the DWH oil spill funds by source.

FIGURE 1
SOURCES AND USES OF THE DEEPWATER HORIZON OIL SPILL FUNDS FOR TEXAS, 2010 TO 2033

SOURCE	TYPE	AMOUNT TO TEXAS (IN MILLIONS)	ALLOWABLE USES
BP Economic Damages	Settlement	$150.0	• General Revenue
Transocean Economic Damages	Settlement	$2.0	• General Revenue; Texas Parks and Wildlife Department; and attorney fees.
BP Natural Resource Damage Assessment Costs	Settlement	$1.5	• Assessment costs
Natural Resource Damage Assessment	Settlement	$238.2	• Restore and conserve habitat. • Restore water quality. • Replenish and protect living coastal/marine resources. • Provide and enhance recreational opportunities. • Monitoring, adaptive management, and administrative oversight.
National Fish and Wildlife Foundation: Gulf Environmental Benefit Fund	Criminal plea agreements	$203.5	• Remedy harm and eliminate or reduce risk of future harm to natural resources. • Remedy resources that were injured, destroyed, lost, or lost use due to the spill.
Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act)	Federal Funds	$520.7	• Direct Component: Restoring and protecting natural resources; mitigating damage; implementing a marine, coastal, or conservation management plan; workforce development/job creation; state park improvements; infrastructure; flood protection; tourism and seafood promotion; and planning/administration. • Spill Impact Component: Similar to Direct Component. Projects must contribute to Gulf economic and ecological recovery. • Comprehensive Plan Component: Projects must meet Comprehensive Plan objectives. • Centers of Excellence: Science and research related to coastal issues at select institutions.
MOEX Offshore 2007 LLC	Settlement	$6.5	• Supplemental Environmental Projects: Land acquisition and habitat protection. • Civil Penalties Direct Payment: General Revenue Fund; Coastal Protection Fund (General Revenue–Dedicated Fund); and attorney fees.
BP-State of Texas Agreement	Agreement	$5.0	• Costs related to the spill.
	TOTAL	**$1,127.4**	

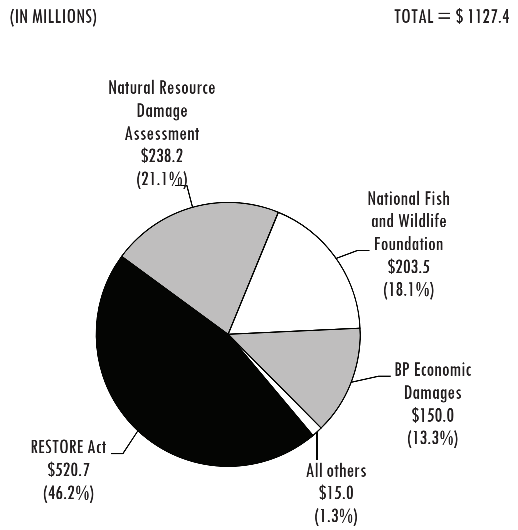
Notes:
(1) The BP Settlement provides funding for economic damages, Natural Resources Damage Assessment, and the RESTORE Act.
(2) Not all funds available to Texas will be deposited to the state Treasury.

Sources: Legislative Budget Board; U.S. Department of Justice; Gulf Coast Ecosystem Restoration Council; National Fish and Wildlife Foundation; Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act; Office of the Attorney General; Office of the Governor.

ECONOMIC DAMAGES

Economic damages claims by states and local governments were resolved in agreements between the five Gulf Coast states and two private companies, BP and Transocean. BP agreed to pay $4.9 billion to the five states and up to $1.0 billion to local governments. Texas will receive $150.0 million from BP and $2.0 million from Transocean in economic damages. Louisiana, Florida, Alabama, and Mississippi each received between $750.0 million and $2.0 billion in economic damages settlements and are considering a wide array of uses for the funds. Florida was determined to have sustained the largest economic damages and will receive $2.0 billion from BP. The separate Transocean economic

FIGURE 2
DEEPWATER HORIZON OIL SPILL FUNDS: TEXAS DISTRIBUTION AMOUNTS, 2010 TO 2033



NOTE: RESTORE Act amounts do not include Comprehensive Plan Component amounts.
SOURCES: Legislative Budget Board; U.S. Department of Justice; U.S. Department of the Treasury; Gulf Coast Ecosystem Restoration Council; National Fish and Wildlife Foundation; Office of the Attorney General; Office of the Governor.

damages settlement paid more than $29.0 million to the five Gulf Coast states in 2015.

In 2011, the Florida Legislature established a trust fund for DWH economic damage payments. The Oil Spill Economic Recovery Act established a Recovery Fund to be disbursed over a 30-year period. It also established a nonprofit entity to administer the fund, invest payments, and pay for projects to benefit impacted counties.

The state of Alabama chose to issue bonds backed by its economic damages settlement, rather than receiving an annuity through 2033. The state passed legislation in 2016 to: create a settlement fund; authorize the incorporation of a settlement authority to handle the debt issue and approve the bond sale; and direct how the proceeds would be spent. Rather than receiving annuity payments totaling $850.0 million, the state will receive a lump sum distribution of $628.7 million.

The first economic damages payment to Texas of $2.0 million from Transocean was deposited into the state Treasury in October 2015. The BP economic damages are scheduled to be deposited from 2016 to 2033. The first payment of $50.0 million will be deposited in July 2016. According to the BP settlement, $6.7 million per year will be deposited from 2019 to 2033.

In total, nearly $1.0 billion in other DWH settlements will be paid to Texas. The settlement agreements direct that those funds be used to benefit environmental and economic projects in Texas. Various state agencies direct how other DWH funds will be used. Currently, economic damages are deposited as General Revenue Funds into the state Treasury. Unlike other DWH funds, these funds are unrestricted and may be expended for any purpose. The Texas Legislature has the authority to decide how to appropriate economic damage payments. The Legislature could direct the $152.0 million in economic damages to be invested for the long-term benefit of the Gulf Coast region.

Option 1 would amend statute to establish the Texas Gulf Recovery Trust Fund as Other Funds in the state Treasury but outside the General Revenue Fund. The new fund would pay for ecological, environmental, or economic projects that benefit the Gulf Coast region using economic damage payments and earned interest. The Legislature would decide which projects to fund. Option 1, Alternative A, would direct funds to be invested with the Texas Treasury Safekeeping Trust Company (TTSTC) with a target average annual return rate of 8.0 percent. This rate is similar to other settlement funds such as the Tobacco Settlement Permanent Trust Account. Depositing these payments as described in Alternative A into a trust fund could generate an estimated $195.3 million in interest if no economic damages funds were expended through 2033. By this date, the majority of the other DWH settlements will have been expended, and the Legislature would have access to the fund balance of $345.3 million.

In 2033, funds could be transferred into the Texas Recovery Trust Fund, to be appropriated by the Legislature. Although other settlement funds remain outside the Treasury and independent of the appropriations process, these options would isolate the funds for the purposes that the Legislature would determine through statute.

Option 1, Alternative B, would direct TTSTC to issue a settlement revenue bond guaranteed by the future payments from the settlement. The state would receive the settlement amount, less some discount rate, available immediately. At an assumed annual interest rate between 3.0 percent to 5.0 percent, the state could expect to receive from $65.9 million to $77.3 million of the $100.0 million in anticipated payments. These funds could be invested through 2033 as in

Alternative A, or they could be invested for a shorter period and made available to the Legislature at an earlier date. Whether selling the bond would yield a higher future value than Alternative A depends on the discount rate for the bond issuance and the annual interest rate assumptions, and investment period.

Option 1 presents a long-range planning and investment plan. If the Legislature determined that an immediate need for the economic damages payments was preferable, the alternative use of bond issuance proceeds as described in Alternative B could be directed by the Legislature. Option 2 would direct TTSTC to issue a settlement revenue bond as described in Alternative B; however, the proceeds would be deposited into a General Revenue–Dedicated Funds account, which would be available for certification purposes. The funds would be available to the Legislature for appropriation.

The Deepwater Horizon funds discussed in the following section are restricted by court settlements, federal law, and other agreements.

BP SETTLEMENT

In October 2015, BP settled various claims related to the DWH with the federal government and five Gulf Coast states, including Texas. BP agreed to pay $20.8 billion, which **Figure 3** shows the national payment summary. Payments to the federal government will be distributed through the RESTORE Act for 15 years. The company will make payments to federal and state governments for natural resource damages for a span of 15 years, while paying economic damages for 18 years.

TRANSOCEAN SETTLEMENT

BP leased the DWH oil rig from Transocean. In January 2013, Transocean Deepwater Inc. agreed to pay $1.4 billion in civil and criminal fines and penalties for its role in the DWH disaster. Transocean Deepwater Inc.'s criminal fines totaled $400.0 million. Of $1.0 billion in civil Clean Water Act penalties, $800.0 million went into the RESTORE Act Trust Fund. Texas will receive $78.1 million. In September 2015, Transocean agreed to pay the state $2.0 million for economic damages. From this amount, $1.8 million was deposited into the state Treasury as General Revenue Funds. The remainder was given to the Texas Parks and Wildlife Department (TPWD) to compensate for lost park revenues and to the Office of Attorney General for attorney's fees.

FIGURE 3
BP SETTLEMENT: NATIONAL PAYMENT SUMMARY OCTOBER 2015

PAYMENT	AMOUNT (IN MILLIONS)
Clean Water Act Penalties (RESTORE Act)	$5,500.0
Natural Resource Damages	$7,100.0
Natural Resource Damages: Early Restoration	$1,000.0
Natural Resource Damages Assessment Costs	$350.0
Unknown Injury and Adaptive Management	Up to $700.0
False Claims Act; Oil Royalties; Response and Other Costs	$250.0
State and Local Economic Claims	Up to $5,900.0
TOTAL	**$20,800.0**

NOTE: BP paid Early Restoration funds prior to the October settlement announcement.
SOURCE: U.S. Department of Justice.

ANADARKO SETTLEMENT

Anadarko Petroleum Corp. was ordered by a federal judge to pay a $159.5 million civil fine in November 2015. Out of those Clean Water Act penalties, $127.6 million was deposited into the RESTORE Act Trust Fund. Texas will receive $12.5 million.

NATURAL RESOURCE DAMAGE ASSESSMENT

In the event of an oil spill, state and federal governments may be compensated by the parties responsible for damaging natural resources. This scientific and legal process is known as the Natural Resource Damage Assessment (NRDA). Government agencies serve as trustees. Trustees assess damage and direct restoration activities. **Figure 4** shows the Texas and federal members of the Deepwater Horizon NRDA Trustee Council. Due to the BP settlement, Texas will receive $238.2 million for various NRDA projects, as shown in

FIGURE 4
DEEPWATER HORIZON NATURAL RESOURCE DAMAGE ASSESSMENT TRUSTEE COUNCIL, OCTOBER 2015

TEXAS TRUSTEES	FEDERAL TRUSTEES
Texas Parks and Wildlife Department	National Oceanic and Atmospheric Administration
Texas Commission on Environmental Quality	U.S. Department of the Interior
Texas General Land Office	U.S. Environmental Protection Agency
	U.S. Department of Agriculture

SOURCE: National Oceanic and Atmospheric Administration.

Figure 5. The trustees agreed to fund projects based on a comprehensive, integrated, ecosystem restoration plan. **Figure 6** shows announced projects as of February 2016.

NATIONAL FISH AND WILDLIFE FOUNDATION

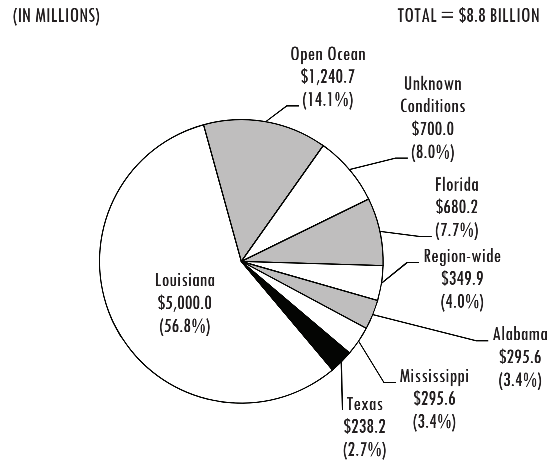
In plea agreements, BP and Transocean agreed to pay $2.5 billion to the National Fish and Wildlife Foundation (NFWF). NFWF is a nonprofit that created the Gulf Environmental Benefit Fund, which will fund projects benefiting the natural resources of the Gulf Coast. The plea agreements identify the amounts each state will receive. **Figure 7** shows the distribution of the Gulf Environmental Benefit Fund among Gulf Coast states. **Figure 8** shows, Texas will receive $203.5 million over several years.

NFWF works with Texas natural resource agencies to select and fund projects. Agencies include TPWD, General Land Office (GLO), and Texas Commission on Environmental Quality (TCEQ). Projects must address where there has been injury, destruction, loss, or loss of use of resources due to the spill. Projects must eliminate or reduce the risk of future harm to Gulf natural resources. **Figure 9** shows a list of projects as of February 2016.

RESTORE ACT

As a result of the 1989 Exxon Valdez oil spill in Alaska, the federal Clean Water Act (CWA) was amended through the

FIGURE 5
NATURAL RESOURCE DAMAGE ASSESSMENT FUNDS: NATIONAL DISTRIBUTION, OCTOBER 2015



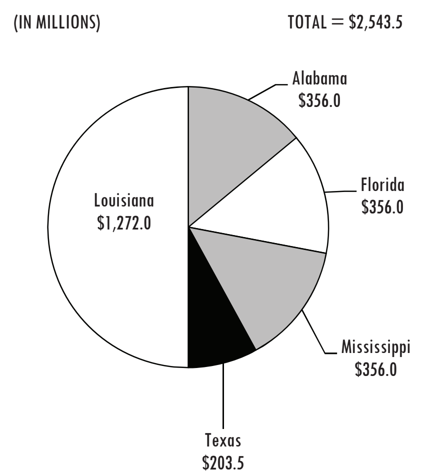
NOTES:
(1) Total includes $1.0 billion in previously announced early restoration funds.
(2) Open Ocean funds are for federal trusteed projects primarily focused on ocean restoration.
(3) Unknown Conditions funds are administered by all trustees for any further natural resource damages that were unknown at the time of the agreement.
SOURCE: U.S. Department of Justice.

FIGURE 6
NATURAL RESOURCE DAMAGE ASSESSMENT PROJECTS IN TEXAS, FEBRUARY 2016

PROJECT	LEAD AGENCY/RECIPIENT	ESTIMATED TOTAL PROJECT COST (IN MILLIONS)	NRDA FUNDS (IN MILLIONS)
Texas Sea Turtle Restoration	Texas Parks and Wildlife Department	$13.3	$13.3
	U.S. Department of the Interior	$4.4	$4.4
Galveston Island State Park Beach Redevelopment	Texas Parks and Wildlife Department	$17.1	$10.7
Texas Rookery Islands Project	Texas Parks and Wildlife Department	$16.7	$16.7
Mid-Upper Texas Coast Artificial Reef	Texas Parks and Wildlife Department	$4.3	$1.9
Texas Rookery Islands Project: Dressing Point Island	U.S. Department of the Interior	$3.9	$3.9
Matagorda Artificial Reef	Texas Parks and Wildlife Department	$3.6	$3.6
Freeport Artificial Reef	Texas Parks and Wildlife Department	$2.2	$2.2
Texas Enhanced Fisheries Bycatch Enforcement	Texas Parks and Wildlife Department	$1.8	$1.8
Sea Rim State Park Improvements	Texas Parks and Wildlife Department	$0.2	$0.2
Sea Turtle Emergency Restoration	Texas Parks and Wildlife Department	$0.1	$0.1
TOTAL		**$67.6**	**$58.7**

NOTES:
(1) NRDA = Natural Resource Damage Assessment.
(2) Amounts listed may differ from actual amounts due to rounding.
SOURCES: Legislative Budget Board; Texas Parks and Wildlife Department.

FIGURE 7
NATIONAL FISH AND WILDLIFE FOUNDATION GULF ENVIRONMENTAL BENEFIT FUND DISTRIBUTION APRIL 2013 TO FEBRUARY 2018



SOURCE: National Fish and Wildlife Foundation.

FIGURE 8
NATIONAL FISH AND WILDLIFE FOUNDATION GULF ENVIRONMENTAL BENEFIT FUNDS AVAILABLE TO TEXAS APRIL 2013 TO FEBRUARY 2018

DATE	AMOUNT AVAILABLE (IN MILLIONS)
April 2013	$12.6
February 2014	$28.2
February 2015	$27.1
February 2016	$24.0
February 2017	$40.0
February 2018	$71.5
TOTAL	**$203.5**

NOTE: Amounts sum less than actual total due to rounding.
SOURCE: National Fish and Wildlife Foundation.

Oil Pollution Act of 1990 to include civil penalties to pay for oil spill cleanup costs. The amendment also authorized the Environmental Protection Agency to deposit the penalties in the federal Oil Spill Liability Trust Fund, administered by the U.S. Coast Guard. The Deepwater Horizon spill led Congress to pass the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE) in 2012. It directs 80 percent of civil and administrative CWA penalties from the DWH oil spill to a newly created Gulf Coast Ecosystem Restoration Trust Fund. The fund has different components. **Figure 10** shows the national distribution of RESTORE Act funds.

RESTORE ACT PROJECTS AND SELECTION

Federal law and rules define who has authority to select projects for each component. The RESTORE Act gives the Governor of Texas or his appointee certain powers.

The Governor or his appointee may administer the Direct Component and serve on the Gulf Coast Ecosystem Restoration Council (RESTORE Council). The RESTORE Council administers the Comprehensive Plan Component. The Governor or his appointee also submits a State Expenditure Plan for the Spill Impact Component, which the council must approve. The Governor appointed a TCEQ commissioner to the RESTORE Council. At the state level, TCEQ administers RESTORE Act funds. **Figure 11** shows allowable uses and estimated Texas amounts for the different components.

Applications for Direct Component projects were accepted from January to April 2016. **Figure 12** shows the project selection criteria. According to the Priorities Document, projects were ranked and submitted to the Governor or his designee. The Governor or his designee could "make changes to the project rankings upon consideration of other discretionary factors related to protecting, preserving, restoring, or enhancing the natural and economic resources of the Texas coast."

The RESTORE Council selects projects for the Comprehensive Plan Component. Projects must meet certain environmental or economic goals. In December 2015, the council approved an Initial Funded Priorities List. **Figure 13** shows Comprehensive Plan Component projects in Texas. The council also administers the Spill Impact Component. These projects must contribute to the Gulf's economic and ecological recovery and be consistent with Comprehensive Plan goals. The Subsea Systems Institute at the University of Houston and Texas OneGulf at Texas A&M University – Corpus Christi are the state's Centers of Excellence. The two centers will each lead a research consortium with RESTORE funds.

MOEX OFFSHORE 2007 SETTLEMENT

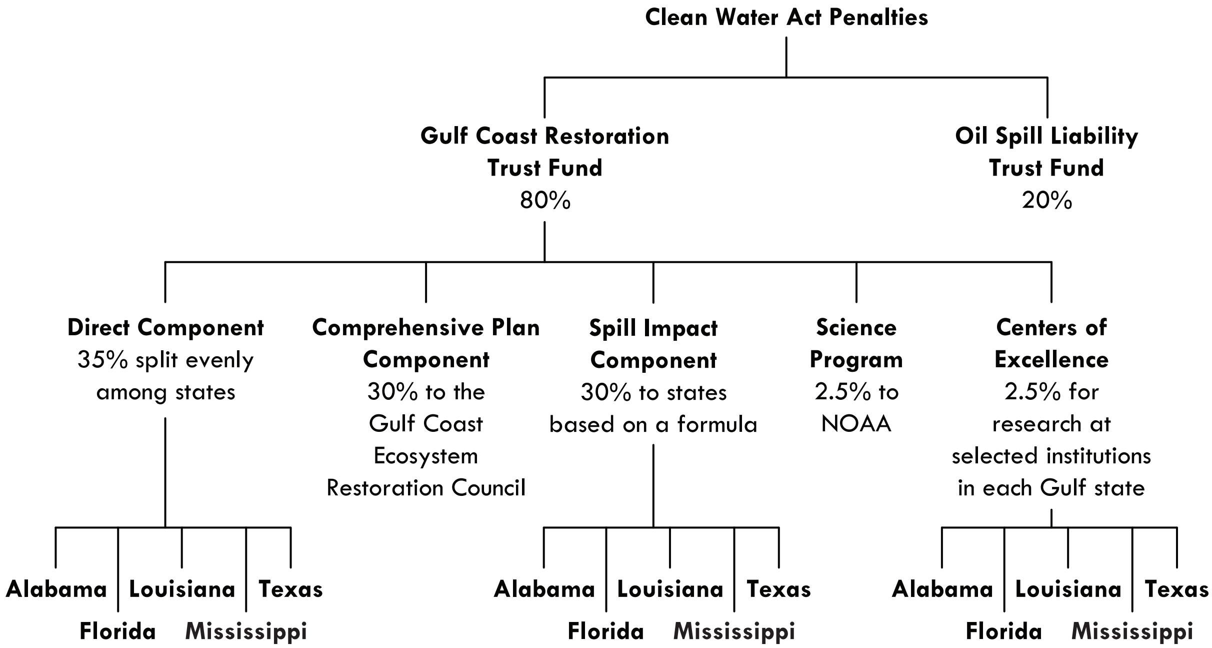
In February 2012, MOEX Offshore 2007 LLC, a well investor, agreed to a $90.0 million settlement with Gulf Coast states. Texas was awarded $3.25 million for civil penalties and $3.25 million for Supplemental Environmental Projects (SEP). From the civil penalties, $1.0 million went to GLO's Coastal Protection Fund, and $2.15 million was deposited into the General Revenue Fund in the state Treasury. The remaining funds went to the Office of the Attorney General for legal fees. Two SEPs were purchased.

FIGURE 9
NATIONAL FISH AND WILDLIFE FOUNDATION PROJECTS IN TEXAS, FEBRUARY 2016

PROJECT	LEAD AGENCY/RECIPIENT	ESTIMATED TOTAL PROJECT COST (IN MILLIONS)	NFWF FUNDS (IN MILLIONS)
Powderhorn Ranch Land Acquisition	Texas Parks and Wildlife Foundation	$34.5	$34.5
Anahuac National Wildlife Refuge Marsh Acquisition	The Conservation Fund	$4.4	$4.4
West Galveston Bay Conservation Corridor Habitat Preservation	SCENIC GALVESTON, Inc.	$5.1	$4.1
Bahia Grande Coastal Corridor-Boswell-Jenkins Track Acquisition	The Conservation Fund	$5.5	$4.0
Galveston Island State Park Marsh Restoration and Protection in Carancahua Cove – Phase II	General Land Office	$3.2	$3.2
Falcon Point Ranch Conservation and Wetland Restoration	The Nature Conservancy	$3.0	$2.0
Coastal Heritage Preserve Initiative: Bayside Acquisition and Easement	Artist Boat, Inc.	$2.6	$2.6
Galveston Bay Sustainable Oyster Reef Restoration	The Nature Conservancy, Texas	$2.5	$2.5
Galveston Island State Park Marsh Restoration and Protection	General Land Office	$4.9	$2.2
Virginia Point Shoreline Protection And Estuarine Restoration	General Land Office	$4.7	$2.0
Egery Flats Marsh Restoration	Coastal Bend and Bays and Estuaries Program	$1.6	$1.6
Gulf Coast Migratory Waterfowl Habitat Enhancement	Ducks Unlimited	$1.3	$1.3
Oyster Lake Shoreline Protection and Restoration	Galveston Bay Foundation	$1.8	$1.2
Nueces Bay Rookery Islands Restoration	Coastal Bend Bays and Estuaries Program	$1.1	$1.1
Oyster Reef Restoration in East Bay	Texas Parks and Wildlife Department	$4.5	$0.8
Candy Abshier Wildlife Management Area Shoreline Protection and Marsh Restoration	Texas Parks and Wildlife Department	$0.5	$0.2
Cow Trap Lake Bird Nesting Island Improvements	Ducks Unlimited	$0.4	$0.4
Matagorda Bay Rookery Island Feasibility Study and Alternatives Analysis	Audubon Texas	$0.3	$0.3
Bahia Grande Colonial Bird Nesting Islands Protection, Feasibility, Engineering and Design	U.S. Fish and Wildlife Service	$0.2	$0.2
Paso Corvinas Wetlands Restoration Engineering and Development	U.S. Fish and Wildlife Service	$0.2	$0.2
Sea Rim State Park Coastal Dune Restoration	Texas Parks and Wildlife Department	$0.2	$0.2
Dollar Bay-Moses Lake Shoreline Enhancement and Restoration	Galveston Bay Foundation	$0.4	0.1
Greens Lake Protection and Marsh Restoration: Engineering and Design	Ducks Unlimited	$0.0	$0.1
	TOTAL	**$83.1**	**$60.9**

NOTES:
(1) NFWF = National Fish and Wildlife Foundation.
(2) Amounts shown may be greater/less than actual amounts due to rounding.
SOURCES: National Fish and Wildlife Foundation; Texas Parks and Wildlife Department; General Land Office.

FIGURE 10
RESTORE ACT DISTRIBUTION FORMULA, 2016



NOTE: NOAA = National Oceanic and Atmospheric Administration.
SOURCES: Ocean Conservancy; Gulf Coast Ecosystem Restoration Council; U.S. Department of the Treasury.

FIGURE 11
RESTORE ACT COMPONENTS AND ESTIMATED TEXAS AMOUNTS, 2016

COMPONENT	USES	ESTIMATED TEXAS AMOUNTS (IN MILLIONS)
Direct	Projects to restore and protect natural resources; mitigate damage; implement a federally approved marine, coastal, or conservation management plan; create workforce development and jobs; improving state parks in coastal areas; build infrastructure that benefits the economy or ecological resources; implement coastal flood protection; promote the tourism and seafood industry; and planning assistance and administration.	$372.9
Comprehensive Plan	Projects that restore, enhance, and protect habitats; restore, improve, and protect coastal and marine resources; restore and enhance natural processes and shorelines; promote long-term resilience.	Cannot be estimated at this time
Spill Impact	Projects must contribute to the Gulf's economic and ecological recovery and complement the comprehensive plan.	$121.1
Science Program	Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program.	N/A
Centers of Excellence	Projects related to science, technology, and monitoring of coastal sustainability, restoration, and protection; coastal fisheries and wildlife ecosystems; offshore energy; economic development; and observing, mapping, or monitoring the Gulf.	$26.6
	TOTAL	**$520.7**

NOTES:
(1) The Gulf Coast Ecosystem Restoration Council selects Comprehensive Plan projects. Amounts cannot be estimated.
(2) Science funds are for national projects and are not Texas specific.
SOURCES: Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act; U.S. Department of the Treasury.

FIGURE 12
DIRECT COMPONENT SELECTION CRITERIA
JANUARY 2016

PRIORITY	POINTS
Economic Benefits	25
Environmental Benefits	25
Comprehensive Factors	20
Project Logistics	20
Community Engagement	20

SOURCE: Texas Commission on Environmental Commission.

FIGURE 13
RESTORE ACT COMPREHENSIVE PLAN PROJECTS IN TEXAS
APRIL 2016

PROJECT	TOTAL COST (IN MILLIONS)
Bayou Greenways: Planning and Implementation	$7.1
Matagorda Bay System Priority Landscape Conservation	$6.0
Bahia Grande Costal Corridor	$4.4
Bahia Grande Wetland System Restoration: Planning and Implementation	$1.4
Plug Abandoned Oil and Gas Wells	$1.3
Texas Beneficial Use/Marsh Restoration	$1.0
TOTAL	**$21.1**

NOTES:
(1) Not all projects are awarded to or implemented by state agencies. Projects may involve federal and non-profit partners.
(2) Amount shown may be greater/less than actual due to rounding.
SOURCE: Gulf Coast Ecosystem Restoration Council.

The Nature Conservancy, a nonprofit, acquired Big Tree Ranch near Goose Island State Park for $2.0 million. It donated the land to TPWD. The U.S. Fish and Wildlife Service added 186 acres to the Laguna Atascosa National Wildlife Refuge on South Padre Island for $1.2 million.

BP-STATE OF TEXAS AGREEMENT

In September 2010, BP agreed to pay the state of Texas $5.0 million for costs related to the spill. This agreement was not tied to the other oil spill sources or any law. The agreement gave the Office of the Governor discretion how to expend funds. TCEQ was granted $1.0 million for website development, travel expenses, a grant coordinator, and other RESTORE-related expenses. As of February 2016, the agency had expended $0.5 million. In January 2015, the Governor announced the remaining $4.0 million would be granted to the RESTORE Act's Centers of Excellence.

GULF OF MEXICO RESEARCH INITIATIVE

BP entered into a voluntary agreement with the Gulf of Mexico Alliance, a nonprofit, to fund research related to petroleum; environmental impacts; oil spill response, mitigation, and detection; and public health. The agreement will provide $500.0 million over 10 years for the Gulf of Mexico Research Initiative. Several Texas institutions of higher education participate in projects funded by the initiative, including Texas A&M University, the University of Houston, Texas A&M University at Galveston, The University of Texas at Austin, Texas Tech University, and Texas A&M University – Corpus Christi.

FISCAL IMPACT OF OPTIONS

If Option 1, Alternative A, were implemented, it is estimated that the trust fund would have a balance of $345.3 million by 2033. **Figure 14** shows a five-year gain to the trust fund if the initial $51.8 million were deposited in fiscal year 2018, and the $6.7 million payments were deposited fiscal years 2019 to 2022 at an annual return rate of 8.0 percent. This estimate assumes there are no distributions before the final economic damages payment is received. By investing the funds, as opposed to spending them, an estimated $195.3 million in additional funds would be available for appropriation by 2033.

FIGURE 14
FIVE-YEAR FISCAL IMPACT OF OPTION 1, ALTERNATIVE A, FISCAL YEARS 2018 TO 2022

YEAR	PROBABLE GAIN TO TRUST FUND	PROBABLE REVENUE LOSS IN GENERAL REVENUE FUNDS
2018	$51,801,765	($51,801,765)
2019	$10,810,807	($6,666,666)
2020	$22,486,479	($6,666,666)
2021	$35,096,204	($6,666,666)
2022	$48,714,708	($6,666,666)

NOTE: Gain to trust fund assumes an annual rate of return of 8.0 percent.
SOURCE: Legislative Budget Board.

If Option 1, Alternative B, were implemented, with an assumed bond payout of $74.0 million for fiscal year 2018 and deposited into the trust fund by fiscal year 2019, it is estimated that the trust fund could have a starting balance of $125.8 million.

If Option 2 were implemented, it is estimated that an additional $67.3 million would be available for appropriation in addition to the $6.7 million of currently expected settlement payments for fiscal year 2019, for an estimated total of $74.0 million of these funds that would be available for certification.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

IMPROVE CARE COORDINATION IN MEDICAID

During the last decade, Texas has moved most Medicaid clients into a capitated managed care system. Under capitation, the state contracts with managed care organizations that receive a premium payment for each member they manage in exchange for providing all covered services. The goal of this has been to support the development of a more coordinated healthcare delivery system and decrease costs. According to the U.S. Agency for Healthcare Research and Quality, care coordination includes a deliberate organization of patient care activities and an improved exchange of information among participants concerned with a patient's care.

As Texas Medicaid has transitioned to a capitated managed care system, however, efforts to coordinate care have remained fragmented. Many of the Medicaid participants who meet eligibility requirements for care coordination services do not receive a service plan or named coordinator. Those who do sometimes encounter problems receiving timely help. In addition to care coordination delivered by managed care organizations, there are several other initiatives that have similar or identical statutory and contractual definitions. To coordinate care more effectively, the Texas Health and Human Services Commission should clarify roles, establish caseload requirements for certain populations receiving care coordination, and ensure more consistent collaboration across entities. Additionally, the agency should implement strategies to increase utilization of care coordination benefits for populations shown in research to consistently benefit from coordination interventions. These changes would help Texas Medicaid improve care coordination and achieve the goals established for capitated managed care.

CONCERNS

- ♦ There is a large gap between eligibility and utilization of care coordination benefits. Most members in managed care programs receive minimal or no coordination services from their managed care organization. The low utilization of care coordination services delivered by managed care organizations may limit access to and coordination of key health services.
- ♦ Surveys of members in the Medicaid STAR+PLUS managed care program show that the percentage of members who are dissatisfied with service coordination has increased from 8 percent in 2008 to 26 percent in 2014. Additionally, members with the highest needs often experience the largest gaps in access to services that should be coordinated by their managed care organization.
- ♦ The extent of coordination between managed care organizations and health providers is mixed and may often be limited. Plans to coordinate care developed by managed care staff may not be shared with treating providers and contact between managed care organization staff and health providers is often limited or does not occur.
- ♦ In addition to care coordination delivered by managed care organizations, Medicaid clients may be eligible for a variety of other, similar benefits. These benefits include health homes, targeted case management, and disease management programs provided by a variety of entities. The way in which the entities responsible for these benefits should work in conjunction with managed care organizations is not clearly articulated in contracts or through other guidance.

OPTIONS

- ♦ **Option 1:** Include a rider in the 2018–19 General Appropriations Bill to require the Texas Health and Human Services Commission to implement strategies to increase utilization of care coordination benefits among Medicaid clients with severe and persistent mental illness, depression, heart failure, or coronary heart disease. The agency would be required to report on the impact on utilization, health outcomes and the need for any rate increase.
- ♦ **Option 2:** Amend statute to require the Texas Health and Human Services Commission to set caseload requirements in rule for care coordination delivered by managed care organizations to STAR+PLUS members receiving Home and Community Based Services to improve the quality of these services. The agency would be authorized to apply caseload requirements to other Medicaid programs. A contingency rider would be included in the 2018–19 General Appropriations Bill to require the agency

to seek approval before reimbursing health plans for caseload requirements if additional appropriations are necessary for caseload requirements established for other programs.

♦ **Option 3:** Amend statute to require managed care organizations to increase the availability of medical records and service plans created by managed care organizations to other health providers.

♦ **Option 4:** Amend statute to require the Texas Health and Human Services Commission to simplify and clarify requirements for benefits related to care coordination across Medicaid programs. This should include a requirement to designate a single, primary entity for each client that would be responsible for coordinating care.

DISCUSSION

According to the 2011 National Healthcare Quality Report, healthcare in the U.S. is often fragmented. Some of this fragmentation can be explained by the high percentage of doctors in the U.S. that practice independently as specialists. People with multiple health conditions commonly need to see multiple physicians who focus on discrete problems in isolation from the person's other conditions and treating physicians. The failure to integrate and coordinate care can result in medical errors, delays of services, duplication of services, and negative health outcomes.

According to research sponsored by the Agency for Healthcare Research and Quality and published in June of 2007, one commonly held belief is that interventions to improve care coordination, such as case management, can help reduce fragmentation of care, improve quality, and lower costs. According to this research, there is anecdotal evidence that improved care coordination can meet these goals. However, systematic evidence from high quality studies to determine the impact of improved care coordination on meeting these goals is limited.

A variety of strategies may be used to improve coordination, including initiatives designed to:

- improve clinical information systems;
- promote self-management;
- provide case management;
- establish financial incentives and integration (such as capitation);
- provide team-based treatment; and
- redesign referral systems.

In Texas, two types of initiatives have been a focus in Medicaid: capitation and case management services. In Texas Medicaid, the Texas Health and Human Services Commission (HHSC) pays managed care organizations (MCOs) a per person per month rate to deliver healthcare to its members. This is known as capitation, since the reimbursement is based on a per person rate. According to HHSC, the primary goal of moving populations into a capitated managed system is to improve health outcomes while containing cost growth. Under prior systems of care, such as fee-for-service, HHSC was the only entity responsible for the broad health outcomes of clients and the financial impact of service utilization. Under capitation, MCOs are financially responsible for most of their member's health expenses and outcomes. If improving care coordination reduces costs, then the growing scope of capitated managed care should incentivize MCOs to coordinate care.

In addition to this incentive, HHSC has established a number of requirements for MCO staff to directly provide care coordination services. According to HHSC, MCO provided care coordination is one of the primary distinguishing features of the managed care system. MCOs are required to screen members to identify members with special healthcare needs (MSHCN) who would benefit from care coordination. This should include members with chronic health conditions, high risk pregnant women, and certain other high-risk Medicaid members. Members in some managed care programs may also request care coordination from their MCO.

Care coordination is a service available to recipients of Medicaid managed care, including STAR, STAR+PLUS, STAR Health, and the Children's Health Insurance Program (CHIP). Care coordinators work with individuals and families to develop a plan of care to meet their needs and coordinate services.

The goal of care coordination is to ensure an accessible, responsive, and flexible health system. This coordination is accomplished by providing a familiar source of contact for each individual and developing a plan of care. To develop a plan of care, MCOs should assess members' needs for a variety of medical and social needs as appropriate. MCOs are then expected to make referrals beyond the core medical benefits, including referrals to community providers for services not directly paid for by MCOs. HHSC also expects MCO care coordination staff to advocate for the individual's needs and preferences.

Care coordination services are delivered by MCOs across a variety of programs. Each program serves different types of members and uses different terminology for care coordination. The programs included in this review are shown in **Figure 1** along with the terms for basic care coordination and higher intensity care coordination.

FIGURE 1
MANAGED CARE ORGANIZATION DELIVERED CARE COORDINATION BENEFITS, FISCAL YEAR 2016

PROGRAM	BASIC	HIGHER INTENSITY
STAR	Service Management	N/A
STAR Health	Service Coordination	Service Management
STAR+PLUS	Service Coordination Level 3	Service Coordination Levels 2 and 1

SOURCE: Health and Human Services Commission.

In addition to care coordination services provided by MCOs, each program also offers other benefits that are similar to care coordination. These benefits include health homes and case management benefits. Access to and the quality of these benefits varies, resulting in both potential duplication and gaps in access to services.

ACCESS TO MCO DELIVERED CARE COORDINATION

Based on the results of screening and assessments, MCOs assign their members to different tiers of care coordination. These tiers range in the intensity of resources dedicated to members. The lowest intensity tier of care coordination is where most individuals are assigned, including members with special healthcare needs. Current screening and assignment practices have resulted in a gap between eligibility for and utilization of MCO delivered care coordination. This low utilization is an indicator of missed opportunities to improve access to and coordination of key health services.

ACCESS IN STAR

Most Medicaid clients are enrolled in the Medicaid State of Texas Access Reform (STAR) program that provides services to pregnant women, newborns, and children with limited income. MCOs participating in the STAR program will receive an estimated average capitation rate of approximately $234.77 per member per month in fiscal year 2017. This rate is intended to cover all medically necessary services covered by contract as well as the administrative expenses of the MCO.

Care coordination provided by MCOs in STAR is defined by HHSC as service management. The MCOs are responsible for identifying members with special healthcare needs (MSHCN) to determine their eligibility for service management. According to the managed care contract, "the MCO must provide Service Management to MSHCN, including the development of a Service Plan and ensuring access to treatment by a multidisciplinary team when necessary."

HHSC defines MSHCN to include members with a "serious ongoing illness or a chronic complex condition that is anticipated to last for a significant period and requires ongoing therapeutic intervention and evaluation." As **Figure 2** shows, based on the number of children enrolled in STAR in fiscal year 2015, this would equate to 373,392 children with moderate or major special healthcare needs.

FIGURE 2
ESTIMATED NUMBER OF CHILDREN WITH SPECIAL HEALTH CARE NEEDS IN STAR, FISCAL YEAR 2015

CATEGORY OF SPECIAL HEALTHCARE NEED	DEFINITION	EXAMPLES	PERCENTAGE OF CHILDREN	NUMBER OF CHILDREN
Minor	Illnesses that can typically be managed with few complications	Hearing loss and attention deficit hyperactivity disorder	5.9	159,639
Moderate	Extensive care and sometimes complex conditions	Asthma, epilepsy, major depression	10.2	275,985
Major	Serious illnesses that often result in progressive deterioration, debilitation, and/or death	Active malignancies, cystic fibrosis	3.6	97,407

NOTE: This estimate is based on historical estimates from the Texas Medicaid External Quality Review Organization (EQRO). In 2009, EQRO contracted by HHSC used physician diagnosis information from claims and encounter data to categorize children in STAR and the Primary Care Case Management (PCCM) programs with special healthcare needs. PCCM was a form of Medicaid managed care that used a network of primary care and other healthcare providers to provide a medical home and healthcare services to individuals in Medicaid. Members were transitioned in most regions into the STAR program in fiscal year 2012. The percentage estimates from 2009 were applied to enrollment data for fiscal year 2015 to estimate the number of children falling into each category in fiscal year 2015.
SOURCES: Legislative Budget Board; Health and Human Services Commission; Texas Medicaid External Quality Review Organization.

This is based on estimates using physician diagnosis indicators included in claims data.

In contrast, MCOs had identified 35,915 members in STAR with special healthcare needs as of August 2015. This represents at most 10 percent of the population of children with moderate or major special healthcare needs estimated in **Figure 2** who would be eligible for service management.

Additionally, not all MSHCN identified by MCOs receive a service plan. In August 2015, 9,463 of the 35,915 MSHCN identified by MCOs, or 26.3 percent, had a service plan. The contract defines service management as the development of a service plan to coordinate care. In practice, however, HHSC does not require MCOs to develop service plans for all MSHCN. Instead, HHSC intends the service plan requirements to apply to the MSHCN who require a greater extent of care coordination.

HHSC considers care coordination in STAR to be an administrative cost, not a medical cost. The capitation rate HHSC pays MCOs for STAR clients includes $20 per member per month, on average, for administrative costs. MCOs have reported to HHSC that including care coordination in the calculation of the administrative portion of the capitation rate is a barrier to providing service management to a greater number of STAR members. MCOs could choose to spend more for care coordination than is provided through the administrative portion of the capitation rate. This decision would be based, in part, on whether they determined there were opportunities to realize potential medical cost savings from service management.

ACCESS IN STAR HEALTH

STAR Health is a statewide program designed to provide services to children and youth in conservatorship of the Department of Family and Protective Services (DFPS). In STAR Health, the lowest intensity tier of care coordination is known as service coordination. Service coordination is for members who require minor assistance with a health need. The next tier of care coordination is called service management. The STAR Health contract defines this tier to include all MSHCN and requires MCOs to develop service plans and coordinate clinical services for these members.

In 2014 the EQRO surveyed caregivers about the status of children that were enrolled in STAR Health. Surveys indicate that 51.0 percent of children in STAR Health had a special healthcare need as a result of a condition that has or is expected to last at least 12 months. To account for this higher level of healthcare needs, the capitation rates paid by HHSC for STAR Health are higher than the rates in STAR. In fiscal year 2016, the average capitation rate was $761.42 per member per month.

The STAR Health MCO is contractually required to notify caregivers of children and youth in the state's conservatorship of the availability of care coordination benefits. The STAR Health MCO is also required to complete telephone screenings for all new members to determine whether they qualify for service coordination or service management. Based on this screening, the MCO assigns qualifying members either a service manager or service coordinator, depending on their needs. The STAR Health MCO reports enrolling 16.0 percent to 18.0 percent of STAR Health members as active participants in service management. This is less than the 2014 EQRO caregiver survey estimate of 51.0 percent of STAR Health members with special healthcare needs.

Despite screening and outreach requirements, a 2014 EQRO caregiver survey found that 35.0 percent of caregivers said they received a call to assess their care coordination needs. Of the children and youth whose caregivers received a phone call, 55.0 percent were identified as needing more intense support and planning via service management. Approximately half (56.0 percent) of caregivers that agreed to participate in service management actually received service management for their child in the previous six months. The 2014 EQRO caregiver survey also suggests an unmet need for care coordination among STAR Health members and limitations in access to care. These findings were the basis for EQRO-recommended improvements to service coordination in STAR Health. The EQRO also found that increasing care coordination may be an opportunity to improve access to specialist care in the foster care population.

Analysis conducted by another vendor contracted by DFPS reached similar conclusions. According to the Stephen Group's November 2015 report, "foster children have low utilization of Targeted Case Management (TCM) and other essential behavioral health rehabilitative services. Low utilization may suggest that high needs children have difficulty getting connected to services they need." Their analysis found that increased coordination could improve utilization of behavioral health services and help avoid hospitalizations and institutional placements.

ACCESS IN STAR+PLUS

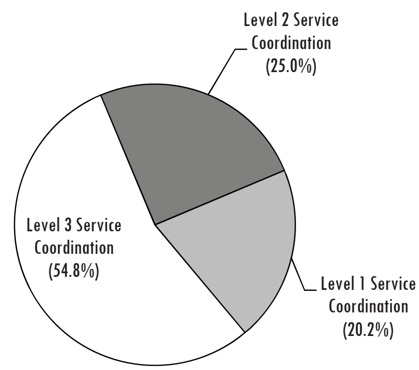
The STAR+PLUS program provides acute care services and long-term services and supports (LTSS). Most STAR+PLUS members qualify as individuals who are age 65 or older or have a disability. Ninety-seven percent of members are over the age of 21. Approximately half (53.1 percent) of members receive LTSS through STAR+PLUS and most of their acute care services through Medicare (these are known as dual eligible members). The other half (46.9 percent) receive both acute care and LTSS from Medicaid. In 2014, most members reported that they had a condition that interferes with their independence and needed help with routine activities of daily living.

Due to the high health needs of this population, HHSC contractually defines all members in STAR+PLUS as MSHCN. MCOs receive a higher capitation rate for these members compared to the STAR program. In fiscal year 2017, the capitation rate ranged from $162.79 to $ 1,809.80 per member per month, depending on whether the members were also enrolled in Medicare and in which region they lived. MCOs receive higher rates for members in the Home and Community Based Waiver or in a waiver for intellectual and developmental disabilities.

MCO provided care coordination is known as service coordination in STAR+PLUS. In STAR+PLUS, contract requirements and rates establish a greater expectation from HHSC about the scope and intensity of care coordination services compared to the STAR program. Service coordination is considered a medical expense in STAR+PLUS (although if it is subcontracted, then it is considered an administrative expense). As a result, the MCOs are not subject to the administrative cap for expenses directly related to service coordination.

The STAR+PLUS managed care contract defines three tiers of service coordination. The lowest intensity tier, Level 3, involves two required telephone contacts between a service coordinator and a member per year. As shown in **Figure 3**, 54.8 percent of STAR+PLUS members are assigned to this tier. In the next tier, Level 2, MCO staff are required to make at least one face-to-face and one telephone contact per year. The MCOs are also required to assign a named service coordinator for each member. According to self-reported MCO data, 25.0 percent of STAR+PLUS members are in Level 2. In Level 1, the highest intensity tier, members are required to receive at least two face-to-face visits per year. Approximately 20.2 percent of STAR+PLUS members are in Level 1, approximately 83.7 percent of which participate in Home and Community Based Services (HCBS).

FIGURE 3
STAR+PLUS MEMBERS WITHIN EACH SERVICE COORDINATION TIER AS REPORTED BY MANAGED CARE ORGANIZATIONS, FISCAL YEAR 2015



NOTE: These figures are self-reported by Medicaid managed care organizations. Level 3 represents the lowest intensity of service coordination.
SOURCE: Health and Human Services Commission.

Compliance with requirements for the frequency of annual contacts varied across these tiers, as shown in **Figure 4**. In the STAR+PLUS Program, five MCOs contract with HHSC to provide services. In Level 1, three of the five MCOs did not meet the minimum two in-person contact requirements; these MCOs served 50 percent of STAR+PLUS members in Level 1. These MCOs made an average number of in-person contacts which ranged from 1.4 to 1.7 contacts per year. In Level 3, where most STAR+PLUS members are assigned, four of five MCOs did not meet the contact requirements. Within Level 3, these four MCOs serve 41.0 percent of all STAR+PLUS members.

The limited contact provided to Level 3 members at most MCOs is not consistent with the general principals of care coordination or case management. HHSC expects service coordinators to provide a familiar source of contact to members to coordinate LTSS and acute care services. The volume of contacts provided to Level 3 members largely reflects activities primarily designed to screen members for the possibility of upgrade into Level 1 or 2 to receive active coordination of services from the MCO. At three MCOs, for example, the MCO contacts members less than one time per year on average. Given that all members eligible for STAR+PLUS are considered to have special healthcare needs yet approximately half (54.8 percent) are in Level 3, there is a risk that many STAR+PLUS members may not receive adequate care coordination.

FIGURE 4
STAR+PLUS MCO SERVICE COORDINATION TIER ASSIGNMENTS AND CONTACTS, FISCAL YEAR 2015

SERVICE COORDINATION TYPE	DESCRIPTION	MEMBERS	AVERAGE IN PERSON CONTACTS MINIMUM	AVERAGE IN PERSON CONTACTS ACTUAL	AVERAGE PHONE CONTACTS MINIMUM	AVERAGE PHONE CONTACTS ACTUAL	MCOS MEETING CONTRACT MINIMUMS
Level 1	Highest level of utilization, including HCBS members	60,207	2.0	4.0	N/A	4.1	2 of 5
Level 2	Lower risk/utilization	133,366	1.0	1.5	1.0	3.4	4 of 5
Level 3	Other members who do not qualify as Level 1 or Level 2	296,520	N/A	0.1	2.0	1.4	1 of 5

NOTE: These numbers are self-reported by Managed Care Organizations and have not been verified by HHSC. Nursing facility residents have been excluded here due to limited data based on the timing of the nursing facility carve-in. One MCO reported making in-person contacts for Level 3 members.
SOURCE: Health and Human Services Commission.

Historically, EQRO survey data indicates fewer members report having an assigned service coordinator than is indicated in MCO self-reported data; 27.0 percent of adult STAR+PLUS members surveyed reported having a service coordinator as compared to the 45.0 percent reported by MCOs as being assigned to either Level 1 or 2 service coordination. This may be due in part to the limited level of contact for some members.

MCOs are contractually required to notify all members that service coordination is available upon request. However, only 57.0 percent of adult STAR+PLUS Medicaid-only members were aware of service coordination when surveyed by the EQRO in 2014. When members were made aware of the benefit during the survey, 55.0 percent indicated an interest in receiving service coordination. In total, 53.0 percent of STAR+PLUS members not currently receiving service coordination would like to receive service coordination.

Based on similar results in a 2011 survey, the EQRO identified this low member awareness and utilization of service coordination as an area for improvement. HHSC agreed with the EQRO findings and recommendation to improve awareness of the benefit. Based on these findings, HHSC set a goal to improve STAR+PLUS members' understanding and utilization of service coordination in 2012 and established a multi-stakeholder workgroup to improve service coordination. Based on this workgroup's recommendations, HHSC amended its contracts with the MCOs to increase the specificity and rigor of requirements surrounding service coordination. This included establishing a minimum number of annual contacts and requirements that members in the moderate and high intensity service coordination tiers (i.e., Levels 1 and 2) be assigned a single person as their service coordinator. The agency also established new requirements relating to the minimum qualifications of service coordinators.

Since these requirements were put in place in 2013, awareness of service coordination among STAR+PLUS adult members has improved, rising by 12.2 percent from calendar years 2012 to 2014. Yet the number of individuals reporting having a service coordinator increased by 2.7 percent.

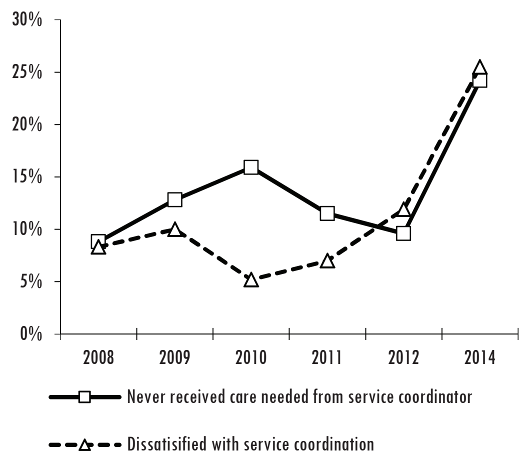
QUALITY OF MCO DELIVERED CARE COORDINATION

Information about the quality of care coordination is more limited in the STAR and STAR Health programs compared to STAR+PLUS. In the STAR program, for example, the EQRO does not ask any questions on its survey of consumers about the quality of care coordination provided by the MCO. In STAR Health, the EQRO asks about service management, but not service coordination. Questions about the quality of service management are limited to a question about understanding the benefit and caregiver satisfaction with service management received. Among those who received service management in the six months prior to the survey, 86.0 percent reported being satisfied with the service. Given the limited surveying of STAR and STAR Health members about care coordination quality, information about the quality of service coordination is limited primarily to the STAR+PLUS program. Information from interviews and consumer surveys show that members with the highest needs often experience gaps in access to services that should be coordinated by their MCO.

QUALITY IN STAR+PLUS

Despite increased contact and service coordinator qualification requirements established in calendar year 2013, the percentage of STAR+PLUS adult members who reported dissatisfaction with MCO delivered service coordination in the 2014 EQRO survey more than doubled from 11.9 percent to 25.5 percent. Simultaneously, as shown in **Figure 5**, the percentage of members who reported that they did not receive timely care from their service coordinator rose from 9.6 percent to 24.2 percent. Additionally, 37.8 percent of STAR+PLUS adult members who attempted to receive treatment through their MCO reported they usually or always had problems with delays with their healthcare.

FIGURE 5
STAR+PLUS MEMBER DISSATISFACTION WITH SERVICE COORDINATION, FISCAL YEARS 2008 TO 2014



NOTE: Percentages are of members who attempted to or received service coordination services.
SOURCE: Texas External Quality Review Organization.

Testimony from consumer and provider groups during legislative hearings conducted between April and May 2016 also indicated ongoing quality problems in STAR+PLUS service coordination. Long term care providers and consumer advocacy groups noted general concerns about access to high quality service coordination. Stakeholders raised concerns about duplication of effort between MCOs and providers, confusion among MCO service coordinators about basic benefit questions, and difficulties reaching service coordinators. These concerns were also identified in audits and in-person interviews focused on Medicaid Home and Community Based Services (HCBS) STAR+PLUS waiver services conducted by the EQRO and HHSC.

The HCBS program provides long-term services and supports to STAR+PLUS members as a cost-effective alternative to living in a nursing facility. In August 2015, there were 50,379 people enrolled in HCBS. A 2012 survey found 91 percent of HCBS members reported having a caregiver that assists with daily activities. The most common needs for assistance included help looking after oneself, accessing food, and moving throughout and outside of members' homes. Services in HCBS to address these needs include nursing care, personal assistance services, adaptive aids, medical supplies, and minor home modifications.

Given the healthcare needs of this population and to promote high quality service coordination, HHSC has established the most detailed set of expectations for the HCBS program and the highest managed care rates for these members. In fiscal year 2017, the capitation rates ranged from $1,251.74 to $4,915.15 per member per month, depending on the region and the member's enrollment in Medicare.

To receive this higher STAR+PLUS capitation rate, MCOs must complete a medical necessity assessment which is used to determine the needs of members, including a determination of whether they qualify for HCBS based on a need for a nursing facility level of care. The MCOs are required to assign a named service coordinator for each member enrolled in HCBS. The medical necessity assessments should be used by service coordinators to develop service plans to meet the needs of members. Multiple reviews, however, have consistently identified concerns about these assessments and MCO follow-up on the results, including member difficulties in accessing HCBS services despite service coordinators including documentation of medical necessity on the assessments.

In 2012, HHSC's Office of Inspector General conducted the first utilization review of an MCO. The review identified problems with Evercare's STAR+PLUS contract. The audit revealed contract failures related to delays in receiving services and member care issues. In some cases, Evercare, a unit of the United Health Group, was inappropriately placing members into the STAR+PLUS HCBS program to receive the higher rate differential.

During in-person interviews conducted by EQRO in 2012, many STAR+PLUS HCBS members expressed they "would prefer to forego their healthcare to avoid future negative experiences" with HCBS and other health plan services. The interviews found that service coordinators assisted in the initiation of services but had minimal subsequent involvement unless there was a problem with a vendor or the member wanted to change vendors. There was no formal system to verify service delivery to members or to monitor the quality of services provided to members. In some cases, service delivery was verified through follow-up calls by service coordinators to members, but this did not occur consistently. Poor communication was the most common negative theme, including poor communication with the MCO, service coordinator, and doctors. Denial of services by the STAR+PLUS MCO was also a common issue for members.

After the 2012 audit, the Texas Legislature enacted Senate Bill 348, Eighty-third Legislature, Regular Session, 2013, which established a regular utilization review (UR) process for STAR+PLUS MCOs within the Medicaid/CHIP Division at HHSC. URs are required to include a thorough investigation of each MCO's procedures for determining whether a member should be enrolled in the HCBS program, including functional assessments and related records.

The UR team at HHSC established in Senate Bill 348 found similar problems with implications for member safety. **Figure 6** shows key findings from these reviews.

According to the UR team at HHSC, reviews of claims and medical files in 2015 showed that all MCOs failed to consistently provide HCBS services documented as medically necessary by the MCOs. In many of the individual service plans (ISPs) reviewed by the UR team, MCOs omitted the need for skilled nursing. According to HHSC, all members of HCBS should receive these services because eligibility for HCBS requires that a member has met medical necessity for nursing services. The UR team also found hundreds of needs other than skilled nursing that were identified by MCOs but either not included in an ISP or included but not delivered.

The UR team also found that MCOs were not consistently assigning a single continuous named service coordinator to STAR+PLUS members. The UR team observed instances where the service coordinator conducting the assessment had no prior knowledge of the member and would not be the assigned service coordinator after the assessment. According to the UR team, this is problematic because HHSC's contract requirements were developed to facilitate members building relationships with a single person over time to improve the continuity of the member's care. A failure to establish a long-term relationship with a single service coordinator may therefore impede high quality care coordination.

HHSC's approach to remedy these issues has focused on educating the MCOs about the contract standards. HHSC considers the failure by MCOs to deliver services identified in the medical necessity determination as overpayment by the agency for services not rendered. The samples for HHSC's UR were based on member upgrades that occurred in January and February of 2015. Onsite reviews for these members were conducted through June of 2015. In September 2016, HHSC notified MCOs of the agency's intent to recover funds for overpayments associated the UR findings.

CASELOADS FOR MCO DELIVERED CARE COORDINATION

The EQRO identified gaps in communication between the service coordinators and their members as a key reason for the unmet needs of HCBS members. For many members, changes to their health status or living situation occur during the year between their in-home assessments. These changes in health status would make them eligible to receive additional services covered by the HCBS program. The EQRO reported in 2012 that when communication between the member and service coordinator is lacking, changes in their health status can result in unmet needs for members until their next in-home assessment. The EQRO found in 2012 that caseloads were between 200 and 500 cases per service coordinator. According to the EQRO these "high

FIGURE 6
KEY FINDINGS FROM UTILIZATION REVIEWS OF HCBS PROGRAM, CALENDAR YEARS 2012 AND 2015

ISSUE	2012 EQRO REVIEW	2015 HHSC UTILIZATION REVIEW TEAM REVIEW
Members with no service plan	13 percent of sample	N/A
Errors and/or omissions in service plans	X	X
Gaps in member participation in service plan development	X	X
At least one HCBS service need not met	21 of 23 members in sample	At least 81 of 272 members in sample

Note: The 2012 EQRO review was based on interviews conducted with HCBS members and service coordinators in October and November of 2012. The 2015 HHSC review was conducted by utilization review (UR) staff in the Medicaid/CHIP division. The UR staff randomly sampled 272 cases of members upgraded to HCBS between January and February of 2015. The review included visits to members' homes to conduct reassessments of the members, an evaluation of three different records in the members' case files, and encounter data analysis for eight months after the initial medical necessity assessment was made. The goal was to determine whether members were eligible for HCBS services, upgrades were made in a timely manner, and members were receiving appropriate services.
Source: Health and Human Services Commission.

service coordinator caseloads are a recognized barrier to improving communication with members."

Based on these findings, EQRO recommended that MCOs explore "strategies for reducing the caseloads of service coordinators, which would allow more frequent contact with members." EQRO also recommended standards pertaining to the frequency and means of contact between service coordinators and members be made more stringent. HHSC opted to implement more stringent contact standards without adopting requirements or guidelines for caseloads.

More recent evidence suggests the steps taken as of June 2016 may not have fully addressed the findings of the EQRO. According to one STAR+PLUS MCO interviewed by LBB staff, caseloads are higher than ideal and the additional contact requirements implemented in 2013 are likely spreading out the same amount of service coordinator resources across a larger number of members. This coincided with the timing of the increase in dissatisfaction among adult STAR+PLUS members, which increased in the 2014 EQRO survey after changes were made to the MCO contracts in 2013.

As shown in **Figure 7**, the self-reported number of STAR+PLUS members per service coordinator varies between MCOs and levels. For example, one MCO segments HCBS recipients into a separate caseload. At this MCO, caseloads for HCBS recipients in Level 1 were reported by the MCO to be 75 per service coordinator. The other Level 1 caseloads at this MCO ranged from 125 to 250 per service coordinator depending on population type.

In addition to self-reported data on service coordination caseloads, Legislative Budget Board (LBB) staff collected staff counts from all five STAR+PLUS MCOs. To understand how each MCO structure impacted caseloads, this analysis included MCO assigned service coordinators as well as support staff. The ratio of members to staff including support staff was an average of 123 members per MCO staff member. This ratio is based on STAR+PLUS members in Level 1 or 2 service coordination. Including members in Level 3 or other programs which may share service coordination staff at MCOs would increase this ratio. Caseloads per assigned service coordinator would also be higher.

In 2015, AARP published a survey of states with Medicaid managed LTSS programs conducted by Truven Health Analytics. The survey excluded programs for individuals with intellectual/developmental disabilities or mental illness. According to the survey, 18 states currently have Medicaid managed LTSS programs. Truven reviewed the contracts in these 18 states, including Texas. Eight states specified caseload ratios in their contracts. These eight states varied caseload requirements by risk group. Excluding low risk categories, caseload maximums varied between 25 and 165. Maximum caseload ratios for high risk groups ranged from 30 to 60. These caseload ratios, especially for the high risk groups which would typically include Texas STAR+PLUS members in Level 1, are lower than those in Texas.

In Texas, each MCO structures their care coordination teams differently. In the STAR+PLUS program (inclusive of non-HCBS members), three of the MCOs interviewed by LBB staff (among the five STAR+PLUS MCOs) typically have service coordination hotline staff resolve in-bound phone calls. According to MCOs, this structure is more efficient due to the amount of time spent by named service coordinators conducting assessments. According to the AARP survey, it is common across states to split duties into two roles. Splitting care coordination into two roles allows social workers to take the lead for LTSS services and nurses to take the lead for health-related issues. In Texas, MCOs have different types of support staff helping service coordinators. Due to these variations, HHSC does not set caseload

FIGURE 7
STAR+PLUS SERVICE COORDINATION CASELOADS PER SERVICE COORDINATOR REPORTED BY MANAGED CARE ORGANIZATIONS, FISCAL YEAR 2016

SERVICE COORDINATION LEVEL	DESCRIPTION	AVERAGE CASELOAD MCO A	MCO B	MCO C
Level 1	Highest level of utilization, including HCBS members	150	250	75-250
Level 2	Lower risk / utilization	275	250	600
Level 3	Other members who do not qualify as Level 1 or Level 2	>800	N/A	1,200

NOTE: This data reflects the ratio of service coordinators to members as self-reported by MCOs to Legislative Budget Board staff and may or may not include all related staff within service coordination departments. MCOs may calculate caseloads differently within and across tiers. MCOs are not required to assign named service coordinators to members in Level 3 yet MCO A and C do report assigning service coordinators to these members.
SOURCE: Texas Medicaid Managed Care Organizations.

standards. Instead, the agency expects MCOs to establish appropriate caseloads to meet contract standards.

As discussed previously, MCOs do not always meet contract requirements related to service coordination. Four of five MCOs failed to meet the telephone contact requirements in STAR+PLUS in fiscal year 2015 for members in Level 3, where most members are assigned (as shown in **Figure 3**). Some STAR+PLUS HCBS members had unmet needs due to the quality and quantity of service coordination they received. Reducing caseloads would increase the resources available to help address these unmet needs.

COORDINATION BETWEEN MCO STAFF AND OTHER PROVIDERS

In addition to impacting access to services, high care coordination caseloads also restrict the ability of service coordinators to coordinate with entities outside of the MCO. The experiences of local community centers, nursing facilities, and MCO service coordination staff indicate varied degrees of collaboration between MCO staff and other system participants. In some cases, there may be gaps in communication between key providers and MCO staff.

In May 2016, the Texas Council of Community Centers conducted a survey on behalf of LBB staff. Responses from 21 community centers showed variations in the extent of collaboration between community center and MCO staff across managed care programs. Though these community centers routinely provide direct client services as well as case management services for managed care members, community centers reported varying volumes and types of interactions with MCOs. One community center reported that "For most clients, [there is] no coordination. For a few clients, there is extensive coordination, and the MCO staff seem involved and knowledgeable." At another, "our clinical staff members speak with MCO staff occasionally regarding client needs, about once a month." At a different community center, "our center receives daily calls from MCOs."

Interactions with nursing facility staff may also be varied. According to the bill analysis, Senate Bill 7, Eighty-third Legislature, 2013 was intended in part to improve the coordination of Medicaid LTSS with acute care services. The legislation required HHSC to transition Medicaid clients in nursing facilities from fee-for-service to capitated managed care. On March 1, 2015, HHSC began moving nursing facility residents into STAR+PLUS.

As a result of Senate Bill 7, HHSC amended its contract to require STAR+PLUS MCOs to assign a service coordinator to nursing facility residents. The contract states that "At a minimum, Level 1 Members in a Nursing Facility must receive quarterly face-to-face visits, including Nursing Facility care planning meetings or other interdisciplinary team meetings." This language describes an expectation that service coordinators will participate in interdisciplinary team meetings with the medical staff of nursing facilities.

Actual implementation by the MCOs and nursing facilities shows most multidisciplinary team meetings do not include MCO service coordinators. In the first six months following the move into capitated managed care, service coordinators for one MCO reported participating in 14,365 meetings for 11,212 members. Service coordinators across three other STAR+PLUS MCOs participated in a combined total of 426 meetings for 27,190 residents. The total number of meetings reported by these three MCOs ranged from 66 to 279. One of these three MCOs indicated their contact volumes were appropriate because service coordinators meet directly with members to avoid interfering with the care process managed by nursing facilities. One MCO did not report to HHSC how many multidisciplinary team meetings the MCO had participated in.

Similarly, one of the three STAR+PLUS MCOs interviewed by LBB staff said that it is not common for service coordinators to work with a member's primary care provider when developing a service plan. Instead, a service coordinator typically develops the service plan with the member and then notifies the primary care provider about which services have been authorized. If the primary care provider identifies any issues or problems with the service plan, they may reach out to the service coordinator. If service coordinators need to work with a primary care provider, it indicates some type of problem according to the MCO.

A significant portion of MCO service coordinators' time is committed to completing assessments. In the case of nursing facilities, these assessments may be largely duplicative. Nursing facilities and MCOs use similar forms to assess their residents and members. According to one large group of nursing facilities, the value of MCO's conducting a second assessment using a similar form is questionable. Additionally, any differences identified in the second assessment are not shared by the MCO with the nursing facilities. The high volume of assessments completed by MCO service coordinators may limit the time they have available to coordinate care.

OTHER MEDICAID CARE COORDINATION EFFORTS

Medicaid clients can access several other care coordination benefits in addition to services coordinated by MCOs. **Figure 8** provides a summary of some of these benefits. In many cases, the goals for these overlap with MCO provided care coordination. Members may be eligible for multiple benefits, yet there is often a lack of clarity about how these benefits are intended to work together. For example, when clients access multiple benefits, according to HHSC, there is no presumption about which entity might have primary responsibility for coordinating care. Additionally, as described in the following sections, utilization of these benefits is often limited.

HEALTH HOMES

Senate Bill 7, Eighty-second Legislature, First Called Session, 2011, requires MCOs to provide health home services. The law defines health homes as "a primary care provider practice or, if appropriate, a specialty care provider practice, incorporating several features, including comprehensive care coordination, family-centered care, and data management, that are focused on improving outcome-based quality of care and increasing patient and provider satisfaction under the child health plan and Medicaid programs."

One of the primary distinguishing features of the health home model is the integration and coordination of medical care with behavioral healthcare. HHSC requires that health home services be provided to individuals with multiple chronic conditions or a serious and persistent mental or health condition. The health home model is intended to promote well-coordinated, patient-centered, high quality, and efficient care for these high-need clients. According to the Centers for Medicare and Medicaid Services, by facilitating access to care and coordinating services, health homes are expected to reduce emergency room use, hospital admissions and re-admissions, healthcare costs, and reliance on long-term care facilities, as well as improve experience of care and quality of care outcomes for patients. **Figure 9** shows a list of selected health home services required by HHSC.

FIGURE 8
SUMMARY OF KEY MEDICAID CARE COORDINATION BENEFITS AND UTILIZATION, FISCAL YEAR 2015

BENEFIT	GOAL	ELIGIBILITY	STAR UTILIZATION	STAR HEALTH UTILIZATION	STAR+PLUS UTILIZATION
MCO Care Coordination	Identify, address, and coordinate physical health, mental health, and long term support service needs, including non-capitated services	Varies by program, generally members with special healthcare needs	0.33%*	18.00%*	43.70%*
Health Home	Build linkages to other community and social supports, and to enhance coordination of medical and behavioral healthcare	Members with chronic conditions	8.83%	10.00%	1.65%
MCO Disease Management	A system of coordinated healthcare interventions and communications for populations with conditions in which patient self-care efforts are significant	Members with certain types of chronic conditions	6.14%	4.74%	9.63%
Mental Health Targeted Case Management	Assist individuals in gaining access to needed medical, social, educational, and other services and supports	Members with Severe and Persistent Mental Illness and/or Severe Emotional Disturbance who require the service	0.15%	0.44%	0.66%
DSHS Case Management for Children and Pregnant Women	Help eligible clients gain access to necessary medical, social, educational, and other services	High risk pregnant women or children through age 20 with a health condition or health risk	0.07%	0.16%	0.02%

NOTES:
(1) The method for counting clients may vary between programs and benefits.
(2) *These percentages reflect members who receive service plans to coordinate their care. Members that receive more limited services without a service plan are not included.

SOURCE: Health and Human Services Commission; Texas Medicaid Uniform Managed Care Contract.

FIGURE 9
SELECTED HEALTH HOME SERVICES REQUIRED BY THE HEALTH AND HUMAN SERVICES COMMISSION FISCAL YEAR 2016

Comprehensive care management
Care coordination and health promotion
Comprehensive transitional care from inpatient to other settings
Patient and family support
Referral to community and social support services
Use of health information technology to link services

NOTE: Not an exhaustive list.
SOURCE: Health and Human Services Commission.

MCOs report that 306,527 of 4,041,173 members enrolled in STAR, STAR+PLUS, STAR Health, and CHIP were receiving health home services in January 2016. While MCOs are required to provide health home services to members with chronic health conditions or serious and persistent mental health conditions, MCOs are utilizing a number of different methods to identify and select members for participation. Most MCOs reported that health homes serve members with chronic conditions, behavioral health conditions, or both. Some of these MCOs reported that members with specific health conditions, such as asthma or diabetes, are primarily receiving health home services. Health home services are considered a medical expense for all managed care programs.

The number of health home participants reported by MCOs indicates there are access issues to health home services for some Medicaid members. This number is low given the prevalence of chronic conditions and serious and persistent mental health conditions in the Texas Medicaid population. For instance, while 306,527 members in all managed care programs were receiving health home services in January 2016, an estimated 450,245 adults in STAR and STAR+PLUS had diabetes or were at risk for developing diabetes. Based on this figure alone, a larger number of Medicaid members would be expected to be receiving health home services.

This number is also low considering that some MCOs do not provide the service and several MCOs reported that they offer health home services to all of their members. Despite contract requirements, 7 of 19 MCOs did not offer health home services to any of their members in January 2016. In contrast to these seven MCOs, one MCO indicated that all managed care members receive health home services. If it is accurate, then this MCO is providing health homes to individuals that do not have multiple chronic conditions or a serious and persistent mental or health condition. This self-reported data has not been verified by HHSC.

Health homes offer one opportunity for Medicaid and CHIP members to access care coordination services. However, there is no framework for collaboration between health homes and MCO provided care coordination services. No language exists in the managed care contract specifying how health homes should operate in coordination with MCOs.

The lack of framework for collaboration increases the risk for duplication of care coordination services. Most MCOs that provide health home services report that they work in a collaborative manner with health home providers to ensure the needs of the members are met. However, only one MCO indicated that they delegate care coordination responsibilities to health home providers for STAR+PLUS members, as allowed by the managed care contract. As care coordination is a core function of both MCOs and health homes, it is therefore likely that some MCO members enrolled in health homes are receiving care coordination services from both entities. Despite federal requirements, there is no routine practice for designating one entity as the primary coordinator.

In addition, HHSC has indicated that MCO capitated payments are not adjusted to account for members that receive multiple care coordination services, including health home services. This suggests that there is a potential for duplication of payment for care coordination services.

DISEASE MANAGEMENT

The Uniform Managed Care Contract requires MCOs to provide disease management services to members with certain conditions. The contract requires MCOs to conduct assessments, coordinate care, and track members' health status. MCOs are also required to make face-to-face contacts for certain hard to reach members. Although there are additional requirements, the requirements listed here suggest elements that may be similar in part to service coordination and service management offered by MCOs.

According to HHSC, MCOs have flexibility on how to structure their disease management programs. HHSC was not able to explain how the requirements listed above are similar or different from service coordination and management.

This flexibility, has resulted in large variations in enrollment and resources dedicated to disease management. One MCO identified 132,292 members as participating in disease management. This accounted for 57.0 percent of all members in STAR and STAR+PLUS in a disease management program. However, the same MCO reported only 13 staff were assigned to the program, a ratio of one staff member for every 10,176 members. The number of members per staff ranged from 11 to 885 at the other 13 MCOs reporting disease management staff. These ratios are not always directly comparable given the variety of staffing structures, but they do give some indication of the resources dedicated to disease management programs. On average, most people appear to be receiving a mail-based intervention that is typically limited to receiving educational materials. For these members, therefore, there is unlikely to be any substantial overlap with care coordination services received through other benefits.

MENTAL HEALTH TARGETED CASE MANAGEMENT

Mental health targeted case management (TCM) is a benefit provided primarily by local mental health authorities (LMHAs). The benefit is available to Medicaid clients with severe and persistent mental illnesses or children with severe emotional disturbances enrolled with an MCO or the fee-for-service system. The goal of the benefit is to assist individuals who have at least one chronic mental health condition gain access to needed medical, social, educational, and other services and supports. The benefit includes a comprehensive assessment of needs, the development of a plan of care, referral for services, and monitoring and follow-up to ensure that the plan of care is implemented and the client receives effective services. The TCM benefit also includes an emphasis on proactive crisis planning and response.

There are several differences between TCM and MCO care coordination. Unlike care coordination services provided by MCOs, TCM must be provided in person. Case managers make telephone contacts to conduct their case management functions, but only face-to-face contacts are billable. Federal rules prohibit TCM providers from denying or authorizing services. This contrasts with MCO care coordinators who act as both members advocates and determine eligibility for services on behalf of the MCO.

In 2013, the enactment of Senate Bill 58 authorized moving TCM into the managed care system. The goal of Senate Bill 58 was to improve the coordination of services within MCOs for behavioral health and acute care services. Effective September 1, 2014, responsibility for paying for TCM shifted from HHSC to MCOs. LMHAs continue to provide the service.

Figure 10 shows utilization of TCM within the STAR, STAR+PLUS, and STAR Health programs. In November 2015 the Stephen Group reported, "foster children have low utilization of TCM and other essential behavioral health rehabilitative services. Low utilization may suggest that high needs children have difficulty getting connected to services they need." This problem stems in part from the uncoordinated case management system.

FIGURE 10
MEDICAID MANAGED CARE MEMBERS RECEIVING MENTAL HEALTH TARGETED CASE MANAGEMENT
JUNE 2015

PROGRAM	COUNT	PERCENTAGE OF ENROLLMENT
STAR	4,670	0.15%
STAR+PLUS	3,335	0.66%
STAR Health	164	0.44%

SOURCE: Health and Human Services Commission.

The state plan for Texas Medicaid requires that TCM payments not duplicate payments made for other case management services provided in Medicaid or foster care. Federal guidance presumes that Medicaid capitated managed care entities are responsible for coordinating care and provide case management as an integral part of managed care services. Typically, however, MCO provided case management is to manage medical services provided by the plan and "does not extend to helping an individual gain access to social, educational, and other services the individual may need." Thus, an individual receiving care coordination services through a MCO may also receive case management or TCM outside of the MCO. If, however, there is an overlap between MCO case management and TCM, this "may require adjustment of the managed care rate if it affects the actuarial value of services furnished by the managed care plan."

In Texas, there may not be sufficient controls in place to prevent and/or adjust rates for possible duplication between TCM and MCO provided care coordination. Unlike the scenario outlined in federal guidance, Texas' contract requires MCOs to help individuals access social, educational, and other services. Yet the contract between HHSC and the MCOs does not provide any details on who should assume primary responsibility for members receiving both TCM and MCO care coordination. There is also no provision to consider MCO capitation rate adjustments for members receiving TCM.

In STAR Health, this risk may be compounded by the provision of additional case management services by DFPS and its foster care contractors. According to a consulting report produced for DFPS by the Stephen Group, there is "confusion about who is ultimately responsible and how these case management functions work together." According to HHSC, the potential for duplication in payment for case management services for managed care members was not considered when TCM was added to managed care. Issues related to potential duplication in payment for case management services may extend to Medicaid MCO members who receive TCM services that are reimbursed outside of MCOs (i.e., early childhood intervention program participants and individuals with developmental disabilities).

DSHS CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

A similar confusion in the overlap of case management service exists in the DSHS Case Management for Children and Pregnant Women program. The goal of the DSHS case management program is to help eligible Medicaid members access necessary medical, social, educational, and other services. DSHS case managers assess client needs and develop a service plan to address those needs. The benefit has existed before statewide capitated Medicaid managed care in Texas and is provided to clients in both capitated managed care and fee-for-service Medicaid.

Similar to TCM, DSHS provided case management is focused on face-to-face assessments and interactions (although all contacts with members are billable). Unlike TCM, however, the benefit is designed as a short-term benefit spanning three to four months. As a result of the program's focus on helping clients access services, appointment scheduling is the most time intensive activity.

The DSHS program uses both private providers and DSHS employees. On average, caseloads among both the private and state case managers are smaller than the caseloads for MCO provided care coordination in STAR and STAR+PLUS. Most individuals receiving the benefit receive it from a DSHS employed case manager, whose caseloads average 80 clients per case manager. Caseloads for the private providers average 24 clients. **Figure 11** shows utilization of the benefit in fiscal year 2015.

FIGURE 11
MEDICAID MANAGED CARE MEMBERS RECEIVING DSHS CASE MANAGEMENT, FISCAL YEAR 2015

PROGRAM	COUNT	PERCENTAGE OF ENROLLMENT
STAR	1,935	0.07%
STAR+PLUS	133	0.02%
STAR Health	48	0.16%

SOURCE: Health and Human Services Commission.

MCOs are contractually required to refer MSHCN to DSHS case management and coordinate with DSHS case managers when appropriate. According to DSHS, MCOs are often the entity that initiates a referral to the DSHS case management program for managed care members. Criteria for when these referrals should occur, however, are not detailed in the managed care contract. Additionally, eligibility for the program is determined on a case-by-case basis. As a result, according to HHSC, there is no way to estimate who is eligible for case management from DSHS.

DSHS indicates it denies requests for case management for MCO members when it relates to services that the MCO must provide. For example, if a prior authorization for DSHS case management lists difficulty accessing a primary care provider in a managed care network, DSHS would deny this request unless the member had already attempted to work with the MCO to correct the issue.

According to DSHS, MCOs are not focused on community-based services because they are not required to coordinate access to non-capitated services. However, according to the managed care contract, MCOs are required to implement a systematic process to coordinate non-capitated services and involve community organizations important to the health and wellbeing of members. MCOs are explicitly responsible for making referrals to and coordinating with local school districts, state and local agencies, civic organizations, and consumer groups. This overlap in goals and contract roles is an example of the lack of clearly defined roles among entities providing care coordination in the Medicaid system.

EFFICACY OF STRATEGIES TO IMPROVE CARE COORDINATION

Due to the large variety of care coordination benefits in Texas Medicaid, a comprehensive review of the research literature was conducted to assess the effectiveness of each strategy. The goal was to identify which strategies are most effective for specific populations. Searches across seven databases produced 1,658 studies potentially eligible for inclusion. The result of this review indicates some evidence that case management can improve outcomes for patients. However, there were substantial variations in the effectiveness of case management. For certain populations, there was more evidence indicating a consistent positive effect from case management type interventions.

There were eight high-quality systematic reviews pertaining to case management that were included in this review of systematic reviews. The eight systematic reviews included

200 primary studies with over 53,450 participants. The vast majority of studies were based on studies of adult populations in a variety of treatment settings. As a result, there may be limitations in how the results apply to Medicaid populations, especially for children.

The reviews indicate some evidence that case management can at times reduce institutionalization, re-admissions, mortality, and hospitalizations. It also at times can improve social functioning, retention in care, depression, and diabetes related outcomes. However, there were substantial variations in the effectiveness of case management. In a number of reviews, most of the measured outcomes showed no improvement. Data on cost were not consistently available, rendering it difficult to draw conclusions about impact on cost.

For several types of patient groups, the results of case management type interventions were consistently shown to be effective. These groups included adults with severe and persistent mental illness (SPMI), depression, heart failure or disease, and/or frequent hospitalizations. **Figure 12** describes the characteristics of these interventions for these populations and the positive effects associated with them.

One systematic review focused on the Patient Centered Medical Home (PCMH), a benefit which may be similar to health homes in Texas Medicaid. The systematic review included five randomized control trials which met inclusion criterion for the umbrella review. The five trials did not show a statistically significant effect on inpatient utilization. Staff experiences showed small improvements, while patient experiences did not. The trials also showed modest improvements in indicators to the percentage of clients receiving appropriate care for chronic illnesses. Insufficient evidence was available to determine the effect of PCMH implementation on clinical outcomes or cost. In two trials, there was moderate evidence of an association with lower emergency department utilization among older adults.

FIGURE 12
SYSTEMATIC REVIEWS DEMONSTRATING CONSISTENT POSITIVE OUTCOMES, CALENDAR YEARS 2010 TO 2015

POPULATION	MODEL	CHARACTERISTICS OF INTERVENTION	POSITIVE EFFECTS
7,328 adults with SPMI	Intensive case management	Team based care of small groups of clients over indefinite period of time. 24-hour availability.	Reduced hospitalizations, retention in care, social functioning
4,440 adults with depression + long-term physical health problems	Nurse-delivered case management	Proactive follow-up of participants, assessment of adherence to treatment, monitoring of patient progress, provision of psychological support, regular communication and supervision with mental health specialists and/or a primary care physician. Commonly incorporated a collaborative approach between a case manager, physician, and mental health specialist.	Depression related outcomes
1,895 adults with co-morbid depression & diabetes	Collaborative case management	Case manager with proactive follow-ups. In four of seven studies, there was a structured management plan with relapse prevention. In three studies diabetes care program was integrated.	Depression and diabetic related outcomes
3,470 adults with heart failure	Nurse led case management	Intensive monitoring after discharge from hospital with telephone follow up.	Heart failure related readmissions, all cause readmissions, all-cause mortality
11,195 adults with coronary heart disease	Nurse coordinated collaborative care	Prescription and/or titration of drug therapy by nurses particularly with predefined algorithms, tailored behavioral counseling with goal setting, and frequent follow-up visits and telephone contacts. Half of the effective reviewed studies included more than four face-to-face contacts and frequent telephone follow-up in one of them.	Cholesterol levels, risk evaluation scores, blood pressure and diet, all-cause and cardiovascular readmission, and guideline adherence
11,445 adults with heart failure	Transitional care	High-intensity with home visits and telephone and clinic visits was effective, low-intensity interventions were not.	Reduced readmissions & ED visits

Notes:
(1) SPMI = severe and persistent mental illness.
(2) This table is based on the highest quality studies that met inclusion criteria.
Source: Legislative Budget Board.

IMPROVING COORDINATION

The Medicaid managed care system is providing high quality care coordination in some cases. However, many individuals meet eligibility requirements for care coordination delivered by MCOs yet most do not receive a service plan or named care coordinator. Those who do sometimes encounter problems receiving timely assistance. In addition, a number of additional case management benefits are available to Medicaid clients that have not been coherently integrated into managed care. In many cases, the statutory and contractual definitions of these benefits are nearly identical to MCO responsibilities. As a result, there may be missed opportunities to further provide high quality care coordination.

The experiences of a variety of stakeholders also support this finding. HHSC surveyed stakeholders affected by the recent transitions from Medicaid fee-for-service to managed care (principally the 2012 expansions). It asked whether care coordination among providers has improved as a result of Medicaid managed care. HHSC received responses from:

- 26 private hospitals, 27 hospital districts/authorities;
- 29 community mental health centers;
- 8 advocacy groups; and
- a mix of 42 health providers, local governments, and other stakeholders.

Responses varied, with some indicating care coordination has deteriorated and others indicating it has improved. On average, respondents said that care coordination has remained the same after the expansion of managed care.

To coordinate care for Medicaid clients more effectively, HHSC should take a more active role in planning, monitoring, and evaluating initiatives aimed at improving care coordination. Currently, the state relies on financial integration to incentivize improvements in broader healthcare systems. As the stakeholder survey demonstrates, there are additional opportunities to improve care coordination in the Medicaid system. The following options provide opportunities for Texas to improve access to high-quality care coordination services.

INCREASE UTILIZATION OF CARE COORDINATION BENEFITS FOR TARGET POPULATIONS

MCOs assign their members to different tiers of care coordination that range in intensity of resources dedicated to members. The lowest intensity tier of care coordination is where most people are assigned, including members with special healthcare needs. The design of this basic tier and the screening methods used by MCOs results in a gap between eligibility for and utilization of MCO delivered care coordination. This low utilization may limit access to and coordination of key health services.

For members with severe and persistent mental illness (SPMI), depression, heart failure, or coronary heart disease, the research literature suggests consistent positive impacts from case management, transitional care, and collaborative care type interventions. Option 1 would include a rider in the 2018–19 General Appropriations Bill to require HHSC to implement strategies to increase utilization of care coordination benefits for members with these conditions. This implementation would ensure that the highest needs populations are prioritized for increased access to care coordination benefits. The agency could increase utilization of targeted case management, MCO provided care coordination, and/or health homes, depending on how the agency implements any charges related to caseloads. The agency would be required to track utilization of targeted benefits and report the results of efforts to increase utilization for these target populations, the impact on health outcomes, as well as the need for any rate increase by November 1, 2018, to the Legislative Budget Board.

IMPROVE THE QUALITY OF MCO DELIVERED CARE COORDINATION

Without timely assessments and communication by service coordinators, members may experience delays in accessing services, especially in the HCBS program. In addition to responsibilities to coordinate care, MCO service coordinators in the HCBS program conduct assessments to determine eligibility for HCBS services.

In both calendar years 2012 and 2014, reviews of member experiences in the STAR+PLUS HCBS program demonstrated substantial unmet needs. Survey data and interviews conducted by the EQRO indicate that many of the quality problems with MCO delivered care coordination stem from members' inability to contact service coordinators and receive timely help. This may be in part due to caseload sizes, which can be as high as 250 members per service coordinator. These caseload sizes are significantly higher than the limits established by states with contract standards for caseloads. Option 2 would amend statute to require HHSC to set caseload requirements for STAR+PLUS HCBS members in rule.

Beyond HCBS, caseload standards may be beneficial for other populations to ensure consistent service quality, contract compliance, and transparency for Medicaid clients and stakeholders. Option 2 would allow HHSC to apply caseload standards to other Medicaid programs.

If the agency sets standards that require substantial increases in MCO staff, there would likely be an additional cost to the state, depending on how actuaries set the rates for MCOs. Over time, reduced caseloads could require additional appropriations from the Legislature. Without increased financial resources, however, MCOs may be limited in their ability to lower caseloads. The current gap between utilization and eligibility for care coordination suggests that MCOs do not believe that care coordination for most populations in need of coordination services will result in a cost savings. Additionally, there is limited evidence about the cost impact of care coordination. Therefore, it cannot be assumed at this time that care coordination will result in a cost savings. If caseload requirements for other programs would require additional appropriations, a contingency rider would require the agency to seek approval before reimbursing health plans for caseload requirements. Prior to providing any rate increases for additional staff to implement caseload requirements, HHSC would be required by this rider to provide the LBB information regarding the number of current staff each MCO dedicates to care coordination; the number of additional staff that would be needed by each MCO for this purpose; expected improvements in care coordination and caseloads as a result of adding staff; and the impact on premiums from these changes.

IMPROVE COORDINATION BETWEEN MCO STAFF AND OTHER PROVIDERS

Collaboration between MCO staff and certain medical providers is limited for some members. Community centers and nursing facilities, for example, report varying levels of coordination with MCOs. According to one large group of nursing facilities, assessments conducted by an MCO are not made available to nursing facilities. To address these gaps, Option 3 would amend statute to require MCOs to increase the availability of service plans and medical records among providers. This option is consistent with a new federal requirement regarding information sharing that took effect in July of 2016. Amending state statute would emphasize the importance of MCO coordination with treating providers and highlight this best practice.

REDUCE FRAGMENTATION OF CARE COORDINATION

Across Medicaid managed care programs, care coordination delivered by MCOs is described inconsistently. In STAR, care coordination is known as service management. In STAR+PLUS, it is known as service coordination. In STAR Health, members can receive service management or service coordination. The goal of each as stated in contract language is similar to case management provided by other providers. Most of these benefits have been added over time without explanation for how they would work together. When TCM was added to capitated managed care, for example, HHSC did not expressly address the possible overlap between TCM and MCO provided care coordination.

Option 4 would amend statute to require HHSC to simplify and clarify requirements for care coordination benefits. This should include, at a minimum, requirements in managed care contracts to:

- assign a person or entity as the primary case manager—this is a federal rule but including it in state statutes would emphasize the importance of this practice in Texas;
- eliminate any duplication of services across the case management and health home services;
- evaluate whether adjustments to the capitation rate are necessary for members receiving case management outside of an MCO; and
- establish a consistent set of terms for MCO delivered care coordination services.

Research shows that the intervention model used by LMHAs for mental health TCM aligns closer to best practices than intervention models used by MCOs. For these populations, Option 4 would also require LMHAs to be the default primary case management entity for individuals that meet TCM eligibility. In other cases, the research literature provides insufficient evidence to determine which options provide the best return on investment.

For STAR members that do not meet TCM eligibility, for example, it is not clear whether case management provided by an MCO or a health home would provide the best value for the member and the state. Option 4 would require HHSC to first evaluate and then streamline the current system to ensure one party is assigned primary responsibility for a client's case management.

FISCAL IMPACT OF THE OPTIONS

Option 1 would require HHSC to increase access to care coordination benefits for target populations. The fiscal impact would depend on which entities were selected to serve the populations not currently receiving care coordination services. It would also depend on the caseloads established by HHSC, per Option 2. The fiscal impact to the state would depend on how HHSC modifies rates for MCOs as a result of these changes. If actuaries increase rates to MCOs as a result of these changes, then this would increase Medicaid expenditures. The fiscal impact cannot be estimated at this time but may be significant.

Option 2 would likely have a fiscal impact. If new caseload standards require additional MCO staff and expenditures, HHSC actuaries may adjust the capitation rate for MCOs. The size of this impact would depend on which programs are included in HHSC's caseload standards and the difference between the new standards and current practices. The option would require HHSC to set caseloads for the HCBS program at a minimum. Depending on the results of HHSC's analysis, if HHSC caseload ratios were applied to other populations, the fiscal impact could be larger. The timing of such changes would depend in part on when rules are effective and the rate setting process. Depending on how HHSC implements these options, fiscal impacts may not occur until the second fiscal year of the biennium or later. As a result, the cost cannot be estimated at this time.

Options 3 and 4 are not expected to have a significant fiscal impact.

The House introduced 2018–19 General Appropriations Bill includes a rider implementing Option 1.

OVERVIEW OF CLAIMS ADMINISTRATOR CONTRACTS IN THE TEXAS MEDICAID PROGRAM

In Texas, the Health and Human Services Commission contracts with vendors to provide claims administration and develop and operate the Medicaid Management Information System. Current vendors are collectively known as the Texas Medicaid and Healthcare Partnership. Accenture became the primary contractor for the Texas Medicaid and Healthcare Partnership in 2014. The Health and Human Services Commission signed an emergency contract with Accenture after terminating a contract with Xerox. In May 2014, the Attorney General filed suit against Xerox for fraud, alleging improper prior authorizations for dental services. Accenture was the largest subcontractor under Xerox. Xerox still manages pharmacy claims and rebates. Contract oversight of previous vendors including Xerox was found to be ineffective by audits. The Health and Human Services Commission has since reorganized contract oversight processes, though as of October 2016 no audits have assessed how well the new processes are working.

As Texas has expanded the use of managed care in Medicaid, managed care organizations have taken on certain functions, such as claims adjudication and prior authorization for claims originating from their clients. The Texas Medicaid and Healthcare Partnership still adjudicates claims for fee-for-service and processes encounter data for both fee-for-service and managed care, in addition to other claims administrator functions. Due to the bundling of services and the fixed costs of maintaining and upgrading the Medicaid Management Information System, which automates many of the claims administrator functions, costs for the contract have not decreased in proportion to the volume of clients or claims remaining in fee-for-service Medicaid. As of October 2016, the claims administrator and Medicaid Management Information System contract is currently being re-bid, so the cost for the next contract has yet to be determined. As the Health and Human Services Commission requests proposals, it faces a concentrated market of few vendors that develop and operate these systems across the country. To decrease the use of heavily customized information technology systems in the future, the federal government is encouraging states to pursue more modular, flexible systems when possible.

FACT AND FINDINGS

- ♦ The Health and Human Services Commission relies on external vendors to perform functions critical to the operation of Medicaid. Historically, the claims administration contract has included responsibilities for recruiting and enrolling providers, paying claims, processing and warehousing data, and conducting analysis and reporting.
- ♦ Internal audit reports have found ineffective contract oversight and monitoring from the 1990s through May 2014, which made it difficult to manage non-compliance or poor performance by the vendors. Weaknesses in vendor controls have resulted in improper payments to providers. The agency terminated the contract with Xerox for cause in May 2014, and the Attorney General filed suit against Xerox in May 2014, for alleged fraud. The Health and Human Services Commission reorganized contract monitoring processes in fall 2014.
- ♦ The market for claims administrator and Medicaid Management Information Systems vendors is highly concentrated. Of states and territories who contract for these services, 85.4 percent contract primarily with one of three companies: Hewlett-Packard, Xerox, or Molina Information Systems.
- ♦ The Medicaid Management Information System must function accurately regardless of the volume of claims adjudicated through it. Therefore, much of the cost associated with operating, maintaining, and upgrading the system does not decrease in proportion to the volume of fee-for-service claims adjudicated.
- ♦ The Health and Human Services Commission issued a request for proposal in September 2015 to take over the operation of the Medicaid Management Information System and claims administrator functions currently performed by Accenture. However, the request for proposal also includes the option to separate or disengage certain business functions from the awarded contract. If the agency does remove functions from the awarded contract, the degree to which pricing terms allow separation of

costs by function will impact the agency's ability to control costs for these services.

DISCUSSION

In Texas, the Health and Human Services Commission (HHSC) contracts with vendors to provide claims administration and develop and operate the Medicaid Management Information System (MMIS). These functions are critical to the mission of HHSC, and the contracts encompass a wide variety of activities. Key claims administrator responsibilities include:

- provider recruitment and enrollment;
- claims adjudication, payment, and related activities;
- data collection and warehousing; and
- reporting.

These functions are intended to ensure the appropriate use of services and improve the efficiency and effectiveness of the Medicaid program. These functions are implemented using a MMIS, which consists of the software and hardware used to process Medicaid claims and manage information about Medicaid beneficiaries, providers, and services. The design and requirements of the MMIS is governed in part by federal regulations. In addition to developing and operating the MMIS, contractors also provide services to support these functions. These services include:

- delivery management;
- leadership and governance;
- legislative support;
- Medicaid program finance and accounting;
- program management;
- state program support;
- appeals and fair hearings;
- print operations;
- provider relations;
- provider re-enrollment for the federal Affordable Care Act;
- publications and training;
- reference file management; and
- surveillance utilization review.

Figure 1 shows how several of these functions relate to one another to allow for claims administration in fee-for-service (FFS) Medicaid.

Cost for claims administration are part of the administrative costs of operating the Medicaid program. Managed care organizations (MCOs) are also paid administrative costs, including costs associated with adjudicating claims on their clients' behalf. By the end of calendar year 2014, 86 percent of Medicaid clients were enrolled in MCOs. By calendar year 2017, HHSC estimates that more than 90 percent of Medicaid clients will be receiving services through MCOs. **Figure 2** shows the proportion of FFS claims and managed care claims adjudicated by fiscal year.

While more clients in Texas Medicaid are served through MCOs now than ever, the technological infrastructure and the claims administrator function are still necessary to support FFS claims adjudication and Medicaid administration overall.

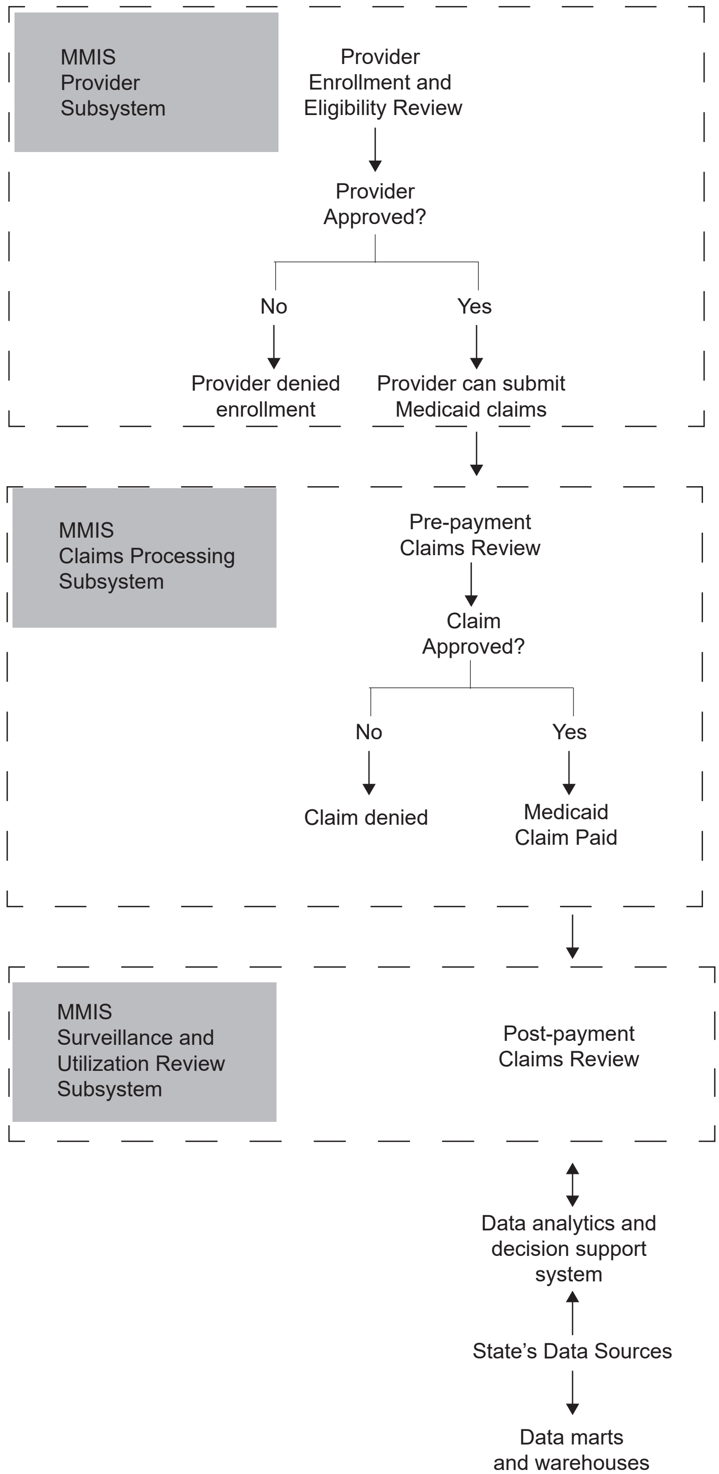
OVERVIEW OF PROVIDER RECRUITMENT AND ENROLLMENT

Provider recruitment and enrollment is the first step in the claims processing system, as seen in **Figure 1**. Effective provider recruitment is intended to ensure that Medicaid clients have sufficient access to medical services. It is also intended to ensure that providers are properly screened and can file claims to receive reimbursement. If the enrollment process is too long or difficult, providers may decide to forgo participation in the Medicaid program.

MCOs also have their own provider enrollment screening processes. Providers must still enroll with Medicaid through the current claims administrator, but are also required to be credentialed by each MCO with whom they seek to work. HHSC has issued a notice of intent to procure a system to streamline the process for providers.

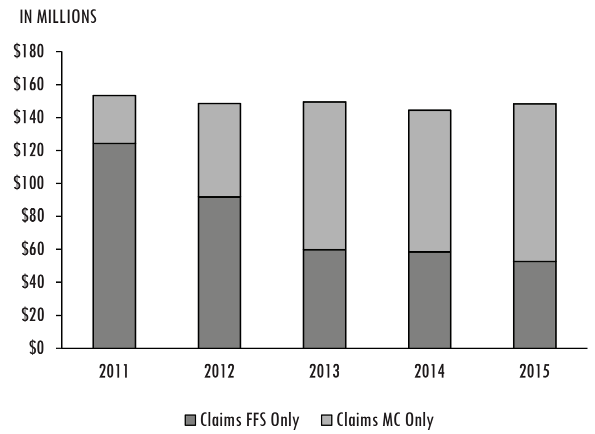
In the current MMIS contract with Accenture, there are two key measures related to provider enrollment, as **Figure 3** shows. Each key measure has corresponding liquidated damages that HHSC can assess if Accenture fails to meet the threshold. HHSC can also require Accenture to propose a corrective action plan to remedy any such failures and prevent them from recurring. HHSC may consider the quality of the plan in determining whether to assess liquidated damages. HHSC also has other contractual remedies, including terminating the contract in whole or in part, for failure to meet key measures.

FIGURE 1
CLAIMS ADMINISTRATION ACTIVITIES AND ASSOCIATED SUBSYSTEMS, AS OF FISCAL YEAR 2016



NOTE: MMIS = Medicaid Management Information System.
SOURCE: Government Accountability Office.

FIGURE 2
FEE FOR SERVICE AND MANAGED CARE CLAIMS ADJUDICATED, FISCAL YEARS 2011 TO 2015



NOTE: FFS = fee-for-service; MC = managed care.
SOURCE: Health and Human Services Commission.

PERFORMANCE AND OVERSIGHT ISSUES – PROVIDER ENROLLMENT AND RECRUITMENT

An August 2015 HHSC Internal Audit indicated that there had been issues with provider enrollment accuracy and timeliness from calendar years 2010 to 2014. Affiliated Computer Systems/Xerox was the lead contractor of the Texas Medicaid and Healthcare Partnership (TMHP) during this period. Of the records sampled, 89.0 percent of monthly contract standards for accurate provider enrollment were achieved. Issues were raised by auditors as to how provider enrollment performance measurements were calculated. Moreover, 3.0 percent of providers in the records sampled had been enrolled timely.

Until March 2016, Accenture had generally not met the key measure requirements for provider enrollment accuracy, as **Figure 4** shows. However, Accenture had met the requirements for timely enrollment application processing.

OVERVIEW OF CLAIMS ADMINISTRATION AND PRIOR AUTHORIZATION

Timely and accurate adjudication and payment of claims is important for retaining providers in the Medicaid program while ensuring that the program is not paying for unnecessary or unallowable services or improper claims. After a Medicaid client receives services from a medical provider, the provider submits a claim to bill for payment for the provided services. For clients in FFS Medicaid, and for certain services for managed care clients, providers submit claims to TMHP. For clients in managed care, providers submit claims to MCOs.

Certain claims require prior authorization before services can be provided and paid. Prior authorization is a process to determine the medical necessity of certain medical services prior to service delivery. Providers submit requests for prior authorization to perform such services. The prior authorization function is intended to manage utilization and reduce the misuse of such services by allowing payment for only those services that are medically necessary, appropriate, and cost-effective.

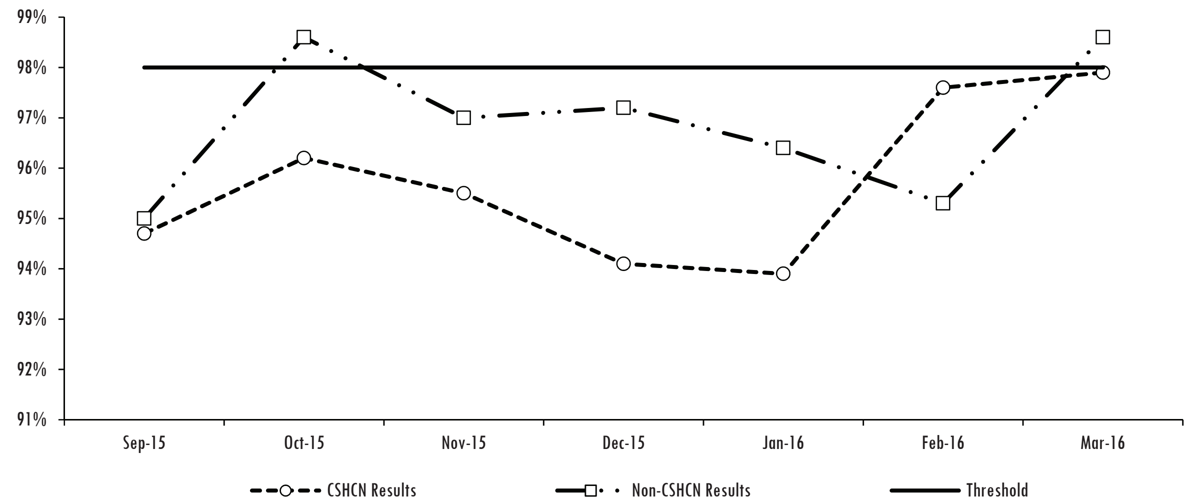
With certain exceptions, TMHP and MCOs adjudicate the claims for their respective clients. Adjudication involves reviewing the claim and approving or denying payment depending on whether requirements have been met. Most claims sent to TMHP are adjudicated automatically through the MMIS. The main claims system, Compass 21, processes more than 260,000 claims and encounters per day. The separate Long Term Care claims system processes an average of 28,000 claims per day. If there is an issue with a claim, it may be suspended and processed manually or denied.

FIGURE 3
KEY MEASURES FOR PROVIDER ENROLLMENT IN ACCENTURE CONTRACT, AS OF FISCAL YEAR 2016

KEY MEASURE	MEASUREMENT	LIQUIDATED DAMAGE FOR FAILURE TO MEET REQUIREMENT
PRV – 0088 Provider Enrollment Processing Accuracy	Maintain a minimum of 98% accuracy rate for processing provider enrollment applications, which is measured against State-approved criteria.	The state may assess up to $10,000 for each percentage point, or portion thereof, below the 98% standard for accuracy.
PRV - 0089 Enrollment Application Processing Timeliness	Complete program enrollment application processing, for 98% of all provider applications and information request responses, within 5 business days of each receipt.	The state may assess up to $5,000 for each percentage point, or portion thereof below the 98% standard.

SOURCE: Health and Human Services Commission.

FIGURE 4
KEY MEASURE PRV – 0088 PERFORMANCE: PROVIDER ENROLLMENT APPLICATION PROCESSING ACCURACY
SEPTEMBER 2015 TO MARCH 2016



NOTE: CSHCN = Children with Special Health Care Needs Services Program.
SOURCE: Accenture, Key Measures Report, May 2016.

In the contract with Accenture, there are four key measures related to claims processing performance, and one related to provider claim payment timeliness, as shown in **Figure 5**.

PERFORMANCE AND OVERSIGHT ISSUES – CLAIMS ADMINISTRATION AND PRIOR AUTHORIZATION

HHSC and its predecessors have had difficulty effectively monitoring claims administrator contracts since at least the 1990s. According to a State Auditor's Office (SAO) report from July 2000, the Department of Health did not hold National Heritage Insurance Company (NHIC), a previous claims administrator contractor, accountable for accurately processing Medicaid claims, properly enrolling providers, and timely completing the new MMIS system. NHIC estimated that inadequate controls resulted in $35 million in improper payments between calendar years 1977 and 1999.

An August 2009 HHSC internal audit found that the division responsible for monitoring contractor performance had not implemented a comprehensive performance assessment system to measure the quality and productivity of TMHP, led at the time by Affiliated Computer Systems (ACS). Performance measures had not been established for some key activities performed by the contractor. Additionally, there were no quality assurance procedures to substantiate functions reported as performed by the contractors for measures already in place. The internal audit also found broader issues with contract oversight generally. By relying on non-contract management program staff that worked directly with the contractors to monitor contractor performance without providing for strong oversight of this monitoring function, HHSC might not detect contractor non-compliance and take appropriate and timely action to address performance issues.

In fiscal year 2011, SAO found weaknesses in controls and errors in claims processing by TMHP. SAO estimated that TMHP overpaid home health services claims by 19 percent in fiscal year 2011. SAO attributed these overpayments to automated controls that did not identify multiple payments to providers for the same services to the same clients on the same day. SAO also found that TMHP overrode automatic edit checks and paid claims for more than 24 hours of services provided within a single day; and for more units than were authorized.

In May 2014, HHSC notified Xerox, which had acquired ACS in 2009, that it was terminating the claims administration contract for cause. HHSC alleged that Xerox had failed to properly review requests for orthodontic procedures, which HHSC indicates led to hundreds of millions of dollars in fraudulent Medicaid claims being approved. The Texas Attorney General has filed suit against Xerox and litigation is pending.

An August 2015 HHSC internal audit reviewed claims administrator contract monitoring from September 2010 to

FIGURE 5
KEY MEASURES FOR CLAIMS PROCESSING AND PROVIDER PAYMENT IN ACCENTURE CONTRACT, AS OF OCTOBER 2016

KEY MEASURE	MEASUREMENT	LIQUIDATED DAMAGE FOR FAILURE TO MEET REQUIREMENT
CPC – 0016 Claims Adjudication Timeliness	Adjudicate 96% of all clean claims within 30 calendar days of receipt. Adjudicate 99% of all clean claims within 90 calendar days of receipt. Adjudicate all other claims within 12 months of the date of receipt. This metric is measured monthly and excludes Long Term Care claims.	The State may assess up to $5,000 for each percentage point, or portion thereof, for failing to adjudicate 96% of clean claims within 30 days and 99% of all clean claims within 90 calendar days.
CPC – 0042 Claims Reprocessing Timeliness (Incorrect Denials)	Reprocess 98% of claims that were incorrectly paid or denied within 30 calendar days of discovery or as directed by the State. Reprocess 100% within 60 calendar days of discovery or as directed by the State.	The State may assess up to $1,000 for each percentage point, or portion thereof, for failing to reprocess at least 98% of incorrectly paid or denied claims within 30 calendar days of the date of discovery.
CPC – 0055 Claims Processing Accuracy	Perform a quality assurance review on a stratified random sample of finalized claims for each State program to validate that at least 98% of claims are accurately processed for each program; using a schedule that is approved by the State.	The State may assess up to $5,000 for each percentage point, or portion thereof, for failing to meet the 98% standard.
CPC – 0121 LTC Claims Adjudication Timeliness	Process 99% of Long Term Care electronic claims within three calendar days after receipt of the claim. Process 100% of Long Term Care electronic claims within five calendar days after receipt.	The State may assess up to $5,000 for each percentage point, or portion thereof, for failing to meet the 99% standard.
FMG – 0013 Provider Claim Payment Timeliness	Complete Compass 21 provider claim payment processing on the schedule agreed with the State.	For any cycle not complete within one business day of the agreed date, the State may assess up to $5,000. If the cycle is processed between three and five business days late the State may assess up to $10,000. If the cycle is processed more than five business days late the State may assess up to $25,000.

SOURCE: Health and Human Services Commission.

May 2014, excluding processes related to prior authorization. The audit found that contract monitoring efforts during the period examined were ineffective. According to HHSC internal auditors, monitoring for 15 of the 17 contract outcomes reviewed either did not occur, or efforts and results for the monitoring were not documented. Auditors found issues similar to those identified in the 2009 audit regarding the decentralized monitoring approach that relied on business owners to independently monitor each contract requirement and communicate any non-compliance to the agency. Auditors reported that throughout the audit, management changed its approach for monitoring the contract to strengthen the control structure. HHSC reorganized related areas within the Medicaid and CHIP Division in fall 2014. The Claims Administrator Contract Compliance unit was consolidated into the Contract Compliance and Performance Management unit. **Figure 6** shows the differences between the two units, as described by HHSC.

The reorganization of contract monitoring corresponded with Accenture's takeover of the claims administrator contract. In most months, Accenture met most of the thresholds for key measures. However, HHSC indicates it is considering pursuing remedies against Accenture for failure to meet the key measures for Claims Processing Accuracy and for Claims Reprocessing Timeliness in certain months.

OVERVIEW OF DATA COLLECTION AND REPORTING

The data reported and collected regarding Medicaid services provided has changed as a result of the expansion of managed care. Because the state pays MCOs a capitated monthly amount for services, the providers in each MCO's network are generally not filing claims for payment or reimbursement from Medicaid directly, but instead through MCOs. However, MCOs are still expected to report data to state

FIGURE 6
CHANGES TO CLAIMS ADMINISTRATOR CONTRACT MONITORING STRUCTURE, FISCAL YEAR 2015

CLAIMS ADMINISTRATOR CONTRACT COMPLIANCE (CACC) BEFORE FALL 2014	CONTRACT COMPLIANCE AND PERFORMANCE MANAGEMENT (CCPM) AFTER FALL 2014
Accountability with business owners to independently monitor	Accountability with CCPM for monitoring working collaboratively with business owners
Requirements are focused on processes	Requirements are focused on outcomes and results
More than 4,000 requirements (some being duplicative or non-essential) with no plan to contain requirements	Fewer than 1,500 requirements with plan to avoid duplication and non-essential requirements
Key Measures (approximately 600) generally lacking quantifiable standards against timeliness and accuracy	Key measures (approximately 40) are measurable (accuracy and timeliness) and critical to operations
Monitoring plan for each requirement	Monitoring plan for groupings of requirements, by business category
No governance framework	Governance framework with oversight at a strategic, management, and operational level

Source: Health and Human Services Commission.

Medicaid programs that describe the services received by their clients. These data are referred to as encounter data. For both FFS and managed care clients, the encounter data are sent to TMHP for processing, storage, and reporting. **Figure 7** shows this process.

The contract with Accenture has three key measures related to encounter data processing and reporting, which are listed in **Figure 8**.

PERFORMANCE AND OVERSIGHT ISSUES – DATA COLLECTION AND REPORTING

The August 2015 HHSC internal audit generally found that ACS/Xerox timely and accurately processed encounter data, and that encounter data was complete. However, the audit identified that encounter data was not always available to HHSC and designated trading partners due to system incidents. Accenture has generally been meeting the requirements established in the key measures related to encounter data and reporting.

According to a January 2015 report by the federal Government Accountability Office (GAO), managed care encounter data are similar to FFS claims and encounter data, but they typically do not include the same level of detail. Additionally, specific encounter data elements may be defined differently than they are for claims data. Managed care encounter data typically would not include a Medicaid billed amount for a particular client's visit to a provider because a state does not pay the provider directly under managed care. In contrast, the data included in a Medicaid FFS claim would include specific amounts for services delivered to a beneficiary.

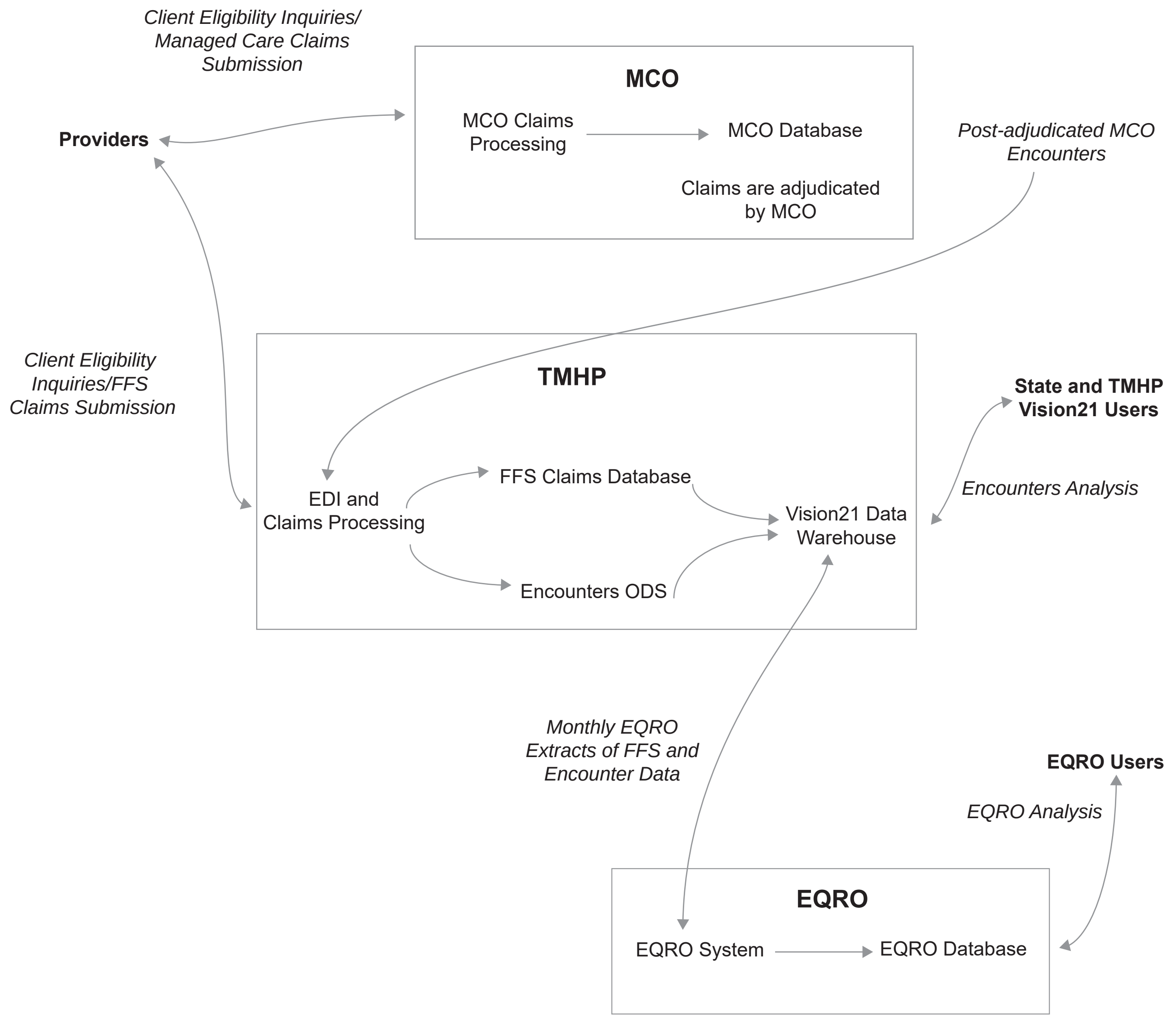
This affects the ways in which the administering agency can review program integrity. Specifically, Texas administrators told GAO that encounter data submitted by MCOs only indicate the reason for a patient's visit and whether the provider's claim was paid. Diagnostic codes and specific amounts paid for a visit are not always included, which affects Texas MMIS's ability to analyze paid claims to detect improper payments.

According to GAO, as states shift to managed care for services, and continue to use MMISs and other systems designed to process FFS claims and encounters, data needed for analyses will not always be consistent or available from the encounter data MCOs collect and report to state Medicaid program administrators. The agency could conduct pre- and post-payment reviews of claims data for FFS visits, but with managed care states often rely on contracts and reporting requirements to a greater degree.

CONSIDERATIONS FOR CURRENT AND FUTURE RE-PROCUREMENT OF CLAIMS ADMINISTRATOR AND MMIS FUNCTIONS

The state has contracted for claims administration and MMIS functions for decades. As long as HHSC continues to contract for this and other functions, successful administration of the Medicaid program will depend on effective contract procurement and monitoring. The agency faces constrained choices when procuring for these services because of a concentrated market of vendors and the complexity of building multiple interrelated IT systems with many federal and state program requirements.

FIGURE 7
CLAIMS AND ENCOUNTERS DATA FLOW, FISCAL YEAR 2016



Note: MCO = Managed Care Organization, TMHP = Texas Medicaid and Healthcare Partnership, EQRO = External Quality Review Organization, FFS = Fee-for-service, ODS = Operational Data Store, EDI = Electronic Data Interchange.
Source: Health and Human Services Commission.

CONCENTRATED VENDOR MARKET

The supply of vendors available to perform Medicaid claims administration work is limited. From 1977 to 2004, the state contracted with NHIC, a subsidiary of Electronic Data Systems Corporation (EDS), to serve as fiscal agent and claims administrator. When the state re-bid the contract in 1997, NHIC was the only bidder. EDS was acquired in 2008 by Hewlett-Packard (HP).

In 2004, a group of contractors referred to as TMHP replaced NHIC as the claims administrator and operator of the MMIS. They also took over administration of the primary care case management program from another contractor, combining functions into one consolidated contract. ACS was the primary contractor for TMHP in 2004. In 2009, Xerox Corporation acquired ACS. In 2010, HHSC entered into a new contract with TMHP, and ACS remained the lead contractor. In 2012, ACS changed its name to Xerox State Healthcare LLC (Xerox).

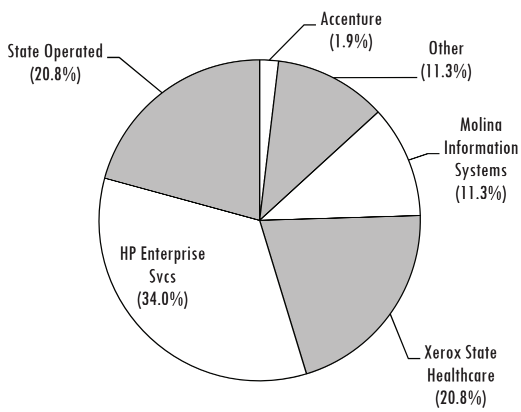
More than half of states and territories contract with either HP or Xerox, as shown in **Figure 9**. Of states and territories

FIGURE 8
KEY MEASURES FOR ENCOUNTER DATA PROCESSING AND REPORTING IN ACCENTURE CONTRACT, AS OF 2016

KEY MEASURE	MEASUREMENT	LIQUIDATED DAMAGE FOR FAILURE TO MEET REQUIREMENT
SYS – 0033 TMMIS System Availability	Maintain a monthly 98% availability for systems except for planned State-approved downtime.	The state may assess up to $10,000 for each percentage point, or portion thereof, below the 98% standard.
SYS - 0213 Data Extract Error Correction Timeliness	Correct all data extract delivery and content problems within five business days of problem identification, or timeframe as mutually agreed within the five day period, and notify the State of correction.	The state may assess up to $5,000 per day for failure to meet the timeliness standard.
SYS – 0226 TMMIS Interface Processing Timeliness	Process and deliver 99% of the priority one interfaces within timeframes based on State-approved Joint Interface Plan.	The state may assess up to $5,000 for each percentage point, or portion thereof, below the 99% percent standard.

Source: Health and Human Services Commission.

FIGURE 9
FISCAL AGENT/CLAIMS ADMINISTRATOR/MMIS OPERATORS ACROSS STATES AND TERRITORIES AS OF FEBRUARY 2016



Sources: Legislative Budget Board; Center for Medicaid and Medicare Services.

who contract out this function, 85.4 percent contract primarily with one of three companies: HP, Xerox, or Molina Information Systems.

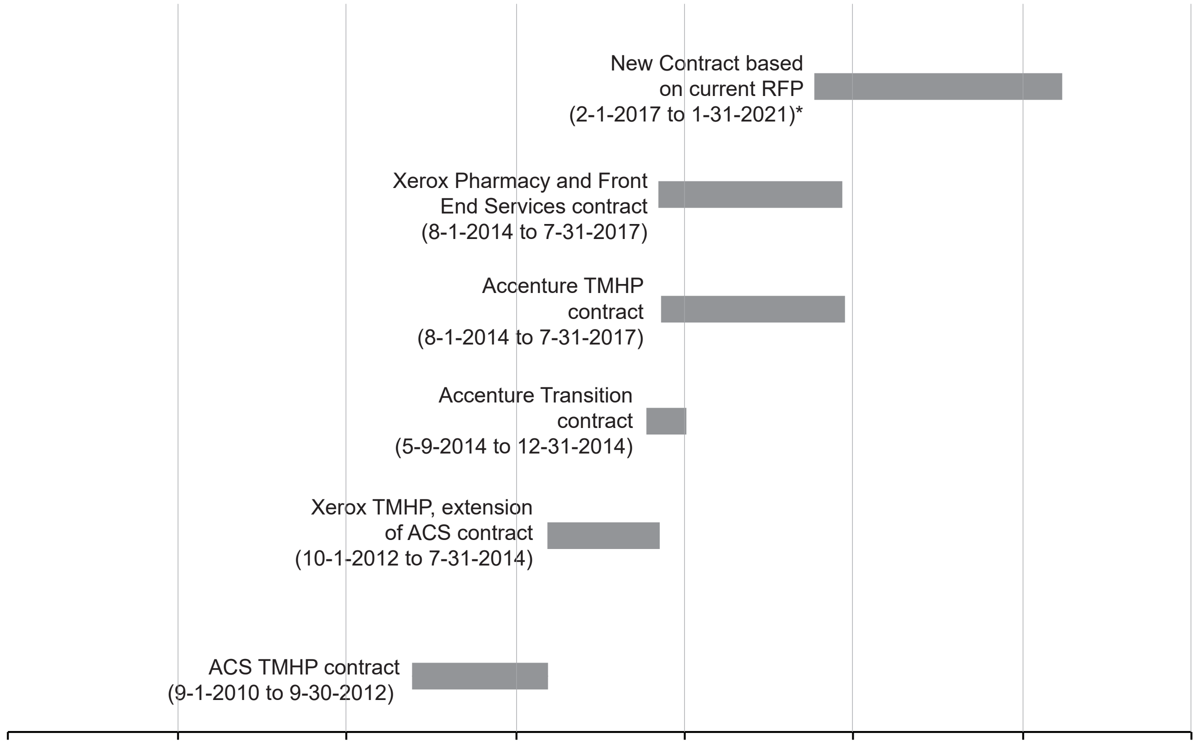
On May 8, 2014, the Office of the Attorney General (OAG) filed a lawsuit against Xerox to recoup hundreds of millions of dollars OAG alleged had been paid for medically unnecessary Medicaid claims. The next day, HHSC notified Xerox that it was terminating the TMHP contract for cause. That same week, HHSC signed a transition contract with Accenture for May through December 2014. Through a non-competitive emergency procurement, HHSC also signed a three-year contract with Accenture to become the primary TMHP contractor effective August 1, 2014. Accenture had been the largest subcontractor for TMHP under Xerox, and was responsible for the technology infrastructure, application maintenance, program management, and data center operations. Accenture retained the TMHP branding. HHSC signed a new, separate contract effective August 1, 2014, with Xerox to administer pharmacy claims and front-end services. In September 2015, HHSC released a request for proposal (RFP) for a new contract to take over the MMIS and claims administrator functions that Accenture is currently performing. According to the RFP, the contract will be awarded January 31, 2017, and the anticipated contract start date is February 1, 2017. HHSC expects the new contract to have an initial term of four years, with up to three additional one-year extensions. A timeline of these contracts is shown in **Figure 10**.

CONTRACT COSTS

There have been significant cost increases for TMHP services that coincide with the transition and emergency contracts with Accenture and Xerox in fiscal year 2015, as **Figure 11** shows.

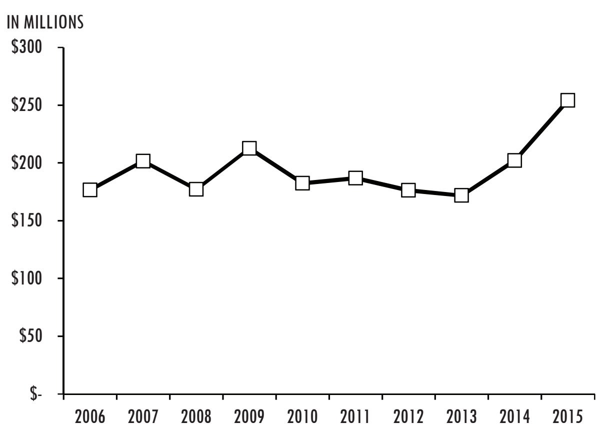
Payments to ACS/Xerox and Accenture fluctuated between $171.7 million and $212.6 million per year from fiscal years 2006 to 2014. Payments in fiscal year 2015 were $254.1 million. The contract with Accenture also did not include many contractual provisions typically included for the State's protection. For example, the contract excludes HHSC's Uniform Terms and Conditions, which covers topics such as dispute resolution, damages, and termination. Additionally, the contract included provisions that limit HHSC's ability to assess and recover damages.

FIGURE 10
CLAIMS ADMINISTRATOR CONTRACTS TIMELINE, FISCAL YEARS 2010 TO 2021



NOTE: The timeline for the new contract based on the current RFP is based on estimated dates found in the RFP.
SOURCES: Legislative Budget Board; Health and Human Services Commission.

FIGURE 11
PAYMENTS FOR FISCAL AGENT/CLAIMS ADMINISTRATOR/ MMIS CONTRACTS, FISCAL YEAR 2006 TO 2015



SOURCES: Legislative Budget Board; Health and Human Services Commission.

ADJUSTING FOR DECLINING FEE-FOR-SERVICE CLAIMS

As Texas has shifted more Medicaid clients and services into managed care, administrative services and oversight have become more fragmented and difficult to manage, according to the Sunset Advisory Commission's December 2014 *HHSC and System Issues Staff Report*. Instead of one system managing provider enrollment and the submission and processing of claims, there are now 22 different information technology (IT) systems—those belonging to TMHP and 21 MCOs.

HHSC states it has adjusted compensation to the claims administrator to account for the decrease in volume of FFS claims adjudicated. The agency asserts that a direct correlation in reduced costs would not be expected due to pricing methodology differences between contracts and fixed costs for technology infrastructure.

To adjudicate FFS claims electronically, and to process encounters and manage data, the IT systems must function accurately, regardless of the volume of claims. Therefore, much of the cost associated with operating, maintaining, and upgrading these systems does not decrease in proportion to the volume of claims adjudicated. There are also other functions that have traditionally been a part of the claims administrator contract or function that have not been taken on by MCOs, such as encounter processing.

Pricing for claims processing in claims administrator contracts in Texas have generally been based on some form of fixed and variable cost methodology. The contract with Accenture includes an amount associated with claims processing and administration operations, which has a fixed and variable component based on claim volume, but it also includes costs for technology services. Some of these services contribute to processing claims and encounter data, however, HHSC indicates that the amount cannot be segregated from other expenditures, as these services contribute to operating the system, which supports other functions in addition to claims processing. This pricing structure is different from previous contracts. Different pricing structures and methodologies for variable costs make it difficult to compare the costs for services over time.

MODERNIZATION AND MODULARITY

When it announced the termination of Xerox in May 2014, HHSC indicated it intended to undergo a competitive rebid process which would include breaking up the large contract into as many as five smaller contracts to make it easier to take action against a vendor without disrupting care for Medicaid recipients. HHSC had also already been planning to modernize the MMIS to comply with federal requirements and add functionality. However, modernization procurements were delayed due to the termination of the Xerox contract and the subsequent issuance of the RFP for the takeover of the contract for MMIS. Accenture is not required to provide these MMIS modernizations and enhancements, but it is performing one of the planned projects to enhance eligibility processing.

The federal agency that jointly administers Medicaid with the states, the Center for Medicare and Medicaid Services (CMS), is encouraging states to use modular, flexible systems development as they replace and upgrade their legacy systems, including MMISs. In an effort to move away from the heavily customized solutions states have built in the past, CMS is offering enhanced matching funds for the development and operation of these systems if states meet certain requirements. On December 4, 2015, CMS published a final rule outlining eligibility for enhanced matching. Eligibility for the enhanced match was further clarified in a March 2016 State Medicaid Director letter from CMS.

The RFP issued by HHSC in September 2015 pertains to taking over the operation of the MMIS and claims administrator functions currently performed by Accenture. However, in the RFP, HHSC also reserves the right to separate or disengage functionality of the MMIS or claims administrator business functions from the awarded contract if it is in HHSC's best interest.

If HHSC does remove functions from the awarded contract, the degree to which pricing terms allow separation of costs by function will impact the agency's ability to control costs for these services. Separation of costs by function would allow for compensation to the existing vendor to be reduced along with that vendor's responsibilities, making those funds available to pay for that function elsewhere. If the pricing terms are similar to the fixed cost structures used in previous contracts, the agency would most likely not be able to remove the costs along with the functions. This would result in the state paying additional costs for such functions elsewhere. As of October 2016, HHSC was negotiating the terms of the contract that will be awarded based on this RFP, and because it was an ongoing procurement, HHSC did not disclose whether and to what degree the contract will break up the functions and services into other contracts in accordance with the intent stated by HHSC in 2014, nor what the pricing structure will be.

OVERVIEW OF MEDICAID MANAGED-CARE FRAUD IDENTIFICATION AND INVESTIGATIONS

The Texas Health and Human Services Commission's process for identifying and controlling Medicaid managed-care fraud relies on three key activities. The agency solicits referrals, conducts analysis of claims data, and requires managed care organizations to verify whether billed services were provided. Implementation challenges associated with these activities have impaired the agency's ability to detect and control fraud. First, a lack of clear roles and limited collaboration among investigative entities limits opportunities to identify fraud. Second, inaccurate and incomplete claims data limits the agency's ability to detect fraud. Third, managed care organizations have made limited investments in program integrity controls. Some managed care organizations, for example, do not conduct verification of billed services. As a result, gaps exist in Medicaid managed care program integrity that could leave fraud unidentified. New federal requirements and recent Health and Human Services Commission initiatives may help mitigate these gaps. Successful implementation will require sustained and dedicated attention to reduce program integrity risks.

FACTS AND FINDINGS

- ♦ The External Quality Review Organization for Texas Medicaid reviewed a sample of dental claims paid in 2014. The results demonstrated several data quality and program integrity risks. During this review, providers indicated that 19.4 percent of claims were for members that were not their patients. For another 2.3 percent of claims, providers indicated they had not seen the patient in relation to the described claim. A review of nondental claims paid in 2013 found 8.5 percent were in one of these two categories.
- ♦ In fiscal year 2015, Texas managed care organizations recovered $2.5 million in fraudulent claims, representing less than 0.02 percent of expenditures. Organizations referred less than 0.08 percent of claims to the Health and Human Services Commission for investigation, representing $9.9 million in claims value. Ten of 22 managed care organizations made no referrals to the agency in fiscal year 2015.
- ♦ Inaccurate or incomplete claims data impedes fraud detection and investigation. The Health and Human Services Commission does not routinely monitor or remediate encounter data for certain types of errors.
- ♦ The Health and Human Services Commission depends in part on managed care organizations to conduct key program integrity activities, including verifying whether billed services were provided. In recent audits of managed-care fraud-control programs, however, a variety of program integrity risks have been identified. These include inconsistent verification of delivered services, inadequate claims sampling when potential fraud is identified, and a lack of dedicated staff for fraud investigations.

DISCUSSION

Healthcare systems, including Medicaid, typically make efforts to prevent, identify, and prosecute fraudulent acts to ensure the cost-effective delivery of care. In Medicaid, for example, providers are required to go through background checks before they can bill Medicaid. Identifying fraud, however, can be challenging due to a number of features of healthcare systems. The standard process for paying claims, the complexity of rules governing payments, and the shared responsibilities for the investigation and prosecution of fraud are all common impediments to controlling healthcare fraud.

Fraud can be distinguished legally from other types of unwanted practices that may be considered abuse or waste. Intentionally billing for services that were not provided is fraud. Taking advantages of loopholes or providing substandard care is more commonly classified as abuse. Although this distinction helps to demonstrate differences between fraud and abuse, in practice this distinction is more difficult to delineate. Medicaid fraud can be prosecuted pursuant to a variety of statutes. In accordance with the Texas Medicaid Fraud Prevention Act, for example, establishing civil fraud does not depend on intent to commit fraud. Instead, knowingly committing fraud can be based on a conscious indifference to the veracity of information. Likewise, whistleblowers can file lawsuits in accordance with the federal False Claims Act using a similar standard.

Although there is not an explicit requirement to establish intent to commit fraud, it can be difficult to prove that a claim is fraudulent rather than abusive or honest but erroneous. This difficulty stems from common challenges experienced by all payers in the U.S. healthcare system and the complexity of the Medicaid system.

COMMON FRAUD CONTROL CHALLENGES IN HEALTHCARE SYSTEMS

In healthcare transactions, there are typically significant differences in the information known to each participant. Payers such as the Health and Human Service Commission (HHSC) have less information than the providers and recipients of care. In most cases, providers submitting claims for services know whether a service was provided, but HHSC does not directly observe whether the service billed was provided. Additionally, patients do not know how their providers are billing for services provided on their behalf. Individuals insured with commercial plans typically receive explanations of benefits (EOB), but they may not understand these statements and Medicaid managed-care members may not receive these. Likewise, providers do not see how managed care organizations submit claims to HHSC. These differences in the information known to each entity within the healthcare system result in opportunities to commit fraud. **Figure 1** shows examples of fraud that may be committed by providers, patients, or insurers (such as Medicaid managed care organizations).

Although a variety of fraudulent activity has been uncovered by investigators and prosecutors, identifying such acts as they are occurring can be difficult. The claims review process used by insurance companies may mitigate certain types of obvious errors and abuse. However, given the volume of health insurance claims submitted daily, claims processing systems are structured with an assumption that most transactions are submitted by honest actors. This assumption, however, results in a system wherein most claims are automatically approved or denied based on whether the information submitted in the claim matches the insurer's established criteria for paying the claim.

This process does not inherently protect against fraudulent claims. Individuals may be able to submit fraudulent claims that will be processed as normal. According to fraud experts, fraud intended to be processed as normal is not typically self-revealing. For example, when a billed service was not provided, the claims review process may check whether the diagnostic code and service provided are appropriate and eligible for reimbursement. The system may also check whether the provider has a contract with the insurer. But the system will presume that, if the documentation matches the clinical criteria for approval, the service actually was provided. As a result, claims submitted for services that were not rendered could remain undetected. It may only be possible to detect this type of fraud through external verification of the claim.

Even when insurance companies and investigators can identify fraud, it may still be difficult to prosecute. This difficulty stems from several constraints common to insurance companies and fraud investigators:

- providers may be able to demonstrate that, due to complicated guidelines that frequently change, it is common that some errors occur: this can make it difficult to prove in court that a claim was submitted fraudulently rather than in error;
- insurance companies lack the prosecutorial authority to prove fraud: they are dependent on actions taken by prosecutors and government agencies;
- insurance companies face risks to their reputations for identifying fraud: when an insurer identifies fraud,

FIGURE 1
EXAMPLES OF HEALTHCARE FRAUD

PROVIDER FRAUD	PATIENT FRAUD	INSURER FRAUD
Billing for services not provided	Filing a claim for services or products not received	Overstating the insurer's cost in paying claims
Providing medically unnecessary services	Obtaining medications or products that are not needed and selling them illegally	Misleading enrollees about health plan benefits
Falsifying a diagnosis	Providing false information to apply for services	Denying valid claims
Billing for a more costly service than performed	Visiting multiple doctors to receive multiple prescriptions	Undervaluing the amount owed by the insurer to a healthcare provider given the terms of the contract
Accepting kickbacks for patient referrals	Using someone else's insurance coverage for services	Discouraging high-cost clients from enrolling or selecting specific insurers

SOURCES: National Conference of State Legislatures; U.S. Health Care Financing Administration (now CMS).

the insurer could be perceived as being particularly vulnerable to fraud; and

- the process of identifying fraud can make it more difficult for some providers and consumers to access health benefits: a provider that is investigated, for example, may have its revenues put at risk, resulting in solvency challenges to providing ongoing care.

As these constraints demonstrate, successful fraud control depends on effective partnerships among insurance companies and government entities.

FRAUD CONTROL CHALLENGES IN MEDICAID MANAGED CARE

In addition to these common challenges to controlling fraud in the healthcare system, the Medicaid program presents additional program integrity risks. According to the U.S. Government Accountability Office (GAO), Medicaid is especially vulnerable to improper payments. The risks in Medicaid include payments for ineligible services, services that were not medically necessary, or services that were billed for but not provided. In Medicaid, for example, typically no copay is required and no EOB is provided to the client. As a result, the Medicaid client may never learn about a fraudulent claim submitted by a provider, which eliminates an opportunity to externally verify a claim. Additionally, the Medicaid system is complex and, according to GAO, agencies have made limited investments in program integrity, especially in managed-care delivery models. **Figure 2** shows the key challenges associated with fraud control in Medicaid and key tools available to states to help address these challenges.

FIGURE 2
KEY CHALLENGES AND STRATEGIES TO CONTROL FRAUD IN MEDICAID

CHALLENGES	TOOLS AVAILABLE TO STATES
Overlap between federal and state responsibilities	Collaboration through effective communication
Insufficient collaboration and information sharing among federal agencies and states	Experienced and knowledgeable staff
Diffusion of authority among multiple federal and state agencies	Joint training with federal agencies
Incomplete and outdated data	Data integrity initiatives and controls
Limited resources for program integrity reviews of managed-care claims	Reallocation and investment in Medicaid program integrity resources
Lack of information on the effectiveness of program integrity initiatives and appropriate performance measures	

SOURCES: U.S. Medicaid and Children's Health Insurance Program Payment and Access Commission; U.S. Department of Health and Human Services Office of Inspector General.

The Medicaid system is a state–federal partnership with a complicated set of laws and agency policies guiding operations. Policy decisions about benefits and delivery systems are made at multiple levels of government. These decisions are detailed in agency rules, contracts, and exceptions from federal laws granted by the U.S. Secretary of Health and Human Services. One effect of this state–federal partnership is that a large number of entities have responsibility for fraud control. According to the Medicaid and Children's Health Insurance Program (CHIP) Payment and Access Commission (MACPAC), more than a dozen state and federal entities are responsible for investigating and prosecuting Medicaid fraud, as shown in **Figure 3**.

According to the GAO, collaboration across these entities is an essential component of controlling Medicaid fraud. State Medicaid Fraud Control Units (MFCU) are an example of the potential benefit of such collaborations. MFCUs investigate and prosecute healthcare fraud. They are required to have either prosecutorial authority or a formal procedure to refer suspected criminal violations to an office with such authority. In fiscal year 2014, MFCUs nationwide collectively reported 874 civil settlements and judgements. Two-thirds of the $1.7 billion recovered was identified by collaborations among multiple MFCUs and the U.S. Department of Justice (DOJ). Collaboration among the entities responsible for Medicaid program integrity can be difficult to establish and sustain, considering the competing priorities of each entity.

Implementation of capitated managed care has resulted in additional complexity and has increased the number of entities responsible for ensuring program integrity. Under capitation, states contract with managed care organizations that receive a premium payment for each member they manage in exchange for providing all covered services. Capitation is a fixed rate paid in advance to medical providers. The implementation of capitation was presumed to incentivize managed care organizations (MCO) to prevent and investigate fraud. However, according to the U.S. Health Care Financing Administration (the predecessor to the Center for Medicare and Medicaid Services), these features may not be effective incentives. Instead, the implementation

FIGURE 3
FEDERAL AND STATE AGENCIES INVOLVED IN MEDICAID PROGRAM INTEGRITY

	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES				U.S. DEPARTMENT OF JUSTICE					STATE AGENCIES			
PROGRAM OR ACTIVITY	**CMS**	**OIG**	**AOA**	**OGC**	**USAO**	**CIVIL**	**CRT**	**CRIM**	**FBI**	**SMA**	**MCFU**	**OIG**	**SAO**
Health Care Fraud and Abuse Control Program	X	X	X	X	X	X	X	X	X				
Health Care Fraud Prevention and Enforcement Action Team	X	X		X	X	X		X	X				
Review Medicaid Integrity Contractors (MIC)	X									X		X	
Audit MICs	X									X		X	
Education MICs	X									X			
Medicare–Medicaid Data Match Program	X	X								X		X	
Audits	X	X								X		X	X
Payment Error Rate Measurement Program	X									X			
Medicaid Eligibility Quality Control Program										X			
Recovery Audit Contractors										X			
Provider Exclusions		X								X			
Provider Terminations	X									X			
Provider Enrollment Moratoria	X									X			
Prosecution	X	X		X						X	X	X	
Investigations	X	X								X	X	X	X

NOTES:
(1) Not an exhaustive list. Agencies shown may have additional ad hoc or intermittent responsibilities.
(2) CMS = Centers for Medicare and Medicaid Services; OIG = Office of the Inspector General; AOA = Administration on Aging; OGC = Office of the General Counsel; USAO = Offices of the U.S. Attorneys; Civil = Civil Division; CRT = Civil Rights Division; CRIM = Criminal Division; FBI = Federal Bureau of Investigation; SMA = State Medicaid Agency; MFCU = Medicaid Fraud Control Unit; OIG = State Office of the Inspector General; SAO = State Auditor.
SOURCE: U.S. Medicaid and Children's Health Insurance Program Payment and Access Commission.

of managed care has increased the challenges in ensuring program integrity in Medicaid.

In two states interviewed by the GAO, officials indicated that MCOs did not consistently report improper payments to the state to avoid appearing vulnerable to fraud and abuse. In three states, officials described potential conflicts of interest due to the link between capitation rate reductions and the identification of improper payments. Similarly, the U.S. Department of Health and Human Services Office of Inspector General has noted concerns about the lack of fraud referrals from managed care entities. According to reports from state MFCUs, managed care entities indicated to MFCUs that they may lose money from fraud recoveries unless the state shares recoveries with the MCO. No penalty is typically assessed for a lack of fraud referrals. As a result, MCOs may remove suspicious providers from their networks instead of referring them to the state. States, therefore, expect increased enrollment in managed care to exacerbate the lack of referrals for Medicaid fraud.

This system can also limit government agencies' abilities to identify fraud independent of MCO efforts to control fraud. In a managed healthcare system, providers are typically required to submit claims to multiple managed care companies and fee-for-service vendors. Each claims system operates differently, which increases the likelihood of providers making errors and the difficulty of establishing data integrity controls. This disparity makes identifying and proving fraud significantly more difficult.

TEXAS ENTITIES RESPONSIBLE FOR INVESTIGATING MEDICAID FRAUD & ABUSE

In Texas, three primary entities are responsible for controlling and investigating Medicaid fraud. The HHSC Office of Inspector General (OIG) has authority and a variety of responsibilities to investigate fraud and ensure the integrity of the Medicaid program. The Office of the Attorney General (OAG) is responsible for managing criminal cases and for prosecuting certain civil cases. The state has also assigned responsibilities to MCOs for a number of key program integrity activities. **Figure 4** shows the number of full-time-equivalent (FTE) positions working within each of these entities on program integrity-related activities.

FIGURE 4
PROGRAM INTEGRITY STAFF IN TEXAS ENTITIES FOCUSED ON MEDICAID FRAUD, FISCAL YEAR 2016

ENTITY	TOTAL FULL-TIME-EQUIVALENT POSITIONS
Health and Human Services Commission Office of Inspector General	652.5
Office of Attorney General Medicaid Fraud Control Unit	194.0
Office of Attorney General Civil Medicaid Fraud Division	52.0
Managed Care Organization and Dental Maintenance Organization Special Investigative Units	75.0

NOTES:
(1) Not all staff at the Health and Human Services Commission Office of Inspector General handle Medicaid cases.
(2) Special Investigative Units' full-time-equivalent positions include any staff employed by subcontract with managed care organizations.
SOURCES: Texas Health and Human Services Commission; Office of the Attorney General.

The HHSC OIG is responsible for a range of program integrity activities in Medicaid, including:

- investigating allegations of fraud, waste, and abuse involving Medicaid providers;
- referring cases and leads to law enforcement agencies, licensure boards, and regulatory agencies, and the OAG Medicaid Fraud Control Unit; and
- providing investigative support and technical assistance to other investigative and prosecutorial entities.

For criminal cases and certain civil cases, HHSC OIG will work with OAG attorneys and investigators. Appeals of administrative hearings previously prosecuted by the OIG at the State Office of Administrative Hearings are also litigated by OAG attorneys. These civil cases are managed by the Civil Medicaid Fraud Division. Criminal cases are assigned to a separate OAG entity, the Medicaid Fraud Control Unit.

Pursuant to state law, OAG MFCU staff do not have the authority to independently prosecute Medicaid fraud. However, these staff may assist district attorneys and the Offices of the U.S. Attorneys with prosecution. MFCU prosecutors are also designated as Special Assistant United States Attorneys (SAUSA). SAUSAs have the authority to prosecute Medicaid fraud cases in federal court. Additionally, local district attorneys may deputize MFCU prosecutors for certain cases.

In addition to these state entities, Texas has also assigned MCOs certain program integrity responsibilities. Until July 2016, federal law provided states with substantial discretion on how they task MCOs with program integrity responsibilities. Before that time, MCO requirements were primarily a set of general principles. MCOs were required to have written policies, effective training and communication, enforcement standards, and provisions for internal monitoring and auditing. In Texas, in addition to the federal minimum requirements, the Legislature directed MCOs to establish special investigative units (SIU). House Bill 2292, Seventy-eighth Legislature, Regular Session, 2003, established this requirement in statute. This requirement was then incorporated into MCO contracts.

On July 6, 2016, new federal rules established more specific requirements and broadened the scope of MCO program integrity activities. In accordance with the new rules, MCOs must perform a number of detailed activities. According to HHSC OIG, some of the new federal requirements were already expected of MCOs. However, OIG indicated that the new provisions are expected to strengthen MCO program integrity activity requirements. The previous requirement that MCOs have a provision for internal monitoring and auditing, for example, was expanded to specify that MCOs must implement a method to verify whether billed services have been delivered. MCOs are required to apply this method regularly. MCOs are also now required to have dedicated staff to conduct routine internal monitoring and auditing.

GAPS IN MEDICAID MANAGED-CARE FRAUD CONTROL IN TEXAS

HHSC's process for identifying fraud in Medicaid managed care is based in large part on three key components:

- investigation of referrals from people and entities knowledgeable of fraud;
- analysis of claims data to identify potential fraud; and

- verification by managed care organizations that billed services were performed.

Several factors have reduced the effectiveness of these activities. As has been observed in other states, limited collaboration, poor data quality, limited verification of services, and insufficient oversight of program integrity requirements have resulted in gaps that may leave significant Medicaid fraud unidentified.

LIMITED COLLABORATION

According to HHSC OIG, collaboration with managed care organizations has historically been limited. For example, MCOs have identified potential fraud and sent referrals to OIG; however, OIG may have closed certain referrals without action or without providing a status update to the referring MCOs. OIG may have closed referrals due to problems with the MCOs' referrals. However, according to OIG, such closures may have been due to a failure to adequately collaborate with the MCOs. Historically, communication among OIG and MCOs occurred primarily at quarterly meetings. According to the Inspector General, these meetings typically did not focus on developing specific cases. HHSC OIG has indicated that it is working to better utilize these interactions for program integrity purposes and is increasing staff-level collaboration. OIG is also conducting meetings to improve collaboration with federal entities that are responsible for investigating and auditing Medicaid claims.

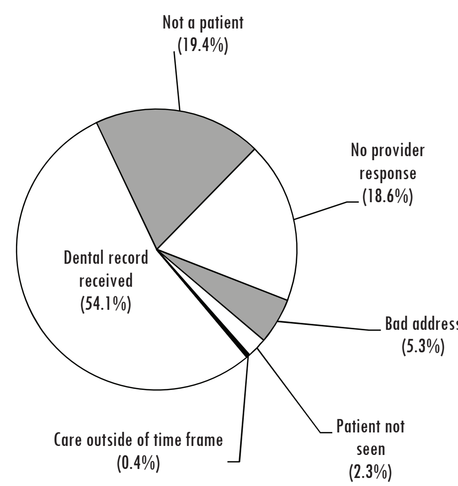
CLAIMS DATA ISSUES

Encounter data, which is collected from claims submitted by providers, is used in the following ways: to set the capitation rates paid to MCOs, to assess the quality of healthcare services in Texas Medicaid, and to conduct program integrity analysis. The accuracy and veracity of this data can have a significant effect on the agency's ability to accurately set rates and monitor program integrity and quality. However, HHSC does not routinely monitor or remediate encounter data for certain types of errors. As a result, the encounter data has a number of omissions and quality limitations.

In fiscal year 2015, the state's federally required independent quality reviewer, the External Quality Review Organization (EQRO), conducted a review of encounter data. The purpose of the review was to determine the accuracy and completeness of certain fields in the dental encounter data, such as dates and locations of services and the procedures provided. The EQRO requested 822 medical records to match with encounters submitted by dental plans.

Figure 5 shows the results of EQRO's attempt to match dental records with claims. For 19.4 percent of claims, the dental provider indicated that the patient on the encounter submitted by the dental plan was not that provider's patient. For an additional 2.3 percent of claims, the provider indicated that the patient was not seen for the claim submitted. In 5.3 percent of claims, the address on file for the provider was incorrect, so the EQRO was unable to collect a medical record.

FIGURE 5
DISPOSITION OF DENTAL ENCOUNTER VERIFICATION
FISCAL YEAR 2015



SOURCE: Texas External Quality Review Organization.

An EQRO review of nondental claims paid in 2013 found that 8.5 percent of claims were related to members that were either not seen or not patients of the listed providers. For 7.6 percent of claims, the addresses on file for providers was incorrect. HHSC does not have a routine process to investigate these types of errors for the purpose of program integrity.

Additionally, according to a December 2015 internal audit conducted by HHSC, the agency did not monitor key encounter data entries to ensure accurate submission by MCOs. The audit found that key encounter data fields submitted by managed care organizations contained errors. For example, encounters associated with some hospital providers were labeled as ambulance providers, and encounters from group practices resulted in erroneous provider type labels. The auditors recommended establishing additional procedures for monitoring and improving the quality of encounter data.

In addition to data errors, omissions in the claims data may also limit its utility in identifying fraud. According to interviews conducted by GAO, encounter data submitted by MCOs do not always include key data, such as diagnostic codes and the specific amounts paid for visits. These data elements are needed to analyze paid claims to detect improper payments.

These data quality problems pose significant risks to program integrity. Many encounter data errors may pertain to billing mistakes that would not be considered fraud or abuse. However, certain types of errors, such as claims wherein providers indicated they did not provide the services as recorded in the claims, indicate risks of potential fraud. These types of errors can also impair the ability of fraud investigators to identify trends and outliers in the claims data for program integrity monitoring.

In July 2016, HHSC OIG indicated that the agency planned to conduct an audit of the Medicaid encounter data. This audit should help the agency start to identify steps to mitigate this gap in program integrity. However, HHSC program staff indicated that efforts to improve the quality of data beyond current procedures would require additional resources. As a result, the agency does not plan to implement the types of controls recommended in HHSC's December 2015 internal audit. As this agency-identified constraint indicates, remedies to data quality issues likely will require significant and sustained efforts from MCOs, providers, and HHSC.

LIMITED VERIFICATION OF SERVICES

According to interviews conducted by the U.S. Department of Health and Human Services Office of Inspector General, the primary program integrity concern of states, MCOs, and the federal Centers for Medicare and Medicaid Services (CMS) is that billed services were not provided.

In fiscal year 2011, CMS reviewed HHSC's program integrity controls and procedures. CMS found that neither HHSC nor MCOS were verifying whether billed services had been received by managed-care members. CMS analysis of information from four MCOs indicated that the MCOs did not perform any verification of beneficiary services. Additionally, a review of HHSC contracts with MCOs found that this activity was not contractually required despite federal requirements that HHSC have a mechanism to verify services. CMS had previously identified this vulnerability in Texas. In response to this review, HHSC indicated it would require MCOs to develop solutions to this vulnerability. MCOs were required to list these solutions in their annual plan filed with OIG by October 2011.

In 2016, HHSC OIG conducted a series of audits of MCO program integrity activities and SIUs. In recent audits of managed care fraud control programs, two of the four MCOs reviewed had never verified whether services paid by the organization were delivered by providers. Seton had never conducted this activity. Cigna-HealthSpring paid $889.3 million in claims but did not verify whether paid services had been delivered. According to its SIU plan, Cigna-HealthSpring had a process to send EOBs to a random sample of its members. However, auditors found that the MCO did not implement this plan.

HHSC does not have a process to independently verify that billed services were provided. The agency contracts with the EQRO to conduct encounter data validation. These reviews, however, do not focus on program integrity. Instead, the EQRO attempts to determine coding match rates for claims that can be matched to medical records. HHSC was unable to indicate any steps it has taken to follow up on the claims that could not be matched to medical records, despite the high risk that these encounters pose to the state.

Without a direct verification of a sample of claims, HHSC OIG is relying on MCOs to self-identify any fraud they potentially committed. MCOs that have contracted with HHSC have a number of settlements and activities that pose program integrity risks to the state. In the STAR+PLUS Home and Community Based Services Program, for example, multiple reviews have found that MCOs have received enhanced premiums without providing medically necessary services. Amerigroup, an MCO that has contracts in Texas Medicaid, settled a lawsuit with DOJ for $334.0 million after a court found that the company had fraudulently discouraged and limited enrollment to avoid enrolling high-cost pregnant women in the Illinois Medicaid program. According to CMS, fraud committed by MCOs is a vulnerability that has not been fully addressed by states and the federal government.

As mentioned previously, CMS implemented new rules to address this risk and the risks of undetected provider fraud. These rules went into effect in July 2016. In accordance with the new federal rules, state agencies are required to conduct independent audits of claims data and financial documents at least once every three years. The audits must include reviews of the accuracy, truthfulness, and completeness of the encounters and financial data. States can incorporate this review into the EQRO encounter data validation process. In Texas, incorporating this review will require an expansion of the EQRO data validation process to include an assessment of the truthfulness of the claims data. Without improvements in the accuracy and quality of encounter data, data quality issues may continue to limit the effectiveness of program integrity monitoring through claims data.

FAILURE TO ENSURE ADEQUATE PROGRAM INTEGRITY INVESTMENTS BY MCOS

Failures to adequately monitor MCO program integrity activities results in a variety of program integrity risks. Since the implementation of managed care in Texas, audits have documented significant problems with the agency's oversight of MCOs. In 2003, the State Auditor's Office (SAO) found that HHSC had not effectively monitored or enforced key MCO contract provisions, and that its contract management function lacked clear direction and focus. In December 2015, HHSC's internal auditor identified ongoing problems with oversight. Internal auditors found that, for 12 of 37 performance issues requiring a corrective action plan for an MCO, the agency did not track whether the MCO implemented the plan. The agency sometimes did not notify MCOs of known performance problems. In an October 2016 report, SAO found that HHSC did not have a documented process to determine when a corrective action plan should be issued in response to performance audit findings. For the 12 performance audits conducted from fiscal years 2011 to 2016, HHSC issued one corrective action plan that required the MCO to address the audit findings.

Similar findings have shown the agency has limited oversight of program integrity functions. In 2010, CMS found that HHSC had inadequate written policies and procedures for oversight of managed care program integrity functions. House Bill 1720, Eighty-second Legislature, Regular Session, 2011, was intended to strengthen coordination among HHSC and MCO SIUs and to grant MCOs additional authority to conduct fraud and abuse recoveries. However, in 2015, the Sunset Advisory Commission found that SIUs at MCOs are not subject to regular oversight to ensure that they implement their program integrity plans. The agency's staff also found that SIU staff are not trained in advanced investigative techniques. According to Sunset Advisory Commission staff, this lack of training may be in part due to uncertainty about OIG's role in oversight of SIUs and fraud investigations.

Based in part on recommendations from Sunset Advisory Commission staff, Senate Bill 207, Eighty-fourth Legislature, 2015, was enacted. The bill required HHSC to define its role and the jurisdictions of managed-care audits, including the frequency of audits and OIG's participation. On July 14, 2016, HHSC adopted administrative rules implementing these requirements. The rules do not include details on the frequency of audits or specific divisions of responsibility. Instead, the rules set forth the policy-making responsibility of the HHSC Executive Commissioner and the practice of developing an annual audit plan for coordination within the agency.

Since enactment of Senate Bill 207, HHSC OIG has also initiated audits of MCOs. These audits have revealed that MCOs have made limited investments in program integrity controls. Most MCOs commit fewer than 3.0 full-time staff to investigating fraud and abuse. Five of 22 MCOs (including dental organizations) did not dedicate any staff to work on program integrity.

Audits that HHSC OIG conducted in 2016 of some MCOs revealed significant implications from limited investments in program integrity. No MCO that OIG audited was found to have followed administrative rules for sampling an adequate number of claims when potential fraud was identified. Key findings at MCOs for the audit period of fiscal years 2014 and 2015 included:

- Seton had not conducted basic program integrity functions required by contract and did not dedicate staff to program integrity; had not conducted claims data analysis or verified whether services paid had been provided; did not maintain a log to keep track of potential fraud and abuse; opened no investigations, made no recoveries, and made no referrals to OIG;
- Sendero did not have an active SIU and did not identify any fraud, waste, or abuse during these two fiscal years;
- Cigna-HealthSpring did not conduct any post-payment claims analysis to identify potential fraud;
- United fully outsourced SIU operations to a third-party vendor, HMS, but did not make any recoveries during the audit period; did not collect $1.1 million in overpayments identified in reports to OIG; paid $2.6 billion in claims; and only collected $396,301 in claims based on identification made by its subcontracted pharmacy benefit manager; and

- Scott and White hired the third-party vendor HMS to conduct claims data analysis and generate reports in a portal. The MCO retained less than 1.0 FTE position in its SIU. During the two years reviewed by auditors, MCO staff reviewed these reports on one day. The MCO did not open any investigations using claims data analysis. The MCO paid $206.0 million in claims and made no recoveries.

Although some MCOs had more robust SIU activities, in fiscal year 2015, MCOs in Texas collectively recovered less than 0.02 percent of expenditures, representing $2.5 million. MCOs referred less than 0.08 percent of claims to HHSC for investigation, representing $9.9 million in claims value. MCOs have indicated that prior authorizations reduce the need to make recoveries after payment. However, prior authorization systems are not typically designed specifically to control fraud. For example, the MCO Cigna-HealthSpring conducts routine prepayment checks of claims to detect duplicate payments, incorrect coding, and rate errors. According to HHSC OIG's audit report, "these prepayment reviews are standard business practice, but do not constitute prepayment analysis for fraud, waste, and abuse detection."

The audits that HHSC OIG initiated represent an increase in oversight of MCO SIUs. Improvements will likely require significant changes and investments in contract enforcement and monitoring.

IMPROVE OVERSIGHT AND IMPLEMENTATION OF PRIOR AUTHORIZATION FOR ANTIPSYCHOTIC MEDICATION IN MEDICAID

Effective management of schizophrenia and other severe and persistent mental illnesses requires continuous access to antipsychotic medications. Treatment discontinuity for this population has an effect on cognitive functioning and mental health and may lead to hospitalizations and other adverse events, which increase healthcare expenditures. In Texas, the antipsychotic drug class is the greatest expenditure for drugs in the Medicaid program. In state fiscal year 2015, the combined expenditure for antipsychotic drugs among approximately 130,126 Medicaid fee for service and managed care clients was $342.0 million.

The Texas Vendor Drug Program provides access to outpatient drugs for persons enrolled in Medicaid. The program has implemented access restrictions to the Medicaid pharmacy benefit to divert clients to lower-cost medications, including for antipsychotics. In fiscal year 2004, the program implemented prior authorization restrictions which require providers to obtain authorization before certain medications can be dispensed. Prior-authorization is required for non-preferred drugs. Preferred drugs are pre-approved as long as their uses meet certain clinical criteria which are typically resolved through automated checks. Some of these policies were intended to reduce costs but may have had a negative impact on access and outcomes for clients requiring treatment with antipsychotics as they limit access to medications prescribed by treating physicians. Additionally, Medicaid managed care organizations have not consistently implemented the appropriate prior authorization policies for antipsychotic medications.

Effective March 2012, most Medicaid clients began obtaining their prescription drug benefits through a managed care organization, as required by statute. Statute requires Medicaid managed care organizations to adhere to the Vendor Drug Program's preferred drug list and prior authorization procedures and requirements until August 31, 2018. Medicaid managed care organizations have not consistently met contractual obligations related to the implementation of prior authorization policies for antipsychotic medications. Variation in practices among Medicaid managed care organizations can result in barriers to obtaining prior authorization for antipsychotic medication. Addressing these barriers would help ensure that Texas Medicaid clients are not subject to restrictions that could negatively affect the quality and timing of care.

CONCERNS

- Policies intended to reduce costs for antipsychotic drugs may have had a negative impact on client access and health outcomes. Evaluations conducted in other states reveal negative impacts on access to treatment, hospitalizations, and other after effects when antipsychotics are subject to prior authorization. In fiscal year 2015, the number of Texas Medicaid clients experiencing a denial for prescribed antipsychotic drugs tripled.
- Managed care organizations are not meeting Vendor Drug Program requirements regarding prior authorization criteria, processing times, denial and approval notices, and data sharing of clients' clinical histories among health plans. This results in barriers to obtaining prior authorization for antipsychotic medication, negative client and provider experiences, and untimely care.
- Medicaid managed care organization pharmacy reporting consists of self-reported information. Some of this information is validated by the Health and Human Services Commission through annual reviews of managed care financial statistical reports; however, these reviews do not focus on compliance with drug utilization requirements. As a result, the state cannot ensure managed care organization compliance with contract requirements and state and federal law.

OPTIONS

- **Option 1:** Amend statute to require the Drug Utilization Review Board to evaluate the clinical impact of changes made at least since January 2014 to prior authorization and preferred drug policies for antipsychotic drugs. If the Board determines these changes have had a negative impact on health outcomes and client access, it should eliminate or revise these policies.
- **Option 2:** Amend statute to require the Health and Human Services Commission to increase oversight of

Medicaid managed care organization implementation of prior authorization requirements in the Vendor Drug Program and validate quarterly pharmacy encounter and self-reported data collected from Medicaid health plans.

- ♦ **Option 3:** Amend statute to require a one-time report from the Health and Human Services Commission on steps taken to increase oversight of compliance with prior authorization requirements and validate data collected from Medicaid health plans. The report would also include a description of corrective actions taken to address any identified non-compliance with prior authorization requirements, validate data, and a plan to ensure conformity with prior authorization policies after fiscal year 2018.

DISCUSSION

Antipsychotic medications treat psychosis, a mental condition affecting a person's perception of reality. Psychosis is characterized by disturbed thoughts and perceptions and a general difficulty understanding what is real. Symptoms of psychosis include delusions, hallucinations, incoherent speech, and unusual, inappropriate behavior. Psychosis can be accompanied by depression, anxiety, sleep problems, social withdrawal, and lack of motivation. Psychosis can result from a mental disorder such as schizophrenia, bipolar disorder, or very severe depression.

Studies of psychosis in persons with schizophrenia have demonstrated the importance of treatment adherence in this group. Non-adherence to treatment with antipsychotic medication significantly increases the risk of relapse in persons with schizophrenia following the first psychotic episode. One study found that discontinuing antipsychotic drug therapy increased the risk of relapse by almost five times. A 2007 study in the Journal of Clinical Psychiatry shows that effective management of schizophrenia depends on medication adherence and relapse prevention. A frequently cited study published in the New England Journal of Medicine in 2005, the Clinical Antipsychotic Trials of Intervention Effectiveness (CATIE), found that 74.0 percent of patients discontinued their assigned treatment within 18 months due to inefficacy, intolerable side effects, or other reasons, suggesting that persons with schizophrenia are particularly vulnerable to relapse.

Psychotic episodes can have lasting effects on a person's cognitive functioning. For example, most persons with schizophrenia experience multiple relapses, each of which carry biological risks. Research suggests that each period of psychosis can advance the progression of disease. These progressions can prevent persons with schizophrenia from returning to their previous levels of functioning, and their symptoms can become less responsive to treatment.

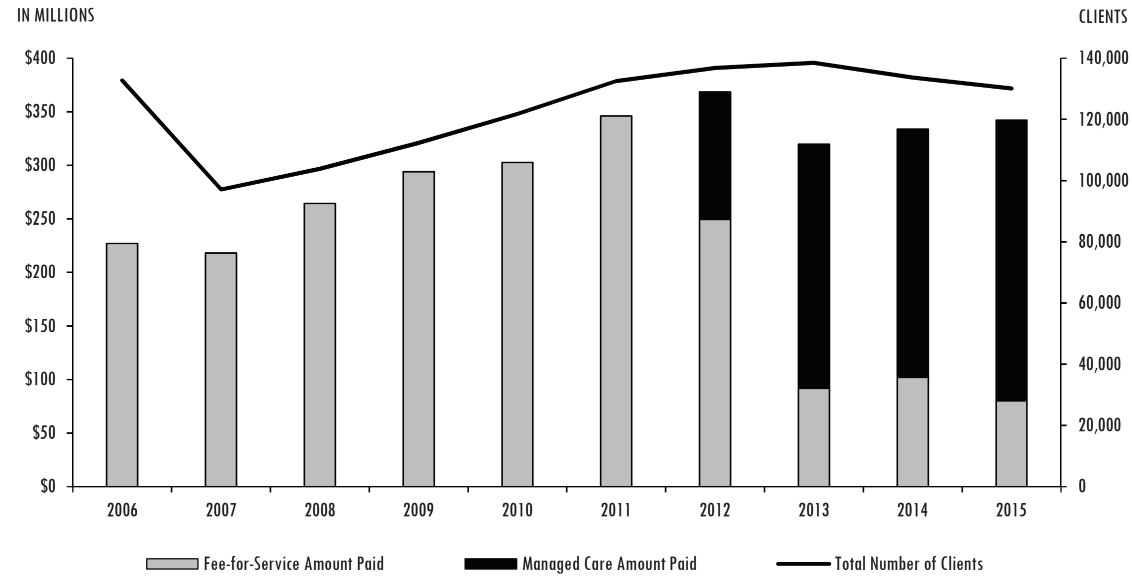
COST CONTAINMENT

The antipsychotic drug class is the greatest drug expenditure for the Texas Medicaid program. In state fiscal year 2015, the combined expenditure for antipsychotic drugs among approximately 130,126 Medicaid fee for service and managed care clients was almost $342.0 million. **Figure 1** shows the number of Medicaid clients who were prescribed antipsychotic medications and associated spending on antipsychotic medications, by state fiscal year and Medicaid program. The figure illustrates that between state fiscal years 2006 and 2015, the state of Texas increased spending on antipsychotics by 50.6 percent and provided this medication to 1.9 percent fewer Medicaid clients. In state fiscal year 2015, spending per client on antipsychotics was approximately $2,628.

Given the high cost of these drugs, many states have implemented cost containment initiatives to slow the growth of Medicaid drug spending, such as prior authorization requirements, step therapy or fail-first policies, and quantity limits. Studies show that some cost containment initiatives in other states have placed clients at risk of medication discontinuation. In Maine, prior authorization and fail-first policies that began in 2003 reduced the use of non-preferred antipsychotics requiring prior authorization, but these policies did not increase the use of preferred medications or the rates of switching. After the new policy, Medicaid patients had a 29.0 percent greater risk of discontinuing medication than a comparison group that initiated treatment before the change. The policy was suspended in 2004.

A study that compared medication access problems among psychiatric patients in 10 state Medicaid programs found that patients subject to prior authorization were 7.8 times as likely to experience a medication access problem than those not subject to this restriction. Patients subject to the use of preferred drug or formulary lists were 5.4 times as likely to experience a medication access or continuity problem, and patients subject to step therapy and fail-first protocols were 4.7 times as likely to experience a medication access or continuity problem. Patients with medication access problems in turn had 3.6 times greater likelihood of adverse events, including emergency visits, hospitalizations, homelessness, suicidal

FIGURE 1
MEDICAID CLIENTS PRESCRIBED ANTIPSYCHOTIC MEDICATION AND ASSOCIATED SPENDING, BY MEDICAID PROGRAM
FISCAL YEARS 2006 TO 2015



Notes:
(1) The Medicaid program carved the pharmacy benefit into the managed care service delivery model in fiscal year 2012.
(2) Client counts represent the distinct count of clients by client type and Medicaid program. Due to changes in eligibility during the fiscal year, clients can present in more than one category of client type and Medicaid program.
Source: Health and Human Services Commission

ideation or behavior, or incarceration. Additionally, Medicaid clients subject to prior authorization were 3.1 times more likely to experience psychiatric hospitalization.

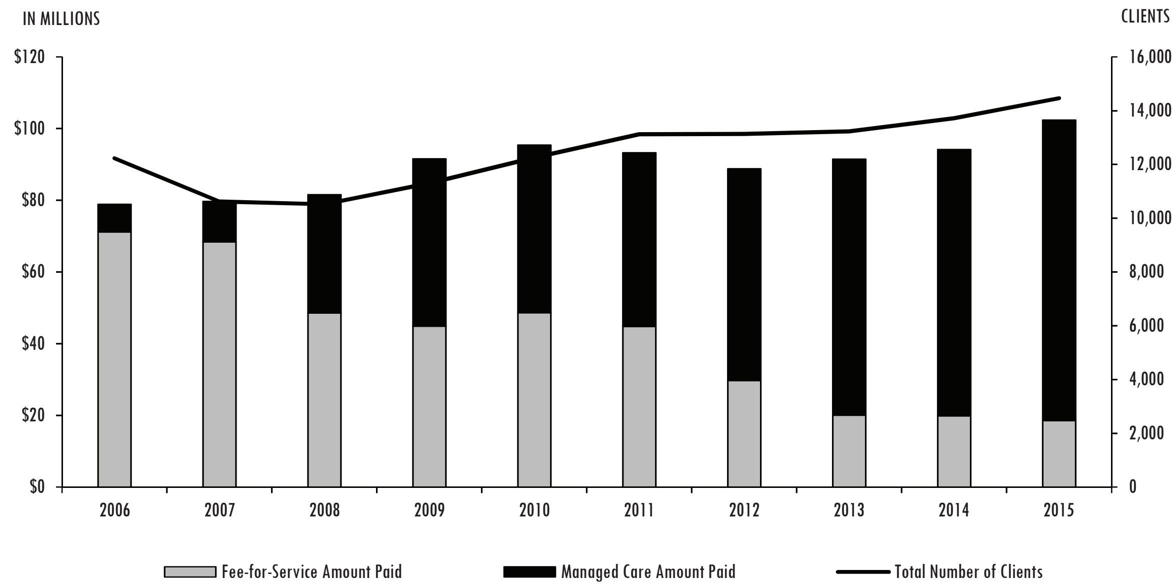
Figure 2 shows Texas Medicaid expenditures on mental health hospitalizations among Medicaid clients diagnosed with severe and persistent mental illness and prescribed antipsychotic medications. In state fiscal year 2015, Texas spent approximately $102.4 million on hospitalizations for severe and persistent mental illness among an estimated 14,465 Medicaid clients prescribed antipsychotics. The figure illustrates that between state fiscal years 2006 and 2015, the state of Texas increased expenditures on these hospitalizations by 29.8 percent as the number of hospitalized clients rose 18.2 percent. In state fiscal year 2015, spending on Medicaid clients prescribed antipsychotics comprised 83.5 percent of spending on all hospitalizations for mental illness and resulted in expenditures per hospitalized client of approximately $7,079. Hospital expenditures for clients with severe and persistent mental illness are therefore substantial, and adjustments to spending on antipsychotic can impact other medical expenses and needs.

TEXAS' PRIOR AUTHORIZATION PROGRAM

The Texas Vendor Drug Program (VDP) provides access to outpatient drugs for persons enrolled in certain state health programs, including Medicaid managed care. Drugs dispensed by pharmacies enrolled in VDP must be produced by a manufacturer that participates in a federal drug rebate program, in which the manufacturer has agreed to pay rebates to have its drugs covered by state Medicaid programs. To contain costs, in fiscal year 2004, the VDP implemented prior authorization restrictions, which require prescribing providers to obtain authorization before certain medications can be dispensed. Drugs on the Medicaid preferred drug list (PDL) are pre-approved as long as their uses meet certain clinical criteria. Non-preferred drugs, however, require prior authorization. The prior authorization process encourages the use of lower-cost preferred drugs. The PDL enables the Health and Human Services Commission (HHSC) to negotiate with pharmaceutical companies to obtain discounts, known as supplemental rebates.

The PDL is reviewed and updated annually. In some years, drugs move from preferred to non-preferred status. In the first 10 years of the PDL, HHSC included protections for Medicaid clients using antipsychotic drugs. When an

FIGURE 2
MEDICAID SPENDING ON MENTAL HEALTH HOSPITALIZATIONS AMONG CLIENTS PRESCRIBED ANTIPSYCHOTICS, BY MEDICAID PROGRAM, FISCAL YEARS 2006 TO 2015



NOTE: Mental health hospitalization was defined as having a claim or encounter for inpatient care at any time during the state fiscal year with a primary diagnosis ICD-9 code for severe and persistent illness. Spending was estimated for Medicaid clients who filled a prescription for antipsychotic medication at any time during the same state fiscal year as having been hospitalized for severe and persistent mental illness.
SOURCE: Health and Human Services Commission.

antipsychotic medication was converted to non-preferred status, Medicaid clients using the drug at the time of conversion were permanently exempted from prior authorization. Only new prescriptions were subject to prior authorization requirements after such a status change.

The Eighty-third Legislature, General Appropriations Act (GAA), 2014–15 Biennium, directed HHSC to contain Medicaid costs through the implementation of initiatives including increasing efficiencies in the VDP. To achieve the cost containment goal, HHSC eliminated the permanent exemption from prior authorization for clients using a previously preferred antipsychotic drug. This policy change took effect January 2014. However, HHSC continued to exempt clients treated by a Local Mental Health Authority (LMHA) from this policy change, citing their more fragile mental health. These clients' prior authorizations are renewed annually if they continue receiving care at LMHAs. **Figure 3** shows unique Medicaid client counts of LMHA patients with this lifetime prior authorization. According to HHSC, there were no lifetime prior authorizations assigned to LMHA clients in calendar year 2016 because the single antipsychotic changing to non-preferred status had a generic version in the PDL. The LMHA clients with lifetime prior

FIGURE 3
LOCAL MENTAL HEALTH AUTHORITY CLIENTS WITH LIFETIME PRIOR AUTHORIZATION
CALENDAR YEARS 2014 AND 2015

MEDICAID PROGRAM	2014	2015
Fee for Service	383	277
Managed Care	257	106
Total	**640**	**383**

NOTE: Represents unique Medicaid client counts.
SOURCE: Health and Human Services Commission.

authorization represent a small portion of the estimated 130,126 Medicaid clients prescribed antipsychotic medication in state fiscal year 2015.

For Medicaid clients not treated at LMHAs, prescriptions for antipsychotic drugs that have non-preferred status on the PDL are denied by HHSC unless the prescribing provider submits a prior authorization request. The request is approved only if the provider presents evidence that the client meets one of the following criteria:

- treatment failure with a preferred drug, known as a fail-first policy or step therapy;

- contraindication to a preferred drug, a condition that makes taking the drug inadvisable; or
- allergic reaction to a preferred drug.

All drugs are also subject to a separate level of prior authorization requiring that certain clinical criteria be met. These clinical prior authorizations check the drug's clinical criteria against the client's medical and drug claims histories. The authorization is intended to protect patients from risks such as inappropriate usage and drug interactions. Prescriptions that are in conflict with client records based on clinical criteria require a prior authorization request by prescribers before pharmacists can fill them. Antipsychotics can be denied in the clinical prior authorization review process for any of the following reasons:

- patients are younger than age 3;
- patients are ages 3 to 5, except if they receive aripiprazole or risperidone for the treatment of autism;
- the drug is only for the treatment of insomnia or major depressive disorder; or
- the patient is taking more than two antipsychotics at the same time.

When a Medicaid client attempts to fill a prescription for an antipsychotic drug at a Medicaid-enrolled pharmacy, the automated pharmacy approval systems process the request. If the prescription does not meet PDL and clinical criteria, the system will not authorize the pharmacy to dispense the medication. The prescribing provider must then contact the fee-for-service or managed care organization's prior authorization call center to obtain approval. The provider may also submit a request for prior authorization through electronic systems, fax, or mail. HHSC requires MCOs to provide a prior authorization decision immediately when a prescriber calls the MCO's call center. For all other prior authorization requests, HHSC or the MCO must notify the prescriber's office of a prior authorization decision no later than 24 hours after receipt of the request. If the MCO cannot make a timely prior authorization determination, the MCO must authorize the client to receive an emergency supply (e.g., a 72-hour supply) of the medication pending resolution of the request.

When a Medicaid client moves from fee-for-service to managed care, HHSC provides MCOs pharmacy-related information (paid and reversed claims history) and three years of medical information including physical, behavioral and dental paid claims. HHSC also follows this practice for all clients switching between Medicaid health plans. The MCOs must also provide health plan information about a client's prior authorization and medication history if it is requested when a client moves to a new health plan. To that end, MCOs are contractually required to develop a standard format for sharing member medication and prior authorization history. HHSC expects the former MCO to respond with the requested information within 72-hours of the new MCO's request. In addition to the three years of claims history HHSC provides, MCOs could share client service plans, member health assessments, non-claim medical records, and other client history that could facilitate the prior authorization process by providing records of previous attempts to try preferred drugs that are not captured in claims.

As an oversight mechanism, HHSC requests quarterly pharmacy reports from MCOs including approval timelines and emergency supply disposing data. Some of the requested data is self-reported, some comes from MCO encounter records, and some comes from HHSC financial data. Although the agency can take corrective action against MCOs that do not adhere to contractual requirements and performance standards, HHSC has not audited the self-reported data on the quarterly pharmacy reports or validated the encounter records to confirm compliance with prior authorization requirements.

HHSC does monitor compliance upon receipt of a stakeholder complaint or inquiry regarding a specific issue, such as access to care due to possible restrictions imposed by an MCO or its pharmacy benefit manager (PBM). HHSC may impose remedies and enforcement actions, including liquidated damages, if the MCO or its PBM is found out of compliance. However, according to HHSC, no violations have been identified through this complaint process regarding MCO or PBM adherence to clinical prior authorization requirements, and no enforcement actions have been taken.

In addition to the VDP prior authorization requirements that all MCOs must follow, health plans can request to apply additional criteria by submitting supporting documentation for the policy to the Texas Drug Utilization Review (DUR) Board. Since April 2014, prior authorization proposals have been solicited from MCOs quarterly, based on the drug classes to be reviewed at the subsequent board meeting. HHSC staff review the submitted clinical prior authorization proposals for relevance, efficacy, effects on clients, effects on prescribers, implementation feasibility, and adherence to the Medicaid formulary and PDL. Selected proposal topics are consolidated into a single criteria set and prepared for presentation to the DUR Board for approval. During the board meeting, public testimony is accepted, and board members discuss the proposals. If the board approves a prior authorization proposal, each MCO may choose to implement the prior authorization criteria or not, depending on the applicability to its clients. If implemented, the MCO criteria must match the approved criteria or be less stringent. MCOs are not authorized to implement any prior authorization criteria that have not been approved by the DUR.

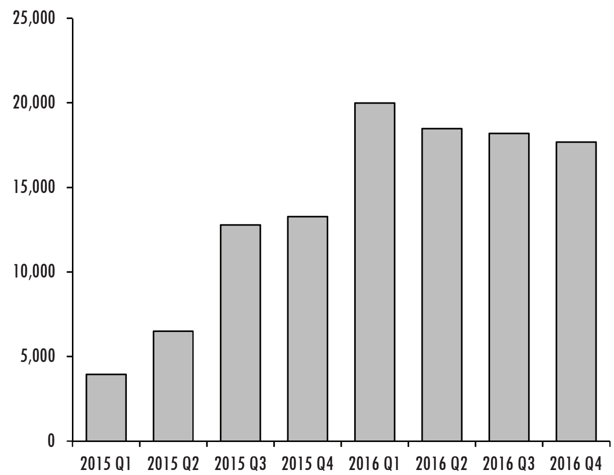
HHSC conducts retrospective reviews of medication prescribing patterns for individual physicians based on peer-reviewed medical literature. When the agency identifies providers with irregular prescribing patterns, it communicates directly with the provider and recommends educational intervention. However, retrospective reviews are used exclusively to study provider prescribing patterns. HHSC does not evaluate or monitor the effects of prior authorization practices on drug access after implementation. According to the agency, it reviews each submitted proposal before it is presented to the DUR Board. Proposals that would negatively affect the PDL are corrected or not presented. This approach to oversight does not allow for reconsideration or changes based on a retrospective review of the challenges of implementing prior authorization.

Figure 4 shows the number of clients each fiscal quarter that experienced a denial of an antipsychotic prescription ordered by their physician. In the first fiscal quarter of 2015, 3,933 unique clients experienced a denial. By the third fiscal quarter of 2015, the number of clients denied more than tripled, rising to 12,780 clients.

Figure 5 shows that the percentage of antipsychotic prescriptions denied by an MCO has more than quadrupled, increasing from 3.3 percent of unique prescriptions in the first quarter of fiscal year 2015 to 13.3 percent in the fourth quarter of 2016. The increases in the number of clients and prescriptions denied indicate a potential increase in challenges for clients attempting to access antipsychotic drugs. The final disposition of the denials, however, was not available for analysis in this report. Some clients, for example, may have received approval after an initial denial. Additionally, it is unclear if these increases in denials are linked to the 2014 change requiring clients stable on an antipsychotic to seek prior authorization for non-preferred drugs.

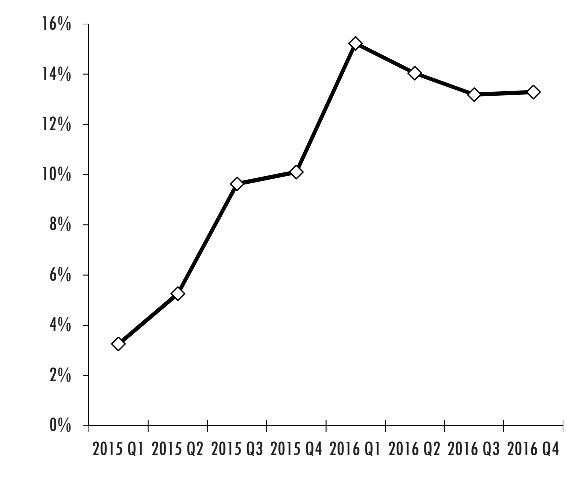
To address the potential impact on client health outcomes, Option 1 would amend statute to require the DUR Board to

FIGURE 4
UNIQUE MEDICAID CLIENTS SUBJECT TO A PRIOR AUTHORIZATION DENIAL FOR ANTIPSYCHOTIC PRESCRIPTION, STATE FISCAL QUARTERS 2015 TO 2016



Note: The final disposition of these denials is unknown, some clients may have received approval after an initial denial.
Source: Health and Human Services Commission.

FIGURE 5
PERCENTAGE OF UNIQUE ANTIPSYCHOTIC PRESCRIPTIONS DENIED STATE FISCAL QUARTERS 2015 TO 2016



Source: Health and Human Services Commission.

evaluate the clinical impact of changes to prior authorization and preferred drug policies for antipsychotic drugs made since January 2014, at a minimum. If the DUR Board determines these changes have had a negative impact on health outcomes and client access, it should eliminate or revise the policies, including potential elimination of first fail policies for the antipsychotic drug class. The DUR Board's evaluation should be provided to the Legislative Budget Board and Office of the Governor when it is completed.

PRIOR AUTHORIZATION IMPLEMENTATION BY MANAGED CARE ORGANIZATIONS

Since March 2012, most Medicaid clients have been required to obtain their prescription drug benefits through a MCO. Statute requires both MCOs and PBMs to comply with VDP and prior authorization procedures and requirements until August 31, 2018. It is unclear whether or how HHSC will require MCOs to comply with PDL and prior authorization policies after this date.

In 2012, just after Texas Medicaid carved pharmacy benefits into managed care, HHSC contracted with an auditing firm to conduct a performance audit of a sample of three PBMs subcontracted by Medicaid MCOs to manage the pharmacy benefit. The audit found there were instances of non-compliance regarding PBM adherence to the HHSC VDP formulary requirements; four of the five audited MCOs did not adhere to the PDL as prescribed by HHSC VDP during various periods; and two PBMs were not in compliance with statutory requirements, as their prior authorization process was more stringent than HHSC VDP. Additionally, the audit could not determine if claims with a prior authorization were paid correctly at two PBMs. In its October 2016 audit of Medicaid managed care contract processes, the State Auditor's Office (SAO) found that MCO pharmacy reporting is not consistently verified by HHSC. Oversight of PBMs was found to rely on a combination of self-reported information from MCOs and limited verification. This verification was for selected portions of the self-reported information through annual reviews of MCO financial statistical reports that do not focus specifically on compliance with drug utilization requirements. SAO found that HHSC did not issue corrective action for the PBM audit in 2012.

To evaluate recent MCO implementation of antipsychotic PDL and PA policies, the Texas Council of Community Centers surveyed its members on behalf of Legislative Budget Board (LBB) staff. The council's membership includes 39 community centers that provide services for people with intellectual and developmental disabilities, serious mental illness, or substance use disorders. These community centers see an average of 47,541 adult mental health Medicaid clients per month. The council received 36 responses from staff at 27 of 39 community centers. Not all respondents answered every survey item. Respondents included medical directors, psychiatric services officers, medical service coordinators, psychiatrists, nursing supervisors, licensed vocational nurses, registered nurses, and other clinical staff. The survey results suggest compliance with HHSC's policies varies across MCOs. Many respondents reported problems with the implementation and clinical effects of the prior authorization program.

According to survey results, when contacting MCO prior authorization call centers, prescribing providers are often transferred multiple times, and the calls are placed on hold for more than an hour for individual prior authorization requests. Most respondents reported delays in obtaining prior authorization for antipsychotic prescriptions, including delays in receiving notification of decision from MCOs. MCOs do not regularly comply with the requirement to provide the client notice of a prior authorization denial. When this denial occurs, providers noted that clients might be denied prescribed antipsychotics at the pharmacy without providers becoming aware of the denial until a follow-up appointment several weeks later. Depending on how the prior authorization requirements are communicated to the Medicaid client at the pharmacy, the client might not notify the provider that a prior authorization is needed.

Centers in the survey also indicated that the VDP fail-first policy for non-preferred antipsychotic drugs presents a barrier to medication adherence. Some respondents noted that initiating treatment on a preferred drug after being stable on a non-preferred antipsychotic could cause metabolic side effects, client frustration, and deterioration of mental health. Some respondents indicated that clients who try medications they do not tolerate might stop taking the medications without informing their providers right away. In these cases, many weeks might pass until the provider is notified the client has stopped taking the drug at the next appointment. Additionally, most centers indicated that prior authorization policies affect the process of obtaining a different antipsychotic after prior authorization denial. Providers noted that additional time is required to appeal denials or to see clients for follow-up appointments to discuss and agree on different antipsychotics.

The Council of Community Centers reports that MCOs do not regularly share clients' clinical histories, which may impede facilitation of the prior authorization process. For example, clients who have previously failed on a preferred drug are sometimes asked by MCOs to try a preferred drug again. If a Medicaid client attempts to fill a prescription for a non-preferred drug and the client's claim history shows that the client has been dispensed a preferred drug recently, HHSC considers that attempt to be evidence of treatment failure. Therefore, according to the agency, the non-preferred drug should be approved. However, according to the state's Uniform Managed Care Contract, an MCO is required to provide a transferring client's drug claims and medical history only if the receiving MCO explicitly requests this information. Although HHSC does transfer three years of medical and prescription claim history, it does not regularly monitor data sharing between plans.

In addition to the three years of claim history HHSC provides, MCOs could share client service plans, member health assessments, non-claim medical records, and other client history that could ensure continuous access to prescription medication. In communications with LBB staff, representatives of the Texas Association of Community Health Plans indicated that they lack an automated process to share client records. Currently, some health plans fulfill their requirement to share client histories via an ad-hoc manual process each time a request is made. A May 2016 request by LBB staff of internal procedures at MCOs regarding their contractual obligation to develop a standard process and timeline for sharing member medication and prior authorization history indicated that some MCOs had not previously developed this internal documentation before the request. Without HHSC monitoring MCO data sharing to confirm compliance, the Council of Community Centers' reports of interactions with MCOs are some of the only sources of information regarding data sharing implementation.

The PDL is updated annually, and, therefore, prior authorizations are valid for a one-year period. Clients and providers are thus required to resubmit prior authorization requests annually. To facilitate this process, HHSC identifies Medicaid clients with expiring prior authorizations and sends letters to their prescribers to inform them of a PDL change. The letters include the updated list of preferred and non-preferred antipsychotic drugs, and a new prior authorization form prepopulated with the client's data. HHSC repeats this process every year when the PDL changes. It also extends similar assistance to clients of LMHAs who continue to be exempted from PDL changes. HHSC reports that it worked with the Council of Community Centers to develop a practice of annually submitting prior authorization requests on exempted LMHA clients' behalf. However, community centers still report that many clients do not obtain prior authorization soon after the change to a new PDL. As a result, those clients have to stop taking their medications until their prior authorization requests are approved.

Survey respondents indicated that it is easier and less time-consuming to navigate the fee-for-service prior authorization process than it is to negotiate with the MCO call centers. According to some community centers, MCOs complicate the process and cause delays or lapses in medication adherence. Nearly 25.0 percent of community centers have hired staff to work exclusively on MCO prior authorization requests, and 75.0 percent diverted resources from other programs or projects to adequately manage MCO prior authorizations.

The community centers surveyed also described two instances in which MCO prior authorization denials did not comply with PDL and prior authorization requirements. One health plan in the Medicaid STAR program denied a center's request for Risperidone, noting that the client did not have a diagnosis identified in tables included in the denial notice. However, the cited tables erroneously omitted diagnosis codes for schizoaffective disorders, which are identified by International Classification of Diseases (ICD-10) codes. The pharmacy benefit manager for this health plan contracts with several other MCOs, and that PBM's prior authorization form for antipsychotics lacks several diagnoses that are included in the VDP's antipsychotic prior authorization form. Therefore, any MCO using this PBM's prior authorization criteria is potentially rejecting claims for this antipsychotic, in violation of VDP rules.

Another health plan denied a center's request for Paxil, which is a non-preferred antidepressant. The prescribing provider's instructions were to take 20 milligrams once a day for a week, then the same dosage twice a day. The MCO did not cite any of the VDP prior authorization criteria in the denial notice but directed the provider to prescribe a higher-strength, once-daily drug, citing a dosing limit as the reason for denial. Although health plans are required by HHSC to make their prior authorization criteria for every drug available on their websites, a search of the MCO's pharmacy website reveals no documentation of this requirement. This instance is an example of how dosing limits can result in barriers to timely care. In other cases, when a client is hospitalized and stabilized on a Medicaid preferred antipsychotic, the client may be at risk of re-hospitalization if, after discharge, the health plan imposes a dosing or quantity limit that leads to prior authorization denial.

According to HHSC, prior authorization requirements do not typically specify dosing criteria. A dosing limit would be considered a change to the prior authorization criteria and would likely require approval by the DUR Board. The addition of clinical prior authorization criteria by an MCO or HHSC to a preferred drug without advance notice to the drug manufacturer may be considered a violation of the state's contract with the drug manufacturer and a violation of Texas statute.

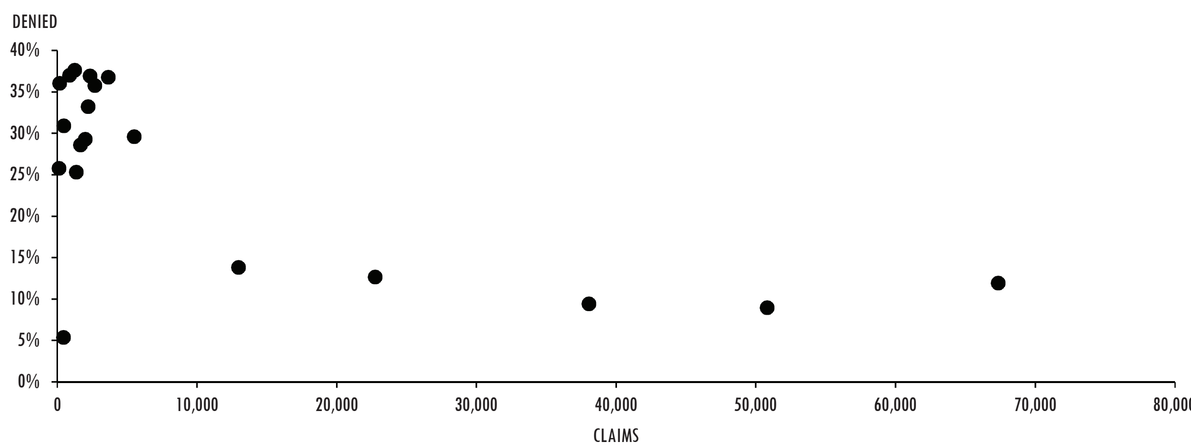
Of 31 responses to this survey item, 27 indicated that prior authorization policies negatively affect clients' ability to maintain continuous adherence to antipsychotic medication treatment. When Medicaid clients present prescriptions to fill at pharmacies, the pharmacists might inform the clients that their antipsychotic medications cannot be dispensed. These denials might not include an explanation that the prescribing providers must submit prior authorization requests to the MCOs. If the prescribing providers are not immediately notified, their ability to ensure the clients receive necessary treatment might be constrained until the next scheduled appointment. This fragmented process presents a risk of clients with a history of psychosis not receiving prescribed antipsychotics or alternate medications and potentially relapsing.

IMPROVE COMPLIANCE

According to Texas Administrative Code, Chapter 353, HHSC is responsible for audits of Medicaid MCOs and its subcontractors. Chapter 353 authorizes the agency to conduct financial, performance, and compliance audits with the scope and frequency necessary to ensure compliance with all federal and state laws. The Executive Commissioner is authorized to determine how these auditing roles and responsibilities are shared among the divisions of HHSC, including the Internal Audit Division, the Office of Inspector General, and the Medicaid/CHIP Division. As of October 2016, HHSC had not conducted a performance audit of PBM contractors since fiscal year 2012, immediately after pharmacy benefits were incorporated into the managed care service delivery model. When the PBM audit found non-compliance, HHSC did not issue corrective action.

Figure 6 depicts the denial rates by MCOs and indicates variation in the rates of denials across MCOs. At 13 MCOs, typically those with lower volumes of claims, the denial rate exceeds 25 percent. At others, it is less than 15 percent. Despite these denial rates, many MCOs reported no paid claims for 72-hour emergency supplies for any type of medication, including antipsychotics. Inconsistent implementation of prior authorization requirements across Medicaid MCOs suggests comprehensive oversight and auditing activities are necessary on a regular basis. To ensure compliance with PDL clinical and prior authorization criteria, timeliness, client and provider notification, and MCO data sharing, Option 2 would amend statue to require HHSC to increase oversight of Medicaid managed care implementation of prior authorization requirements in the VDP and report on steps taken to increase oversight. To achieve this, the agency should regularly audit MCO pharmacy benefit managers, prior authorization call centers, denials of prior authorization requests, and sharing of clients' medical histories among health plans. Survey results from community providers highlight the need for HHSC to

FIGURE 6
ANTIPSYCHOTIC PRESCRIPTIONS AND DENIALS BY MCO, FOURTH QUARTER 2016



SOURCE: Health and Human Services Commission.

review provider and Medicaid member experiences navigating the prior authorization process.

To ensure HHSC can adequately monitor managed care compliance with contract requirements and state and federal law, Option 2 would also amend statute to require HHSC to validate the quarterly pharmacy encounter and self-reported data collected from Medicaid health plans. Data validation should focus on data used to measure compliance with drug utilization requirements, including prior authorization.

Per existing statutory authority, the HHSC Executive Commissioner would determine how the auditing and data validation requirements that would result from implementation of Option 2 should be implemented by the Internal Audit Division, the Office of Inspector General, and the Medicaid/CHIP Division. To allow for Legislative oversight of actions taken to address Option 2, Option 3 would amend statute to establish a one-time reporting requirement for HHSC to summarize steps taken to increase oversight of compliance with prior authorization requirements in VDP and validate quarterly pharmacy data collected from Medicaid health plans. The report should also include descriptions of corrective actions taken by MCOs and PBMs to address any identified non-compliance with prior authorization requirements.

Additionally, it is unclear how possible changes to the requirement for MCOs and PBMs to comply with PDL and prior authorization procedures and requirements after fiscal year 2018 could impact access to prescriptions, including antipsychotic medication. If MCOs each develop their own formulary as a result of these changes, there could be up to 19 formularies to monitor rather than the single formulary that currently applies to all MCOs. Therefore, Option 3 would also require HHSC to include a plan to monitor future MCO compliance with prior authorization policies after fiscal year 2018 in this report. The report would be due no later than October 1, 2018 and should be provided to the Office of the Governor, the Legislative Budget Board, and Legislative committees responsible for oversight of health and human services agencies.

FISCAL IMPACT OF THE OPTIONS

It is assumed that the options in this report would have no significant fiscal impact and could be implemented with existing resources. The first option would require the DUR Board to evaluate the clinical impact of recent changes to prior authorization and preferred drug policies for antipsychotic drugs. This evaluation could be conducted within existing resources. If the board makes changes to policies based on the results of the evaluation, this could have a secondary fiscal impact on pharmaceutical spending in Medicaid. Secondary impacts could also include impacts on acute care services, some of which may offset pharmaceutical spending through reduced hospitalizations and improved health outcomes. The net fiscal impact of these potential secondary impacts cannot be determined.

Option 2 would require HHSC to increase oversight of prior authorization requirements through auditing. This could be done using HHSC's existing internal performance auditing function. It would also require HHSC to validate data reported from pharmacies and Medicaid health plans. The agency already collects data regarding drug utilization and prior authorization compliance, and improving validation of this data would allow it to be used to better ensure compliance with drug utilization requirements. Option 3 would require HHSC to report to the Legislature on steps taken to implement Option 2, any corrective actions taken to improve compliance with prior authorization requirements and pharmacy data, and the agency's plan to ensure compliance with prior authorization requirements after fiscal year 2018. This report could be completed using existing resources.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

IMPROVE THE COST-EFFECTIVENESS OF MEDICAL TRANSPORTATION SERVICES FOR TEXAS MEDICAID CLIENTS

The Texas Medical Transportation Program provides nonemergency medical transportation to covered medical appointments for Medicaid clients who have no alternative means of transportation. Medicaid members in Texas made an estimated 3.6 million trips using this program in fiscal year 2015 at an All Funds cost of $211.9 million. Before fiscal year 2009, the Medical Transportation Program was operated by the state, which paid transportation providers a fee for each trip provided. The Eighty-first Legislature, 2009, directed the Texas Health and Human Services Commission to implement a capitated broker model in areas of the state where it could be sustained. A capitated broker model pays a set rate per eligible client in the region, whether the program is used or not. To mitigate operational risk concerns, the agency developed a regional pilot. However, statute was amended in 2013 to implement the broker model statewide before the results of this pilot were available.

Implementation of the broker model was intended to improve the cost-effectiveness of the program. To date, the broker model has not achieved this goal. Costs per client served have increased, access to transportation services has decreased, and complaints from clients have increased. Since implementation of the broker model, costs per trip have increased from $22.31 to $59.40. Conversely, the percentage of Medicaid clients that are served by the program has decreased by one-half from fiscal years 2009 to 2015. In regions that converted to broker management in fiscal year 2015, substantiated complaints increased 43.4 percent.

These cost and quality issues have been due in part to procurement and contract management failures. The Health and Human Services Commission did not, as required, seek competitive bids based on price in the most recent expansion of the model. The agency also selected vendors with performance risks rather than vendors recommended by program staff. As a result, contracts were awarded to companies with histories of poor performance. The Health and Human Services Commission considers almost all the vendors in the program to pose a high risk to the state and to Medicaid clients. The agency has also canceled two contracts due to client safety risks, contract violations, and financial issues. Increasing external oversight and evaluation and authorizing the Health and Human Services Commission to use the most cost-effective model would ensure that the program provides access to services at a lower cost per trip.

FACTS AND FINDINGS

- ♦ In fiscal year 2009, one in four Medicaid clients younger than age 21 had unmet transportation needs. Although comparable measures are not available for recent fiscal years, the percentage of Medicaid clients served by the Medical Transportation Program has decreased from 7.7 percent of clients in 2009 to 3.8 percent in fiscal year 2015. Program changes made by the Health and Human Services Commission may have had the greatest effects on access, however, the conversion to a broker model also coincided with decreases in the number of medical transportation users.
- ♦ Since implementation of broker management, costs per trip have increased from $22.31 to $59.40. As a result, Legislative Budget Board staff estimate that the 3.6 million trips provided in fiscal year 2016 cost approximately $120.2 million more in All Funds compared to what operations through fee-for-service would have cost in fiscal year 2016.

CONCERNS

- ♦ The goal of the Medical Transportation Program is to provide cost-effective transportation to clients who have no other means of transportation to medical appointments. However, no mechanism exists to track unmet transportation needs and determine if the program is achieving this goal.
- ♦ The Health and Human Services Commission established conflicting contract performance reporting requirements, failed to establish data sources, and has not collected the appropriate data. For example, the agency does not systematically measure whether clients are transported on time to medical appointments. Additionally, surveys intended to measure the quality of services produce unreliable data due to differences in methodologies across survey firms.

- The Health and Human Services Commission has not incorporated cost per trip in its monitoring of the cost performance of the Medical Transportation Program. As a result, the agency does not adequately monitor the cost-effectiveness of services provided by the program.

- It is unclear whether a competitive market of qualified brokers is available to provide more cost-effective services than direct payment to providers through a fee-for-service model. According to the Health and Human Services Commission, contracts for 11 of the 12 broker operated regions pose a high risk to the state. Both spending per trip and complaints have increased in the broker model. Many of these complaints relate to failures to transport clients to medical appointments. The agency has also cancelled two contracts due to client safety risks, contract violations, and financial issues.

OPTIONS

- **Option 1:** Include a rider in the 2018–19 General Appropriations Bill requiring the Health and Human Services Commission to notify the Legislative Budget Board and relevant standing committees of the Legislature if the percentage of Medicaid clients with unmet transportation needs rises above levels reported in calendar year 2012. The agency would be required to develop a corrective action plan to remediate increases in unmet transportation needs.

- **Option 2:** Amend statute to require the Health and Human Services Commission to hire a single, independent vendor to conduct surveys of customer satisfaction and unmet transportation needs.

- **Option 3:** Include a rider in the 2018–19 General Appropriations Bill requiring the Health and Human Services Commission to measure and report the average costs per trip of the program at the end of each fiscal year to the Legislature.

- **Option 4:** Amend statute to authorize the Health and Human Services Commission to use the most cost-effective model of delivering medical transportation services. The agency would be required to conduct a needs assessment before any reprocurement of broker services and establish a cost threshold for accepting bids. Include a contingency rider in the 2018–19 General Appropriations Bill to require the agency to seek Legislative Budget Board approval for this cost threshold. Contracts would only be awarded to brokers in regions where qualified vendors bid at prices that meet or fall below this cost threshold.

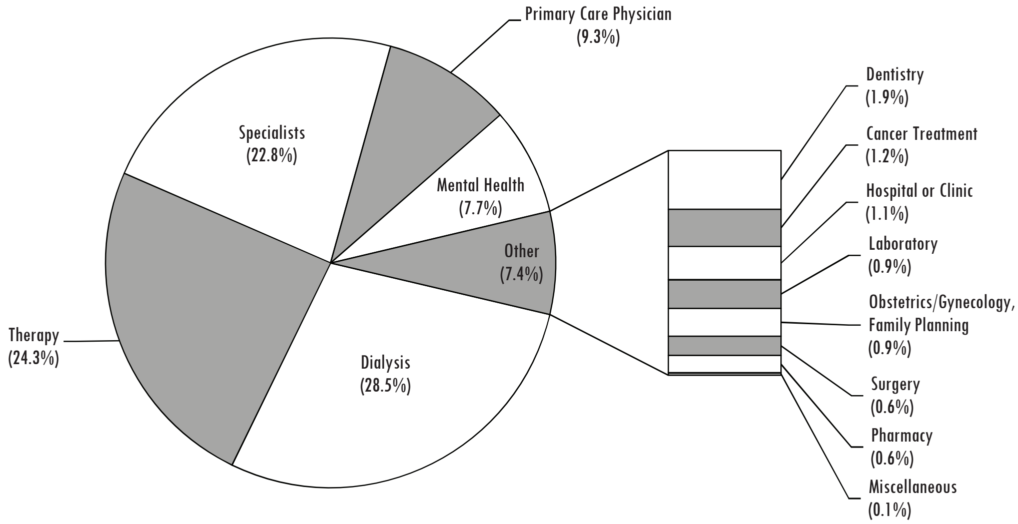
DISCUSSION

The Texas Medical Transportation Program (MTP) provides nonemergency medical transportation (NEMT) to covered medical appointments for Medicaid clients who have no alternative means of transportation. Medicaid clients may experience difficulties securing transportation to medical appointments for a variety of reasons. For example, some clients may not have the means to purchase a car or pay fuel costs for trips to medical appointments. Others may have disabilities and health impairments that limit their abilities to drive or use public transportation. Additionally, the type of treatment clients receive can prevent them from safely transporting themselves. For example, clients might not be able to safely transport themselves after receiving dialysis treatment, chemotherapy, or surgery. Access to NEMT could be required for these clients to safely continue treatment. **Figure 1** shows the types of visits for which Medicaid clients in Texas received NEMT in fiscal year 2015.

Without access to NEMT services, these clients may miss medical appointments. Several national research studies have shown that transportation difficulties are associated with adverse effects on long-term health and quality of life. Delays in access to care due to a lack of transportation have also been shown to increase the need for emergency care and preventable hospitalizations. According to a 2007 survey of Texas Medicaid clients conducted by the Public Policy Research Institute at Texas A&M University, approximately one-third of children enrolled in Texas Medicaid missed medical appointments as a result of transportation barriers. Half of these, or one-sixth of children enrolled in Texas Medicaid, missed visits for routine care appointments. Among caregivers whose children missed medical appointments, 35.0 percent reported needing emergency care services as a result of missing these routine appointments. According to the Public Policy Research Institute, these findings indicate that healthcare costs could be reduced through improved access to transportation.

In Texas, a variety of NEMT services are available through MTP, which is operated by the Texas Health and Human Services Commission (HHSC). Like services in most states, Texas' MTP provides NEMT services through mass transit and dispatched vehicles. Dispatched vehicle services, typically

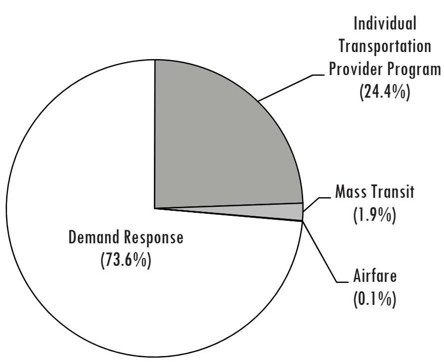
FIGURE 1
MEDICAL TRANSPORTATION PROGRAM TRIPS BY TYPE OF MEDICAID-COVERED APPOINTMENT, FISCAL YEAR 2015



SOURCE: Texas Health and Human Services Commission.

referred to as demand response, are provided by individual providers. This service is available when mass transit is not available or feasible. Historically, the MTP demand response category has represented the majority of trips and spending. In fiscal year 2015, as shown in **Figure 2**, demand response represented 73.6 percent of trips, and mass transit represented 2.0 percent of trips. In the Houston, Dallas, and Austin regions, the percentage of trips using mass transit ranged from 2.0 percent to 5.0 percent. In most regions of the state, few, if any, of trips were provided using mass transit.

FIGURE 2
MEDICAL TRANSPORTATION PROGRAM TRIPS BY MODE OF TRANSPORTATION, FISCAL YEAR 2015



SOURCE: Texas Health and Human Services Commission.

Family members and friends of Medicaid clients can enroll as volunteer drivers to provide transportation services through the individual transportation provider (ITP) program within MTP. Texas also offers reimbursement for meals and lodging for overnight and extended medical stays. Certain clients with cystic fibrosis and families with children may be eligible to receive meals, lodging, and mileage reimbursement in advance through the advance funds benefit.

The advance funds benefit was established in response to class action litigation filed against HHSC in 1993, Frew vs. Commissioner of Texas Health and Human Services Commission. According to the plaintiffs, access to MTP in Texas was problematic in part due to poor customer service by HHSC and its vendors. HHSC has been party to a consent decree with the plaintiffs since 1996. The consent decree includes a variety of Medicaid program functions, including NEMT services from 1996 to 2015. By participating in the consent decree, HHSC agreed to conduct surveys of access and demonstrate improvement in these surveys.

Since the 1990s, HHSC has focused on complying with the Frew lawsuit while attempting to mitigate program integrity risks identified in state and federal audits. Although the class action lawsuit is specific to Texas, many states experience competing priorities among access, cost, and program integrity. According to the U.S. Government Accountability Office, NEMT programs represent a high-risk area of government operations. This risk is in part due to the size, complexity, and nature of the services. For example, providers often have difficulty complying with documentation requirements. Other states have also reported challenges controlling costs while ensuring access to NEMT services.

STRATEGIES TO ADMINISTER MEDICAL TRANSPORTATION

States use a variety of strategies to provide NEMT services, including operating the program directly using state agency staff. Alternatively, states can outsource management to external vendors. When states directly operate the program, state employees take requests for transportation, review eligibility, schedule trips, process claims, and develop provider networks with transportation providers. This model was used by Texas until fiscal year 2015 and is typically referred to as a fee-for-service (FFS) system because the state reimburses transportation providers directly.

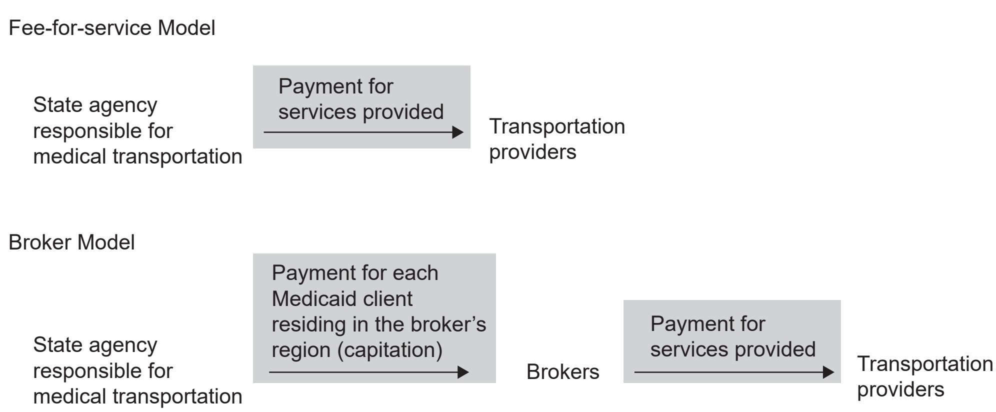
States also contract for NEMT management, and sometimes outsource a limited number of functions. Before MTP's transition to the broker model, HHSC outsourced claims processing to an administrative services contractor in fiscal year 2012. In other cases, states may choose to outsource most program management functions.

Two options are available for broadly outsourcing program management. A state can integrate NEMT within its managed care contracts for health services. In this model, managed care organizations (MCO) are responsible for health services and for NEMT services. Alternatively, a state can outsource most NEMT program management functions to third parties, which operate independently of the state agency and MCO. These third parties, typically described as brokers or managed transportation organizations (MTO), can be public transit agencies, nonprofit entities, or for-profit companies that specialize in providing brokerage services. In determining how to award contracts to brokers, some states use a single statewide NEMT contract with one broker, while others, such as Texas, use a regional broker model. As shown in **Figure 3**, transportation providers are reimbursed by brokers in this model. These brokers are paid a rate per person per month based on the number of people within their region. This fixed rate is known as capitation.

In 2003, 41.0 percent of states used a broker model. Until 2005, states were required to seek a federal waiver to operate NEMT through a broker model. The federal Deficit Reduction Act of 2005 removed this requirement and authorized states to amend their Medicaid state plan through a standardized process. The rules to implement the NEMT provisions of the Act were finalized by the U.S. Center for Medicare and Medicaid Services (CMS) in January 2009. Following these changes, the number of states using broker models expanded. By 2014, according to the Texas Transportation Institute, 63 percent of states were using a broker model for NEMT services either in-part or in whole.

The effects of this transition to NEMT broker models has been unclear. Interviews and surveys of state agencies responsible for NEMT administration typically suggest that brokers have achieved cost savings without compromising quality. According to several research institutions, however, minimal academic peer-reviewed research from independent sources supporting these assertions has been conducted.

FIGURE 3
NONEMERGENT MEDICAL TRANSPORTATION MODELS, FISCAL YEAR 2016



NOTE: The managed care organization (MCO) model works similarly to the broker model. The capitation rate in an MCO model would include payments for transportation and for health services.
SOURCE: Legislative Budget Board.

TRANSPORTATION BROKERS IN TEXAS

As shown in **Figure 4**, until 2012, Texas MTP was implemented using a FFS system, which experienced a number of problems. In the 1990s, the former Texas Department of Health was responsible for operating the program. According to research conducted by the federal Transit Cooperative Research Program, the Department of Health focused on maximizing competition at the expense of quality. The standards for drivers and vehicle safety, for example, were lower than the standards required of public transit operators. As a result, higher-quality public transit vendors were priced out of the Texas NEMT program during the late 1990s.

A 2002 audit conducted by the Texas State Auditor's Office (SAO) indicated negative effects from this strategy. The audit found that the Texas Department of Health failed to consider any factors other than price in its procurement. This procurement process led to failures to deliver services by unprepared vendors. In one region, the agency canceled a contract after eight weeks due to the contractor's inability to deliver required services. In some cases, although price was the sole factor, the agency did not negotiate rates or achieve maximum cost savings. The audit found that, overall, the agency did not adequately manage the procurement or program.

Based in part on these audit findings, in fiscal year 2003, the Texas Comptroller of Public Accounts (CPA) recommended transferring operations from the Department of Health to HHSC. CPA also recommended outsourcing management of MTP to either a single statewide broker or regional brokers.

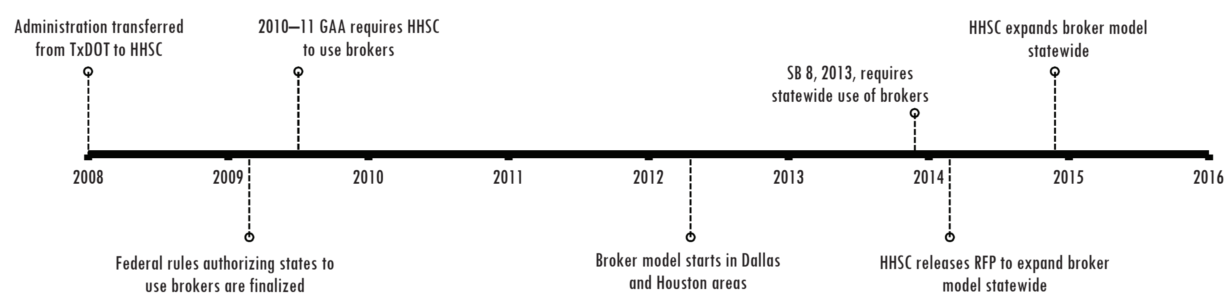
During fiscal year 2003, the Seventy-eighth Legislature transferred MTP to HHSC as part of a system wide consolidation of health and human services. HHSC then delegated operational responsibility of the program to the Texas Department of Transportation (TxDOT). According to a 2007 SAO audit, TxDOT addressed the previous procurement problems in the program. In the procurement reviewed by SAO, TxDOT considered both price and vendor qualifications in making awards. However, the audit identified a number of internal control and oversight weaknesses and concerns about the quality of services.

Before the results of this audit were published, the Legislature discontinued delegation of MTP operations to TxDOT. This decision was based on authorization included in the federal Deficit Reduction Act of 2005 to amend Medicaid state plans to use the broker model. Senate Bill 10, Eightieth Legislature, 2007, authorized HHSC to contract for MTP using public and private transportation providers or regional transportation brokers.

Although Senate Bill 10, 2007, gave HHSC the authority to change the MTP model, the federal rules authorizing state plan amendments were not effective until January 20, 2009. After the federal rules were finalized, the Eighty-first Legislature, General Appropriations Act (GAA), 2010–11 Biennium, required HHSC to use a capitated regional broker model "in areas of the state that the Commission finds can sustain a regionalized model."

HHSC's Office of General Counsel subsequently determined that the 2010–11 GAA did not require use of the broker model statewide. An August 2009 memo to the HHSC

FIGURE 4
POLICY CHANGES RELATED TO THE TEXAS MEDICAID MEDICAL TRANSPORTATION PROGRAM
CALENDAR YEARS 2005 TO 2015



Notes:
(1) TxDOT = Texas Department of Transportation; HHSC = Texas Health and Human Services Commission; RFP = request for proposals; GAA = General App[ropriations Act.
(2) SB 8 refers to Senate Bill 8, Eighty-third Legislature, Regular Session, 2013.
Source: Legislative Budget Board.

Executive Commissioner documented concerns about the potential effects of a broker model on access and quality. HHSC analysis showed that Texas' benefit package was different from what transportation brokers were accustomed to managing. In particular, the advance funds benefit used by some to receive NEMT services was established in response to the Frew decree, and it was unclear how a broker model based on capitation would account for these costs.

As a result of these concerns, HHSC staff recommended that the broker model be piloted. The intent of the broker pilot was to give HHSC information to evaluate the effects of the model before expanding it to other areas of the state. The agency estimated that two to four years of operations would be necessary to determine the effects of the conversion. HHSC awarded contracts for broker pilots in the Houston and Dallas regions, and operations started in March and April 2012, respectively.

Before the results of this pilot were available, the Eighty-third Legislature, Regular Session, 2013, passed Senate Bill 8, which required HHSC to operate MTP using a regional broker model across the state. The legislation required the agency to seek a federal waiver to authorize transportation brokers to directly own transportation providers. As a result, the agency did not rely on the discretion authorized by the Deficit Reduction Act of 2005. Instead, HHSC was required to amend its state plan and to receive a federal waiver. CMS authorized HHSC for a waiver effective September 1, 2014, to August 31, 2016.

PROCUREMENT OF THE BROKER MODEL

The expansion of the broker model in fiscal year 2015 resulted in HHSC issuing a request for proposals (RFP) to procure vendors to operate in 11 regions of the state. During this procurement, HHSC did not include price as a factor or properly disclose evaluation criteria in the RFP. HHSC also did not award contracts to vendors in accordance with internally developed performance criteria. These procurement issues have had negative effects on MTP.

CONSIDERATION OF PRICING

The statewide expansion of brokers in fiscal year 2015 was subject to several mandates requiring price competition. Requirements to include price in the procurement for the 2015 expansion of MTP brokers included:

- state plan disclosure requirements linked to federal law – CMS required HHSC to assure in writing that the agency could prove upon request that brokers were selected through a competitive bidding process. The process was required to include cost as a consideration to be consistent with federal rules. The cited federal rules distinguish between competitive bidding and competitive proposals. Competitive bidding, as described in these rules, requires firms to compete on price;
- state statutes requiring competitive bidding – Senate Bill 8, Eighty-third Legislature, Regular Session, 2013, required the agency to develop a capitated rate system using competitive bidding to procure the contract. The Texas procurement manual, State of Texas Contract Management Guide, and common legal definitions of bid are all based on vendors submitting prices; and
- HHSC's administrative rules – At the time of the procurement, HHSC rules required the agency to include price unless the agency documented reasons for disregarding price.

However, the RFP that HHSC issued did not require vendors to submit pricing information and the agency did not document a reason for excluding pricing from its procurement. Instead, vendors were required to submit audits of their firms to help evaluate their operational efficiency. As a result, preliminary awards were granted based on criteria other than price, including indicators of probable performance and the effects that the proposals would have on HHSC's productivity and resources. After this preliminary award, HHSC disclosed the capitation rates, and the selected vendors had to agree to these rates to receive contracts. All vendors received the same rate except for adjustments for the demographic and utilization history of each region.

Legislative Budget Board (LBB) staff interviews with HHSC staff in fiscal year 2016 indicated that the agency determined that capitation precludes bidding. HHSC does not require medical MCOs to compete on price and carried this practice forward to the transportation program despite indicators from vendors that this was not a standard practice for NEMT procurements.

After the RFP was posted, HHSC received questions from vendors. One vendor asked HHSC why it was not required to bid on price in the following question to the agency:

> Unlike any other Medicaid RFP we have encountered, the State is requesting that contractors turn in a proposal without knowing what the capitated rate will be? This

> concept that any reputable organization would go to the trouble of putting a proposal only to find later that the State's capitated rate is not sufficient is at best questionable. … Every other RFP in U.S. we are familiar with asks bidders to propose a capitated rate, why not here?

LBB staff reviewed NEMT procurements in 12 other states, all of which required vendors to submit bids with prices, including states that use actuarially sound rates. HHSC's response to the vendor's question advised the vendor to decide whether to execute the contract after HHSC set the rates.

During the RFP solicitation, the agency received similar questions from other vendors. One vendor asked, "How will the HHSC determine the 'long-term cost' of the vendor, if the HHSC is determining the capitated rates?" HHSC responded that MTO's cost performance would become a factor in subsequent rates; therefore, HHSC was seeking vendors with plans for reducing costs. The agency was also asked how best value would be determined without submission of cost proposals. The agency stated that this information is not disclosed during active procurements.

This practice conflicted with state contracting regulations and with HHSC's rules. The State of Texas Contract Management Guide, which was also in effect at the time of procurement, requires agencies to provide best value and proposal evaluation criteria within solicitations. The Guide also requires agencies to explain to potential vendors how best value will be determined and how proposals will be evaluated. In solicitations, agencies should include the weights used for each criterion. Additionally, HHSC's administrative rules required the agency to publish the criteria used to determine best value.

VENDOR SELECTION PROCESS

HHSC established specific weights internally with a detailed rubric to evaluate vendor proposals. An evaluation team composed of HHSC staff reviewed each proposal and scored it against this rubric. Despite this internal procedure, several inconsistencies occurred throughout the vendor selection process. In North Texas (Region 4), the RFP evaluation team determined that one "respondent did not demonstrate even a basic understanding of nonemergency medical transportation services or program requirements." Additionally, the vendor failed to demonstrate a financial capacity to provide broker services to HHSC. This vendor was ranked last among four proposals, but it was awarded an MTP contract in one region.

HHSC awarded contracts to the highest-scoring vendor in four of 11 regions. One vendor with a history of performance problems was awarded contracts for multiple regions. According to a 2007 audit by SAO, 16.0 percent of that vendor's contracted transportation providers had invalid driver licenses, and 19.0 percent had criminal histories. The evaluation team determined that this vendor "did not clearly address all elements of the RFP."

The reasons for these deviations were not documented or justified during the procurement process. According to LBB staff interviews with HHSC staff in fiscal year 2016, these decisions may have been made to increase the diversity of contracted vendors. If the agency had followed its evaluation criteria, the agency would have awarded contracts in most regions to a single vendor.

As **Figure 5** shows, in regions where the highest-scoring vendor won, complaints and access trends improved compared to the other regions. In regions where the highest-scoring vendor was not awarded a contract, complaints increased and access to services decreased.

Poor performance from underqualified vendors resulted in HHSC terminating contracts for the North Texas (Region 4) and South Central Texas regions (Region 8). These terminations were made seven months and 15 months, respectively, after contracts were awarded due to client safety issues and possible financial fraud. In North Texas, the termination was specifically related to concerns that the RFP evaluation team raised 15 months previously.

LBB staff has been working with HHSC to remediate these problems. On April 4, 2016, LBB staff recommended to HHSC staff that the agency reprocure the MTP contracts using competitive bidding as soon as possible. In April 2016, HHSC indicated that it would reprocure the contracts. However, HHSC subsequently renewed the broker contracts through August 31, 2018. It is unclear if the agency intends to re-procure the contracts in the future using price as a competitive factor.

In addition to procurement problems, MTP has experienced increases in cost and decreases in access to services in the FFS and broker models. These concerns are not explained solely by procurement issues.

ACCESS TRENDS

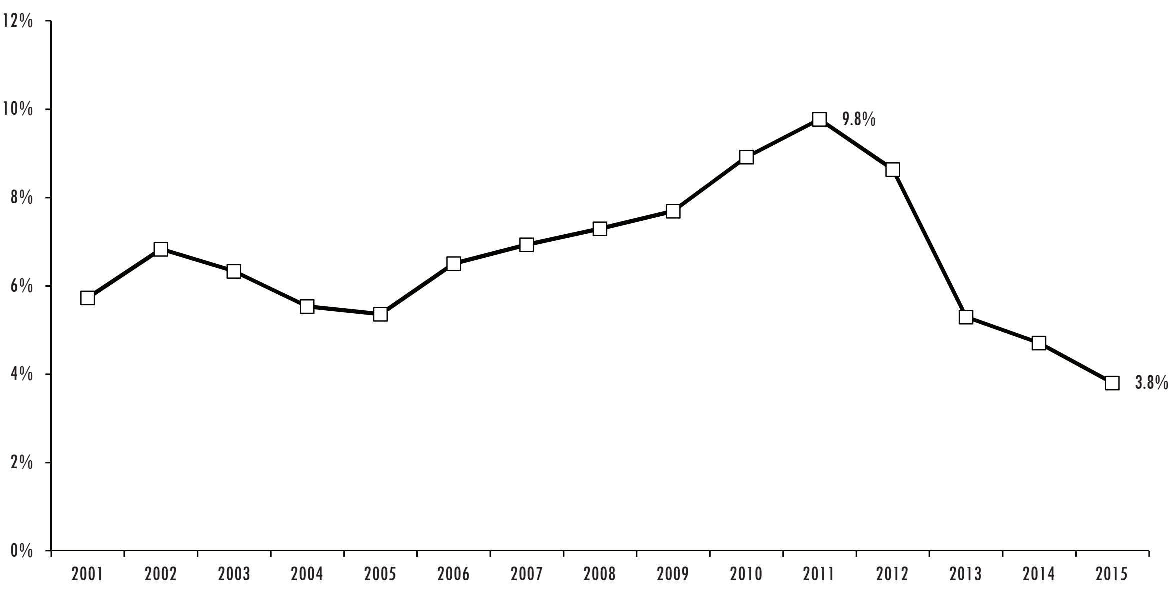
As shown in **Figure 6**, the percentage of Medicaid clients served by MTP was 7.7 percent for fiscal year 2009. At this level of utilization, 23.9 percent of Texas children enrolled

FIGURE 5
COMPARISON OF MEDICAL TRANSPORTATION PROGRAM VENDOR SCORES TO CHANGES IN ACCESS AND COMPLAINTS FISCAL YEARS 2014 TO 2015

REGION	GAP IN PROBABLE PERFORMANCE SCORE	PERCENTAGE DECREASE IN UNIQUE CLIENTS SERVED	PERCENTAGE CHANGE IN COMPLAINTS
6. Southwest Texas	(5.45)	(25.6%)	50.8%
4. North Texas	(5.21)	(11.2%)	167.6%
1. Panhandle	(3.21)	(21.0%)	110.4%
3. Northwest Central	(3.21)	(23.3%)	112.2%
10. South Texas	(3.21)	(27.1%)	23.4%
5. East Texas	(2.93)	(21.8%)	228.7%
9. Southeast Texas	(2.93)	(30.3%)	146.0%
2. West Texas	0	(2.9%)	41.8%
8. South Central Texas	0	(5.0%)	(26.6%)
11. Northeast Central	0	(10.2%)	(29.9%)
7. Central Texas	0	(14.0%)	(32.7%)

NOTE: The gap in probable performance shows the difference from the request for proposals (RFP) evaluation team's probable respondent performance score for the winning vendor to the vendor with the highest score for all RFP criteria. A score of zero indicates that the Texas Health and Human Services Commission selected the highest-scoring vendor.
SOURCE: Texas Health and Human Services Commission.

FIGURE 6
PERCENTAGE OF MEDICAID CLIENTS SERVED BY THE MEDICAL TRANSPORTATION PROGRAM, FISCAL YEARS 2001 TO 2015



SOURCES: Texas Health and Human Services Commission; Texas Department of Transportation; Texas Department of Health.

in Medicaid had unmet transportation needs. This unmet need was calculated in a report produced by the Public Policy Research Institute at Texas A&M University for the Frew lawsuit. The report evaluated unmet transportation needs through a survey of caregivers for Medicaid children. The report calculated the percentage of Medicaid clients younger than 21 years old who did not use MTP and had either a difficult or very difficult time obtaining transportation to medical appointments during the previous year. The study authors concluded that NEMT services were underutilized in Texas, even though past evaluations concluded that many Medicaid clients could potentially benefit from the MTP services.

Since this time, the percentage of Medicaid clients served by MTP has decreased by 50 percent. Therefore, more Medicaid clients likely have unmet transportation needs than are served by the program. There are 154,266 children and adults currently served by the program. Based on the estimate of 23.9 percent of children in Medicaid with unmet transportation needs and the current number of children in STAR, 646,671 children may have unmet transportation needs. Most of the decrease in utilization occurred during the previous use of the FFS model. However, statewide expansion of the broker model in fiscal year 2015 coincided with an additional decrease in the number of MTP users.

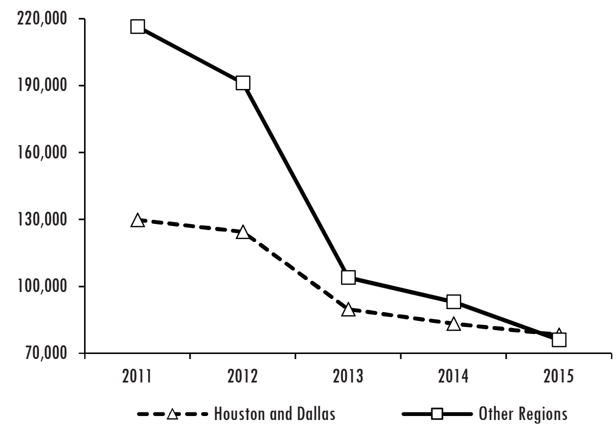
By fiscal year 2011, the percentage of Medicaid clients that MTP served had risen from 7.7 percent to 9.8 percent of Medicaid clients. According to documents filed by HHSC, this increase in access was a result of corrective actions taken by the agency from fiscal years 2008 to 2012 to resolve the Frew lawsuit. Corresponding to this increase in the percentage of Medicaid clients using MTP, the calendar year 2012 survey found unmet need had decreased from 22.0 percent to 17.0 percent in urban areas and from 23.0 percent to 14.0 percent in rural areas.

These improvements in MTP access and other system improvements resulted in the court vacating the Frew Corrective Action Order for NEMT services in fiscal year 2015. However, **Figure 6** shows that these gains reversed starting in fiscal year 2012. The number of clients using MTP decreased from 346,147 clients in fiscal year 2011 to 154,266 clients in fiscal year 2015, despite Medicaid caseload growth. In fiscal year 2015, MTP served 3.8 percent of Medicaid clients.

HHSC's program changes affected access to MTP before the adoption of the statewide broker model. In 2012, HHSC began to implement controls in response to audit deficiencies (see the Program Integrity Risks section). The agency revised eligibility requirements for the advance funds and ITP benefits, established controls for the types of reimbursable expenses, and required individuals to submit compliance documentation. According to HHSC, the changes to the advance funds benefit produced immediate cost savings due to decreases in fraud and misuse. From fiscal years 2012 to 2014, HHSC also took steps to enforce a parental accompaniment rule.

As shown in **Figure 7**, before MTP's conversion to a broker model in fiscal year 2015, the number of users in FFS regions decreased by 128,620 Medicaid clients from fiscal years 2011 to 2014. This decrease represented 67.0 percent of the total decrease in MTP users from fiscal years 2011 to 2015 across all regions. These figures suggest that antifraud-related efforts and other changes that HHSC made affected the number of MTP users, independent of the state's conversion to a broker model.

FIGURE 7
MEDICAL TRANSPORTATION PROGRAM USERS BY REGION, FISCAL YEARS 2011 TO 2015

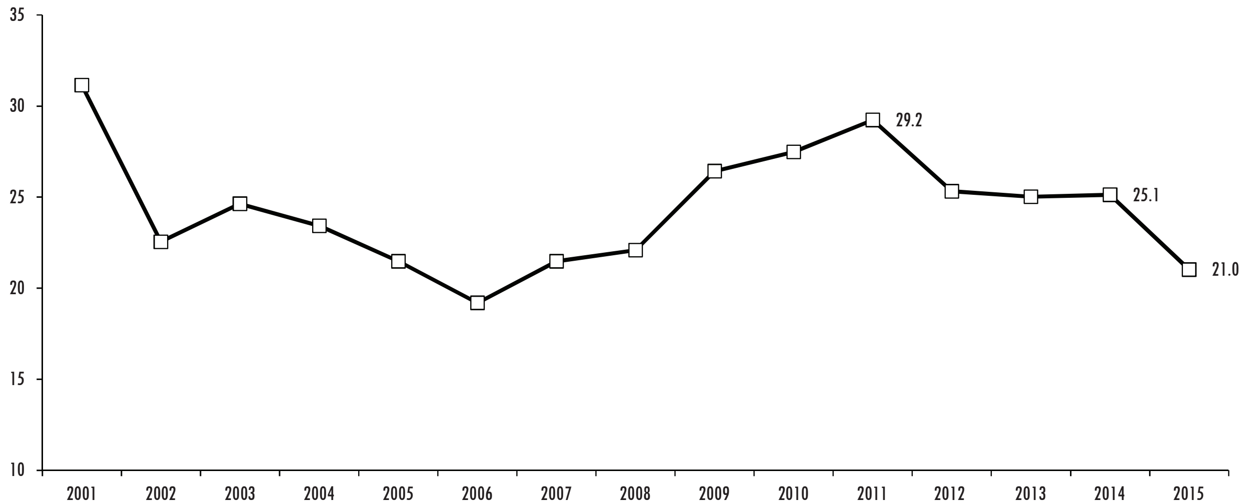


NOTE: Pilots of the broker model in the Houston and Dallas regions started in March and April of fiscal year 2012. The broker model was expanded statewide at the beginning of fiscal year 2015.
SOURCE: Texas Health and Human Services Commission.

Although HHSC's program changes may have had the largest absolute effects on access, the conversions from a FFS model to a broker model also coincided with further decreases in the number of MTP users. After the fiscal year 2015 statewide expansion, a decrease of 18.3 percent occurred in those regions in addition to the decrease that occurred during use of the FFS model. These decreases in the number of users coincided with a decrease in the reported number of trips per user. As **Figure 8** shows, the fiscal year 2015 trip counts suggest a decrease in the number of trips per users compared to fiscal year 2011.

Given historical access and unmet need, the current volume of MTP utilization may correspond to a large volume of unmet transportation needs for Medicaid clients. This trend cannot be explained by procurement problems and instead points to overall performance issues within MTP. The goal of MTP is to provide cost-effective transportation to clients who have no other means of transportation to medical

FIGURE 8
ONE-WAY TRIPS PER UNIQUE MEDICAL TRANSPORTATION PROGRAM USER PER YEAR, FISCAL YEARS 2001 TO 2015



NOTE: Trip counts may have been calculated differently in certain years. Pilots of the broker model in the Houston and Dallas regions started March and April of fiscal year 2012. The broker model was expanded statewide at the beginning of fiscal year 2015. Transportation brokers have underreported claims data to the Health and Human Services Commission, and some trips may be missing, especially for fiscal year 2015. Inflating reported trips for fiscal year 2015 to account for this missing data would add 2.0 trips to the average number of trips per user.
SOURCES: Texas Health and Human Services Commission; Texas Department of Transportation; Texas Department of Health.

appointments. To ensure the program is providing transportation needs to clients as intended, Option 1 would amend the 2018–19 General Appropriations Bill to include a rider requiring HHSC to notify the LBB and relevant standing committees of the Legislature if the percentage of Medicaid clients with unmet transportation needs exceeds the levels in calendar year 2012. In calendar year 2012, the last year in which the percentage of unmet transportation needs was determined, the level of unmet transportation needs was 17.0 percent in urban areas and 14.0 percent in rural areas. The agency would be required to develop a corrective action plan to remediate any unmet transportation needs in any instance in which survey data reveals unmet transportation needs exceed calendar year 2012 levels.

QUALITY TRENDS

In addition to the downward trend in MTP utilization, indicators show decreasing program quality. Statewide complaints relative to the number of MTP users have more than tripled since fiscal year 2011. Many of these complaints have been substantiated and relate to failures to deliver clients to medical appointments. Historical survey data indicates that each expansion of the broker model has been followed by an increase in complaints about the quality and reliability of services in MTP.

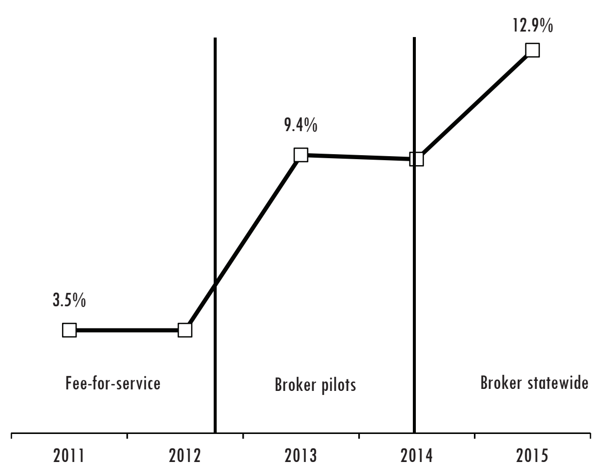
A survey fielded from October to December 2012, when HHSC conducted its pilot, sampled MTP users in both the broker and FFS models. The timing of this survey provided some Medicaid clients six to eight months of experience with the broker model in the Houston and Dallas regions. The survey found that broker users and FFS users rated the usability of NEMT services equivalently. According to survey respondents, travel time among broker users was more reasonable than among FFS users, although this result may have been related to the more urban composition of broker users. However, responses regarding timeliness and reliability of service indicated differences between the broker and FFS systems.

Within the Houston and Dallas regions, broker users were more likely to miss appointments because of MTP transportation problems than users of the FFS system. Among broker users, 34.0 percent reported missing either a few or almost all medical appointments, compared to 27.0 percent of FFS users. Broker users were also more likely to be dissatisfied with wait times for pickup after medical appointments. Medical providers in this survey also rated performance in broker regions as less reliable. Despite the differences in missed appointments, overall satisfaction was rated almost the same among users of the two systems. Among broker users, 73.0 percent reported that they were satisfied with services, compared to 75.0 percent in non-broker regions. Transportation providers in broker regions reported that they were less satisfied with the program than providers in FFS regions.

The urban composition of broker users compared to FFS users varied and may have contributed to these outcomes. However, complaint data during this period supports the conclusion that NEMT users experienced problems with transportation to medical appointments after the transition to the broker model. After statewide expansion in fiscal year 2015, negative effects related to timeliness and service quality continued to be associated with transportation brokers in Texas. However, in three regions of the state in which the vendor with the highest score based on RFP criteria is operating the program, the percentage of complaints declined between fiscal years 2014 and 2015.

Figure 9 shows increases in the ratio of complaints to yearly unique MTP users (the complaint ratio). These increases coincided with each expansion of the broker model. For fiscal years 2011 and 2012, the complaint ratio equaled approximately 3.5 percent. For fiscal year 2013, the first full year of broker operations in Houston and Dallas, the complaint ratio increased to 9.4 percent. During fiscal year 2013, more complaints were filed in the Houston and Dallas regions than in all regions in fiscal year 2012 combined. For fiscal year 2013, the rate of total complaints across regions remained steady. When statewide expansion of the broker model occurred during fiscal year 2015, the complaint ratio increased to 12.9 percent. This increase was caused by a 62.7 percent increase in the volume of complaints in the regions that converted to the broker model. Complaints in the Houston and Dallas regions remained steady for fiscal year 2015.

FIGURE 9
RATIO OF COMPLAINTS TO MEDICAL TRANSPORTATION PROGRAM USERS, FISCAL YEARS 2011 TO 2015



NOTE: Pilots of the broker model in the Houston and Dallas regions started in March and April of fiscal year 2012. The broker model was expanded statewide at the beginning of fiscal year 2015. Multiple complaints may have been filed by a single user. The ratio shows a general gauge of complaints relative to the number of unique nonemergency medical transportation users each year.
SOURCE: Texas Health and Human Services Commission.

From fiscal years 2011 to 2015, total complaints increased as the number of MTP users decreased. Additionally, the volume of complaints in relation to the number of people using the program more than tripled.

Figure 10 shows some of the reasons for which complaints were filed in the regions that converted to a broker model in fiscal year 2015. In these regions, overall complaints substantiated by HHSC increased from 3,041 complaints to 5,379 complaints. Substantiated complaints that clients were never transported to their medical appointments increased by 76.9 percent from fiscal years 2014 to 2015. Complaints about the overall timeliness of service represented the most common substantiated complaints. Substantiated complaints also increased related to the individual transportation provider program and customer service problems.

Changes in complaint volumes can occur for reasons unrelated to program quality. For example, if brokers were more transparent in the complaint filing process, then complaints may have risen in part due to greater awareness about a grievance process. This awareness could increase the likelihood of clients seeking to resolve issues. However, the following findings suggest that changes in the quality of services contributed to increases in complaint rates from fiscal years 2011 to 2015:

- 2012 surveys of MTP users in the Houston and Dallas regions showed similar systematic differences in the quality of service in the broker model compared to the FFS model – survey data is not subject to the same type of reporting bias that complaint data could be, and, as such, when survey data and complaint data show consistent findings, this correlation increases the confidence about the reliability of complaint data;
- complaints rose in eight of the 11 regions converted to a broker model – one vendor consistently reduced complaints across two regions and had the highest-rated probable performance score by the RFP team among all vendors; this vendor also experienced a lower-than-average decrease in the number of unique users, suggesting that vendor performance has a distinct effect on complaint volumes; and

FIGURE 10
SUBSTANTIATED COMPLAINTS FOR REGIONS THAT CONVERTED FROM FEE-FOR-SERVICE MODEL TO BROKER MODEL FISCAL YEARS 2014 TO 2015

COMPLAINT	2014 (FFS)	2015 (BROKERS)	COMPLAINT	2014 (FFS)	2015 (BROKERS)
Client was not transported at all	866	1,365	Program policy or procedure	79	188
Client was not picked up within 1 hour of request	575	685	MTO ITP enrollment process	N/A	177
Client arrived late to appointment	538	528	Operator issues	80	139
MTO ITP reimbursement	N/A	448	Operator mistreated client	71	125
Dispatcher failed to control or monitor service delivery	269	370	Client unable to reach MTO via dispatch number	N/A	101
Customer service	23	366	Client not called day before appointment to schedule pickup time	81	101
MTO scheduling error	N/A	280	Total Substantiated Complaints	3,041	5,379

Notes:
(1) FFS = fee-for-service model; MTO = managed transportation organization; ITP = individual transportation provider.
(2) Complaints exclude those related to transportation brokers in the Houston and Dallas pilot program regions.
Source: Texas Health and Human Services Commission.

- the scale of the increase in complaints was large, complaint volumes relative to usage more than tripled from fiscal years 2011 to 2015.

Additional data to clarify the effects of brokers on service quality are either missing or unreliable. HHSC has established performance standards in contracts for the timeliness of service and the percentage of clients receiving appropriate services. But the agency has not identified a way to measure or track these standards. As a result, the agency is largely dependent on complaints as an indicator of service quality.

Transportation brokers are also required to hire and pay vendors to conduct customer satisfaction surveys, but these surveys are problematic. According to HHSC, the MTP contract has conflicting requirements regarding whether these broker-led surveys are to be conducted quarterly or annually. For the first three quarters of fiscal year 2015, four of the 11 regions that converted to a broker model did not provide surveys to HHSC. To resolve any confusion regarding the requirements, HHSC required brokers to conduct only annual surveys.

Results of these broker-led surveys are difficult to compare because each MTP vendor conducted its surveys differently. For example, different scales are used to rate satisfaction. In one region, the annual survey did not calculate a total satisfaction score, despite this score being a key performance measure in the MTP contract. Surveys may also not always include the appropriate mix of clients. In at least one instance, the survey was conducted only among clients who were transported, potentially excluding clients whose MTO did not arrive for pickup or who were unable to schedule services. This lack of reliable data makes it difficult to verify quality trends within MTP.

Option 2 would amend statute to consolidate responsibility for surveying MTP users and Medicaid clients with HHSC, rather than with each broker. HHSC would be required to contract with a single, independent vendor to ensure high-quality, consistent survey data. This consolidation would align MTP survey practices with those in place for other Medicaid programs. For instance, HHSC contracts with a single external quality review organization (EQRO) to survey Medicaid clients regarding medical benefits provided by MCOs. This singularity ensures independence and comparability of results. Surveys of MTP users and Medicaid clients could be incorporated into the contract with the EQRO or performed by another qualified survey firm. The agency would be required, at a minimum, to estimate MTP client satisfaction as well as unmet transportation needs among Medicaid clients.

COST EFFECTS OF BROKER MODEL

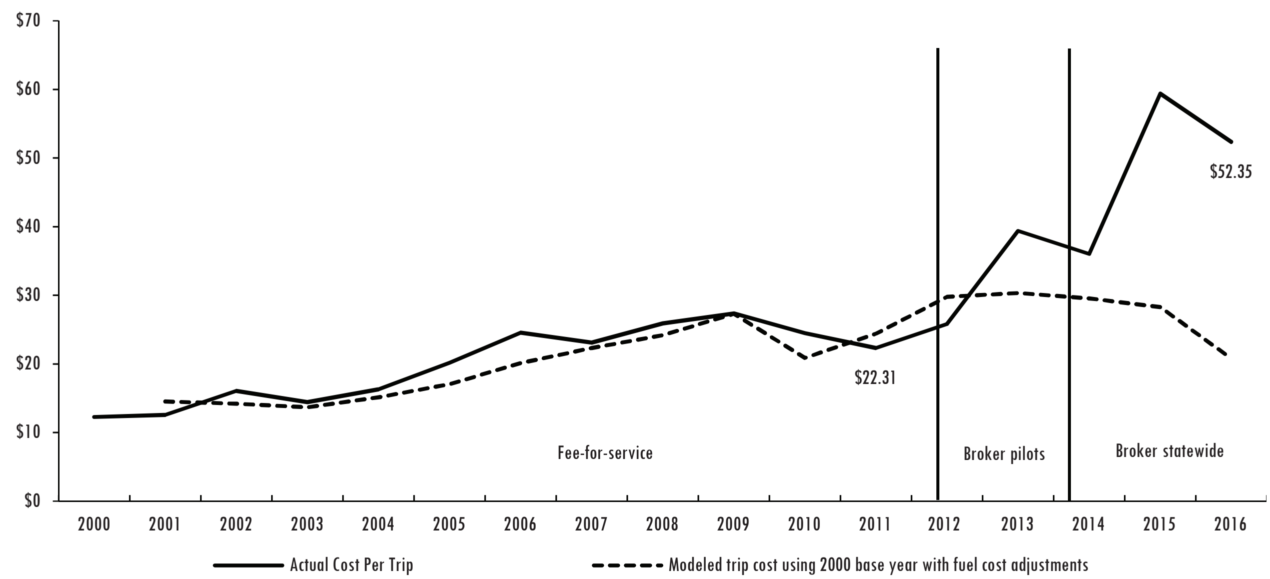
MTP costs have increased by approximately $316.5 million cumulatively in All Funds since the introduction of transportation brokers in fiscal year 2012. For fiscal year 2016, LBB staff estimate the cost difference between the broker model and what operations using FFS would have cost was approximately $120.2 million in All Funds per year. This cost difference is due to increases in the cost of administering the program ($46.3 million) and for paying transportation-related expenses ($73.9 million).

A comparison of the actual MTP costs between the broker model and an LBB staff estimate of what MTP would have cost if the FFS model had continued shows the relative expense of converting to a statewide broker model. MTP contracts were historically adjusted each year based on changes in the fuel cost index. To establish a comparable baseline from the broker model to the FFS model, LBB staff adjusted trip costs using fuel cost changes. **Figure 11** shows adjustments to the actual MTP cost per trip in fiscal year 2000 using subsequent fuel cost changes. Adjusting for fuel costs accounts for nearly all variations in the actual annual cost per trip through fiscal year 2011. Variations in the cost of transportation fuel establish a trend of what the program might have cost if it had continued using the FFS model through fiscal year 2016.

During fiscal year 2011, the final year of FFS-only operations, the program spent $22.31 per trip. During fiscal year 2013, the first full year of broker operations in the Houston and Dallas regions, costs in the program rose to $39.38 per trip, a 76.7 percent increase from fiscal year 2011. This increase occurred despite stable fuel costs from fiscal years 2011 to 2013. Despite fuel cost decreases in fiscal years 2014 and 2015, actual costs were $59.40 per trip for fiscal year 2015, after adjusting for missing claims from some brokers. Based on costs for fiscal year 2011 and subsequent fuel cost changes, the FFS trend indicates that the cost per client would have been approximately $26.16 per trip. With an estimated 3.6 million trips in fiscal year 2015, the broker model costs were $118.6 million greater than the FFS trend. The cost difference for each year is shown in **Figure 12**.

Total actual spending on MTP for fiscal year 2016 decreased due to a decrease in capitation rates associated with HHSC's parental accompaniment rule. MTP actuaries decreased rates for fiscal year 2016 to account for decreasing utilization in South Texas (Region 10) observed during fiscal year 2015. However, fuel costs were also decreasing simultaneously. This fuel cost decrease was not incorporated into the fiscal year 2016 rates. As a result, the estimated cost difference grew in fiscal year 2016 despite the rate cut. In total, from fiscal years 2012 to 2016, the broker model cost approximately $316.5

FIGURE 11
MEDICAL TRANSPORTATION PROGRAM COST PER TRIP, FISCAL YEARS 2000 TO 2016



NOTES:
(1) Modeled costs use fiscal year 2000 as the base year with adjustments for cost per client based only on fuel cost changes in subsequent years. Each year is adjusted based on fuel costs changes using a one-year lag.
(2) Pilots of the broker model in the Houston and Dallas regions started during fiscal year 2012. The broker model was expanded statewide at the beginning of fiscal year 2015.
(3) Onetime settlement costs from the Frew vs. Executive Commissioner of Texas Health and Human Services Commission lawsuit in fiscal year 2011 were excluded from these calculations.
(4) Brokers underreported claims in fiscal year 2015. Adjustments to these trip totals are shown using an inflation factor estimated based on actuary estimates of missing claims. Trip volumes for fiscal year 2016 were assumed to be equivalent to fiscal year 2015 for this analysis.

SOURCES: Texas Health and Human Services Commission; Texas Department of Transportation; Texas Department of Health; U.S. Bureau of Labor Statistics.

FIGURE 12
MEDICAL TRANSPORTATION PROGRAM COST TRENDS, ALL FUNDS, FISCAL YEARS 2011 TO 2016

(IN MILLIONS)

COST SCENARIO	2012	2013	2014	2015	2016	TOTAL
Actual Expenditures	$206.4	$190.8	$159.7	$211.9	$186.8	$1,181.3
FFS Trend	$221.0	$136.7	$121.5	$93.3	$66.6	$639.1
Cost Difference	($14.6)	$54.1	$38.2	$118.5	$120.2	$316.5

NOTES:
(1) Fiscal year 2011 is used as the base year to estimate the fee-for-service (FFS) trend and is adjusted for fuel cost and utilization in subsequent years.
(2) Pilots of the broker model in the Houston and Dallas regions started in March and April of fiscal year 2012. The broker model was expanded statewide at the beginning of fiscal year 2015.
(3) Onetime settlement costs of $8.7 million from the Frew vs. Executive Commissioner of Texas Health and Human Services Commission lawsuit in fiscal year 2011 were excluded from these calculations.
(4) Subsequent refunds due to profit caps (known as experience rebates) reduced net expenditures for fiscal years 2014 and 2015 and are accounted for in these totals. Fiscal years 2015 and 2016 totals were adjusted to account for underreported claims, estimated to be 10.0 percent of trips. Fiscal year 2016 estimates assume the same number of trips as during the previous year.
SOURCE: Legislative Budget Board.

million more than estimated expenditures would have been using the FFS model.

This cost difference is likely to continue in subsequent years. The proposed rates for fiscal year 2017 include a change equivalent to a $3.2 million overall decrease to the rates for brokers in fiscal year 2016. This change is based on fiscal year 2016 enrollment and excludes the North Texas region, which has temporarily converted to a fee-for-service model after the vendor contract was terminated. Actuaries include a 5.0 percent inflation factor in each year's rates. Sometimes, such as for fiscal year 2017, this inflation adjustment is offset by other adjustments. Therefore, the cost difference shown in **Figure 12** is likely to continue, considering the decrease in rates for fiscal year 2017 and the customary 5.0 percent inflation factor.

Cost growth in the broker model can be attributed to two components: administrative cost growth and an increase in rates paid to transportation providers. LBB staff estimates for fiscal year 2016 indicate that costs for the broker model were $120.2 million greater than the cost of operating the program in the FFS model. The administrative cost growth represents approximately $48.7 million of this cost difference.

As a result of the transition of NEMT services to the broker model, HHSC decreased the number of full-time-equivalent (FTE) positions administering the program from 355.3 positions in February 2011 to 108.0 positions in September 2015. However, the reduction of 247.3 FTE positions at HHSC was offset by 580.0 new administrative positions at the transportation brokers (nonstate staff). Consistent with this net increase of 332.7 positions, total costs for administering the program increased from $22.9 million to $60.4 million from fiscal years 2011 to 2016.

This cost increase occurred during a period of decreasing numbers of users and claims. As a result, total costs for administering the program increased from 11.1 percent of claims in fiscal year 2011 to 47.8 percent of claims in fiscal year 2016. Fixed costs for providing MTP services serve as a base to overall administrative costs for the program. As a result, an increase in administrative costs relative to claims may have occurred in accordance with FFS operations as utilization decreased. However, from fiscal years 1999 to 2011, the ratio of administrative costs to claims never exceeded 21.1 percent. As **Figure 13** shows, if the program had maintained an administrative expense ratio of 21.1 percent relative to claims, HHSC could have avoided $48.7 million in MTP administrative costs for fiscal year 2016. For fiscal year 2017, actuaries set administrative costs using the same percentage and fixed fee as the previous year. This scenario indicates that administrative costs associated with the model in accordance with actuarially set rates are likely stable and inherent to the structure of the model and contract.

Although $48.7 million of the $120.2 million cost difference for fiscal year 2016 is attributable to administrative costs, the remaining $71.4 million is due to costs paid directly to transportation providers and Medicaid clients for NEMT services. During fiscal year 2015, for example, brokers paid subcontractors 2.1 percent more than was paid in the FFS model during the previous year. This increase occurred despite a 35.9 percent decrease in the cost of fuel during the same period. In the FFS model, rates paid to transportation providers would have accounted for decreases in fuel costs.

FIGURE 13
COMPONENTS OF COST GROWTH IN THE MEDICAL TRANSPORTATION PROGRAM, FISCAL YEAR 2016

(IN MILLIONS)

COST SCENARIO	HHSC ADMINISTRATION	BROKER ADMINISTRATION	ADMINISTRATION SUBTOTAL	CLAIMS	TOTAL	RATIO OF ADMINISTRATIVE COSTS TO CLAIMS
Estimated 2016 FFS Costs	$11.6	N/A	$11.6	$55.0	$66.6	21.1%
Estimated 2016 Broker Costs	$7.6	$52.7	$60.4	$126.4	$186.8	47.8%
Cost Difference	($4.0)	$52.7	$48.7	$71.4	$120.2	26.7%

NOTES:
(1) HHSC = Health and Human Services Commission; FFS = fee-for-service Medicaid model.
(2) Estimated fiscal year 2016 broker costs are based on the capitation rates paid to brokers and the number of clients using Medical Transportation Program (MTP) services. Fiscal year 2016 estimates assume the same number of clients use MTP services as during the previous year.
SOURCE: Legislative Budget Board.

However, in the broker model, rates are not adjusted for fuel cost changes unless the brokers make rate reductions paid to their transportation providers. Additional reasons for cost growth may include increases in reimbursement rates for other types of services and adjustments in the mix of transportation modes provided.

According to HHSC, brokers "cost less than FFS when considering all operating costs." This determination is based on a comparison of MTP costs to the number of people enrolled in all Medicaid programs, which is the methodology used to establish rates for the transportation brokers. This cost measure for MTP tracks the average cost per recipient per month. The methodology used to calculate this cost is shown in **Figure 14** and is based on Medicaid case growth, which regularly increases, and does not reflect the actual volume of MTP services provided. Instead, it divides costs for 154,266 MTP clients into a caseload of 4.1 million Medicaid enrollees.

FIGURE 14
MEDICAL TRANSPORTATION PROGRAM (MTP) COST ANALYSIS METHODS, FISCAL YEAR 2016

PROPOSED COST PER MTP TRIP METHOD	COST PER CLIENT METHOD
MTP Expenditures / MTP Trips Provided = Cost Per MTP Trip	MTP Expenditures / Medicaid Clients = Cost Per Client

SOURCE: Legislative Budget Board.

HHSC does not regularly track and report the cost efficiency of the program using cost per trip. Option 3 would include a rider in the 2018–19 General Appropriations Bill to require HHSC to report cost per trip annually to the Legislature and post a copy of the report on the agency's website. This cost would be calculated by dividing MTP expenditures by the number of MTP trips provided. When considered with fuel cost changes, cost per trip provides a reliable way to measure the cost efficiency of the program and facilitates benchmarking performance against historical trends.

PROGRAM INTEGRITY RISKS

As HHSC has transitioned to a broker model, many brokers have had problems properly submitting documentation regarding claims paid to HHSC. In addition, HHSC has not collected adequate performance data for key risks to clients and the state. Without this data, HHSC cannot identify key program integrity risks. Although HHSC has taken some steps to mitigate risks when providing NEMT services, risks remain.

Audits conducted in the FFS system repeatedly identified noncompliance with program rules. In a federal audit based on field work conducted during fiscal year 2011, for example, most claims had a deficiency. The audit sampled claims and found examples of the following:

- providers unable to verify vehicles used for transportation and whether the vehicles had current state registrations and inspections at the time service was provided;
- children were transported without a parent or legal guardian;
- an inability to verify that computerized criminal history background checks, drug testing, and driver history checks on drivers had been completed;
- Medicaid-covered healthcare services were not provided to a beneficiary on the transportation date;
- cancellation of a transportation request before the service was received; and

- documentation was not available to support the NEMT services.

The federal audit recommended that the state refund $30.4 million to the federal government for these improper payments. An internal audit at HHSC conducted during a similar period corroborated these conclusions. HHSC's audit report found that the program did not have adequate controls to ensure services were provided only to eligible clients. Another recurring issue in audits of the program has been the extent to which clients received transportation services unrelated to medical appointments.

Based on these audits, HHSC established a process to match transportation claims with medical claims data. This process facilitates the identification of potential fraud and misuse of program resources, and HHSC has applied it to broker claims data. For the fourth quarter of fiscal year 2015, transportation claims matched medical claims at a rate varying from 87.3 percent to 97.6 percent at each broker. Brokers were required to sample a portion of the unmatched claims and provide proof that the transportation was related to a covered healthcare event.

However, this analysis was partly impaired by the amount of data missing from broker submissions. The contract with brokers states that "the state will not recognize or pay services that cannot be properly substantiated by the MTO and verified by HHSC," and includes requirements to maintain claims records. In June 2015, however, the actuaries found that brokers were not submitting encounter data correctly. As a result, the data could not be used to set rates. Therefore, the actuaries relied on older FFS data from fiscal year 2014 to set fiscal year 2016 broker rates. This missing data limits the agency's ability to identify potential fraud in the medical claims matching process.

Brokers have also had difficulty complying with provider credentialing and documentation requirements. In August 2015, HHSC fined every vendor for contract violations related to network adequacy and client safety issues. The letters assessing liquidated damages sometimes indicated that deficiencies were placing clients at risk of imminent harm. Additionally, four of the five brokers did not meet driver training, drug testing, or sex offender registry check requirements.

These problems resulted in some contract terminations. HHSC canceled two contracts due to client safety risks, nonperformance, and financial issues. According to HHSC, as of January 2016, contracts in 11 of the 12 regions operated by brokers pose a high risk to the state.

LBB staff provided recommendations to HHSC to address these issues. In recommending reprocuring MTP services, LBB staff included recommendations to ensure that past performance is adequately factored into the evaluation of vendor proposals. LBB staff also recommended that HHSC determine whether evaluation criteria should include preferences for diversifying the number of vendors awarded contracts and develop a contingency plan for regions where qualified vendors are not available.

ESTABLISH FLEXIBILITY TO USE MOST COST-EFFECTIVE MTP MODEL

The statutory requirement to use a broker model for MTP statewide limits HHSC's ability to develop the program to control costs and ensure quality services. As discussed previously, LBB staff analysis shows that the broker model costs approximately $120.2 million per year more than FFS trends. This cost difference exists at a time of historically low utilization; from fiscal years 2011 to 2015, the number of program users decreased from 346,147 to 154,266. Complaints from MTP users have more than tripled since fiscal year 2011, and many clients are likely having difficulty arriving at medical appointments due to transportation barriers.

The outcomes of a future reprocurement are uncertain. It remains unclear whether a competitive broker market exists for cost-effective, high-quality services in Texas. Three considerations suggest potential limitations in the market for broker services:

1. According to HHSC, as of January 2016, contracts for 11 of the 12 regions pose a high risk to the state in performance and viability;
2. According to HHSC, there is a risk that requiring vendors to bid on price will result in higher prices. A number of states have moved away from competitive bidding for medical contracts to rely on state-set rates. According to the U.S. Medicaid and CHIP Payment and Access Commission, states may rely on direct-rate setting to achieve lower rates than they may be forced to accept from bidding; and
3. MTP contracts with a variety of vendors; however, one vendor has consistently reduced complaints across regions. This vendor paid substantially higher rates to transportation providers in most of its regions, suggesting a negative cost impact to the state for any increased reliance on this vendor.

Therefore, even if the MTP contract is reprocured with vendors competing on price, it is unclear if vendors will be able to bid less than the current rates while providing quality services.

Option 4 would amend statute to authorize HHSC to use the most cost-effective model for administering the program with a sufficient level of service in each region of the state. This authorization would give the agency the ability to use either the broker model or FFS model. The optionwould require the agency to evaluate the cost-effectiveness of each model during future reprocurements to manage MTP services. This would align MTP with current requirements for medical services.

To implement Option 4, the agency would be required to conduct a needs assessment before any reprocurement of broker services. This needs assessment would establish a cost threshold to determine whether to accept bids from qualified vendors. This threshold would be used in conjunction with an assessment of quality to evaluate cost-effectiveness. Option 4 would also include a contingency rider in the 2018–19 General Appropriations Bill requiring the agency to obtain LBB approval for this cost threshold during the biennium. If the agency, for example, determined that soliciting broker contracts presented an option for cost-effective delivery of services in a region, the agency would be required to determine a cost threshold for bids from vendors. This threshold would be reviewed and approved by the LBB. After approval, the agency could solicit proposals and bids. If bids from qualified vendors failed to meet or fall below the pre-specified cost threshold, HHSC would not award a contract for the region and could instead operate the region through a FFS model.

Option 4 would establish whether transportation brokers are capable of meeting or exceeding the performance of the FFS system in each regions of the state. It would also ensure that HHSC utilizes the most cost-effective MTP model for Texas Medicaid.

FISCAL IMPACT OF THE OPTIONS

Option 1 would require HHSC to report if there are increases in the percentage of Medicaid members with unmet transportation needs and develop a corrective action plan for these increases. If unmet transportation needs increase and HHSC implements a corrective action plan, this could affect utilization of the program. Over time, utilization increases may also increase costs but these costs could be offset by avoiding emergency care or preventable hospitalization.

Option 2 would require HHSC to consolidate MTP surveys. HHSC would be required to directly contract for an annual survey. Multiple surveys are conducted quarterly by vendors that contract with brokers. This option is not expected to have a significant fiscal impact. HHSC has the option to reduce premium rates paid to vendors that conduct surveys to offset any costs the agency incurs to assume this responsibility.

Option 3 would require HHSC to measure and report on the cost per trip of the program to the Legislature. This option would have no significant fiscal impact.

Option 4 would amend statute to authorize HHSC to use the most cost-effective model of delivering MTP services. The agency would also be required to evaluate the cost-effectiveness of the broker model and establish a cost threshold for any bids in a broker procurement that would be approved by the LBB. This evaluation would ensure that a reprocurement can meet the historical cost-effectiveness of the FFS system.

Estimates indicate that expenditures using brokers cost approximately $120.2 million more than expenditures would be using FFS in all regions of the state. State administration of the program could result in reduced administrative costs. Rates paid to transportation providers could also be adjusted to align provider rates with fuel costs. Due to potential negative effects on network adequacy, it would likely be necessary to incrementally implement provider rate adjustments in a transition to a FFS system. The timing of these reductions would impact the cost savings each year.

Considering the cost difference between FFS and brokers, brokers would need to bid at rates lower than the current costs per trip to meet the requirements of Option 4. Because it is not possible to anticipate how many or which regions may be transitioned to a FFS model, or what the cost threshold for a broker would be, the fiscal impact of Option 4 cannot be estimated. However, it is expected this option would reduce costs per trip.

The House introduced 2018–19 General Appropriations Bill includes a rider implementing Options 1 and 3.

INCREASE ACCESS TO URGENT CARE PROVIDERS IN MEDICAID

Texas Medicaid clients use hospital-based emergency departments for conditions diagnosed as non-emergent by physicians. Approximately one-third of the 3.2 million emergency department visits in the Texas Medicaid State of Texas Access Reform (STAR) program in fiscal year 2014 were for treatment of non-emergent conditions. Clients may choose to go to the emergency department because their symptoms suggest problems that require immediate attention, or they may have limited access to treatment for urgent needs in the primary care setting. Texas Medicaid member surveys show that 44 percent of child visits to an emergency department in the STAR program were the result of caregivers being unable to schedule an appointment at a doctor's office or clinic to address the child's immediate care.

Urgent care providers treat non-life threatening acute conditions in an outpatient setting and serve clients regardless of their primary care provider. These secondary providers could help to reduce the use of emergency departments in the STAR program by providing care for urgent needs when a primary care provider is not available. Urgent care providers could have treated a portion of STAR clients with non-emergent conditions at a cost lower than hospital-based emergency departments. If all STAR clients with non-emergent conditions had used an urgent care provider instead of the emergency department, the cost of care would have been $111.2 million less in fiscal year 2014. Actual savings would accrue to managed care organizations unless the premium amounts paid by the state are adjusted to reflect reduced emergency department spending. To reduce non-emergent use of the emergency department, the Texas Health and Human Services Commission should increase access to urgent care providers by strengthening access standards for urgent care, reducing administrative barriers for urgent care providers, and improving client access to information about available urgent care locations.

FACTS AND FINDINGS

- ♦ Children, ages 0 to 14, account for the majority of non-emergent emergency department visits and spending in the Medicaid STAR program. The five most common primary diagnoses for these visits are acute upper respiratory infections, cough, vomiting, acute pharyngitis (i.e., sore throat), and unspecified viral infection.
- ♦ Certain Medicaid clients have limited access to appointments at their primary care provider's office after regular business hours and may have difficulty obtaining timely same-day appointments for urgent needs during regular hours. A survey of Texas Medicaid STAR managed care organizations found that many primary care providers participating in the Texas Medicaid STAR program do not offer routine extended weekday or weekend hours.
- ♦ According to Texas Medicaid member surveys, 44.1 percent of STAR child members and 32.3 percent of STAR adult members who went to the emergency department reported doing so because they could not get an appointment at a doctor's office or clinic as soon as they needed care.

CONCERNS

- ♦ The state cannot determine the extent to which Medicaid clients have sufficient access to urgent care providers because the Texas Health and Human Services Commission does not regularly monitor client access to these services. The agency does not monitor compliance with the managed-care contract requirement that managed care organizations include urgent care clinics in their provider networks. Furthermore, one-time data collected on the number and location of urgent care providers in Medicaid by the Commission was incomplete. As a result, there is no comprehensive data that identifies the number and accessibility of urgent care providers available to Medicaid clients.
- ♦ Certain Medicaid processes pose administrative barriers that result in some urgent care providers choosing to not participate in the Texas Medicaid program, further limiting client access to these services.
- ♦ The accessibility of information about urgent care locations available to clients varies by Medicaid managed care organization. Also, the Texas Medicaid and Healthcare Partnership's website for provider

look-up incorrectly identifies certain providers as urgent care centers. As a result, some Medicaid clients may have difficulty finding urgent care providers.

OPTIONS

- ♦ **Option 1:** Amend statute to require the Texas Health and Human Services Commission to strengthen Medicaid provider access standards and oversight, including collecting data to ensure that clients have sufficient access to urgent care locations and include related language in the Uniform Managed Care Contract.
- ♦ **Option 2:** Amend statute to require the Texas Health and Human Services Commission to reduce administrative barriers in the Texas Medicaid program for providers at urgent care locations, including making improvements to enrollment and credentialing processes.
- ♦ **Option 3:** Amend statute to require the Texas Health and Human Services Commission to improve Medicaid client access to information about available urgent care locations.

DISCUSSION

Urgent care providers treat non-life threatening acute medical conditions in an outpatient setting and serve individuals regardless of their medical home. Some of these providers are open seven days a week with extended evening, weekend and holiday hours. Patients can typically see a provider without scheduling an appointment. Urgent care providers are distinct from freestanding emergency centers, which are licensed by the state to provide 24-hour emergency services to patients at the same level as a hospital-based emergency department, with the exception of trauma care, and have different licensing requirements. **Figure 1** shows the types of urgent care providers available to patients.

Two types of information from emergency department (ED) visits are collected related to their use: (1) patient symptoms when they arrive at the ED; and (2) diagnoses when they leave. The urgency of symptoms can help explain why a patient chose an ED for care. Patients may choose to go to the ED because their symptoms suggest problems that require prompt medical attention. Hospital triage staff measure urgency when patients arrive at the ED by assessing symptom severity and deciding how quickly patients need to be evaluated. The second type of information used to explain ED use is the physician's diagnosis after examining and evaluating a patient in the ED. It is difficult to determine the urgency of an ED visit based solely on a physician's diagnosis after examination, which may be quite different from the patient's perception of symptoms when deciding to seek emergency care. Diagnoses related to ED visits can be used, however, to estimate the amount of care provided in EDs that could be provided by an urgent care provider. Analysis of available data shows that some patients are diagnosed with non-emergent conditions that could have been treated by an urgent care provider. Urgent care providers are often available to treat patients when their primary care provider (PCP) is not available and can provide an alternative to the ED in these instances.

This report focuses on Medicaid services delivered through the managed care model known as the State of Texas Access Reform (STAR) program. Managed care organizations (MCOs) in the STAR program receive a monthly capitation payment from the state for each person enrolled in the program. This rate is based on an average projection of medical expenses for the typical patient in exchange for

FIGURE 1
TYPES OF URGENT CARE PROVIDERS, 2016

TYPE	SETTING	PRIMARY TREATING PROVIDER	EQUIPMENT	EXAMPLES OF CONDITIONS TREATED
Retail Clinic	Typically located in retail stores such as Walgreens, CVS, Target, and Wal-Mart	Nurse practitioners and physician assistants	N/A	Minor cuts, sore throats, ear infections, sinus infections, bladder infections, pinkeye, non-complicated respiratory conditions
Urgent Care Center	May be freestanding or located within another health care facility such as a hospital or physician's office	Physicians, nurse practitioners and physician assistants	X-ray and lab facilities, some also have advanced diagnostic equipment	Conditions treated by retail clinics in addition to wounds, injuries, fractures, asthma attacks and mild concussions

SOURCE: American Academy of Urgent Care Medicine.

assuming the risk of providing covered services that are medically necessary. As of fiscal year 2014, approximately 3 million of Texas' 3.7 million Medicaid clients are in managed care with 2.6 million in STAR. The majority of STAR Medicaid clients are under age 21. STAR provides primary, acute care, and pharmacy services for low-income families, children, pregnant women, and some former foster care youth. Analysis by the Center for Studying Health Systems found that clients, such as those served by STAR, are more likely to visit the ED for conditions that could be appropriately treated by urgent care providers than clients in Medicaid managed care programs that serve populations with chronic disease or disability (e.g., STAR+PLUS and STAR Kids).

USE OF THE EMERGENCY DEPARTMENT FOR NON-EMERGENT CONDITIONS

Non-emergent conditions include all diagnoses made by physicians that are not on the Texas Medicaid program's list of emergency medical conditions, such as sore throat or cough. **Figure 2** shows the number of and estimated amount spent by MCOs on hospital-based ED visits in the Texas Medicaid STAR program by age category in fiscal year 2014. Of the 3.2 million ED visits in fiscal year 2014, approximately 1.2 million, or 37.3 percent, were for treatment of non-emergent conditions. Program spending on ED visits totaled $428.1 million in All Funds in fiscal year 2014. Of this amount, $185.5 million, or 43.3 percent, was for non-emergent conditions. ED spending includes physician fees, facility fees, and billings for ancillary diagnostic services (e.g., x-rays and laboratory tests). The amounts do not include prescription medications and return outpatient visits that may be associated with the ED visit.

A portion of the non-emergent visits in the Texas Medicaid STAR program are for conditions that could have been treated by an urgent care provider. In many cases, children ages 0 to 14, who account for the majority of non-emergent ED visits and spending in the program, could receive treatment at urgent care settings. In contrast, teens and adults are more likely to have ED visits for diagnoses of complex conditions (e.g., pregnancy or chronic illness) that could be difficult for other care settings to treat. **Figure 3** shows the most common primary diagnoses for non-emergent ED visits in the STAR program for children ages 0 to 14. The five most common primary diagnoses for non-emergent ED visits for children are acute upper respiratory infection, cough, vomiting, acute pharyngitis (i.e., sore throat), and unspecified viral infection. Although it is not possible to determine precisely which clients could have received appropriate treatment from an urgent care provider instead of an ED, it is possible that treatment for some clients with the primary diagnoses in **Figure 3** could have occurred in an urgent care setting.

FIGURE 2
HOSPITAL BASED EMERGENCY DEPARTMENT VISITS IN THE TEXAS MEDICAID STAR PROGRAM BY AGE CATEGORY FISCAL YEAR 2014

	CHILDREN, AGES 0 TO 14	TEENS AND YOUNG ADULTS, AGES 15 TO 20	ADULTS, AGES 21 TO 64	ADULTS, AGES 65 AND OLDER	TOTAL
Non-Emergent ED Visits	793,892	139,123	270,221	199	1,203,435
Total ED Visits	2,245,332	352,875	630,490	518	3,229,215
Non-Emergent as Percentage of Total ED Visits	35.4%	39.4%	42.9%	38.4%	37.3%
Spending on Non-Emergent ED Visits	$122,263,996	$22,646,205	$40,529,139	$14,593	$185,453,934
Total ED Spending	$287,625,675	$51,319,394	$89,123,313	$35,571	$428,103,952
Non-Emergent as Percentage of Total ED Spending	42.5%	44.1%	45.5%	41.0%	43.3%

NOTE: The state does not reimburse individual hospital providers under contract with managed care organizations. The spending amounts reported for the Medicaid STAR program represent the Health and Human Services Commission's best estimate of the amount paid by the managed care organizations to their providers.
SOURCES: Texas Medicaid and Healthcare Partnership Ad Hoc Query Platform Claims Universe and Encounter Data.

FIGURE 3
TOP DIAGNOSES FOR NON-EMERGENT EMERGENCY DEPARTMENT VISITS IN MEDICAID STAR PROGRAM AMONG CHILDREN AGES 0 TO 14, FISCAL YEAR 2014

PRIMARY DIAGNOSIS	NON-EMERGENT ED VISITS	PERCENTAGE OF TOTAL
Acute Upper Respiratory Infection of Unspecified Site	87,623	37.8%
Cough	44,010	19.0%
Vomiting Alone	40,436	17.4%
Acute Pharyngitis (Sore Throat)	23,409	10.1%
Unspecified Viral Infection	11,092	4.8%
All Other Top Primary Diagnoses Combined	25,371	10.9%

NOTES:
(1) ED = Emergency Department; PCP = Primary Care Provider.
(2) Primary diagnosis is considered the main reason for an ED visit. Top primary diagnoses are defined as the five most frequently listed primary diagnoses for each individual Medicaid STAR managed care organization within a service delivery area by client type. Client types are defined as TANF/TANF-related, SSI/SSI-related, and other. These top diagnoses were then summed across all Medicaid STAR managed care organizations, service delivery areas and client types.
SOURCES: Texas Medicaid and Healthcare Partnership Ad Hoc Query Platform Claims Universe and Encounter Data.

POTENTIAL COST AVOIDANCE FROM CLIENTS RECEIVING TREATMENT FOR NON-EMERGENT CONDITIONS FROM URGENT CARE PROVIDERS INSTEAD OF THE ED

Serving Medicaid STAR clients with certain non-emergent conditions in an urgent care provider setting instead of the ED could result in significant cost avoidance to the state. As shown in **Figure 4**, if all clients who received non-emergent care in an ED were served by an urgent care provider, the estimated cost for treating these clients in this setting would have totaled $74.3 million in fiscal year 2014. This cost estimate includes a physician reimbursement fee and an average amount for ancillary diagnostic tests. Office-based family practice physician reimbursement fees listed in the Texas Medicaid 2016 Physician Fee Schedule range from $13.49 to $111.98. The actual amount depends on the client's age, whether the client is new or established, and the level of the visit. The physician reimbursement fee used for this estimate was $61.56, which is the under-age-21 fee for the most frequently paid procedure code for outpatient new office visits for STAR clients. An urgent care provider may receive a higher or lower reimbursement amount based on their contract with a given STAR MCO.

As shown in **Figure 4**, if all STAR clients with non-emergent conditions had used an urgent care provider instead of the ED, the cost of care would have been $111.2 million less in fiscal year 2014. This estimate was determined by subtracting the cost of providing care to clients through urgent care provider appointments, $74.3 million, from the estimated total direct cost of non-emergent ED visits, $185.5 million. Any actual savings would accrue to MCOs unless the premium amounts paid by the state are adjusted to reflect reduced emergency department spending.

INCREASE ACCESS TO URGENT CARE PROVIDERS IN MEDICAID

Although Medicaid clients use EDs for non-emergent care for various reasons, multiple national research studies suggest that individuals use EDs for non-emergent conditions due to limited access to treatment for urgent needs in the primary

FIGURE 4
ESTIMATED ANNUAL COST SAVINGS FROM TREATING TEXAS MEDICAID STAR CLIENTS WITH NON-EMERGENT CONDITIONS IN URGENT CARE PROVIDER SETTING, FISCAL YEAR 2014

SETTING	CRITERIA	AMOUNT
Hospital-based Emergency Department	Expenditures for Non-emergent visits	$185,453,934
Urgent Care Provider	Estimated direct cost of treating Emergency Department clients with non-emergent conditions	($74,251,940)
Estimated Cost Savings		$111,201,994

NOTE: The state does not reimburse individual hospital providers under contract with managed care organizations. The spending amounts reported for the Medicaid STAR program represent the Health and Human Services Commission's best estimate of the amount paid by the managed care organizations to their providers. Any savings would accrue to managed care organizations unless the premium amounts paid by the state are adjusted to reflect reduced emergency department spending.
SOURCES: Texas Medicaid and Healthcare Partnership Ad Hoc Query Platform Claims Universe and Encounter Data; Legislative Budget Board.

care setting during regular and extended hours. For example, one study by researchers at Ohio State University found that almost half of Medicaid patients in the study sample who went to the ED with a non-urgent medical condition reported primary care infrastructure barriers. These barriers include waiting times and constraints associated with conventional business hours in the primary care setting. Another study by researchers at Morehouse School of Medicine and New York University found that barriers to primary care access, such as an inability to get an appointment soon enough, were associated with a higher likelihood of ED use. Finally, other studies suggest that increased access to treatment for urgent needs in the primary care setting is associated with a reduction in use of the ED.

Figure 5 shows the strategies implemented by HHSC to improve access to treatment for urgent needs in the primary care setting, which includes PCPs and urgent care providers. Some of these strategies are required by the Uniform Managed Care Contract (UMCC), the contract between MCOs participating in the Texas Medicaid program and HHSC. Yet, despite these strategies, some Medicaid clients may not have sufficient access to urgent care. Certain Medicaid clients may have difficulty obtaining timely same-day appointments at their PCP's office for urgent needs during regular hours. LBB staff analysis of the Texas Medicaid member surveys conducted the HHSC External Quality Review Organization (EQRO) found that 45.9 percent of caregivers of child members and 52.0 percent of adult members reported waiting for an appointment because the health provider worked limited hours or had few available appointments. The member surveys did not distinguish between waiting for same-day appointments for urgent needs and other types of appointments. Some providers participating in the Texas Medicaid program reported to LBB staff that some Texas Medicaid STAR clients might have difficulty accessing same-day care for urgent needs during regular hours due to capacity limitations that result in long waiting periods to get appointments. However, the extent of this difficulty is unknown because HHSC could not provide data on how long Texas Medicaid clients have to wait to be

FIGURE 5
STRATEGIES IMPLEMENTED IN THE TEXAS MEDICAID PROGRAM TO INCREASE ACCESS TO TREATMENT FOR URGENT NEEDS IN PRIMARY CARE SETTING, FISCAL YEAR 2014

STRATEGY	DESCRIPTION
Primary Care After Hours	The Uniform Managed Care Contract encourages MCOs to enter into Network Provider agreements with sites that offer primary care services during evening and weekend hours.
Waiting Time for Treatment of Urgent Conditions	The Uniform Managed Care Contract requires that MCOs ensure that treatment for urgent conditions, including urgent specialty care, is provided within 24 hours. The contract defines an urgent condition as a condition that is not an emergency, but is severe or painful enough to cause a prudent layperson, possessing the average knowledge of medicine, to believe that his or her condition requires medical treatment evaluation or treatment within 24 hours by the member's PCP or designee to prevent serious deterioration of the member's condition or health.
24/7 Telephone Access to PCPs	The Uniform Managed Care Contract requires Medicaid MCOs to require, through contract provisions, that PCPs are accessible via the telephone to members 24 hours per day, seven days per week.
Physician Incentive Programs	At least six STAR MCOs operate physician incentive programs to encourage PCPs to reduce ED use among their patients. The design of each program varies by MCO.
Add-on payments for PCP Routine After Hour Appointments	Fifteen STAR MCOs provide add-on payments to PCPs for care provided during routine, regularly scheduled, extended weekday or weekend hours.
Urgent Care Clinics in MCO Provider Networks	The Uniform Managed Care Contract states that MCOs must ensure that Urgent Care Clinics, including multi-specialty clinics serving in this capacity, are included within the Provider Network.
Identification of Urgent Care Centers	HHSC allows providers to self-declare as an urgent care center in the Provider Information Management System. Medicaid clients can conduct queries to identify self-declared urgent care centers. Providers may also be listed as having extended or weekend hours.

Notes:
(1) MCO=Managed Care Organization; ED=Emergency Department; PCP=Primary Care Provider.
(2) References to the Uniform Managed Care Contract is for version 2.16.
Source: Health and Human Services Commission.

seen by their PCP for urgent needs during regular office hours. Future Medicaid member surveys by the EQRO may provide additional information to access whether the strategies in **Figure 5** have improved client access to same-day appointments at PCP offices for urgent needs during regular hours.

Certain Medicaid clients have limited access to appointments at their PCP's office after regular business hours. As shown in **Figure 6**, a survey of Texas Medicaid STAR MCOs conducted by HHSC found that many PCPs participating in the Texas Medicaid STAR program do not offer routine extended weekday or weekend hours. Specifically, the percentage of PCPs in STAR MCOs that offer routine after-hour appointments ranges from 0.7 percent to 65.2 percent for extended weekday hours, and 0.5 percent to 65.2 percent for weekend hours depending on the MCO and service delivery area. It is possible that variations in the percentage of PCPs that offer routine after-hour appointments could be due to differences in MCO methodologies used to collect the data and HHSC was unable to validate the data provided.

FIGURE 6
PERCENTAGE OF PRIMARY CARE PROVIDERS IN TEXAS MEDICAID STAR PROGRAM THAT OFFER ROUTINE AFTER-HOUR APPOINTMENTS BY SERVICE DELIVERY AREA AND MCO, FISCAL YEAR 2016

		PCPS OFFERING EXTENDED HOURS (PERCENTAGE)	
SERVICE DELIVERY AREA	MCO	WEEKDAY	WEEKEND
Bexar	Aetna	65.2%	65.2%
	Amerigroup	14.0%	14.9%
	Community First	8.6%	2.9%
	Superior	15.5%	9.8%
Dallas	Amerigroup	16.4%	21.3%
	Molina	31.4%	31.6%
	Parkland	32.1%	33.2%
El Paso	El Paso First	9.5%	7.5%
	Molina	24.4%	7.3%
	Superior	16.6%	9.5%
Harris	Amerigroup	15.5%	18.2%
	Community Health Choice	17.1%	12.7%
	Molina	17.8%	21.9%
	Texas Children's	31.1%	47.4%
	United	4.6%	1.5%
Hidalgo	Driscoll	41.2%	20.6%
	Molina	60.9%	43.3%
	Superior	39.2%	26.7%
	United	21.3%	11.4%
Jefferson	Amerigroup	0.7%	0.8%
	Community Health Choice	1.4%	1.0%
	Molina	18.7%	21.6%
	Texas Children's	17.4%	16.0%
	United	0.6%	0.5%
Lubbock	Amerigroup	10.4%	10.7%
	FirstCare	12.7%	7.8%
	Superior	9.3%	4.9%
Nueces	Christus	1.4%	0.9%
	Driscoll	8.2%	7.5%

FIGURE 6 (CONTINUED)
PERCENTAGE OF PRIMARY CARE PROVIDERS IN TEXAS MEDICAID STAR PROGRAM THAT OFFER ROUTINE AFTER-HOUR APPOINTMENTS BY SERVICE DELIVERY AREA AND MCO, FISCAL YEAR 2016

		PCPS OFFERING EXTENDED HOURS (PERCENTAGE)	
SERVICE DELIVERY AREA	MCO	WEEKDAY	WEEKEND
Nueces (cont.)	Superior	2.2%	3.7%
Tarrant	Aetna	46.0%	46.0%
	Amerigroup	9.9%	9.3%
	Cook Children's	27.3%	21.9%
Travis	Blue Cross Blue Shield	not available	29.5%
	Sendero	22.2%	12.8%
	Seton	31.1%	26.3%
	Superior	13.3%	6.3%
	Scott and White	5.4%	3.2%
	Superior	3.7%	4.0%
MRSA Northeast	Amerigroup	22.9%	18.8%
	Superior	5.2%	5.2%
MRSA West	Amerigroup	11.5%	9.3%
	FirstCare	3.7%	1.2%
	Superior	10.3%	6.9%

NOTES:
(1) MCO = Managed Care Organization.
(2) In most service delivery areas, Amerigroup and Christus combined reporting for STAR and other managed-care delivery models they participate in (e.g., CHIP or STAR+PLUS). As a result, the data for these MCOs may include PCPs that offer after-hour appointments to clients in CHIP or STAR+PLUS, but not STAR. In these cases, the actual percentage for STAR would be lower than reported in this figure. Two MCOs—United and Christus—reported that their data includes not only PCPs who offer routine after-hours care, but also PCPs that occasionally offer care after posted, routine office hours.

SOURCE: Health and Human Services Commission Survey of Texas Medicaid STAR Managed Care Organizations, February 2016, and Texas Medicaid Program Provider Data Files submitted by MCOs to HHSC, First Quarter State Fiscal Year 2016.

LBB staff analysis of the Texas Medicaid member surveys conducted by the EQRO suggests that STAR clients may not have sufficient access to urgent care. As shown in **Figure 7**, 44.1 percent of child members and 32.3 percent of adult members who went to the ED reported doing so because they could not get an appointment at a doctor's office or clinic as soon as they needed care. Among caregivers of child members who reported needing after-hours care, 32.4 percent said it was never or only sometimes easy to get such care. Among adult members who reported needing after-hours care, 45.9 percent said it was never or only sometimes easy to get such care. Similarly, 56.9 percent of adult members reported that they were never or only sometimes able to get care needed from a provider's office during evenings, weekends, or holidays. Survey results did find that a majority of adult members report receiving assistance when phoning their personal doctor after-hours and receiving information on what to do if care is needed during evenings, weekends, or holidays.

Providers at urgent care locations could help fill the gap that exists due to limited access to same-day and after-hours treatment for urgent needs at PCP offices. HHSC could take steps in three areas to increase access to urgent care providers for Medicaid clients: (1) strengthening provider access standards for urgent care; (2) reducing administrative barriers for urgent care providers; and (3) improving client access to information about available urgent care locations. Any efforts to increase access to urgent care providers should ensure that client access to PCPs is not diminished. For example, clients should not be allowed to receive well-child appointments from urgent care providers. Some Medicaid MCOs have taken steps to ensure that the only type of care clients receive from urgent care providers is for the treatment of urgent conditions. For example, at least one MCO denies claims submitted by urgent care providers that are for routine care, including vaccines. Routine care includes preventive and medically necessary services that are non-emergent or non-urgent.

FIGURE 7
URGENT CARE RELATED QUESTIONS FROM TEXAS MEDICAID STAR MEMBER SURVEYS, 2014 AND 2015

QUESTION	PERCENTAGE ACROSS MCOS
STAR Child Caregiver Member Survey, Survey fielding period: May 2015 to August 2015	
Had to sometimes (23.3%), usually (7.5%), or always (15.1%) wait for an appointment because the health provider worked limited hours or had few available appointments.	45.9%
Personal doctor contacted before going to emergency room.	29.7%
Went to emergency room because could not get an appointment at doctor's office or clinic as soon as care was needed.	44.1%
Never (9.4%) or only sometimes (23.1%) easy to get after-hours care.	32.4%
STAR adult Member Survey, Survey fielding period: June 2014 to August 2014	
Had to sometimes (32.6%), usually (9.0%), or always (10.3%) wait for an appointment because the health provider worked limited hours or had few available appointments.	52.0%
Never (34.0%) or only sometimes (22.9%) able to get care needed from provider's office during evenings, weekends, or holidays.	56.9%
Personal doctor contacted before going to emergency room.	33.0%
Went to emergency room because could not get an appointment at doctor's office or clinic as soon as care was needed.	32.3%
Never (22.7%) or only sometimes (23.1%) easy to get the after-hours care.	45.9%
Personal doctor gave information about what to do if care is needed during evenings, weekends, or holidays.	77.2%
Always received help or advice when phoned personal doctor's office after regular office hours.	62.8%

SOURCES: Texas External Quality Review Organization; University of Florida Survey Research Center.

STRENGTHEN PROVIDER ACCESS STANDARDS

The state cannot determine the extent to which Medicaid clients have sufficient access to urgent care providers because HHSC does not regularly monitor client access to these services. The UMCC states that MCOs must ensure that Urgent Care Clinics, including multi-specialty clinics serving in this capacity, are included within a MCO's provider network. However, HHSC does not monitor compliance with this requirement. Because HHSC does not regularly monitor client access to urgent care providers, at the request of LBB staff, in February 2016, HHSC surveyed MCOs to collect data on the number and location of urgent care providers available within each service delivery area. However, LBB staff research confirmed that the survey data provided by HHSC was incomplete. As a result, there is no existing source of data that can be used to determine the number and accessibility of urgent care providers available to Medicaid clients across the state or by MCO.

Senate Bill 760, Eighty-fourth Legislature, Regular Session, 2015, requires HHSC to establish minimum provider access standards for Medicaid MCO provider networks, including standards that ensure sufficient access to after-hours urgent care. This requirement does not specifically apply to access to urgent care providers during regular business hours. HHSC is also required to implement a process for monitoring MCO provider network adequacy and to report to the Legislature on access. Each MCO is required to comply with provider access standards as a condition of contract retention and renewal and must publicly report data on provider network adequacy. HHSC's timeline for overall completion of these changes is March 1, 2017. As a result, Senate Bill 760 may improve HHSC's monitoring of client access to urgent care providers. However, the statute is limited to after-hours urgent care and does not prescribe that specific data on urgent care providers be included in the reports on provider access standards prepared by the MCOs or HHSC. As a result, the state's ability to monitor client access to these services may be less comprehensive.

Option 1 would amend the Texas Government Code to require HHSC to strengthen Medicaid provider access standards and oversight, including collecting data to ensure that clients have sufficient access to urgent care locations and include related language in the UMCC. For example, HHSC should consider establishing a distance standard to ensure that all Medicaid clients have access to at least one urgent care location within a set number of miles from their home.

Some Medicaid MCOs have established either a 30- or 75-mile distance standard for urgent care providers while others have not implemented a distance standard. HHSC should also be directed through statute to ensure that standards established in response to Senate Bill 760 apply to not only after-hours urgent care, but also urgent care provided during regular hours. Also, reporting by MCOs and HHSC on provider access standards should include a detailed analysis of access to urgent care providers, including compliance with distance standards, urgent care provider-to-recipient ratios and compliance with MCO contract requirements related to urgent care access.

REDUCE ADMINISTRATIVE BARRIERS

Certain Medicaid processes create administrative barriers that result in some urgent care providers choosing not to participate in the Texas Medicaid program, further limiting client access to these services. A survey conducted by the Urgent Care Association of America (UCAOA) in 2016 found that the majority of member urgent care providers believe that Texas Medicaid participation criteria is challenging for the urgent care setting. Survey respondents cited administrative burdens associated with contracting with the Texas Medicaid program, including challenges with the provider credentialing process. One urgent care provider reported to LBB staff that they have chosen to not contract with the Texas Medicaid program because the provider enrollment and credentialing processes are "lengthy, burdensome, confusing and takes several months to complete." The Texas Medicaid provider credentialing process requires providers to first submit an enrollment application to the state and then submit separate applications to each MCO for each clinical practitioner.

The Code of Federal Regulations, Title 42, Section 440.90, permits states to reimburse clinic services furnished by facilities that are not part of a hospital, but are organized and operated to provide medical care on an outpatient basis, as long as the services are under the direction of a physician or dentist. According to HHSC, facility providers are not required to enroll any individual employee or performing provider. Payment is made to the Medicaid-enrolled facility. However, the Texas Medicaid State Plan does not permit urgent care providers to enroll as facility providers. As a result, individual providers employed by urgent care centers or retail clinics who choose to participate in the Texas Medicaid program must individually enroll to serve Medicaid clients. Urgent care providers report that the current process results in additional administrative cost associated with completing paperwork on each practitioner. Providers in a group practice who operate an urgent care center can enroll their legal entity as a group provider to serve Medicaid clients. For any group enrollment, there must be at least one Medicaid-enrolled performing provider and the enrolled performing provider must be listed on the claim in order for a provider group claim to be paid.

Some urgent care providers reported to LBB staff that the provider enrollment process is more streamlined in Medicare than the Texas Medicaid program. According to the UCAOA, 88 percent of urgent care centers contributing data to their Benchmarking Report indicated that they accept Medicare compared to 53 percent that accept one or more Texas Medicaid MCOs. Also, one urgent care provider reported to LBB staff that while they do not participate in the Texas Medicaid program, they do accept Medicaid in other states with more simplified enrollment and credentialing processes that take much less time to complete (e.g., 45 days compared to almost a year in Texas).

Option 2 would amend the Texas Government Code to require HHSC to reduce administrative barriers in the Texas Medicaid program for providers at urgent care locations, including making improvements to enrollment and credentialing processes. HHSC should consider, at a minimum, the following modifications: (1) amending the Texas Medicaid State Plan to permit certain urgent care providers to enroll as facility providers; and (2) streamlining provider enrollment and credentialing processes so that the process is less burdensome and can be completed in a shorter amount of time (e.g., increase automation). HHSC has implemented a provider protection plan as required by Senate Bill 1150, Eighty-third Legislature, Regular Session, 2013. The purpose of this plan is to reduce administrative burdens placed on providers participating in Medicaid managed care. The plan includes components related to provider enrollment and credentialing processes. Also, Senate Bill 760 requires Medicaid MCOs to implement an expedited credentialing process to allow applicant providers to provide services on a provisional basis. HHSC may need to consider adjusting the provider protection plan and expedited credentialing processes to ensure that modifications to administrative processes proposed in Option 2 are addressed.

IMPROVE CLIENT ACCESS TO INFORMATION

The UMCC states that MCOs must require PCPs to provide telephone access to Medicaid STAR clients 24 hours a day, seven days a week. Medicaid STAR clients are encouraged to contact their PCP when they have an urgent, non-life threatening, medical condition. PCPs who are unable to see a client with an urgent medical condition may refer the client to an urgent care provider. However, some Medicaid clients may be unable to reach their PCP over the telephone outside of regular operating hours despite contract requirements. An HHSC review of surveys conducted by MCOs to evaluate client access to PCPs found that less than 50 percent of PCPs that contracted with two of the largest MCOs based on client enrollment and provider networks met the 24/7 access standard. It is possible that variations in reported continuous PCP access could be due to differences in MCO survey methodologies. For clients who are able to reach their PCP after-hours, data is not available to estimate the extent to which PCPs refer clients to urgent care providers.

As shown in **Figure 8**, Medicaid STAR MCOs have implemented additional strategies to provide clients with information on urgent care provider locations. However, LBB staff found that the ease of access to information about available urgent care locations varies by Medicaid MCO. As a result, some Medicaid clients may have difficulty finding urgent care providers. This is especially problematic for clients who are unable to reach their PCP after-hours. LBB staff found differences in the ways in which MCOs have implemented these strategies that may affect how easy it is for clients to identify urgent care provider locations. For example, some MCOs have online search tools where the term urgent care center is at the bottom of a list of service types that may be selected while other MCOs have created separate search tools for clients to identify only urgent care providers. Similarly, some MCOs list urgent care providers in provider directories under broader provider type categories, such as ancillary services or medical facilities, while others have created separate directories or brochures that list urgent care providers. Furthermore, only 10 of 18 MCOs have a nurse telephone line that can provide clients who call after-hours with a list of in-network urgent care providers.

FIGURE 8
STRATEGIES IMPLEMENTED BY TEXAS MEDICAID STAR MCOS TO PROVIDE CLIENTS WITH INFORMATION ON URGENT CARE PROVIDER LOCATIONS, MARCH 2016

STRATEGIES	MEDICAID STAR MCOS
Online search tool	15
Printed/PDF Provider directory or brochure identifies urgent care provider locations	14
24/7 nurse telephone line has list of in-network urgent care provider locations	10

Notes:
(1) MCO = Managed Care Organization; ED = Emergency Department; PCP = Primary Care Provider.
(2) As of March 2016, 18 MCOs contracted with Health and Human Services Commission serve clients in the Medicaid STAR program.
Source: Legislative Budget Board.

The Texas Medicaid and Healthcare Partnership (TMHP) operates an online provider look-up tool that clients may use to find urgent care providers. According to HHSC, Medicaid providers use a secure online portal referred to as the Provider Information Management System (PIMS) to self-declare as an urgent care center or to list themselves as offering extended or weekend hours. This information is contained in the online provider look-up tool used by clients. HHSC does not have a mechanism to verify the accuracy of the information entered into PIMS by providers. LBB staff review of the online provider look-up tool, which included contacting a sample of providers over the telephone, found that certain providers are incorrectly identified as urgent care centers or as PCPs with extended hours. Examples of the limitations identified include:

- Providers identified as having extended hours that are only open during regular business hours;
- Providers identified as PCPs with extended hours that were part of an emergency physician group; and
- One provider identified as an urgent care center that was part of an anesthesiology physician group.

Option 3 would amend the Texas Government Code to require HHSC to improve Medicaid client access to information about available urgent care locations. HHSC should consider the following improvements: (1) require MCOs to regularly provide updated information on urgent care locations in a standard format and post the listing, at a minimum, on MCO websites and/or ensure that the online provider search tools used by clients to identify urgent care providers are accessible; (2) improve the accuracy of the online provider look-up tool operated by TMHP including ensuring that urgent care providers are identified and listed correctly; (3) require that MCO nurse lines provide clients with information on in-network urgent care providers when appropriate; and (4) encourage PCPs to maintain relationships with urgent care providers as referral sources. Senate Bill 760, Eighty-fourth Legislature, Regular Session, 2015, includes provisions to improve client access to information about providers participating in Medicaid MCO networks. HHSC should ensure that these improvements include steps to also increase client access to information about available urgent care locations.

FISCAL IMPACT OF THE OPTIONS

The options in this report direct HHSC to take steps to increase access to urgent care providers in the Texas Medicaid program by strengthening provider access standards for urgent care, reducing administrative barriers for urgent care providers, and improving client access to information about available urgent care locations. The options are intended to reduce non-emergent use of the ED in the Texas Medicaid program by improving access to urgent care providers. To the extent that the options result in clients obtaining treatment for urgent needs from urgent care providers instead of higher costs EDs, there would be savings to Medicaid STAR MCOs. If the premium amounts paid by HHSC to MCOs are adjusted to reflect reduced ED spending, there could be savings to the state. However, there may be some clients who receive treatment from an urgent care provider who would not have otherwise obtained care. As a result, the fiscal impact cannot be estimated.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

OVERVIEW OF CURRENT MEDICAID HOSPITAL PAYMENTS AND HEALTHCARE ASSESSMENT FEES

Texas hospitals reported in the 2014 American Hospital Association Annual Survey of Hospitals receiving $5.5 billion in Medicaid revenue for fiscal year 2014. Supplemental payments to hospitals from the federal Disproportionate Share Hospital and the U.S. Social Security Act, Section 1115 Medicaid Transformation Waiver programs totaled about $5.8 billion in All Funds for fiscal year 2014. Public hospitals provide intergovernmental transfers to draw down these supplemental payments. The amount of intergovernmental transfers from local public hospitals to the state to receive supplemental payments increased from $1.2 billion for the 2002–03 biennium to an estimated $5.4 billion for the 2014–15 biennium. This increase is attributable to the additional Federal Funds available until 2011 in accordance with the Upper Payment Limit program, a federal initiative that allowed states to reimburse Medicaid providers the difference between Medicaid and Medicare payment rates. Intergovernmental transfers continued to increase when the Upper Payment Limit program was replaced in December 2011 with Section 1115 Waiver Uncompensated Care and Delivery System Reform Incentive Payment pools. Texas received an extension to continue the Section 1115 Waiver payments for an additional 15 months, until December 31, 2017, while the federal government considers a five-year Section 1115 Waiver renewal.

State-owned hospitals provide intergovernmental transfers for the nonfederal match for their share of Disproportionate Share Hospital payments. Local public hospitals transfer local funds to draw down the remaining Disproportionate Share Hospital Federal Funds. To augment these intergovernmental transfers, the Eighty-third Legislature, Regular Session, 2013, provided $300.0 million in General Revenue Funds for the 2014–15 biennium for the nonfederal share of the Disproportionate Share Hospital payments to local hospitals. For the 2016–17 biennium, the General Revenue for the nonfederal share Disproportionate Share Hospital payments was not maintained, instead the Eighty-fourth Legislature, 2015, appropriated $301.6 million in General Revenue–Dedicated Funds for rural, safety-net, and trauma hospital add-on payments. This report provides an overview of the distribution of Medicaid hospital payments and an update on health care assessment fees.

FACTS AND FINDINGS

- ♦ Six urban local public hospitals in Texas provide a significant amount (90 percent in fiscal year 2015) of the nonfederal share for the Disproportionate Share Hospital program and about 105 nonpublic hospitals receive program payments.
- ♦ Forty-nine states, including Texas, use provider taxes in connection with their Medicaid programs. Approximately two-thirds of states subject assessments on hospitals or intermediate care facilities for persons with intellectual or developmental disabilities.
- ♦ A hospital assessment may provide an opportunity to generate additional revenue that can be used to provide the nonfederal share of the Disproportionate Share Hospital payments to nonpublic hospitals.
- ♦ Annual revenue from a 0.85 percent revenue assessment on net inpatient revenue of nonpublic hospitals would generate approximately $414.3 million to be used toward the nonfederal share match for Disproportionate Share Hospital payments to nonpublic hospitals.

DISCUSSION

The U.S. Medicaid program is a jointly funded federal–state partnership that provides health insurance and other services primarily to low-income families, nondisabled children, pregnant women, the elderly, and people with disabilities. Inpatient hospital services are mandated Medicaid benefits that must be provided to all eligible clients. As of March 2016, 626 hospitals participated in the Texas Medicaid program. In 2014, about 545,000 admissions of Medicaid clients were made to these hospitals across the state.

Primary payments to Medicaid providers are categorized as either fee-for-service or managed care. In the 2014 American Hospital Association Annual Survey of Hospitals, Texas hospitals reported approximately $5.5 billion in revenue from the Medicaid program.

HOSPITAL REIMBURSEMENT POLICIES AND METHODOLOGIES

The federal government authorizes each state to develop its own hospital reimbursement methodology, subject to federal approval. Texas reimburses general acute care hospitals for inpatient hospital services provided to clients that are not served through managed care by using a prospective payment system. A prospective payment system bases payments for inpatient services on a patient's diagnosis before the provision of services. Hospitals that provide services to clients through managed-care plans must negotiate with managed care organizations (MCO). According to the Health and Human Services Commission (HHSC), the number of Medicaid managed-care clients in June 2015 represented 3.5 million of Texas' 4.0 million Medicaid beneficiaries. Calculating a hospital payment involves three elements: (1) the diagnosis-related group (DRG), (2) the DRG relative weight, and (3) the statewide standard dollar amount (SDA). General acute care hospitals receive a statewide SDA and additional amounts referred to as add-ons for geographical wage variances, teaching programs, safety-net designation, or trauma designation. Safety-net hospitals serve primarily uninsured or low-income patients. **Figure 1** shows how Medicaid FFS payments for inpatient hospital services are calculated for the different types of hospitals in Texas.

Outpatient hospital services covered for Medicaid clients consist of diagnostic, therapeutic, or rehabilitative services delivered in a licensed hospital setting. The U.S. Tax Equity and Fiscal Responsibility Act (TEFRA) reimbursement process is used to determine FFS reimbursement rates for hospitals that operate outside of managed care. An interim payment rate is used, subject to cost settlement at the end of the state fiscal year. **Figure 2** shows the rates as a percentage of cost for outpatient services by hospital type. Imaging and clinical lab services are reimbursed through a fee schedule that is based on a percentage of the Medicare fee schedule for similar services (limited to 125 percent of Acute Care Medicaid fee for same procedure). Rural hospitals receive higher reimbursement for imaging and clinical lab services. Except for rural hospitals, nonemergent emergency room (ER) visits are reimbursed at 125 percent of the Medicaid fee for an office visit. The payment amount for non-emergent ED visits at rural hospitals is set to 65 percent of their emergent fee. For additional information on rural hospital reimbursement, see the *Legislative Budget Board Staff Report,* Use Improved Rate-setting Data to Evaluate Rural Hospital Medicaid Funding, 2017.

In addition to the two primary Medicaid reimbursements, Medicaid hospitals also receive supplemental payments. Medicaid supplemental payments consist of: (1) the Network Access Improvement Program; (2) Uncompensated Care and Delivery System Reform Incentive Payment pools; and (3) Disproportionate Share Hospital (DSH) payments. These supplemental payment streams are joint state–federal programs that are reimbursed by the federal government at a state's Federal Medical Assistance Percentage (FMAP). **Figure 3** shows the Medicaid supplemental payments to

FIGURE 1
TEXAS MEDICAID FEE-FOR-SERVICE PAYMENT METHODOLOGY FOR HOSPITAL INPATIENT SERVICES, FISCAL YEAR 2016

HOSPITAL	REIMBURSEMENT	METHODOLOGY
General Acute	Prospective Payment System	The product of the DRG relative weight and the statewide SDA for the hospital is used to calculate the hospital's payment. Additional add-on payments are made for geographical wage variances, teaching programs, and safety-net and trauma designations.
Rural Hospitals	Prospective Payment System	The product of the DRG relative weight and the facility-specific SDA for the hospital is used to calculate the hospital's payment.
Children's Hospitals	Prospective Payment System	The product of the DRG relative weight and single, children's statewide base SDA is used to calculate the hospital's payment with add-ons for geographic wage differences and for teaching programs.
State-owned Hospitals	Retrospective Cost-based Reimbursement System (U.S. Tax Equity and Fiscal Responsibility Act)	An interim-rate payment for Medicaid inpatient services is made to a hospital based on the historical relationship of costs compared to charges. At the end of a reporting cycle, an audit of costs is completed to determine if additional reimbursements or recoupments will occur.
Psychiatric Hospitals	Per Diem	A per diem based on the federal base per diem with facility-specific adjustments for wages, rural locations, and lengths of stay.

Notes:
(1) DRG = diagnosis-related group; SDA = standard dollar amount.
(2) State-owned Hospitals include the Department of State Health Services State Hospitals, Texas Center for Infectious Disease, The University of Texas M.D. Anderson Cancer Center, The University of Texas Medical Branch at Galveston, and The University of Texas Health Science Center at Tyler.

Sources: Legislative Budget Board; Health and Human Services Commission.

FIGURE 2
TEXAS MEDICAID PAYMENT FOR OUTPATIENT SERVICES FISCAL YEAR 2016

	REIMBURSEMENT AS A IN PERCENTAGE OF COSTS	
HOSPITAL	HIGH-VOLUME PROVIDER	NON-HIGH-VOLUME PROVIDER
Children's and State-owned	76.03%	72.70%
Rural	100.00%	100.00%
All Other	72.00%	68.44%

NOTE: A high-volume provider is defined as one that was paid at least $200,000 in Medicaid outpatient payments in 2004.
SOURCES: Legislative Budget Board; Health and Human Services Commission.

Texas hospitals. Medicaid supplemental payments are described in the following sections.

Texas uses funds received by intergovernmental transfer (IGT) from local governments, hospital districts, and state-owned hospitals toward the nonfederal share of the supplemental payments.

Funds that can be transferred to HHSC include the following nonfederal funds that:

- are in the governmental entity's administrative control;
- are not Federal Funds;
- are public funds, not private funds;
- are not prohibited or directed to a specific purpose by statute or constitution;
- meet a statutory or constitutional requirement that relates to the funds; and
- are not provider-related donations, which are voluntary donations from a nongovernmentally operated healthcare provider or entity related to a private healthcare provider.

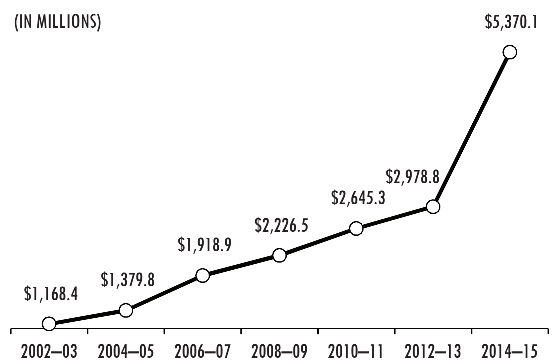
Hospital eligibility for supplemental payments is based on meeting state and federal requirements. Payments are based on federal and state limits and methodologies. As shown in **Figure 4**, Texas' reliance on IGTs from local public hospitals to provide the nonfederal share of Medicaid supplemental payments has increased substantially since the 2002–03 biennium.

FIGURE 3
MEDICAID SUPPLEMENTAL PAYMENTS TO TEXAS HOSPITALS, FISCAL YEAR 2015

PROGRAM	DESCRIPTION	2015 DISTRIBUTION
Network Access Improvement Program (NAIP)	The NAIP program provides incentive payments to participating Health Related Institutions (HRI) and public hospitals to increase access for Medicaid managed-care clients to primary care, specialty care, and related services. HRIs and public hospitals partner with managed care organizations (MCOs).	NAIP payments total $126.6 million. These payments are based on intergovernmental transfers (IGT) of $53.9 million.
Section 1115 Waiver -Uncompensated Care Payments	In accordance with the U.S. Social Security Act, Section 1115, Waiver, Uncompensated Care payments provide hospitals and other providers with supplemental payments for uncompensated care costs for services provided to Medicaid-eligible patients and uninsured patients.	Total Uncompensated Care payments were $3.1 billion. These payments are based on IGTs of $1.3 billion.
Section 1115 Waiver -Delivery System Reform Incentive Payment (DSRIP)	DSRIP payments are available to hospitals and other providers to develop and implement programs, strategies, and investments to enhance: access to healthcare services; quality of healthcare and health systems; cost-effectiveness of services and health systems; and health of the patients and families served.	DSRIP payments total $2.2 billion. These payments are based on IGTs of $0.9 billion.
Disproportionate Share Hospital Program (DSH)	The DSH program provides funding to hospitals that treat a disproportionate share of Medicaid clients and uninsured patients. The funding is intended to reimburse hospitals for the uncompensated care and additional costs from treating Medicaid clients.	Total DSH funding was $315.5 million for state hospitals and $1.4 billion for non-state-owned hospitals. These payments are based on IGTs of $722.6 million.

SOURCE: Legislative Budget Board.

FIGURE 4
INTERGOVERNMENTAL TRANSFERS BY TEXAS LOCAL PUBLIC HOSPITALS FOR MEDICAID SUPPLEMENTAL PAYMENTS, 2002–03 TO 2014–15 BIENNIA



NOTES:
(1) Amounts include IGTs for the Disproportionate Share Hospital Program, Upper Payment Limit Program, Network Access Improvement Program and Section 1115 Waiver Payments.
(2) The Upper Payment Limit program was replaced in the 2012–13 biennium with Section 1115 Waiver Payments.
SOURCE: Legislative Budget Board.

ACTIONS TAKEN BY THE TEXAS LEGISLATURE

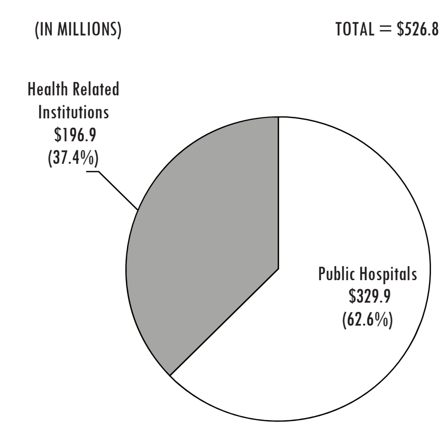
The Eighty-fourth Legislature, 2015, appropriated $301.6 million in General Revenue–Dedicated Funds related to trauma for rural, safety-net, and trauma hospital add-on payments. These funds are transferred from General Revenue–Dedicated Account No. 5111, Trauma Facility and EMS (Account 5111), which generates revenue from the Driver Responsibility Program (DRP) and a $30 state traffic fine relating to traffic offense convictions. A total of $128.7 million in General Revenue–Dedicated Funds ($299.0 million in All Funds) was appropriated to cover the Medicaid rate add-on for safety-net hospitals for the 2016–17 biennium. As of March 2016, public urban hospitals and children's hospitals have received $43.8 million (All Funds) in add-on payments for safety-net designations. An additional $153.0 million in General Revenue–Dedicated Funds ($355.5 million in All Funds) was included for a trauma add-on for eligible hospitals. HHSC has distributed $56.3 million (All Funds) in trauma add-on payments to public urban hospitals as of March 2016. An additional $20.0 million in trauma-related funding and $5.0 million in General Revenue Funds was appropriated for rural hospital add-on payments.

The Eighty-fourth Legislature, 2015, also directed HHSC to set aside 10.0 percent of the $299.0 million in All Funds for the 2016–17 biennium for incentive payments to safety-net hospitals based on quality metrics. HHSC will distribute $15.0 million in All Funds for fiscal year 2016 and $14.9 million in All Funds for fiscal year 2017. Safety-net hospitals will be eligible to receive incentive payments if they have not received penalties for either potentially preventable readmissions or potentially preventable complications.

NETWORK ACCESS IMPROVEMENT PROGRAM

In fiscal year 2015, HHSC established the Network Access Improvement Program (NAIP) to increase the availability and effectiveness of primary care for Medicaid clients. This program provides incentive payments to participating health-related institutions (HRI) and public hospitals. Participation is voluntary and requires HRIs and public hospitals to develop proposals in partnership with MCOs to receive federal matching dollars through Medicaid. If HHSC approves a proposal, the costs associated with the incentive payments are added to the monthly capitation rates paid to the MCO. The MCOs then are responsible for making payments to the HRIs and public hospitals. Intergovernmental transfers from HRIs and public hospitals are the source for the nonfederal share of NAIP payments. The program has distributed $ 126.6 million in All Funds in fiscal year 2015 and $526.8 million in All Funds in fiscal year 2016. The federal government has begun to conduct reviews on existing NAIP programs. HHSC is continuing funding for only existing projects. **Figure 5** shows the distribution of NAIP payments among HRIs and public hospitals in fiscal year 2016.

FIGURE 5
NETWORK ACCESS IMPROVEMENT PROGRAM PAYMENTS IN ALL FUNDS, FISCAL YEAR 2016

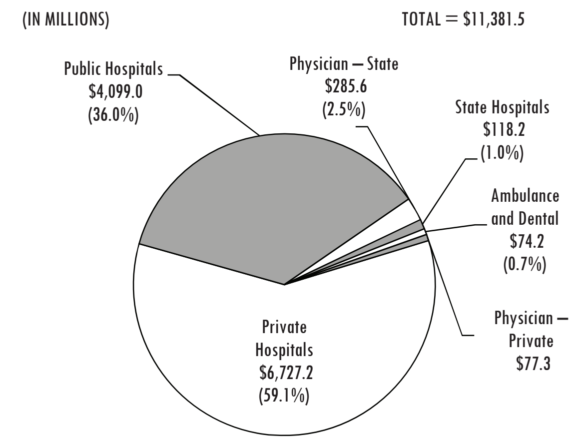


SOURCES: Legislative Budget Board; Health and Human Services Commission.

TEXAS MEDICAID TRANSFORMATION WAIVER

Two sources of Medicaid supplemental payments to hospitals depend on the Texas Section 1115 Medicaid Transformation Waiver. In 2011, HHSC worked with the federal Centers for Medicare and Medicaid Services (CMS) to implement statewide managed-care implementation while preserving Upper Payment Limit federal funding. The Medicaid Transformation Waiver is a five-year project and was set to expire September 30, 2016. HHSC received approval for a 15-month extension and will maintain the current funding through December 2017. The Medicaid Transformation Waiver secured federal funding to make hospital supplemental payments from two funding pools: the Uncompensated Care (UC) pool and the Delivery System Reform Incentive Payment (DSRIP) pool. The UC pool partially reimburses providers for costs associated with uncompensated or indigent care. The DSRIP pool incentivizes hospitals and other providers to transform their service delivery practices to improve quality, health status, patient experience, coordination, and cost-effectiveness. To receive a payment from either pool, providers and hospitals must participate in a Regional Healthcare Partnership (RHP). In 2012, HHSC established 20 geographically designated RHPs throughout the state, with each anchored by a public hospital or another public entity. Anchoring entities were responsible for coordinating regional activities and submitting RHP plans to HHSC describing these activities to HHSC. UC and DSRIP payments are drawn with IGTs from public hospitals, local mental health authorities, state academic health science centers, and state-owned hospitals. **Figure 6** shows the total UC payments by provider type through fiscal year 2015.

FIGURE 6
UNCOMPENSATED CARE POOL PAYMENTS TO TEXAS PROVIDERS IN ALL FUNDS, FISCAL YEARS 2012 TO 2015



NOTE: Payments include Upper Payment Limit transition payments distributed in fiscal year 2012.
SOURCES: Legislative Budget Board; Health and Human Services Commission.

As of July 2016, 1,451 DSRIP-funded projects were in place across Texas. DSRIP projects are categorized by the following purposes:

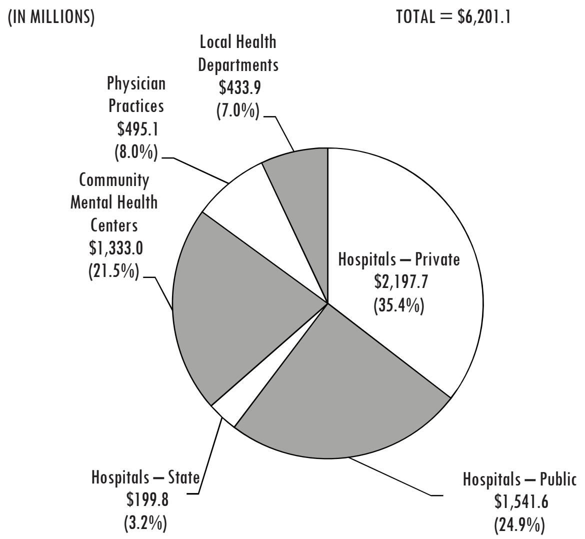
- Category 1 – Infrastructure Development, including DSRIP projects that lay the foundation for delivery system transformation through investments in technology, tools, and human resources;
- Category 2 – Program Innovation and Redesign, including piloting, testing, and replicating innovative care models;
- Category 3 – Quality Improvements, requiring an outcome related to Category 1 and Category 2 DSRIP projects; and
- Category 4 – Population-Focused Improvements, including reporting measures across several domains of healthcare and public health.

Figure 7 shows DSRIP payments by provider type as of June 2016.

DSRIP projects offered local entities an opportunity to realize returns on their IGTs specific to their regions. As a result, transferring entities preferred to use IGTs for DSRIP rather than for DSH payments. In fiscal year 2013, this preference presented an obstacle to fully funding DSH, because insufficient local funds were available to maximize both DSH and DSRIP.

To address this obstacle, the Eighty-third Legislature, Regular Session, 2013, appropriated $137.9 million from Account 5111 to provide the nonfederal portion of DSH payments. This appropriation was made in House Bill 1025, Eighty-third Legislature, Regular Session, 2013, which contained supplemental appropriations for fiscal year 2013. Additionally, the Eighty-third Legislature, General Appropriations Act (GAA), 2014–15 Biennium, addressed the anticipated ongoing need to provide appropriations for the nonfederal portion of DSH payments. The 2014–15 GAA, Article II, HHSC, Rider 86, provided up to $300.0 million in General Revenue Funds for the nonfederal portion of DSH for the biennium.

FIGURE 7
DELIVERY SYSTEM REFORM INCENTIVE PAYMENTS FOR CATEGORIES 1, 2, AND 3 TO TEXAS PROVIDERS IN ALL FUNDS, FISCAL YEARS 2013 TO 2015

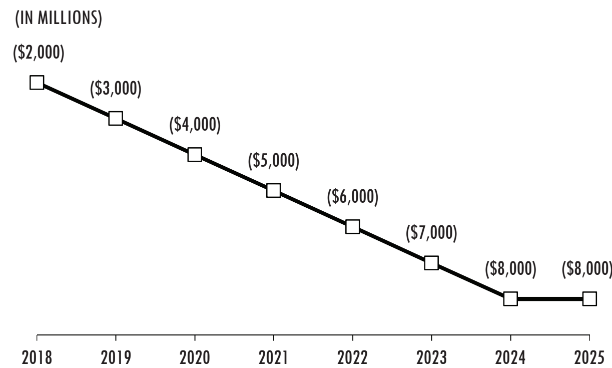


NOTE: Category 4 and fiscal year 2012 Delivery System Reform Incentive Payments (DSRIP) are not included.
SOURCES: Legislative Budget Board; Health and Human Services Commission.

DISPROPORTIONATE SHARE HOSPITAL PROGRAM

The U.S. Patient Protection and Affordable Care Act (ACA) was intended to reduce the number of uninsured Americans by incenting private insurance purchases and by expanding Medicaid. As a result, it was anticipated that hospitals' reliance on DSH payments to subsidize care for uninsured patients would decrease. The ACA included a series of national DSH reductions. The U.S. Department of Health and Human Services (HHS) is charged with developing a methodology that imposes the largest percentage of reductions on: (1) states that have fewer uninsured people; and (2) hospitals that have low levels of uncompensated care and low volumes of Medicaid clients. Reductions were to begin in federal fiscal year 2014 and end in federal fiscal year 2020. The reduction amounts varied by year, but totaled $17.1 billion during the seven-year period. Subsequent federal legislation delayed the implementation of the reductions from federal fiscal year 2014 to federal fiscal year 2017, and have extended the reductions to federal fiscal year 2024. In April 2015, the U.S. Medicare Access and CHIP Reauthorization Act eliminated the fiscal year 2017 reduction, which delayed reductions until fiscal year 2018, adjusted reduction amounts, and extended them to fiscal year 2025. The reduction to Texas' allocation is unknown at this time. Texas' federal DSH allocation for federal fiscal year 2016 is an estimated $1.0 billion for state and nonstate hospitals. **Figure 8** shows the ACA's reductions to the national DSH pool as modified by subsequent legislation.

FIGURE 8
FEDERAL REDUCTIONS IN DISPROPORTIONATE SHARE HOSPITAL PROGRAM'S NATIONAL SUPPLEMENTAL PAYMENTS, FEDERAL FISCAL YEARS 2018 TO 2025



SOURCE: Legislative Budget Board.

STATE-OWNED DISPROPORTIONATE SHARE HOSPITAL PROGRAM

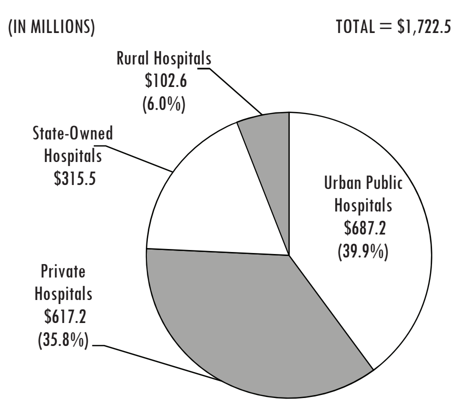
State-owned hospitals provide intergovernmental transfers for the nonfederal match for their share of Disproportionate Share Hospital payments. These hospitals include The University of Texas M.D. Anderson Cancer Center, The University of Texas Medical Branch at Galveston, The University of Texas Health Science Center at Tyler, Texas Center for Infectious Disease, and nine state-owned or state-funded mental health facilities. The DSH payment methodology requires any supplemental Medicaid payments to be considered in a hospital's specific limit. A hospital's specific limit is their Medicaid shortfall (costs not covered by Medicaid reimbursement) plus uncompensated care costs. DSH federal rules prohibit hospitals from receiving DSH payments more than their hospital-specific limits.

The state-owned hospitals participating in the DSH and Section 1115 Waiver UC programs transfer nonfederal appropriated funds to HHSC in the amount of their DSH and UC program allocations for inpatient and outpatient hospital services. HHSC returns to the state-owned hospitals the same amount in a mix of state and federal dollars. HHSC transfers the remaining balance of transferred funds, which is equal to the amount of matching Federal Funds obtained, to the state Treasury as unappropriated General Revenue Funds.

NON-STATE-OWNED DISPROPORTIONATE SHARE HOSPITAL PROGRAM

Local public hospitals transfer local funds to draw down the remaining Disproportionate Share Hospital Federal Funds. Although six urban local public hospitals in Texas provide a significant amount (90 percent in fiscal year 2015) of the nonfederal share for the Disproportionate Share Hospital program, about 105 private hospitals receive program payments. A total of 54 rural public hospitals and two urban public hospitals transfer local funds for their share of DSH payments. The six local hospital districts include Bexar, Dallas, El Paso, Harris, Tarrant, and Travis. This arrangement is voluntary, which HHSC negotiates with these hospitals. However, because of the availability of increased Federal Funds in accordance with the Medicaid Transformation Waiver, these hospitals were faced with the decision of using their local funds for statewide DSH payments or for community investment with DSRIP initiatives. In addition, these six local public hospitals are only receiving a fraction of their DSH Federal Funds that are generated from their IGTs. **Figure 9** shows how DSH funding was distributed in Texas in fiscal year 2015. A total of 105 private hospitals received 35.8 percent of DSH funds in fiscal year 2015.

FIGURE 9
TEXAS DISPROPORTIONATE SHARE HOSPITAL PAYMENTS IN ALL FUNDS, FISCAL YEAR 2015



SOURCE: Legislative Budget Board.

DSH payments are funded using the same matching rate as medical services (57.13 percent Federal Funds, 42.87 percent state funds in federal fiscal year 2016). States must provide the nonfederal share to draw DSH Federal Funds. The nonfederal share may be in General Revenue Funds, IGTs, or provider assessments.

HEALTH PROVIDER ASSESSMENTS AND TAXES

Pursuant to federal law, a state may impose an assessment, tax, or fee on certain classes of healthcare providers. However, the U.S. Social Security Act, Section 1903(w), specifies that unless healthcare-related taxes collected by a state are broad-based, such collections are subtracted from federal Medicaid funding amounts due. Broad-based taxes must be imposed uniformly on all providers of a class of healthcare items or services. Qualifying uniformly applied taxes may not authorize credits, exclusions, or deductions that result in a return of tax funds to the provider, or establish a similar hold harmless scenario. These prohibitions are not violated unless the amount of taxes returned to a provider exceeds 6.0 percent of the provider's net patient revenues. However, federal law provides the U.S. Secretary of HHS with authority to waive these requirements for certain providers, or upon a state showing that the tax and associated expenditures are typically redistributive and are not positively correlated to Medicaid payments.

Broad-based taxes are excepted from the statutory prohibition; however, states may use revenues from such assessments within limited circumstances to pay up to 25.0 percent of the nonfederal share of Medicaid spending. This usage enables the state to leverage the revenue generated by an assessment to draw down additional matching Federal Funds.

Forty-nine states, including Texas, use provider taxes in connection with their Medicaid programs. More than three-quarters of states impose provider taxes on nursing facilities. Approximately two-thirds of states subject assessments on hospitals or intermediate care facilities for persons with intellectual or developmental disabilities. Several states, including Colorado, Oregon, and Wisconsin, have used provider taxes to finance Medicaid provider reimbursement increases or coverage expansion initiatives.

The Texas Health and Safety Code, Chapter 252, Subchapter H, establishes a quality assurance fee for certain community and state facilities that serve individuals with an intellectual disability. Section 252.202 specifies that HHSC shall set the quality assurance fee based on patient days and facility gross receipts across a period of at least six months. However, the statute specifies that the fee may not exceed 6.0 percent of the facility's total annual Texas gross receipts. The statute further specifies that the fee is an allowable cost for Medicaid reimbursement. The quality assurance fee draws Medicaid Federal Funds for Intermediate Care Facilities for Individuals with Intellectual Disabilities.

The Texas life, health, and accident insurance premium tax is levied at 1.75 percent of the taxable gross premiums of any insurer, health maintenance organization (HMO), or MCO. Although this tax predates Medicaid, the portion of this tax collected from HMOs and MCOs is considered a provider assessment in accordance with the applicable federal definitions. This tax revenue is deposited to General Revenue Funds.

Although federal regulations provide for the enactment of provider taxes, the federal government scrutinizes provider tax structures for adherence to requirements in state plan amendments and waiver applications. In recent years, several states have submitted requests for waivers of provider tax requirements. States have been approved to exclude select providers from the tax. **Figure 10** shows select states and the types of facilities that are exempt from these states' hospital assessment fees.

FIGURE 10
STATES WITH HOSPITAL ASSESSMENTS THAT EXEMPT SELECT FACILITIES, FISCAL YEAR 2016

STATE	EXEMPT FACILITIES
California	Public Hospitals
Colorado	Institutions of Mental Disease
Oklahoma	Long-term-care Hospitals
Oregon	Long-term-care Hospitals

SOURCE: Legislative Budget Board.

PROVIDER ASSESSMENT FEE FOR HOSPITALS OPTIONS

The finite amount of available local funds has strained the existing DSH funding structure as large local public hospital districts have used intergovernmental transfers to fund Section 1115 waiver opportunities. Establishing an additional revenue source would increase the likelihood that Texas can maximize the DSH program and available Federal Funds under the extension of the Section 1115 Waiver.

An assessment fee on hospitals could be applied in several forms, which could generate a range of revenue and have a range of effects on these providers. The structure of an assessment fee and how assessment fee revenue are used will affect the estimates of effects on providers. **Figure 11** shows four populous states' use of hospital assessments or taxes. The profiles include: rate of assessment; amount of revenue generated from assessment; and general disposition of that revenue.

FIGURE 11
SELECT STATES' HOSPITAL ASSESSMENTS
FISCAL YEAR 2015

STATE	ASSESSMENT
California	• The assessment methodology varies fee amounts based on each hospital's Medicaid utilization rate, federal Upper Payment Limit, and other data elements. • An estimated $3.2 billion in fiscal year 2015 was generated from assessments to support the state's Medicaid supplemental payments to private hospitals.
Florida	• The rate of assessment is 1.5 percent of net operating revenues on inpatient hospital services and 1.0 percent of net operating revenue on outpatient services. • An estimated $511.0 million in fiscal year 2015 was generated from assessments to support the state's Medicaid program.
New York	• The rate of assessment on hospitals is 0.35 percent of cash operating receipts. • An estimated $384.0 million in fiscal year 2015 was generated to support the state's Medicaid program and other health programs.
Pennsylvania	• The rate of assessment for each covered hospital is up to 3.71 percent of net inpatient revenue. • An estimated $762.9 million in fiscal year 2015 was generated to support the state's Medicaid program.

SOURCE: Legislative Budget Board.

Nonpublic hospitals have an opportunity to provide the nonfederal share to draw DSH payments through an assessment fee. Implementing an assessment fee in Texas could provide policymakers with a stable source of state funds to maximize Federal Funds. According to an evaluation of Florida's Section 1115 Waiver by Navigant Consulting, Inc., a provider assessment might increase access to care by incenting low-Medicaid-volume hospitals to accept more Medicaid clients to cover their costs of the assessment.

Additionally, the increasing number of hospital provider assessments enacted and the federal approval of provider tax waivers in several states shows the viable opportunity for states to generate additional revenue toward accessing additional federal funding. Assessments are mandated by law, not optional as IGTs are. The Legislature could consider an assessment fee on nonpublic hospitals. An assessment on nonpublic hospitals' net inpatient revenue would generate the following approximate amounts to provide the nonfederal match for DSH payments for a full fiscal year:

- $365.6 million from an assessment of 0.75 percent on net inpatient revenue;
- $389.9 million from an assessment of 0.80 percent on net inpatient revenue; and
- $414.3 million from an assessment of 0.85 percent on net inpatient revenue.

USE IMPROVED DATA TO EVALUATE RURAL HOSPITAL MEDICAID FUNDING

Rural hospitals face several challenges due to their remote geographic location. Low population density tends to keep patient volume low making it difficult to manage the high fixed costs associated with operating a hospital. According to the Department of State Health Services, 13 rural hospitals have closed in Texas between January 2010 and December 2015 which is about 10.0 percent of all Texas rural hospitals. To promote access to rural hospitals, the Texas Medicaid program has implemented changes to payment methods. Specifically, Medicaid fee-for-service rates set by the Texas Health and Human Services Commission for rural inpatient and most outpatient services are designed to cover up to the full allowable cost of delivering services. Hospital rates for services provided to Medicaid managed care clients are negotiated between hospitals and managed care organizations.

The state cannot fully assess the impact of legislative efforts to increase rural hospital Medicaid funding due to data limitations. It is unknown whether Medicaid funding initiatives have increased the percentage of rural hospital cost covered by managed care payments because allowable cost data for these clients is currently not available. The Texas Health and Human Services Commission is modifying systems to use managed care data to estimate the allowable cost for hospital services provided to Medicaid managed care clients. The changes are expected to be complete by September 30, 2017, but it will take until 2019 for the system to produce sufficient data to estimate allowable cost. To help ensure that Medicaid payments to rural hospital providers are appropriate and promote access to care, the Texas Health and Human Services Commission should use this estimated data on the allowable cost of services provided to Medicaid managed care clients to evaluate funding initiatives for rural inpatient and outpatient hospital services provided to these clients.

FACTS AND FINDINGS

- ♦ From 2010 to 2014, the total number of inpatient days at Texas' rural hospitals decreased by 22.1 percent, from 739,077 to 575,831, while the number of outpatient visits increased by 2.9 percent, from 5,949,417 to 6,119,769.
- ♦ From 2010 to 2014, total billed charges at Texas' rural hospitals increased by 20.2 percent, from $8.5 billion to $10.2 billion. More than half (58.0 percent) of total billed charges in 2014 were for Medicare (45.7 percent) and Medicaid clients (12.3 percent).
- ♦ Hospital billed charges do not reflect the actual cost to the hospital of providing care. From 2010 to 2014, total cost at Texas' rural hospitals increased by 11.0 percent, from $2.9 billion to 3.3 billion.
- ♦ In 2014, total Medicaid claims payments to rural hospitals totaled $259.1 million. Of this amount, $162.4 million, or 62.7 percent, were for inpatient services and $96.7 million, or 37.3 percent, were for outpatient services.

CONCERNS

- ♦ The Health and Human Services Commission has been unable to determine the allowable cost of hospital services provided to Medicaid managed care clients due to data limitations. As a result, the state cannot determine whether funding initiatives have increased the percentage of rural hospital cost covered by Medicaid managed care payments.

OPTION

- ♦ **Option 1:** Include a rider in the 2018–19 General Appropriations Bill that would require the Health and Human Services Commission to evaluate Medicaid funding initiatives for rural inpatient and outpatient hospital services, including determining the percentage of estimated allowable hospital cost for services provided to managed care clients reimbursed by payments, and submit a report to the Legislative Budget Board and the Office of the Governor by August 1, 2019.

DISCUSSION

This report defines a rural hospital as a hospital in a county with 60,000 or fewer persons based on the 2010 decennial census, a hospital designated by Medicare as a Critical Access Hospital, a Sole Community Hospital, or a Rural Referral Center. The Texas Medicaid program for inpatient and outpatient hospital reimbursement uses the same definition. According to the Texas Department of State Health Services (DSHS), as of March 2016, there were 154 rural hospitals in

Texas which comprise 23.0 percent of acute care hospitals in Texas. Nearly all of these rural hospitals provide acute care that includes inpatient medical care and other related services for surgery, acute medical conditions or injuries usually for a short-term illness or condition. Most of the 154 rural hospitals accept Medicaid clients. The vast majority, 81.2 percent, of rural hospitals are non-profit while the remaining 18.8 percent are for-profit. The non-profit hospitals include publicly owned hospitals. The number of total beds at each rural hospital ranges from 10 to 214 with an average of 44. Approximately half of these hospitals have 25 or fewer beds.

RURAL HOSPITAL CHALLENGES AND CLOSURES

According to a 2011 report by the American Hospital Association, rural hospitals face several challenges, including:

- Rural residents are older, have lower incomes, are more likely to be uninsured, and are more likely to have chronic conditions than their urban and suburban counterparts. These characteristics can lead to challenges for the healthcare facility providing care for these individuals.
- The remote geographic location of rural hospitals results in low population density which tends to keep hospital size small and patient volume low. These features make it difficult to manage the high fixed costs associated with operating a hospital. With fewer patients to spread fixed expenses, costs per case tend to be higher.
- The older age mix of the population in combination with the greater poverty levels in rural areas makes rural hospitals highly dependent on public programs. As a result, rural hospitals are particularly vulnerable to Medicare and Medicaid policy changes.
- Insufficient Medicare and Medicaid reimbursement is compounded by rural hospitals absorbing the cost of treating high numbers of uninsured.
- Rural hospitals have difficulty recruiting and retaining an adequate workforce.

Rural hospital closures have been increasing since the 2008–09 economic recession. According to the Rural Health Research Program (RHRP) at the University of North Carolina at Chapel Hill, 74 rural hospitals have closed in the U.S. from January 2010 to May 2016. RHRP defines a rural hospital as any short-term, general acute, non-federal hospital that is not located in a metropolitan county or is located in a certain type of Rural-Urban Commuting Area or is a Critical Access Hospital. A hospital is considered closed if it stopped providing in-patient services.

According to DSHS, 13 rural hospitals have closed in Texas from January 2010 to December 2015 which is about 10.0 percent of all Texas rural hospitals. This figure is based on the rural hospital definition used for purposes of Medicaid inpatient and outpatient hospital reimbursement. Some of the closed hospitals may have reopened or sold to another hospital. Despite these closures, the Texas Health and Human Services Commission (HHSC) reports that 96 percent of Medicaid clients in rural areas had access to a rural acute care hospital within 30 miles of their residence in 2015. **Figure 1** shows a Texas map of the counties with rural hospitals and highlights the counties with closures.

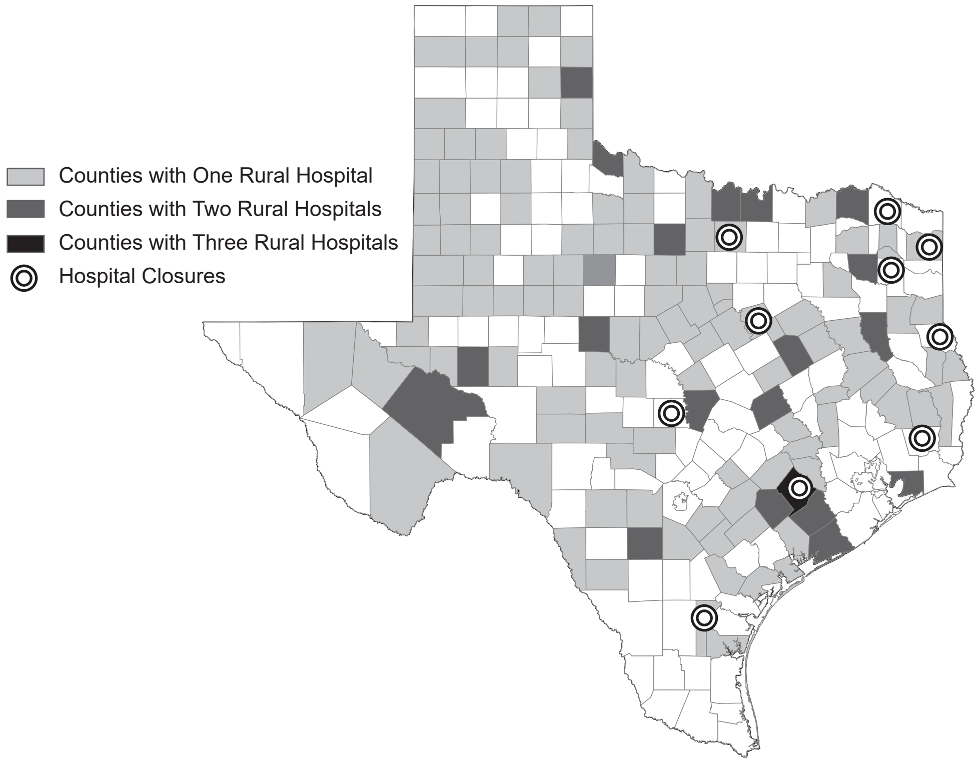
HOSPITAL UTILIZATION

Texas hospitals report the number of inpatient days on the Annual Survey of Hospitals. The survey, which is a cooperative effort between DSHS, the American Hospital Association, and the Texas Hospital Association, collects aggregate financial, utilization and other data from all licensed hospitals in Texas. Inpatient days include the number of adult and pediatric days of care. **Figure 2** shows the total number of inpatient days across all payer types at rural hospitals. From 2010 to 2014, the total number of inpatient days at rural hospitals decreased by 22.1 percent, from 739,077 to 575,831. As shown in **Figure 3**, of the total number of inpatient days in 2014, 62.4 percent were for Medicare clients, 12.9 percent for Medicaid, and 24.7 percent for other payer types. Other payer types include the uninsured, other government (e.g., TRICARE), non-government third-party, and self-pay. The proportion of inpatient days for each payer type remained relatively constant from 2010 to 2014.

Hospitals also report the number of outpatient visits on the DSHS Annual Survey of Hospitals. Outpatient visits include all clinic visits, referred visits, observation services, outpatient surgeries, home health service visits, and emergency department (ED) visits provided to clients who are not lodged in the hospital while receiving these services. **Figure 4** shows the total number of outpatient visits across all payer types at rural hospitals. From 2010 to 2014, the total number of outpatient visits increased by 2.9 percent, from 5,949,417 to 6,119,769.

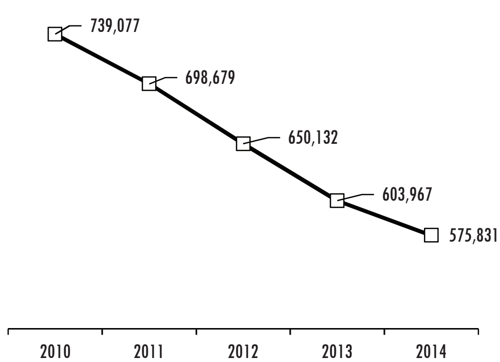
ED visits represented 20.0 percent of all outpatient visits at rural hospitals in 2014. As shown in **Figure 5**, from 2010 to 2014, the total number of ED visits across all payer types at

FIGURE 1
TEXAS RURAL HOSPITALS, MARCH 2016



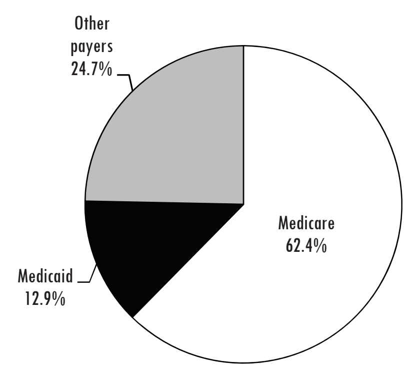
SOURCE: Texas Department of State Health Services, Annual Survey of Hospitals.

FIGURE 2
INPATIENT DAYS AT TEXAS RURAL HOSPITALS 2010 TO 2014



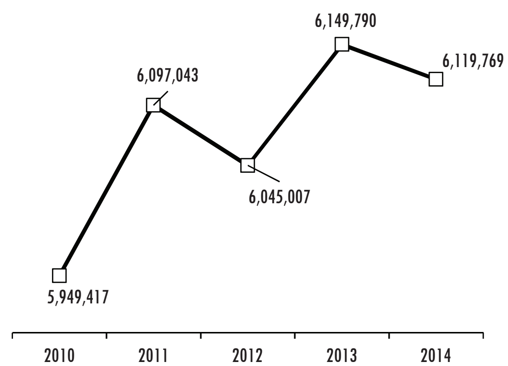
NOTES: An inpatient day of care, also known as a patient day, census day, or occupied bed day, is a period of service between census-taking hours on two successive calendar days. Days of care for infants born in the hospital and not transferred into a neonatal care unit are not included in this count. The discharge day is counted only when the patient is admitted the same day. Hospitals may report data by the hospital's fiscal year, state fiscal year, or calendar year.
SOURCE: Texas Department of State Health Services, Annual Survey of Hospitals.

FIGURE 3
PERCENTAGE OF INPATIENT DAYS AT TEXAS RURAL HOSPITALS BY PAYER TYPE, 2014



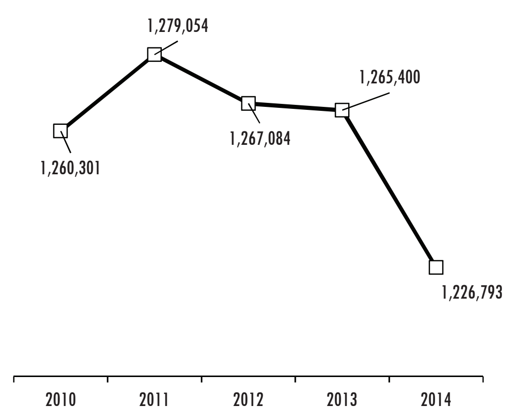
NOTE: Hospitals may report data by the hospital's fiscal year, state fiscal year, or calendar year.
SOURCE: Texas Department of State Health Services, Annual Survey of Hospitals.

FIGURE 4
OUTPATIENT VISITS AT TEXAS RURAL HOSPITALS 2010 TO 2014



NOTE: Hospitals may report data by the hospital's fiscal year, state fiscal year, or calendar year.
SOURCE: Texas Department of State Health Services, Annual Survey of Hospitals.

FIGURE 5
EMERGENCY DEPARTMENT VISITS AT TEXAS RURAL HOSPITALS, 2010 TO 2014



NOTE: Hospitals may report data by the hospital's fiscal year, state fiscal year, or calendar year.
SOURCE: Texas Department of State Health Services, Annual Survey of Hospitals.

rural hospitals decreased by 2.7 percent, from 1,260,301 to 1,226,793.

CHARGES AND COSTS

In general, hospitals have a list of prices that cover every hospital service. These lists contain the billed charges that are recorded on claims submitted to insurers or patients. Typically, Medicare, Medicaid, and commercial health insurance companies negotiate private contracts with hospitals for discounts off their billed charges. These discounts are often referred to as negotiated discounts, contractual adjustments, or contractuals. The size of the discount and how it is determined depends on the payer. In some cases, the actual payment is based on a predetermined fee schedule and the hospital's billed charges are not relevant. As a result, actual payments are different from hospital charges and differ by payer. The actual payment that a hospital receives is known as the allowed amount. The allowed amount, which is the maximum reimbursement the insurer will compensate the hospital for a service, is then divided into a portion paid by the patient and a portion paid by the insurer. **Figure 6** lists definitions for the hospital finance terms used in this report.

Hospitals report their billed charges, also known as gross patient revenue, for inpatient and outpatient services on the DSHS Annual Survey of Hospitals. Billed charges are defined as a hospital's full-established rates for all services rendered to patients. **Figure 7** shows the total billed charges across all payer types at rural hospitals. From 2010 to 2014, total billed charges increased by 20.2 percent, from \$8.5 billion to \$10.2 billion. These amounts include uncompensated care, which totaled \$1.1 billion in 2014 or 11.2 percent of total billed charges. Uncompensated care is the sum of bad debt charges and charity care charges. Bad debt charges include uncollectible inpatient and outpatient charges that result from the extension of credit. Charity care charges include the total amount of hospital charges for inpatient and outpatient services provided to individuals classified by the hospital as financially or medically indigent.

As shown in **Figure 8**, more than half (58.0 percent) of total billed charges in 2014 were for Medicare (45.7 percent) and Medicaid clients (12.3 percent). The proportion of billed charges for each payer type remained relatively constant from 2010 to 2014.

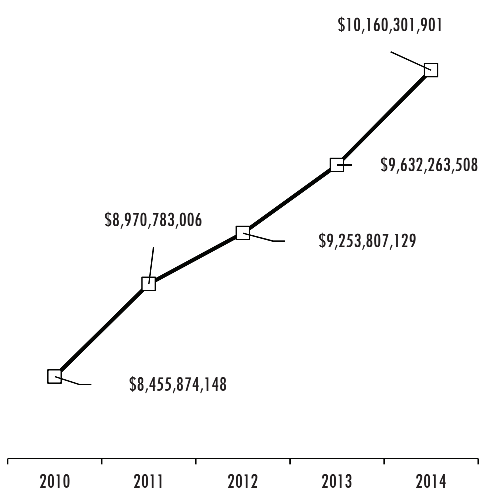
Hospital billed charges do not reflect the actual cost to the hospital of providing care. Hospital cost refers to how much the hospital must spend to provide care as opposed to how much a patient or insurer must spend to receive care at a hospital. For certain procedures, the hospital's cost may be less than the allowed amount and the hospital earns a profit. In other cases, the cost may exceed the allowed amount and the hospital experiences a financial loss. It is common to translate a hospital's total billed charges into a hospital's cost using a cost-to-charge ratio (CCR) methodology. The CCR is the ratio between a hospital's expenses and what it charges. The closer the CCR is to 1, the less difference there is between

FIGURE 6
HOSPITAL FINANCE TERMINOLOGY, 2016

TERM	DEFINITION
Billed Charges	A hospital's full-established rates for services rendered to patients. Billed charges are also known as gross patient revenue. These charges may include services that are not a benefit of the Texas Medicaid program.
Cost	The amount a hospital must spend to provide care.
Cost-to-Charge Ratio (CCR)	The ratio between a hospital's cost and what it charges. The closer the CCR is to 1, the less difference there is between the actual costs and the hospital's charges. Multiplying each hospital's total billed charges by the overall CCR provides an estimate of the hospital's cost.
Contractual Adjustments	Discounts off billed charges that are negotiated between hospitals and payers.
Payment	The maximum reimbursement the insurer will compensate the hospital for a service. The payment a hospital receives is also known as the allowed amount.
Medicaid Allowable Charges	Charge amounts for Medicaid payable services within the limits of the Texas Medicaid program.
Medicaid Allowable Costs	The cost incurred by the hospital for providing Medicaid payable services within the limits of the Texas Medicaid program.
Medicaid claims payments	Payments made by the Medicaid program for services listed by hospitals on itemized statements of services
Medicaid supplemental payments	Additional compensation for below-cost Medicaid reimbursement and to help fund care for low-income patients not eligible for Medicaid.

Source: Legislative Budget Board.

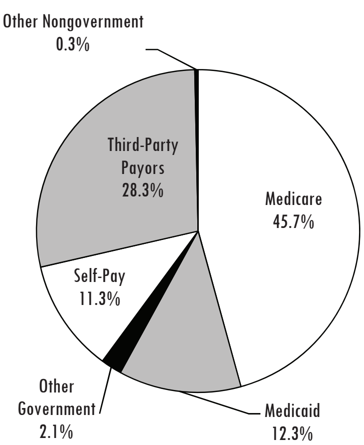
FIGURE 7
BILLED CHARGES AT TEXAS RURAL HOSPITALS 2010 TO 2014



Notes:
(1) Billed charges, also known as gross patient revenue, are defined as a hospital's full-established rates for all services rendered to patients.
(2) Hospitals may report data by the hospital's fiscal year, state fiscal year, or calendar year.

Source: Texas Department of State Health Services, Annual Survey of Hospitals.

FIGURE 8
PERCENTAGE OF BILLED CHARGES AT TEXAS RURAL HOSPITALS BY PAYER TYPE, 2014



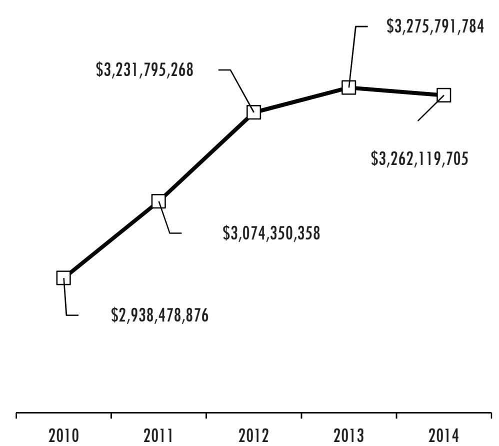
Notes:
(1) Billed charges, also known as gross patient revenue, are defined as a hospital's full-established rates for all services rendered to patients.
(2) Hospitals may report data by the hospital's fiscal year, state fiscal year, or calendar year.

Source: Texas Department of State Health Services, Annual Survey of Hospitals.

the actual costs and the hospital's charges. Multiplying each hospital's total billed charges by the overall CCR provides an estimate of the hospital's cost.

HHSC contracts with the Texas Medicaid and Healthcare Partnership (TMHP) to perform certain administrative functions of the Texas Medicaid program. Hospitals submit cost data to TMHP. This data includes the cost for all patients across all payer types, including Medicaid fee-for-service and managed care clients. The forms also include worksheets that list the calculated cost to treat Medicaid fee-for-service clients, but data for Medicaid managed care clients is not broken out separately. **Figure 9** shows the total cost across all payer types at rural hospitals. Despite rural hospital closings, from 2010 to 2014, total reported cost increased by 11.0 percent, from $2.9 billion to $3.3 billion.

FIGURE 9
TOTAL COSTS AT TEXAS RURAL HOSPITALS, 2010 TO 2014



NOTE: Hospital cost reports are completed by each hospital based on their individual fiscal year which may differ from the state fiscal year.
SOURCE: Texas Medicaid and Healthcare Partnership, Hospital Cost Reports.

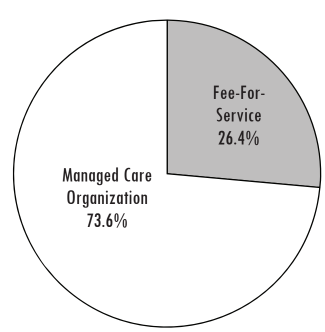
MEDICAID PAYMENTS FOR INPATIENT AND OUTPATIENT SERVICES

Due to data limitations, this report only includes Medicaid payments for inpatient and outpatient services at rural hospitals and does not report payments made by all payers, such as Medicare, other government, non-government third-party, and self-pay. Medicaid reimburses hospitals for providing covered inpatient and outpatient services to clients. HHSC sets payment rates for hospital services provided to clients in the traditional Medicaid payment system known as fee-for-service (FFS). Hospital rates for services provided to Medicaid managed care clients are negotiated between the hospital and the MCO. Under federal law, HHSC may not interfere in rate setting negotiations between MCOs and providers. MCOs may refer to Medicaid fee-for-service rates during negotiations with hospitals, but are not required to do so. Most hospitals are paid rates negotiated with MCOs since most Medicaid clients are in managed care and not the original fee-for-service program.

Inpatient hospital reimbursement rates for fee-for-service Medicaid clients are set using a prospective payment system. Each hospital admission is classified into an APR-DRG (All Patient Refined Diagnosis Related Group) on the basis of clinical information. Hospitals are paid a predetermined rate for each admission based on the APR-DRG regardless of the actual services provided. The payment rates are determined by multiplying APR-DRG weights by a Standard Dollar Amount (SDA) that may be adjusted for high-cost services or regional cost differences. Effective September 1, 2013, rural hospital reimbursement rates for fee-for-service Medicaid clients are set using a hospital-specific full cost SDA with no adjustments. The full cost SDA is based on each rural hospital's average cost of all inpatient admissions for fee-for-service clients in the base year trended forward for inflation.

Total Medicaid claims payments to rural hospitals for inpatient services totaled $162.4 million in state fiscal year 2014. As shown in **Figure 10**, nearly three-quarters, or $119.5 million, of total Medicaid payments for inpatient services at Texas rural hospitals were for managed care clients.

FIGURE 10
MEDICAID PAYMENTS FOR INPATIENT SERVICES AT TEXAS RURAL HOSPITALS BY DELIVERY MODEL STATE FISCAL YEAR 2014



SOURCE: Texas Medicaid and Healthcare Partnership, claims database.

Medicaid regulations broadly define hospital outpatient services to include preventative, diagnostic, therapeutic, rehabilitative, or palliative services provided under the direction of a physician in the hospital. Except for outpatient hospital surgeries which have prospectively determined rates, payments for outpatient hospital services provided to FFS Medicaid clients are a combination of cost reimbursement and fee schedules. For cost reimbursed services, the payment amount is determined by multiplying a hospital's outpatient allowable charges by the Medicaid FFS CCR ratio and by a reduction percentage established by HHSC. The Medicaid FFS CCR is the ratio of Medicaid allowable outpatient FFS costs to Medicaid allowable outpatient FFS charges derived from the hospital's Medicaid cost report. Allowable charges and costs only include amounts for Medicaid payable services within the limits of the Texas Medicaid program. For non-rural hospitals, the reduction percentage established by HHSC for all cost reimbursed services except for certain emergency department (ED) care ranges from 68.44 to 76.03 percent depending on whether the facility is a high volume or low volume provider and whether it is a children's hospital, state-owned teaching hospital, or other hospital. For rural hospitals, the reduction percentage set by HHSC is 100 percent which results in a payment that does not exceed 100 percent of allowable cost. **Figure 11** shows an example of the formula used to reimburse rural hospitals for outpatient services provided to Medicaid fee-for-service clients that are reimbursed on a cost basis.

Except for rural hospitals, the payment rate for outpatient ED services that do not qualify as emergency visits is a flat fee set at a percentage of the Medicaid adult acute care physician office visit fee. The payment amount for non-emergent ED visits at rural hospitals is set to not exceed 65 percent of the hospital's allowable cost.

Outpatient hospital imaging services provided to Medicaid fee-for-service clients at rural and non-rural hospitals are reimbursed according to a fee schedule that is based on a percentage of the Medicare fee schedule for similar services. Fees for these services cannot exceed 125 percent of the Medicaid adult acute care fee for a similar service. For rural hospitals, additional amounts are added to the fees in the schedule.

Total Medicaid claims payments to rural hospitals for outpatient services totaled $96.7 million in state fiscal year 2014. These amounts do not reflect cost settlements done after audit of a hospital's cost report for services that were reimbursed by Medicaid based on cost. Any recoupments would decrease the total payment amounts. Similar to inpatient services, as shown in **Figure 12**, 82.6 percent, or $79.9 million, of total Medicaid payments for outpatient services at Texas rural hospitals were for managed care clients.

In addition to claims payments, a hospital may also receive supplemental Medicaid payments to provide additional compensation for below-cost Medicaid reimbursement and to help fund care for low-income patients not eligible for Medicaid. These supplemental payments include payments through the Disproportionate Share Hospital (DSH) program and Uncompensated Care (UC) pool. Hospitals may also receive Delivery System Reform Incentive Payment (DSRIP) funding designed to encourage hospitals and other providers to implement efforts to enhance access, quality, and cost-effectiveness of services and improve health of patients served. As shown in **Figure 13**, total Medicaid supplemental payments to rural hospitals totaled $429.6 million in federal fiscal year 2014.

USE IMPROVED DATA TO EVALUATE RURAL HOSPITAL MEDICAID FUNDING

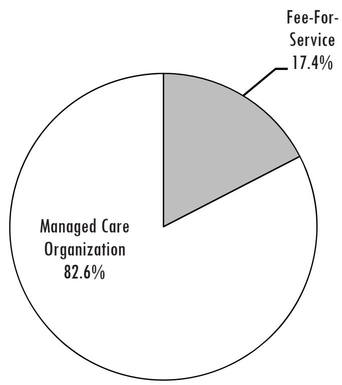
To promote access to rural hospitals, Medicaid fee-for-service payment methodologies for rural inpatient and most outpatient services are designed to cover up to the full allowable cost of delivering services. As previously described, rural inpatient hospital reimbursement rates for fee-for-service Medicaid clients are set using a methodology that results in a payment rate that is based on each rural hospital's total Medicaid cost. Similarly, the General Appropriations Act, Eighty-fourth Legislature, Regular Session, 2015, Special Provisions Relating to all Health and Human Services

FIGURE 11
EXAMPLE PAYMENT FORMULA FOR RURAL OUTPATIENT SERVICES PROVIDED TO TEXAS MEDICAID FFS CLIENTS
STATE FISCAL YEAR 2016

Allowable outpatient charges		Hospital's Medicaid FFS cost to charge ratio		Reduction percentage set by HHSC		Rural outpatient charges
$500	X	0.5	X	100%	=	$250

NOTE: FFS = fee-for-service.
SOURCE: Legislative Budget Board.

FIGURE 12
MEDICAID PAYMENTS FOR OUTPATIENT SERVICES AT TEXAS RURAL HOSPITALS BY DELIVERY MODEL STATE FISCAL YEAR 2014



SOURCE: Texas Medicaid and Healthcare Partnership, claims database.

FIGURE 13
MEDICAID SUPPLEMENTAL PAYMENTS TO RURAL HOSPITALS, FEDERAL FISCAL YEAR 2014

PAYMENT TYPE	AMOUNT
Disproportionate Share Hospital	$91,415,975
Uncompensated Care Pool	$190,502,547
Delivery System Reform Incentive Payment	$147,663,627
Total	**$429,582,149**

SOURCE: Texas Health and Human Services Commission.

Agencies, Section 58, directed HHSC to expend $58.1 million in All Funds in state fiscal years 2016 and 2017 to provide increases in, or add-ons to, Medicaid outpatient payments to rural hospitals. As a result of this provision, HHSC implemented the following increases in outpatient reimbursements at rural hospitals for fee-for-service Medicaid clients effective September 1, 2015:

- allowing general outpatient payments to rural hospitals to go up to 100 percent of allowable cost (previous maximum was 76.03 percent of cost for high volume providers and 72.27 percent of cost for low volume providers);
- allowing payments for outpatient emergency department services that do not qualify as emergency visits to go up to 65 percent of cost (previous maximum was 60 percent of cost); and
- creating rural hospital add-ons to the outpatient hospital imaging services fee schedule.

Since March 1, 2012, most Texas Medicaid clients are served in managed care instead of the original fee-for-service program. Hospital rates for services provided to Medicaid managed care clients are negotiated between the hospital and the MCO. Under federal law, HHSC may not interfere in rate setting negotiations between MCOs and providers. MCOs may refer to Medicaid fee-for-service rates during negotiations with hospitals, but are not required to do so. The monthly capitation payments paid by HHSC to MCOs were increased due to the increased appropriations for Medicaid outpatient payments to rural hospitals and so it was expected that MCOs would pass that increase on to rural hospital providers.

The state cannot fully assess the impact of legislative efforts to increase rural hospital Medicaid funding due to data limitations. Specifically, HHSC has been unable to determine the allowable cost of hospital services provided to managed care clients. Without access to estimated allowable cost data for Medicaid managed care clients, the state cannot determine whether funding initiatives have increased the percentage of rural hospital cost covered by Medicaid managed care payments. While HHSC receives data on each encounter between a managed care client and provider, most managed care data does not process through the Texas Medicaid Management Information System (MMIS) claims system. As a result, data on managed care allowed charges needed to calculate estimated allowed cost for services provided to managed care clients is currently not available. Similarly, the annual cost reports submitted by hospitals do not break out data for Medicaid managed care clients. Medicaid enrolled hospitals are required by federal law to submit annual cost reports using forms created by the Centers for Medicare and Medicaid Services (CMS). These forms collect the cost to serve patients across all payer types (i.e., Medicare, Medicaid, other government (e.g., TRICARE), non-government third-party, the uninsured, and self-pay). The forms also include worksheets that include the calculated cost to treat Medicaid fee-for-service clients, but data for Medicaid managed care clients is not broken out separately. The estimated allowable cost to treat Medicaid fee-for-service clients is calculated by multiplying a hospital's total cost-to-charge ratio for all patients derived from the hospital's cost report by the allowable charges for Medicaid fee-for-service clients.

HHSC is working towards using managed care encounter data to estimate the allowable cost for services provided to Medicaid managed care clients. On February 1, 2016, the agency submitted a change order to TMHP to request that managed care encounter data be used to estimate hospital cost for services provided to Medicaid managed care clients. Each record of an encounter sent by an MCO to TMHP includes the billed charges. Upon completion of the change order, HHSC states that they will be able to determine Medicaid allowable charges for each hospital encounter based on fee-for-service policies. The agency can then multiply a hospital's total cost-to-charge ratio derived from the hospital's cost report by the allowable charges for Medicaid managed care clients to estimate hospital allowable cost for services for these clients. HHSC indicates that they may also ask hospitals to submit supplemental worksheets in their cost reports for MCO charges similar to what is submitted for FFS charges. TMHP will include all provider types in the change order. The change order is expected to be complete by September 30, 2017, but it will take until 2019 for the system to produce sufficient data to estimate allowable cost.

Option 1 would include a rider in the 2018–19 General Appropriations Bill that would require HHSC to evaluate Medicaid funding initiatives for rural inpatient and outpatient hospital services, including determining the percentage of estimated allowable hospital cost for services provided to managed care clients reimbursed by payments, and submit a report to the Legislative Budget Board and the Office of the Governor by August 1, 2019. HHSC should use the cost estimate data obtained after the change order is complete to evaluate rural hospital funding initiatives. Also, although HHSC does not know specific rates negotiated between hospitals and MCOs, the agency can use data on amounts paid by an MCO to a given hospital in this analysis.

FISCAL IMPACT OF THE OPTION

The option in this report directs HHSC to use improved data to evaluate Medicaid funding initiatives for rural inpatient and outpatient hospital services and submit an evaluation report to the Governor and Legislative Budget Board. The option is intended to assess the impact of rural hospital Medicaid funding changes on payments, including determining the percentage of estimated allowable hospital cost for services provided to Medicaid managed care clients that is reimbursed by payments. The option should provide information to help ensure that Medicaid payments to rural hospital providers are appropriate and promote access to care. It is assumed that the option would have no significant fiscal impact and could be implemented using existing resources.

The House introduced 2018–19 General Appropriations Bill includes a rider implementing Option 1.

IMPLEMENT PREVENTION STRATEGIES TO REDUCE NEONATAL ABSTINENCE SYNDROME

Opioid use among pregnant women across the country has sharply increased. From 2000 to 2009, use among pregnant women increased fivefold nationally. Opioids are a class of drug that includes prescription medicines such as hydrocodone, oxycodone, morphine, and methadone and illicit substances such as heroin. One consequence of increased opioid use among pregnant women is the increase in the incidence of neonatal abstinence syndrome. This syndrome is a treatable condition that occurs in newborns exposed to substances such as opioids in utero from maternal substance use. Opioid-affected newborns are likely to experience longer medically complex initial hospitalizations costing up to nine times more than non-affected newborns.

Neonatal abstinence syndrome has emerged as a public health issue in Texas. From 2010 to 2014, rates of occurrence increased in the state by 51.3 percent. The Eighty-fourth Legislature, 2015, appropriated $11.2 million in General Revenue Funds to the Texas Department of State Health Services for new and existing services aimed at reducing the incidence, severity, and costs associated with neonatal abstinence syndrome. In addition to these services, the state could amend statute to improve the tracking of the syndrome and implement educational and verbal screening requirements and other prevention strategies to address the increase in the syndrome.

CONCERNS

- The state's ability to evaluate its neonatal abstinence syndrome prevention and mitigation strategies and identify areas of related concern is limited. Data is currently available from hospital discharge and Medicaid records. However, these sources do not provide detailed information and only become available after a significant delay.

- The state has taken steps to reduce and mitigate the effects of neonatal abstinence syndrome but could implement more prevention strategies. Prevention strategies are likely to be the most effective and least costly option to prevent and mitigate the effects of neonatal abstinence syndrome.

OPTIONS

- **Option 1:** Amend statute to make neonatal abstinence syndrome a reportable condition and ensure that timely, detailed data, such as newborn demographic information, maternal history of substance exposure, and the source of the substance causing the syndrome, is available for public health officials. Include a rider in the 2018–19 General Appropriations Bill to require the Texas Department of State Health Services to report on how the agency plans to use the data to evaluate prevention and mitigation strategies and identify areas of related concern.

- **Option 2:** Amend statute to require prescribers to counsel and provide educational materials to women of childbearing age on the consequences of substance use and pregnancy before they prescribe an opioid.

- **Option 3:** Amend statute to require obstetricians and gynecologists to follow the American College of Obstetricians and Gynecologists recommendation regarding universal, verbal screening of pregnant women for substance use. The Texas Health and Human Services Commission should be required to make materials available to obstetricians and gynecologists on how to conduct proper verbal screening for substance use for pregnant women and substance use treatment resources in their geographic area.

- **Option 4:** Amend statute to require obstetricians and gynecologists or appropriate, authorized employees to check the Texas Prescription Monitoring Program at the first prenatal visit to assess their patients' exposure to prescription opioids.

- **Option 5:** The Texas Medical Board should implement the U.S. Centers for Disease Control and Prevention and National Safety Council recommendation and require education on appropriate opioid prescribing, alternatives to opioid prescribing, and/or opioid addiction for prescribers that are registered with the federal Drug Enforcement Agency to prescribe controlled substances.

DISCUSSION

Opioids are a class of drug that includes prescription medicines such as hydrocodone, oxycodone, morphine, and methadone and illicit substances such as heroin. Opioid use during pregnancy may be the result of nonmedical use, misuse, or abuse of opioids. However, opioids are also taken during pregnancy for medically indicated reasons. Common reasons for treatment with opioids during pregnancy include surgical procedures, infections, chronic diseases, and injuries. Pain relief options for pregnant women are limited, and opioids are the only analgesic option for severe pain. Another medically indicated reason for opioid use during pregnancy is treatment for opioid-use disorders. It is the standard of care for pregnant women with opioid-use disorders to be treated with medication-assisted therapy (MAT).

From 2000 to 2009, opioid use among pregnant women increased fivefold nationally. This increase largely mirrors the increase in the use of prescription opioids observed generally across the country. According to a 2011 article in the U.S. Centers for Disease Control and Prevention (CDC) publication, Morbidity and Mortality Weekly Report, prescription opioid sales quadrupled nationally from 1999 to 2010. Concerns about insufficient treatment of pain and lack of accurate information about the risk for addiction lead to increased prescribing of opioids.

The CDC reported in 2013 that there are special considerations for certain populations regarding opioid use. For instance, women are more likely to experience chronic pain and be prescribed opioids when compared to men. A 2015 article in Morbidity and Mortality Weekly Report shows that opioid-containing medications are widely prescribed among reproductive-aged women. When women are prescribed opioids, they are prescribed in higher doses and for longer periods than men. The 2013 CDC report also stated women may become dependent on opioids more quickly than men.

The Medicaid population may also have increased risk factors with regards to opioids. In a 2016 Informational Bulletin, the Centers for Medicare and Medicaid Services stated Medicaid beneficiaries are more likely to be prescribed painkillers than non-Medicaid patients. This finding was also noted in the 2015 Morbidity and Mortality Weekly Report article, which explained the disparity as potentially due to a number of factors including differences in health plan drug formularies or underlying health conditions among private- and Medicaid-covered individuals.

Prescription opioids have a high potential for abuse and taking prescription opioids can lead to their nonmedical use, misuse, or abuse. The belief by some patients that prescription drugs are safe because they are manufactured legitimately and prescribed by physicians may contribute to the potential for nonmedical use, misuse, or abuse. Those who take opioids and develop a physical dependence may also become addicted. Although nonmedical use, misuse, abuse, and addiction occurs in only a subset of individuals prescribed opioids, because many individuals take opioids, the number of those affected is significant. Research from the CDC and the federal Substance Abuse and Mental Health Services Administration (SAMHSA) suggests that nonmedical use, misuse, abuse, and addiction to prescription opioids can lead to heroin use.

NEONATAL ABSTINENCE SYNDROME

According to the U.S. National Library of Medicine and other sources, neonatal abstinence syndrome (NAS) occurs when pregnant women taking opioids pass these substances through the placenta to their baby in the womb. At birth, the baby is still dependent on the opioids and may experience withdrawal symptoms. Newborns of mothers using opioids for medically indicated reasons are also at risk for developing NAS. Mothers using opioids for episodic pain has not resulted in NAS in newborns. Prenatal opioid exposure is considered a risk factor but not a predictor of NAS. In addition, although less common, NAS can occur after intrauterine exposure to other drugs.

NAS is characterized by central nervous system irritability, autonomic overreactivity, and gastrointestinal dysfunctions. The type and onset of symptoms depend on factors such as the kind and amount of opioid taken and the duration it was used. Symptoms may also depend on whether multiple substances were used during pregnancy.

Symptoms of NAS typically begin within one to three days after birth but may take up to one week after birth to become evident. Symptoms can persist from one week to six months.

Newborns with NAS are likely to experience longer medically complex initial hospitalizations compared to nonaffected newborns. Infants with NAS need to be continuously monitored. As the onset of symptoms may vary, some infants may need to be monitored for longer than others. All infants with NAS should be monitored in the hospital for four to seven days and their symptoms regularly assessed using an abstinence scoring tool.

Medical care for infants with NAS typically involves a combination of pharmacologic and non-pharmacologic soothing strategies for the management of withdrawal symptoms. The goals of treatment are to ensure that the newborn achieves adequate sleep and nutrition, consistent weight gain, and is able to interact with caregivers. **Figure 1** shows common NAS symptoms and its typical treatment options. Delayed treatment or untreated NAS can result in significant morbidity and even mortality.

HEALTH CONSEQUENCES OF NEONATAL ABSTINENCE SYNDROME

There are no prolonged health effects associated with NAS or the treatment of NAS. However, opioid use during pregnancy may have other health consequences for the baby. In the neonatal period, opioid use during pregnancy has been associated with low birth-weight and prematurity in infants. Recent research from the CDC suggests that opioid use early in pregnancy may be linked with an increased risk of neural tube and congenital heart defects in newborns.

Research on the potential long-term effects of opioid use during pregnancy on the newborn is mostly limited or unavailable. The research that does exist indicates that prenatal opioid exposure does not affect a child's growth but toddlers and older children may exhibit behavioral problems.

COSTS OF NEONATAL ABSTINENCE SYNDROME

Caring for infants with NAS can result in costly initial hospitalizations, and NAS is associated with higher healthcare costs. According to hospitalization-related data, the average hospital charges related to NAS infants were almost nine times that of non-NAS infants in Texas in 2014.

Newborns with NAS are more likely to be covered by Medicaid compared to all other hospital births. In 2012, Medicaid was the primary payer for 81.1 percent of hospital charges associated with NAS across the country. Therefore, the Texas Medicaid program likely shoulders much of the medical cost of caring for newborns with NAS.

The state likely incurs additional, indirect costs related to opioid use during pregnancy. For instance, the Department of Family and Protective Services' Child Protective Services (CPS) receives reports of any newborn who tests positive for alcohol or controlled substances. As opioid use during pregnancy has become more prevalent across the state, CPS may need to allocate additional resources to handle reports. CPS does not track the number of newborns reported who have positive substance use tests.

NEONATAL ABSTINENCE SYNDROME IN TEXAS

Rates of opioid prescribing are lower in Texas than in the nation as a whole. In 2012, Texas ranked 34th in the nation for the rate of opioid pain relievers prescribed. However, mirroring national trends, opioid use among pregnant

FIGURE 1
NEONATAL ABSTINENCE SYNDROME SYMPTOMS AND TREATMENT

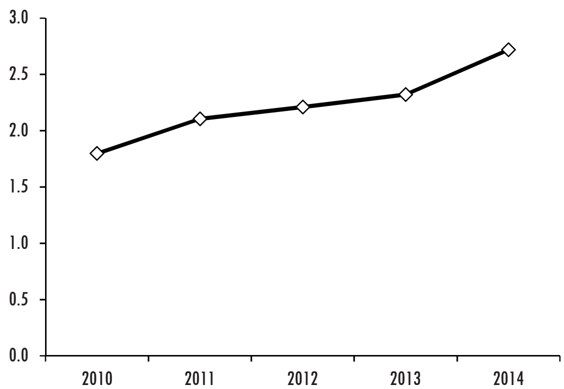
SYMPTOMS	TREATMENT OPTIONS
• blotchy skin coloring; • diarrhea; • excessive crying or high-pitched crying; • excessive sucking; • fever; • hyperactive reflexes; • increased muscle tone; • irritability; • poor feeding; • rapid breathing; • seizures; • sleep problems; • slow weight gain; • stuffy nose or sneezing; • sweating; • trembling; and • vomiting.	• minimizing environmental stimuli; • infant positioning and comforting techniques; • rooming-in; • breastfeeding; and • pharmacologic care with drugs, including opioids and benzodiazepines. Doses of the drug are slowly reduced as symptoms subside.

NOTE: Not an exhaustive list.
SOURCE: Pediatrics Volume 129, Number 2, February 2012; U.S. National Library of Medicine, January 2014.

women has increased in Texas. In fiscal year 2015, of the pregnant women served by substance use disorder treatment programs funded by the Texas Department of State Health Services (DSHS) 26.3 percent had an opioid use disorder.

Rates of NAS have also increased in the state. From 2010 to 2014, rates of NAS per 1,000 live births increased from 1.8 to 2.7, a 51.3 percent increase. **Figure 2** shows the increase in the rate of NAS in the state in this period. Among the Medicaid population, from fiscal year 2010 to 2014, rates of NAS per 1,000 Medicaid-covered births increased from 3.3 to 5.3, a 59.3 percent increase. DSHS does not track what percentage of NAS cases are the result of women using opioids for a medically indicated reason or nonmedical use, misuse, or abuse.

FIGURE 2
NEONATAL ABSTINENCE SYNDROME RATE PER 1,000 BIRTHS IN TEXAS, 2010 TO 2014



SOURCES: Legislative Budget Board; Texas Department of State Health Services.

NAS is most commonly seen in urban areas. According to hospitalization-related data, from 2009 to 2014, NAS was most prevalent in Bexar, Dallas, El Paso, Harris, Nueces, Tarrant, and Travis Counties. In 2014, Bexar County accounted for 28.0 percent of all NAS cases. The counties with the highest number of NAS cases compared to all other Texas counties are shown in **Figure 3**.

PROGRAMS AND STRATEGIES RELATED TO NEONATAL ABSTINENCE SYNDROME AT THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DSHS has implemented treatment and prevention strategies aimed at reducing the incidence, severity, and costs associated with NAS in Texas. The Eighty-fourth Legislature, 2015, appropriated $11.2 million in General Revenue Funds for the 2016–17 biennium to the department for existing strategies and new initiatives related to NAS.

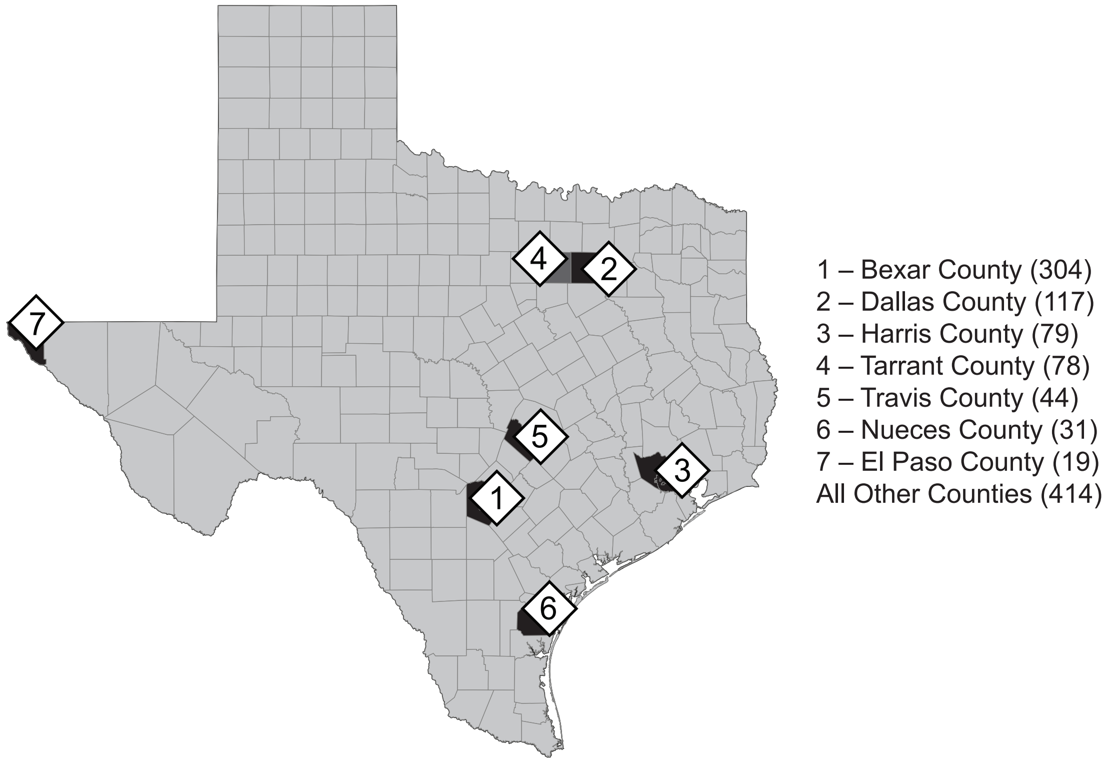
TREATMENT STRATEGIES TO ADDRESS NAS

DSHS funds and operates specialized substance use programs for pregnant women at risk for or experiencing substance abuse. Among other services, the Pregnant and Post-Partum Intervention programs (PPI) provide interventions for pregnant women at risk for substance abuse. The goals of the program are to improve birth outcomes and reduce the number of infants born with substance exposure. These services include substance abuse screening, assessment, and referral, counseling services that address gender-specific issues, and case management. PPI services also include education in topics such as reproductive health, parenting, and the effects of alcohol, tobacco, and other drugs on fetal development. With new funding provided by the Eighty-fourth Legislature, DSHS is integrating PPI programs with MAT services. DSHS allocated $7.1 million to provide 635 clients with integrated services in the 2016–17 biennium. There are currently 19 PPI program sites located across the state. In fiscal year 2015, PPI programs served 1,376 pregnant women.

DSHS began funding a new, statewide pregnancy stabilization center located in Bexar County in May 2016. The center will serve opioid-dependent pregnant women from across the state who live in communities that are unable to provide comprehensive care. Once the women are stabilized, they will transition back to the community with the help of a recovery coach. The center will serve approximately 85 women per fiscal year. DSHS allocated $1.3 million in funding provided by the Eighty-fourth Legislature for the stabilization center in the 2016–17 biennium.

The Mommies Program is a DSHS-funded program located in Bexar County. The program integrates MAT with educational, counseling, and wrap-around services to support pregnant and parenting women with substance-use disorders. Hospital and substance abuse treatment staff prepare expectant mothers for labor and delivery, and the immediate postpartum period. A 2014 article in Pediatrics indicates that active, maternal participation helps to avoid pharmacological intervention and can lead to earlier discharge from the hospital. According to DSHS, from 2011 to 2013, infants' neonatal intensive care unit length of stay due to NAS was reduced by 33 percent among Mommies Program participants. With new funding provided by the Eighty-fourth Legislature, DSHS plans to expand the Mommies Program from Bexar County to

FIGURE 3
TEXAS COUNTIES WITH THE HIGHEST NUMBER OF NEONATAL ABSTINENCE SYNDROME CASES, 2014



NOTE: Neonatal abstinence syndrome cases are those only reported by hospitals.
SOURCE: Legislative Budget Board; Texas Department of State Health Services.

Dallas, Harris, Nueces, and Tarrant Counties. These are the five counties with the highest number of NAS cases in the state (see **Figure 3**). The Mommies Program will serve approximately 560 families in the 2016–17 biennium.

DSHS also funds a variety of general substance use treatment programs. Pregnant women receive priority access into federal and state-funded substance use programs. General substance use programs that serve pregnant women include intensive residential and outpatient programs that are geared towards women specifically or adults generally.

PREVENTION STRATEGIES TO ADDRESS NAS

DSHS also operates several education and outreach initiatives related to NAS. The agency is developing Mommies online training modules to educate professionals on NAS and caring for pregnant and parenting women with substance use disorders. The online modules became available September 2016. DSHS will fund trainings conducted by Mommies Program staff and state and national NAS experts for medical, mental health, substance use treatment, child welfare, and community health providers. The trainings will cover information related to substance use, NAS, and the Mommies Program curriculum. DSHS allocated $260,000 in funding provided by the Eighty-fourth Legislature for these new initiatives in the 2016–17 biennium.

DSHS contractors for substance abuse treatment provide NAS risk-reduction tools and materials to women of childbearing age who use substances. The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) clients receive educational materials related to the dangers of using alcohol, tobacco, or other drugs during pregnancy.

PPI providers also conduct community needs assessments to determine ways to engage women with high risk behaviors that can lead to substance-exposed pregnancies. DSHS substance use intervention contractors go out into communities across the state to provide outreach services to pregnant and postpartum women. The outreach consists of providing information, referrals to substance use treatment or prenatal care, and other intervention services. DSHS budgeted $1.3 million in new funding provided by the Eighty-fourth Legislature for community needs assessments in the 2016–17 biennium.

In addition, DSHS funds general substance abuse prevention programs such as the Outreach, Screening, Assessment, and Referral (OSAR) program. OSAR provides substance use screenings and assessments, interventions including counseling and education, and referrals to treatment for those seeking substance use treatment. OSAR also provides case management services.

TEXAS PRESCRIPTION MONITORING PROGRAM

Texas operates a prescription drug monitoring program (PDMP), the Texas Prescription Monitoring Program. PDMPs can be a tool for healthcare providers to help them assess their patients' history of prescription opioid use. Texas' PDMP allows registered, authorized users to view a patient's controlled substance history online for up to three years. Authorized users include pharmacists, physicians, and pharmacy technicians and nurses under the direction of a pharmacist or physician.

Senate Bill 195, Eighty-fourth Legislature, implemented a number of recommended updates to Texas' PDMP. These included transferring the program from the Department of Public Safety to the Texas State Board of Pharmacy (TSBP), enabling practitioners to auto-enroll in the program, and authorizing TSBP to share information with other states. TSBP has joined InterConnect, a prescription drug data sharing system that allows states to access the prescription drug data of other participating states. Interstate sharing of prescription drug information allows states to track the prescriptions of patients regardless of where they get their prescriptions filled. Excluding Texas, thirty-one states currently participate in InterConnect. Texas' participation in InterConnect began September 1, 2016. TSBP has also taken steps to improve the state's PDMP including ensuring that the system contains high quality information that is quickly available to users.

OTHER STATES' STRATEGIES TO ADDRESS NEONATAL ABSTINENCE SYNDROME AND OPTIONS

To better understand the issue of NAS, Kentucky and Tennessee have taken steps to improve their tracking of NAS. Both states have made NAS a reportable condition, meaning that de-identified data is reported to public health departments by hospitals for public health surveillance purposes. The data collected include demographic information on the infant, the source of the substance causing NAS, and maternal history of substance exposure. This information is more timely and complete than other data sources, such as hospital discharge records. Tracking NAS has helped these states better understand the causes of the syndrome, measure the impact of interventions, and tailor solutions to areas of concern.

Texas public health officials do not currently track essential public health information related to NAS. The state's ability to evaluate its NAS prevention and mitigation strategies and identify areas of concern related to NAS is therefore limited. The state's ability to direct funding towards the most effective NAS prevention, reduction, and mitigation strategies is also hindered by this lack of data. NAS related data is currently available from hospital discharge and Medicaid records. However, these data sources primarily include information related to diagnosis and hospital charges rather than the detailed information collected by states like Kentucky and Tennessee. In addition, these data only become available after a significant time lag. For example, hospital discharge data may take up to one year to be reported to DSHS by hospitals.

Option 1 would amend state statute to make NAS a reportable condition and ensure that timely, detailed data, such as newborn demographic information, maternal history of substance exposure, and the source of the substance causing NAS, is available for public health officials. The executive commissioner of the Texas Health and Human Services Commission (HHSC) has the statutory authority to revise the list of health conditions that are reported to public health officials. Option 1 would include a rider in DSHS's bill pattern to require DSHS to report to the Legislative Budget Board and the Governor on how the agency plans to use the data to evaluate prevention and mitigation strategies and identify areas of related concern by March 1, 2018. The Association of State and Territorial Health Officials (ASTHO) supports states improving NAS data collection efforts.

The increasing incidence of NAS has led to a variety of states implementing prevention strategies. Although Texas has taken steps to reduce and mitigate the effects of NAS, the state could implement more prevention strategies. Prevention strategies are likely to be the most effective and least costly option to prevent and mitigate the effects of NAS. In a 2009 publication addressing the issue of substance-exposed infants, SAMHSA stated that investing funds in prevention and early intervention services provides significant cost-savings opportunities to the healthcare system. In 2014, the average hospital charges related to NAS infants were almost nine times that of non-NAS infants in Texas.

Some states have chosen to address NAS in the preconception period, before a pregnancy occurs. To ensure that women who could become pregnant are aware that NAS is a potential consequence of using opioids while pregnant, health officials in a number of states recommend that providers counsel women prescribed opioids. During these provider-patient discussions, women can discuss how opioid use may affect their family planning decisions. These states include North Carolina, Arizona, Tennessee, and Washington. In Missouri, obstetricians and gynecologists are required by law to counsel pregnant women on the perinatal effects of substance use.

Texas regulations require providers to discuss the risks of taking opioids with patients when they treat chronic pain. However, the discussion is not required to include information on the risk for negative infant health outcomes should the patient become pregnant. In addition, Texas does not require providers to discuss the risks of taking opioids with patients when they are treating non-chronic pain. Option 2 would amend state statute to require prescribers to counsel and provide educational materials to women of childbearing age on the consequences of substance use and pregnancy before they prescribe an opioid. By increasing awareness of the risks related to using prescription opioids among the many women of childbearing age prescribed opioids, Option 2 would reduce the likelihood of women delivering a baby with NAS. The CDC supports provider-patient discussions on the risks of taking prescription painkillers, especially during pregnancy.

States have also implemented strategies to improve birth outcomes for infants who may have already been prenatally exposed to opioids. Public health officials in states such as Washington, Vermont, and Indiana encourage obstetricians and gynecologists to verbally screen all pregnant patients for substance use. Virginia law requires that practitioners licensed to provide prenatal care screen every pregnant woman for substance abuse as a routine component of prenatal care.

Research shows that the proper use of substance use screening tools such as the "4 P's Plus" in early pregnancy are effective in identifying substance use in pregnant women. Emerging research also suggests that substance use screening, brief intervention, and referral techniques are effective substance use interventions. Evidence indicates that birth outcomes are improved when pregnant women receive substance use treatment and MAT.

In Texas, only certain providers must verbally screen pregnant women for substance use as a condition of receiving certain state and federal funding. No data is available regarding the extent to which obstetricians and gynecologists voluntarily verbally screen pregnant women for substance use. A 2016 report by the Texas Maternal Mortality and Morbidity Task Force and DSHS, however, found repeated missed opportunities to screen women for mental health issues, including substance use disorders, and refer them to treatment in a review of maternal death cases occurring in Texas in 2012. Option 3 would amend state statute to require all obstetricians and gynecologists to follow the American College of Obstetricians and Gynecologists recommendation regarding universal, verbal screening of pregnant women for substance use. HHSC would also be required to make materials available to obstetricians and gynecologists on how to conduct proper verbal screening for substance use for pregnant women and substance use treatment resources in their geographic area. Conducting this screening would increase the likelihood of pregnant women who have substance use issues beginning treatment.

Treatment may not only improve birth outcomes and reduce or mitigate the effects of NAS for opioid-exposed births, but may also reduce tobacco- or alcohol-exposed births. Tobacco- and alcohol-exposed births result in serious short- and long-term health consequences for infants. Fetal alcohol syndrome is the most common preventable cause of intellectual and development disabilities. Smoking during pregnancy is associated with sudden infant death syndrome, childhood respiratory illness, and cognitive effects, among other health conditions. In addition, the Texas Maternal and Mortality and Morbidity Task Force and DSHS suggest that verbal screening for substance use and referral to treatment in the prenatal period may reduce maternal deaths involving substance use or overdose.

States have also responded to the opioid epidemic in general that have implications for NAS. Several states have mandated prescriber use of PDMPs in certain circumstances to combat opioid overprescribing and patient "doctor-shopping." PDMPs also allow providers to identify patients in need of addiction support. Texas does not require that prescribers enroll with the state PDMP or access PDMP information. Option 4 would amend state statute to require obstetricians and gynecologists or appropriate, authorized employees to check the Texas Prescription Monitoring Program at the first prenatal visit to assess their patients' exposure to prescription opioids. This option would be an additional opportunity for providers to assess the possibility of their patients delivering a baby with NAS. ASTHO and the American Congress of Obstetricians and Gynecologists support initial checks of state PDMPs by providers.

To increase provider awareness of the consequences of opioid use, Connecticut, Kentucky, Massachusetts, Maine, and New York require physicians who are authorized to prescribe controlled substances to complete certain continuing medical education (CME) requirements. The required CME must cover topics related to pain management, addiction disorders, and risks associated with opioid medications.

Texas regulations require all providers to receive CME. However, only providers employed by a pain management clinic must receive CME on the topic of pain management. Option 5 would direct TMB to implement the CDC and National Safety Council (NSC) recommendation and require education on appropriate opioid prescribing, alternatives to opioid prescribing, and/or opioid addiction for all prescribers that are registered with the federal Drug Enforcement Administration to prescribe controlled substances. NSC is a national nonprofit organization that advocates for safety and the prevention of unintentional death. The organization has made prescription opioid use a top priority, issuing recommendations for state governments to address the epidemic in a 2016 report. This option would ensure physicians are aware of the special considerations for women prescribed opioids. Lack of accurate information about the risk for addiction contributed to the increased prescribing of opioids seen across the country. Additional prescriber education would mitigate or prevent opioid use disorders among pregnant women and reduce the incidence of NAS. By increasing provider awareness of the risks of using opioids in general, Option 5 may also reduce the occurrence of opioid use disorders among the general population.

FISCAL IMPACT OF THE OPTIONS

It is anticipated that Options 1 to 5 will be cost neutral. Options 1, 2, 4, and 5 would not result in significant costs and can be implemented with current agency resources. Option 3 would require obstetricians and gynecologists to verbally screen their pregnant patients for substance use and may result in additional costs to the Texas Medicaid Program. Option 3 would also require HHSC to provide certain materials to obstetricians and gynecologists and is not expected to result in significant costs to the agency.

Options 1 to 5 are also likely to have secondary costs. For example, the number of babies with a NAS diagnosis may increase as result of better screening and identification of pregnant women using opioids. In addition, more pregnant women may be referred to the substance use treatment system as the result of positive substance use screens.

Any costs associated with Options 1 to 5 are expected to be offset by lowering the incidence and severity of NAS and improving birth outcomes. To the extent that the options reduce Texas Medicaid Program spending related to treating NAS, savings would accrue to Medicaid managed care organizations (MCOs) unless the premium amounts paid by HHSC to MCOs are adjusted to reflect reduced spending related to treating NAS. If premiums are adjusted, there could be savings to the state.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

FINANCING OPTIONS FOR THE EARLY CHILDHOOD INTERVENTION PROGRAM

The U.S. Individuals with Disabilities Education Act, Part C, provides states with Federal Funds for early childhood intervention services. In Texas, the Health and Human Services Commission contracts with local agencies and organizations to provide for early childhood intervention services. The Early Childhood Intervention program was transferred to the Health and Human Services Commission on September 1, 2016. This transfer was due to the consolidation of the health and human services agencies by the Eighty-fourth Legislature, 2015.

As Texas' population continues to grow, the Early Childhood Intervention program is expected to serve an increasing number of children and families. The program provided comprehensive services to 50,634 children in fiscal year 2015. On average, the program served approximately 1,200 more individuals per month in fiscal year 2015 than it did in fiscal year 2012. The U.S. Department of Education treats the program as an entitlement, requiring Early Childhood Intervention programs to serve all eligible individuals. However, federal funding for the Individuals with Disabilities Education Act, Part C program has not increased significantly during that period. For fiscal year 2016, the Legislature appropriated $114.1 million in Federal Funds and $63.8 million in state funds for these programs in Texas. Other funding sources include third parties and local funds. Early Childhood Intervention providers utilize the Texas Medicaid and Children's Health Insurance programs, the family cost-share system, and private insurance. Medicaid is the largest contributor of third-party funds, funding 64.2 percent of the comprehensive services delivered by all providers in Texas for fiscal year 2015. Controlling costs and maximizing non-state sources of revenue for the Early Childhood Intervention program would ensure that the program remains fiscally stable.

FACTS AND FINDINGS

- ♦ The Early Childhood Intervention program provides early intervention services to infants and toddlers with disabilities and developmental delays. Children up to age 3 are eligible if they have a developmental delay, medically diagnosed condition, or auditory or visual impairment. These services include physical therapy, speech-language therapy, and psychological services.
- ♦ Pursuant to federal requirements, states are required to refer children in a substantiated case of child abuse or neglect to Early Childhood Intervention programs for evaluation. In fiscal year 2015, 6,436 children were referred to Early Childhood Intervention programs by the Department of Family and Protective Services. Only 13.7 percent of children referred were subsequently enrolled in Early Childhood Intervention compared to the 37.0 percent of all children referred that received comprehensive services.
- ♦ In fiscal year 2015, the Department of Assistive and Rehabilitation Services contracted with a network of 50 local providers to deliver ECI services. The agency determined contract amounts based on the previous year's costs and enrollment, the total state appropriation, and the percentage of children enrolled in Medicaid.

CONCERNS

- ♦ The federal government authorizes states to decide the extent of a developmental delay a child must have to be eligible for early intervention services. Half of the states have a tiered definition of eligibility, which distinguishes between children who have one developmental delay and children who have two or more developmental delays. Of the states who determine eligibility in the manner that Texas does, several are more selective than Texas.
- ♦ In fiscal year 2015, speech therapy and specialized skills training made up most of the therapies provided by the Early Childhood Intervention program. Private insurance policies usually do not provide coverage for speech therapy services that are not related to a medical diagnosis. Private insurance companies also do not provide coverage for specialized skills training.

OPTIONS

- ♦ **Option 1:** Amend statute to define a tiered definition of eligibility. A child would be eligible for Early Childhood Intervention services with a developmental delay of 30.0 percent or more in one area or 25.0 percent or more in two or more areas.

- ♦ **Option 2:** Amend statute to require the Health and Human Services Commission to establish a task force to study the feasibility of requiring private insurers to reimburse participants for early intervention services. The task force should include early intervention service providers, advocacy groups, the Health and Human Services Commission, the Texas Department of Insurance, and representatives of private insurance companies. The task force should present its findings and recommendations to the Legislature's health and human services committees.

DISCUSSION

The U.S. Individuals with Disabilities Education Act (IDEA) authorizes programs for children and students with disabilities. IDEA, Part C, provides grants to states for the following purposes:

- to implement and maintain a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early childhood intervention services;
- to facilitate the coordination of payment for early intervention services from federal, state, local, and private sources (including public and private insurance coverage);
- to enhance state capacity to provide quality early intervention services and expand and improve existing early intervention services that are provided to infants and toddlers with disabilities and their families; and
- to encourage states to expand opportunities for children younger than age 3 who would be at risk of having substantial developmental delay if they did not receive early intervention services.

Pursuant to IDEA, early childhood intervention services are provided to infants and toddlers with disabilities and their families. Children up to age 3 are eligible if they have a developmental delay, medically diagnosed condition, or auditory or visual impairment.

In Texas, the Health and Human Services Commission (HHSC) administers the Early Childhood Intervention (ECI) program. DARS reported that it provided ECI-comprehensive services to 50,634 children in fiscal year 2015. ECI services are based on the needs and concerns of each family and child, and are usually provided in the child's home. These services include physical therapy, speech-language therapy, and psychological services. **Figure 1** shows the ECI services DARS provided to infants and toddlers with disabilities and their families. In fiscal year 2017, ECI was transferred from DARS to HHSC. This transfer is due to Senate Bill 200, Eighty-fourth Legislature, 2015, which consolidates the state's five health and human services agencies into three agencies.

FIGURE 1
EARLY CHILDHOOD INTERVENTION SERVICES
FISCAL YEAR 2016

SERVICES	
Assistive Technology	Physical Therapy
Audiology Services	Psychological Services
Family Training and Counseling	Respite
Health Services	Special Instruction
Medical Services	Speech–Language Therapy
Nursing	Social Work Services
Nutrition	Transportation
Occupational Therapy	Vision Services

SOURCE: Legislative Budget Board.

HHSC coordinates with local agencies and organizations throughout Texas to provide these services to eligible children and families. In fiscal year 2015, DARS worked with a network of 50 contractors to deliver ECI services. The ECI program provides evaluations and assessments to families to determine eligibility and need for services. Some families share in the cost of services, as determined by a sliding fee scale based on family size and income. Federal regulations state that no families may be turned away from the program because of an inability to pay for services.

No state matching requirements are in place for IDEA, Part C funds. However, the legislation requires that state expenditures on the ECI program equal, at a minimum, state expenditures from the most recent year for which complete data is available. In fiscal year 2016, Texas appropriated $63.8 million in state funds for the ECI program.

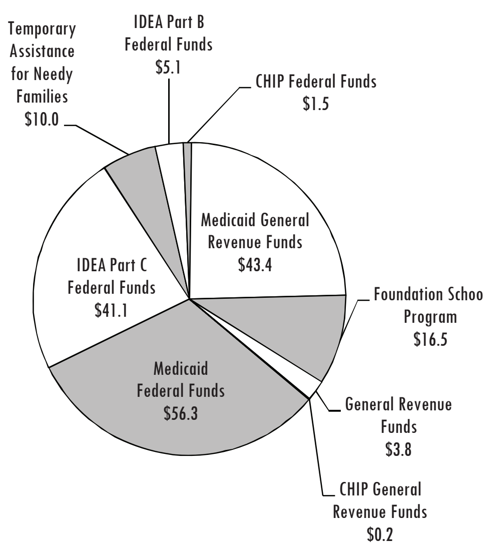
FUNDING FOR EARLY CHILDHOOD INTERVENTION SERVICES

Several funding streams finance the ECI program in Texas. HHSC is appropriated state and federal funding for ECI services. ECI providers utilize the Texas Medicaid and Children's Health Insurance programs, the family cost-share system, private insurance, cost reimbursement contracts, and local contributions to provide services.

EARLY CHILDHOOD INTERVENTION PROGRAM STATE AND FEDERAL FUNDS

The Eighty-fourth Legislature, General Appropriations Act (GAA), 2016–17 Biennium, appropriates General Revenue Funds, General Revenue Funds Certified as Match for Medicaid, General Revenue Funds as Match for Medicaid for ECI services, and General Revenue for the Children's Health Insurance Program (CHIP). Additional funding includes Federal Funds for Temporary Assistance for Needy Families (TANF); IDEA, Part C; and CHIP. The state's Foundation School Program also contributes funds for ECI. **Figure 2** shows the sources of appropriations for the ECI program in fiscal year 2016. Medicaid is the most significant source of funding for the ECI program. Although each provider's case makeup varies, Medicaid funded 64.2 percent of the comprehensive services delivered by all ECI providers in Texas for fiscal year 2015. This share has remained constant since fiscal year 2012.

FIGURE 2
EARLY CHILDHOOD INTERVENTION FUNDING IN THE GENERAL APPROPRIATIONS ACT, FISCAL YEAR 2016



NOTE: Federal Funds = $114.1 million; state funds = $63.8 million.
SOURCES: Legislative Budget Board; Department of Assistive and Rehabilitative Services.

EARLY CHILDHOOD INTERVENTION THIRD-PARTY REVENUE

ECI services are also funded by other public insurance programs. Children of military personnel may receive services through TRICARE, a healthcare program administered by the U.S. Department of Defense Military Health System. CHIP may also reimburse for some ECI services.

Families that have private insurance are encouraged to provide this information to ECI providers, so that providers may bill the family's plan for ECI services. Depending on a particular family's private insurance plan and coverage, providers may be reimbursed for ECI services. Public insurance programs funded by the Employee's Retirement System of Texas and the Teacher's Retirement System of Texas are tracked by HHSC as sources of reimbursement from private insurance.

LOCAL FUNDS

ECI providers collect several sources of local funds. The Family Cost Share system is structured so that families with the ability to pay share in the cost of ECI services. ECI staff work with families to determine their monthly maximum charges. These charges are affected by factors including family size and income, the type and amount of ECI services provided each month, and whether the child receives Medicaid benefits. ECI providers also receive charitable donations and grants from third-party organizations, which are included in locally collected funds.

ELIGIBILITY FOR ECI SERVICES

The federal government authorizes states to determine their eligibility criteria for ECI services. To be eligible for these services in Texas, a child must be younger than age 36 months and meet initial eligibility criteria. Initial eligibility criteria are established by one of three methods: a documented, medically diagnosed condition that has a high probability of resulting in developmental delay; an auditory or visual impairment; or a developmental delay. Developmental delay is defined as a delay of 25.0 percent or more in one of six developmental areas. These areas are communication, cognitive, gross motor, fine motor, social emotional, or adaptive. If the child's only delay is in expressive language in the communication developmental area, a delay of at least 33.0 percent is required. Chapter 40 of the Texas Administrative Code provides that a team evaluating the child may determine that the evaluation tool does not accurately reflect the child's development. The evaluation team instead may use a designated supplemental tool to establish a qualitative determination of developmental delay.

A parent and at least two professionals from different disciplines conduct the evaluations to determine eligibility for ECI services. The standardized tool designated by HHSC is the Battelle Developmental Inventory, Second Edition (BDI-2). The cost of BDI-2 varies, depending on how many children are in a particular program and how many evaluations that program administers. In Texas, most of the individuals eligible for ECI services, 81.0 percent, are eligible based on this testing because of a developmental delay. **Figure 3** shows the criteria for ECI eligibility and the percentage of individuals enrolled in ECI that are associated with each eligibility category for fiscal year 2015.

FIGURE 3
EARLY CHILDHOOD INTERVENTION ELIGIBILITY, FISCAL YEAR 2015

CRITERION	DEFINITION	PERCENTAGE OF ENROLLMENT
Developmental Delay	A delay of at least 25.0% that affects functioning in one or more areas of development.	81.0%
Medical Diagnosis	A medically diagnosed condition that has a high probability of resulting in a developmental delay. The condition must qualify as an Early Childhood Intervention condition, as defined by the Department of Assistive and Rehabilitative Services.	18.0%
Hearing or Vision Impairment	An auditory or visual impairment, as defined in the Texas Administrative Code, Title 19, §89.1040.	2.0%

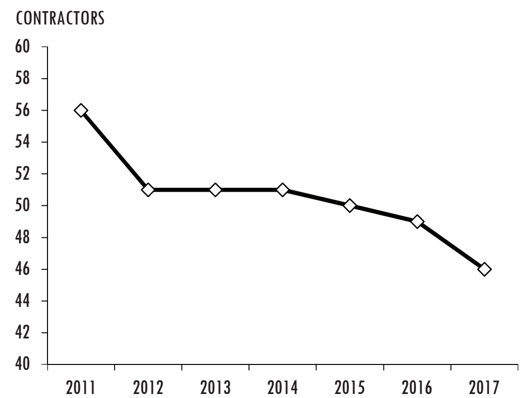
NOTE: Totals may not sum due to rounding.
SOURCES: Legislative Budget Board; Department of Assistive and Rehabilitative Services.

The U.S. Department of Education considers the delivery of early intervention services an entitlement. States must make early intervention services available to all eligible infants and toddlers with disabilities and their families. The program, however, is not funded as a traditional entitlement program, such as Medicaid. The federal government does not provide funding to serve all eligible children. Instead, states receive funds through a statutory formula, based on population.

The number of children served by the ECI program is expected to increase as the population of Texas increases. According to data provided by DARS, providers served a monthly average of approximately 1,200 more eligible individuals in fiscal year 2015 than they did in fiscal year 2012.

Unlike the population, the number of ECI providers is decreasing. Ten providers have left the program since fiscal year 2011. In fiscal year 2016, three ECI providers indicated that they would not renew their contracts for fiscal year 2017. HHSC has indicated that, as of October 6, 2016, replacement contractors have not been found for two of those three ECI providers. **Figure 4** shows the number of ECI providers from fiscal years 2011 to 2017.

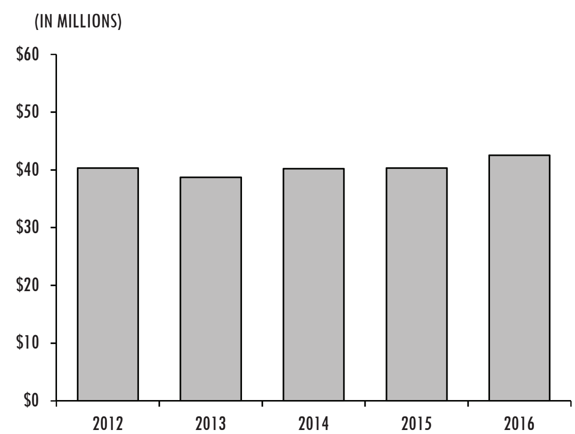
FIGURE 4
EARLY CHILDHOOD INTERVENTION SERVICES CONTRACTORS, FISCAL YEARS 2011 TO 2017



NOTE: The number of contractors for fiscal year 2017 is estimated.
SOURCE: Department of Assistive and Rehabilitative Services.

Although population has increased and the number of providers has decreased, the amount of federal funding available for IDEA, Part C, has not increased significantly. As **Figure 5** shows, IDEA, Part C, funding has remained relatively stable from fiscal years 2012 to 2016.

FIGURE 5
U.S. INDIVIDUALS WITH DISABILITIES EDUCATION ACT, PART C, FUNDING TO TEXAS FISCAL YEARS 2012 TO 2016



SOURCES: Legislative Budget Board; U.S. Department of Education.

NATIONWIDE ELIGIBILITY COMPARED TO TEXAS

Eligibility standards for ECI services vary widely from state to state. More than half of states use a certain percentage threshold to define the developmental delay that is sufficient to warrant ECI services. This model is what Texas uses. Several states that use a single percentage threshold are more selective than Texas. Other states quantify the developmental delay by standard deviations from the mean development of other children of the same age. A standard deviation is a quantity calculated to indicate the extent of deviation for a group as a whole.

According to the national Early Childhood Technical Assistance Center half of the states use a tiered definition of eligibility. A tiered definition distinguishes between a child with a developmental delay in one area and individuals with multiple delays. In such systems, individuals with a developmental delay in one area are required to meet a higher delay threshold. For example, in New York, a child must have a developmental delay of 33.0 percent in one area to be eligible for services. An individual is also eligible for services with developmental delays of 25.0 percent in two or more areas. **Figure 6** shows the eligibility criteria used by selected states.

The Legislature could modify ECI's eligibility levels to contain costs and ensure the viability of the program. Option 1 would amend statute to define a tiered definition of eligibility. A child would be eligible for ECI services with a developmental delay of 30.0 percent or more in one area or 25.0 percent or more in two or more areas. A tiered definition of eligibility would reduce costs by focusing the number of individuals and families served by the program to the children who are experiencing a higher degree of developmental delay. This tiered eligibility will reduce pressure on the ECI system, considering the decrease in the number of providers in recent years and a federal funding source that has not grown significantly.

DARS narrowed eligibility criteria for ECI services in fiscal year 2012. At that time, DARS altered eligibility criteria because the funding appropriation for ECI services for fiscal years 2012 and 2013 was approximately 14.0 percent less than the previous fiscal year. The reduction was due in part to the expiration of the American Recovery and Reinvestment Act of 2009.

IDEA, Part C, funds may be used by states to monitor the development of at-risk children who do not meet the eligibility criteria to qualify for ECI services. In fiscal year 2015, DARS reported that 1,562 children received these services, referred to as follow-along services. Follow-along services include: providing age-appropriate developmental materials to a family at the time a child is determined ineligible for comprehensive services; and contacting the family periodically to determine the child's developmental status.

IDEA, Part B, Special Education Preschool Program, funds special education and related services for children ages 3 to 5 who have disabilities. States have the option to serve children age 2 who will turn age 3 during the next school year with Special Education Preschool Program funds. The Texas Education Agency (TEA) and HHSC could consider expanding the Special Education Preschool program, as it potentially would provide services to children from ages 2 to 3 who are not eligible for ECI services.

Another resource in Texas for children not served by ECI includes Home Health Agencies (HHA). HHAs provide pediatric services to children with developmental disabilities. These entities provide speech, physical, and occupational therapies to children with disabilities. HHAs accept most private insurance and Medicaid. Stakeholders in the ECI program have indicated that HHAs serve children who are eligible for ECI services.

FIGURE 6
SELECTED STATES' ELIGIBILITY CRITERIA FOR EARLY CHILDHOOD INTERVENTION SERVICES, FISCAL YEAR 2015

STATE	DELAY IN ONE DEVELOPMENTAL AREA	DELAY IN TWO OR MORE DEVELOPMENTAL AREAS	ADDITIONAL CRITERIA
Texas	25.0% delay	N/A	33.0% delay in expressive language in the communication area
New York	33.0% delay or 2.0 standard deviations	25.0% or 1.5 standard deviations	2.0 standard deviations if the only delay is in the communication area
Florida	2.0 standard deviations	1.0 standard deviation	None
Oklahoma	50.0% or 2.0 standard deviations	25.0% or 2.0 standard deviations	None

Note: A standard deviation refers to a developmental delay that deviates from the mean development for a child at a certain age.
Source: The Early Childhood Technical Assistance Center, Frank Porter Graham Child Development Institute, University of North Carolina at Chapel Hill, 2015.

CAPTA AND CPS REFERRALS TO ECI

Although federal law requires states to screen children involved in a substantiated case of abuse or neglect for ECI eligibility, most of such children in Texas are not eligible for ECI services. The federal Child Abuse Prevention and Treatment Act (CAPTA) was reauthorized on December 20, 2010. CAPTA requires that states have provisions in place for referrals of children in a substantiated case of child abuse or neglect to ECI services. IDEA, Part C, also requires these provisions. Chapter 40 of the Texas Administrative Code requires that ECI providers coordinate with the Texas Department of Family and Protective Services (DFPS) to accept referrals for children in such cases.

The DFPS Child Protective Services (CPS) division and the HHSC ECI program have executed an MOU to align their respective programs to facilitate these referrals. The MOU also includes that CPS will refer children to ECI who are born and identified as affected by an illegal substance or have withdrawals symptoms from prenatal drug exposure.

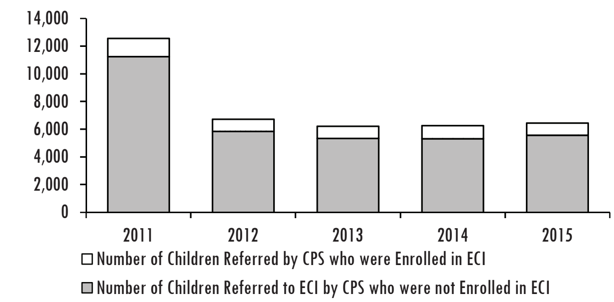
If CPS staff suspect a child has a developmental delay, the staff refer that child to the ECI program. ECI providers must then offer an initial developmental screening to the child. The initial developmental screening enables the ECI provider to determine if the child needs a comprehensive evaluation to determine ECI eligibility. ECI providers may use professional judgment to conduct a comprehensive evaluation without a developmental screening.

The MOU executed by HHSC and CPS distinguishes between children who are enrolled in the STAR Health Program and children who are not. Children who are enrolled in STAR Health are initially screened by their primary care physicians. The primary care physicians may refer them to ECI, depending on the results of the initial developmental screening.

States must have referral procedures pursuant to CAPTA. However, the U.S. Health and Human Services' Administration for Children and Families indicates that the law does not require that every child involved in a substantiated case of child abuse or neglect must be referred to ECI programs. Instead, states may employ a screening process to determine whether a referral is needed. Some state IDEA, Part C, programs work with CPS agencies and train CPS social workers to conduct the appropriate screenings. Such an approach meets the CAPTA requirements.

Stakeholders and providers report that the children referred in accordance with the MOU between DARS and CPS are often not eligible for ECI services. The developmental screenings that must be completed at no charge to families have become a cost driver for providers. Data provided by DARS shows that children referred by CPS are unlikely to be eligible for ECI services. **Figure 7** shows that most children referred by CPS are not subsequently enrolled in ECI. **Figure 8** shows that the percentage of children who enter ECI services through a CPS referral is significantly lower than the program's total enrollment rate through referrals. In fiscal year 2015, only 13.7 percent of children referred by CPS were subsequently enrolled in ECI. In comparison, in fiscal year 2015, 37.0 percent of all children referred received comprehensive services.

FIGURE 7
CHILDREN ENROLLED IN THE EARLY CHILDHOOD INTERVENTION PROGRAM COMPARED TO TEXAS CHILD PROTECTIVE SERVICES REFERRALS WITH SUBSEQUENT ENROLLMENT, FISCAL YEARS 2011 TO 2015



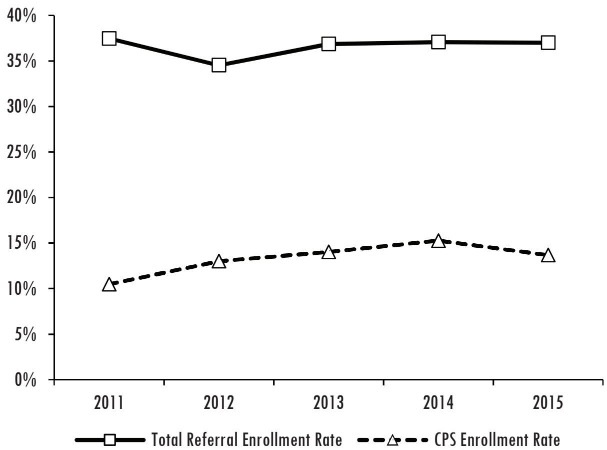
NOTE: CPS = Texas Child Protective Services; ECI = Early Childhood Intervention.
SOURCES: Legislative Budget Board; Department of Assistive and Rehabilitative Services.

PRIVATE INSURANCE MAXIMIZATION

According to IDEA, Part C funds should be the payor of last resort. ECI providers must collect reimbursement from all other sources of funding before spending IDEA, Part C, Federal Funds. States may use private insurance funds to pay for ECI services, but only if the parent provides consent to do so. Texas does not require that early intervention services be covered by private insurance. However, a health benefit plan that covers Part C services may not prohibit or restrict payment for such services.

According to a survey of ECI providers by LBB staff, not all ECI services are covered by private insurance. ECI services commonly reported as not covered include speech therapy and specialized skills training. Most major insurance carriers do not provide coverage for speech therapy, unless these services result from an illness, injury, or congenital defects.

FIGURE 8
TEXAS EARLY CHILDHOOD INTERVENTION ENROLLMENT RATE FOR ALL REFERRALS COMPARED TO RATE BASED ON CHILD PROTECTIVE SERVICES (CPS) REFERRALS FISCAL YEARS 2011 TO 2015



SOURCES: Legislative Budget Board; Department of Assistive and Rehabilitative Services.

Private insurance typically does not provide coverage for specialized skills training, such as providers coaching families regarding infant and toddler development and behavior. Carriers typically limit coverage to services provided by caseworkers who are credentialed by a state or nationwide, independent, third party. The early intervention services credential is awarded by local contractors, in conjunction with the state. This credential excludes ECI programs from reimbursement for these services performed by the caseworkers of those programs.

Providers have indicated several administrative issues with regard to private insurance reimbursement. These issues include denials for lack of authorization and the fact that ECI providers are often not part of the private insurer's network. The result is an increase in the costs for families with private insurance plans that otherwise provide coverage for ECI services. Providers also cite low reimbursement rates from private insurers for ECI services.

LOCAL PROVIDER CONTRACTS

To provide ECI services, HHSC contracts with local providers across the state who administer the program. These cost-reimbursement contracts provide ECI programs with an annual amount of funding. ECI providers bill HHSC up to this amount for appropriate services that cannot be reimbursed from another source of funding. **Figure 9** shows how HHSC determines the total ECI program budget for each provider. HHSC determines the contract amounts based on the previous year's costs and enrollment, the total state appropriation made to HHSC, and the percentage of children enrolled in Medicaid. Locally collected funds are subtracted from the total ECI program budget to arrive at the contract amount for each ECI provider. These locally collected funds include expenditures for TRICARE, CHIP, private insurance, and other third-party revenue.

In fiscal year 2016, DARS reduced ECI contract amounts by 12.2 percent. This decrease was made because federal appropriations for fiscal year 2016 decreased relative to fiscal year 2015. DARS then applied that percentage to the determined contract amount for fiscal year 2016. DARS applies this adjustment factor to all ECI contracts each fiscal year.

HHSC cost reimbursement contracts specify the activities that can be reimbursed from the contract amount. Contractors submit requests for reimbursement for allowable costs on a State of Texas Purchase Voucher no later than 30 calendar days following the end of the month for which reimbursement is requested. The total payout of allowable contract costs cannot exceed the contract amount without

FIGURE 9
DARS PROCESS FOR DETERMINING PROGRAM BUDGET AMOUNTS FOR ECI PROVIDERS, FISCAL YEAR 2016

(Amounts for MAC, TCM, and SST: Previous Fiscal Year Medicaid Enrollment)	X	(New Fiscal Year Contract Number of Children)	=	MAC, TCM, and SST Amount
(Average Cost Per Enrollment Slot)	X	(New Fiscal Year Contract Number of Children)	=	Cost Reimbursable Amount
(Previous Fiscal Year Expenditures for Texas Health Steps, Private Insurance, CHIP, and TRICARE)	X	(Other Third-party Revenue)	=	Other Projected Revenue
			TOTAL	DARS Provider Program Budget

NOTE: DARS = Department of Assistive and Rehabilitative Services; ECI = Early Childhood Intervention; MAC = Medicaid Administrative Claiming; TCM = Medicaid Targeted Case Management; SST = Specialized Skills Training; CHIP = Children's Health Insurance Program.
SOURCES: Legislative Budget Board; Department of Assistive and Rehabilitative Services.

amending the contract. A final claim for reimbursement must be submitted by November 15 of the contracting year. HHSC is the payor of last resort pursuant to federal regulations for IDEA, Part C, funds. Contractors must utilize other funding before billing HHSC for services provided.

As part of its contracting policy, HHSC requires that ECI providers enter data into the Texas Kids Intervention Data System (TKIDS) on the twentieth day of every month. HHSC uses this data to calculate the average of directly delivered service hours for September through March of the contracting year. When the average enrollment of an ECI program is more than a certain number of children, the ECI provider is eligible for an increased reimbursable amount. If that enrollment is less than a certain number, the reimbursement amount is decreased. These midyear adjustments to contracts are made by formal amendment to the contracts after May 1 of the contracting year.

A significant number of providers have indicated that the midyear adjustment occurs too late in the contract year. Providers have suggested that adjustments should occur after the second quarter, or in February or March. DARS indicated that it would consider altering its adjustment methods. However, DARS indicated that fewer children attend therapy sessions during the holiday months of November and December. Therefore, an adjustment earlier in the contract year may be inaccurate due to the lack of TKIDS data from the subsequent months. DARS cost-reimbursement contracts closed out on November 15 of the subsequent contracting year. If a provider has to bill for a service that occurred in a previous fiscal year after that date, the billing is typically reimbursed out of the current contracting year, if at all. Other programs, such as Medicaid, remain open for much longer than cost reimbursement contracts. DARS indicated that it would consider expanding the period for which contracts from previous fiscal years remain open to adjustment. This change would likely increase cash flow for providers.

MANDATORY PRIVATE INSURANCE COVERAGE FOR AUTISM SPECTRUM DISORDER

The Eightieth Legislature, 2007, amended Chapter 1355 of the Texas Insurance Code to require health benefit plans to provide coverage for all typically recognized services that are prescribed in relation to Autism Spectrum Disorder (ASD). These services are recommended in the enrollee's primary care physician's treatment plan. Typically recognized services include speech, occupational, and physical therapies; medications or nutritional supplements; and other treatments. The Eighty-first Legislature, Regular Session, 2009, amended the law to expand coverage from the date of diagnosis until the enrollee turns age 10.

In 2009, the Council for Affordable Health Insurance (CAHI) estimated that a state mandate for private insurance to cover ASD increases the cost of health insurance by about 1.0 percent. CAHI predicted that if the incidence of ASD and the coverage of services increased, then the cost of mandating coverage would range from 1.0 percent to 3.0 percent. Although Texas has mandated private insurance coverage for ASD, the state has not extended a similar statute to cover ECI services. However, other states have extended mandatory insurance coverage to ECI services.

MANDATORY PRIVATE INSURANCE COVERAGE FOR ECI SERVICES

At least seven states have enacted legislation that requires private insurers to cover ECI services. Typically, statutes require private insurers to cover early intervention services utilized by families up to a certain annual limit. These statutes exempt the costs from counting against any lifetime limit in a family's policy. **Figure 10** shows the annual limits on private insurance for ECI services in selected states.

Due to population growth, unchanged federal IDEA, Part C, funding, and challenges to accessing General Revenue Funds, New Mexico considered private insurance for ECI reimbursement. In 2004, that state's Legislature directed the New Mexico State Department of Health to implement a task force to study methods for private insurers to provide coverage for early intervention services to eligible children and families. The task force included representatives from advocacy groups, providers of care to children with developmental delays, parents of developmentally delayed children, the New Mexico Department of Health, and representatives of private health insurance companies. The New Mexico Legislature directed the task force to present its finding to the interim legislative health and human services and finance committees. The task force identified the potential for nearly $3.0 million in revenue for the state's ECI program. As a result of the task force's findings, New Mexico enacted legislation that required private insurers to reimburse medically necessary early intervention services up to $3,500 annually.

Private insurance offers a significant opportunity to offset the costs of the ECI program to state General Revenue Funds. Option 2 would amend statute to direct HHSC to establish a task force to study the feasibility of requiring private

FIGURE 10
SELECTED STATES WITH PRIVATE INSURANCE COVERAGE FOR EARLY CHILDHOOD INTERVENTION SERVICES
FISCAL YEAR 2015

STATE	ANNUAL CAP	ELIGIBILITY	COVERED SERVICES
New Mexico	$3,500	Requires coverage for early intervention services. Costs are not applied against any maximum lifetime or annual limits in the policy.	Medically necessary early intervention services.
Virginia	$5,000	Costs exempted from counting against any lifetime cap in a family's policy.	Occupational Therapy, Speech Therapy, Physical Therapy, and Assistive Technology Services and Devices.
Colorado	$6,067	Requires coverage per calendar or policy years. Includes case management costs.	Medically necessary early intervention services and case management costs.

Sources: Legislative Budget Board; the Early Childhood Technical Assistance Center, Frank Porter Graham Child Development Institute, University of North Carolina at Chapel Hill.

insurers to provide coverage for early intervention services to eligible children and families. The task force should include early intervention service providers, advocacy groups, HHSC, the Texas Department of Insurance, and representatives of private insurance companies. The task force should present its findings and recommendations to the Legislature's health and human services committees. Although insurance premiums may have risen in the states that have mandated ECI coverage, it is likely that such a rise would be modest, such as the premium rise predicted by mandated coverage for ASD (1.0 percent to 3.0 percent).

FISCAL IMPACT OF THE OPTIONS

Option 1 would amend state statute to restrict eligibility for ECI services by establishing a tiered definition of eligibility and could reduce the costs of the ECI program. It is assumed that HHSC could implement this option within existing resources. This reduction in costs cannot be quantified due to the unknown number of children that would be served in accordance with the tiered eligibility. Option 2 is estimated to have no significant fiscal impact.

Option 2 would amend state statute to require HHSC to establish a task force to study the feasibility of requiring private insurance to reimburse for ECI services. It is assumed that HHSC and TDI could implement this option within existing resources.

The House introduced 2018-19 General Appropriations Bill does not include any adjustments as a result of these options.

REDIRECT CHILD SUPPORT FOR CHILDREN IN FOSTER CARE TO MAXIMIZE REIMBURSEMENT OF FOSTER CARE PAYMENTS

When a court places a child under the conservatorship of the state, represented by the Texas Department of Family and Protective Services, the state assumes parental responsibilities including paying for the child's care. State and federal funds are used to provide for a child's daily needs while in care. To help offset these costs, the state collects child support from parents, if appropriate. The Texas Department of Family and Protective Services works with the Office of the Attorney General, the child support enforcement agency in Texas, to collect and distribute child support for children in care. There are about 28,000 children in the conservatorship of the Texas Department of Family and Protective Services on any given day. In fiscal year 2015, $397.8 million was budgeted for Foster Care Payments to foster parents and providers.

Child support funds collected to help offset foster care costs totaled about $4.5 million in fiscal year 2015. However, the state's distribution of child support collected on behalf of children in care does not maximize the use of those funds for the care and maintenance of children. In some cases, the state retains more child support than what was spent on a child's care, the collecting agency retains more of a foster child's support than it does for non-foster care cases, and funds are not always disbursed for their intended purpose. By amending statue to revise the allocation and distribution of these funds, child support payments from parents would be used for the care and maintenance of children while in the state's care.

FACTS AND FINDINGS

- Federal regulations require that child support collected on behalf of children in foster care is first used to reimburse the state and federal governments for their respective shares of foster care maintenance payments.
- State statute directs the Texas Department of Family and Protective Services and Office of the Attorney General to establish the allocation of the child support funds collected for cases where the department is the custodial parent. This agreement, executed in 1996, provides that the state share of child support collections be divided equally between the two agencies. In fiscal year 2015, each agency received approximately $888,000 from the state share of child support collections.

CONCERNS

- The amount of child support retained by the Office of the Attorney General for foster care cases exceeds fees it charges for enforcement of non-foster care child support cases.
- Occasionally, parents pay more child support than what the state spent on the child's care. For some children, the state does not identify or track these excess payments. For other children, the state has not allocated resources to properly identify and disburse the funds when the child exits care.
- As of March 1, 2016, the Texas Department of Family and Protective Services is conserving approximately $36,000 in excess child support payments for children whose care is partially federally funded. These are payments made by families as support for children in foster care that are in excess of what has been spent on a child's care.

OPTIONS

- **Option 1:** Amend statute to allocate all of the state share of child support collected on behalf of children in foster care to the Texas Department of Family and Protective Services.
- **Option 2:** Amend statute to require the Office of the Attorney General to identify excess child support payments made on behalf of children in foster care paid for entirely by the state.
- **Option 3:** Include a contingency rider in the 2018–19 General Appropriations Bill to increase appropriations to the Texas Department of Family and Protective Services by an estimated $1.8 million in DFPS Appropriated Receipts – Child Support Collections. The contingency rider would also require that the Texas Department of Family and Protective Services and the Office of the Attorney General work together to identify the most efficient method of distributing child support funds collected on behalf of children in substitute care. Additionally, the rider

would require the agencies to provide a report to the Legislative Budget Board outlining how the agencies would implement Option 1 and Option 2 by no later than November 1, 2017. This rider would be contingent on passage of legislation implementing Option 1 and Option 2.

DISCUSSION

The mission of the Texas Department of Family and Protective Services (DFPS) is to protect children, the elderly, and people with disabilities from abuse and neglect. The responsibilities of the Child Protective Services (CPS) division at DFPS include investigating allegations of abuse and neglect of children. If a CPS investigation leads a court to determine it is against the child's best interest to remain in the family home, the child is removed from the home. When the state is appointed as the child's temporary managing conservator, the state assumes the rights and duties of the child's parents. The child is placed in an out-of-home placement under the supervision of DFPS, also known as substitute care. On any given day there are approximately 28,000 children under the supervision of DFPS.

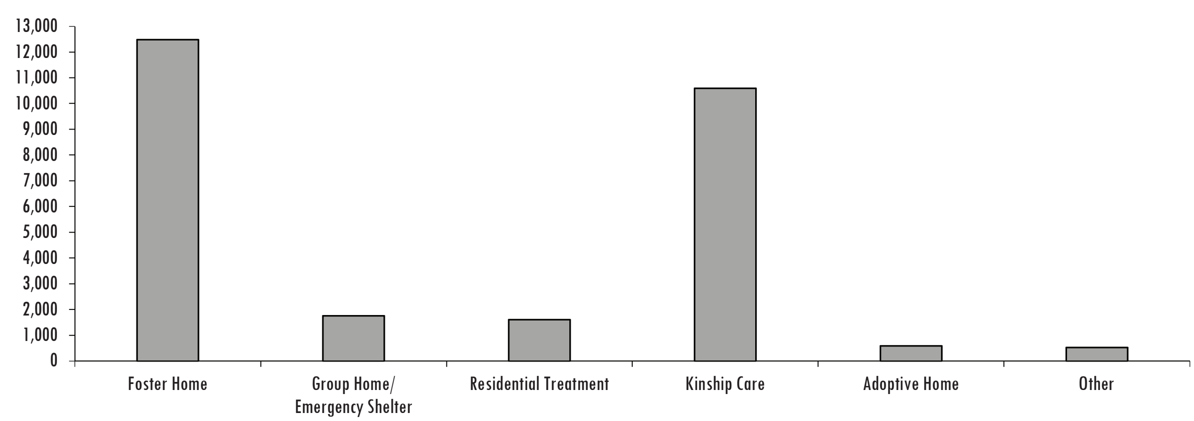
FOSTER CARE

Although DFPS attempts to place children in substitute care with appropriate relatives or fictive kin (caring adults that have existing relationships with the child but are not relatives), more than half of the children in DFPS care must be placed in a paid foster care placement. Foster care is provided in DFPS-licensed placements with providers that passed background checks, completed training, and passed a home screening, among other requirements. The providers receive monthly foster care maintenance payments to cover the cost of providing foster care services. Paid foster care placements may include a foster family home, foster group home, or a general residential operation. **Figure 1** shows the number of children in out-of-home placements supervised by DFPS in January 2016.

DFPS makes foster care maintenance payments to cover the child's basic needs. Foster care maintenance payments vary depending on the child's needs and the type of placement facility where they live.

When a child enters into care under the supervision of DFPS, the agency assesses the child's service needs by consulting with the child's caregivers, parents, teachers, and other appropriate sources to determine the child's service level. DFPS foster care maintenance payment rates are determined by the child's service level. When the child enters care, DFPS also determines eligibility for the foster care assistance program under Title IV-E of the federal Social Security Act. A child is eligible for Title IV-E benefits if, prior to removal, the child would have qualified for the federal Aid for Families with Dependent Children (AFDC) program. AFDC was replaced by the Temporary Assistance for Needy Families (TANF) block grant program, but the Title IV-E statute specifies eligibility requirements as they were in effect on July 16, 1996. DFPS uses Federal Funds (Title IV-E) to

FIGURE 1
NUMBER OF CHILDREN IN DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES OUT-OF-HOME PLACEMENTS BY FACILITY TYPE, JANUARY 2016



NOTE: DFPS = Department of Family and Protective Services.
SOURCE: Regional Statistical Information about Children in DFPS Care, January 2016.

pay for a portion of the maintenance payments for eligible children. The remainder is paid for with General Revenue Funds and TANF block grant funds, which the state can use with some flexibility. Maintenance payments for children who do not qualify for Title IV-E foster care are considered state-paid and are comprised of General Revenue Funds and TANF block grant funds.

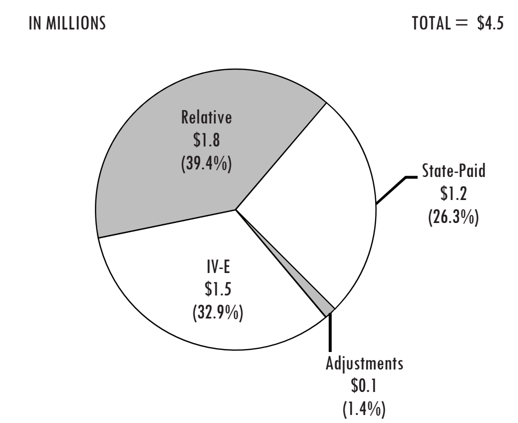
FOSTER CARE MAINTENANCE PAYMENTS AND CHILD SUPPORT

To offset foster care maintenance costs and require that a parent shares in the financial responsibility of providing for their child's care, the federal Social Security Act requires states to ensure that any rights to child support for each child in the state's care are assigned to the state. Texas statute provides that placement of a child in substitute care constitutes an assignment to the state of any support rights attributable to the child as of the date the child is placed in substitute care.

Unless seeking termination of parental rights, DFPS caseworkers are required to ask the presiding judge to order parents to pay child support and health insurance, if appropriate, while their child is in substitute care. DFPS may also request child support payment, if appropriate, after parental rights are terminated. The judge follows guidelines laid out in Texas statute to rule on the appropriateness of child support for the family, a parent's ability to pay, and the support obligation. If the court orders a child support obligation, the order is entered into the DFPS Information Management Protecting Adults and Children in Texas (IMPACT) system, and the case is automatically referred to the Office of the Attorney General (OAG). OAG is responsible for child support enforcement services; including parent locator, paternity establishment, and child support collections.

Both parents, even if missing or living outside of Texas, are included in the referral to OAG. During the course of the case, DFPS may determine that requiring a child support payment from a parent is not in the best interest of the child and may request that OAG defer collection for six months. Child support collections to pay for a child's foster care may not end when the child returns home or DFPS is otherwise dismissed as the managing conservator if a parent owes child support arrears. Therefore, it is important that the final court order dismissing DFPS from a conservatorship case addresses how to handle the child support. DFPS staff and the attorney representing the agency may determine that it is not in the child's best interest for the parent to pay child support arrears at the end of a case and can request that the court waive the state share of the amount in arrears. The portion of child support arrears intended to reimburse the federally funded share of the foster care payments for children that were in Title IV-E care cannot be waived. In fiscal year 2015 the OAG child support caseload had approximately 20,000 dependents (children) with DFPS listed as the custodial party, about 0.3 percent of the agency's total caseload. **Figure 2** shows the fiscal year 2015 child support funds for children in DFPS care by foster care type.

FIGURE 2
CHILD SUPPORT FUNDS FOR CHILDREN IN DFPS CARE BY FOSTER CARE TYPE (IV-E, RELATIVE, STATE-PAID)
FISCAL YEAR 2015



NOTES:
(1) DFPS=Department of Family and Protective Services.
(2) Adjustments are due to corrections from prior accounting errors (i.e., child classified as in relative care when actually in IV-E care). Adjusted amounts go to the General Revenue Fund.

SOURCE: Office of the Attorney General.

CHILD SUPPORT DISTRIBUTION

Federal regulations require that child support collected on behalf of children in foster care is first used to reimburse the state and federal governments for foster care maintenance payments. OAG collects and disburses these child support payments through the automated Texas Child Support Enforcement System (TXCSES). When child support is received for a child in Title IV-E foster care, OAG uses information from DFPS about the child's needs (service level), placement type, and the corresponding foster care daily grant rate to calculate the foster care maintenance cost for the child for that month. OAG then applies the Federal Medical Assistance Percentage (FMAP) to the maintenance cost calculation to determine the portion of the costs that were paid by the federal government, known as the federal share. The federal share is transferred to a fund administered by DFPS and used to fund the federal share of Title IV-E eligible expenses. **Figure 3** shows how child support for children in foster care is distributed by type of foster care.

The remainder of the maintenance cost calculation is the state share, the portion that is the responsibility of the state. Federal guidelines do not explicitly direct how the state share should be allocated. Texas statute requires OAG and DFPS to execute a memorandum of understanding for the allocation of the state share.

Any amount of support collected on behalf of a child in Title IV-E foster care that is more than the cost of any foster care maintenance payments made by the state but less than the child support obligation required by the court is transferred to DFPS as excess funds. Federal regulations require DFPS to determine how to use excess funds to serve the best interest of the child. As the managing conservator for a child, DFPS is responsible for making prudent financial decisions on the child's behalf.

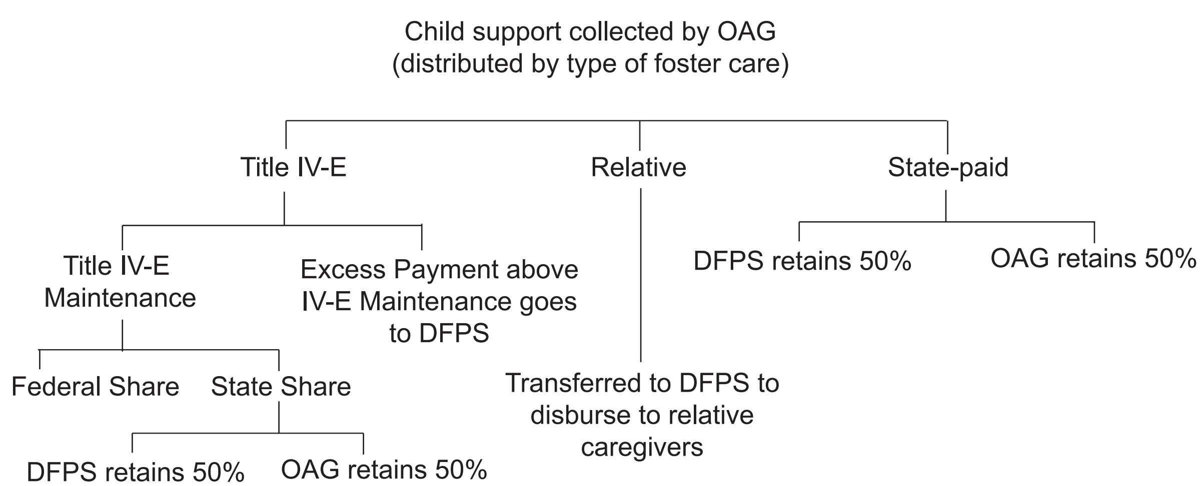
If the amount of child support collected on behalf of a child in Title IV-E foster care is more than the foster care maintenance cost and the child support obligation, the balance is used to reimburse past foster care payments or other public assistance received, such as TANF benefits. Any remaining balance goes to DFPS to use in the best interest of the child.

The state retains child support collected on behalf of a child in state-paid foster care. The memorandum of understanding between OAG and DFPS also determines the allocation of these funds. Parents of children in relative placements may also be ordered to pay child support. OAG directs the support paid by these parents to DFPS, and DFPS is responsible for disbursing it to the relative responsible for the child's care.

ALLOCATE THE STATE SHARE OF CHILD SUPPORT COLLECTED FOR CHILDREN IN FOSTER CARE TO THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

The Texas Family Code directs DFPS and OAG to execute a memorandum of understanding for the implementation of child support enforcement and allocation of the child support funds collected by OAG in cases where DFPS is the custodial parent. The original memorandum between the agencies was executed in 1996 and the allocation methodology has not changed since that date. The allocation equally divides the state share between OAG and DFPS. In fiscal year 2016, the agencies were unable to provide information to Legislative Budget Board (LBB) staff on the factors considered or the process used in determining the allocation. Federal law authorizes the state to retain child

FIGURE 3
CHILD SUPPORT DISTRIBUTION FOR CHILDREN IN DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES MANAGING CONSERVATORSHIP, AS OF FISCAL YEAR 2015



NOTE: OAG = Office of the Attorney General; DFPS = Department of Family and Protective Services.
SOURCES: Legislative Budget Board; Office of the Attorney General.

support to the extent necessary to reimburse it for the foster care maintenance payments.

OAG retains more for foster care child support cases than for non-DFPS cases. In non-DFPS child support cases, custodial parents who receive full-service monitoring and enforcement services, such as establishment of paternity or automatic income withholding, pay a $25 fee to OAG for each year that the custodial parent receives at least $500 in child support collections; representing a maximum fee of 5 percent. Custodial parents in non-DFPS child support cases pay OAG a $3 monthly fee in cases that receive registry-only payment processing and record keeping services through the federally mandated State Disbursement Unit for each month in which a child support payment of more than $3 is received. Based on the memorandum of understanding, OAG retains about 20 percent or 50 percent of the support paid on behalf of children in foster care, depending on Title IV-E eligibility.

All funds retained by OAG from the state share of child support collected on behalf of children in foster care are deposited into the Child Support Retained Collections Account (CSRCA). The CSRCA is a subaccount within the General Revenue Fund that the Legislature appropriates to OAG in Strategy B. 1. 1, Child Support Enforcement and Strategy B. 1. 2, State Disbursement Unit. As such, OAG's half of the state shares is used for expenses from these two strategies. **Figure 4** shows DFPS-related child support funds as a percentage of the total child support funds for state fiscal years 2010 to 2015.

Although a relatively minimal amount when compared to either OAG child support enforcement or DFPS foster care expenses, federal regulations provide that the portion retained by OAG, an average of approximately $885,000 per fiscal year, is intended as reimbursement for foster care payments paid by DFPS. Option 1 would amend the Texas Family Code to allocate the state share of child support collected on behalf of children in foster care to DFPS to reimburse it for the foster care maintenance payments. Allocating the full state share to DFPS would better align with the objective of the federal law, to use the child support collected to reimburse for the care of the children, maximize the state's use of the funds, and be consistent with the allocation of child support collected on behalf of children in relative care.

INCREASE EFFICIENCY OF DISTRIBUTION OF CHILD SUPPORT COLLECTED ON BEHALF OF CHILDREN IN SUBSTITUTE CARE

Other than the portion of the state share retained by OAG, the agency disburses all other funds related to child support collected on behalf of children in substitute care to DFPS as a lump sum. The funds are transferred into a suspense account administered by DFPS. A staff of three full-time accountants at DFPS are responsible for ensuring the lump sum disbursement from OAG is appropriately distributed to: (1) reimburse Title IV-E Federal Funds; (2) reimburse General Revenue Funds and TANF block grant funds; (3) reimburse relative caregivers; and, (4) identify and track excess child support funds. The accountants access data from OAG to determine if child support payments received were for current child support orders or for accounts in arrears and use data from the DFPS IMPACT system to verify the child's placement, legal status, and eligibility. This information dictates which funds were used to pay foster care maintenance payments and tells the accounting staff which source should receive the reimbursement from child support collected. **Figure 5** shows the state shares of IV-E and state-paid foster care child support retained by OAG and disbursed to DFPS in fiscal years 2012 to 2015.

FIGURE 4
DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES-RELATED CHILD SUPPORT PAYMENTS, FISCAL YEARS 2010 TO 2015

FISCAL YEAR	ALL CHILD SUPPORT PAYMENTS (IN MILLIONS)	PAYMENTS FOR DFPS-RELATED CASES (IN MILLIONS)	PROPORTION OF PAYMENTS FROM DFPS-RELATED CASES
2010	$2,927.9	$3.9	0.13%
2011	$3,196.5	$4.7	0.15%
2012	$3,479.8	$5.2	0.15%
2013	$3,627.8	$4.6	0.13%
2014	$3,809.1	$4.6	0.12%
2015	$3,995.0	$4.5	0.11%

Note: DFPS = Department of Family and Protective Services.
Source: Office of the Attorney General.

FIGURE 5
STATE SHARE OF FOSTER CARE CHILD SUPPORT RETAINED BY OAG AND DISBURSED TO DFPS, FISCAL YEARS 2012 TO 2015

FISCAL YEAR	TOTAL DISBURSED	IV-E FEDERAL SHARE	EXCESS PAYMENTS	RELATIVE CAREGIVER SHARE	DFPS SHARE	OAG SHARE	ADJUSTMENTS
2012	$5,195,721	$1,223,424	$36,292	$1,834,810	$1,052,434	$1,020,383	$28,378
2013	$4,576,850	$998,605	$23,977	$1,773,811	$894,651	$823,486	$62,319
2014	$4,630,417	$947,815	$18,648	$1,776,009	$922,883	$888,916	$76,145
2015	$4,502,406	$865,059	$13,642	$1,784,599	$895,255	$880,791	$63,062

NOTES:
(1) OAG = Office of the Attorney General; DFPS = Department of Family and Protective Services.
(2) Adjustments are due to corrections from prior accounting errors (i.e. child classified as in relative care when actually in IV-E care). Adjustment funds go to General Revenue Fund.
SOURCE: Office of the Attorney General.

The federal share of the child support reimbursing Title IV-E foster care maintenance is transferred to an account which temporarily holds federal funds granted for the protection of homeless, abandoned, dependent, and neglected children. Eventually, DFPS draws down on the account to fund the federal share of Title IV-E eligible expenses, including foster care maintenance payments, administrative costs to manage the program, training for DFPS staff and foster parents, foster parent recruitment, and other related expenses. The DFPS portion of the state share of the child support for Title IV-E and state-paid foster care maintenance is used to reimburse funding for foster care payments.

Appropriations for foster care payments are made in the Child Protective Services goal of the General Appropriations Act. In fiscal year 2015, $1.3 billion was budgeted for the child protective services goal. A majority of the funds within the CPS goal in fiscal year 2015 were budgeted for CPS Direct Delivery Staff, $511.6 million (38.6 percent) and Foster Care Payments to foster parents and providers, $397.8 million (30.0 percent). The child support funds are appropriated to DFPS by the Legislature as Appropriated Receipts. The appropriation for DFPS Appropriated Receipts from Child Support Collections is an estimate based on historical collections.

Distribution of the child support collected for children living with relative caregivers requires accounting staff to conduct in-depth research to ensure payment is issued correctly. Each month the three accountants that distribute the lump sum of child support from OAG also research more than 1,400 relative caregiver placements before issuing payment.

Additionally, the three accountants are responsible for distributing any excess child support funds, payments from parents that are more than what the state spent on the child's foster care. Prior to fiscal year 2014, DFPS transferred excess child support funds to reimburse foster care costs along with the state-shares from Title IV-E and state-paid foster care. After a judicial inquiry, DFPS determined it would be in foster children's best interest to conserve the excess funds separately. Since then, excess funds for 43 children have been conserved for a total excess fund balance of $36,000 as of February 29, 2016. The account holding these funds does not accrue interest. The amount of funds held per child has ranged from $4 to $3,493. A majority of the children have less than $1,000 conserved, but more than $1,000 is being held for 14 children. According to DFPS, two children have received their conserved excess funds after exiting foster care.

Despite the federal requirement for child welfare agencies to use excess funds for children eligible for the Title IV-E foster care assistance program in the manner the agency determines will serve the best interest of the child, there is no statutory requirement to calculate or identify any potential excess child support payment for children in state-paid foster care. Children who are placed in state-paid foster care were removed from homes with family income that was too high to qualify for Title IV-E assistance. Neither DFPS nor OAG determines if children in state-paid care have excess funds. All child support received for these children is assigned to the state and evenly split between OAG and DFPS. It is possible that OAG and DFPS have retained funds that otherwise would have been conserved for children in state-paid foster care placements.

In December 2015, DFPS indicated it will be working through each case to identify children for which excess funds have been collected and who have exited care. However, DFPS reports it does not have sufficient staff to monitor the excess funds and determine when a child ages out or otherwise exits care due to the amount of time and effort required to verify data and accurately distribute the funds. It takes the three accountants most of the month to distribute the child support to relative caregivers because it is a multi-step process per child.

Options 2 and 3 jointly address these concerns. Option 2 would amend the Texas Family Code to require OAG to identify excess child support payments made on behalf of children in state-paid foster care. OAG currently makes these calculations for children in Title IV-E foster care and the option would require OAG to develop similar methodology for children in state-paid care. Option 3 would include a contingency rider in the 2018–19 General Appropriations Bill to require DFPS and OAG to improve the distribution of child support to relative caregivers and the distribution of excess funds to children that exit foster care. The rider would also require the agencies to provide a one-time report to the LBB by November 1, 2017, outlining how the distribution of child support for children in foster care will be improved; and, how the agencies will track and timely distribute excess child support funds for certain children that exit foster care. The rider would be contingent on the passage of legislation implementing Option 1 and Option 2.

FISCAL IMPACT OF THE OPTIONS

These options would strengthen the administration and management of child support funds received on behalf of children in foster care. Specifically, Option 1, implemented by the contingency rider from Option 3, would redirect funds that are retained by OAG to DFPS to better align with the intended use of those funds. In the 2018–19 biennium, Option 1 would result in a loss of an estimated $1.8 million to the Child Support Retained Collections Account (CSRCA) at OAG and a gain of an estimated $1.8 million in DFPS Appropriated Receipts from Child Support Collections. The loss of funds in CSRCA would be a loss of funds carried forward each year and would not require replacement with another source of funding. Option 2 would better allow the state to meet its responsibility as the managing conservator by ensuring a proper accounting of excess child support funds for all children in care. Because the excess child support funds for children in state-paid foster care have not been identified in the past, it is impossible to estimate how much would be lost in DFPS Appropriated Receipts due to conserving the excess funds for the child but it is assumed this amount would be minimal and would not have a significant fiscal impact. Option 2 could be implemented by OAG using existing resources. Option 3 would include a contingency rider increasing the appropriation to DFPS in Strategy B.1.9., Foster Care Payments, by an estimated $1.8 million in DFPS Appropriated Receipts from Child Support Collections and reducing General Revenue Funds by a like amount, resulting in a General Revenue Funds savings. It is assumed these funds would be appropriated by the Legislature to address funding needs within the state foster care system. The contingency rider would also direct DFPS and OAG to improve the distribution of foster care child support funds and provide a report outlining how these improvements will be implemented to the LBB. This report could be completed using existing resources. This rider would be contingent on passage of legislation implementing Option 1 and Option 2. **Figure 6** shows the five-year fiscal impact of Options 1 and 3.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

FIGURE 6
FIVE-YEAR FISCAL IMPACT OF OPTIONS 1 AND 3, FISCAL YEARS 2018 TO 2022

FISCAL YEAR	PROBABLE REVENUE (LOSS) TO CHILD SUPPORT RETAINED COLLECTIONS ACCOUNT 787	PROBABLE REVENUE GAIN TO DFPS APPROPRIATED RECEIPTS – CHILD SUPPORT COLLECTIONS	PROBABLE COST TO DFPS APPROPRIATED RECEIPTS – CHILD SUPPORT COLLECTIONS	PROBABLE SAVINGS IN GENERAL REVENUE FUNDS	PROBABLE COST IN GENERAL REVENUE FUNDS
2018	($900,000)	$900,000	($900,000)	$900,000	($900,000)
2019	($900,000)	$900,000	($900,000)	$900,000	($900,000)
2020	($900,000)	$900,000	($900,000)	$900,000	($900,000)
2021	($900,000)	$900,000	($900,000)	$900,000	($900,000)
2022	($900,000)	$900,000	($900,000)	$900,000	($900,000)

NOTE: DFPS = Department of Family and Protective Services.
SOURCES: Legislative Budget Board; Department of Family and Protective Services.

OVERVIEW OF SELECT ISSUES, RECOMMENDATIONS, AND AGENCY ACTIONS RELATED TO CHILD PROTECTIVE SERVICES TRANSFORMATION

Child welfare is a continuum of services designed to ensure that children are safe and that families have the necessary support to care for their children successfully. The child welfare system is made up of multiple public agencies, the juvenile courts, and private organizations. Both federal and state laws establish the legal, regulatory, and fiscal frameworks that govern the roles and responsibilities of agencies and organizations for children and families that enter and leave the child welfare system.

The federal government develops and implements national child welfare policy by enacting legislation, issuing regulations, overseeing state performance, and conducting compliance reviews. It also allocates federal funds for child welfare and related programs to state, county, city, and tribal governments and private organizations that meet federal requirements.

ROLE OF THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) is the primary state entity responsible for Texas' child welfare program. Three programs within DFPS provide child welfare services: Statewide Intake (SWI), Child Care Licensing (CCL) and Child Protective Services (CPS).

SWI operates the Texas Abuse Hotline to take reports of abuse, neglect, and exploitation, and routes them to the right program for investigation. These reports include allegations of child abuse and neglect at home, in childcare, in state facilities, and in programs for people with mental illness or intellectual disabilities.

CCL works to promote the health, safety, and well-being of children and youth in daycare as well as in foster care and other types of 24-hour childcare. CCL regulates childcare operations and child-placing agencies; issues permits and checks to make sure operations and agencies comply with licensing standards, rules, and laws; gives technical assistance to help childcare providers meet licensing standards, rules, and laws; investigates reports of violations of minimum standards and reports of abuse or neglect in daycare and residential childcare; and educates parents and others about choosing regulated childcare and how each daycare or business complies with state standards.

CPS investigates reports of child abuse and neglect to protect children from harm now and in the future. State law requires anyone who believes a child is being abused or neglected to report it so CPS can investigate. CPS interviews children, parents, and others to help determine if abuse or neglect happened. CPS also considers physical evidence such as injuries. CPS investigators may refer families to Family Based Safety Services (FBSS) to strengthen and stabilize families so that they can safely care for their children at home. FBSS can help avoid the need to remove children from their homes. When that is not possible, CPS works with the courts to obtain state custody of the children and temporarily place them with relatives or foster families, or in an emergency shelter or foster-care facility. In some cases, children may be placed with relatives or family friends also known as kinship caregivers. Children live in foster care when kinship care is not an option. CPS plans for permanency for the child which means leaving state care to live in a permanent home. Children are reunited with their parents when possible. When a child cannot return home safely, the court may give permanent custody to a relative or make the child available for adoption.

SPENDING ON CHILD PROTECTIVE SERVICES AT DFPS

The Texas Legislature has steadily increased biennial appropriations to DFPS for CPS. The agency's All Funds appropriations increased by $673.6 million from the 2008–09 biennium to the 2016–17 biennium, representing a 31 percent increase. Appropriations of General Revenue Funds were similarly increased by $554.8 million, or 60 percent, over the same period. In addition, appropriations have exceeded the agency's Legislative Appropriations Request since the 2014–15 biennium in All Funds and since the 2012–13 biennium in General Revenue Funds.

As shown in **Figure 1**, DFPS is projected to spend $2,984.6 million on CPS during the 2016–17 biennium. This amount includes $1,560.2 million in General Revenue Funds (52.3 percent), $1,406.6 million in Federal Funds (47.1 percent),

FIGURE 1
CHILD PROTECTIVE SERVICES FUNDING, FISCAL YEARS 2016 AND 2017

METHOD OF FINANCE	APPROPRIATED AMOUNTS	PROJECTED SPENDING	OVER/(UNDER) APPROPRIATIONS
General Revenue Funds	$1,473,091,769	$1,560,214,192	$87,122,423
Federal Funds	$1,352,889,973	$1,406,601,227	$53,711,254
Other Funds	$18,522,324	$17,735,860	($786,464)
All Funds	$2,844,504,066	$2,984,551,279	$140,047,213

Source: Legislative Budget Board.

and $17.7 million in Other Funds (0.6 percent). The projected total All Funds spending amount for the 2016–17 biennium is $140.0 million more than the appropriated amount of $2,844.5 million.

Federal Funds consists of 21 separate federal grants. The largest federal grant allocated to CPS for the 2016–17 biennium is the Temporary Assistance for Needy Families (TANF) grant totaling $529.9 million, followed by Foster Care Title IV-E at $371.0 million and Adoption Assistance Title IV-E at $250.9 million which assist in funding the federal entitlement programs for foster care and adoption assistance payments. In addition, of the $1,473.1 million in appropriations of General Revenue Funds for the 2016–17 biennium, $362.4 million, or 24.6 percent, are provided to meet specific federal match and maintenance of effort (MOE) requirements to draw down Medicaid, TANF, and Title IV-E funding.

The Eighty-fourth Legislature, 2015, funded a total of $42.8 million in All Funds in CPS exceptional items for the 2016–17 biennium. These items include:

- rate increases for certain foster care providers ($25.0 million);
- parental child safety placement pilot ($5.0 million);
- merit salary increases for direct delivery staff ($7.4 million);
- subacute inpatient treatment program ($4.2 million);
- Court Appointed Special Advocates (CASA) family finding collaboration ($0.6 million); and
- Child and Adolescent Needs and Strengths (CANS) Assessment Tool ($0.6 million).

On October 12, 2016, the Governor, Lieutenant Governor, and Speaker of the House directed DFPS to develop a plan to address the backlog of children not seen within statutory guidelines. In response, DFPS requested approval for an additional $61.6 million in All Funds to provide salary increases for existing CPS caseworkers and $51.6 million in All Funds to hire 828.8 additional caseworkers, for a total of $142.4 million in All Funds in fiscal year 2017. On December 1, 2016, the Legislative Budget Board (LBB) approved the request contingent upon reporting and performance requirements related to areas such as employee turnover, timeliness of seeing children, and caseloads. The approval letter from the LBB that lists each of the reporting and performance requirements can be found in Appendix E.

SUMMARY OF EFFORTS TO REFORM CPS

Over the past several years, there have been legislative and state agency efforts to reform CPS. **Figure 2** shows a timeline of recent efforts intended to reform CPS at DFPS. Several reports have been issued that contain recommendations for improving these services. In August 2014, DFPS began the CPS Transformation initiative intended to make improvements based on recommendations from the following reports:

- In April 2014, Casey Family Programs issued a report on CPS in Harris County. The report included recommendations focused on practices and procedures within DFPS' control that would improve foster care outcomes in Harris County.
- On February 1, 2014, the Texas Health and Human Services Commission (HHSC) and DFPS contracted with The Stephen Group (TSG) to conduct an operational review of CPS (operational review). The goal of the review was to identify operational changes to better enable CPS to help families build environments for children to promote safety, well-being and permanence. In April 2014, TSG published reports on the findings of the operational review and in June 2014, they published recommendations for improvement.
- During fiscal years 2014 and 2015, DFPS was reviewed by the Sunset Advisory Commission (SAC)

FIGURE 2
TIMELINE OF SELECT EFFORTS TO REFORM CHILD PROTECTIVE SERVICES AT THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, CALENDAR YEARS 2011 TO 2015

DATE	ACTIVITY
March 2011	Class action lawsuit (M.D. v. Perry) filed in U.S. District Court seeking reform of the Texas child welfare system
April 2014	Casey Family Programs publishes report on Child Protective Services in Harris County
April 2014	The Stephen Group publishes findings report on the Child Protective Services Operational Review
June 2014	The Stephen Group publishes recommendations report on the Child Protective Services Operational Review
August 2014	Sunset Advisory Commission publishes staff report with Commission decisions
July 2015	Sunset Advisory Commission publishes staff report with final results
December 2015	U.S. District Court rules in favor of plaintiffs in M.D. v. Perry
March 2016	U.S. District Court appoints two Special Masters to craft, monitor, and implement reforms of the Texas foster care system
November 2016	Special Masters presented the U.S. District Court with an implementation plan to reform the Texas foster care system

SOURCE: Legislative Budget Board.

which issued reports that included recommendations to improve CPS operations.

According to DFPS, CPS Transformation is a rigorous self-improvement process. Transformation is intended to be a bottom-up effort, built on the knowledge and insights of front-line staff and led primarily by regional staff. Transformation has one overarching goal—enhanced child safety—with three main priorities: (1) ensure child safety, permanency, and well-being; (2) develop a professional and stable workforce; and (3) establish effective organization and operations.

DFPS indicates they are continually evaluating the implementation and outcomes of transformation efforts to improve their effectiveness. In the October 2016 progress report on CPS Transformation, DFPS reported statewide and regional data for select performance measures. **Figure 3** provides statewide data for select measures. DFPS will include future performance data updates in the annual CPS Business Plan.

In March 2011, the national advocacy group Children's Rights, along with Texas law firms Haynes and Boone, LLP, Yetter Coleman, and Canales & Simonson, filed a class action lawsuit in federal court seeking widespread reform of the Texas child welfare system. The lawsuit, known as M.D. v. Perry, charges DFPS with violating the constitutional rights of children in permanent foster care in Texas, including their right not to be harmed while in state custody and their right to familial association. In December 2015, U.S. District Judge Janis Graham Jack ruled in favor of the plaintiff, requiring that Texas make targeted changes to its foster care system. In March 2016, Judge Jack appointed two, joint independent Special Masters and charged them with helping to craft and oversee the reform of Texas' foster care system. The federal court requires the Special Masters to present the court with an Implementation Plan to reform Texas's foster care system within 180 days of their selection. On November 4, 2016, the Special Masters filed their Implementation Plan with the court. Upon review of the plan, the court will enter a final order establishing final, enforceable, and binding provisions, after which, the Special Masters is required to report every 180 days concerning the status and progress made towards compliance. The Special Masters is required to continue to serve the court until the court determines they are no longer necessary.

The following sections summarize select CPS management issues and recommendations for improvement included in the CPS operational review conducted by TSG and the SAC staff report with final results. The issues and recommendations included are limited to those that DFPS has the authority to change without amending statute; recommendations that have been addressed via statute are not included unless otherwise noted. Actions taken by DFPS and HHSC through November 2016 in response to those recommendations are also outlined. Issues and recommendations within the following four areas are summarized:

- CPS Organization and Management Operations;
- Workforce Management;
- Technology and Data; and
- Foster Care Redesign.

The CPS operational review and the SAC staff report include other issues and recommendations related to CPS processes

FIGURE 3
SELECT CPS PERFORMANCE DATA, FISCAL YEARS 2014 TO 2016

MEASURE	2014	2015	2016
Average time to investigation closure (in days)	52.9	48.2	45.6
Average time to Family Based Safety Services closure (in months)	7.1	7.0	7.1
Average time to conservatorship closure (in month)	21.3	20.9	20.8
Events to recruit former military members to work at DFPS	Not reported	30	36
Average time to fill a DFPS vacancy (in days)	Not reported	65	43
Turnover for CPS Staff overall	25%	26%	26%
Turnover for Investigations Staff	34%	33%	33%
Turnover for Family Based Safety Services Staff	23%	28%	25%
Turnover for Conservatorship Staff	23%	23%	23%
Turnover for Investigations – new staff (0-3 months)	23%	34%	32%
Turnover for Family Based Safety Services – new staff (0-3 months)	21%	22%	24%
Turnover for Conservatorship – new staff (0-3 months)	20%	23%	29%
Turnover for Investigations – (3-18 months)	49%	45%	48%
Turnover for Family Based Safety Services – (3-18 months)	27%	40%	33%
Turnover for Conservatorship – (3-18 months)	18%	17%	18%
Turnover for Investigations – tenured staff (19+ months)	23%	21%	24%
Turnover for Family Based Safety Services – tenured staff (19+ months)	21%	22%	22%
Turnover for Conservatorship – tenured staff (19+ months)	18%	17%	18%
Recidivism for Investigation Stage	7.5%	7.7%	7.5%
Recidivism for Family Based Safety Services Stage	7.8%	7.6%	7.6%
Recidivism for Conservatorship Stage	11.9%	11.5%	11.7%
Average number of placements	3.2	3.2	3.1
Exits to Permanency	91.4%	92.2%	92.1%
Average Time to Exit to Permanency (in months)	18.8	18.5	18.4

NOTE: The number of military events for fiscal year 2016 does not include August 2016. The average time to fill a vacancy for fiscal year 2016 does not include the fourth quarter of fiscal year 2016. Recidivism rates refer to the percentage of children who leave a stage of service and exit the CPS system and have subsequent CPS involvement.
SOURCE: Department of Family Protective Services CPS Transformation Progress Report October 2016.

that are not included in this report. Examples of areas not included are CPS involvement with media and stakeholders and certain casework processes.

ORGANIZATIONAL AND MANAGEMENT OPERATIONS

The HHSC executive commissioner appoints a commissioner to oversee the operations of DFPS. Rules and policies for DFPS are developed by the DFPS commissioner and the HHSC executive commissioner, with advisory input from the DFPS Council. The council provides a venue for public review and comment and is appointed by the Governor. CPS has an associate commissioner who reports to the DFPS commissioner and is responsible for all activities related to this program area, including, but not limited to, field operations, purchased client services, investigations, permanency, and family and youth services. To carry out its work, CPS is organized among 11 geographic regions for day-to-day direct service work, with the CPS State Office in Austin providing central oversight and administration. At the end of fiscal year 2016, DFPS employed 12,235.7 staff with 13,273.8 authorized full-time equivalent positions. Of the filled positions, 9,519 were within CPS and 5,618.1 of those were CPS caseworkers. Organizational charts for DFPS and CPS as well as the DFPS regional map can be found in the appendices.

ISSUES AND RECOMMENDATIONS

Both the operational review of CPS conducted by The Stephen Group (TSG) and the report published by the

Sunset Advisory Commission (SAC) found issues related to how DFPS manages its operations, including planning, policy-making and implementation, communication, performance management, and leadership development. According to SAC, DFPS has struggled to develop a strategic approach to overall CPS management due to its inherent need to react to crisis situations as a regular part of its daily business. SAC found the agency has a history of repeatedly identifying the same management and communication problems and not adequately addressing them. It also found that CPS initiatives are not tied to an overall set of goals nor an overarching plan and lack outcomes and methods to measure and communicate impact. TSG found similar issues in its operational review.

According to SAC, there is a pattern of ineffective management practices from CPS State Office in managing the 11 regions. A survey of DFPS staff conducted by SAC found hundreds of comments from CPS field staff that indicated "frustration with the way CPS State Office creates and implements policy changes and new initiatives; ineffective communication; lack of consistency in policy application from region to region and even from supervisor to supervisor; as well as disenchantment with what staff sees as an unwillingness of management to implement changes in response to employee input."

One SAC recommendation was to direct CPS to implement an annual business planning process and submit the first plan to SAC by October 2014 along with the agency's report on planned changes. SAC also recommended that the agency implement changes based on the operational assessment, report select CPS performance measures, and submit a 2016 progress report. In response, DFPS has submitted six reports that provide an update on CPS Transformation. A report was submitted in October 2014, February 2015, April 2015, October 2015, April 2016, and October 2016. DFPS also submitted the annual CPS Business Plan for Fiscal Year 2016 in October 2015. According to DFPS, future updates to CPS' initiatives and metrics will be provided in the annual CPS Business Plan. DFPS indicates it has also taken steps to improve its organizational structure, policy-making activities, internal communication, and quality management.

Figure 4 shows the CPS management issues related to policy-making, internal communication, and quality identified by TSG in their operational review and/or raised in the SAC report. **Figure 5** shows the recommendations made by the

FIGURE 4
SELECT CPS ORGANIZATION AND MANAGEMENT ISSUES IDENTIFIED IN OPERATIONAL REVIEW AND BY THE SUNSET ADVISORY COMMISSION, FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW
Organization	DFPS' functions remained largely unchanged from its predecessor agency after the 2003 consolidation and operates within a health and human services system that has not been comprehensively reassessed since its formation.	The current CPS organizational structure is not optimized for top performance. For example, similar operations are unconnected.
Policy-making	CPS' policies and procedures are lengthy, convoluted, and not kept up-to-date which results in lack of consistent understanding and application of existing policy. Each region has its own protocols and practices that are not well documented and may vary from state policy.	CPS policies are inconsistent, burdensome, and not well understood. CPS State Office does not have a unified approach to support policy and procedure changes with training, technology, and metrics. Supervisors make their own interpretation of policy and regions are free to adapt process.
Internal Communication	CPS management does not routinely report back to employees on input provided or changes made.	Sharing information between CPS State Office and caseworkers is challenging. Policy is developed with limited input from field staff. A regular method for obtaining feedback on policy from field staff was not observed.
Quality Management	CPS State Office does not have a comprehensive approach to evaluate regional performance that identifies systemic issues. CPS State Office has no formal process to monitor regional management's implementation of identified solutions.	The CPS quality assurance and management structure is not well designed. There is no integrated statewide quality plan to lift performance across the agency. Monitoring systems are inconsistent and not effectively used for improvement. Within each region, there is no mechanism to validate implementation of quality improvement efforts.

NOTE: CPS = Child Protective Services; DFPS = Department of Family and Protective Services.
SOURCE: Sunset Advisory Commission Staff Report with Final Results for the Department of Family and Protective Services and DFPS CPS Operational Review Phase 1: Assessment/Findings.

FIGURE 5
SELECT RECOMMENDATIONS AND ACTION REPORTED TO IMPROVE CPS ORGANIZATION AND MANAGEMENT OPERATIONS FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW	ACTIONS REPORTED BY DFPS AS OF NOVEMBER 2016
Organization	The DFPS organizational structure must be evaluated in conjunction with the health and human services system overall.	Reorganize CPS operations to focus on continuous improvement, financial integrity, improved communications and streamlined policy.	CPS reorganized state office to align with the field's organizational structure and maximize use of existing resources.
Policy-making	Direct DFPS to comprehensively review and update the CPS policy and procedures handbook and develop a systematic approach to its policy-making process. Direct DFPS to require CPS regions to fully document, report, and update their protocols and practices.	Develop a new policy strategy. Improve policy development including, create one statewide policy unit, rewrite the policy handbook, develop a practice manual, review and reauthorize policy every five years, and measure and track the cost and staffing impact of policy changes.	CPS enacted a new policy strategy to improve the clarity and accuracy of policy and practice resources. CPS established a centralized process for policy review, development, and dissemination. CPS has used the new process to streamline policies. CPS has developed practice guides that provide direction to caseworkers on best practices.
Internal Communication	CPS should develop a process to report suggestions made by employees and management actions taken.	Statewide policy unit should employ significant regional input. Improve policy distribution.	CPS has created a mailbox for policy questions to solicit feedback about the policy handbook and practice guides. Feedback may come from internal or external sources. DFPS held regional staff meetings, stakeholder meetings, and webinars to communicate transformation efforts. CPS also has monthly "Meetings in a Box" to implement change in the field through supervisor-led communication and training.
Quality Management	Direct CPS to develop a systematic, comprehensive approach to evaluating and monitoring regional performance.	Move quality assurance to a centrally managed, regionally staffed model. Modify sampling protocol for quality assurance reviews. Develop a quality management program.	CPS has implemented a new Continuous Quality Improvement plan that uses Regional Systems Improvement (RSI) specialists. RSIs analyze data at a system level to help regional management and the state identify strengths and improvements. CPS has expanded use of real-time case reviews and is implementing improvements to the Child Safety Specialist case review process.

Notes:
(1) Recommendations for statutory change are not included unless noted.
(2) CPS = Child Protective Services; DFPS = Department of Family and Protective Services.
Source: Sunset Advisory Commission Staff Report with Final Results for the Department of Family and Protective Services, DFPS CPS Operational Review Phase 1: Recommendations, and DFPS CPS Transformation Progress Reports.

SAC and TSG to improve these issues as well as actions reported to be taken by the agency to implement the recommendations. Additional detail on specific issues and recommendations related to the use of performance data and technology are discussed later in this report.

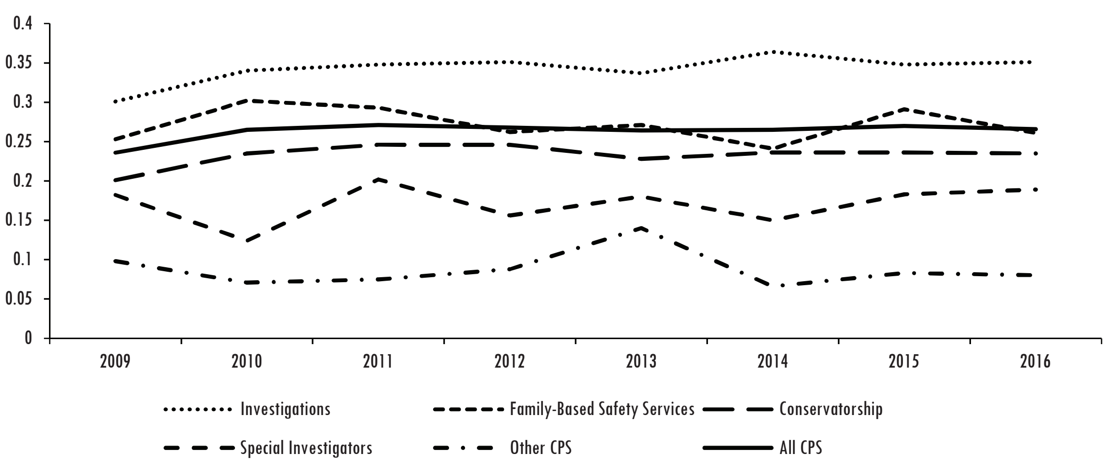
CHILD PROTECTIVE SERVICES WORKFORCE MANAGEMENT

The basic job duties for CPS caseworkers require that they intervene with families in crisis. A caseworker's responsibilities include being witness to the effects of child abuse and neglect, substance use disorders, and family violence. CPS is organized among 11 geographic regions for the day-to-day service work. Each region's director implements and manages the program to provide services across the stages of service, including intake, investigation, family preservation (also known as Family Based Safety Services), substitute care, family reunification, adoption, post-adoption, and preparation for adult living. Regional directors organize the program delivery system to meet regional needs while complying with applicable policies and other DFPS directives. All regions have established job descriptions, ratios for supervisors to frontline workers, and ratios for administrative support, however, based on the size of the region, leadership roles may be divided differently. All CPS caseworkers have a supervisor within their stage of service. Supervisors report to Program Directors (also within the stage of service). Appendix C includes the CPS organizational chart. Appendix D includes the organizational structure of staff in DFPS regions.

Caseworkers must manage the compassion fatigue of direct care work while meeting a multitude of administrative and policy requirements from agency rules to state and federal laws. Nationally, turnover in the child welfare system is higher than in other fields. In fiscal year 2016, the CPS caseworker turnover rate was 26.6 percent, however the rate has consistently been higher in investigations than in FBSS and conservatorship. **Figure 6** shows the turnover of CPS caseworkers by stage of service classification from fiscal years 2009 to 2016.

Chronically high turnover presents several problems for the agency and interferes with its ability to meet its mission of protecting children from abuse and neglect. The Texas Legislature and DFPS have long been concerned with addressing CPS turnover because it creates a cycle of vacancies, high caseloads, overburdened workers looking to leave, and a hiring and training program that is constantly attempting to catch up. As a result, the agency's ability to improve the safety, permanency, and well-being of children in CPS cases is limited. The major workforce issue identified by SAC staff and the operational review of CPS by TSG is turnover, but many facets of workforce management affect CPS's ability to regain control and maintain a stable workforce.

FIGURE 6
CHILD PROTECTIVE SERVICES CASEWORKER TURNOVER BY STAGE OF SERVICE, FISCAL YEARS 2009 TO 2016



NOTE: This turnover is calculated using the method required by the LBB performance measure for CPS caseworker turnover: (the total number of full time, regular employees who terminated during the period and remain terminated divided by the average number of full-time, regular filled positions on the last day of each quarter in the period) times 100 to produce a percentage. As a result, the State Auditor's Office turnover calculation varies slightly from DFPS due to methodological differences in calculating the average number of filled positions and the total number of terminated employees.
SOURCE: Department of Family and Protective Services.

ISSUES AND RECOMMENDATIONS

According to SAC and TSG, DFPS needed to suspend non-critical tasks to recover from the almost constant reform it had been undergoing for several years. SAC stated DFPS needed to better manage its people to carry on its mission. SAC concluded that efforts to reduce turnover at CPS failed to address the key reasons that many staff leave: poor work environment, lack of mentoring and support, unstable workload, unreasonable management practices, inadequate training, and a lack of meaningful performance evaluations. SAC found that, due to high turnover rates, CPS had also faced high vacancy rates and difficulty filling available positions at the rate necessary to keep up with workload demands, especially due to the time required for hiring and training new hires. SAC also found that DFPS had been ineffective at addressing the agency's work environment, despite evidence that shows it contributed to caseworker turnover. Instead, SAC observed that the agency had concentrated on hiring more caseworkers, without addressing the workforce management issues that lead to attrition.

Like SAC, TSG also reports that turnover had been a major organizational burden on CPS. In addition to drawing many of the same conclusions as SAC regarding the key factors behind high turnover, TSG found that, due to deficiencies in workforce management, CPS caseworkers were unable to spend more than 26 percent of their time building relationships with families and children. TSG also identified issues with CPS recruitment and hiring practices. TSG found that the number of new hires varied significantly from quarter to quarter and year to year, placing a burden on CPS trainers and staff. Additionally, TSG found that over a quarter of all new hires left the agency within the first 12 months of employment, possibly due in part to outdated instruments and interview guides used in the DFPS hiring process. Another finding by TSG was that the hiring process did not provide the opportunity for applicants to drop out of consideration for a vacancy based on an authentic portrayal of job duties.

In survey responses to both SAC and TSG, CPS staff repeatedly emphasized a need for improved training and professional development. TSG found that new caseworkers were generally not prepared to fulfill the requirements of the job upon completion of training. Additionally, TSG reported that DFPS did not test any of their training for efficacy or compare it to position expectations and requirements.

Both SAC and TSG made recommendations to help CPS improve workforce management. Key recommendations from both reviews aim to address the need for mentors for new caseworkers, succession planning and professional development for tenured workers interested in becoming supervisors or managers, and a need to provide transparency and emphasize the importance of performance evaluations and recognition.

Figure 7 provides additional detail on select CPS management issues related to recruitment and hiring, professional development, and performance evaluations by the TSG operational review and the SAC staff report. **Figure 8** lists the recommendations made by the SAC and TSG to improve these issues as well as actions reported to be taken by the agency to implement the recommendations.

FIGURE 7
SELECT WORKFORCE MANAGEMENT ISSUES IDENTIFIED BY THE SUNSET ADVISORY COMMISSION AND IN THE OPERATIONAL REVIEW, FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW
Recruitment and Hiring	DFPS focuses on high-volume hiring without adequately addressing internal management issues that cause workers to leave.	Inconsistent hiring practices overburden training staff and result in inefficient training of new hires.
	No corresponding issue	The CPS Specialist Personality Profile Assessment used to screen caseworker applicants is outdated.
		Applicants do not have an authentic portrayal of job duties to self-select out of the hiring process.
Professional Development	CPS does not adequately develop and support existing staff, especially new caseworkers. Caseworkers need additional hands-on training in the field. CPS relies on supervisors to mentor new workers, but due to turnover and high workloads, supervisors are unable to serve as dedicated mentors to new workers.	Training for new caseworkers is inadequate and does not prepare them for working real cases. It does not seek to create a culture of on-going learning. There are not enough mentorship opportunities for new caseworkers.
	CPS does not have a comprehensive strategy to identify and develop staff to move into key management positions.	DFPS does not have an effective process to identify caseworkers who may possess quality supervisory skills that could help with succession planning.
	DFPS lacks a coordinated effort to support its workforce and does not systematically monitor statewide trends to identify management problem.	No corresponding issue
Performance Evaluation	Caseworker performance measures are arbitrary, inadequate, and unnecessarily punitive. Management uses corrective action levels in a punitive and inconsistent manner. Management does not systematically identify opportunities for staff development through formal measures such as performance evaluations. DFPS has not established criteria and guidelines for merit pay awards.	CPS supervisors focus on tracking numbers and metrics, including using data to discipline caseworkers, rather than creating a supportive environment. CPS struggles to find positive ways to recognize individual performance.
	Managers are not systematically held accountable for caseworker turnover.	No corresponding issue

NOTE: DFPS = Department of Family and Protective Services; CPS = Child Protective Services.
SOURCE: Sunset Advisory Commission Staff Report with Final Results for the Department of Family and Protective Services and DFPS CPS Operational Review Phase 1: Assessment/Findings.

FIGURE 8
SELECT RECOMMENDATIONS AND ACTION REPORTED TO IMPROVE CPS WORKFORCE MANAGEMENT, FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW	ACTIONS REPORTED BY DFPS AS OF OCTOBER 2016
Recruitment & Hiring	No corresponding recommendation	Develop a staffing model that ensures CPS has sufficient caseworkers to meet the agency's needs, taking into account training time and expected turnover.	DFPS reports that a staffing model for forecasting CPS separations exists; however, it is only applied in authorized situations as a formal request from CPS due to fiscal implications of hiring above appropriated full-time equivalent caps.
	No corresponding recommendation	Collaborate with Texas institutions of higher education to recruit workers from social work and related degree programs. Develop a strategic marketing and recruitment plan, including targeted recruiting and positive branding in institutions of higher education.	DFPS developed strategic recruitment plan with targeted colleges and universities, including a system to track employee performance and client outcomes of participants of Title IV-E Training Program and creating a Title IV-E coordination role within the DFPS Workforce Management and Support Division. DFPS is assessing the capacity to implement these recommendations within existing resources. DFPS will begin working with Austin Community College and Alamo Community College to improve internship opportunities for two-year degree students to provide a tailored curriculum to meet agency needs.
	No corresponding recommendation	Evaluate CPS job descriptions to ensure roles and required competencies and abilities accurately represent CPS positions. Require a mandatory job preview process before an application is submitted. Evaluate candidate profile used for the assessment process to ensure it reflects the behavioral and attitudinal characteristics of successful CPS workers.	DFPS implemented new job postings that align with new core competencies for caseworkers. DFPS enhanced candidate screening, including the addition of a statement of interest and use of the DFPS-specific Human Services Index to identify characteristics of candidates who can be successful. DFPS now uses situational and behavioral-based interview questions to more accurately identify candidates who are a good fit for the job.
	No corresponding recommendation	Validate the job profile and verify it aligns with profile of successful CPS workers. Ensure interview includes situational and behavioral questions. Adopt an evidence-informed child welfare worker selection process. Give CPS supervisor the final authority on candidate selection.	DFPS contracted with a human resources vendor that will develop and provide training to DFPS hiring specialists and CPS supervisors on the new behavioral interview process.
	No corresponding recommendation	Evaluate best practices in other industries that recruit and hire for high-turnover positions and implement findings to improve CPS recruitment tracking and assessment.	DFPS completed a market analysis to assist in defining and identifying high-priority populations for recruitment. This analysis will guide the development of more targeted recruitment activities. DFPS recruitment activities are reported in the DFPS Human Resources Management Plan every six months. The Data and Decision division provides a quarterly report to executive leadership to inform strategic planning.

FIGURE 8 (CONTINUED)
SELECT RECOMMENDATIONS AND ACTION REPORTED TO IMPROVE CPS WORKFORCE MANAGEMENT, FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW	ACTIONS REPORTED BY DFPS AS OF OCTOBER 2016
Professional Development	No corresponding recommendation	Create an organizational culture that encourages and supports continuous employee learning, critical thinking, and innovation. Offer ongoing professional development.	CPS Transformation implements various initiatives to change the organization's culture into that of a learning organization. The DFPS Center for Learning and Organizational Excellence (CLOE) offers support for planning conferences and training-related events. In addition, CLOE provides services related to organizational effectiveness to all DFPS programs and divisions, including orientations, skills development, supervisor trainings, program and cross-program trainings, and certification courses.
	Direct DFPS to dedicate certain existing caseworker positions to create a mentoring program to better support new CPS caseworkers.	Develop a mentoring program to pair interested, experienced workers with new workers. CPS should screen potential mentors, match with mentees, provide mentor training and post-match support.	DFPS has implemented a pilot mentoring program, pairing new workers with experienced ones to share a caseload while offering the experienced worker financial compensation. DFPS is evaluating the program at key stages to address barriers and make practice improvements. A final evaluation is due on December 31, 2016.
	No corresponding recommendation	Create performance pairs of caseworkers with shared responsibility of certain casework, to improve decision-making and cultivate the feeling of connection and teamwork.	DFPS uses performance pairs in Bexar County. Staff involved report feeling safer working in pairs. Units with performance pairs meet target outcomes with face-to-face contacts and case resolution. DFPS reported other areas are beginning to implement this model.
	No corresponding recommendation	Provide improved management training for supervisors and managers. Promote informal opportunities and forums for supervisors, middle, and senior leadership to share innovative methods.	DFPS implemented a Strengths-Based Supervision training model focused on: critical thinking and analysis; guidance and support; and, administrative responsibilities. This consists of two days of classroom training followed by a series of group supervision sessions providing practical and emotional support while highlighting the importance of in-depth supervision in child welfare work. The supervisor training program was enhanced through the first two years to certification. The Continuous Learning team will develop training for Program Directors and higher-level management positions in calendar year 2017. CPS regional management staff completed contacts with each employee in the 6- to 24-month tenure range, repeating the contacts at six-month intervals. Regional leadership found the calls beneficial in identifying regional issues and will continue the practice.

FIGURE 8 (CONTINUED)
SELECT RECOMMENDATIONS AND ACTION REPORTED TO IMPROVE CPS WORKFORCE MANAGEMENT, FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW	ACTIONS REPORTED BY DFPS AS OF OCTOBER 2016
	Direct DFPS to develop a succession planning strategy.	Create leadership development programs for high performing CPS staff to move into supervisory and management roles. Each CPS leadership position should have a succession plan. Develop an internal CPS leadership academy.	The updated training for caseworkers and supervisors includes a structured mentoring program. Mentors can expand their leadership experience through one-on-one guidance and additional trainings. A leadership program for caseworkers interested in advancement, Emerging Leaders, will also be developed in 2017.
	No corresponding recommendation	Restructure the BSD curriculum with input from field workers. Validate BSD competencies and topic areas. Deliver BSD through mixed methods and with new training resources.	DFPS redesigned CPS caseworker training and implemented a mentor program. DFPS also launched a competency-based training model known as CPS Professional Development (CPD). CPD lasts for the first nine months of a new caseworker's tenure. DFPS contracted with The University of Texas at Austin for an evaluation of the CPD model, due December 2016.
	No corresponding recommendation	During on-the-job training in BSD, use mentors for guided experiential learning relevant to on-going cases open. Provide training material that is as close to real as possible. Ensure BSD trainers have recent field experience.	DFPS implemented CPD training model with hands-on and field-based specialty-track training. The expectation is that trainers complete 40 hours of CPS program contact, including caseworker ride along and shadowing, unit meetings, regional program meetings, per fiscal year. However, if program training needs or workload requirements do not allow time for these hours, trainers prioritize training needs over program contact hours.
Performance Evaluation	CPS should revise its system for evaluating caseworker performance and provide guidance to managers on awarding merit pay awards.	Use a 360-degree feedback tool to help managers learn from their workers. Launch a performance recognition campaign.	DFPS revised performance evaluation tools for all caseworkers to incorporate qualitative and quantitative indicators corresponding to new job descriptions and competencies. DFPS is working with The University of Texas at Austin to develop a 360-degree performance feedback program for program directors and administrators; it will be piloted in Regions 4, 7, and 11. DFPS implemented the Commissioner's statewide employee recognition programs: Commissioner's Award of Excellence (recipients can take up to two days of extra leave), DFPS Team Integrity Award (team recognition), and the DFPS Award of Distinction (recognizes regional staff members).

FIGURE 8 (CONTINUED)
SELECT RECOMMENDATIONS AND ACTION REPORTED TO IMPROVE CPS WORKFORCE MANAGEMENT, FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW	ACTIONS REPORTED BY DFPS AS OF OCTOBER 2016
	DFPS should more clearly define its policy on the use of corrective performance actions, provide additional guidance to managers on appropriate use, and require centralized reporting of all level one actions.	No corresponding recommendation	DFPS refined the corrective action policies and training that provides guidance to managers on the appropriate use of, and reporting responsibilities for, positive performance levels. All CPS field personnel actions now flow through a central point in the Director of Field's office to ensure consistency. CPS has been working closely and collaboratively with HHS Human Resources to improve use of corrective actions. All performance level actions are reported to the Workforce Development Division, responsible for the quarterly monitoring of corrective actions within the agency. All levels are reported to HHS Human Resources.
	DFPS should develop a systematic way of using turnover, when appropriate, as a tool for judging performance of CPS regional management.	Hold regional directors accountable for turnover.	Regional Directors, Deputy Regional Directors, and Program Administrators focus on staff retention. DFPS has specific targets, action plans, and reporting tools in place to track turnover data. Regional turnover is discussed quarterly on Regional Director calls with the Director of Field. The discussion includes any training or coaching that may need to be implemented, regionally or statewide, as a result of the quarterly Caseworker Retention report. Quarterly reports are also aggregated and documented as an annual performance evaluation measure. Regional Directors were required to re-apply for their positions and four of the 10 were not re-hired.

NOTES:
(1) The Stephen Group review offered more recommendations related to workforce management than the Sunset Advisory Commission review due to the differences in scope of each review.
(2) CPS = Child Protective Services; BSD = Basic Skills Development.
SOURCE: Sunset Advisory Commission Staff Report with Final Results for the Department of Family and Protective Services, July 2015, and Child Protective Services Operational Review Phase 1: Recommendations, June 2014.

INFORMATION TECHNOLOGY AND DATA

CPS uses a variety of information technology (IT) resources to complete its work. The primary IT application CPS uses is known as IMPACT (Information Management Protecting Adults and Children in Texas). IMPACT is CPS' case management IT system and serves as the master repository of information on allegations of abuse and neglect, investigations, family-based services, conservatorship, foster care, and adoption. It supports all aspects of CPS casework and has connections to external data sources that help users do their jobs. IMPACT allows staff to record and process all case-related information beginning at intake and ending at case closure. IMPACT is accessible inside the state's internal network and through a web browser user interface. It also supports Adult Protective Services and Residential Child Care Licensing casework.

There are a significant number of forms that are contained outside of IMPACT that caseworkers use to document their findings and send and receive information to families and other third parties. Caseworkers also use an electronic fax system that is the primary form of communication between caseworkers and law enforcement, healthcare providers, schools, and providers of certain client services.

DFPS' ability to use existing IT resources, primarily IMPACT, to manage operations and measure performance is constrained due to antiquated technologies and several system limitations. As a result, DFPS began implementing the IMPACT Modernization project in fiscal year 2014. The project includes several upgrades to improve usability with new tools, interfaces and software architecture. The project will also ensure that IMPACT can effectively support CPS work in future years. Changes to IMPACT will also allow Court Appointed Special Advocate volunteers to access a child's case file and to add information as appropriate. The data model and database will not change so the information retrieved from the system will remain the same. The original modernization project budget and timeline have not changed and remain at approximately $44.6 million with an expected completion date of February 28, 2018. However, due to project delays, the LBB Quality Assurance Team believes there is a high risk that the project will not be completed by this date. As of February 29, 2016, the total amount expended and encumbered for the project was $27.1 million. The method of finance is a combination of General Revenue Funds and Federal Funds. The project is divided into several sub-projects that have been or will be awarded to vendors through various contracts. Funding is intended to allow DFPS to set the foundation for implementing the system changes program staff need for management, and allow DFPS to implement real-time performance management tools for supervisors and caseworkers, business intelligence tools for data analysis, and other improvements.

To increase caseworker time spent with families, DFPS has implemented efforts to increase the mobility of field staff when performing their job. Efforts include providing tablet computers and smart phones to all front-line employees and developing mobile applications. The mobility initiative gives caseworkers access to all tools and information available on the state's internal network and allows users to enter data into IMPACT.

ISSUES AND RECOMMENDATIONS

Both the operational review of CPS conducted by The Stephen Group (TSG) and the report published by the Sunset Advisory Commission staff identified several issues needing improvement within the area of technology and data. One finding is that impending changes to CPS processes will require that CPS carefully identify and plan for adjustments to IMPACT modernization. DFPS indicates it has taken steps to improve use of technology and data, including changes to performance data and casework tools.

Figure 9 shows select CPS technology and data issues related to performance data and casework tools identified by TSG in their operational review and raised in the Sunset Advisory Commission's staff report. **Figure 10** lists the recommendations made by the Sunset Advisory Commission and TSG to improve these issues as well as actions reported to be taken by the agency to implement the recommendations.

FOSTER CARE REDESIGN

In 2011, Senate Bill 218, Eighty-second Legislature, Regular Session, 2011, directed DFPS to redesign the foster care system according to the recommendations in the January 2011 report entitled, Improving Child and Youth Placement Outcomes: A System Redesign. The model, developed by DFPS and its stakeholders, is known as Foster Care Redesign (FCR) and is a part of the current CPS Transformation initiative. FCR changes the way the state contracts and pays for foster care services. The intent of the model is to improve safety, reduce the time to permanency, increase stability and grow capacity for children in Texas' foster care system, and improve the well-being of the children and families receiving services.

FIGURE 9
SELECT CPS TECHNOLOGY AND DATA ISSUES IDENTIFIED IN OPERATIONAL REVIEW AND BY THE SUNSET ADVISORY COMMISSION, FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW
Performance Data	CPS initiatives lack outcomes and methods to measure and communicate impact. CPS must ensure that data needed to provide analysis to effectively guide policy is collected through IMPACT.	State and regional leaders lack a management dashboard preventing them from using predictive data trends for proactive decision making. CPS lacks a comprehensive set of metrics to support middle or senior management with key decisions. The data provided by CPS to policy makers is not in a usable format to help track outcomes.
	There are specific gaps in CPS data that prevent a complete assessment of risk to children and quality of provided services. Gaps include lack of recidivism data linked directly to perpetrator of abuse, potential misuse of case dispositions which distorts data on unsure findings, and limited review of child fatality investigations. DFPS also does not track the effectiveness of specific services and cannot evaluate whether caseworkers appropriately use certain resources because usage and outcomes are not tracked.	No corresponding issue
Casework Tools	CPS must adequately plan for adjustments to IMPACT modernization that will be needed due to impending changes to CPS processes.	IMPACT has not been optimized to effectively support CPS work in the field. There are multiple issues with IMPACT that limit its ability to support casework processes, such as the ability to quickly store pictures or video or sync with current versions of forms. CPS does not have a decision support technology tool that would help the caseworker capture relevant decision factors and structure them to support human decision-making. CPS processes are largely paper-based. The CPS caseworker mobility initiative lacks several key elements to ensure success.

NOTE: DFPS = Department of Family and Protective Services; CPS = Child Protective Services.
SOURCE: Sunset Advisory Commission Staff Report with Final Results for the Department of Family and Protective Services and DFPS CPS Operational Review Phase 1: Assessment/Findings.

In the areas of the state still operating under the traditional foster care system, DFPS directly contracts with both residential providers to house and care for children in paid foster care and child placing agencies to recruit, verify, and reimburse foster homes. DFPS may also sometimes serve as the child placing agency in the traditional model. Under FCR, DFPS uses a competitive procurement process to contract with a single entity in each geographic catchment area, known as a Single Source Continuum Contractor (SSCC). The SSCC is responsible for finding foster homes or other living arrangements and providing a full continuum of services to children in foster care. The SSCC may subcontract with child placing agencies, residential providers, and other service providers.

The FCR payment structure is a single blended case rate paid to the SSCC for each child in paid foster care within a catchment area. The SSCCs are required to pass through a minimum amount to the foster parent. In contrast, in the traditional foster care system, the state contracts with a foster parent to provide a specific service level (i.e., basic, moderate, specialized, or intense). Foster parents receive one of four unit rates depending on the child's level of service.

The transition to FCR is being implemented gradually rather than an immediate statewide rollout. As of November 2016, the vast majority of foster children are served through the traditional foster care system. In February 2013, the first SSCC contract began with Providence Service Corporation (PSC) for DFPS Regions 2 and Region 9 that includes Wichita Falls, Abilene, San Angelo, and Midland/Odessa. The first child was served through PSC in August 2013. On August 1, 2014, DFPS took over direct management of foster care services for regions 2 and 9 after PSC voluntarily terminated its contract with the state. According to DFPS, PSC did not believe that they could make their service model fiscally viable. DFPS posted a new Request for Proposals for Redesign in Region 2 from August 1, 2016 through October 3, 2016.

FIGURE 10
SELECT RECOMMENDATIONS AND ACTION REPORTED TO IMPROVE CPS TECHNOLOGY AND DATA, FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW	ACTIONS REPORTED BY DFPS AS OF NOVEMBER 2016
Performance Data	Ensure planning efforts for IMPACT modernization support providing data for performance management and business intelligence.	Develop an executive dashboard that provides meaningful data for key decisions. Improve the reporting of data used by management, including creating a data repository and report writing capability.	DFPS has completed an executive dashboard and placemats. IMPACT modernization phase I includes enhancements for Statewide Intake, eReports, background checks, CASA Case Connection, and creating new data warehouse reports.
	Report select CPS performance measures to the Sunset Advisory Commission.	Develop a key set of metrics for legislators.	DFPS has issued reports on selected CPS performance measures statewide, and for each region, at six-month intervals beginning April 2015 and continuing through October 2016.
	DFPS should take steps to address specific gaps in data to allow for quality assessment. The agency should develop a recidivism measure linked to the alleged perpetrator of abuse, clarify and standardize the use of unsure case dispositions, and broaden its child fatality investigation review to include a sample of all fatality investigations. DFPS should develop more specific service-level outcome measures and evaluate the effectiveness of certain caseworker resources.	Use IMPACT data to help with quality management.	Using data from IMPACT, the executive dashboard and data warehouse reports assist staff with analyzing data at the unit level to identify trends, patterns, and critical issues for quality assessment. CPS also uses data from IMPACT in its predictive analytics work. CPS analyzed data on perpetrator recidivism and has incorporated this analysis into its predictive analytics work to identify high risk cases. DFPS developed perpetrator methodology for reporting in the agency's Data Book which is targeted for publication in February 2017. CPS policy has been updated to include parameters for when to use unable to determine case dispositions. CPS will use data to identify the most effective types of services, the providers with the best outcomes, and service capacity needs. CPS revised the Evaluation and Treatment Statement of Work for purchased client services provider contracts, including revising performance measures to focus on quality.

In January 2014, another SSCC was established with All Church Home (ACH) Child and Family Services for Region 3b that includes Erath, Hood, Johnson, Tarrant, Palo Pinto, Somervell and Parker counties. The first child was served through ACH in September 2014. As of August 2016, DFPS reports that ACH had 1,354 children in the SSCC continuum which represented 97 percent of the children and youth in paid foster care from Region 3b, and approximately 8 percent of all children and young adults in paid foster care in Texas.

After a SSCC vendor is selected in a catchment area, DFPS implements a three stage plan to rollout FCR within that area. According to DFPS, this strategy is intended to limit risk by allowing SSCC vendors to master each set of services before adding another and provide opportunity to improve implementation of the model between procurements. Each stage of services is added according to SSCC readiness, but readiness for each subsequent stage is to be accomplished in no less than one year and no more than two. The stages include:

FIGURE 10 (CONTINUED)
SELECT RECOMMENDATIONS AND ACTION REPORTED TO IMPROVE CPS TECHNOLOGY AND DATA, FISCAL YEAR 2014

AREA	SUNSET ADVISORY COMMISSION	OPERATIONAL REVIEW	ACTIONS REPORTED BY DFPS AS OF NOVEMBER 2016
Casework Tools	Ensure planning efforts for IMPACT modernization align with CPS operational changes, including supporting caseworkers.	IMPACT modernization should include changes to support caseworker daily work. IMPACT should support decision making tools and be linked to policy and practice manuals. IMPACT changes should include improvements to information collection and documentation, and the process for requesting purchased family services. Streamline policies to eliminate paper and increase use of electronic documentation, including use of an electronic IMPACT case file for every CPS case that is also linked to email correspondence. Make changes to processes to support mobility of caseworkers.	Phase 2 of IMPACT modernization will include a new technological platform geared to CPS caseworker needs. DFPS implemented new Structured Decision Making safety tool and assessment tool into IMPACT. CPS prioritized Transformation technology initiatives funded by the Eighty-fourth Legislature that improve caseworker time with families.
	No corresponding recommendation	Integrate CPS systems with other State databases to help locate families.	DFPS is collaborating with the Texas Department of Public Safety to obtain more in-depth background information on household members at the onset of investigations.
	No corresponding recommendation	Use technology to determine available capacity among service providers and to determine if families are using services.	DFPS is requesting additional funds during the 2018-19 biennium to implement this recommendation.
	No corresponding recommendation	Expand management tools in IMPACT to help with workflow and resource allocation.	The case complexity tool is currently in development in phase 1 of IMPACT modernization. This tool will help supervisors distribute cases based on the complexity of the case. The critical tasks list is also in development to help caseworkers and supervisors identify and prioritize critical tasks.
	No corresponding recommendation	Provide training on updated IMPACT and mobility capabilities, including designation of certain staff as “super-users” available to assist peers with technology questions.	Phase 2 of IMPACT modernization will address the system supports for CPS caseworker needs. The need for training and the use of "super users" will be evaluated as the system changes are completed, tested, and prepared for roll out to the field.

Notes:
(1) Recommendations for statutory change are not included unless noted.
(2) DFPS = Department of Family and Protective Services; CPS = Child Protective Services.
Source: Sunset Advisory Commission Staff Report with Final Results for the Department of Family and Protective Services, DFPS CPS Operational Review Phase 1: Recommendations; and DFPS CPS Transformation Progress Reports.

- stage one is focused on improving foster care quality and capacity by building infrastructure;
- stage two adds more focus on improving services to families by increasing planning activities and better coordinating the delivery of purchased services; and
- stage three provides greater flexibility and incentives for achieving positive outcomes.

SPENDING

As shown in **Figure 11**, spending on foster care, including daily foster care payments, system enhancement, CPS

FIGURE 11
SPENDING ON FOSTER CARE SERVICES BY DELIVERY MODEL, FISCAL YEAR 2016

SPENDING CATEGORY	TRADITIONAL FOSTER CARE SYSTEM	REGION 3B ACH CHILD AND FAMILY SERVICES	TOTAL
Daily foster care payments	$386,627,287	$34,827,037	$421,454,324
System Enhancement	$0	$1,615,440	$1,615,440
CPS purchased services	$49,024,477	$3,466,347	$52,490,824
Consulting Services	$374,133	$0	$374,133
Other Administration	$462,500	$1,796,878	$2,259,378
Total	**$436,488,397**	**$41,705,702**	**$478,194,099**

SOURCE: Texas Department of Family and Protective Services.

purchased services, consulting services, and administrative items, totaled $$478.2 million in All Funds for fiscal year 2016. Of this amount $436.5, or 91.3 percent, was for spending in the traditional foster care system, and $41.7 million, or 8.7 percent, was for spending on FCR in Region 3b. Spending amounts for FCR are equal to what would have been spent had services in FCR regions been provided through the traditional foster care system.

PERFORMANCE DATA

Rider 25 in the DFPS bill pattern in the General Appropriations Act, Eighty-fourth Legislature, 2015, directs DFPS to take steps to evaluate FCR, including reporting on select performance measures that will allow for comparative analysis between the traditional foster care system and FCR. The agency is required to submit a report on these measures and other information by February 1 and August 1 of each fiscal year of the biennium. The Rider 25 report includes a summary of the FCR evaluation findings which include both process and outcome components. The process evaluation includes an assessment of the development, implementation, and delivery of catchment area services including the SSCC infrastructure. The outcome evaluation includes both contract performance and system change measures. DFPS works with University of Chicago to provide an independent data analysis of SSCC performance. According to DFPS, it uses evaluation findings to assist in identifying performance, trends, changes, and issues in the redesign catchment areas.

ISSUES AND RECOMMENDATIONS

Figure 12 shows detail on select FCR issues and recommendations contained in the Sunset Advisory Commission's staff report as well as actions reported to be taken by the agency to implement the recommendations. TSG did not include issues specific to FCR in its operational review, but did recommend that FCR be moved closer to the traditional foster care system at the State Office. At the time that TSG published its reports on the CPS operational review, the first SSCC vendor had been serving children for less than one year.

The appendices shown in **Figure 13** provide additional details about DFPS and CPS structure, funding, investigations caseload, and caseworker retention.

FIGURE 12
SELECT FOSTER CARE REDESIGN ISSUES AND RECOMMENDATIONS IN THE SUNSET ADVISORY COMMISSION STAFF REPORT FISCAL YEAR 2014

AREA	ISSUES	RECOMMENDATIONS	ACTIONS REPORTED BY DFPS AS OF NOVEMBER 2016
Planning	FCR presents inherent challenges and risks to DFPS and to the State. Challenges include a fundamental shift in service model, no additional state funding, operating the traditional and redesigned systems simultaneously during the rollout period, higher risk contracts with responsibility concentrated in a smaller number of contracts, dismantling of the traditional system which is problematic if the contractor pulls out, more complex contract oversight, and the financial viability of contractors with large contractual risks.	DFPS should thoroughly evaluate performance and cost data before pursuing broad-based implementation of FCR. This review should include an analysis of costs involved with initial FCR procurements to better understand the cost of FCR to the State, SSCCs, and community partners.	DFPS has taken a continuous quality improvement approach using process, outcome, and cost evaluation data to inform changes as FCR is implemented in new catchment areas and new stages. In July 2015, DFPS implemented a Progressive Intervention Plan should the SSCC fail to comply with the contract terms and conditions, including contingency planning efforts and timeframes.
	DFPS has not clearly communicated a detailed, comprehensive long-term plan for the statewide rollout of FCR to mitigate risks associated with the transition.	Require DFPS to develop and maintain a long-range foster care redesign implementation plan to guide the agency's transition efforts. The plan is meant to be a working document that DFPS would update annually and report progress towards implementation goals. (Senate Bill 206, Eighty-fourth Legislature, 2015)	DFPS published a FCR Implementation Plan in April 2015. The plan provides a consolidated guide to FCR efforts and outlines the process that must occur to implement FCR in a single or multiple catchment area(s). DFPS plans to release a revised FCR Implementation Plan in fiscal year 2017.
Performance Monitoring	DFPS lacks a comprehensive approach to performance monitoring that prevents an adequate evaluation of the foster care system as a whole, including separate quality assurance efforts between the traditional foster care system and FCR, lack of comparable data between models, inadequate quality indicators for measuring well-being, and data collection efforts that limit the agency's ability to identify risk.	DFPS should develop common performance measures and risk indicators to monitor and communicate the performance of the entire foster care system, including publicizing key data.	In January 2016, DFPS started the Residential Contracts Demonstration Project to collect outcome focused performance data for monitoring activities, including the use of predictive analytics and scorecard reporting. Contract monitors use data to give providers technical assistance in a supportive environment in which providers focus on improving outcomes for children. DFPS will publicize data once the demonstration project is completed. DFPS plans to roll out the demonstration statewide in fiscal year 2018.
	Persistent and immediate concerns about the traditional foster care system, including safety issues, require DFPS to continue to identify and implement improvements to this system regardless of FCR.	DFPS should continue to identify practices that could improve the traditional foster care system.	DFPS has a number of initiatives underway to improve the traditional foster care system, including, but not limited to: Integrated Care Coordination initiative, Texas Treatment Foster Family Care, Faith Based initiatives and the Residential Contract Demonstration. In August 2015, DFPS created a detailed work plan to strengthen residential-contracts monitoring.

FIGURE 12 (CONTINUED)
SELECT FOSTER CARE REDESIGN ISSUES AND RECOMMENDATIONS IN THE SUNSET ADVISORY COMMISSION STAFF REPORT FISCAL YEAR 2014

AREA	ISSUES	RECOMMENDATIONS	ACTIONS REPORTED BY DFPS AS OF NOVEMBER 2016
Advisory Groups	The two foster care advisory groups at DFPS lack a clear structure and purpose and have loosely defined memberships and methods of operating.	DFPS should establish the two existing foster care advisory committees in rule as formal DFPS advisory committees.	DFPS put the Youth Leadership Council, the Parent Collaboration Group, and the Public/Private Partnership in rule.

NOTES:
(1) Sunset recommendations for statutory change are not included unless noted.
(2) DFPS = Department of Family and Protective Services; CPS = Child Protective Services; FCR = Foster Care Redesign; SSCC = Single Source Continuum Contractor.
SOURCE: Sunset Advisory Commission Staff Report with Final Results for the Department of Family and Protective Services and DFPS CPS Transformation Progress Reports.

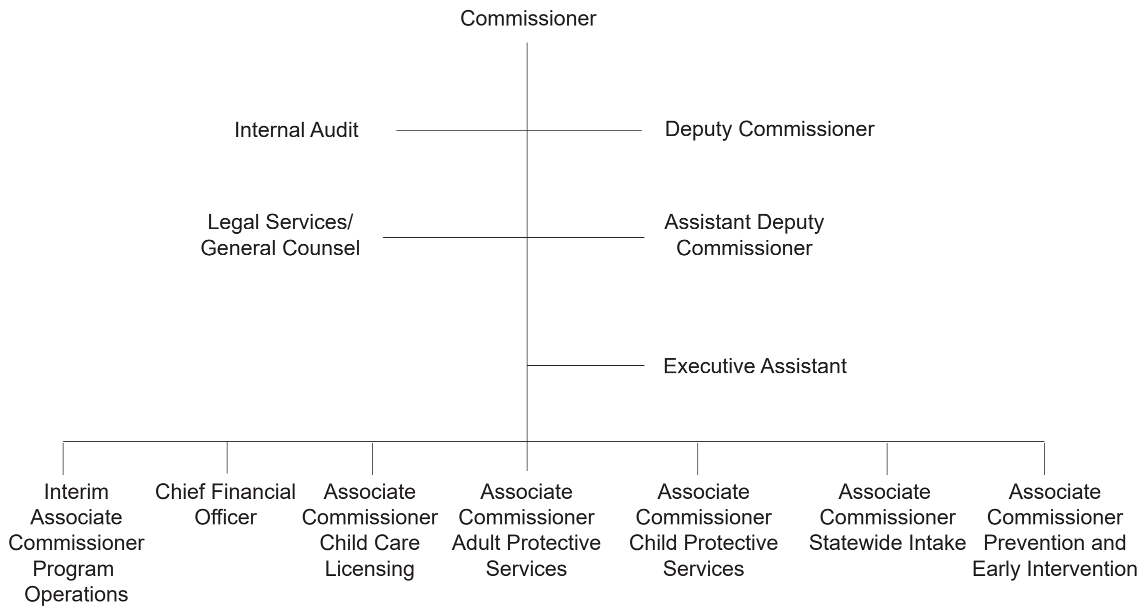
FIGURE 13
CONTENTS OF APPENDICES

APPENDIX	SUMMARY
Appendix A	Department of Family and Protective Services Organizational Chart
Appendix B	Department of Family and Protective Services Regional Boundaries
Appendix C	Child Protective Services Organizational Chart
Appendix D	Regional Level Child Protective Services Organizational Structure
Appendix E	Approval Letter for Department of Family and Protective Services Critical Funding Needs for Fiscal Year 2017
Appendix F	Child Protective Services Investigations Caseload
Appendix G	Retention Rates for New Hire Child Protective Services Caseworkers

SOURCE: Legislative Budget Board.

APPENDIX A: DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES ORGANIZATIONAL CHART

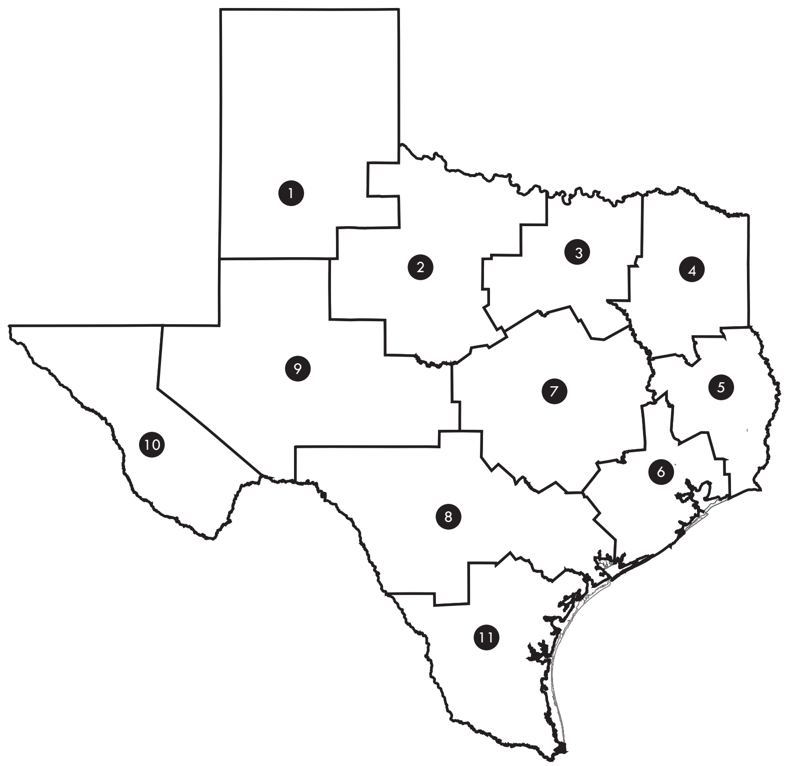
FIGURE A1
DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES ORGANIZATIONAL CHART, SEPTEMBER 2016



SOURCE: Department of Family and Protective Services.

APPENDIX B: DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES REGIONAL BOUNDARIES

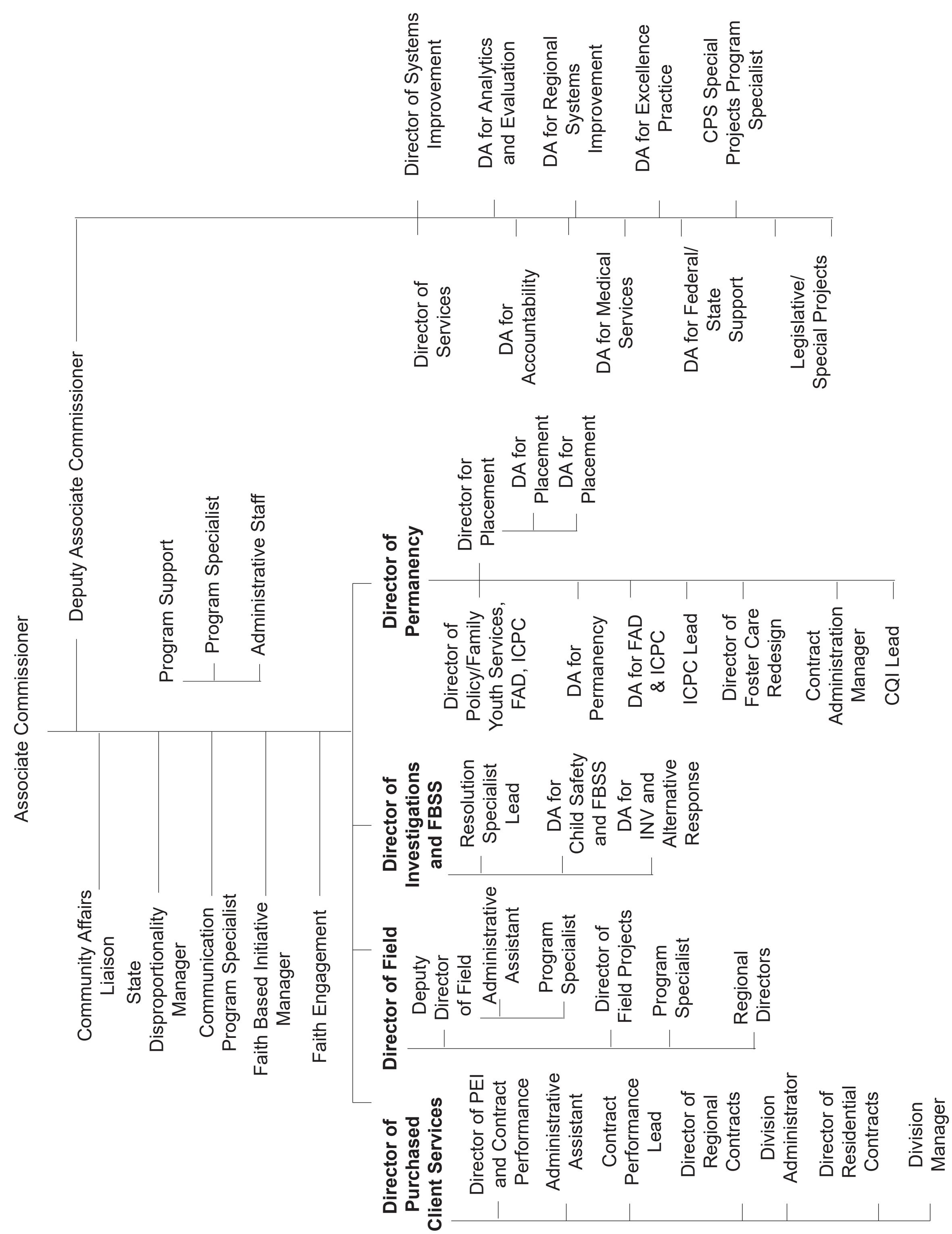
FIGURE B1
DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES REGIONAL BOUNDARIES, 2016



SOURCE: Department of Family and Protective Services.

APPENDIX C: CHILD PROTECTIVE SERVICES ORGANIZATIONAL CHART

FIGURE C1
CHILD PROTECTIVE SERVICES ORGANIZATIONAL CHART, 2016



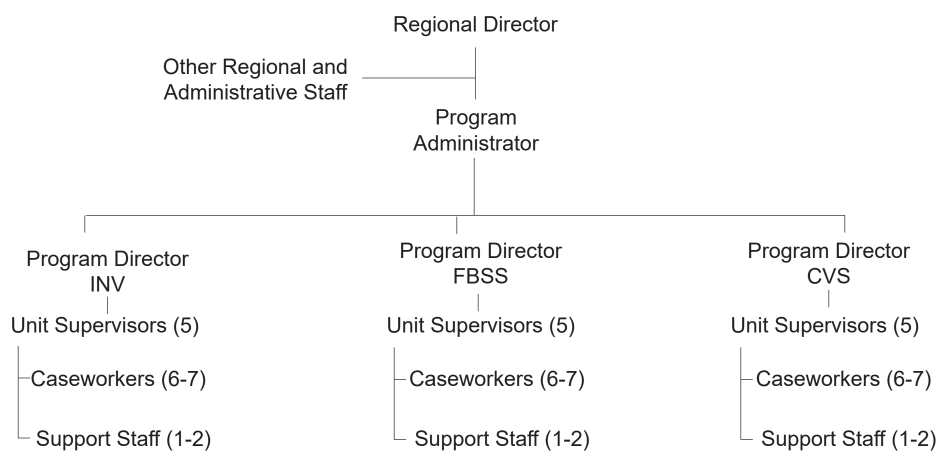
NOTE: PEI = Prevention and Early Intervention, DA = division administrator, ICPC = Interstate Compact for the Placement of Children, FAD = Foster and Adoption Development, IT = Information Technology, FBSS = Family-Based Safety Services.
SOURCE: Department of Family and Protective Services.

APPENDIX D: REGIONAL LEVEL CHILD PROTECTIVE SERVICES ORGANIZATIONAL STRUCTURE

Direct delivery staff for Investigations, Family Based Safety Services, and Conservatorship stages of service account for over 80.0 percent of regional staff. Regional Directors oversee Program Administrators. Program Administrators oversee Program Directors for each stage of service. The basic structure within each Program Director's purview is designed around units and each Program Administrator supervises approximately five units. Each unit is composed of a supervisor (reports to the Program Director), six or seven caseworkers (report to the unit supervisor), and one or two support staff (report to the unit supervisor).

As of November 25, 2016, for Investigation, Family Based Safety Services, and Conservatorship, there were 10 Regional Directors, 33 Program Administrators, 151 Program Directors, 809 supervisors, and 5,504 caseworkers. The figure below shows a sample organizational structure for regional level direct delivery staff. Regional directors organize the program delivery system to meet regional needs while complying with applicable policies and other DFPS directives.

FIGURE D1
REGIONAL LEVEL CHILD PROTECTIVE SERVICES ORGANIZATIONAL STRUCTURE



SOURCE: Department of Family and Protective Services.

APPENDIX E: APPROVAL LETTER FOR DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES CRITICAL FUNDING NEEDS FOR FISCAL YEAR 2017

THE STATE OF TEXAS

LEGISLATIVE BUDGET BOARD

Robert E. Johnson Bldg.
1501 N. Congress Ave. - 5th Floor
Austin, TX 78701

512/463-1200
Fax: 512/475-2902
http://www.lbb.state.tx.us

December 1, 2016

Mr. Whitman
Commissioner
Department of Family and Protective Services
701 W 51st St
Austin, Texas 78751

Dear Mr. Whitman:

In a letter dated November 22, 2016, the Department of Family and Protective Services (DFPS) requested approval for an additional $142,434,948 in All Funds and 828.8 FTEs in fiscal year 2017 in response to the letter from the Governor, Lieutenant Governor, and Speaker of the House on October 12, 2016 directing DFPS to develop a plan to address the backlog of children not seen within the statutory guidelines.

The LBB has reviewed the DFPS request, and approves the request contingent upon the provisions below. Should the LBB determine that the agency has failed to meet the reporting or performance requirements stipulated in this approval, the appropriation authority granted in this request for hiring additional full-time employees shall terminate within 30 days after notification to the agency. The termination of appropriation authority specified in this approval does not apply to appropriations to continue funding employee compensation or appropriations to continue funding additional staff already hired.

Reporting Requirements
The following information must be submitted to the LBB in twice-monthly reports on a regional basis, in a format and on dates prescribed by the LBB:

1. The number of persons hired into the positions described in the request, by position type;
2. The number of persons provided the requested increase in employee compensation;
3. The effect on caseloads per worker;
4. The effect on the number of investigations pending more than 60 days;
5. The effect on employee turnover, including retention rates by stage of service and job description;
6. The total salaries, and other operating expenses, for persons hired into the positions described by the request; and
7. The number of caseworkers and associated supervisors in training, by position type and stage of training.

Mailing Address: P.O. Box 12666 • Austin, TX 78711-2666

December 1, 2016
Page 2

DFPS must conduct exit surveys of staff subject to salary increases who leave the agency beginning on January 1, 2017 to determine the reason for leaving and what impact salary increases had on their job satisfaction.

In addition, DFPS must provide LBB with a plan to demonstrate how it will link increased compensation to accountability measures to ensure effective employee performance.

The agency shall provide to the LBB any requested information on the direct and downstream effect of these actions, and shall provide performance data on any existing or new measures with respect to affected programs.

The agency will report to the LBB weekly on P1 and P2 timeliness by region. DFPS will also report to the LBB weekly on the number of P1 intakes, by region, without face-to-face contact for over 24 hours, over 48 hours, and over 96 hours.

<u>*Performance Requirements*</u>
The following benchmarks must be met by the agency:

1. By May 1, 2017, all regions will see 90 percent of children in P1 cases within 24 hours.
2. By August 1, 2017, all regions will see 95 percent of children in P1 cases within 24 hours.
3. By June 1, 2017, supervisor training for all supervisors (current and new) must be completed statewide.

Additionally, the LBB may terminate the appropriation authority granted in this request for hiring additional full-time employees if the agency does not demonstrate significant improvement in employee retention.

<u>*Appropriation Restrictions*</u>
The agency is prohibited from using any funds made available for the purposes outlined in the request for any other purpose.

The LBB will work closely with the Comptroller of Public Accounts to monitor these appropriations and to ensure all approval contingencies are being met.

If you need additional information regarding this matter, please contact Julie Lindsey, the LBB Analyst assigned to your agency at 512-463-5670 or Julie.Lindsey@lbb.state.tx.us.

Sincerely,

Ursula Parks
Director

APPENDIX F: CHILD PROTECTIVE SERVICES INVESTIGATIONS CASELOAD

FIGURE F1
CHILD PROTECTIVE SERVICES INVESTIGATIONS OF ABUSE OR NEGLECT, FISCAL YEARS 2012 TO 2016

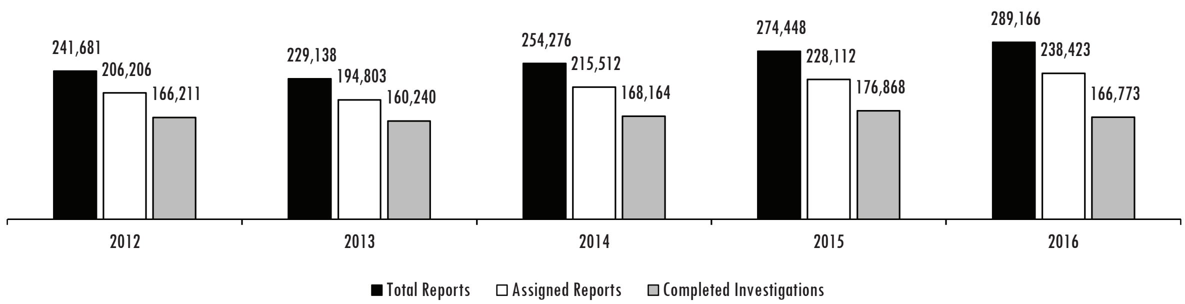
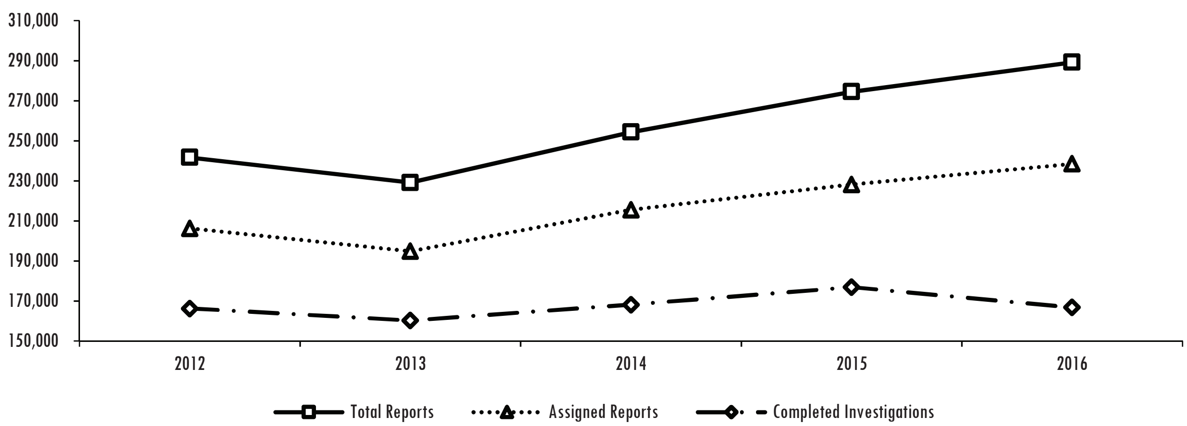


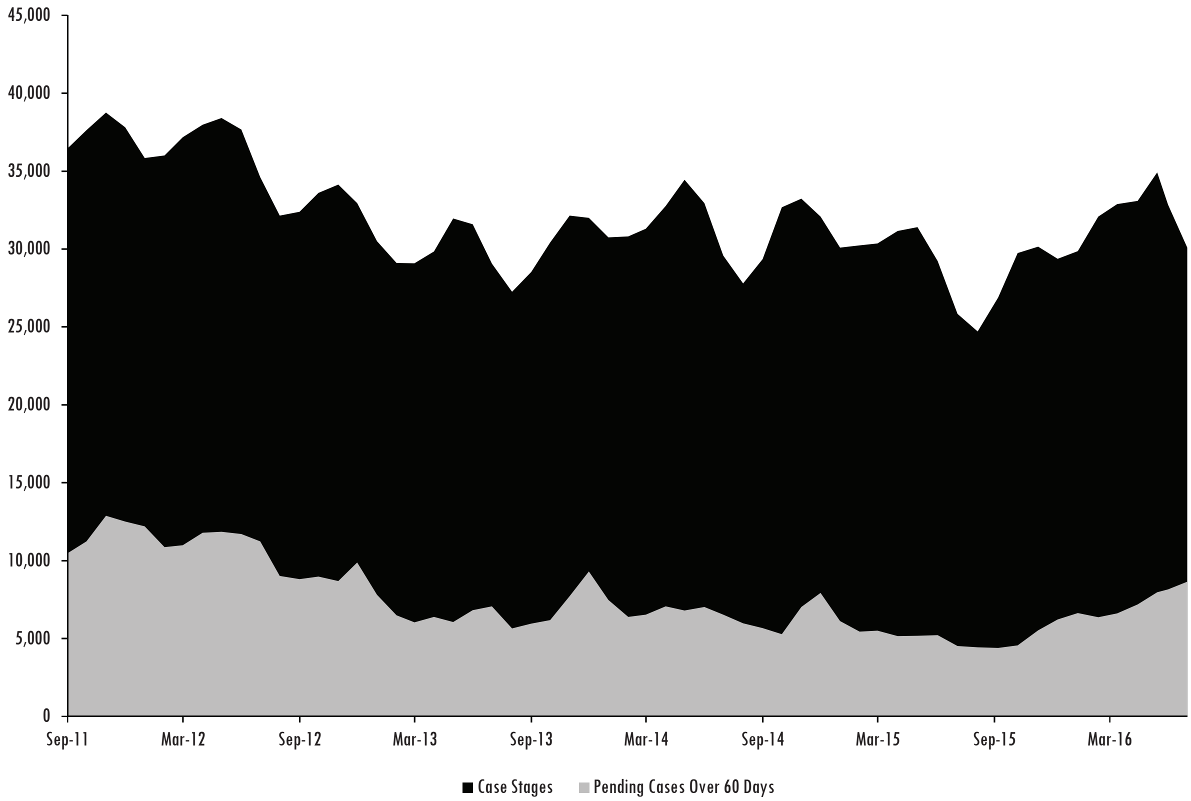
FIGURE F2
CHILD PROTECTIVE SERVICES INVESTIGATIONS OF ABUSE OR NEGLECT, FISCAL YEARS 2012 TO 2016



NOTES:
(1) Total Reports of Abuse or Neglect and Assigned Reports (those referred for investigation) declined in fiscal year 2013 but have increased in each subsequent fiscal year. Total Reports have increased more quickly than Assigned Reports. The percentage of Reports referred for investigation has declined from 85.3 percent in fiscal year 2013 to 82.5 percent in fiscal year 2016.
(2) Completed Investigations followed the same pattern of declining or increasing until fiscal year 2016 when the number of Completed Investigations declined despite increasing Reports.
(3) While there is a lag in completion of an investigation, that lag should be small and not result in a deviation in trend between the two measures.
(4) The implication is that the length of time to closure increased in fiscal year 2016 resulting in fewer investigations closed in fiscal year 2016 than in previous fiscal years.

SOURCE: Department of Family and Protective Services.

FIGURE F3
AVERAGE DAILY INVESTIGATIVE STAGES AND CASES PENDING MORE THAN 60 DAYS, FISCAL YEARS 2012 TO 2016



NOTES:

(1) The number of Daily Investigative Stages is reported as a daily average by month while the number of Cases Pending More Than 60 Days is reported as an end-of-month count. Comparisons between the two measures can still be made, particularly over time.

(2) Average Daily Investigative Stages declined in fiscal years 2013 and 2015, increased in fiscal years 2014 and 2016. The number of Cases Pending More Than 60 Days followed this same pattern, but increased throughout fiscal year 2016. By the end of fiscal year 2016, 27 percent of Investigative Stages had been open more than 60 days, a nearly 50 percent increase over the fiscal year 2015 average.

(3) The number of Investigative Stages is influenced by both the number of Reports referred for investigation and the length of time an investigation remains open.

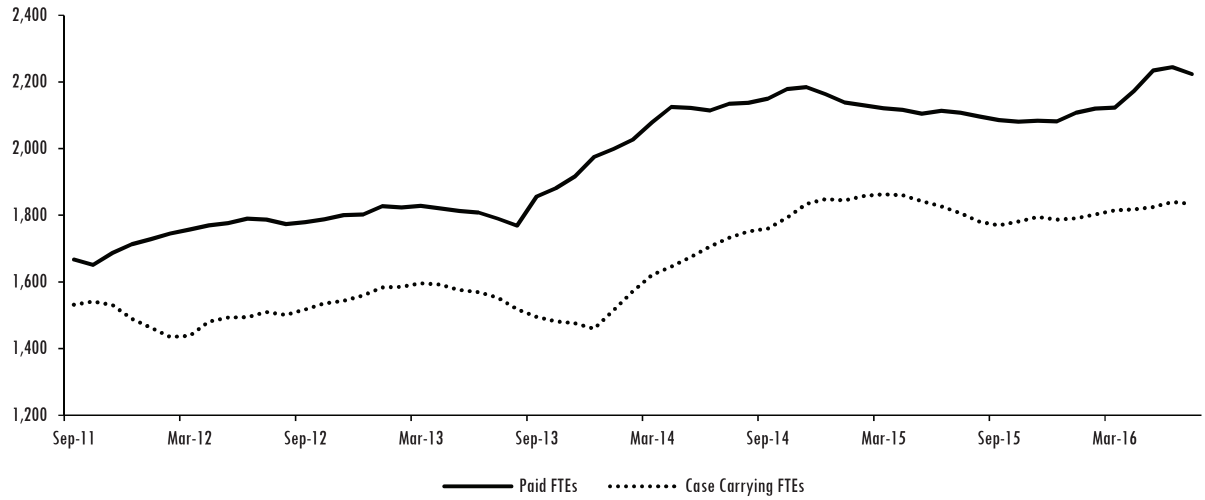
(4) Investigations remaining open for longer periods of time can result in the appearance of increased workload (caseload per worker) even if the number of investigations remains relatively steady.

(5) The Department of Family and Protective Services (DFPS) has indicated Cases Pending More Than 60 Days are generally cases that are lacking documentation to close, which may be contributing significantly to the measure of workload while no work is actually being done on them. For example, if one of these pending cases could be closed in a day if the documentation were completed but it remains open for 60 days after the investigation is completed, it is counted in the workload measure each of those 60 days. If the case had been closed the day the investigation was completed, it would have been removed from the workload measure for those 60 days. Essentially the same amount of work is being measured in two different ways.

(6) Recent DFPS reports on contacts with children who had not been seen by a caseworker included some children in Cases Pending More Than 60 Days.

SOURCE: Department of Family and Protective Services.

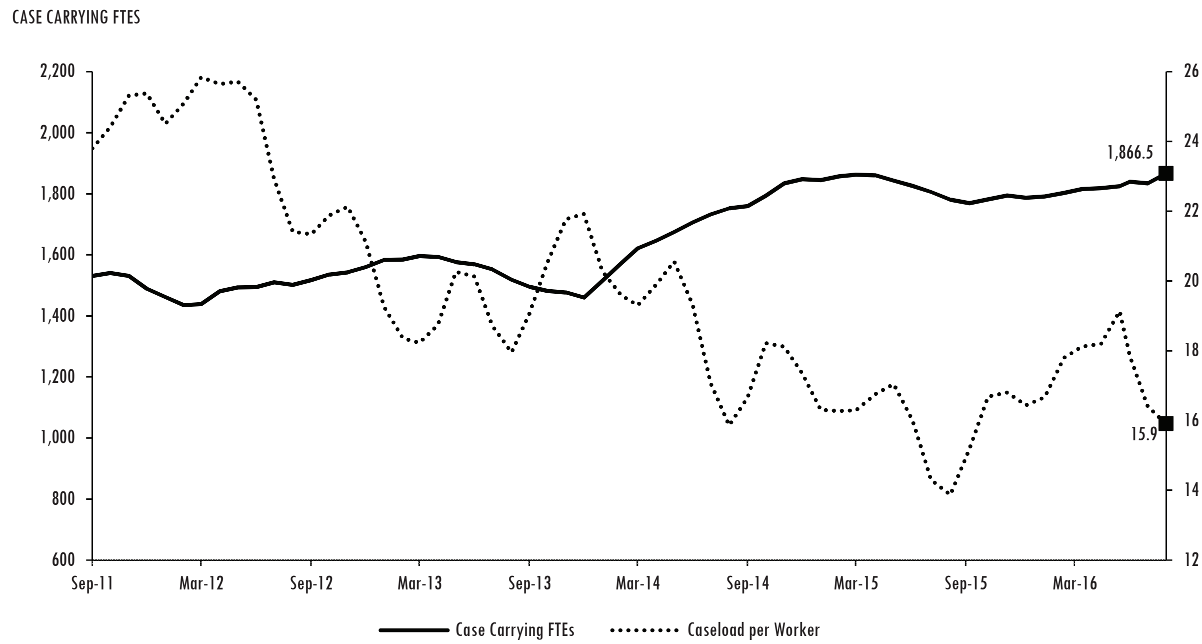
FIGURE F4
INVESTIGATIVE CASEWORKER FTES, PAID VS. CASE CARRYING, FISCAL YEARS 2012 TO 2016



NOTES:
(1) DFPS reports two measures of full-time-equivalents (FTEs): the number of Paid FTEs and the number of Case Carrying FTEs. Paid FTEs are not counted as case carrying during their first 97 days of employment and are counted as half of a Case Carrying FTE during the next 98-128 days of service to reflect the training period for new caseworkers. Because of this, there is a lag between increases in Paid FTEs and increases in Case Carrying FTEs. This is most evident in fiscal year 2014 when the number of Paid FTEs began increasing significantly in September 2013 while the same increase in Case Carrying FTEs did not begin until January 2014.
(2) The gap between the two FTE measures reflects on the agency's ability to retain caseworkers. The gap was at its narrowest in fiscal year 2013 and the middle of fiscal year 2015.
(3) Despite receiving additional funding for caseworkers in the 2016-17 biennium, it appears DFPS did not begin hiring new staff until April 2016. Small increases in Case Carrying FTEs in early fiscal year 2016 despite no increase in Paid FTEs indicates there may have been some progress in retaining staff. The gap increased in the second half of fiscal year 2016 as more staff entered the training period.

SOURCE: Department of Family and Protective Services.

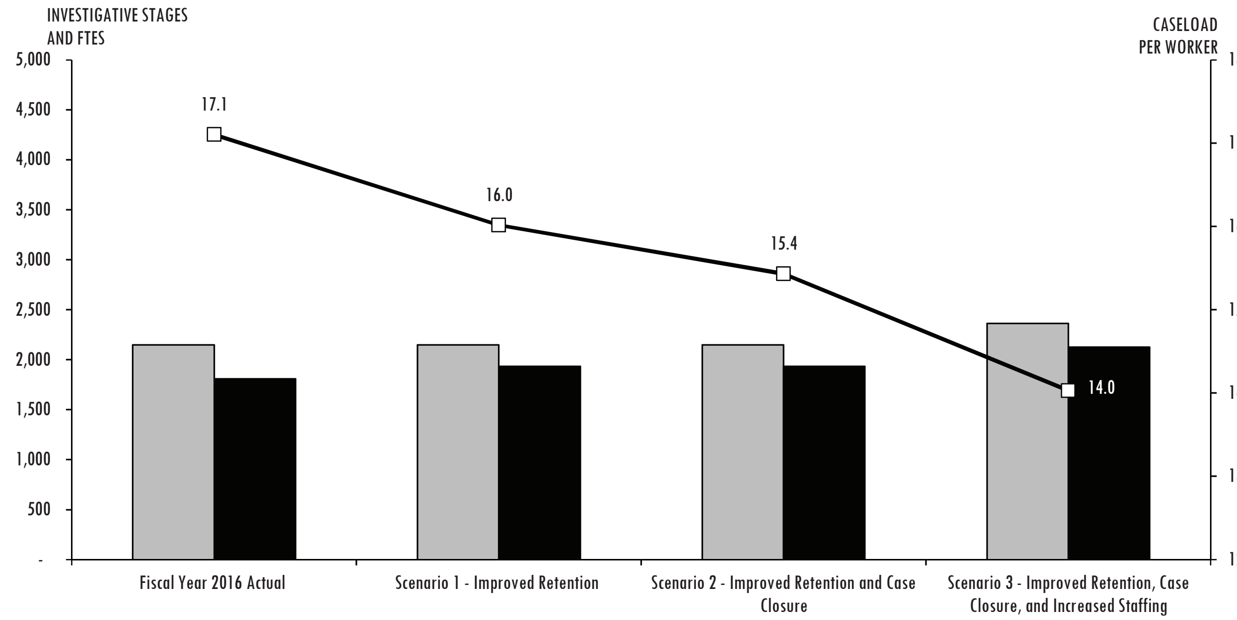
FIGURE F5
CASELOAD PER WORKER AND CASE CARRYING FTES, FISCAL YEARS 2012 TO 2016



NOTES:
(1) Caseload per Worker is calculated as the Average Daily Investigative Stages divided by the average daily Case Carrying FTEs.
(2) There is no required national standard for calculating Caseload per Worker or the appropriate number. Monitoring data over time using the same methodology can be an indicator of progress absent a true benchmark.
(3) DFPS has made progress in reducing Caseload per Worker since fiscal year 2012. Despite this progress, Caseload per Worker steadily increased throughout fiscal year 2016 as the number of Investigative Stages increased (at least in part due to investigations not being closed in a timely fashion) while the number of Case Carrying FTEs remained flat.
(4) There is a seasonal pattern in the monthly number of Investigative Stages that is reflected in Caseload per Worker with increases in the fall and spring, decreases in the winter and summer.

SOURCE: Department of Family and Protective Services.

FIGURE F6
CASELOAD PER WORKER REDUCTION SCENARIOS, FISCAL YEAR 2016



NOTES:
(1) Progress towards reducing Caseload per Worker can be made by both reducing the numerator (number of Investigative Stages) and increasing the denominator (Case Carrying FTEs).
(2) The number of reports requiring investigation is not within the agency's control but the length of time the investigations remain open can be reduced through action by the agency. This is evident in the increase in Cases Pending More Than 60 Days.
(3) The number of Case Carrying FTEs can be increased in two ways: increasing Paid FTEs and increasing retention so that the gap between Paid FTEs and Case Carrying FTEs is narrowed.
(4) Below are three iterative scenarios showing the impact on Caseload per Worker using actual fiscal year 2016 data as the basis.
Scenario 1 - Improved Retention: The number of Case Carrying FTEs was increased relative to the number of Paid FTEs by increasing the percentage carrying cases from 84 percent to 90 percent. This results in a reduction to the fiscal year average Caseload per Worker of 1.1 (6 percent).
Scenario 2 - Improved Retention and Improved Case Closure: The same number of Case Carrying FTEs as in Scenario 1 is assumed while the number of Investigative Stages is reduced (assumes Cases Pending More Than 60 Days in January to August are reduced based on fiscal year 2015 month-to-month change and that this will result in a reduction to Average Daily Investigative Stages of 50 percent of the reduction to end-of-month Cases Pending More Than 60 Days). This results in a reduction to Investigative Stages of 13,498 and a reduction to fiscal year average Caseload per Worker of 1.7 (10 percent) from actual fiscal year 2016 and 0.6 (4 percent) from Scenario 1.
Scenario 3 - Improved Retention, Improved Case Closure, and Increased Staffing: The number of Paid FTEs is increased by 10 percent (2,578 Paid FTEs) while maintaining the same percentage carrying cases from Scenario 1 and the same number of Investigative Stages from Scenario 2. This results in a reduction to the fiscal year average Caseload per Worker of 3.1 (18 percent) from actual fiscal year 2016, 2.0 (12 percent) from Scenario 1, and 1.4 (9 percent) from Scenario 2.

SOURCE: Department of Family and Protective Services.

APPENDIX G: RETENTION RATES FOR NEW HIRE CHILD PROTECTIVE SERVICES CASEWORKERS

DISCUSSION

LBB staff, using data from the Texas Comptroller, tracked the attrition rates of all newly hired CPS caseworkers who did not have previous state employment for fiscal years 2010 through 2015. **Figure G1** shows overall hire and retention numbers. **Figure G2** the percent of the each of six yearly cohorts of new hire CPS caseworkers remaining by months after hire. There has been substantial improvement in retention rates over the last six years with retention among the most recent cohort hired in fiscal year 2015 showing improvement. For example, the retention rate after 24 months for fiscal year 2010 was 47.8 percent. For the cohort who entered in fiscal year 2015, the 24-month retention rate was 63.2 percent.

FIGURE G1
NEW CASEWORKER HIRES BY FISCAL YEAR

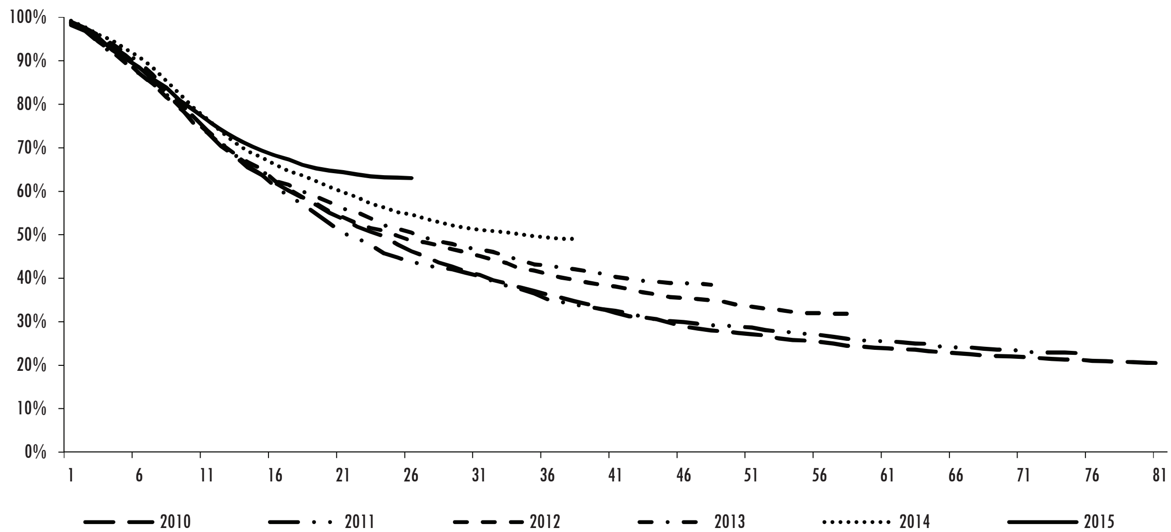
HIRE FISCAL YEAR	TOTAL HIRES	REMAINING AT END OF FISCAL YEAR 2016	LEFT BY END OF FISCAL YEAR 2016
2010	1,436	294	1,142
2011	856	205	651
2012	1,328	426	902
2013	1,167	455	712
2014	2,279	1,119	1,160
2015	1,599	586	586

SOURCE: Legislative Budget Board.

Figure G3 shows the percentage of each of six yearly cohorts of new hire CPS caseworkers remaining by months after hire. There has been improvement in retention rates over the last six years with retention among the most recent cohort hired in fiscal year 2015 showing the highest rate of improvement. For example, the retention rate after 24 months for fiscal year 2010 was 47.8 percent. For the cohort who entered in fiscal year 2015, the 24-month retention rate was 63.2 percent. **Figure G2** shows 48-month retention rates for the six metropolitan counties. There is a substantial difference between these counties, with El Paso having a retention rate of 51.0 percent while Travis has a retention rate of 35.2 percent.

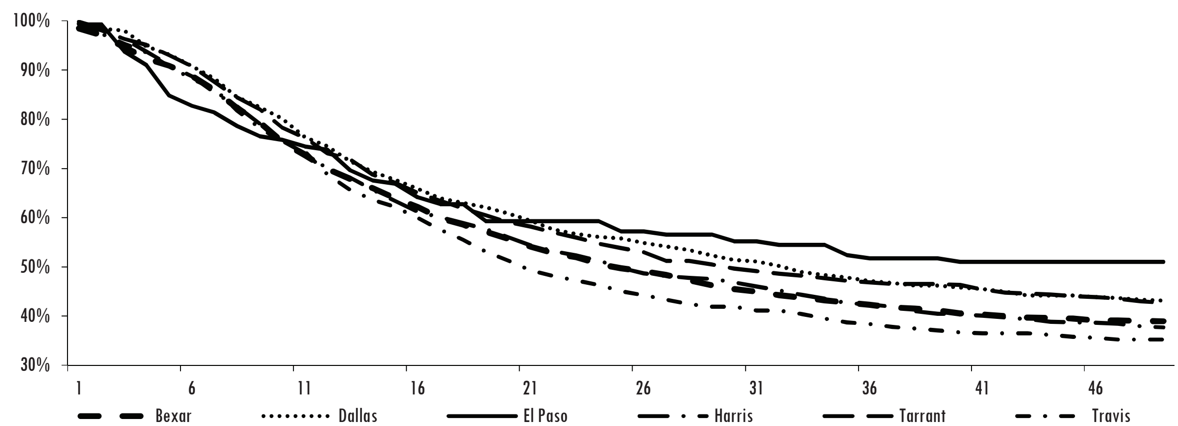
LBB staff also examined retention by CPS Region. These rates range from a 63.6 percent retention in CPS Region 5 to 47.5 percent 24-month retention in CPS Region 7.

FIGURE G2
NEW CASEWORKER HIRE ATTRITION RATES BY FISCAL YEAR OF HIRE



Source: Legislative Budget Board.

FIGURE G3
NEW CASEWORKER HIRE ATTRITION BY MAJOR METROPOLITAN COUNTY, FISCAL YEARS 2010 TO 2016



Source: Legislative Budget Board.

CLARIFY DISPOSITION OF ASSETS AND RECORDS IN CHARTER SCHOOL CLOSURES

The Legislature established charter schools in Texas in 1995, and the Texas Education Agency reports the number of these schools operating in the state was 174 as of August 31, 2016. However, since 2013, 26 charters have been revoked, not renewed, or expired. This amount exceeds the total number of charter school closures in the 10 previous years combined. Senate Bill 2, Eighty-third Legislature, Regular Session, 2013, required the Texas Education Agency to close a charter school if it is assigned an unacceptable performance rating for the three preceding school years, has been assigned a financial accountability performance rating indicating financial performance lower than satisfactory for the three preceding school years, or any combination of these two situations for the three preceding school years.

A lack of statutory clarity regarding the disposition of an open-enrollment charter school's assets upon closure hinders the state from obtaining title to facilities and land, fulfilling statutory responsibilities to those with security interests or lienholders, and transferring and maintaining student records. As a result, charter holders have contested the state's right to property purchased with any state funds. As of December 13, 2016, 11 lawsuits encompassing 53 properties, valued at approximately $5.6 million are pending. The increase in charter school closures has revealed the lack of clarity in the statute outlining the process of asset disposition and increases the risk of litigation as the state attempts to gain title to assets.

FACTS AND FINDINGS

- ♦ Statute provides that property purchased or leased by a charter school using any state funds after September 1, 2001, is property of the state.
- ♦ Among closed charter properties in Texas, 53 have disputed dispositions of title, which are being contested in 11 suits against the state. Although the Texas Education Agency has not yet incurred any direct legal fees related to these cases, legal staff have spent a significant and increasing amount of time addressing these issues.
- ♦ The Eighty-fourth Legislature, General Appropriations Act, 2016–17 Biennium, Article IX, Section 8.02(h), appropriates to the Texas Education Agency state funds that are recovered from closed charter schools for the management and closure of charter holders and for the disposition of recovered state property.

CONCERNS

- ♦ Lack of clarity in statute regarding the disposition of closed charter school assets results in unnecessary administrative burden and increases the risk of litigation.
- ♦ Charter schools often combine state, local, and federal funding sources to purchase real assets, which results in complexity in the disposition process. A lack of detailed information about how assets were purchased hinders the resolution of the property's disposition upon closure.
- ♦ The General Appropriations Act provision authorizing expenditures for charter entity closure and management from recovered assets is impermanent authority and does not provide accounting distinction from the agency's other General Revenue Funds appropriations, which complicates revenue and expenditure reporting and monitoring.
- ♦ No funding mechanism is in place to maintain records for students of a charter school that has been closed.

OPTIONS

- ♦ **Option 1:** Amend statute to clarify that, upon dissolution of charter school assets, property purchased with state funds is state property to the extent to which it was purchased with state funds.
- ♦ **Option 2:** Amend statute to require charter holders to provide a detailed inventory of owned and leased properties in the districts' annual financial reports, including information regarding the source of funding.
- ♦ **Option 3:** Amend statute to establish an account for the deposit of recovered charter assets within the General Revenue Fund, to be appropriated to the Texas Education Agency for the purpose of management and closure of charter holders and for the retention

of the student records of closed charters, and make conforming changes to related existing riders.

DISCUSSION

The Seventy-fourth Legislature, 1995, authorized the establishment of charter schools, a type of public school that provides education through a charter. The State Board of Education (SBOE) established the first open-enrollment charter schools in Texas in 1995. A charter holder is the entity that has been awarded a contract by the Texas Commissioner of Education. A charter holder may be a nonprofit corporation, a higher education institution, or a governmental entity. A charter holder functions similarly to a school district, although charter schools typically are subject to fewer state laws than their public counterparts. According to the Texas Education Agency (TEA), this operation is intended to encourage innovation and allow discretion; however, state law requires fiscal and academic accountability from charter schools. The monitoring and accreditation procedures are the same for charters and public school districts. Texas has four types of charter schools: home-rule school district; campus or campus program; college or university; and open-enrollment. The majority of charter schools in Texas operate as open-enrollment charters, which are granted by the Commissioner of Education. The Commissioner may award an open-enrollment charter upon application by an entity that meets certain eligibility, financial, and operational criteria. The most common type of applicant is a 501(c)(3) tax-exempt, nonprofit organization.

The purposes of charter schools set forth in statute are to: improve student learning; increase the choice of learning opportunities within the public school system; establish professional opportunities that will attract new teachers to the public school system; establish a new form of accountability for public schools; and encourage different and innovative learning methods. Since the establishment of charter schools in Texas, the number of these schools operating in the state has grown to 174.

PROCESS FOR CHARTER SCHOOL CLOSURE AND ASSET DISPOSITION

Senate Bill 2, Eighty-third Legislature, Regular Session, 2013, transferred the authority to grant charters to qualified applicants from SBOE to the Commissioner of Education. The bill also amended the cap on the total number of open-enrollment charters that may be issued by the state. The cap increases from 215 in fiscal year 2015 to 275 in fiscal year 2018, by an additional 15 to 20 charters each year through fiscal year 2021, and by an additional 10 charters annually thereafter. The bill also authorizes the Commissioner to grant additional charters annually not subject to the cap for charter holders in other states that meet certain performance requirements, certain charters that primarily serve students with disabilities, and certain charters serving as dropout recovery programs. This legislation also set requirements for TEA to revoke or not renew a charter for not meeting certain educational performance or financial standards. Specifically, the bill requires the Commissioner to revoke the charter if the charter holder received the following ratings:

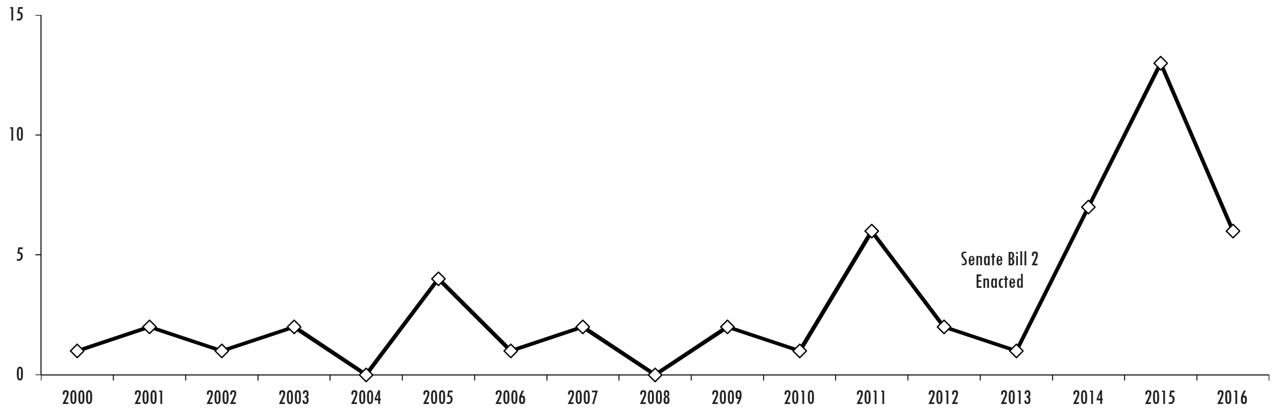
- unacceptable performance rating for the three preceding school years;
- unsatisfactory financial accountability performance rating for the three preceding school years; or
- any combination of the above ratings for the three preceding school years.

Since the passage of Senate Bill 2, 2013, 26 charters have either been revoked, not renewed, or expired, which is referred to as default closure. This amount exceeds the total number of closures in the 10 previous years combined. **Figure 1** shows the number of charter school default closures for fiscal years 2000 to 2016.

When the decision has been made to close a charter school, TEA provides the charter holder with conservator directives to help prepare for and to guide closure. The directives include notifying parents, staff, and the Teacher Retirement System of the details of the closure, such as the last day of instruction, employment, and when the final retirement payment will be submitted. Closed charters also must provide TEA with detailed capital and real asset information, and information pertaining to financial institutions and accounts that hold local, state, and federal funding on the charter holder's behalf. The initial directives also require disclosure of liabilities such as accounts payable, security interests, and fiduciary withholdings, and the charter holder's final annual financial report (AFR).

The conservator directives require the charter holder to complete additional tasks after the school year ends. These activities include: completion of the AFR; submission of final data and student and staff records to TEA through the agency's Public Education Information Management System; removal of certain data from school computers; payment of creditors; cancellation of all leases and executory contracts; disposing of nontitled assets (all assets except for vehicles, real property, and cash); and transferring remaining cash to TEA.

FIGURE 1
TEXAS CHARTER SCHOOL DEFAULT CLOSURES, FISCAL YEARS 2000 TO 2016



SOURCE: Texas Education Agency.

The Texas Education Code, Section 12.128, defines the disposition of charter school assets purchased or leased with state funds. This section states that property purchased with funds received from the state after September 1, 2001, are considered public property for all purposes pursuant to state law. The Commissioner of Education is required to take possession and assume control of the property and supervise the disposition of assets "in accordance with law." According to statute, a security interest in or a lien on property established by a creditor in connection with the sale or lease of the property to the charter holder are not affected by the state's right to property purchased with state funds.

Among the conservator directives TEA provides are several that direct charter holders on the disposition of property and assets. The first is a directive regarding real property owned outright. In such cases, the charter holder is required to execute a warranty deed to TEA for each real property parcel purchased or leased with state funds or declared by the charter holder as state property in its annual financial report. The second directive regarding real property applies to properties secured by a lien that arises from the purchase or lease of a facility. This directive instructs charter holders to cede secured property purchased or leased with state funds back to the lienholder, and to assign any excess proceeds from such a transaction to TEA.

A charter holder's failure to comply with the deadlines in accordance with the conservator directives may result in the appointment of a board of managers by TEA to complete the charter school close-out procedures.

CHALLENGES TO DISPOSITION OF ASSETS

The statutory directive in Texas Education Code, Section 12.128(c)(2), that the Commissioner of Education oversees the disposition of recovered charter property "in accordance with law" has resulted in challenges. The applicable law that TEA is to rely upon in such proceedings is not specified. This lack of clarity in the provisions relating to asset disposition upon charter closure has resulted in lawsuits against the state. Statute provides that property purchased with funds received from the state is considered public property. However, some confusion has resulted regarding what the intent of the statute is and if it is intended to compel state ownership of property in which any amount of state funds was used to purchase it. Also, statute does not address who is entitled to the amount of any asset appreciation greater than the original purchase value. In addition, Section 12.128(b) considers real property purchased before September 1, 2001, to be public property to the extent it was purchased with state funds if at least 50.0 percent of the funds used to purchase the property were state funds. TEA asserts that it is not clear as to whether the 50.0 percent of funds used refers to the asset's original purchase amount or its current value. This lack of explicit statutory framework has resulted in charter holders contesting the state's right to property purchased with any state funds. As a result, 11 lawsuits have been filed encompassing 53 properties for which the dispositions of title have not been resolved. According to county appraisal district records, the value of the 53 closed charter properties totals approximately $5.6 million.

TEA reports that while the agency, as of December 13, 2016, has not yet had to expend any additional funds for related legal expenses, the lawsuits and related ambiguity in disposition of assets has resulted in the need for TEA staff to spend an increasing amount of time addressing issues related to asset disposition.

When TEA assumes control of a charter school's property upon closure, the lack of clarity in statute limits the agency's ability to obtain the title and dispose of the property in a timely manner. This delay exposes the agency to property management costs and unnecessary administrative burden. TEA has maintained facilities during the 2016–17 biennium, at a cost to the agency of $22,342. The Eighty-fourth Legislature, General Appropriations Act (GAA), 2016–17 Biennium, Article IX, Section 8.02(h), authorizes TEA to use funds collected through the closure process for related purposes. Expenditures from these funds, as of December 13, 2016, have totaled approximately $91,400. TEA expects expenditures to rise due to an increasing number of properties requiring maintenance. Funds collected through charter closure process for the 2016–17 biennium totaled approximately $3.3 million.

ASSET DISPOSITION PROCESS IN OTHER STATES

According to the National Conference of State Legislatures (NCSL), the issue of asset disposition upon a charter school closure is primarily influenced by the method of finance used to purchase assets. Nationwide, the methods used for charter school facilities funding vary. Charter schools often use a mix of funding sources to secure assets, which can make it difficult to distinguish who is entitled to those assets upon closure. In Texas, TEA does not require either charter schools or traditional school districts to provide descriptions of the source of funding for each building or parcel of land that is owned. This lack of information results in complexity when determining which properties were acquired using state funds.

According to a 2014 report, 16 states, including Texas, do not have a state per-pupil funding allowance for charter school facilities (a funding formula based on the number of students). North Carolina restricts the use of state funds to payments for lease arrangements on real property and for loans made to charters for facilities, equipment, or operations. North Carolina statute further clarifies that charter schools may own land and buildings they obtain using nonstate sources. Louisiana requires contracts between charter holders and the authorizer to include acknowledgement that if the charter is revoked or otherwise ceases to operate, all assets purchased with any public funds become property of the charter authorizer. California authorizes the transfer of net assets to the authorizing entity, but net assets may also be transferred to another public agency, such as another public charter school, if stated in the agreement between the authorizing entity and the charter school.

TEXAS EDUCATION AGENCY REQUEST FOR CLARIFICATION

On December 21, 2015, TEA requested an Office of the Attorney General (OAG) opinion to clarify the legal status of and disposition of property purchased using state funds by a charter school that is revoked or ceases to operate. The request seeks to clarify whether property purchased using state funds is: (1) the property of the state appropriated to TEA; (2) unappropriated property of the state that becomes part of the Permanent School Fund (PSF); or (3) of some other legal nature. The OAG opinion request, although intended to clarify how statute should be applied, did not include a request for clarification of a charter school's right to property purchased with private funds.

In June 2016, the OAG responded to TEA's request. The opinion stated that property purchased or leased with state funds, which the Commissioner takes possession of and supervises the disposition of, is likely not considered unappropriated property of the PSF. The opinion did not identify any other law that governs the Commissioner's disposition of property recovered pursuant to the Texas Education Code, Section 12.128; but the opinion preserved the possibility of such other applicable law.

DISPUTES FOR ASSETS OTHER THAN PROPERTY

Charter schools that have been revoked have also sued the state for assets other than property. For example, Faith Family Academy sued TEA for $6.7 million that remained in the school's account upon revocation. The charter operated two schools with one charter at the time of the closure. TEA settled the suit and authorized the charter's school in Waxahachie to use the funds remaining in the Oak Cliff school's account. TEA cited the exposure to high litigation costs if the agency had lost the suit as the reason for the settlement. Otherwise, these funds would have been transferred to TEA through the conservator directives process.

CLARIFY CHARTER SCHOOL ASSET MANAGEMENT RESPONSIBILITIES

Option 1 would amend the Texas Education Code to clarify that, upon dissolution of charter school assets, property purchased with state funds is state property to the extent to which it was purchased with state funds. This option would continue TEA's statutory authority and responsibility to oversee the closure process and disposition of charter assets, but it would establish that state ownership of property would be based on the amount of state funds used to acquire it.

When a charter school is closed, TEA does not have detailed information about what specific assets are owned or leased by the charter or how those assets were purchased. This lack of information limits TEA's ability to identify the amount of state funds used to acquire property and to efficiently dispose of the assets upon closure. Option 2 would amend the Texas Education Code to require charter holders to provide a detailed inventory of owned and leased properties in their annual financial reports, including information regarding the source of funding. This information would enable TEA to better distinguish the number of properties owned and leased by each charter holder. This information will improve TEA's ability to effectively execute its responsibility to dispose of closed charter school assets.

RECORDS MANAGEMENT UPON CHARTER SCHOOL CLOSURE

Regardless of setting, student records are the primary source of information containing students' transcripts. Student records are necessary for the appropriate placement and continued education of the student and for proof of graduation. While in operation, the same records management requirements apply to public school districts and charter school settings. When a charter school closes, students may enroll with another charter school or at a school within their assigned school districts. Statute requires records of an open-enrollment charter school that ceases to operate to be transferred in a manner specified by the Commissioner to a designated custodian. Statute also authorizes the Commissioner to designate any appropriate entity to serve as custodian, including TEA, a Regional Education Service Center, or a school district.

In designating a custodian, the Commissioner is required to ensure that the transferred records, including student and personnel records, are transferred to a custodian capable of: maintaining the records; making the records readily accessible to students, parents, former school employees, and other persons entitled to access; and complying with applicable state or federal law restricting access to the records. Student and personnel records for closed charter schools are maintained by the Regional Education Service Center (ESC) XIII (Region 13). According to TEA, approximately 550,000 student records are maintained at Region 13. The number of staff records being maintained is unknown. As the number of charter closures increases, this process could place an inequitable burden on the Region 13 staff.

When a student from a closed charter school needs records, Region 13 staff must locate them from a large storage room of files. This action increases labor for Region 13 and causes confusion for students who attended charters located in another ESC region. In TEA's 2018–19 Legislative Appropriations Request, the agency requested $1.5 million to move the management of student records for closed charter schools from Region 13 to TEA.

CLARIFY ACCOUNTING OF CLOSED CHARTER FUNDS

The 2016–17 GAA, Article IX, Section 8.02(h), appropriates state funds recovered from closed charter schools to TEA for the management and closure of charter holders and for the disposition of recovered state property. However, the GAA provision authorizing expenditures for charter entity closure and management from recovered assets is impermanent authority and does not provide accounting distinction from the agency's other General Revenue Funds appropriations, which complicates revenue and expenditure reporting and monitoring. The establishment of an account within the General Revenue Fund for this purpose would ensure ongoing stability and predictability in agency funding and authority. The account also would provide a mechanism to easily track and report associated revenue and expenditures. Option 3 would amend the Texas Education Code to establish an account for the deposit of recovered assets within the General Revenue Fund to be appropriated to TEA for the management and closure of charter holders and the retention of student records from closed charter schools and would also amend the related rider to make conforming changes.

FISCAL IMPACT OF THE OPTIONS

Option 1, clarifying the state's right to property purchased to the extent it was purchased with state funds, is not anticipated to have a significant fiscal impact to the state.

Option 2 would amend statute to require charter holders to provide a detailed inventory of owned and leased properties in their annual financial reports. It is assumed that TEA could implement this option within existing resources.

Option 3 would amend statute to establish an account for the deposit and accounting of recovered charter school assets within the General Revenue Fund, to be appropriated to TEA for the management and closure of charter holders and for the retention of the student records of closed charters, and make conforming changes to related existing riders. This option would be cost neutral, as recovered charter school assets are retained in the General Revenue Fund but not accounted for separately.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

OVERVIEW OF PUBLIC CHARTER SCHOOL FACILITIES IN TEXAS

While the Foundation School Program includes mechanisms for assisting with the purchase of educational facilities for traditional school districts in Texas, the state does not provide any direct funding for charter school facilities. Therefore, charter schools use a variety of sources to secure facilities, including operating funds earned through the Foundation School Program based on student attendance, philanthropy, grants, and federal funding.

This overview provides information on charter school state funding, charter school facilities, and charter school bonded debt and annual debt service payments, and also potential funding options to assist charter schools in the acquisition of instructional facilities. Other states have implemented several methodologies to address charter school facility funding.

FACTS AND FINDINGS

- ♦ Charter school enrollment has increased an average of 14 percent per year during the past eight years. In the 2013–14 school year, charter school enrollment exceeded 203,000 students and constituted an estimated 4 percent of all Texas students. Enrollment in traditional school districts has increased an average of just over 1 percent per year during the same period and exceeded 4.9 million students.
- ♦ Charter schools in Texas are not eligible to receive any direct state funds for facilities. In contrast, traditional school districts received $1.3 billion for facility debt service equalization in the 2014–15 biennium.
- ♦ Policy options used in other states to fund charter school facilities include: per-pupil funding, competitive grant programs, access to school district facilities, access to local property tax dollars, and programs to reduce debt expenses.

DISCUSSION

The Foundation School Program (FSP) is the primary means of distributing state aid to both traditional school districts and charter schools in Texas. The FSP distributes funding in support of ongoing operating costs through Tier 1 and Tier 2. Tier 1 entitlement is calculated for each school district and charter school using formulas established by the Legislature in the Texas Education Code and the General Appropriations Act. The formula portion of Tier 1 for school districts is determined by multiplying a statutory allotment amount by counts of students enrolled in general and targeted education programs and the statutory factors or weights associated with those programs. The statutory allotment is adjusted for each district's Cost of Education Index (CEI) and, if appropriate, the small or mid-sized district scale adjustment.

The CEI is an adjustment based on a district's size, regional teacher salaries, and the percentage of low-income students in the district in 1989–90. The CEI has not been updated since that time. The small and mid-sized district scale adjustments are designed to account for the proportionally larger fixed cost of educating each individual student when the total number of students in a district is below a certain threshold. For the purpose of the adjustment, small districts are defined as those with fewer than 1,600 students in average daily attendance (ADA). Mid-sized districts are defined as those with fewer than 5,000 students in ADA.

This entitlement amount is then funded by a combination of local property taxes and state funds. The ratio between local and state funds is determined by the property wealth of the school district.

The charter school Tier I entitlement is determined by multiplying counts of students enrolled in general and targeted education programs by applicable program weights and the state average of school district adjusted allotments. Because charter schools are not authorized to levy local property taxes, the entire Tier 1 Entitlement is provided as state aid.

The second portion of FSP school maintenance and operations (M&O) funding, Tier 2 enrichment funding, is provided through a guaranteed yield per penny of property tax levied in excess of the rate dedicated to meet the local share of Tier 1. For school districts without taxing authority and charter schools, this entitlement is determined using the average number of enrichment pennies levied by school districts with taxing authority.

Comparisons between charter school and district M&O funding are complicated because charter school funding is based on state averages of certain district funding components and not the characteristics of the charter school. Using these averages allows all charter schools to take advantage of the formula adjustments for economies of scale and the CEI. Districts with more than 1,000 students are generally funded lower than their equally sized charter schools, while districts with less than 1,000 students are generally funded higher than their charter counterparts. Differences in populations of students that choose to attend a charter school also vary from those that attend school districts. These differences also complicate comparisons due to the extent that student participation in special programs influences funding.

School districts also receive assistance for the financing and repayment of locally authorized debt issued for the construction of facilities through two programs: the Instructional Facilities Allotment (IFA), established in 1997, and the Existing Debt Allotment (EDA), established in 1999. Like funding for operations, FSP entitlement for facilities is funded through a combination of state aid and local property tax revenue. Debt service equalization through IFA and EDA account for about $8.4 billion of total FSP entitlement for the biennium. The state share for these programs is provided through $1.4 billion of the $42.3 billion total FSP 2016–17 All Funds appropriation amount.

Charter schools are not eligible to participate in the state facility funding program, and do not receive any formula funding specifically designated for facilities.

CHARTER SCHOOL FACILITIES

According to the National Conference of State Legislatures (NCSL), the challenge of securing facility funding has led to lower quality charter school buildings. Nationally, charter schools often use operating funds for facilities, and are not able to secure space specifically designed for instructing students. Space is often converted commercial space that lacks many of the standard features found in buildings designed as schools, such as gymnasiums, libraries, or kitchens that can serve free or reduced-price school lunches.

To help determine the current inventory of charter school facilities and debt in Texas, Legislative Budget Board (LBB) staff gathered data from the required audited Annual Financial Report (AFR) submitted to the Texas Education Agency (TEA). As a part of the AFR, charter schools report ownership interest in two categories of assets: (1) land, and (2) buildings and improvements. These categories are divided into local, state, and federal funding sources. The annual amount of debt service is also reported in the AFR.

LAND AND BUILDINGS OWNERSHIP

Statewide, of the 190 charter holders 102 reported an ownership of $221.7 million of land in the 2013–14 school year. (Organizations holding state granted charters may operate multiple charter schools depending on the terms of the charter agreement with the state.) Of that amount, $53.6 million was purchased with funds derived through local efforts (i.e., philanthropy, fund raising, or private grants) and $167.6 million was purchased with state funds. Less than $0.5 million in land was reported as purchased using federal funding.

The total value of charter school buildings and improvements, reported by 152 charter holders, was $1,359.0 million. Nearly 79 percent ($1,068.3 million) of this amount was reported as being purchased with state funds. Funds derived through local efforts were used for $277.2 million and $13.5 million of Federal Funds were used for buildings and improvements.

As shown in **Figure 1**, eight charter holders reported state-funded building and improvement values in excess of $30 million, with IDEA Public Schools reporting the highest amount at $176.8 million. There were 96 charter holders that reported state-funded building and improvements in excess of $1.0 million. Of those, Hampton Preparatory had the highest

FIGURE 1
CHARTER SCHOOLS REPORTING MORE THAN $30 MILLION IN STATE-FUNDED BUILDINGS AND IMPROVEMENTS, SCHOOL YEAR 2013–14

CHARTER SCHOOL	BUILDINGS AND IMPROVEMENTS	BUILDINGS AND IMPROVEMENTS PER ADA
IDEA Public Schools	$176,804,594	$11,734
Harmony Science Academy	$57,306,877	$19,000
Life School	$42,010,536	$9,411
Summit International Preparatory	$39,695,151	$17,596
Williams Preparatory	$35,224,215	$15,794
Harmony Science Academy (Waco)	$32,998,535	$8,747
Harmony School of Excellence	$30,860,765	$8,134
North Hills Preparatory School	$30,162,720	$14,110

NOTES:
(1) ADA = average daily attendance.
(2) Reflects charter schools that submitted more than $30 million in state funded buildings and improvements in their 2013–14 Annual Financial Report.

SOURCE: Texas Education Agency, Charter School Annual Financial Reports, 2013–14.

reported state-funded building and improvements per student in ADA at $23,607 per ADA. The average reported state-funded building and improvements per ADA among charter schools that reported state-funded building and improvements in excess of $1.0 million was $8,134 per ADA.

BONDED DEBT

The tax-exempt bond market is frequently used as a source of financing for charter school facilities in Texas. According to the Local Initiatives Support Corporation, a community financing organization that works with charter schools across the nation, Texas was one of only six states to exceed $200 million of par value in charter school bonds issued between June 2012, and May 2014. In all, there have been 66 charter school bond transactions in Texas from 2000 to 2014. This activity has resulted in only one defaulted transaction, which has been made current thereby curing all missed payments. Texas has the lowest default rate of any state where a default has occurred.

In contrast to other types of borrowing, tax-exempt bond investors focus more on cash flow than on a loan-to-value ratio. This approach helps charter school issues appeal to investors, due to regular payments from state funding formula entitlements. In addition to investigating a charter school's historical cash flow, the July 21, 2015, Reuters news agency's article "U.S. Charter School Default Rate Up, but Sector Sound," advises investors to examine a charter school's academic performance. States, as well as lenders, continue to look for ways to define a charter school's reliable and consistent academic performance. Evaluating a charter school's cash flow and student achievement fits well with the transparent accountability requirements in Texas for both financial and academic performance.

In addition, the tax-exempt bond market allows a charter school to fix lower interest rates over longer periods, fully amortizing the cost of a facility as well as transaction costs. This allows the school to increase enrollment to capacity without incurring larger annual debt service expenses with a small or no up-front equity contribution.

An additional factor spurring some charter schools to take advantage of the bond market is the state-sponsored credit enhancement program. Since 2014, eligible charter schools are allowed to participate in the Permanent School Fund Bond Guarantee program along with traditional school districts. Program participation enables bonds to be issued at an AAA rating. AAA-rated bonds are valued at the strongest creditworthiness of the issue or issuer. All charter school bonds issued without the backing of the program have had ratings of BBB grade or lower. A BBB grade represents only average creditworthiness. Participation in the program can result in a substantial interest cost savings, especially when interest rates are high.

As of January 31, 2016, the Permanent School Fund Bond Guarantee Program has guaranteed $389 million in charter refunding bonds and $442 million in initial bonds. A refunding bond is similar to refinancing a home mortgage. Specifically, it is a new issuance that provides a present value savings to a previously guaranteed bond. Refunding bonds are limited to no more than 50 percent of the available charter capacity.

The Permanent School Fund Bond Guarantee Program capacity for charter schools is based on an annual ratio of charter school students to total students, and is 4.36 percent. This ratio is applied against the available total capacity of the program. The total capacity is defined as the maximum allowable for guarantee less total amount of outstanding guaranteed bonds, and less the State Board of Education (SBOE) established reserve, currently 5.00 percent.

As of January 31, 2016, the capacity to guarantee bonds for charter schools was met, and there is now a wait list for charters seeking a bond guarantee. However, at its meeting on September 11, 2015, the SBOE voted to increase the capacity multiplier from 3.00 to 3.25, effective February 1, 2016. The capacity multiplier sets the total available amount that can be guaranteed. It is anticipated that this change, along with the continued relative growth of charter school students compared to traditional school district students, will open additional loan guarantee capacity in 2017.

To fund the Charter District Bond Guarantee Reserve, charter schools participating in the program must remit 0.1 percent of the principal amount of guaranteed bonds upon closing, and an annual amount equal to 0.1 percent of the outstanding principal of their bonds to TEA. This reserve is for the payment of principal and interest in the event of a charter school bond default. As of January 31, 2016, no default had occurred on a guaranteed bond and the reserve balance was $1.3 million.

DEBT SERVICE

Charter holders report annual debt service both on their AFR and to the TEA in financial submissions. The data on debt service in this review is based on AFR reporting, and verified using data reported in the Public Education

Information Management System. Debt service was reported by 119 out of 190 charter holders for the 2013–14 school year. Annual debt service amounts ranged from less than $100 to $11.3 million, with an average of $657,276 among charter holders that reported a debt service amount.

According to the Bond Review Board, of the 1,022 traditional school districts 842 had outstanding voter-approved debt in the 2013–14 school year. The average debt service due during the 2014–15 school year for these districts was $6.9 million. Although traditional school district voter-approved debt has been included for comparison, there are significant differences between the resources available to service voter-approved district debt and charter school debt. Districts can levy taxes and receive state assistance for the repayment of voter-approved debt for facilities through the FSP. Charter schools must either raise funds through philanthropy or operating funds to service debt.

When evaluating charter school debt service as a function of the number of students in ADA, the range was from less than $1 per ADA to $1,956 per ADA. The average debt per student in ADA for charter schools that reported an amount of debt service was $512 per ADA. As **Figure 2** shows, 13 charter schools reported an amount greater than $1,000 per ADA.

Traditional districts that reported outstanding voter-approved debt in 2013–14 averaged $1,287 debt service per ADA for the 2014–15 school year.

CHARTER SCHOOL ENROLLMENT GROWTH

In Texas, charter school enrollment has increased an average of 14 percent per year over the past eight years. From the 2001–02 to the 2005–06 school years, charter school enrollment increased by an average of 6,572 students per year (11.0 percent average annual growth), followed by an average increase of 16,548 students per year (12.4 percent average annual growth) from the 2006–07 to 2013–14 school years. The total charter school enrollment in 2013–14 was 203,290, or 4.0 percent of total public school students. From the 2001–02 to 2005–06 school years, student enrollment in traditional districts increased an average of 83,350 students per year, but dropped to an average of 62,312 (1.3 percent average annual growth) from the 2006–07 to 2013–14 school years. Total enrollment in traditional districts in the 2013–14 school year was 4,949,000 students.

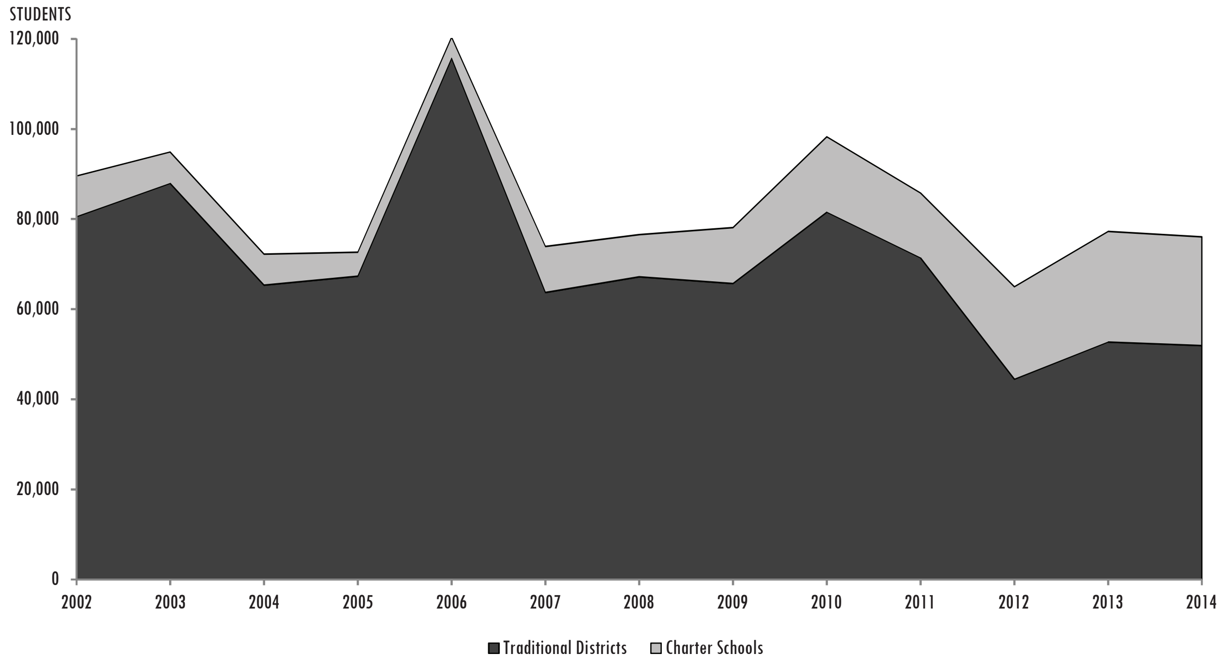
FIGURE 2
CHARTER SCHOOLS REPORTING MORE THAN $1,000 DEBT SERVICE PER STUDENT IN ADA
2013–14 SCHOOL YEAR

CHARTER	DEBT SERVICE	DEBT SERVICE PER STUDENT
Odyssey Academy	$1,233,317	$1,956
Amigos Por Vida-Friends For Life	$611,910	$1,357
Eden Park Academy	$1,314,408	$1,356
Harmony Science Academy (Waco)	$4,967,276	$1,317
Northwest Preparatory	$280,501	$1,281
Hampton Preparatory	$1,124,766	$1,259
Harmony Science Academy	$3,741,634	$1,241
Summit International Preparatory	$2,564,809	$1,137
TLC Academy	$1,283,196	$1,117
Evolution Academy Charter School	$489,478	$1,098
Orenda Charter School	$1,254,227	$1,082
UME Preparatory Academy	$380,452	$1,065
Life School	$4,516,037	$1,012

NOTE: Reflects charter schools that submitted debt service in their 2013–14 Annual Financial Reports. Annual Financial Reports are posted on the Texas Education Agency website.
SOURCE: Texas Education Agency, Charter School Annual Financial Reports, 2013–14.

While charter schools only account for 4 percent of students, they continue to educate an increasing percentage of the public education system's annual growth, as shown in **Figure 3**. Advocates have looked to the Texas Legislature for help with facility funding to keep up with this growth.

FIGURE 3
ANNUAL INCREASE IN STUDENT ENROLLMENT BY SCHOOL YEAR, TRADITIONAL DISTRICTS AND CHARTER SCHOOLS CALENDAR YEARS 2002 TO 2014



SOURCE: Texas Education Agency Public Education Information Management System.

FUNDING APPROACHES IN OTHER STATES AND APPLICABILITY TO TEXAS

Approaches that have been used in other states to fund public charter school facilities include:

- a per-pupil allowance,
- grant programs,
- the transfer of excess capacity to charter schools,
- access to local property tax dollars, and
- programs to reduce debt expenses.

A summary of these approaches and program implementation in select states follows (see **Figure 4**).

PER-PUPIL ALLOWANCES

Fourteen states and Washington, D.C. provide a per-pupil facility allowance to their charter schools in their public school funding formulas. Three states (Arizona, Georgia, and Minnesota) and Washington, D.C. provide over $1,000 per pupil, four states provide funding from $350 to $999 per pupil (California, Florida, Massachusetts, and New Mexico), and Colorado, Idaho, Ohio, Pennsylvania, Tennessee, and Utah provide less than $349 per pupil. The New York amount is still to be determined through a legislative appropriation.

Charter school facility funding on a formula or per-pupil basis in Texas under the FSP was proposed in Committee Substitute, Senate Bill 1900, Eighty-fourth Legislature, 2015. This bill would have entitled charter schools to funding equal to the state average revenue per student collected by traditional school districts under the IFA and EDA programs. This bill used a state average to drive facility funding, much the same way charter school operating funds are determined in the FSP formulas.

Based on the LBB fiscal note for Senate Bill 1900, the state average amount of revenue per ADA was $864 for fiscal year 2016 and $860 for fiscal year 2017. Based on projected charter school ADA, the total cost to the state and the amount of funding estimated to flow to charter holders would have been $203.3 million in fiscal year 2016 and $224.1 million in fiscal year 2017. This bill was voted out of the Senate Education Committee, but not taken up by the full Senate. A companion was filed in the House.

A funding mechanism based on average per student revenue received by traditional districts would yield a consistent facilities funding system that charter schools could rely upon

FIGURE 4
STATE CHARTER SCHOOL FACILITY FUNDING PROGRAMS

STATE	PER-PUPIL ALLOWANCE	GRANT PROGRAMS	DISTRICT FACILITY ACCESS	LOCAL TAX DOLLARS	REDUCE DEBT EXPENSE
Alaska				X	
Arizona	X				
Arkansas					X
California	X	X	X		X
Colorado	X			X	X
Connecticut		X			
Delaware		X			
Florida	X			X	
Georgia	X	X			
Idaho					
Indiana			X		
Iowa			X		
Maine			X		
Maryland			X		
Massachusetts	X				X
Michigan					X
Minnesota	X	X			
Mississippi			X		
New Mexico	X			X	
New York	X	X	X		
North Carolina			X		
Oklahoma		X			
Ohio	X				X
Pennsylvania	X				
South Carolina			X		
Tennessee	X				
Texas			X		X
Utah	X				X
Washington			X	X	

SOURCES: 2014 Charter School Facility Finance Landscape, Local Initiatives Support Corporation, September, 2014; State Policy Snapshot: Facilities Funding for Public Charter Schools, National Alliance for Public Charter Schools, May, 2015.

based on readily available data. Benchmarking facility payments to school district average revenue per ADA would provide predictable charter facility funding without further legislative action. This approach would add additional complexities to the school finance formulas and create an on-going entitlement. Note, the aggregate portion of school districts' equalized debt service for facilities would not necessarily correspond with charter school facility needs.

A per-pupil allowance could be implemented in conjunction with other facility funding mechanisms. While the per-pupil funding mechanism could be designed to improve the overall condition of facilities, an additional program could be designed to address a specific legislative initiative, like improving facility health and safety issues or encouraging new facilities to be constructed in fast growth regions.

GRANT PROGRAMS

Subject to an appropriation, a competitive or formula grant program could fund charter facilities. Criteria to rank charter schools for a competitive grant award depending on legislative intent for the program could include:

- a charter school's increasing enrollment or sustaining its maximum enrollment;
- a charter school's percentage of students eligible for free/reduced lunch;
- performance on certain academic and financial accountability measures; and/or
- the location of the additional instructional space (for example; opening a facility near a school or district with low accountability ratings or schools on the Public Education Grant list.)

By establishing a charter school facility grant program outside of FSP formula entitlements, additional resources could be provided to charter schools without creating an ongoing budget obligation. This approach was utilized when the state initiated facility funding for traditional school districts. Such programs could be implemented either solely or with other types of facility funding to provide funds targeted to a specific legislative intent and could be implemented as competitive grants. Potential fiscal impact to the state could be set directly by legislative appropriation of the grant.

A grant program may be appropriate for the remodel, retrofit, or outright purchase of a facility. Such a program may not be suitable for on-going lease costs or debt service due to long-term funding uncertainty.

In Minnesota, charter schools are prohibited from using state funds to purchase land or buildings. However, that state does have a program that allows for assistance of up to 90 percent of a charter school's lease costs through a grant program called Charter School Lease Aid. A lease reimbursement or assistance program could provide an option for expanding charter school facility capacity without increasing the number of state-funded charter school facilities.

Colorado's facility program, Building Excellent Schools Today, allows charter schools to compete for funding along with traditional school districts. The grant program funds both new construction and renovation projects that are designed to solve health and safety issues in school facilities. The program requires that district grantees match funding with local dollars and charter grantees match with private funds. This requirement and the targeted nature of allowable projects compels both advanced planning and commitment from grantees.

While 16 states have created grant programs, only 8 are currently funded: California, Colorado, Connecticut, Delaware, Georgia, Minnesota, New York, and Oklahoma.

TRANSFER EXCESS CAPACITY TO A CHARTER SCHOOL

Ten states allow charter schools access to school district buildings that are either abandoned or have unused space. Using existing buildings from traditional school districts often allows a charter school access to a facility designed for educational purposes at a much lower cost than privately leasing commercial property, purchasing, or building a new facility. According to the NCSL, some states allow charter schools the right to request the use of vacant or underused public buildings before the buildings can be used for any other purpose. Other state policy options include requiring traditional districts to offer long-term leases to charter schools and limiting rental costs charged to charter schools.

Pursuant to the Texas Education Code, Section 11.1542, a traditional school district that intends to sell, lease, or allow nondistrict use of an unused or underused facility must give each local charter school the opportunity to make an offer to purchase, lease, or use the facility before offering the facility for sale or lease. However, a district is not obligated to accept a charter school's offer. Because this section has no direct reporting mechanism, it is unknown whether or not such offers have occurred since this section took effect September 1, 2013. It is unlikely that a charter school has taken advantage of this section, because no transaction of this type has been reported to TEA through the charter school amendment process.

According to a study conducted by the National Charter School Resource Center, California's charter school's per-pupil spending for facilities varied depending on the facility's ownership situation, but was lowest when a charter school occupied a local school district facility. The center reports a per-pupil annual facility cost of $895 (13.2 percent of per-pupil revenue) when the facility is owned by the charter, $570 per-pupil (8.3 percent of per-pupil revenue) when the facility is leased from a private entity, and $285 per-pupil (4.3 percent of per-pupil revenue) when the charter occupies a traditional school district's facility.

While per-pupil facility costs were lowest when occupying a traditional school district facility, California charter schools faced many challenges when choosing this approach. Forty-seven percent of charter schools reported lower quality technology infrastructure than available in facilities that were used by the traditional school district, and 35 percent of charter schools surveyed said their facilities were smaller than those of comparable neighborhood schools and below recommended square footage standards. In addition, district space was not always available at the capacity and/or location desired by the charter school. As a result, many charters were forced to seek more costly facility options.

One way to encourage the transfer of facility space between traditional school districts and charter schools could be through the wealth equalization process found in the Texas Education Code, Chapter 41. This approach would also have state costs. Property wealthy districts that are subject to recapture are provided with five Options to reduce their wealth to the equalized level under the FSP. One approach could expand Option 4, contract to educate nonresident students from a partner district to include agreements with charter schools to transfer or lease facilities to reduce a district's wealth. This could provide property wealthy districts more potential partners to meet the equalization requirements and potentially keep more local tax dollars within the local community. Option 4 agreement processes between districts could be modified to make agreements viable for district to charter school facility transfers. These transfers would only apply to districts subject to recapture.

To the extent such an approach were utilized, qualifying facility transfers from Chapter 41 districts to charter schools would decrease appropriated receipts, one of the methods used to fund the state's share of the FSP. Currently, a district that reduces its property wealth under Option 4 sends funds to a partner school district below the wealth equalization limit. These funds subsequently reduce state payments to the partner district. Facilities received by charter schools in lieu of transferred funds would decrease one of the Methods of Finance for the FSP (appropriated receipts) and potentially increase the need for another (General Revenue Funds). Impact to the General Revenue Fund could be statutorily limited.

Only California and New York City require a district to provide facilities to charter schools; Indiana, Iowa, Maine, Maryland, Mississippi, North Carolina, South Carolina, Texas, Washington, and Wyoming, provide a right of first refusal for purchase or lease of available traditional district facilities or access to information on unused traditional district facilities.

ACCESS TO LOCAL PROPERTY TAX DOLLARS

Similar to the recapture Option 4 facility transfer alternative discussed above, the Texas Education Code, Chapter 41's wealth equalization Option 3 "purchase attendance credits from the state" could also be used to create revenue for a construction or renovation program for charter schools. A statutorily specified portion of recapture revenue sent to the state could be deposited in a centralized fund, or transferred to a specific charter school located within a school district that is eligible to partner with a Chapter 41 district under the provisions found in the Texas Education Code, Section 41.121. This section designates the amount of funds a school district with a property wealth below the equalized wealth limit can receive from a Chapter 41 district. If a centralized fund were created, funds could be distributed directly to charter schools, or used to create a revolving loan program for charter facilities.

Several states have programs that provide loans to charter schools at or below market rates to assist with startup costs for facilities. However, these revolving loan funds often receive an initial appropriation without a recurring funding source that limits their ability to continue to support facility projects. Including a mechanism to add to funds through the wealth equalization system could help to alleviate this problem.

Similar to the impacts on state resources in the previous policy scenario, funds diverted to a charter school facility program under Option 3 would also decrease appropriated receipts, one of the methods used to fund the state's share of the FSP, which may in turn increase the demand for General Revenue Funds. Impact to the General Revenue Fund could be statutorily limited.

Five states allow access to local property tax dollars for charter school facilities: Alaska, Colorado, Florida, New Mexico, and Washington.

REDUCE DEBT EXPENSE

As mentioned previously, Texas allows eligible charter schools to participate in the Permanent School Fund Bond Guarantee Program to help reduce debt expenses. While the program has exceeded its capacity for charter school loan guarantee, it is anticipated that additional capacity will again be available in 2017. The program does not have any direct impact on state funds, but allows lower interest costs to local school districts and charter schools that participate in the program.

Several states have programs that provide direct loans to charter schools at or below market rates to assist with startup costs for facilities and reduce debt expenses. However, these revolving loan funds often receive an initial appropriation without a recurring funding source that limits their ability to continue to support facility projects. A new Texas direct loan program could be established to allow charter schools that are not eligible to participate in the current Permanent School Fund Guarantee Program due to financial position or guarantee capacity to borrow funds at below market rates. Including a mechanism to add funds after appropriating an initial outlay of loan capacity could allow the program to continue after initial loans are granted.

Along with Texas, other credit enhancement and/or state loan guaranty programs are partially funded or administered by Arkansas, California, Colorado, Massachusetts, Michigan, Ohio, and Utah.

OVERVIEW OF SELECTED ISSUES REGARDING FUNDING FOR PUBLIC SCHOOL TRANSPORTATION

Texas charter schools, counties providing transportation services to students, and most school districts are entitled to receive funding for those services through the school district transportation allotment. The transportation allotment is a component of the Foundation School Program. The Foundation School Program is the state's primary source for funding public schools. For school year 2014–15, the transportation allotment provided Texas school districts and charter schools with funding of $359.5 million.

The transportation allotment provides funding for four groups of eligible students: regular education program students who reside more than two miles from campus; regular education program students who reside within two miles from the campus but who would be subject to hazardous conditions while walking to school; special education students; and career and technology education students. Reimbursement rates for eligible student groups are established in statute and by a rider in the General Appropriations Act. For regular education students, the transportation allotment entitles a school district to a reimbursement rate per route mile traveled that is based on the district's linear density grouping. Linear density is the average number of regular education students transported daily, divided by the approved daily route miles traveled in the district.

Districts that serve more students per mile receive higher reimbursement rates than districts that operate less dense routes. Urban school districts, which serve more geographically compact populations, tend to have greater linear density than more sparsely populated rural districts. School districts that provide transportation services to geographically isolated or homeless students may operate routes with lower linear density.

FACTS AND FINDINGS

- ♦ Transportation allotment reimbursement rates have not been updated since 1985, at which time the state provided 70.0 percent to 80.0 percent of total transportation costs, according to the Texas Education Agency. Recently, the transportation allotment has supported less than one-third of school district transportation costs. The transportation allotment provided all school districts and charter schools with an entitlement of $359.5 million for school year 2014–15.
- ♦ According to the Texas Education Agency's School Transportation Allotment Handbook, which provides guidance about reporting transportation services, a school district is not required to report all eligible regular route service. A district is authorized to exclude routes if doing so enables the district to achieve a higher linear density and receive more state funding. A district can amend previously approved reports and receive additional funding for up to three previous school years. A district can also evaluate its submissions or contract with an outside consultant to determine whether excluding routes would yield additional funding from the state.
- ♦ Funding is determined by the transportation allotment formula and is not a sum-certain appropriation; therefore, the practice of excluding certain routes to achieve a more favorable linear density group could increase state obligations. It could also weaken the effectiveness of the linear density formula, which is intended to incentivize district efficiency.

DISCUSSION

The Texas Education Code, Section 34.007, authorizes school districts and charter schools in Texas to operate economical public transportation systems for the school district's students. The statute also authorizes a school district to contract with another entity to operate a transportation system, such as a mass transit agency, a commercial entity, or county juvenile board.

The Texas Education Code, Section 42.155, governs the transportation allotment, a component of the Texas public school finance system. The allotment entitles school districts, charter schools, and counties providing transportation services to students to receive a funding allotment for those services from the state. The transportation allotment was established by the Legislature to provide funding for efficient systems of public school transportation services. It is part of the Foundation School Program (FSP), which is the primary means of distributing state funding to public schools in Texas.

FSP entitlement for Texas public schools is funded through a combination of state and local property tax revenue. For districts with taxing authority, local revenue generated by up to $1.00 of the maintenance and operations tax rate provides the local share of Tier 1 funding. The share of a district's entitlement not funded through the local share of Tier 1 funding, including the transportation allotment, is provided by the state. Charter schools can also receive direct state aid in accordance with the allotment.

More information about the Foundation School Program is available in the Legislative Budget Board staff Issue Brief *Foundation School Program Overview,* March 2016, at www.lbb.state.tx.us

TYPES OF FUNDING PROVIDED BY THE TRANSPORTATION ALLOTMENT

The Eighty-fourth Legislature, General Appropriations Act (GAA), 2016–17 Biennium, Article III, Texas Education Agency (TEA), Rider 5, establishes the formula used to determine the transportation allotment's biennial funding. **Figure 1** shows the four main groups of eligible students for which the transportation allotment provides funding.

A formula established in statute determines reimbursement for regular education program students who reside more than two miles from campus. This formula entitles a school district to a reimbursement rate per route mile traveled that is based on the district's linear density grouping. The Texas Education Code, Section 42.155(b), defines linear density as the average number of eligible regular program students transported daily, divided by the approved daily route miles traveled in the district. The Legislature raised reimbursement rates for regular education students twice in the early 1980s, and the last increase was in 1985.

A district can also apply to receive funding to provide transportation to regular education program students who reside less than two miles from campus but face hazardous walking conditions. To serve such students, a district can apply for and receive an increase of up to 10.0 percent of the amount it receives for regular education program students who reside more than two miles from campus. A hazardous condition is defined in statute as a condition in which "no walkway is provided and children must walk along or cross a freeway or expressway, an underpass, an overpass or a bridge, an uncontrolled major traffic artery, an industrial or commercial area, or another comparable condition." For school year 2014–15, hazardous-area service represented 7.1 percent of the total annual mileage and 18.7 percent of average daily ridership for the transportation allotment's regular education program.

A district can receive compensation for transportation provided to special education students at a rate of up to $1.08 per mile, which is established in the GAA. Like the linear density reimbursement rates for regular education students, the maximum reimbursement rate for special education students has not changed since 1985.

The Texas Education Code, Section 42.155(f), entitles districts to reimbursement for the cost per mile of route service miles for transporting Career and Technology Education (CTE) students for CTE program transportation. TEA determines the reimbursement rate as the district's cost per mile for regular route services for the preceding school year.

FIGURE 1
TRANSPORTATION ALLOTMENT PRIMARY ELIGIBLE STUDENT GROUPS, 2016–17 BIENNIUM

GROUPS	REIMBURSEMENT
Regular Education Program Students (more than 2.0 miles from campus)	A reimbursement rate per approved route mile based on a school district's linear density grouping (the average number of students transported daily, divided by the approved daily route miles traveled).
Regular Education Program Students (less than 2.0 miles from campus and contains hazardous walking conditions)	An additional amount that is up to 10.0% of the amount received for all Regular Education Program students.
Special Education Students	A reimbursement rate per mile for eligible special education students based on the previous school year's cost per mile and capped at a rate established in the General Appropriations Act.
Career and Technology Education (CTE) Students	A reimbursement rate per mile of route service for transporting CTE students for CTE programs. The Texas Education Agency determines the rate as the district's cost per mile or regular route service for the previous school year.

SOURCE: Legislative Budget Board.

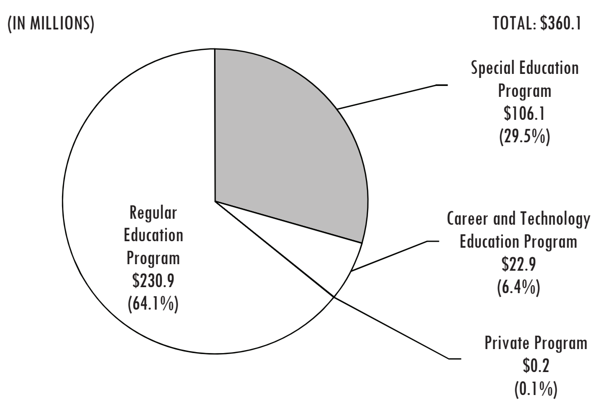
Pursuant to the Texas Education Code, Section 42.155(l), a school district may provide a commercial mass transit bus pass to students for whom the use of a district's regular transportation system is not feasible. After applying and receiving approval from TEA, a district may provide these passes to eligible students and receive reimbursement. A participating district is required to maintain a roster of eligible riders and to report the number of students who received passes to TEA as part of its route services report.

A district also can receive reimbursement for private or commercial route services for eligible students from isolated areas. This reimbursement is calculated by multiplying a district's private route-service mileage by $0.25, up to a maximum of $816 per eligible student rider per school year.

TRANSPORTATION ALLOTMENT FUNDING BY PROGRAM TYPE

For school year 2014–15, almost two-thirds of state aid provided through the transportation allotment was for services provided to regular education program students. **Figure 2** shows the share of the transportation allotment entitlement for school year 2014–15 for each category of funding.

FIGURE 2
FOUNDATION SCHOOL PROGRAM TRANSPORTATION ALLOTMENT ENTITLEMENT BY PROGRAM TYPE SCHOOL YEAR 2014–15

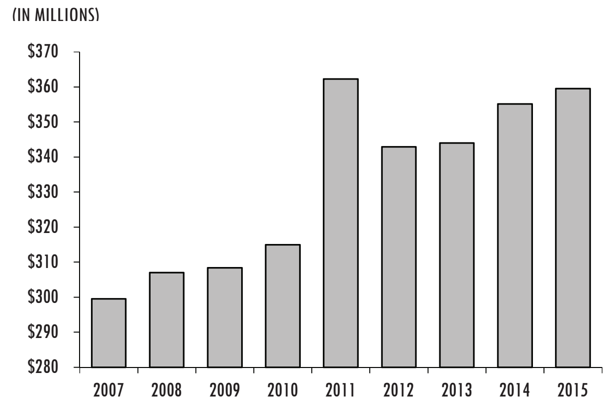


NOTE: Amounts shown are from the Statewide Transportation Detail Report for school year 2014–15. Amounts can change based on Texas Education Agency and school district revisions.
SOURCE: Texas Education Agency.

TRANSPORTATION ALLOTMENT FUNDING HISTORY

Figure 3 shows the level of state funding provided to school districts for transportation services through the transportation allotment from fiscal years 2007 to 2015. The transportation allotment entitlement increased at a compound annual rate of 2.1 percent during this period. The highest level of funding occurred for fiscal year 2011, due to a higher level of reported route mileage from school districts. The transportation allotment provided school districts and charter schools with an entitlement of $359.5 million for school year 2014–15.

FIGURE 3
FOUNDATION SCHOOL PROGRAM TRANSPORTATION ALLOTMENT ENTITLEMENT, FISCAL YEARS 2007 TO 2015



SOURCE: Legislative Budget Board.

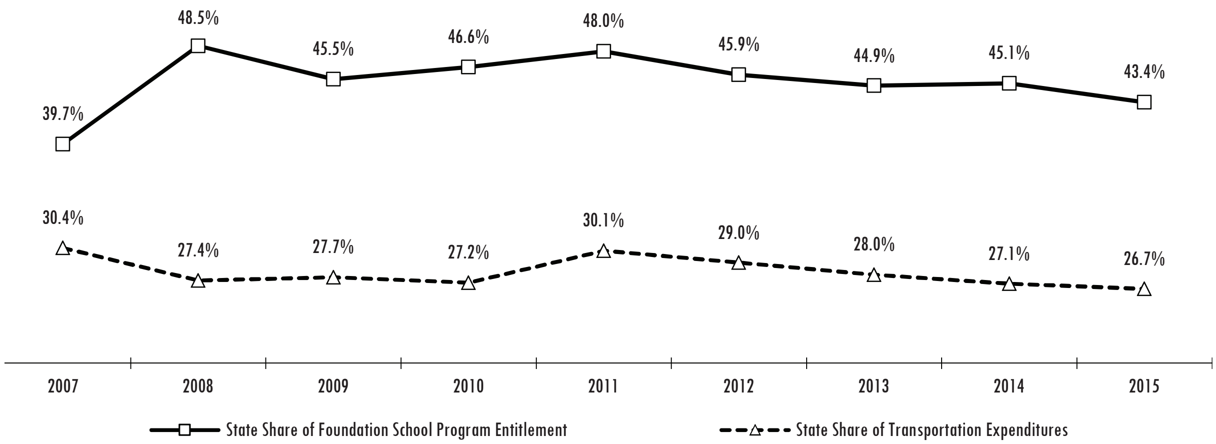
As shown in **Figure 4**, the state has supported a decreasing share of district transportation costs through the transportation allotment compared to all FSP funding since fiscal year 2007. According to TEA, the transportation allotment previously funded 70.0 percent to 80.0 percent of total school district transportation costs. With increasing district costs and static reimbursement rates, the share of state-reimbursed expenditures has decreased to 26.7 percent for fiscal year 2015. This decrease contrasts to the state share of funding for the entire FSP entitlement, which has been more than 43.0 percent each fiscal year since 2008.

As shown in **Figure 5**, districts and charter schools with smaller enrollments tended to receive larger shares of their entitlement-supported funding than larger-enrollment districts did.

SCHOOL DISTRICT REPORTING REQUIREMENTS

School districts that receive transportation allotment funding are required to submit two transportation-related reports to TEA each year. The first is an operations report that includes information about the cost of transportation services that a district provides. If the district has applied to receive funding through the transportation allotment, that district is also required to submit a route services report. This report serves

FIGURE 4
STATE SHARE OF THE FOUNDATION SCHOOL PROGRAM ENTITLEMENT AND OF TRANSPORTATION OPERATION EXPENDITURES, FISCAL YEARS 2007 TO 2015



SOURCE: Legislative Budget Board

FIGURE 5
AVERAGE SHARE OF COSTS SUPPORTED BY TRANSPORTATION ALLOTMENT ENTITLEMENT BY DISTRICT OR CHARTER SCHOOL ENROLLMENT SCHOOL YEAR 2014–15

AVERAGE ENROLLMENT GROUPING	SUPPORTED SHARE
138	32.6%
249	30.5%
408	25.7%
583	25.9%
825	25.4%
1,165	25.6%
1,759	22.8%
2,972	23.7%
6,192	22.9%
32,837	23.2%

NOTE: Data may exclude some entities eligible for transportation allotment funding for school year 2014–15.
SOURCE: Texas Education Agency.

as the basis for calculating the district's funding from the transportation allotment.

TEA provides school districts with the School Transportation Allotment Handbook, a publication that provides guidance about reporting transportation services to the agency. The handbook, which is adopted into rule by TEA, defines eligible student riders and reimbursable services, and it provides guidance to districts to complete and submit their transportation route services reports. District officials consult the handbook for direction on how to determine whether a student is an eligible rider, how to develop and adopt a hazardous traffic area policy, and how to calculate mileage to be reported, among other guidance.

LINEAR DENSITY FORMULA AND FUNDING FOR REGULAR EDUCATION PROGRAM STUDENTS

The School Transportation Allotment Handbook specifies the method for calculating daily route mileage, which is used in the calculation of a school district's linear density and which factors into a district's level of funding from the allotment. A district's daily mileage for each route that it operates is defined in the route description. The route description is a turn-by-turn documentation of a route's path, which yields a mileage total for the route. A district is also required to conduct a ridership count at least twice per year to calculate the average daily ridership for each route. The average number of regular education students transported daily is divided by the approved daily route miles traveled in the district to determine the district's linear density. As shown in **Figure 6**, linear density determines the rate at which a school district is reimbursed for the transportation services it provides to regular education students. Urban school districts, which serve more geographically compact populations, tend to have greater linear density than more sparsely populated rural districts. School districts that provide transportation services to geographically isolated or homeless students may operate routes with lower linear density.

The School Transportation Allotment Handbook, Section 6.7, states that a school district is "not required to report all

FIGURE 6
LINEAR DENSITY REIMBURSEMENT RATES
2016–17 BIENNIUM

LINEAR DENSITY	REIMBURSEMENT PER MILE
2.40 and greater	$1.43
1.65 to 2.40	$1.25
1.15 to 1.65	$1.11
0.90 to 1.15	$0.97
0.65 to 0.90	$0.88
0.40 to 0.65	$0.79
Less than 0.40	$0.68

SOURCE: Eighty-fourth Legislature, General Appropriations Act, 2016–17 Biennium.

eligible regular route service and may choose to not report the mileage for a route or segment of a route if the mileage would adversely affect linear density." If a district excludes a route or segment of a route, then the ridership for the route or segment also must be excluded.

In accordance with this provision, a school district can exclude routes or route segments if doing so enables the district to achieve a higher linear density and receive more state funding. Districts can amend previously approved reports and receive additional funding for up to the three previous school years. According to TEA, some districts evaluate their submissions or contract with external consultants who determine whether excluding routes would yield additional state funding. An amended report that qualifies a school district for more funding in a previous year may lead to additional state aid from TEA to the school district. Although this process is not described in statute, it has been a longstanding practice authorized by TEA rule and used by districts to maximize state funding.

Appropriations for the transportation allotment are determined by formula and are not sum-certain; therefore, the practice of excluding certain routes to achieve a more favorable linear density group could increase state obligations. It could also weaken the effectiveness of the linear density formula, which is intended to incentivize district efficiency by providing an incentive to operate the most efficient routes possible.

TEA staff reported that they do not systematically track the number of districts that exclude route miles to inflate linear density and draw down additional state funds. To evaluate the effect of this policy, Legislative Budget Board (LBB) staff used data provided by TEA to identify school districts that had amended their route service reports to exclude route miles and increase transportation allotment payments. For school years 2012–13, 2013–14, and 2014–15, 10 districts submitted revised reports that led to decreases in the districts' route mileage, increases in linear density, and increases in transportation allotment funding. As a result, at least $313,937 in additional state aid was paid to districts for those three years.

TEA and LBB staff did not have separate data to identify districts that exclude route miles to attain a higher linear density in an initial report submission. Thus, the amounts identified represent only known costs to the state associated with the practice of excluding route miles. Some districts may be incentivized to exclude routes and achieve higher linear density to gain additional state aid. This practice may contribute to increased state costs, particularly if the Legislature chooses to increase funding in accordance with the linear density-based reimbursement structure and, as a result, funding gaps among linear density groups increased.

RECENT LEGISLATION

The Legislature has considered alternative proposals to fund school district transportation services. The most significant recent change to the transportation allotment occurred as a result of the enactment of House Bill 3506, Eighty-second Legislature, Regular Session, 2011. That bill authorized school districts to use transportation allotment funds to provide bus passes to students for whom the district's transportation system was not a feasible method of transportation. Upon receiving approval from TEA, a district may provide these passes to eligible students and receive reimbursement.

The Eighty-fourth Legislature, 2015, considered House Bill 1759, which would have repealed the transportation allotment as part of an extensive revision of the state's school finance system. This bill effectively would have funded transportation services as part of the general equalized system for funding public education in the state. This bill's fiscal note assumed that the repeal of the transportation allotment would have been replaced with a $125 increase in the basic allotment to provide a systemwide entitlement of $800.0 million for transportation beginning in fiscal year 2016.

ALTERNATIVE METHODS FOR FUNDING SCHOOL DISTRICT TRANSPORTATION

Other states use a variety of mechanisms to fund public school transportation. Some states incorporate components that are similar to those in Texas' formula, although most are distinct. Some states, including Arkansas, Indiana, Iowa, Louisiana, and Rhode Island, either provide no funding for transportation or provide funding as part of a district's basic student allotment. Other states reimburse all of a district's eligible transportation costs or provide a fixed rate of eligible costs. For example, Wyoming and Delaware reimburse 100.0 percent of each school district's student transportation costs. Oregon reimburses 70.0 percent to 90.0 percent of eligible costs, wherein districts that have higher average costs qualify for larger reimbursement rates. Wisconsin provides a fixed dollar amount per student per year that is determined by the distance each student resides from campus. School districts receive larger reimbursements for students that reside farther from campus. Several states issue a base rate of funding and incorporate adjustments based on factors such as efficiency of operations, geographic sparsity, distance travelled, capital expenses, property tax wealth, enrollment, cost of living, and hazardous conditions while walking.

ENSURE ADEQUATE OVERSIGHT OF DUAL CREDIT PROGRAMS TO MAXIMIZE EFFECTIVENESS AND EFFICIENCY

Since 2006, school districts have been required to provide high school students the opportunity to earn the equivalent of at least 12 semester credit hours of college credit. Statute refers to these programs as college credit programs. These credits may be earned through dual credit, advanced placement, or International Baccalaureate programs. Dual credit programs include academic dual credit, early college high schools, and career and technical education dual credit. These options are offered through partnerships between high schools and community colleges or other institutions of higher education, with the structures of the partnerships varying across programs.

Statutory changes in recent biennia have expanded the availability and diversity of dual credit opportunities and the number of dual credits a student may earn. In September 2015 limitations on the number of dual credits that students may enroll in per semester and grade limitations on when a student may begin dual credit courses were removed. As a result of these changes, the number of dual credit students, the number of credit hours taken, and the state's investment in these programs has grown. Dual credit fall enrollment grew from more than 42,100 students in 2005 to more than 133,000 students in 2015. By fall 2015, the state was investing approximately $39.6 million in higher education formula funds for fall enrollment semester credit hours for dual credit courses. In addition, other state funding sources such as public education formula funds may finance dual credit courses.

As dual credit programs expand and more high school students earn greater amounts of dual credit, the state would benefit from a comprehensive strategy to administer and evaluate these programs and their outcomes for students. Amending statute to align goals and requirements among the three programs would increase rigor, consistency, and quality across partnerships and programs. Increasing the evaluation capacity of the Texas Education Agency and the Texas Higher Education Coordinating Board would enable dual credit programs to be more accountable to the state and provide needed insight into the effectiveness and efficiency of these programs.

FACTS AND FINDINGS

- ♦ Dual credit programs are included in formula funding calculations for school districts and institutions of higher education. In addition to these formula funds, riders in previous biennia have included funds for specific dual credit programs and early college high schools. During the fall 2015 semester, the state spent approximately $39.6 million in higher education formula funds for dual credit courses' semester credit hours. Additional revenue sources are available to school districts, although the amounts are unknown.
- ♦ Dual credit enrollment grew 25.0 percent from the 2010 to the 2014 fall semesters. After the September 2015 removal of limitations on the number of dual credits that students' may earn, dual credit fall enrollment grew nearly 20.0 percent compared to fall 2014 enrollment.
- ♦ National best practices identify rigor, consistency, and quality as essential to effective dual credit programs.

CONCERNS

- ♦ Although early college high school and career and technical education programs have statutorily established goals and program evaluation measures, academic dual credit does not. As a result, program accountability is inconsistent.
- ♦ The state lacks a comprehensive system to oversee and evaluate dual credit program outcomes and has not fully assessed which programs present the most efficient or effective models.

OPTIONS

- ♦ **Option 1:** Amend statute to require the Texas Education Agency and Texas Higher Education Coordinating Board to develop and align goals for all dual credit programs to ensure the availability of standard outcomes on which these programs could be evaluated.
- ♦ **Option 2:** Amend statute to ensure that partnerships are structured to achieve state goals by requiring memoranda of understanding for all dual credit

programs to contain program-specific goals and quality assurances. These memoranda should be posted annually on each participating school district's and institution of higher education partner's website.

- ♦ **Option 3:** Include a rider in the 2018–19 General Appropriations Bill requiring the Texas Education Agency and the Texas Higher Education Coordinating Board to collaboratively develop strategies to evaluate the effects of dual credit programs and to issue guidance for successful partnerships among school districts and institutions of higher education using available data. The option would also increase each agency's full-time equivalent cap and provide appropriations for one employee to implement these requirements.

DISCUSSION

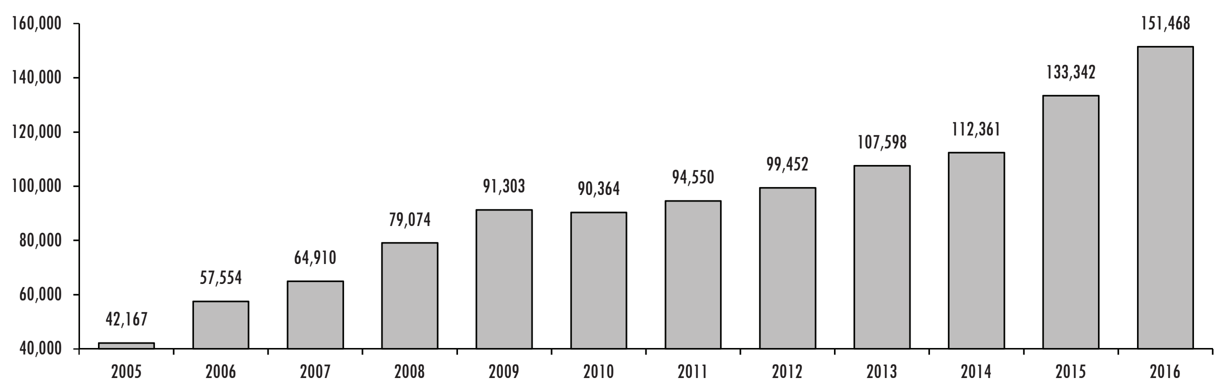
Dual credit programs in Texas enable students to simultaneously earn college credit and high school credit for one course. The Texas Education Agency (TEA) defines dual credit as "a process through which a student may earn high school credit for successfully completing a college course that provides advanced academic instruction beyond, or in greater depth than, the Texas Essential Knowledge and Skills (TEKS) for a corresponding high school course." School districts are required by statute to provide opportunities, which may be through dual credit, for students to earn at least 12 hours of college credit while in high school. Three commonly offered dual credit programs in the state are early college high schools, academic dual credit programs, and career and technical education (CTE) dual credit programs. These programs are different from concurrent enrollment opportunities, in which a high school student may earn college credit, but not corresponding high school credit, while enrolled in high school.

Dual credit programs are operated through the partnership of an institution of higher education or technical training and a school district or an individual high school. A school or district may include independent or charter schools and home-schooled students.

Courses may be offered on a college or high school campus, or they may be offered online. Early college high schools (ECHS) may be offered either on a college campus, within a learning community on an existing school campus, or as a stand-alone school. For all three dual credit programs, these partnerships are established through a Memorandum of Understanding (MOU). MOUs are required by rule to outline supports that will be provided for dual credit program students; information regarding eligible courses for dual credit; student eligibility; location of the class; student composition of the class; faculty selection, supervision, and evaluation; course curriculum, instruction, and grading; transcripting of credit; and funding.

All three programs have been expanded with the goal of increasing Texas students' postsecondary success. **Figure 1** shows the number of students enrolled in all three types of dual credit programs during the fall semester of each of the past 10 school years. Dual credit enrollment grew 25.0 percent from fall 2010 to fall 2014 semesters. After the September 2015 removal of limitations on the number of dual credits that students may earn, dual credit fall enrollment grew nearly 20.0 percent in one year.

FIGURE 1
DUAL CREDIT FALL ENROLLMENT IN TEXAS HIGH SCHOOL STUDENTS, FALL 2005 TO FALL 2015



NOTE: Fall 2016 data is missing certified data from one small institution.
SOURCE: Texas Higher Education Coordinating Board.

DUAL CREDIT PROGRAMS COST AND FUNDING

There are a variety of ways that dual credit partnerships allocate program costs or structure their offerings. Regardless of where the course is taught or whether it is taught by a high school or college faculty member, both partners receive state formula funding. In addition to this formula funding, other locally available funds may be used for dual credit offerings. State grants are also provided to help support different dual credit opportunities. For example, the Eighty-third Legislature, Regular Session, 2013, amended statute to allow the Texas Workforce Commission to award up to 5.0 percent of the General Revenue Funds appropriated to the Skills Development Fund to CTE dual credit programs through grant awards. The total amount spent on dual credit programs across all methods of finance and the allocation of costs among dual credit partners in Texas is unknown.

A 2009 study conducted by the American Institutes for Research projected that for the 2009–10 school year, statewide costs associated with dual credit programs would be approximately $180.0 million. According to the estimate, 61.0 percent, or $109.8 million, of these costs were supported by state funding. The remainder of dual credit costs were estimated to be supported by local and other funds used by institutions (13.0 percent), local and other funds used by school districts and local education agencies (LEAs) (24.0 percent), and Federal Funds, mostly in the form of grants to school districts and LEAs (2.0 percent). This study was based on a survey of 12 programs across Texas. The cost is expected to have increased since this time as a result of increases in program offerings and dual credit enrollment. The study also showed that factors such as average class size, location (high school or college campus), and whether the course was offered by a community college or four-year institution affected program costs.

A portion of dual credit funding may be estimated based on state funding formulas, however, this estimate does not represent a complete picture of funding given the diversity of funds that may be used to support dual credit. State higher education formula funds provided for dual credit may be estimated using data on dual credit enrollment, average number of dual credit hours taken, and the applicable state formula funds per semester credit hour. **Figure 2** shows estimates for dual credit funding provided to institutions of higher education based on semester credit hours between fall 2012 and fall 2015.

Community colleges are the main providers of dual credit opportunities. In 2015, dual credit enrollment constituted from 20.0 percent to 50.0 percent of community college fall enrollment at 51 community colleges across the state. Dual credit, therefore, accounts for a large portion of the state formula funding received by some of these institutions each year.

School districts and charter schools also receive formula funds from the state for the time students spend in dual credit courses. Foundation School Program (FSP) formula funding is based on student attendance, including attendance in dual credit courses. The semester credit hour information shown in **Figure 2** can be used to approximate the amount of FSP formula funding attributable to student attendance in dual credit courses by converting them to contact hours. Contact hours may be used to estimate student attendance based on definitions within the Foundation School Program that equate 30 contact hours per week to full-time student attendance. Based on this methodology, the dual credit semester hours reported equated to 42,057 students in average daily attendance (ADA) in 2012, increasing to 49,539 ADA by 2014. On average, the state portion of formula funding attributable to this level of attendance would have been $160.7 million in 2012, increasing to

FIGURE 2
ESTIMATED HIGHER EDUCATION FORMULA FUNDING FOR DUAL CREDIT, FALL 2012 TO FALL 2015

SEMESTER OF DUAL CREDIT ENROLLMENT	DUAL CREDIT ENROLLMENT	DUAL CREDIT SEMESTER HOURS	AVERAGE DUAL SEMESTER HOURS PER DUAL CREDIT STUDENT	ESTIMATED STATE FUNDING REIMBURSEMENT FOR 1 SEMESTER CREDIT HOUR	ESTIMATED STATE FORMULA FUNDING COST (SEMESTER CREDIT HOURS)
Fall 2012	99,452	504,703	5.07	$53.71	$27.1 million
Fall 2013	107,598	562,163	5.22	$53.71	$30.2 million
Fall 2014	112,361	594,491	5.29	$54.86	$32.6 million
Fall 2015	133,342	715,491	5.37	$55.39	$39.6 million

SOURCES: Legislative Budget Board; Texas Higher Education Coordinating Board.

$199.4 million by 2014. The amount of funding provided through the FSP does not change for attendance in dual credit or non-dual credit courses. Therefore, the same level of funding would have been attributable to attendance in similar non-dual credit courses. In addition to these formula funds, a rider in the General Appropriations Bill (2018–19 Biennium) allocates $3.0 million in General Revenue Funds per year to support early college high school programs.

Providing funding to both school districts and institutions of higher education for dual credit has been cited as encouraging the creation and continuation of dual credit opportunities. However, dual credit partnerships are not required to identify or calculate locally available funds, state formula funds, or state grants or resources used by partnerships to support dual credit programs. This, combined with the variety and degree of local control afforded to dual credit program structures and cost allocation, has prevented the state from evaluating its investment in these programs.

OVERVIEW OF DUAL CREDIT PROGRAMS

All three dual credit programs are geared towards meeting the statutory requirement that high school students have the opportunity to accumulate at least 12 semester credit hours of college credit. However, each dual credit program was established as the state's offerings for high school students earning college credit expanded and diversified. There are therefore different statutory requirements, programmatic goals, and target populations for ECHS, academic dual credit programs, and CTE dual credit programs. **Figure 3** shows the differences among these dual credit programs.

ASSESSING BENEFITS OF DUAL CREDIT PROGRAMS

Stakeholders in Texas and nationwide—including advocates, researchers, and educators—often attribute the following benefits to dual credit:

- saving money for families and students in the overall cost of a higher education through acceleration of college coursework;
- developing strong networks among secondary and postsecondary education systems that help establish more seamless transitions for students from high school to college;
- increasing the likelihood that students will complete high school;
- increasing student aspirations for college and career;
- increasing college-going and persistence rates; and
- reducing the need for remedial or developmental education.

While these benefits are often cited in relation to dual credit, the state currently does not have a consistent or comprehensive strategy to ensure quality in or evaluate all dual credit programs. Without this capability, the state in unable to effectively assess the benefits of dual credit programs in Texas.

National studies by research centers and policy organizations on dual credit programs state that the benefits associated with these programs are achieved through courses that offer authentic college experiences that prepare students for subsequent-level college courses. These studies have found that ensuring the quality, consistency, and rigor of dual credit programs may also help students transfer dual credits more successfully to the institutions to which they end up matriculating. Such transferability may help students move through postsecondary education more quickly. However, university representatives in Texas have testified that dual credit students at times end up being placed in subsequent-level college courses for which they are not prepared, which hinders their acceleration and college completion.

Although accelerated completion of postsecondary education is an oft-cited benefit of dual credit, the rate at which this occurs may be limited. Of one cohort of Texas high school students who earned dual credit from the same institution of higher education to which they eventually matriculated in 2009, 38.0 percent, including full-time and part-time students, graduated with a baccalaureate degree within four years or less. This indicates that 62.0 percent of students in this cohort required more than four years to complete their degrees, if they completed at all. The institutions' overall four-year graduation rate was 30.5 percent for all students who enrolled full-time in 2009; the graduation rate for part-time students during the same period is not available.

Growth in dual credit enrollment and number of dual credits earned are often cited as evidence of the success of dual credit programs in Texas. These rates, however, are not effective measures of the quality or rigor of the programs or postsecondary outcomes for students, such as four-year graduation rates. Furthermore, certain outcomes or success indicators for dual credit may be more illustrative for some programs than others. For example, measuring college readiness outcomes for early college high school students, who may be at risk of dropping out of high school, would support an indication of program success. However, academic dual credit students are required to demonstrate college

FIGURE 3
DUAL CREDIT PROGRAM DIFFERENCES, FISCAL YEAR 2016

CATEGORY	ACADEMIC DUAL CREDIT	CAREER AND TECHNICAL EDUCATION	EARLY COLLEGE HIGH SCHOOL
Year Established	Students first tracked by TEA and THECB in 1999	Established as dual credit-eligible program in 2013	Established in 2003 as middle college program
Eligibility	Students must achieve stated scores on named assessment tools to be eligible; as of academic year 2015–16, students in grades nine to 12 may enroll.	For Level 2 certificates, students must achieve stated scores on named assessment tools; Level 1 certificates are exempt from college readiness standards. As of academic year 2015–16, students in grades 9 to 12 may enroll.	Students may be evaluated for readiness to take college-level coursework using a variety of assessment tools; the institution of higher education partner will identify appropriate assistance or remediation for students who need it to enroll in college courses.
Tuition, fees, and books	The institution of higher education may waive tuition; school districts are not required to pay students' tuition or other dual credit costs. Students' families may be charged for tuition, fees, or books.	The institution of higher education may waive tuition; school districts are not required to pay students' tuition or other dual credit costs. Students' families may be charged for tuition, fees, or books.	The institution of higher education may not charge students' families for tuition, fees, or books. The institution must either waive these fees, or school districts must pay them.
Funding sources	State formula funds to partnering institutions of higher education and districts (including semester credit hours, average daily attendance, state High School Allotment, and other formula funds); grants; locally available funds; and tuition and fees.	State formula funds to partnering institutions of higher education and districts; weighted state formula funds to school districts for CTE; Texas Workforce Commission grant funding; federal Perkins Act grant funds; and tuition and fees.	Direct state appropriations, state formula funds to partnering institutions of higher education and districts; grants; and Texas Workforce Commission funds for ECHS that have a CTE emphasis.
Establishment	Agreement between district or school and institution; approved by district and institutional authority.	Agreement between district or school and institution; approved by district and institutional authority.	Application to TEA for designation to offer ECHS program; renewal application each year to continue operation.
Statutory goals	None	CTE: Intended to lead to academic and technical competencies, industry-recognized credentials or postsecondary degree or college credit, and participation in state career and technical activities supported by TEA and the state.	Intended to enable grade 9 to 12 students who are at risk of dropping out of high school or wishing to accelerate high school completion to receive high school diplomas and associate's degrees or 60 credit hours.
Evaluation metrics	None	Some districts track CTE dual credit outcomes; all CTE programs are subject to evaluation by TEA, school districts, and the federal government, if discretionary grant funds awarded from the federal Perkins Career and Technical Education Act are used.	The Commissioner of Education and each partnership between an ECHS and institution of higher education set performance and evaluation measures of effectiveness. Measures of effectiveness must include success indicators of graduates at Texas public institutions of higher education (e.g., participation rates, grade point averages, or retention rates).

NOTE: CTE = career and technical education; ECHS = early college high school; TEA = Texas Education Agency.
SOURCE: Legislative Budget Board.

readiness to be eligible for program participation. Therefore, measuring the same outcome for these students would not be an indicator of that program's effectiveness.

Statute includes objectives and accountability measures for the early college high school and career and technical education programs. However, these measures differ in their comprehensiveness. The early college high school program, for example, has statutory requirements intended to ensure that its dual credit partnerships: (1) align with the goals of the overall program; (2) generate desired outcomes; (3) provide quality instruction and access to college readiness and credit; and (4) serve the population intended. However, no similar statutory requirements exist for academic and certain CTE dual credit programs. Although different program types serving different populations may seek to achieve different outcomes, establishing overarching goals for all dual credit opportunities would help support achievement of state goals and accountability across programs.

In October 2016, the Texas Higher Education Coordinating Board (THECB) announced it had partnered with a non-profit organization, the RAND Corporation, to study the extent to which high school students are ready to take college level coursework and the effect of dual credit expansion on student performance. This study is tentatively scheduled to be completed in December 2018, although THECB plans to provide summary information regarding the scope of dual credit programs in Texas to the Legislature in March 2017. The results of this study may provide insight into the goals sought by the state for dual credit offerings.

ESTABLISH STATEWIDE GOALS ACROSS DUAL CREDIT PROGRAMS AND ALIGN PROGRAM STANDARDS

Concerns regarding the quality and alignment of dual credit programs with the state's higher education goals are of particular importance in Texas given the growth in enrollment numbers and options for dual credit statewide. Limited state oversight could result in variance in the consistency and rigor of courses across the state. The lack of a comprehensive strategy also results in an inability to track the expansion, administration, and outcomes of individual dual credit partnerships and the overall performance of dual credit programs, and to make comparisons across the three programs.

Aligning program goals and requirements for the three types of dual credit programs would provide a basis to compare the efficacy and outcomes of program models and individual partnerships. This alignment could be accomplished by:

- establishing overarching goals for all dual credit programs;
- establishing program-specific goals for academic dual credit; and
- applying some requirements for ECHS to academic and CTE dual credit programs.

Strengthening the framework for evaluation would help ensure the quality, consistency, and rigor of dual credit across programs and individual partnerships statewide.

Option 1 would amend statute to require TEA and THECB to develop goals that are aligned and apply to all dual credit programs and individual partnerships by August 31, 2018. Establishing a comprehensive, statewide strategy for dual credit and aligning statutory goals for academic and CTE dual credit would ensure that each dual credit partnership shares common objectives. As a result, agencies tasked with administering dual credit programs would have standard outcomes for which programs should be evaluated. These goals should, at a minimum, address the state's goals for dual credit's achievement of enrollment in and acceleration through postsecondary education, performance in college-level course work, and the development of an effective bridge between secondary and postsecondary education in Texas. The development of these goals may also be informed by the ongoing work THECB is doing with the RAND Corporation between October 2016 and March 2017 to summarize the scope of dual credit programs.

ENSURE DUAL CREDIT PROGRAMS ARE STRUCTURED IN ACCORDANCE WITH STATEWIDE GOALS

Research has demonstrated that dual credit programs can be effective in bridging high school and postsecondary education and training when program curricula are aligned with state higher education goals. For instance, efforts to shorten time to degree could be served by ensuring that dual credit earned by a high school student clearly matches an articulated college-level course through a course crosswalk. The Eighty-third and Eighty-fourth Legislatures passed bills emphasizing degree plans and the importance of guidance in helping students select and prepare for postsecondary pathways while in high school. Memoranda of Understanding establishing dual credit partnerships typically are required to address supports available for dual credit students. However, efforts to increase guidance and postsecondary planning could be strengthened if MOUs were required to clearly articulate the available resources and supports a student will receive as part of a dual credit course, such as academic guidance or tutoring.

With the exception of early college high schools, dual credit partnerships may charge or waive tuition, depending on the partnership agreement. There are no specific requirements for how dual credit course costs will be allocated or for this allocation to be included in MOUs or other documentation. Depending on the partnership, dual credit courses may take a variety of different forms or structure costs in a number of ways. Data available on dual credit programs show the policy implications of understanding how financing structures affect program goals. For instance, certain economically disadvantaged students in Texas are 3.0 percent to 8.0 percent less likely to enroll in dual credit programs than their noneconomically disadvantaged peers. This likelihood exists despite studies indicating that low-income students are often those who benefit most from these programs. Whereas some programs in the state cover tuition, books, and fees for their students, other districts or programs may not. These costs could present a barrier to access for students who would benefit. More information provided in MOUs on how programs structure these costs could help partnerships evaluate new ways to provide dual credit opportunities and allocate costs between education partners and the families of students who are taking dual credit. Isolating and examining the financing structure of those districts able to waive costs would enable the state to gain insight into models or strategies that could improve access statewide. Tracking cost structures would also enable the state to identify trends, challenges, and potential solutions in funding dual credit programs.

Early college high school MOUs document shared goals between high schools and institutions of higher education for dual credit offerings and delineate quality controls for their courses. These agreements also enable state agencies such as TEA, THECB, and TWC to observe whether the goals of individual partnerships align with state goals for the programs; at the same time, local partnerships maintain discretion to focus on specific dual credit goals that are based on the needs and resources of the community. The same level of articulation is not required for CTE and academic dual credit partnerships. As a result, the state has forgone a quality control opportunity for these programs.

Academic and CTE dual credit partnerships would also benefit from describing their plans for the evaluation of course quality in their MOUs, as is required for ECHS. The necessity of improved evaluation and assessment of dual credit programs was identified in 2010 by the State Auditor's Office, which found that 10 out of 12 examined dual credit partnerships needed improved evaluation processes to comply with state statute. Without these quality assurances, there is a risk that state resources provided to both school districts and institutions of higher education are being provided for dual credit programs without achieving intended results.

Option 2 would amend statute to require MOUs or partnership agreements for all dual credit programs after fiscal year 2018 to contain: (1) specific program goals that align with statewide goals for dual credit; (2) a course equivalency crosswalk that matches high school course to college course, or establishes a procedure for doing so; (3) an explicit description of the academic supports or guidance that will be provided to dual credit students; (4) stated roles, responsibilities, and processes for determining the rigor and quality of the offering; and (5) funding details, including, at a minimum who will cover tuition, fees, books, and transportation, and what these costs are. Implementing this requirement beginning with fiscal year 2019 would allow MOUs to include goals based on the statewide goals TEA and THECB would set as a result of Option 1.

As a result of this option, requirements of academic and CTE dual credit partnership agreements would be more closely aligned with requirements for early college high school MOUs. Requirements for CTE dual credit programs that only receive local or state formula funding may differ from those for programs that receive federal Perkins Act grant funding or Texas Workforce Development grants. Therefore, this option would also standardize requirements for CTE dual credit programs no matter what the source of funding. Requiring all dual credit program partnerships to plan for this evaluation and describe their processes would help ensure programs are efficient and effective.

Aligning required features among dual credit agreements would ensure that partnership offerings are correlated with state goals for college readiness through dual credit and ensure that guidance in preparing students for college pathways is considered and documented sufficiently in partnership agreements. The alignment also would improve state-level information on the types of courses in which students enroll and encourage partnerships to regularly evaluate the success of their offerings, what costs are associated with the program, and how to allocate them. These memoranda would also be required to be posted annually on each participating school district's and relevant higher education partner's website to enable stakeholders and families considering dual credit to evaluate existing options.

Options 1 and 2, together, would help strengthen dual credit offerings by increasing rigor, consistency, and quality across partnerships and programs.

REQUIRE THECB AND TEA TO DEVELOP EVALUATION TOOLS AND ENCOURAGE EFFECTIVE PARTNERSHIPS

State and national research has identified longitudinal, comprehensive studies as an important tool for gauging the effectiveness of dual credit offerings. Despite the state's investment in and expansion of dual credit options, a comprehensive accountability and evaluation system has not been established for these programs and individual partnerships. This lack of oversight hinders the state's ability to assess program effectiveness and efficiency. As the availability of dual credit has expanded and the number of students enrolled in dual credit hours has increased, there has been a resulting increase in the amount of funding for institutions offering these courses. However, an effective means of evaluating the performance and results generated for investments in dual credit programs is not in place.

Dual credit data reporting requirements for TEA and THECB include that the agencies share data to enable school districts to annually report: (1) the number of district students, including CTE students, who have taken and earned dual credit; and (2) the cumulative number of dual credit courses district students have taken and the college credit hours earned. This data provides insight into the scale of dual credit courses taken and the number of students served statewide. However, the data does not provide information to determine which dual credit models provide the strongest outcomes, or to measure the quantifiable benefits of dual credit. TEA is required by statute to develop standards for evaluating the success and cost-effectiveness of high school completion, high school success, and college readiness programs implemented using High School Allotment funds, which include early college high schools and other dual credit opportunities. However, TEA has limited information on compliance with these statutory requirements and has stated that it is not authorized to monitor the outcomes of dual credit programs. TEA does not explicitly collect or analyze dual credit outcomes for any program.

Several efforts have been made to increase the availability of information about dual credit program types, costs, models, and longitudinal outcomes. These efforts are shown in **Figure 4**. Although past actions have resulted in some insights into dual credit programs, none resulted in a comprehensive evaluation of dual credit program outcomes against goals and investments in program expansion. In addition to past efforts, THECB's planned study with the RAND Corporation will also aim to evaluate dual credit opportunities in Texas.

THECB has indicated it now has more data and could conduct a more comprehensive study of dual credit programs than what previous efforts were able to yield. However, limitations still exist in the state's ability to evaluate long-

FIGURE 4
PREVIOUS AND ONGOING STATE EFFORTS TO EVALUATE DUAL CREDIT PROGRAMS IN TEXAS

EFFORT	OUTCOME/FINDINGS
2009: Eighty-first Legislature, Regular Session, 2009, included a rider in the General Appropriations Act (2010–11 Biennium) directing THECB to work with TEA to provide integrated data on dual credit outcomes and study costs and potential improvements to dual credit programs.	TEA contracted with American Institutes for Research,which released a March 2011 report summarizing findings based on 12 dual credit programs across the state. Report included overview of different dual credit delivery methods, cost estimates for dual credit, and policy recommendations on course availability, access, and cost efficiency.
2011: Eighty-second Legislature, Regular Session, 2011, included a rider in the General Appropriations Act (2012–13 Biennium) directing THECB to work with TEA to analyze fiscal and instructional impacts on outcomes for dual credit courses taken on both high school and community college campuses.	THECB released a report in March 2012 which included analysis of growth and demographic changes in dual credit enrollment, educational outcome data, variability of dual credit financing, and recommendations for improving dual credit programs.
2016-ongoing: THECB announced it is working with the RAND Corporation to conduct a two-part study on dual credit programs in Texas. Project intended to examine current dual credit outcomes and develop potential reforms to dual credit policies and practice.	Part one of report is tentatively scheduled for release in March 2017; part two of report tentatively scheduled for release in December 2018.

Note: THECB = Texas Higher Education Coordinating Board; TEA = Texas Education Agency.
Sources: Legislative Budget Board; Texas Higher Education Coordinating Board.

term outcomes for dual credit students. Dual credit programs bridge secondary and postsecondary education and, therefore, exist between the administrative authorities of TEA and THECB. The two agencies track dual credit data separately for their respective purposes and do not efficiently link the data they each track. For example, TEA collects dual credit data by the course taken, but THECB tracks dual credit by higher education institution. These data limitations prevent the state from comprehensively studying dual credit effects on students' academic abilities and performances while in high school. While THECB's forthcoming study will employ both TEA and THECB records, establishing an ongoing comprehensive system for monitoring and evaluating dual credit would streamline the state's ability expand or reform dual credit moving forward.

Standardizing methods and tools to evaluate dual credit outcomes would allow state agencies to better track and evaluate outcomes such as graduation rates, performance in subsequent-level courses, acceleration of students through postsecondary education, and tuition saved when college credit is earned during high school. Evaluation metrics could be more closely aligned with state goals for dual credit opportunities and more indicative of whether dual credit is effectively meeting intended goals including those that would be set in accordance with Option 1.

Option 3 would include a rider in the 2018–19 General Appropriations Bill requiring TEA and THECB to jointly: (1) identify existing capabilities, limitations, and costs to comprehensively evaluate dual credit opportunities; and (2) develop a plan for a cross-agency, statewide outcome reporting and evaluation tool to measure acceleration, tuition saved, and efficient and effective practices for offering dual credit. The agencies should consider whether adequate information is available about costs and local finance structures for dual credit programs to determine the most efficient method of funding these programs. The agencies should also consider methods for evaluating which dual credit programs are at the greatest risk of ineffectiveness or inefficiency.

This plan must include an analysis of the feasibility of enlisting either Texas Education Research Centers (ERC) or regional Preschool-to-Grade-16 (P-16) councils as resources to evaluate dual credit programs. Both agencies would be required to report their joint findings to the Office of the Governor, the Legislative Budget Board, and legislative committees responsible for oversight of education no later than August 31, 2018. In addition, the rider would require TEA and THECB to jointly study existing data on all dual credit programs and issue guidance regarding the best and most effective practices for school districts to continue or initiate dual credit offerings. This may be informed by the work THECB is currently undertaking to evaluate the performance of dual credit students. Option 3 would also increase each agency's full-time-equivalent (FTE) position cap and provide appropriations for one additional employee at both agencies to implement these requirements.

This information could provide the basis for determining best practices and could be used to strengthen existing dual credit partnerships and ensure they are implemented in a way that promotes rigor and quality. It would provide lawmakers and educators with information that could be used when making decisions regarding how to direct state resources. A comprehensive study of dual credit in Florida, for example, found that students who enrolled in dual credit courses on a college campus had better outcomes than those who took the courses on their high school campuses, who showed no significant improvement. As dual credit programs continue to expand in Texas, insight into which courses are associated with degree acceleration or college success would help to provide needed guidance on scalability strategies. Without this knowledge, schools cannot effectively counsel students on their best strategies for earning and applying college credit, which potentially could save students' time, and save family and state funding. The two agencies responsible for dual credit offerings have an opportunity for collaboration to identify options to collect and analyze program outcomes effectively and in a way that gives the Legislature, institutions, school districts, and students' families a clear representation of the effects of dual credit programs toward accomplishing educational goals.

FISCAL IMPACT OF THE OPTIONS

Option 1 would require TEA and THECB to develop and align goals for all dual credit programs and individual partnerships. Option 2 would require MOUs or partnership agreements for dual credit programs to include program specific goals and quality assurances. It is assumed that these options would have no significant fiscal impact and could be implemented using existing resources.

Option 3 would include a rider in the 2018–19 General Appropriations Bill directing TEA and THECB to jointly (1) identify existing capabilities, limitations, and costs to comprehensively evaluate dual credit opportunities and (2) develop a plan to establish a cross-agency, statewide dual credit student outcome reporting and evaluation tool to measure acceleration, tuition saved, and efficient and effective practices for offering dual credit. The rider would also direct TEA and THECB to report their joint findings regarding the comprehensive evaluation of dual credit. The report would be submitted to the Governor, Legislative Budget Board, and Legislative committees responsible for oversight of education no later than August 31, 2018.

Option 3 would also increase appropriations to TEA and to THECB by $90,000 per agency each fiscal year and the agencies' FTE position caps by one. These funds would be directed, via the rider above, to be used for one employee at each agency dedicated to fulfilling the requirements that would result from Option 3. For purposes of this analysis, it is assumed each agency would retain these employees to ensure oversight of dual credit programs in the future. The five-year fiscal impact of this option is shown in **Figure 5**.

FIGURE 5
FIVE-YEAR FISCAL IMPACT OF OPTION 3
FISCAL YEARS 2018 TO 2022

FISCAL YEAR	PROBABLE SAVINGS/ (COST) IN GENERAL REVENUE FUNDS	PROBABLE ADDITION/ (REDUCTION) OF FULL-TIME- EQUIVALENTS
2018	($180,000)	2
2019	($180,000)	2
2020	($180,000)	2
2021	($180,000)	2
2022	($180,000)	2

SOURCE: Legislative Budget Board.

The House introduced 2018–19 General Appropriations Bill includes an increase in FTE positions and appropriated amounts, and riders implementing Option 3.

ALIGN ELIGIBILITY FOR CERTAIN UNDERGRADUATE FINANCIAL AID PROGRAMS WITH THE STATE'S HIGHER EDUCATION GOALS

Financial aid programs provide funding for students to pay for education expenses at institutions of higher education. Financial aid includes grants, scholarships, loans, or work-study programs and can be used for college-related expenses such as tuition, fees, room and board, books, supplies, transportation, and other costs. Financial aid can be need-based and made available based on a student's financial need; merit-based and made available based on a student's skill or ability; or based on some combination of need and merit. Financial aid can come from several sources, including the federal government, institutions of higher education, private and nonprofit sources, and state government.

In Texas, funds for most state financial aid programs are appropriated to the Texas Higher Education Coordinating Board and administered by the agency in conjunction with public institutions of higher education. The agency allocates funds to institutions, which provide funds to individual students through the financial aid award process. For the 2016–17 biennium, the Texas Legislature appropriated approximately $1.2 billion in General Revenue Funds to the Texas Higher Education Coordinating Board for financial aid programs for students. These funds were distributed among four-year, undergraduate public and private non-profit institutions in Texas. The largest of these programs, the Towards EXcellence, Access, and Success (TEXAS) Grant Program, was appropriated $715.0 million in All Funds for the biennium, almost all of which was General Revenue Funds.

State and national research findings indicate that financial aid programs that prioritize credit accumulation result in greater rates of timely graduation among aid recipients. Modifying eligibility criteria for the state's largest undergraduate financial aid programs would encourage successful, timely completion of undergraduate degrees among more aid recipients.

FACTS AND FINDINGS

- State financial aid award programs help ensure access to college for low-income Texans. Because eligibility for the TEXAS Grant Program has historically exceeded available funding, the Legislature introduced a model designed to prioritize award eligibility for low-income students who are also high-achieving. The prioritization model has attempted to align financial aid with the state's goals of college completion and success.
- Unlike the TEXAS Grant Program, eligibility and prioritization requirements for Tuition Equalization Grants have not been substantially revised since 2005, despite an increasing emphasis toward timely completion and access for undergraduate students, as reflected by the Texas Higher Education Coordinating Board's 60x30TX Strategic Plan.

CONCERNS

- Texas data supports national findings that financial aid recipients who make slower progress in accumulating credit hours in their first semesters have lower overall rates of graduation. TEXAS Grant recipients who enroll in less than 12 semester credit hours in either of their first two semesters have a significantly lower six-year graduation rate, 17.9 percent, than recipients who enrolled at least 12 hours in each of the first two semesters, 55.3 percent.
- The TEXAS Grant Program, for students at public institutions, has more restrictive program rules than Tuition Equalization Grants, for students at private institutions. Tuition Equalization Grants can provide funding for graduate students; however, the TEXAS Grant Program is specifically for undergraduate students. The eligibility requirements for Tuition Equalization Grants could be adjusted to maximize the use of state grant dollars for timely completion by undergraduate students.

OPTIONS

- **Option 1:** Amend statute to increase semester credit hour requirements for the TEXAS Grant Program and Tuition Equalization Grants from 24 hours to 30 hours per academic year. This amendment would reinforce reforms intended to prioritize high-achieving, high-need students and to encourage timely completion among grant recipients.
- **Option 2:** Amend statute to align Tuition Equalization Grants eligibility requirements to be

equivalent to those for the TEXAS Grant Program, including restricting Tuition Equalization Grants awards to undergraduates.

DISCUSSION

The mission of the Texas Higher Education Coordinating Board (THECB) is to promote "access, affordability, quality, success, and cost efficiency" in the state's institutions of higher education. The state's financial aid programs help accomplish these goals by providing need-based and merit-based aid to eliminate students' barriers to college. In the 2016–17 biennium, the Legislature appropriated approximately $1.2 billion in General Revenue Funds for THECB's goal to close the gaps by improving affordability, which includes the state's higher education financial aid programs. The largest of these state programs, the TEXAS Grant Program, provides need-based aid to Texas undergraduates at four-year, public institutions. The Legislature appropriated approximately $715.0 million in All Funds for TEXAS Grants for the 2016–17 biennium. Most of this amount included General Revenue Funds, and it represents an increase of $62.7 million in General Revenue Funds from 2014–15 biennial funding levels. For other financial programs, including Top 10 Percent Scholarships and the B-On-Time loan programs, 2016–17 biennial appropriations support only renewal awards, because the programs are being phased out.

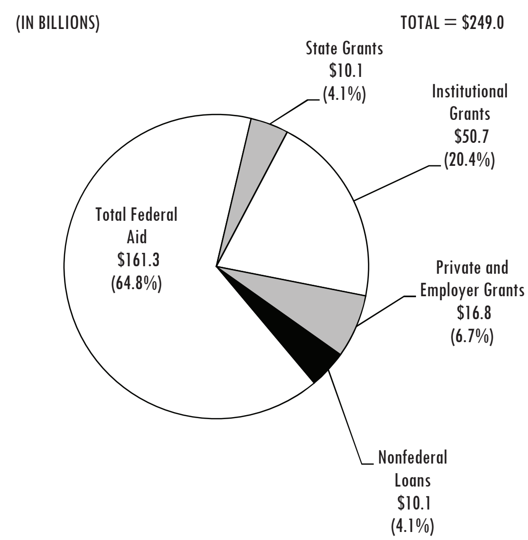
Research by experts who have studied state and federal financial aid programs typically has found that financial aid programs lower the cost of college for low-income and moderate-income students, which increases their access. In addition, some aid programs have been shown to improve college-related outcomes such as persistence and completion rates. Persistence is defined as the continued enrollment in the pursuit of a degree, and completion is defined as graduation from a four-year institution. However, these benefits can be undermined due to poor program structure or the general complexity of the financial aid system. Considering the level of investment in financial aid by the Legislature, it is important to ensure that the state's financial aid dollars are awarded and administered to maximize the benefit for eligible students, and to align funding with the state's broad mission for higher education.

FINANCIAL AID SOURCES

In the 2014–15 academic year, financial aid in the U.S. from all sources totaled $249.0 billion. Financial aid that state governments funded represented a small portion of the total amount of financial aid provided to students nationwide.

According to the nonprofit organization the College Board, state grants for undergraduate students nationwide totaled $10.1 billion in the 2014–15 academic year. This amount was compared to $46.2 billion in federal grants and $96.0 billion in federal loans. The single-largest source of financial aid in the U.S. is the Federal Pell Grant program, which is administered by the U.S. Department of Education. Other sources of support for undergraduates include federal tax credits ($18.2 billion), institutional grants ($50.1 billion), private and employer grants ($16.8 billion), and nonfederal loans ($10.1 billion). **Figure 1** shows that state grants made up approximately 4.1 percent of all student aid in the U.S., compared to the 64.8 percent made up by total federal aid.

FIGURE 1
TOTAL STUDENT AID IN THE UNITED STATES BY SOURCE
ACADEMIC YEAR 2014–15



SOURCE: The College Board.

FINANCIAL AID AWARD PROCESS

To determine their eligibility for the Pell Grant and other federal aid programs, students are required to submit the Free Application for Federal Student Aid (FAFSA) to the U.S. Department of Education. This form is used to calculate a student's expected family contribution (EFC). The FAFSA is also the basis for determining eligibility for nonfederal aid programs. Institutions also use the EFC to determine eligibility for need-based state and institutional aid programs.

FINANCIAL AID IN TEXAS

THECB oversees most of the state's financial aid programs. For these programs, including TEXAS Grants and Tuition Equalization Grants (TEG), the Legislature appropriates state financial aid funds to THECB. THECB then allocates these funds to institutions of higher education. A different allocation methodology is used for each financial aid program. To guarantee transparency in THECB's allocation methodologies, the Eighty-third Legislature, Regular Session, 2013, passed Senate Bill 215, the agency's Sunset legislation. Pursuant to Senate Bill 215, THECB is required to engage in negotiated rule making to adopt rules for developing allocation methodologies to distribute funds among institutions, including financial aid or other trusteed funds that the agency administers. In addition to the programs that THECB administers, institutions grant institutional aid through funds supported by tuition or other resources.

Institutions have substantial discretion to provide financial aid to students, within the parameters established pursuant to state law and agency rules. This discretion enables the institutions to assemble aid packages with the goal of attracting diverse classes of students. State grant award amounts are determined based on the number of students applying and the availability of funds. For TEXAS Grants, and most other state aid programs, the number of eligible students typically exceeds available funding.

Institutions calculate a student's cost of attendance, factoring in tuition and fees, books, supplies, room and board, and other factors. Institutions rely on an applicant's EFC to determine eligibility for federal and state aid programs. University financial aid officials determine a student's financial aid award by determining the student's unmet need. Unmet need is calculated by determining the student's cost of attendance and then subtracting the student's EFC. Unmet need can be met by using a combination of merit-based scholarships, grant aid (from federal, state, or other sources), federal loans, and tuition exemptions and fee waivers.

In July 2015, THECB released a new strategic plan, 60x30TX, which is intended to guide the agency's work through 2030. THECB indicates in the plan the importance of maintaining a well-trained workforce to maintain a strong state economy. The plan sets forth THECB's strategy for the role higher education will play in the Texas economy's ability to remain globally competitive.

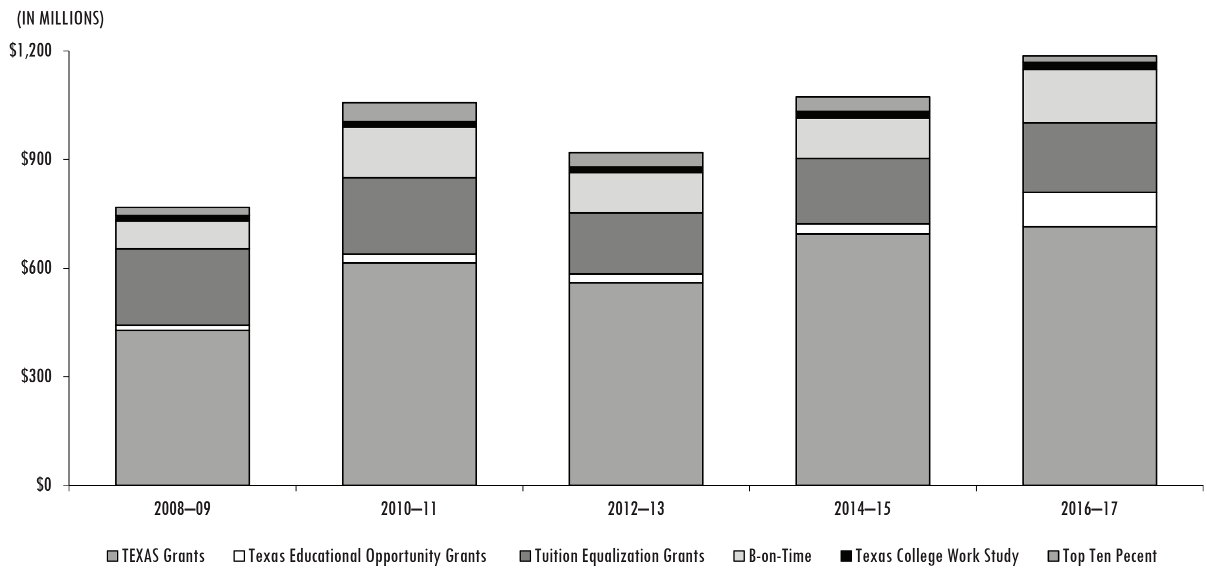
The strategic plan establishes a goal for at least 60.0 percent of Texans ages 25 to 34 to have a certificate or degree by 2030. Other goals in 60x30TX include improving college completion, linking degree and certificate programs with the attainment of marketable skills, and minimizing student debt. The plan identifies several strategies to attain these goals, including promoting college attainment to high school students, developing new curriculum delivery systems, fully funding financial aid programs for eligible students, and developing methods to speed up degree completion.

TRENDS IN STATE FINANCIAL AID FUNDING

The Eighty-fourth Legislature, General Appropriations Act (GAA), 2016–17 Biennium, Article III, THECB, Goal B, Close the Gaps by Improving Affordability, includes the state's financial aid programs. This goal is aligned with the agency's broader Closing the Gaps by 2015 strategic plan. Texas began providing financial aid to needy students in 1973, when TEG, the state's first financial aid program, was established. Additional programs were established in subsequent years, including TEXAS Grants in 1999. Beginning in the 2008–09 biennium, TEXAS Grants, Texas Educational Opportunity Grants (TEOG, formerly known as TEXAS Grants II), College Work Study, the B-On-Time programs, and TEG were funded in the GAA within THECB's Student Financial Aid Program strategy, with a rider specifying the level of funding for each financial aid program.

The Legislature increased funding for these programs from the 2008–09 to the 2010–11 biennia. However, in consideration of the state's fiscal condition, the Legislature reduced funding for financial aid for the 2012–13 biennium. Several smaller aid programs have received no funding since the 2010–11 biennium, although they have not been repealed in statute. The primary programs—TEXAS Grants, TEOG, TEG, Texas B-On-Time loan program, Top Ten Percent Scholarship, and Texas College Work Study—also received reduced funding for the 2012–13 biennium. **Figure 2** shows funding trends for the six largest financial aid programs administered by THECB from the 2008–09 to the 2016–17 biennia. By the 2016–17

FIGURE 2
ALL FUNDS APPROPRIATIONS FOR MAJOR TEXAS FINANCIAL AID AWARD PROGRAMS, 2008–09 TO 2016–17 BIENNIA



NOTES:
(1) Before the 2016–17 biennium, some funding for community college and state technical college grants was included in Towards EXcellence, Access, and Success (TEXAS) Grant appropriations.
(2) Beginning in the 2016–17 biennium, TEXAS Grants included funding for only four-year, undergraduate students, and funding for community and technical college students was moved into Texas Educational Opportunity Grants.
SOURCE: Legislative Budget Board.

biennium, funding for financial aid programs exceeded the previous funding peak in the 2010–11 biennium.

TEXAS GRANT PROGRAM

The TEXAS Grant Program receives the most state appropriations of any state financial aid program. The program was established by the Seventy-sixth Legislature, 1999, to facilitate access to higher education for students with financial need. Texas residents that enroll in public institutions offering baccalaureate degrees apply for TEXAS Grants when they complete and submit the FAFSA or the Texas Application for State Financial Aid (TASFA).

The Legislature appropriated approximately $715.0 million in All Funds for TEXAS Grants in the 2016–17 biennium. For the 2016–17 biennium, of the five largest undergraduate financial aid programs THECB administers, 65.0 percent of appropriations were for TEXAS Grants.

According to the program's performance measures in the 2016–17 GAA, this level of funding is intended to provide grants to 71,500 students in fiscal years 2016 and 2017. Based on these performance measures, the target four-year graduation rate for recipients is 15.7 percent, and the six-year graduation rate is 41.0 percent. For the 2013–14 academic year, 87,341 students received TEXAS Grants awards.

To receive a TEXAS Grants award, students must enroll in three-fourths of a full course load, or nine semester credit hours (SCH), complete at least 24 SCH per academic year, and maintain a grade point average of 2.5 on a 4.0 scale. The maximum award amount for TEXAS Grants is defined by the Texas Education Code, Section 56.307, as the average statewide amount of tuition and fees that a full-time baccalaureate degree student would be charged at general academic institutions in the state in a semester. In the 2015–16 academic year, for students at public four-year institutions, this amount was $8,480. The amount can be prorated so that the amount of aid does not exceed the student's need as determined via the FAFSA.

Eligibility typically has exceeded available state funding. Therefore, THECB established a target award amount to encourage institutions to spread limited funding across as many students as possible. The target award amount for the 2015–16 academic year was $5,000 for students at public, four-year institutions.

By statute, applicants with an expected family contribution (EFC) of less than 60.0 percent of the average statewide amount of tuition and required fees ($5,088) are prioritized for initial TEXAS Grant awards. In addition to this requirement, Senate Bill 215, Eighty-third Legislature, Regular Session, 2013, established a priority model intended to direct TEXAS Grants to high-achieving, high-need students and align the program with the state's goals of increasing college completion and success. As of the 2013–14 academic year, institutions must give additional priority to eligible students who have demonstrated strong potential for college success during their high school careers. Students who meet certain academic requirements, such as graduating from high school with a Distinguished Achievement diploma or enrolling within 12 months of earning an associate's degree in Texas, are prioritized for initial awards.

The allocation methodology for TEXAS Grants also prioritizes renewal allocations, so that students who received awards in a previous year continue to receive awards as long as they are eligible. THECB uses the historical number of initial-year and renewal-year recipients of TEXAS Grant awards at each institution and the target award amount to calculate the amount of funds for renewal allocations. To calculate the allocation for initial awards at an institution, THECB uses the institution's historical share of entering students identified as Texas residents who:

- enrolled in at least three-fourths of a full-time course load; and
- had an EFC of less than or equal to the cap established for the academic year.

To this amount, THECB adds the institution's share of initial-year TEXAS Grants recipients who:

- recently completed an associate's degree; or
- previously received an award through TEOG, a financial aid program available to students enrolled in community colleges, in fall 2014 or later.

TUITION EQUALIZATION GRANT PROGRAM

The Tuition Equalization Grant program (TEG), established by the Sixty-third Legislature, Regular Session, 1973, is a financial aid program that is available only for students at private, nonprofit institutions of higher education in Texas. The program provides grant aid to students who demonstrate financial need and are Texas residents or are nonresident National Merit Scholarship Program Finalists that are eligible to pay resident tuition.

Among state aid programs available to students at four-year institutions, TEG received the second-highest level of funding in the 2016–17 biennium. To be eligible for a TEG, a student must enroll in a degree plan leading to a first associate, baccalaureate, master, professional, or doctoral degree at a private or independent institution.

The Legislature appropriated $192.3 million in General Revenue Funds to THECB for TEG for the 2016–17 biennium, a 6.8 percent increase from the 2014–15 biennium. According to the program's performance measures in the 2016–17 GAA, the program has a goal that 56.2 percent of TEG recipients are minority students in fiscal years 2016 and 2017. Based on the program's performance measures, the target four-year graduation rate for TEG recipients is 37.0 percent. For the 2013–14 academic year, 27,089 students received a TEG.

Unlike TEXAS Grants, initial TEG awards are not prioritized for students demonstrating high academic achievement or lower-than-average EFC. Additionally, initial TEG awards may be received in an upper-class year, regardless of receipt in a student's first year. In contrast, a student must receive a TEXAS Grant award during the student's first year to be eligible for it in upper-class years. TEG renewal award recipients must maintain at least a 2.5 grade point average and complete at least 24 semester hours per academic year, with at least a 75.0 percent completion rate. Unlike TEXAS Grants, TEG awards may be used toward advanced degrees, such as graduate or professional degrees.

EFFECTIVE FINANCIAL AID PROGRAM MODELS

Research has shown that financial aid, and grant aid in particular, can increase college enrollment and improve access for low-income students. Studies have shown that discounting the cost of tuition increases college attendance rates. One study found that the U.S. Congress' elimination of a federal program that had paid the college costs of the children of deceased, disabled, or retired Social Security beneficiaries reduced college attendance among the eligible population by more than one-third. Several other studies evaluating federal and state aid programs have found that increasing grant aid leads to higher rates of college enrollment.

In addition to facilitating access for low-income students, effectively structured and administered financial aid programs can also improve outcomes by increasing college persistence and completion rates. Multiple studies have found that financial aid programs that link aid to specific GPA or credit accumulation requirements improve student performance and increase completion rates. Specifically, researchers have found that increasing GPA and credit accumulation requirements can have a positive effect on student achievement, but grant programs with weak or no incentives are less likely to yield student success. The nonprofit research organization MDRC published a multiyear research project in 2012 that evaluated the effect of performance-based scholarship programs in six states (Ohio, New Mexico, New York, California, Arizona, and Florida). These programs tied aid to the current and future performance of grantees, rather than on previous accomplishments, such as high school GPA. The intent of these programs was to increase students' focus on their studies, thereby leading them to perform better in their classes and accumulate credit more rapidly. GPA and credit accumulation are positively correlated with persistence and graduation; therefore, the researchers' hypothesis was that performance benchmarks would improve these outcomes.

Although some characteristics of the six programs varied, each program had specific benchmarks for GPA and credit accumulation for students to retain their scholarships. The study controlled for differences in the population of students. The researchers concluded that performance-based programs consistently increased the number of credits earned by students who received funding through the programs. The study found that the performance-based programs also led to increased persistence, because students in the program were less likely to quit attending the institutions before completing their degrees. The New Mexico program, which required students at four-year institutions to enroll in 15 credits per semester and maintain a 2.0 GPA or better, found that, in addition to these outcomes, students also completed their degrees with lower levels of student loan debt.

Increased timely completion reduces the amount of student loan debt incurred, including for those who receive financial aid. According to the College Board, among students who completed their bachelor's degrees during the 2011–12 academic year, 47.0 percent of those who graduated within four years finished their degrees with less than $10,000 in cumulative student loan debt. Of those who graduated in six years, 36.0 percent finished with less than $10,000 in debt. Furthermore, 19.0 percent of those who graduated in four years finished with more than $40,000 in debt, and 33.0 percent of those who graduated in six years accumulated more than $40,000 in debt.

EFFECTS ON TEXAS GRANT PROGRAM MODEL

By law, undergraduate TEXAS Grants and TEG recipients must maintain a GPA of at least 2.5 and complete 24 semester credit hours each year to be eligible for a renewal grant. Considering the research that shows the benefits to students and to the state of timely completion, the Legislature should consider revising eligibility requirements to encourage students' behavior that would be likely to facilitate persistence and completion.

As shown in **Figure 3**, undergraduate TEXAS Grants recipients who achieve higher GPAs during their first years have a much higher six-year graduation rate than recipients with lower average GPAs. The figure compares the six-year graduation rate for TEXAS Grants recipients who entered four-year institutions during the 2008–09 academic year.

FIGURE 3
SIX-YEAR GRADUATION RATE FOR UNDERGRADUATE TEXAS GRANTS RECIPIENTS BY FIRST-YEAR GPA ACADEMIC YEAR 2008–09

ENTERING RECIPIENTS	STUDENTS	GRADUATION RATE
GPA less than 2.5 after first year	7,638	29.0%
GPA greater than or equal to 2.5 after first year	8,071	76.8%

NOTE: TEXAS Grants = Towards EXcellence, Access, and Success Grant Program; GPA = grade point average.
SOURCES: Legislative Budget Board; Texas Higher Education Coordinating Board.

Of the 7,638 undergraduate TEXAS Grants recipients who finished their first years with GPAs less than 2.5 in the 2008–09 academic year, 29.0 percent graduated within six years. Of the 8,071 students who finished their first years with GPAs greater than 2.5, a significantly higher proportion, 76.8 percent, graduated within six years. The THECB prioritization model might improve outcomes for TEXAS Grants recipients by directing aid to students with need who are most likely to succeed. However, due to the fact that the priority model was introduced in the 2013–14 academic year, and considering the time required to evaluate graduation rates, additional time is required to determine the effectiveness of the priority model and whether GPA requirements should be revised.

Texas data also supports the finding that financial aid recipients who make slower progress in accumulating credit hours have a lower six-year graduation rate. As shown in **Figure 4**, the 14,940 undergraduate TEXAS Grants recipients who entered in fall 2008 and who enrolled in 12 or

FIGURE 4
SIX-YEAR GRADUATION RATE OF UNDERGRADUATE TEXAS GRANTS RECIPIENTS BY FRESHMAN YEAR CREDIT HOUR ENROLLMENT, ACADEMIC YEAR 2008–09

UNDERGRADUATES	STUDENTS	GRADUATION RATE
All Entering Students	64,504	59.3%
Entering TEXAS Grants Recipients enrolled in 12 or more hours each semester	14,940	55.3%
Entering TEXAS Grants Recipients enrolled in less than 12 hours in either semester	845	17.9%

NOTE: TEXAS Grants = Towards EXcellence, Access, and Success Grants Program.
SOURCES: Legislative Budget Board; Texas Higher Education Coordinating Board.

more semester credit hours in each of their first two semesters had a six-year graduation rate of 55.3 percent. This rate was 4.0 percent lower than the six-year graduation rate of 59.3 percent for all entering students. However, the 845 TEXAS Grants recipients who enrolled in 12 or fewer semester credit hours in either of their first two semesters had a six-year graduation rate of 17.9 percent. This difference shows that the graduation rate of TEXAS Grants recipients who were enrolled full-time was close to the average rate for all students in the state; however, the rate for students who were not enrolled full-time was lower. Requiring TEXAS Grants recipients to enroll full-time would accomplish two goals. It would encourage some students to enroll in more credit hours, thereby increasing the likelihood that they graduate in a timely fashion. Additionally, funds that might have been awarded to students who were unwilling or unable to enroll full-time could instead be redirected to other students who have a greater likelihood of timely completion.

Option 1 would amend the Texas Education Code, Sections 56.305(e-1) and 61.2251(c), to require TEXAS Grants and TEG recipients to complete 30 semester credit hours each academic year to be eligible for renewal awards. Most degree programs in the state require 120 credit hours for completion, and a requirement of 30 credit hours per academic year would encourage students to maintain a pace necessary to graduate within four years. Students should be eligible to receive funding during summer semesters to help meet this requirement.

For TEXAS Grants and TEG recipients, statute requires each state institution to adopt a policy enabling students to continue receiving awards upon showing hardship or good cause. This policy must include, but is not limited to, a student who has a debilitating illness or condition or who is responsible for the care of a sick, injured, or needy person. This allowance would continue, enabling a student who encountered an unexpected personal or familial hardship to petition the institution and retain the award.

Option 1 would not affect the level of appropriation for either of these programs. It is anticipated that such a change would encourage some aid recipients to increase their course loads to maintain aid eligibility. Although this option would not affect the level of appropriation for either program, it may affect the distribution of funds for the program. Students who have received a TEXAS Grants award or TEG award pursuant to existing statute would continue receiving the award in accordance with previous eligibility requirements, and would not be subject to this option. When students become ineligible for continuing awards, such funds may be made available for initial award aid to entering students.

Although TEXAS Grants and TEG both provide financial aid grants to undergraduate students, TEG is unique in that it also allows institutions to provide funding to graduate students. In the 2014–15 academic year, 3,170 eligible graduate students were awarded a TEG.

The statutory intent of TEG is to "provide the maximum possible utilization of existing educational resources and facilities within the state." However, existing TEG policies that provide for the awarding of aid to graduate students are not efficiently aligned with THECB's strategic 60x30TX goals intended to increase the percentage of Texans ages 25 to 34 that have earned a degree or certificate to 60.0 percent by 2030.

To expand access and improve outcomes for undergraduate students in the state, Option 2 would amend statute to make TEG available only to undergraduate students. This change would align with the state's higher education goals by ensuring that the greatest number of Texans have the opportunity to attain a college degree. Renewal awards would continue for students who received funding in accordance with existing law.

Options 1 and 2 would strengthen eligibility requirements for TEXAS Grants and TEG. Additionally, other financial aid programs are available for Texas students.

OTHER STATE FINANCIAL AID PROGRAMS

In addition to the federal aid programs, institutional aid programs, and student loan programs, the following programs provide financial aid to students in Texas.

TEXAS COLLEGE WORK STUDY

Since 1989, the Texas College Work Study program has offered students at public, private, or independent institutions of higher education financial assistance to meet the costs of attending approved institutions by providing job opportunities. Jobs provided through the College Work Study program are partially funded by the state, with matching funds from employers. Students must be Texas residents, demonstrate financial need, and enroll in at least six semester credit hours. Beginning in the 2016–17 academic year, institutions are required to work with community businesses and employers to ensure that from 20.0 percent to 50.0 percent of work-study positions are located off-campus.

The Legislature appropriated $18.8 million in General Revenue Funds to THECB for the 2016–17 biennium for the Texas College Work Study program, the same level of appropriation the program received in the 2014–15 biennium. Based on the program's key performance measures in the 2016–17 GAA, 0.57 percent of students receiving financial aid will be employed through Texas College Work Study in fiscal years 2016 and 2017. In the 2013–14 academic year, 4,763 students participated in the Texas College Work Study program.

TEXAS ARMED SERVICES SCHOLARSHIP PROGRAM

The Legislature established the Texas Armed Services Scholarship Program in 2009, to encourage Texas students to enter the Texas Army National Guard, the Texas Air National Guard, the Texas State Guard, the U.S. Coast Guard, or the U.S. Merchant Marine, or to become commissioned officers in any branch of the U.S. armed services. To receive an award from this program, an applicant must be appointed by the Governor, Lieutenant Governor, a state senator, or a state representative and must enter into an agreement with THECB to satisfy training and service requirements. The student may enroll in a public or private institution of higher education. If the agreement requirements are not met, the scholarship converts to a loan. Recipients must maintain satisfactory academic progress and be in good standing in a Reserve Officer Training Corps (ROTC) program while enrolled. The Legislature appropriated $5.3 million in General Revenue Funds to THECB in the 2016–17 biennium for the program, a decrease of $1.8 million from the 2014–15 biennium. Any unexpended balances are transferred to TEXAS Grants.

COLLEGE ACCESS LOAN PROGRAM

The College Access Loan Program (CAL) is also administered by THECB. CAL is intended to provide alternative educational loans to help Texas residents meet the cost of attendance for at least half-time enrollment in a course of study leading to a certificate, an associate's, bachelor's, graduate, or higher degree, or an approved alternative educator certification program. The loan interest is a fixed annual rate (4.5 percent for fiscal year 2016) determined by the Commissioner of Higher Education. Repayment begins after a six-month grace period that begins when a student's enrollment decreases to less than half-time. Repayment is required within 20 years. Loans are made through bond proceeds and repayments. For the 2013–14 academic year, $98.9 million was disbursed to 7,493 students through CAL.

B-ON-TIME

The Seventy-eighth Legislature, 2003, passed legislation that established the Texas B-On-Time loan program. The goal of this program is to provide middle-income families that do not qualify for financial aid with an affordable way to pay for college for students at public, private, or independent institutions in Texas, including in junior or technical colleges. B-On-Time provides 0.0 percent interest loans to eligible resident students. Students with demonstrated financial need are prioritized if funding is insufficient to meet demand. For the 2013–14 academic year, 7,651 students received awards through the B-On-Time program.

B-On-Time loans are forgiven if a recipient graduates within four or five years, depending on program of study, with at least a 3.0 grade point average on a 4.0 scale. The Sunset Advisory Commission's 2013 review of THECB found that more than $32 million appropriated for the program and allocated to institutions in fiscal year 2011 was not spent, and that the program loans had a high default rate. House Bill 700, Eighty-fourth Legislature, 2015, repealed the program. Appropriations for B-On-Time for the 2016–17 biennium were $148.0 million in All Funds. Appropriations were provided to fund award renewals only. These appropriations include $19.2 million in General Revenue Funds for private institutions, a decrease of $12.2 million in General Revenue Funds compared to the 2014–15 biennium. This included an appropriation of $65.3 million in unexpended General Revenue–Dedicated Funds that were appropriated to public institutions of higher education in accordance with a formula adopted by THECB rule. The appropriation also includes $63.4 million in General

Revenue–Dedicated Funds to support renewal awards. The program will be fully phased out by 2020.

House Bill 700, Eighty-fourth Legislature, 2015, also changed the percentage of designated tuition each institution must set aside for financial assistance from 20.0 percent to 15.0 percent. Pursuant to previous law, 5.0 percent of the 20.0 percent set-aside was deposited into the General Revenue–Dedicated Texas B-On-Time Student Loan Account. House Bill 700 repealed this requirement.

TOP TEN PERCENT SCHOLARSHIP

The Top Ten Percent Scholarship was established by the Eighty-first Legislature, GAA, 2010–11 Biennium. For the 2016–17 biennium, the program is subject to the 2016–17 GAA, Article III, THECB, Rider 32. The program was implemented by agency rules as an aid program for Texas students who graduate in the top 10.0 percent of their high school classes and who demonstrate financial need.

Scholarships were first awarded for the 2010–11 academic year. Eligible institutions include public technical institutes, public junior colleges, public senior colleges or universities, or medical or dental units. Academic requirements for the Top Ten Percent Scholarship are more stringent than for other state financial aid programs, and require a full course load of 12 semester credit hours, completion of three-fourths of attempted courses, at least 30 semester credit hours per academic year, and maintenance of at least a 3.25 grade point average.

As of the 2016–17 biennium, the Top Ten Percent Scholarship funds only renewal awards. Historical funding levels have not been sufficient to provide the full grant award amount of $2,000 to each eligible student. For the 2016–17 biennium, the Legislature appropriated $18.2 million in General Revenue Funds to THECB for the Top Ten Percent Scholarship, a $21.4 million decrease from the 2014–15 biennium. The 2016–17 biennial appropriation is estimated to support 15,185 students each year of the 2016–17 biennium with a $600 award amount. The Legislature appropriated the $21.4 million associated with the reduction in this program to TEXAS Grants for the 2016–17 biennium.

OTHER AID PROGRAMS

The Educational Aide Exemption ($1.5 million in General Revenue Funds for the 2016–17 biennium), Engineering Recruitment ($0.5 million in General Revenue Funds), and License Plate Scholarship ($0.2 million in Other Funds) programs are available to select students. Such students qualify because of concurrent work experience, focus on a specified field, or because the student attends an institution that has received donations to the state's License Plate Trust Fund (Other Funds).

THECB has loan repayment programs that include: Physicians Education ($33.8 million in General Revenue–Dedicated Funds for the 2016–17 biennium); Teach for Texas ($4.4 million in General Revenue Funds); Math and Science Scholars ($2.6 million in General Revenue Funds); and Border Faculty ($0.4 million in General Revenue Funds). These programs' funds are awarded to eligible individuals only after they graduate and begin careers in the corresponding areas.

THECB also administers TEOG, which is for students enrolled in public community colleges and state and technical colleges. The Legislature appropriated $94.0 million in General Revenue Funds to THECB for the 2016–17 biennium for this program, an increase of $66.2 million above the amount appropriated for the 2014–15 biennium. This increase was partially attributable to funding for two-year students that previously had been included in TEXAS Grants being moved into TEOG beginning in the 2016–17 biennium.

TEXAS PUBLIC EDUCATIONAL GRANT PROGRAM

Each institution administers the Texas Public Educational Grant (TPEG) program, which represents a significant portion of total state financial aid funding. TPEG grants are funded by tuition set-asides as provided in the Texas Education Code, Section 56.033. The Legislature determines the amount of tuition to be set aside biennially for TPEG in the GAA. Institutions set aside this defined percentage of tuition from resident and nonresident students, and the Legislature appropriates the funding to general academic teaching institutions. The Legislature specified the amount of tuition to be set aside for the 2016–17 biennium is 15.0 percent of each resident student's tuition charge, pursuant to the Texas Education Code, Section 54.051, as provided by the GAA for the applicable academic year. Institutions must use TPEG to provide need-based grants to Texas residents at public institutions of higher education. Statute does not provide specific academic requirements, but the institutions' governing boards may establish guidelines to determine eligibility requirements beyond demonstrating financial need. The total appropriations for TPEG across 37 public universities equaled $232.3 million in General Revenue–Dedicated Funds for the 2016–17 biennium, an increase of $11.5 million, or 5.2

percent, from the 2014–15 biennium. TPEG was awarded to 121,604 students for the 2013–14 academic year, including 67,444 students at public universities.

FISCAL IMPACT OF THE OPTIONS

These options would not have a fiscal impact to the state. Any funds that were made available would be reallocated within the affected financial aid programs. Option 1 could result in a decrease in renewal awards, if some students do not meet the heightened eligibility requirement of 30 semester credit hours. This result would provide additional funds that could be made available for initial awards within the programs. Option 2 would eliminate the practice of providing TEG awards to graduate students and would increase the number of awards for eligible undergraduate students.

The House introduced 2018–19 General Appropriations Bill does not include adjustments as a result of these options.

OVERVIEW OF ISSUES IMPACTING FINANCIAL AID AWARD NOTIFICATION

Students in the U.S. must apply to be eligible for most types of financial aid at four-year institutions. The Free Application for Federal Student Aid is the primary basis for determining eligibility for most need-based aid. Institutions use information derived from this application to determine eligibility for state financial aid programs. After an institution has made college admittance and financial aid eligibility determinations, the institution sends students financial aid award letters, which typically are sent at the same time as admission offer letters. The average published tuition and fees at U.S. public four-year colleges for full-time, in-state, undergraduate students in 2015 was $9,410 per year. However, net tuition and fees after applying financial aid and other awards was $3,980, less than half the published amount.

In Texas, most state financial aid programs are administered by the Texas Higher Education Coordinating Board, in conjunction with institutions of higher education. For the 2013–14 academic year, more than 878,000 students, representing 60.5 percent of all students enrolled in Texas public and independent nonprofit colleges and universities, received financial aid.

Research has found that the complexity of the financial aid application and award process can deter students from applying to and attending college. A lack of timely information can prevent early notification of financial aid awards to students and result in misestimates of financial aid on behalf of institutions. These misestimates could affect a student's decision about enrollment.

In September 2015, the U.S. Department of Education adopted new rules to address problems with the financial aid application and award process. The new federal rules will allow students to submit the Free Application for Federal Student Aid earlier in the year, with the intent of providing students with early, accurate information about the true cost of college.

Due to the timing of the state's biennial appropriations process, the Texas Higher Education Coordinating Board is unable to provide institutions with information about exact funding levels for state financial aid programs until after award letters have been sent to prospective students. This factor is expected to limit the effectiveness of new federal rules governing the Free Application for Federal Student Aid. Prefunding an additional fiscal year's appropriation for state financial aid is an option that could provide students with complete and accurate information on which to base enrollment decisions, although it would result in a substantial one-time cost.

FACTS AND FINDINGS

- ♦ Timely, accurate financial aid award information enables students to understand college costs and make informed decisions about college enrollment. In an attempt to provide students with financial aid award information early in their college decision processes, recent federal policy changes will enable students to complete and submit the federal Free Application for Federal Student Aid earlier in the process.
- ♦ Barriers to early notification at the state level may limit the efficacy of the federal changes intended to provide financial aid award information earlier in the college decision process. Specifically, due to the timing of the state's appropriation process, institutions must estimate and extend financial aid offers before officials know how much state financial aid funding will be allocated to their institutions.
- ♦ Legislative Budget Board staff surveyed public university institutions and systems in Texas. Eighty-one percent reported that the timing of the allocation process limits their ability to provide award information to students early in the process.
- ♦ Institutions reported that the allocation process contributes to uncertainty regarding financial aid award amounts for students. If institutions underestimate the amount of financial aid funding they will receive, they will provide fewer students with financial aid or offer lower award amounts. This could lead some students not to enroll in college. On the other hand, if institutions overestimate the amount of funding, they may be forced to reduce financial aid to students after they have chosen to enroll.

DISCUSSION

Many students who attend institutions of higher education in the U.S. receive financial aid. For academic year 2013–14, 878,836 students in Texas who applied for need-based financial aid received some type of aid. This amount represented 60.5 percent of all students enrolled in public and independent nonprofit colleges and universities that year. Aid can come in the form of grants, tuition and fee waivers, or loans that must be repaid. Financial aid can be provided by the federal government, the state of Texas, institutions of higher education, or other private or nonprofit sources. Students must apply to be eligible for most types of financial aid. The Free Application for Federal Student Aid (FAFSA) is the primary basis for determining eligibility for the federal Pell Grant and most other need-based aid (including nonfederal aid) in the U.S. Students planning to attend college after they graduate high school submit the FAFSA to the U.S. Department of Education (ED) during their grade 12 school years. Previously, students have been able to submit the FAFSA beginning in January; however, new federal rules will enable students to submit the application as early as October.

Although college application deadlines vary, institutions typically begin to receive applications for acceptance in fall of the school year preceding students' first years of enrollment. Some institutions have priority application deadlines in December or March, and others accept applications throughout the summer months. The college application period overlaps with the FAFSA application period. Beginning in 2016, students are able to submit FAFSAs as early as October 1 of the grade 12 school year. Most institutions in Texas require that the FAFSA be completed no later than mid-March. ED typically requires three to five days to process an application.

After ED processes the FAFSA, the agency sends each student a Student Aid Report (SAR) for each submission. This report includes the student's Expected Family Contribution (EFC), which is used to determine eligibility for federal and nonfederal student aid. A copy of the student's SAR and the student's EFC information is also sent to each institution the student listed on his or her FAFSA. Institutions use the EFC to determine a student's unmet need, which is calculated by determining the student's cost of attendance and then subtracting the student's EFC. Unmet need can be met by a combination of merit-based aid, grant aid (from federal, state, or other sources), federal loans, private loans, and tuition exemptions and fee waivers. After an institution has made college admittance and financial aid eligibility determinations, the institution sends financial aid award letters, which typically are sent at the same time as admission offer letters.

IMPORTANCE OF TIMELY AND ACCURATE FINANCIAL AID INFORMATION

In 2005, ED's Advisory Committee on Student Financial Assistance recommended that the federal government take steps to enable students to apply for financial aid earlier than January. The intent of this proposal was to assist students to determine the true cost of attending college by taking available financial aid into account and make more informed decisions. This determination would be accomplished by enabling students to incorporate information about their eligibility for financial aid into the college planning process earlier during their grade 12 school year (for those students enrolling in college directly after high school).

In response to these and other recommendations, the federal government has taken steps to simplify the FAFSA application process and speed up award notifications. In September 2015, ED adopted new rules governing the administration of the FAFSA.

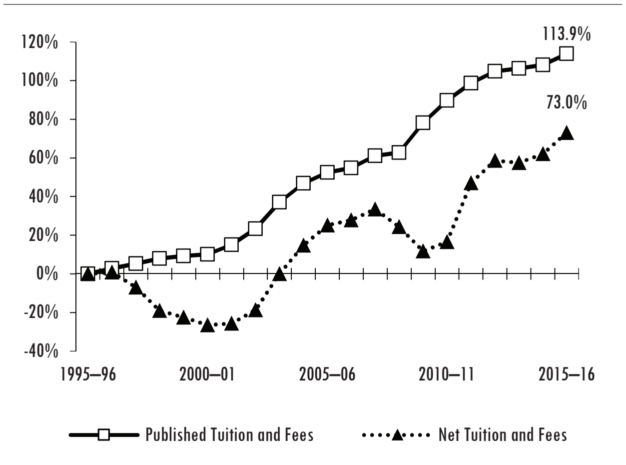
These new rules are scheduled to go into effect for students planning to attend college in fall 2017. In accordance with these rules, families will be able to use federal income tax data that have been filed from two years prior to complete the FAFSA. Before the rule change, families could not complete the FAFSA until they had filed their federal income taxes with the U.S. Internal Revenue Service (IRS) for the preceding year. ED did not accept FAFSA applications until January, and most students submitted the FAFSA in February or March. This timing meant that SARs were not distributed until late March or later, and financial aid award letters were sent to students later than that.

The new ability to use "prior-prior" federal income tax return data will enable families to complete the FAFSA as early as October of students' grade 12 school year. Using the example of a student planning to attend college in fall 2017, the previous rules would have required the student's family to use 2016 federal income tax return data. A family typically would file these returns from January to April 2017. By using the family's 2015 tax return data, as authorized by the revised rules, the student's family will be able to submit that student's FAFSA in fall 2016. Additional procedural changes will enable families to electronically import their tax return data from the IRS systems into the FAFSA's online application, further simplifying the FAFSA process.

The intent of these federal rule changes is to enable faster FAFSA processing and earlier distribution of EFC calculations to families and institutions. In accordance with the new rules, students will be able to receive SARs as early as fall of the grade 12 school year, as students are readying applications to college. Institutions will also receive students' FAFSA information earlier, enabling institutions to distribute acceptance and award letters earlier in the year.

Before the federal rule change, students typically would not receive financial aid award information from institutions until April. This may pose unique challenges for low-income and first-generation college students. For many students, the published price of college tuition differs from the net price that students pay after financial aid awards are considered. For example, average published tuition and fees at U.S. public four-year colleges for full-time, in-state, undergraduate students in 2015 was $9,410 per year. However, net tuition and fees was $3,980, less than half the published amount. As shown in **Figure 1**, the published price for college tuition and fees has increased by 113.9 percent from academic years 1995–96 to 2015–16. During that time, the average net price increased at a lower rate of 73.0 percent.

FIGURE 1
PERCENTAGE CHANGE IN PUBLISHED TUITION AND FEES AND NET TUITION AND FEES IN U.S. PUBLIC FOUR-YEAR INSTITUTIONS, ACADEMIC YEARS 1995–96 TO 2015–16



SOURCE: The College Board.

Studies have found that students and their families are often intimidated by media reports that highlight increasing tuition without noting the distinction between published and net tuition and fees. As a result, families might overestimate the cost of higher education. For these reasons, until a student has received full information about financial aid award eligibility, such as the information included in the SAR, the student may not recognize that the actual costs of attendance could be lower than expected.

Early notification of financial aid to low-income students has several advantages. Studies have found that the early promise of financial aid increases college enrollment among underrepresented groups. Early notification would also provide families with more time to compare offers from various institutions, identify financial options, and save more money. Additionally, early notification would assist high school counselors and financial aid administrators to work with students to evaluate and decide on college admission offers. The federal FAFSA changes were intended to address these issues.

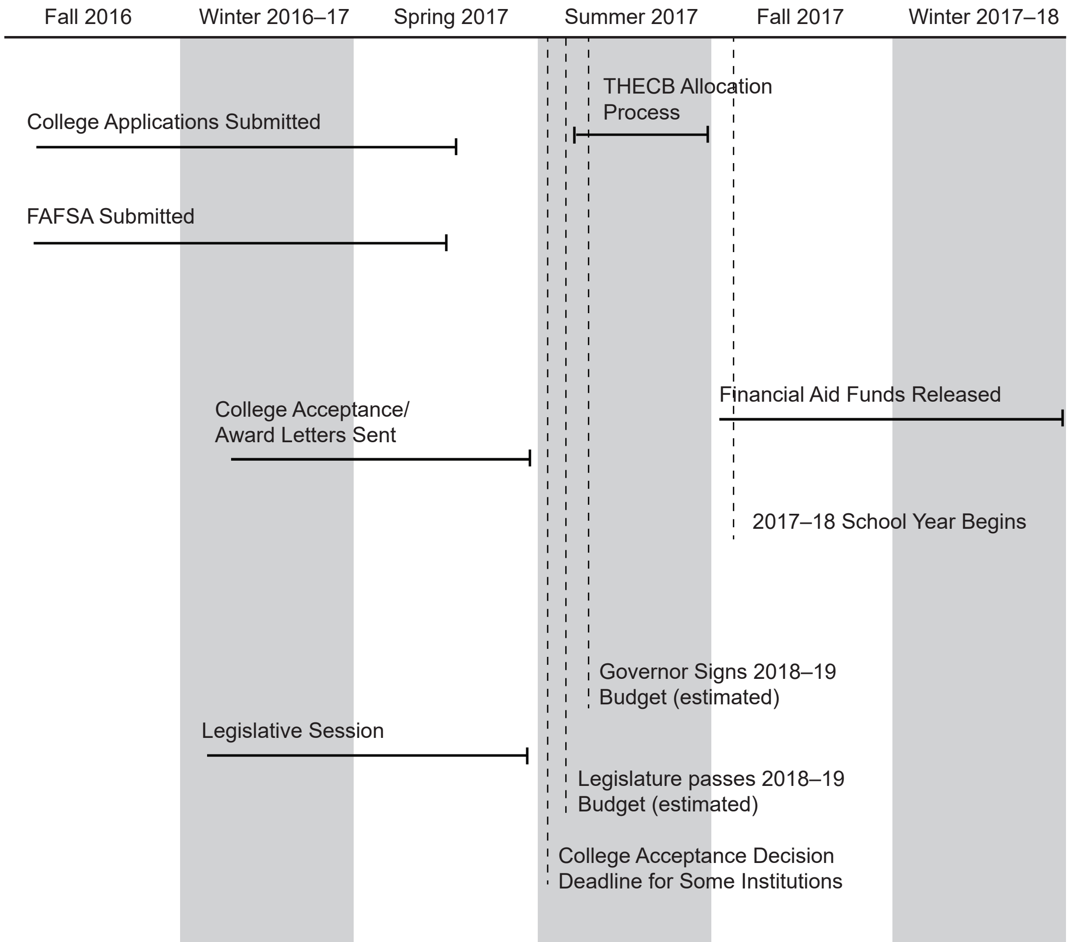
CHALLENGES IN TEXAS

Despite the federal reforms designed to speed up the financial aid application and award process, obstacles specific to Texas may limit the effectiveness of these recent changes. These barriers slow the process of distributing financial aid award notifications for Texas students.

One barrier identified by institutions is related to the timing of the state appropriations process, which is shown in **Figure 2**. The Texas Higher Education Coordinating Board (THECB) oversees most of the state's financial aid programs. The Legislature appropriates state financial aid funds to THECB. THECB then allocates these funds to institutions of higher education in accordance with agency rules. Typically, the state's biennial General Appropriations Act is passed in May of odd years and signed by the Governor in June. Allocations are determined from July to August after the bill has been signed, but before the next biennium begins. Institutions, with guidance from THECB, estimate potential funding and base financial aid packages on these funding levels. However, institutions do not know their exact allocations for state aid programs at the time they are assembling financial aid packages for applicants. This process occurs in fall and spring of the school year that precedes the student's first year of college enrollment. Institutions do not receive actual allocation amounts until the summer before the student's first year of enrollment.

If institutions underestimate the amount of financial aid funding they will receive, it is likely that they will provide fewer students with financial aid offers or offer lower award amounts than they could have provided. Award letters that

FIGURE 2
FINANCIAL AID AND THE APPROPRIATIONS PROCESS IN TEXAS, ACADEMIC YEARS 2016–17 AND 2017–18



NOTES:
(1) Dates are approximate.
(2) FAFSA = Free Application for Federal Student Aid; THECB = Texas Higher Education Coordinating Board.
SOURCE: Legislative Budget Board.

communicate a higher cost of enrollment could lead some students not to enroll in college. Likewise, if institutions overestimate the amount of funding, too much funding could be awarded. In these cases, institutions might be forced to reduce financial aid to students after they have chosen to enroll.

EFFECTS OF DELAYS ON INSTITUTIONS AND STUDENTS

In November 2015, Legislative Budget Board (LBB) staff surveyed Texas university systems and institutions about the federal FAFSA rule change. Officials were asked whether the changes would enable their financial aid offices to make award information available to students earlier in the college decision process. Of the 21 four-year institutions and university systems who responded to the survey, 17 (81.0 percent) indicated that even with the federal rule changes, the timing of the state's appropriation process and THECB's allocation process will limit their ability to issue complete and accurate financial aid award information early in students' grade 12 year of high school.

According to Midwestern State University, delays in the state allocation process require officials to either award state aid based on projected allocations or postpone the awarding of state aid altogether. In the latter scenario, the institution will send a revised award to students at a later date that reflects additional aid for state financial aid award programs. According to the institution, these delays and inaccuracies could deter students from enrolling or lead to confusion for students about award amounts.

Prairie View A&M University reported that the lack of timeliness in the allocation process hinders the institution's ability to make accurate financial aid awards to students early in the college decision process. The institution's financial aid officers provide preliminary awards to students, but these offers are not finalized until actual allocation amounts are received from THECB. Texas A&M University – Central Texas has a similar process by which officials provide preliminary offers that can change after allocation amounts are finalized. Thus, student award packages that are awarded early in the process may be inaccurate.

West Texas A&M University similarly stated the institution faces difficulty in awarding state aid before allocations have been finalized. According to Texas Southern University, having award amounts for state aid programs no later than December of each year would enable the institution to plan and communicate accurate award packages to students.

Texas Tech University stated that it has had to base award letters on institutional funding in place of state funding until allocations were available. According to the institution, this process can be confusing for students and parents and is administratively burdensome.

According to the University of Texas System, its institutions are prevented from issuing financial aid award information earlier in the application process due, in part, to delays in receiving financial aid allocation amounts from THECB. If THECB issues allocations in the fall, the UT System indicates that institutions could award financial aid in the fall, as soon as each student's FAFSA had been processed.

ENABLING EARLY FINANCIAL AID NOTIFICATION

To issue accurate award amounts to students early in the spring as intended by the federal rule change, institutions would have to know their allocation amounts for state financial aid programs in January, if not earlier. The Legislature could consider prefunding an additional fiscal year's appropriation for state financial aid. For example, if prefunding were to occur in the 2018–19 biennium, this would require increasing appropriations to THECB in the 2018–19 General Appropriations Bill to an amount sufficient to support state financial aid programs for fiscal year 2020, in addition to funding fiscal years 2018 and 2019.

Authorizing THECB to provide institutions with their financial aid allocations for academic year 2019–20 in fall of calendar year 2018 would enable institutions to begin evaluating and awarding aid as soon as students' FAFSAs are received. Students would benefit by receiving their awards and admissions letters earlier during their grade 12 years of high school (for those students enrolling in college directly after high school). Award amounts would also be less likely to change. Prefunding an additional fiscal year of state financial aid could be implemented in any future biennia.

Pursuant to the Eighty-fourth Legislature, General Appropriations Act (GAA), 2016–17 Biennium, Article IX, Section 4.02(b), funds appropriated to a state agency for grants may be distributed in subsequent fiscal years, provided that the funds have been awarded and treated as a binding encumbrance by the grantor agency before the end of the appropriation year. Pursuant to the Texas Constitution, Article 8, Section 6, appropriations can be made only for a term of two years. Therefore, financial aid funding for the third school year would have to be obligated within the biennium (i.e., no later than August 31, 2019, for the upcoming biennium).

The example described above would require the Eighty-fifth Legislature, 2017, to provide funding for state financial aid programs for three years, leading to an initial cost. The fiscal impact of prefunding financial aid programs for fiscal year 2020 in the 2018–19 General Appropriations Bill would depend on the level of funding for those programs as established by the Legislature. As an example, fiscal year 2017 appropriations to THECB for TEXAS Grants, Tuition Equalization Grants, Texas Educational Opportunity Grants, and College Work Study, was $510.0 million in All Funds. Assuming these appropriations are maintained, the inclusion of funding for academic year 2019–20 would represent a 50.0 percent increase in funding for these financial aid programs in the 2018–19 General Appropriations Bill from the 2016–17 biennial level, and would result in a cost of an additional $510.0 million in All Funds for fiscal year 2019.

The cost of funding an additional fiscal year of financial aid programs would occur only during the first biennium. Because this would be a one-time appropriation, the Legislature could choose to use available balances in General Revenue Funds or in Other Funds.

IMPROVE TRANSPARENCY AND OVERSIGHT OF THE DRIVER LICENSE IMPROVEMENT PLAN

The Department of Public Safety operates approximately 230 driver license offices across the state. Due to office closures and openings, the number of operating driver license offices changes frequently. The 2016–17 biennial appropriation for the agency's driver license function was $288.2 million in All Funds with an authorized staffing level of 2,103 full-time equivalent positions. The driver license function is one of the agency's largest divisions, second only to the Texas Highway Patrol.

The Eighty-second Legislature, Regular Session, passed legislation that established the Driver License Improvement Plan. The Legislature initially appropriated funds for the Department of Public Safety to establish six new mega centers to improve services and shorten wait times for driver license customers in and around the state's urban communities. In subsequent years, the agency has directed Driver License Improvement Plan funds to address needs and add service counters at mega center and regional driver license offices throughout the state.

In order to increase efficiency, the Department of Public Safety installed queuing systems to categorize customers by transaction type; implemented online scheduling for Class C and commercial license road tests in certain locations; remodeled existing facilities; shortened card delivery time; and installed self-service kiosks. However, these efforts have yielded mixed results and average wait times at driver license offices have increased from fiscal years 2013 to 2015. By prohibiting fund transfers out of the Driver License Improvement Plan and requiring the Department of Public Safety to report key performance measures, the Texas Legislature could improve transparency and oversight of the plan.

FACTS AND FINDINGS

- ♦ From fiscal years 2013 to 2015, the Department of Public Safety opened eight mega centers.
- ♦ From fiscal years 2013 to 2015, average wait times for an original non-commercial driver license at mega centers rose from 36 minutes to 65 minutes, which represents an 80.5 percent increase.
- ♦ Customer service assessments of driver license offices conducted by the University of Texas at Austin show the determining factor in customer perception of service by the Driver License Division is wait times.
- ♦ According to The University of Texas 2015 customer service assessment, customer satisfaction ratings at smaller driver license offices exceeded those at nearby mega centers in certain regions of the state. This difference is most likely attributable to the higher customer volume experienced at mega centers relative to driver license offices. From fiscal years 2011 to 2015, certain driver license offices experienced a reduction in transactions in excess of 50 percent.
- ♦ The Department of Public Safety maintains two separate databases for documenting wait times and transactions. The agency reported the data sets are not compatible because the system documenting transactions does not track everyone who seeks service at a driver license office.

CONCERNS

- ♦ An internal audit published by the Department of Public Safety in August 2016, concluded that due to record limitations, the agency is not able to confirm that appropriations made specifically for the Driver License Improvement Plan were expended in accordance with program objectives.
- ♦ Despite receiving $310.1 million in General Revenue Funds since fiscal year 2012 for the Driver License Improvement Plan, service outcomes at select high-volume driver license offices remain lower than targeted levels. Performance measure results show that the Department of Public Safety failed to meet the targeted wait times for driver license offices in fiscal years 2014, 2015, and 2016. These wait time targets are identified in the General Appropriations Act.

OPTIONS

- ♦ **Option 1:** Include a rider in the 2018–19 General Appropriations Bill prohibiting fund transfers out of the Driver License Improvement Plan strategy.
- ♦ **Option 2:** Include a rider in the 2018–19 General Appropriations Bill requiring the Department of Public Safety to submit an annual report to the

Legislative Budget Board detailing the following by type of transaction: (1) wait times for each mega center; (2) wait times at driver license offices within a 20-mile radius of each mega center; (3) a statewide weighted average of wait times at all driver license offices; (4) an analysis and explanation of why wait times have increased at mega centers, driver license offices within a 20-mile radius of a mega center, and driver license offices outside the 20-mile radius of mega centers; and (5) a plan to reduce wait times.

DISCUSSION

The Department of Public Safety (DPS) operates approximately 230 driver license offices across the state. Due to office closures and openings, the number of operating driver license offices changes frequently. The 2016–17 biennial appropriation for the agency's driver license function was $288.2 million in All Funds with an authorized staffing level of 2,103 full-time-equivalent positions. The driver license function is one of the agency's largest divisions, second only to the Texas Highway Patrol.

The Eighty-second Legislature, Regular Session, passed legislation that established the Driver License Improvement Plan (DLIP). The Legislature initially appropriated funds for DPS to establish six new mega centers to improve services and shorten wait times for driver license customers in and around the state's urban communities. In subsequent years, the agency has directed DLIP funds to address needs and add service counters at mega center and regional driver license offices throughout the state.

Since the 2012–13 biennium, the Texas Legislature has appropriated $310.1 million for DLIP: $64.1 million in the 2012–13 biennium, $167.1 million in 2014–15 biennium, and $143.0 million in the 2016–17 biennium. **Figure 1** shows the funding for DLIP over the past three biennia.

Despite these appropriations, DPS cannot confirm that DLIP expenditures matched appropriated levels because the agency is unable to fully account for these expenditures after a two-year biennial appropriation. After a two-year biennium appropriation period, the agency ceases to track appropriation items and the funds revert to the base total. As such, the agency cannot state whether funding originally appropriated for DLIP in a biennium would remain dedicated for DLIP in subsequent biennia. This has made it difficult for the agency to accurately state historical DLIP expenditures.

According to a 2016 internal DPS audit, challenges exist in verifying DLIP expenditures. A review of fiscal year 2015 transactions found detailed documentation was not always available to clearly tie DLIP appropriations to expenditures, and therefore DPS could not verify the expenditures were made in accordance with DLIP objectives. During the strategic planning process for the 2018–19 biennium, a line item was added to the DPS budget structure for the purpose of capturing DLIP appropriations and expenditures. Despite the addition of the new DLIP strategy, DPS did not provide historical expenditures or baseline requests for the program in this line item in its 2018–19 biennial legislative appropriations request, further obscuring how DLIP funding is used.

Option 1 would add a rider prohibiting DPS from transferring funds out of the DLIP strategy. The rider would ensure all funds appropriated for DLIP are expended for the intended purpose of reducing driver license office wait times and enhancing customer service, and would prohibit DPS from diverting funds to other agency budget items.

FIGURE 1
DRIVERS LICENSE IMPROVEMENT PLAN APPROPRIATIONS BY BIENNIUM, 2012–13 TO 2016–17 BIENNIA

STRATEGY	2012–13	2014–15	2016–17	STRATEGY TOTAL
To improve driver licensing processing capacities by funding six mega centers, queuing technology, etc.	$64.1	$64.1	$64.1	$192.3
To improve driver licensing processing capacities by funding two new offices (in Houston and Dallas), 325 automated self-service kiosks, and upgrades to the division's electronic fingerprinting technology.	$0.0	$30.9	$30.9	$61.8
To fund ongoing salary costs for staff added in fiscal year 2013 as part of Drivers License Improvement Plan.	$0.0	$8.0	$8.0	$16.0
Funding to reduce wait times.	$0.0	$0.0	$40.0	$40.0
Biennia Total:	**$64.1**	**$103.0**	**$143.0**	**$310.1**

Source: Legislative Budget Board.

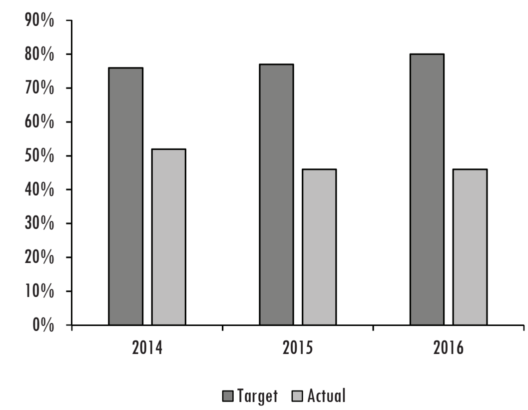
When DLIP was implemented in fiscal year 2011, DPS anticipated outcomes in three areas:

- Customer service – reduce driver license office (DLO) transaction times to 45 minutes for original licenses and 30 minutes for renewal licenses;
- Safety and security – increase fraud prevention with security features on driver license and identification cards; and
- Employee environment – improve retention by increasing salaries of field employees and realigning position descriptions.

Wait times have increased at DLOs throughout the state since fiscal year 2013. To track performance for DLIP, the 2014–15 and 2016–17 General Appropriations Acts include a key measure for wait times at DLOs. This measure is calculated as the percentage of original non-commercial driver license and identification (ID) card applications completed within a target of 45 minutes. Original and ID card applications reported include original out of state (OOS) and limited term transactions. Limited term transactions are issued to temporary visitors to the United States. Those who meet the requirements are issued a driver license or ID card with "Limited Term" printed on it. The driver license or ID card expires when the period of lawful presence expires. Other transaction types include renewal, replacement/duplicate, original commercial driver license (CDL), and renewal CDL which are not included in the performance measure calculation.

Figure 2 shows the agency has not met its fiscal years 2014, 2015, or 2016 performance measure targets for wait times at DLOs.

FIGURE 2
PERCENTAGE OF DRIVER LICENSE/ID APPLICATIONS COMPLETED WITHIN 45 MINUTES
FISCAL YEARS 2014 TO 2016



SOURCE: Department of Public Safety.

DRIVER LICENSE DIVISION IMPROVEMENTS

In 2011, DPS was appropriated funds to add six new mega centers to improve services and shorten wait times for driver license customers in and around the state's urban communities. Mega centers employ 25 or more full-time-equivalent (FTE) positions and include offices with at least 40 fully staffed processing stations with the capacity to process at least 2,000 transactions each day. DPS opened eight mega centers in urban communities (Austin, San Antonio, Corpus Christi, two in Houston, and three in Dallas/Fort Worth) from fiscal years 2013 to 2015.

In addition to new mega centers, DPS has sought to improve its driver license operations by implementing a civilian management structure, hiring additional staff, realigning position descriptions, and adding automated queuing solutions to increase efficiency at DLOs.

DPS has used two software applications from two third party vendors, QLess and Nemo-Q, to queue customers more efficiently by grouping customers by transaction. Both QLess and Nemo-Q allow customer service representatives to monitor wait times for each type of transaction—renewals (including changes to and duplicates of existing, valid driver licenses); testing (automated written and driving tests for both commercial and Class "C" licenses); and original applications. These contracts are subject to change depending on lease terms and agency requirements.

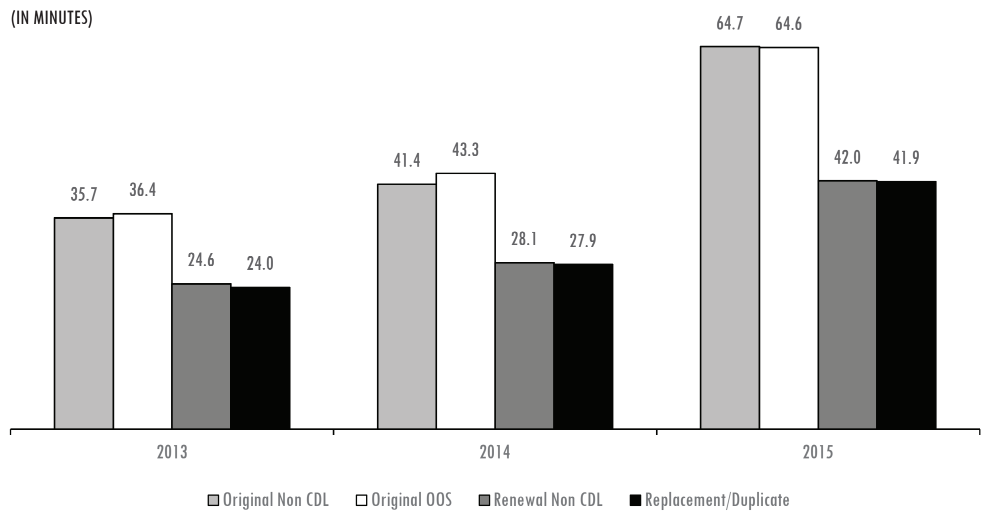
MEGA CENTER WAIT TIMES

While mega center offices with at least 40 fully staffed processing stations are designed to process at least 2,000 transactions per day, wait times have continued to increase. In fiscal year 2013, the average wait time for an original non-CDL application at driver license mega centers was 36 minutes. Average wait times in these offices rose to 65 minutes in fiscal year 2015, representing an 80.5 percent increase. **Figure 3** shows the overall average wait time by transaction type at mega centers for fiscal years 2013 to 2015.

Of the mega centers that were operational in fiscal years 2013 to 2015, five experienced wait times for original non-CDL applications over 45 minutes in 2015.

Mega centers experiencing the highest percentage increase in wait times for original applications were the Fort Worth and Garland offices. From fiscal years 2013 to 2015, original

FIGURE 3
AVERAGE WAIT TIME AT MEGA CENTERS BY TRANSACTION, FISCAL YEARS 2013 TO 2015



Source: Department of Public Safety.

non-CDL wait times at the Fort Worth mega center increased from 21 minutes to 73 minutes, representing a 247.6 percent increase. Similarly, wait times at the Garland mega center increased from 24 minutes to 72 minutes for the same transaction, representing a 200 percent increase.

The mega centers experiencing the longest wait times for original applications in 2015 were the Gessner and Spring offices. In fiscal year 2015, the average wait time for customers seeking original non-CDL applications at the Gessner mega center was 105 minutes. In the same year, the average wait time at the Spring mega center was 78 minutes for original applications for the same transaction.

No mega center experienced a decrease in wait times for original non-CDL transactions. However, the Pflugerville mega center did experience a decrease in wait times for original out of state and renewal non-CDL transactions. **Figure 4** shows wait times for various services at mega centers from fiscal years 2013 to 2015.

THE EFFECT OF MEGA CENTERS ON NEARBY DRIVER LICENSE OFFICE WAIT TIMES

In fiscal year 2013, DLOs within a 20-mile radius of each mega center witnessed a significant decrease in wait times. **Figure 5** shows the overall average change in wait times at these offices for fiscal years 2011 to 2015 and includes CDL wait times as the queuing systems do not differentiate CDL versus non-CDL transactions.

While wait times decreased in fiscal year 2013, they began to increase in fiscal years 2014 and 2015. In fiscal year 2015, the average wait time for a transaction at a DLO within a 20-mile radius of a mega center was 39 minutes. While this represents a 30.4 percent decrease in wait times from fiscal year 2011, wait times have increased since mega centers began servicing customers in 2013. From fiscal years 2013 to 2015, wait times at DLOs within a 20-mile radius of a mega center increased from 36 minutes to 39 minutes, an 8.3 percent increase.

FACTORS CONTRIBUTING TO WAIT TIME TRENDS

Data show average wait times at mega centers, DLOs within a 20-mile radius of each mega center, and DLOs outside the 20-mile radius of mega centers have increased from fiscal years 2013 to 2015.

DPS reports that average wait times are increasing at mega centers as a result of three major influences:

- population growth is increasing at a higher rate than capacity at DLOs;
- the number of original and limited term transactions at mega centers is increasing; and
- the agency's attempts to reduce vacancy rates at DLOs have not been effective.

According to the agency, demand at DLOs has grown faster than capacity. **Figure 6** shows transaction volume by type at

FIGURE 4
TRANSACTION WAIT TIMES BY MEGA CENTER
FISCAL YEARS 2013 TO 2015

MEGA CENTER	TRANSACTION	2013	2014	2015
Fort Worth	Original Non CDL	0:21	0:44	1:13
	Original OOS	0:24	0:49	1:15
	Renewal Non CDL	0:16	0:24	0:42
	Replacement/Duplicate	0:14	0:22	0:42
Garland	Original Non CDL	0:24	0:42	1:12
	Original OOS	0:27	0:47	1:16
	Renewal Non CDL	0:17	0:29	0:51
	Replacement/Duplicate	0:16	0:29	0:50
Gessner	Original Non CDL	1:11	1:24	1:45
	Original OOS	1:03	1:31	1:49
	Renewal Non CDL	0:45	0:54	1:12
	Replacement/Duplicate	0:44	0:53	1:09
Pflugerville	Original Non CDL	0:21	0:15	0:22
	Original OOS	0:26	0:15	0:21
	Renewal Non CDL	0:16	0:10	0:15
	Replacement/Duplicate	0:15	0:10	0:15
Rosenburg	Original Non CDL	0:38	0:49	1:08
	Original OOS	0:40	0:47	1:00
	Renewal Non CDL	0:30	0:38	0:32
	Replacement/Duplicate	0:31	0:39	0:34
Leon Valley	Original Non CDL	0:22	0:25	0:35
	Original OOS	0:23	0:23	0:34
	Renewal Non CDL	0:12	0:18	0:23
	Replacement/Duplicate	0:12	0:17	0:24
Spring	Original Non CDL	0:53	0:31	1:18
	Original OOS	0:52	0:31	1:17
	Renewal Non CDL	0:36	0:24	0:59
	Replacement/Duplicate	0:36	0:25	0:59

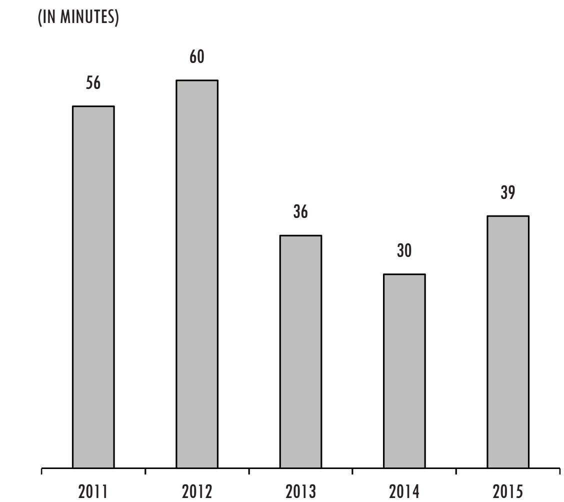
NOTE: CDL = Commercial Driver License; OOS = Original Out of State.
SOURCE: Department of Public Safety.

each mega center facility that was operational from fiscal years 2013 to 2015.

While two mega centers were planned to become operational in fiscal year 2015, delays resulted in their opening in fiscal year 2016. Additionally, the agency reports these two mega centers were staffed with only 15 employees each, requiring the Driver License Division to close older DLOs near these mega centers to consolidate staff. According to DPS, the positive effect on wait times as a result of the two new mega centers will be reflected in fiscal year 2016 data.

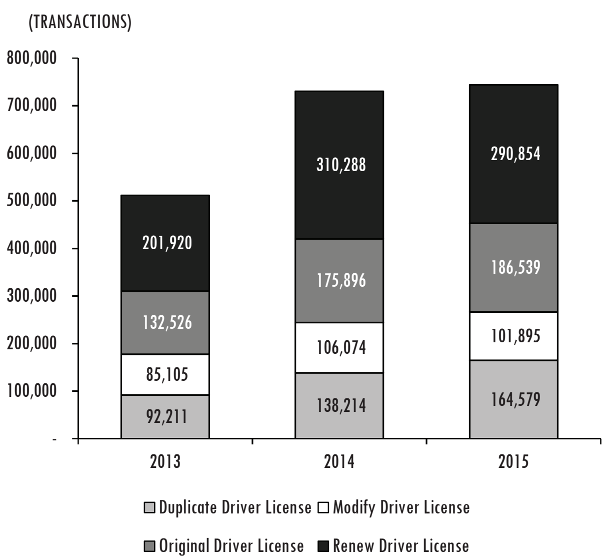
DPS reports original and limited term transactions at mega centers are also increasing. The agency reports these transactions take more time which affects the number of customers that may be served within a specific time period, thereby resulting in increased daily, weekly, and overall average wait times. DPS plans to address wait times by adding capacity and employees to areas where rapid population growth exists, expanding services to rural locations, and adding service counters and employees to offices within metropolitan areas. DPS also plans to install

FIGURE 5
WAIT TIMES AT DRIVER LICENSE OFFICES NEAR MEGA CENTERS (WITHIN 20 MILES), FISCAL YEARS 2011 TO 2015



SOURCE: Department of Public Safety.

FIGURE 6
TRANSACTION VOLUME BY MEGA CENTER FISCAL YEARS 2013 TO 2015



NOTE: Includes non-commercial drivers license transactions only.
SOURCE: Department of Public Safety.

"remote queue join" capability at approximately 50 offices which allows customers to reserve a place in line prior to arrival at a DLO. The agency reports the increase in wait times will be addressed by the $40.0 million appropriated for this purpose by the Eighty-fourth Legislature, 2015.

As reported by DPS, population growth is a contributing factor when considering wait times. DPS also acknowledges that state population growth translates into increased demand at statewide DLOs. The agency reports that when wait times or service times are analyzed the queuing system database is the source of record. However, when transactions are analyzed or counted, the Driver License System (DLS) is the source of record. The two databases cannot be compared because DLS does not capture all who request service at a DLO (e.g., customers who arrive at a DLO or enter the queueing system, but leave before receiving service). Since transaction volume incorporates all who receive service in a DLO, it could be considered a proxy for population growth (demand). Further, because DPS acknowledges the relationship between wait times and demand the two data sets could be compared. Since the agency has not pursued a mechanism to adequately cross reference queuing data with transaction volume data, the actual relationship between increased average wait times and population growth (transaction volume) at DLOs cannot be determined.

CUSTOMER SATISFACTION ASSESSMENT

Based on customer service assessments conducted by the University of Texas at Austin's Institute for Organizational Excellence in 2013 and 2015, the determining factor in customer perception of service by the Driver License Division was wait times. In summary, the longer the wait time, the greater the dissatisfaction with customer service. Wait times affect all seven measures of customer satisfaction collected by the institute, which include:

- staff—professional and friendly;
- fairness—fair treatment;
- timeliness—reasonable waiting time for service;
- process—ease of service delivery;
- outcome—desired result achieved;
- trust—trust in the Driver License Division to do a good job; and
- overall customer satisfaction rating.

The most recent customer satisfaction survey suggests that perception of service quality remains positive when wait times are 15 minutes or less, as measured by overall customer satisfaction ratings of 4.5 points or better, with 5.0 the highest possible rating of customer service. The 2015 survey shows a decrease in overall satisfaction when wait times reach

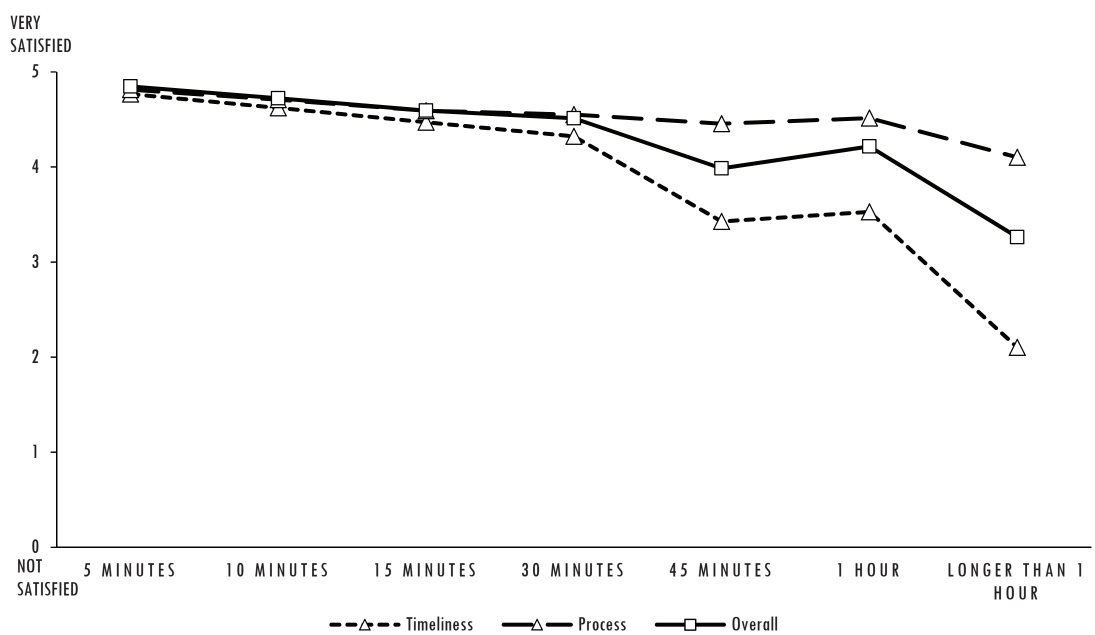
30 to 45 minutes, but a positive overall customer satisfaction rating of over 4.0 points for wait times of 60 minutes. The institute attributes the latter to customer belief in the process and Driver License Division staff; even with a 60-minute wait time customers gave positive scores for the fairness, process, and outcome measures. As shown in **Figure 7**, when wait times exceeded one hour, customer satisfaction ratings for timeliness decreased to less than 2.5 points but remained above 4 points for process or ease of service delivery. Overall customer satisfaction ratings decreased to less than 3.5 points when wait times exceeded one hour.

According to the Institute for Organizational Excellence, wait times at mega centers reported by survey participants increased between the 2013 and 2015 surveys. The Institute attributes the increase in wait times to mega centers established in higher customer volumes and highly populated areas. According to DPS, mega centers drew customers from DLOs in surrounding regions, specifically those within a 20-mile radius. One factor in this shift is the reduction in transaction volumes at nearby DLOs since fiscal year 2011; at least three locations experienced a reduction in transactions in excess of 50 percent from fiscal years 2011 to 2015. This reallocation of transactions may account for the overall customer satisfaction ratings for the regional DLOs in the Dallas-Fort Worth and Houston areas exceeding the ratings for those area's mega centers. According to the 2015 customer service assessment, the largest increase in satisfaction as measured by scores for overall customer service experience occurred at the regional DLOs in the Houston area. In the 2013 customer service assessment, the regional DLOs in Houston scored an average of 3.5 points. Based on the 2015 assessment, the score had increased by 26 percent, or almost a full point to an average of 4.41 points.

The increase in mega center wait times reported in the customer satisfaction survey is consistent with data analysis showing increased wait times at mega centers in the last three fiscal years. This trend is not limited to mega centers, but also includes regional DLOs. While wait times fell from fiscal years 2011 to 2013, they began to rise in fiscal years 2014 and 2015. This represents an 8.3 percent increase from fiscal years 2013 to 2015 at DLOs within a 20-mile radius of a mega center and an increase of 11.8 percent from fiscal years 2013 to 2015 at DLOs outside the 20-mile radius of mega centers. In terms of minutes, this trend represents an increase in wait time of less than five minutes for the regional and more remote DLOs.

Given the relationship between customer satisfaction and wait times shown in the survey, future increases in wait times

FIGURE 7
DRIVER LICENSE DIVISION - IMPACT OF WAIT TIMES ON CUSTOMER SATISFACTION, 2015 CUSTOMER SERVICE ASSESSMENT



SOURCE: The University of Texas at Austin Institute for Organizational Excellence.

at both mega centers and the regional DLOs would be expected to reduce customer satisfaction ratings for the Driver License Division. If this occurs, the effectiveness of the state's investment in the Driver License Improvement Plan could be affected.

Option 2 would include a rider in the 2018–19 General Appropriations Bill, requiring the Department of Public Safety to submit an annual report to the Legislative Budget Board detailing the following by type of transaction: (1) wait times for each mega center; (2) wait times at driver license offices within a 20-mile radius of each mega center; (3) a statewide weighted average of wait times at all driver license offices; and (4) an analysis and explanation of why wait times have increased at mega centers, driver license offices within a 20-mile radius of a mega center, and driver license offices outside the 20-mile radius of mega centers; and (5) a plan to reduce wait times. The data should be provided in a manner whereby average wait times for transactions may be uniformly reported and analyzed. This option would provide detail for analysis of average wait time trends for all transactions, whether the customer receives service at a regional DLO or a mega center. Implementation of this option would also provide a basis for comparisons between average wait times by transaction type.

FISCAL IMPACT OF THE OPTIONS

Options 1 and 2 would not direct DPS to add new FTE positions. Because these resources would be within DPS' current appropriation level, these options have no fiscal impact.

The House introduced 2018–19 General Appropriations Bill includes riders implementing Options 1 and 2.

MODIFY STATE CRIME LAB CASE MANAGEMENT PRACTICES TO OPTIMIZE WORKLOAD

The Texas Department of Public Safety operates crime laboratories at 13 locations across the state. These crime labs provide forensic evidence testing at no charge to all Texas law enforcement agencies. Throughout the past several years, the department's crime labs have experienced an increase in the number of forensic testing requests and backlogs. According to the Department of Public Safety, from calendar years 2010 to 2015, the crime lab's forensic evidence backlog increased from approximately 22,000 to more than 33,000 submissions. Among respondents to a 2016 survey conducted by the Texas Center for the Judiciary, 96.2 percent indicated that the wait for lab results had led to court delays.

The Department of Public Safety's crime labs do not have standard procedures to ensure all forensic testing is necessary at the time testing occurs. There is also not a policy that allows the lab to halt testing determined to be unnecessary. As a result, unnecessary testing may occur, reducing resources that could be used to address backlogs. Implementing a process to systematically check the need for testing in certain circumstances could reduce crime lab workloads and enable them to operate more efficiently.

FACTS AND FINDINGS

- ♦ In one instance, a Department of Public Safety crime lab was able to reduce its backlog by 66.0 percent by communicating with district attorneys to determine whether testing was still required for backlogged cases.
- ♦ The American Society of Crime Laboratory Directors/Laboratory Accreditation Board, which accredits crime laboratories in the U. S., authorizes a crime lab to stop testing that has begun on a forensic evidence submission if the lab develops and adheres to its own policy.

CONCERNS

- ♦ The Department of Public Safety does not have a formal process to ensure all forensic testing remains necessary at the time of testing. The agency attempts to reduce redundant or unnecessary testing by contacting the requesting agency. However, the Department of Public Safety will perform the testing if the submitting agency continues the request, which limits the crime lab's ability to efficiently prioritize cases at the time testing actually occurs. This continuation can result in tests being conducted unnecessarily.
- ♦ The Department of Public Safety crime labs complete all testing that has been started and do not have a policy to halt testing for certain situations, such as the requesting agency notifying the lab that testing is no longer necessary.

OPTION

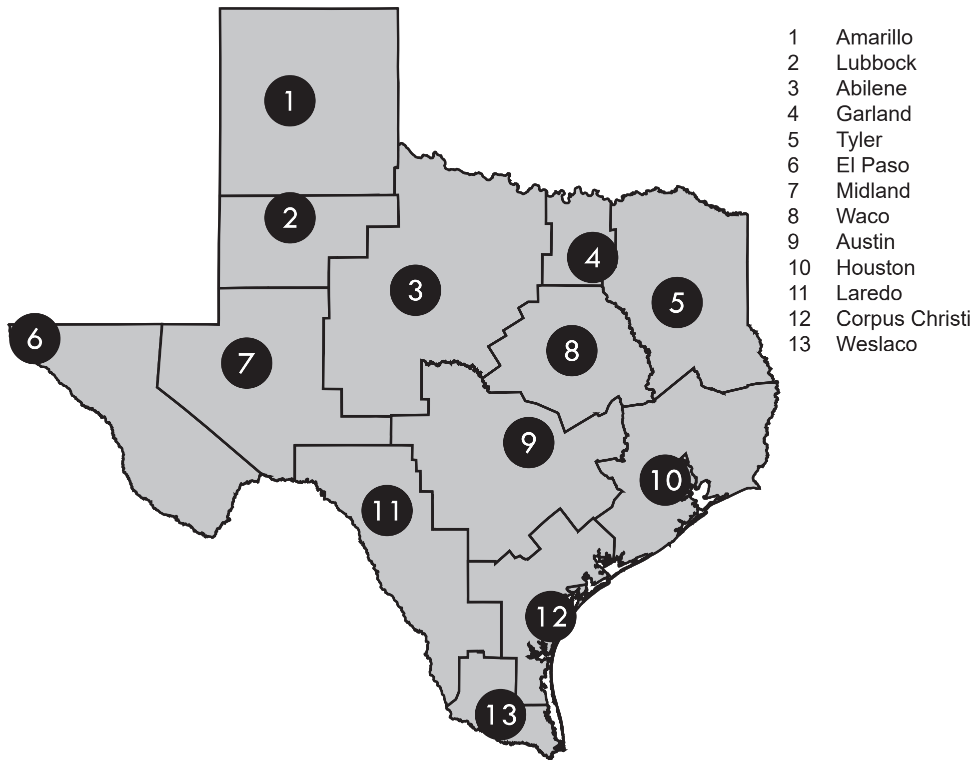
- ♦ **Opton 1:** Include a rider in the 2018–19 General Appropriations Bill to require the Department of Public Safety to implement cost containment measures that include: (1) maintaining communication with agencies requesting forensic evidence testing on the status of cases before forensic testing occurs; and (2) stopping work on a forensic test in accordance with applicable accreditation standards for instances in which a crime lab has begun testing that is determined to be unnecessary.

DISCUSSION

According to the Texas Forensic Science Commission, forensic analysis is the expert examination of physical evidence collected during a criminal investigation to determine the connection between evidence and a criminal action. Forensic analysis helps investigators learn the composition and source of evidence, such as drugs and trace materials, or determine the identity of suspects, and may be presented in court. Accurate and timely forensic testing results can prove a crime has been committed, determine whether a suspect had contact with a victim or crime scene, establish the identity of persons associated with a crime, prove innocence, corroborate a victim's testimony, and assist in establishing facts.

The Law Enforcement Support Division of the Department of Public Safety (DPS) provides forensic analysis to Texas law enforcement agencies. DPS has 13 crime labs across the state, shown in **Figure 1**. The DPS crime labs have approximately 426 full-time equivalents. The labs' employees assist peace officers with crime scene investigations, provide instruction at peace officer training

FIGURE 1
DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY LOCATIONS, AS OF FISCAL YEAR 2016



NOTE: Regions may vary slightly based on forensic testing discipline to help distribute workload and based on lab capabilities.
SOURCE: Texas Department of Public Safety.

seminars, analyze physical evidence in criminal cases, and present results of analyses in courtroom testimony.

Each crime lab serves a separate region of the state. DPS establishes service areas with the goal of each lab having a similar workload. Each lab conducts various forensic evidence disciplines based on the characteristics of the lab. **Figure 2** shows the services provided at each regional lab.

DPS crime labs have been continuously accredited since 1986 through the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). Accreditation is part of a lab's quality assurance program, which includes proficiency testing, continuing education, customer liaison, and other programs to help the lab provide more effective overall service.

Figure 3 shows appropriations for DPS crime labs and actual expenditures for the last three biennia. The Eighty-third Legislature, Regular Session, 2013, appropriated $8.7 million in General Revenue Funds to increase the general capacity of the crime laboratories and $10.9 million in General Revenue Funds to provide additional testing services to eliminate the backlog of sexual assault kits (SAK). These appropriations resulted in an increase for the 2014–15 biennium. The Eighty-fourth Legislature, 2015, appropriated $5.0 million in General Revenue Funds to complete testing services necessary to eliminate the backlog of sexual assault kits during the 2016–17 biennium. DPS crime labs expended an average of $4.2 million more than the appropriated amount from the 2010–11 to 2014–15 biennia. According to DPS, amounts expended in addition to what was appropriated are attributed to Interagency Contracts and Federal Funds.

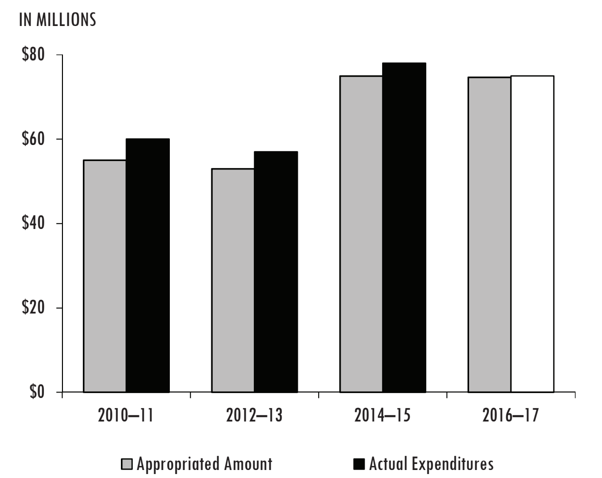
Approximately 80.0 percent of appropriations for the DPS crime labs for the 2016–17 biennium are from General Revenue Funds, as shown in **Figure 4**. The remainder consists of Federal Funds, Interagency Contracts, and Appropriated Receipts. According to DPS, Appropriated Receipts are from fees collected by local jurisdictions for restitution paid by defendants for drug or blood alcohol cases when a defendant is placed on probation.

FIGURE 2
SERVICES BY CRIME LABORATORY, AS OF FISCAL YEAR 2016

LOCATION	DRUGS	ALCOHOL	BIOLOGY	DNA	FIREARM	TRACE	LATENT	TOXICOLOGY	QD	AFIS	GSR	DIGITAL EVIDENCE
Abilene	X	X										
Amarillo	X											
Austin	X	X	X	X	X	X	X	X	X	X	X	X
Corpus Christi	X	X	X	X								
El Paso	X	X	X	X	X							
Garland	X	X	X	X	X	X	X					
Houston	X	X	X	X	X	X						
Laredo	X											
Lubbock	X	X	X	X	X	X						
Midland	X	X										
Tyler	X	X	X		X							
Waco	X	X	X	X								

NOTE: QD = Questioned Documents; AFIS = Automated Fingerprint Identification System; GSR = Gunshot Residue.
SOURCE: Texas Department of Public Safety.

FIGURE 3
TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME LAB APPROPRIATIONS AND EXPENDITURES 2010–11 TO 2016–17 BIENNIA



NOTE: The expenditures for part of fiscal year 2016 and all of 2017 are estimated.
SOURCES: Legislative Budget Board; Eighty-first Legislature, General Appropriations Act (GAA), 2010–11 Biennium; Eighty-second Legislature, GAA, 2012–13 Biennium; Eighty-third Legislature, GAA, 2014–15 Biennium; Eighty-fourth Legislature, GAA, 2016–17 Biennium; Automated Budget and Evaluation System of Texas (ABEST).

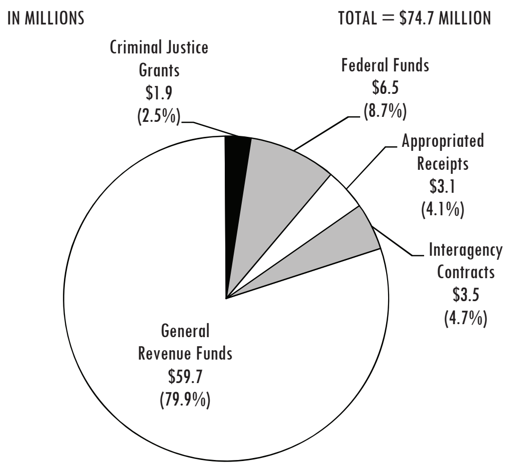
DPS CRIME LAB FORENSIC WORKFLOW

Each forensic testing discipline provided by the crime labs is conducted using different processes. Four testing disciplines make up more than 85.0 percent of all testing requests sent to DPS labs: Drugs, Blood Alcohol, Biology, and DNA. DNA evidence is closely linked with the most serious crimes, and testing of drugs is the lab's most requested service.

DPS crime labs processed 4,368 DNA samples in fiscal year 2015 with an average turnaround time of 150 days from receipt of evidence to reporting results. The first step in DNA testing is a biological screening process in which presumptive tests to identify certain fluids are conducted and DNA samples are selected. DNA samples are then frozen until a DNA analyst begins working on the case. The standard process is to accumulate a batch of cases then compile and interpret results before the administrative review of the completed case. When DNA test results are obtained, they are entered into the Combined DNA Index System (CODIS), the national database for criminal justice DNA samples. **Figure 5** shows the DPS crime lab workflow for the testing of DNA evidence.

DPS crime labs conducted 44,965 drug evidence tests in fiscal year 2015 with an average turnaround time of 123 days. Drugs are first screened to confirm drug type and then placed in an instrument that identifies the makeup of the substance. According to crime lab staff, standard practice is to test the substance up to the highest penalty group. For

FIGURE 4
TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY APPROPRIATIONS BY METHOD OF FINANCE, 2016–17 BIENNIUM



NOTES:
(1) Criminal Justice Grants include state and Federal Funds administered through Interagency Contracts with the Trusteed Programs within the Office of the Governor, Criminal Justice Division.
(2) Appropriated Receipts include fees collected by local jurisdictions for restitution from certain drug or blood alcohol cases.
SOURCE: Legislative Budget Board, Fiscal Size Up, 2016–17 Biennium.

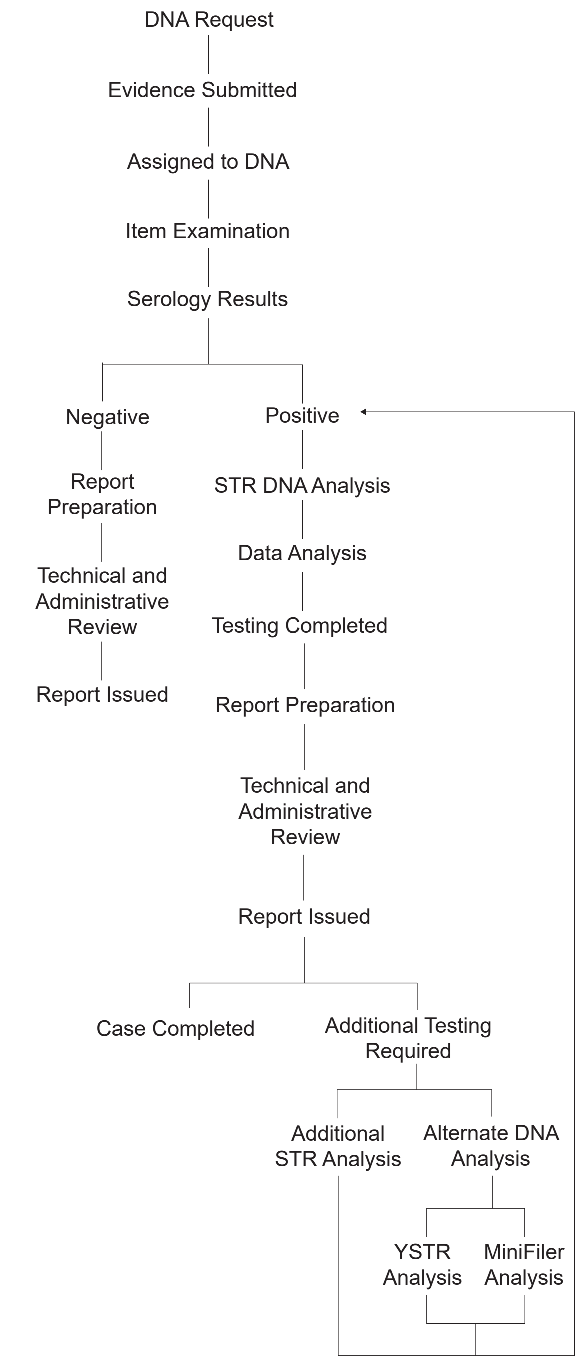
example, if multiple drugs were found in one sample, the lab would test the drug included in the highest penalty group. The drug discipline work flow is shown in **Figure 6**.

DPS CRIME LAB CAPACITY AND BACKLOGS

DPS reports that it is unable to determine the total capacity of its crime labs because a number of variables affect the length of time required to complete a case. According to the Dallas County crime lab, although management has a general idea of its lab capacity, a variety of factors make it difficult to set a benchmark for the number of cases a crime lab should complete. For example, a DNA case may have many samples of evidence requiring analysis.

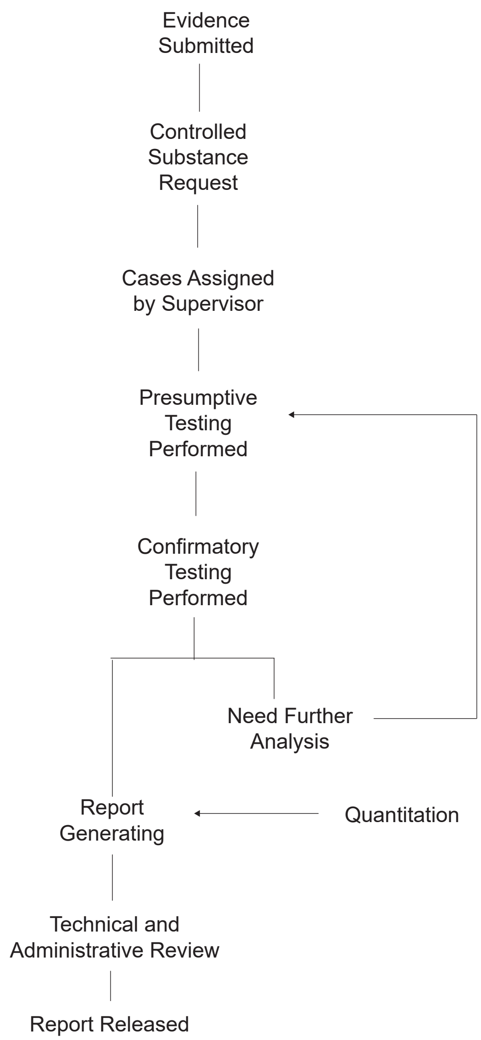
When a law enforcement agency requests a test, all evidence received by the DPS crime lab is assigned a case number and tracked via the agency's laboratory information management system (LIMS). DPS calculates case turnaround times from the date a request is received to release of the results to the requesting agency. **Figure 7** shows average turnaround times by testing discipline for calendar years 2013 to 2015. From calendar years 2013 to 2015, completion times for Biology

FIGURE 5
TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY DNA TESTING PROCESS AS OF FISCAL YEAR 2016



NOTE: STR = Short Tandem Repeat: A method to compare two or more DNA samples; YSTR = Y-Chromosome Short Tandem Repeat; MiniFiler = A kit used for DNA amplification.
SOURCE: Texas Department of Public Safety.

FIGURE 6
TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY DRUG TESTING PROCESS AS OF FISCAL YEAR 2016



Source: Texas Department of Public Safety.

and DNA disciplines testing increased by 24 days and 39 days, respectively. Conversely, completion time for the Drugs discipline decreased by 50 days, and Blood Alcohol testing decreased by 11 days since calendar year 2013.

According to the U.S. Department of Justice's National Institute of Justice (NIJ), no industrywide definition determines a backlog of forensic DNA testing. For grant purposes, the NIJ defines a forensic biology or DNA case as backlogged if the case has not been completed within 30 days of receipt by the lab. NIJ reports some crime laboratories consider a case to be backlogged if DNA has not been analyzed after 90 days. Other crime labs, including the Texas

FIGURE 7
TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY AVERAGE DAYS FROM TESTING REQUEST TO COMPLETION, CALENDAR YEARS 2013 TO 2015

DISCIPLINE	2013	2014	2015
Drugs	173	162	123
Alcohol	48	47	37
Biology	139	184	163
DNA	111	131	150
Firearm	135	100	129
Trace	248	349	340
Latent	111	120	86
Toxicology (2)	177	177	141
QD (1) (2)	147	147	145
AFIS (1) (2)	42	98	139
GSR (1) (2)	432	215	235

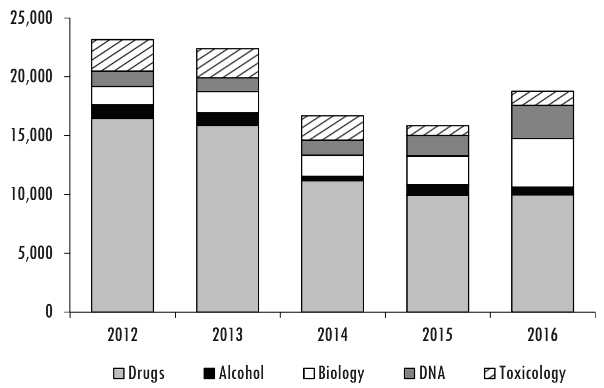
Notes:
(1) QD = Questioned Documents, AFIS = Automated Fingerprint Identification System, GSR = Gunshot Residue.
(2) Toxicology, QD, AFIS, and GSR disciplines are provided only at the Austin laboratory location. Information for the Digital Evidence discipline was not provided.
Source: Texas Department of Public Safety.

Parks and Wildlife Department's forensic lab, consider any case, no matter when it was received, to be backlogged if it has not been analyzed. DPS considers a case to be backlogged if it has not been analyzed and a completed report has not been submitted to the requesting agency within a certain number of days specific to each discipline. The DPS timeframes of backlogged cases by discipline are as follows:

- more than 30 days – Drugs and Alcohol;
- more than 60 days – Firearm, Trace/Criminalistics, Latent, Toxicology, QD, AFIS, GSR, and Digital Imaging; and
- more than 90 days – Biology and DNA.

The testing disciplines that make up the majority of the DPS backlog are Drugs, Blood Alcohol, Biology, DNA, and Toxicology. These disciplines represent 93.5 percent of DPS crime labs' forensic testing backlog. **Figure 8** shows the number of cases backlogged in these five disciplines at the end of calendar years 2012 to 2015, and as of August 22, 2016. Beginning in fiscal year 2014 appropriations to the DPS crime labs were increased to augment general capacity and address backlogs of sexual assault kits. The backlog was reduced in 2014–15 biennium when appropriations were increased by almost $20.0 million. However, the backlog has grown in fiscal year 2016.

FIGURE 8
TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY BACKLOGGED CASES
CALENDAR YEARS 2012 TO 2016



NOTE: Calendar years 2012 to 2015 show the number of backlogged cases as of December 31. Calendar year 2016 shows the number of backlogged cases as of August 22, 2016.
SOURCE: Texas Department of Public Safety.

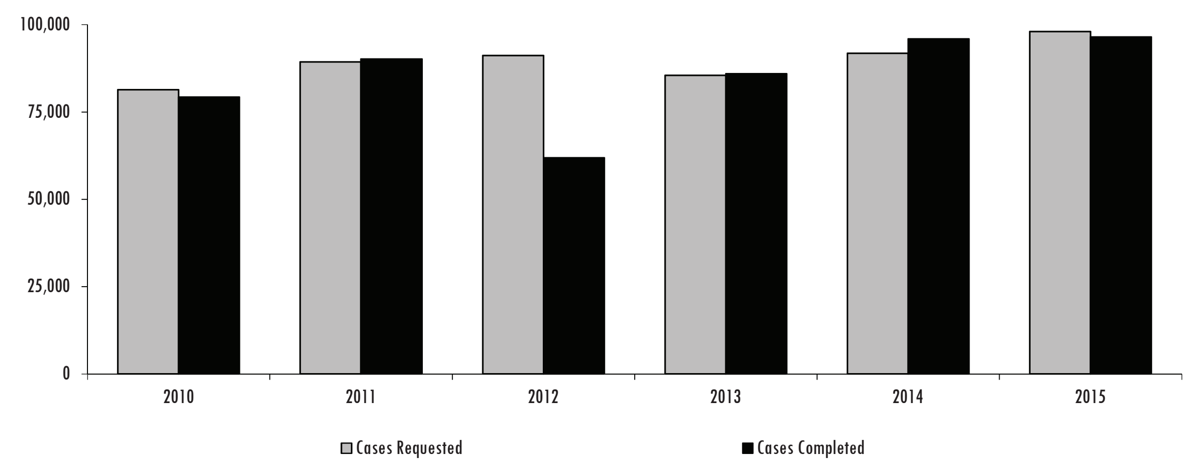
From calendar years 2010 to 2015, the number of forensic evidence requests submitted to DPS increased 20.5 percent, from approximately 81,000 to 98,000. **Figure 9** shows forensic testing requests and completions for calendar years 2010 to 2015. A test may not be completed for a variety of reasons. In addition to backlogged cases, factors such as a plea agreement being reached or a determination that forensic testing of certain evidence is not necessary may result in a case being incomplete. DPS does not track the reasons for which a test is incomplete.

RECENT LEGISLATION AFFECTING WORKLOADS AT DPS CRIME LABS

Since 2011, new statutory requirements for forensic evidence testing have contributed to the number of submissions to DPS crime labs. Senate Bill 1636, Eighty-second Legislature, Regular Session, 2011, required law enforcement agencies to analyze or submit to an accredited crime laboratory all sexual assault evidence from active criminal cases occurring since September 1, 1996, that had not previously been analyzed or submitted for analysis. The bill also required DPS, to the extent funding was available, to analyze or contract for the analysis of all applicable sexual assault evidence submitted to the agency by September 1, 2014. In February 2013, DPS estimated approximately 20,000 sexual assault kits (SAKs) throughout the state were unanalyzed. Initially, DPS estimated that 10,000 of the unanalyzed SAKs would be submitted to the agency for processing, and that law enforcement entities would use their own or private crime labs to process the remaining 10,000 kits. DPS planned to process the SAKs received by outsourcing them to other accredited labs on a fee for service basis. DPS has received more than 18,000 unanalyzed SAKs, and the agency anticipated that testing would be complete during fiscal year 2016. As of June 30, 2016, 10,145 SAKs in DPS' possession were expected to be outsourced.

Senate Bill 1292, Eighty-third Legislature, Regular Session, 2013, amended statute to require that all biological evidence collected by the state as part of a capital offense investigation be tested. The bill further required that the lab performing

FIGURE 9
TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY CASES REQUESTED AND CASES COMPLETED
CALENDAR YEARS 2010 TO 2015



SOURCE: Texas Department of Public Safety.

the test pay for it. DPS reports that this requirement has significantly increased the number of DNA samples tested, in some instances totaling 30 to 100 samples per case.

According to DPS, it can be difficult to isolate a particular drug in evidence submitted for testing. The chemical structure of drugs may be altered, which makes it difficult to match the drug to a standard. DPS reports that Senate Bill 172, Eighty-fourth Legislature, 2015, has assisted in addressing this issue. The bill added certain drugs that are similar to one another, but have a slightly different makeup and properties, to the Texas Controlled Substances Act for criminal prosecution and other purposes. As a result, costs to test drugs has decreased due to not having to purchase standards to test drugs against for each chemical structure.

DPS CRIME LABS INTERACTION WITH LOCAL CRIMINAL JUSTICE SYSTEMS

Many local law enforcement agencies use the DPS crime labs for forensic testing services. These agencies range in size and geographic location. In addition, criminal justice practices can vary greatly among jurisdictions. For example, some prosecutor offices may require more pieces of evidence to be tested per case than others would request for a similar case. These circumstances require the crime labs' workload be efficiently managed to ensure only necessary forensic testing be performed so turnaround times are suitable for all local agencies. Communication with the requesting law enforcement agency is necessary to manage expectations and to ensure that all evidence testing is still necessary at the time testing occurs.

In calendar years 2013 and 2014, DPS received an average of 87,642 testing requests each year from 2,310 law enforcement agencies. Approximately 22,000 of all testing requests in these years were from 25 users of the DPS crime lab, and the Lubbock Police Department (LPD) requested more testing from the DPS lab than any other agency. DPS reports that the criminal justice system requires a quicker response for many cases than the DPS crime lab can provide. LPD reports that it has had concerns with the timeliness of DNA and trace evidence testing for forensic evidence submission to the DPS crime lab. LPD reports an average wait time of two to three months for trace evidence and three to six months for DNA analysis. Furthermore, the nonprofit Texas Center for the Judiciary conducted a survey in January 2016 regarding sources of evidence delays that was sent to all active district and county court at law trial judges. The survey asked the respondents to identify sources of delay. Of the 130 individuals who responded to this question, 125 respondents identified crime lab results as a source of delay. Delays can result in issues including increased jail costs, attorney fees, and impediments for expert witnesses. DPS indicated delayed forensic testing results can affect plea agreements. For instance, local jurisdictions may not offer plea agreements in drug cases until lab results are received.

DPS sets priorities for testing evidence based on information from district attorney offices. As a default, DPS tests to the highest penalty group for drug cases. In drug cases, the offense an individual is charged with is determined on the amount of drug that was in the individual's possession. After testing has confirmed the highest possible level of drug offense for which an individual could be charged, DPS discontinues testing the remainder of the drugs submitted. However, DPS reports that some local jurisdictions require that all drug evidence be tested, even though it will not affect the level of the offense. Testing evidence in excess of what is necessary can reduce the crime lab's overall efficiency and turnaround times.

DPS reports communication among laboratories and requesting agencies is positive in some areas of the state. In these areas, the labs proactively reach out to requesting law enforcement agencies to ensure that tests still need to be completed when the labs are available to begin testing evidence. If DPS staff do not believe that testing of certain submitted samples is necessary, they may contact the requesting entity. However, according to DPS, if the requesting entity wants the testing to move forward, DPS will test the sample in question. Although this communication happens in some cases, it is not standard procedure for the DPS crime labs to ensure that all testing is still necessary at the time tests are performed. Communication between DPS and the requesting agencies is important to avoid unnecessary testing; in many cases, significant time occurs from DPS' receipt of a testing request to the time testing begins. During this time, circumstances in the criminal case may have changed. This change can be the result of the defendant agreeing to a plea, charges being dismissed during legal proceedings, or some other progression in the case.

Texas Code of Criminal Procedure, Section 38.35, authorizes any law enforcement or governmental agency to charge a fee for certain types of forensic analysis. Various accredited crime labs across the state that conduct forensic testing for law enforcement agencies charge fees for services. As of August 2016, DPS does not charge any fees to law enforcement agencies that request forensic evidence testing, and few other restrictions are placed on the amount or necessity of forensic evidence submitted.

DPS previously implemented measures to manage crime laboratory workflow. In 2012, DPS issued a memo to law enforcement agencies to require prosecutors to provide written requests to test evidence in misdemeanor cases. This requirement is now a permanent policy. The DPS Physical Evidence Handbook states misdemeanor drug offenses will be accepted only if prosecutors provide written requests stating that drug testing results are needed to prosecute these cases. In homicide cases, agency submissions are limited to 10 samples per case; any requests for more than that limit are required to have written requests from prosecutors. Also, DPS crime labs typically do not complete blood alcohol testing if a valid breath test was completed at the time of the offense. Furthermore, it is DPS policy to not complete drug toxicology tests requested in addition to blood alcohol test results that are more than the legal definition of intoxication of a 0.08 alcohol concentration. Option 1 would include a rider in the 2018–19 General Appropriations Bill to require DPS to establish a process for maintaining communication with requesting agencies on the status of cases before forensic testing. DPS also could use existing statutory authority to charge fees for forensic testing to encourage improved communication with local jurisdictions when needed.

In 2015, the DPS crime lab in Midland reduced its drug backlog 66.0 percent. The lab achieved this reduction by closing 1,641 cases without analysis as a result of communicating with district attorneys to determine whether testing was still required. DPS also reduced the drug backlog by 20.0 percent by working with local stakeholders who used the five labs with the majority of the statewide backlog to ensure forensic testing of the cases were still needed for prosecution.

Local law enforcement agencies may call DPS to inform the labs about reaching plea agreements so that evidence related to these cases no longer need to be analyzed. ASCLD/LAB authorizes a crime lab to stop work on an evidence submission, but the accreditation organization requires that labs issue a report on the findings up to the point work was stopped. ASCLD/LAB authorizes labs to do this as long as the labs have and follow their own policies for doing so. ASCLD/LAB requirements authorize for this stoppage to be done by discipline or for a lab as a whole. DPS does not have such a policy. This lack of a stoppage policy results in the crime labs completing testing on any evidence for which a test has begun, even if it is determined during the testing that it is no longer necessary. The rider in Option 1 would also require the Department of Public Safety crime lab to implement a stop-work policy. This policy would authorize testing of evidence to be stopped if the department determines it is no longer necessary. At the Austin Police Department (APD) crime lab, if a customer advises the lab that testing is no longer necessary for testing that has already begun, the lab stops testing. APD crime lab management reports that open communication with investigators, the rapport established with the local police department because the lab works with a limited number of law enforcement agencies, and its customers' knowledge of the testing process due to working with the lab frequently helps to manage expectations.

FISCAL IMPACT OF THE OPTION

It is assumed that DPS could implement this option within existing resources. Option 1 could help reduce the backlog by enabling DPS to better manage its workload.

The House introduced 2018–19 General Appropriations Bill includes a rider implementing Option 1.

STRENGTHEN INSPECTION AND TRAINING FUNCTIONS OF THE TEXAS COMMISSION ON JAIL STANDARDS

The Texas Commission on Jail Standards is an independent state agency with the authority and responsibility to create and enforce minimum jail standards for construction, planning, equipment, maintenance, and operations. The agency is statutorily required to physically inspect all 242 Texas jails annually and certify compliance with minimum jail standards. While the majority of jails achieve compliance, a small number of jails do not. Non-compliant jails are offered technical assistance and have one year to achieve compliance. With 17 staff members, including four jail inspectors, training and technical assistance resources are provided on an ad hoc basis. Further, the agency is responsible for analyzing staffing and construction plans, adjudicating offender grievances, and auditing jail population and costs. While the agency is able to sufficiently conduct statutorily required annual inspections of county jails, it lacks the resources to provide the necessary standardized, proactive training and technical assistance to jails.

In addition, the agency's oversight regarding mental health is limited. Jailers are not required to attend an accredited comprehensive course on mental health and suicide prevention, although jails are required to provide training as outlined in their operational plan. Proper identification and treatment of persons at risk of suicide or mental health crisis is essential to maintain safe jail operations. In fiscal year 2015, suicides comprised 30 percent of all deaths in Texas jails. Of the 24 suicides in fiscal year 2016, nine jails were cited for non-compliant jail operations, primarily for failing to conduct observation checks as required. Amending statute to require the Commission on Jail Standards to provide training to all jails and appropriating funds for additional staff would help address non-compliant jail operations and mental health issues occurring in Texas jails.

FACTS AND FINDINGS

- ♦ To obtain and maintain the basic jailer license, an individual is required to initially complete a 96-hour training course and complete a course on cultural diversity every four years. Jail administrators are required to implement a mental disabilities/suicide prevention plan which must include a provision for staff training. No other training is required.
- ♦ Four jail inspectors are responsible for conducting all annual and special inspections of the 242 facilities subject to the Commission's oversight. These inspectors also provide technical assistance and training and routinely work more than 40 hours per week.
- ♦ From fiscal year 2010 to 2015, there were 144 suicides in Texas jails. On December 1, 2015, the agency implemented a new mental health screening form with the intent of identifying persons at risk of suicide or mental illness who require specialized assessment by mental health professionals.
- ♦ As of June 2016, five of the six jails that experienced a suicide after the new mental health screening form was implemented were found in non-compliance for not conducting offender observation checks as required. As of August 16, 2016, an additional seven suicides occurred in county jails with one in non-compliance.

CONCERNS

- ♦ The agency lacks resources to provide regular standardized training programs to local jails. As a result, most training and technical assistance to jails occurs in conjunction with annual jail inspections and is therefore limited to staff on duty the day of the inspection.
- ♦ While the agency is able to sufficiently conduct statutorily required annual inspections, the influence and oversight of the agency is limited, particularly in the area of mental health.

OPTIONS

- ♦ **Option 1:** Appropriate $0.3 million in General Revenue Funds to the Texas Commission on Jail Standards in the 2018–19 General Appropriations Bill for three additional inspectors to focus on re-inspections and high risk jails, and to reduce the work load of the current team.
- ♦ **Option 2:** Amend statute to require a Texas Commission on Law Enforcement approved mental health and suicide prevention training program for jailers every two years and require the Commission on Jail Standards to provide the training to all jails.

- **Option 3:** Appropriate $0.3 million in General Revenue Funds to the Texas Commission on Jail Standards in the 2018–19 General Appropriations Bill, for three trainers to regularly conduct training on mental health and suicide prevention in local jails.

DISCUSSION

Texas was one of the first states to establish an independent agency to oversee local jails. During the 1960s and 1970s, an increase in offender lawsuits and federal interventions led to the development of the Texas Commission on Jail Standards (TCJS) in 1975. The Sixty-fourth Legislature established the Texas Commission on Jail Standards as an independent agency with the authority and responsibility to create and enforce minimum jail standards for construction, planning, equipment, maintenance, and operations. In 1983, the Sixty-eighth Legislature placed county and municipal jails operated under vendor contract under the agency's purview. The Seventy-second Legislature in 1991, required the agency to also provide management consultation and technical assistance to jails.

TCJS is responsible for promulgating reasonable written rules and procedures establishing minimum standards, inspection procedures, enforcement policies, approving new jail construction and renovation plans, and providing training and technical assistance to jail staff. While the agency has the authority to regulate privately owned municipal jails, its primary activities relate to jails operated by counties. Primary functions of TCJS include on-site inspections of jails to ensure compliance; review of proposed construction and renovation; providing jail management, technical assistance and training; administration of offender population reports and audits; and resolution of offender grievances. TCJS does not have the authority to regulate either the state prison system or juvenile detention facilities.

As of September 1, 2015, 254 Texas counties operated 235 jails and 7 privately or jointly operated facilities, for a total of 242 facilities and 93,335 beds within TCJS' purview. As of July 1, 2016, there were 58,241 local offenders, 5,634 federal offenders, 409 out-of-state offenders, and 37 Texas state offenders held in county jails. In fiscal year 2015, 235 of the 242 facilities were in compliance with the prescribed minimum jail standards. The agency currently is authorized to employ 17 full-time equivalents, including 4 inspectors. In the 2016–17 biennium, TCJS was appropriated $1.9 million in General Revenue Funds in addition to estimated appropriated receipts for the sale of jail standards manuals. TCJS may also collect inspection fees from facilities that house 30 percent or more of non-Texas offenders or for conducting an inspection of a non-compliant facility. Approximately 2 percent of the agency's budget is derived from these appropriated receipts and inspection fees.

The policy-making body of TCJS consists of nine members appointed by the Governor including a sheriff of a county with a population of more than 35,000, a sheriff of a county with a population of 35,000 or less, a county judge, a county commissioner, and a practitioner of medicine licensed by the Texas State Board of Medical Examiners. The remaining four members must be representatives of the general public, with at least one from a county with a population of 35,000 or less.

JAIL STANDARDS AND INSPECTION PROGRAMS IN OTHER STATES

Nationwide, 32 states have jail standards and/or inspection programs. The majority of states operate inspection programs on an annual basis; however, a few states operate on a biennial or biannual basis. The majority of states have jail standards in place and operate inspection programs through the state department of corrections. Other states operate inspection programs through a statewide sheriffs' association. Few states have an independent commission, as does Texas. According to the U.S. Department of Justice, Texas is only one of six responding state-level jail inspection agencies to have the authority to close jails, with the other states being Iowa, Kentucky, Maryland, North Dakota, and Wisconsin.

There are three primary models of jail standards programs, the executive branch/department of corrections model, the independent commission model, and the professional association model. The executive branch/department of corrections model, as used in Indiana, provides authority for standards, inspections, and enforcement in statute. Sheriffs make up the jail standards committee, inspections are conducted annually, and training and technical assistance are also offered. The independent commission model, as used in Nebraska, is similar to the model used in Texas. Nebraska's authority for inspection, enforcement, and standards is codified in statute and administered by the Jail Standards Board. In addition to inspections, the Jail Standards Board offers facility planning, training, collection of jail population data, and technical assistance. The professional association model, as used in Idaho, is administered by the Idaho Sheriff's Association. It has no legal authority and inspections are voluntary.

MINIMUM JAIL STANDARDS

Texas' minimum jail standards mandate a secure and safe jail design and operation, effective offender management, use of accepted correctional methods, and offender programming. Minimum jail standards include both requirements and recommendations regarding structural elements including the number of square feet required per offender, working toilets, showers, and faucets, offender classification, proper use of fire safety equipment, certain staff-to-offender ratios, medical services, and grievance procedures. TCJS requires each jail to develop, update, and adhere to 17 operational plans to be compliant with minimum jail standards. In 2015, TCJS staff reviewed 944 operational plans and conducted 255 on-site operations and management consultations with jail representatives.

Minimum jail standards require all jails to implement a mental disabilities/suicide prevention plan. The Texas Administrative Code, Section 273.5, requires that each sheriff/operator shall develop and implement a mental disabilities/suicide prevention plan which addresses training, identification, communication, housing, supervision, intervention and emergency treatment, and reporting to authorities and family members. The jail standard pertaining to mental health does not specify frequency or duration of training for staff. Such training decisions are left to the jail administrator and subject to approval by TCJS. Further, jails are required to use an approved mental health screening instrument and perform a mental history check using the Department of State Health Services (DSHS) Continuity of Care Query System, a real-time identification of arrested individuals who have received state mental health services.

In addition to the required mental health/suicide prevention plan, The Texas Administrative Code, Section 273.8, requires TCJS, the Texas Commission on Law Enforcement (TCOLE), and the Texas Correctional Office on Offenders with Medical or Mental Impairments to enter into a cooperative memorandum of understanding to establish a continuity-of-care system for offenders with mental impairments or who are elderly, physically disabled, terminally ill or significantly ill. TCJS is required to develop mental health standards which address training needs, identification, communication, housing, supervision and referrals, and provide technical assistance for local jails on management strategies for offenders with special needs.

National research, statewide input, and case law are considered when developing or revising the minimum jail standards. As required by the state Administrative Procedures Act, TCJS staff conducts a review of minimum jail standards every four years. The last review of minimum standards began in February 2012, and was concluded in May 2014. While formal revisions are made to minimum standards every four years, the agency aims to provide best practice information to county officials through the use of a newsletter, technical assistance memos, and conference calls with rural jails and recently-elected sheriffs. In addition, the agency provides training related to jail management issues. This training may be conducted independently or in partnership with the Texas Jail Association or the Sheriff's Association of Texas.

JAIL INSPECTIONS

To ensure minimum jail standards are met, enforced, and monitored in an unbiased manner, TCJS has adopted an impartial uniform inspection process. Inspectors conduct statutorily required inspections once per year, which are unannounced by agency policy. Certain risk factors like elevated population, complaints, escapes, or deaths may cause TCJS to add jails to the risk-assessment tracking list, which may trigger special inspections. Special inspections are conducted at facilities that have been identified as high risk or are non-compliant. Re-inspections are conducted after a sheriff or county official has corrected non-compliance issues and the inspector must visually re-inspect the corrections.

An inspection may take one day or a full week depending on the size of the jail operations. Larger facilities require multiple inspectors to sufficiently inspect the jail. During an annual inspection, inspectors:

- review the last 12 months of average daily population, fire, death, and escape reports;
- verify fire marshal inspections, conduct fire drills, and equipment checks;
- verify documentation of health department inspection and registered dietitian approved meal plans;
- verify documentation of security checks, jailer certification and training, contraband searches, and staffing schedules;
- review discipline and grievance files and resolution;
- review documentation related to offender classification and release;
- review documentation that offenders are offered one hour of recreation three days per week;

- review plans related to jail operations to ensure operational plans are being followed even if the plans exceed the minimum jail standard guidelines;
- review the federal Americans with Disabilities Act self-assessments;
- review a sample of offender files to ensure documentation of the mental health screening, offender classification, and release; and
- conduct walk-through visual inspections of facilities to evaluate cleanliness, conduct staff and offender interviews, and ensure that doors, control panels, intercoms, toilets, sinks, showers, and light fixtures are in working order.

Jails may be non-compliant for various reasons. TCJS identified the four most common reasons for non-compliance:

- failure to complete the Mental Health/Suicide Prevention Screening Form either immediately upon intake or in its entirety;
- failure to complete the visual face-to-face observation of all offenders by corrections officers at least once every hour or at least every 30 minutes in cases where offenders are known to be assaultive, potentially suicidal, mentally ill, or have demonstrated unusual behavior;
- failure to properly train jailers in quarterly fire drills/air pack training as required by minimum jail standards; and
- failure to inspect, maintain, and test fire and life safety equipment as required by minimum jail standards.

If an inspector finds a deficiency related to minimum jail standards, the jail is typically given the opportunity to correct the issue immediately to avoid a notice of non-compliance. In some cases, the inspector extends the workday to allow the jail to bring in a repair crew or contractor to correct the issue. In other cases, the inspector returns to the facility the next day if scheduling allows to verify correction of the issue. If the issue is relatively minor, the inspector may follow up on the issue within 30 days to ensure compliance. By allowing the jail to correct the issue immediately and avoiding the issuance of a notice of non-compliance, the inspector may strengthen the relationship between the local sheriff's office and TCJS. TCJS staff believes the more likely the agency is viewed as willing to work with local jails, the more likely jails will work to achieve compliance.

If issues cannot be corrected with technical assistance or require additional time to correct, the inspector issues a notice of non-compliance to the sheriff and the county commissioners court. The notice of non-compliance requires the county to submit a corrective action plan to TCJS within 30 days and correct the problem within one year. In most cases, jails are able to correct issues within 30 days. If issues are not corrected within one year, TCJS may issue a remedial order at a commission meeting to close the jail or a portion of the jail. Offenders held at the facility must be transferred to another location, which may present a significant cost to the county. If a remedial order is appealed by the county, the jail remains open until commission members review the appeal. After the appeal, at the next meeting, the commission members may vote to uphold the remedial order and order the closure of the facility. Since July 2009, nine counties have been issued remedial orders to close all or part of a jail. The Texas Government Code, Section 511.012, allows local jails one year to comply with an order of non-compliance. However, since commission members meet quarterly and actions are typically not taken outside a commission meeting, non-compliance issues are often not resolved for long periods.

While the majority of jails regularly achieve compliance and are certified by TCJS, a small number of jails struggle with compliance issues. Typically, a jail that fails an inspection regularly is often deficient in a different area of jail maintenance or operation at each inspection. Failing an inspection every year for different reasons highlights the importance of thorough training in local jails. The jail may work to implement the technical assistance offered by TCJS staff but unless the jail administrator or operator has a thorough understanding of the minimum jail standards, the jail is at risk of additional non-compliance issues. High staff turnover is a large contributor to issues that affect jail safety and operations.

The Texas Administrative Code, Section 297.1, requires that regular local inspections be conducted by county officials in addition to the annual inspections conducted by TCJS staff. The rule reads "at intervals of at least four months and at least two times each year, the sheriff/operator shall inspect each facility for which he/she is responsible inquiring into the security, control, conditions, and state of compliance with the rules of the commission." When local officials conduct regular inspections of jails, they may potentially improve safety and efficiency in jail operations. Management related deficiencies, such as improper record keeping, missed life safety training, and maintenance may be addressed before a costly repair is required or compliance is in jeopardy. Jail administrators may reinforce best practices and training with jail staff when conducting local inspections. TCJS does not formally verify these inspections, and they are not part of the inspection checklist.

Figure 1 shows the number of annual inspections conducted and the number of failed annual inspections from fiscal years 2010 to 2015. **Figure 2** shows the number of re-inspections and the number of special inspections from fiscal years 2010 to 2015.

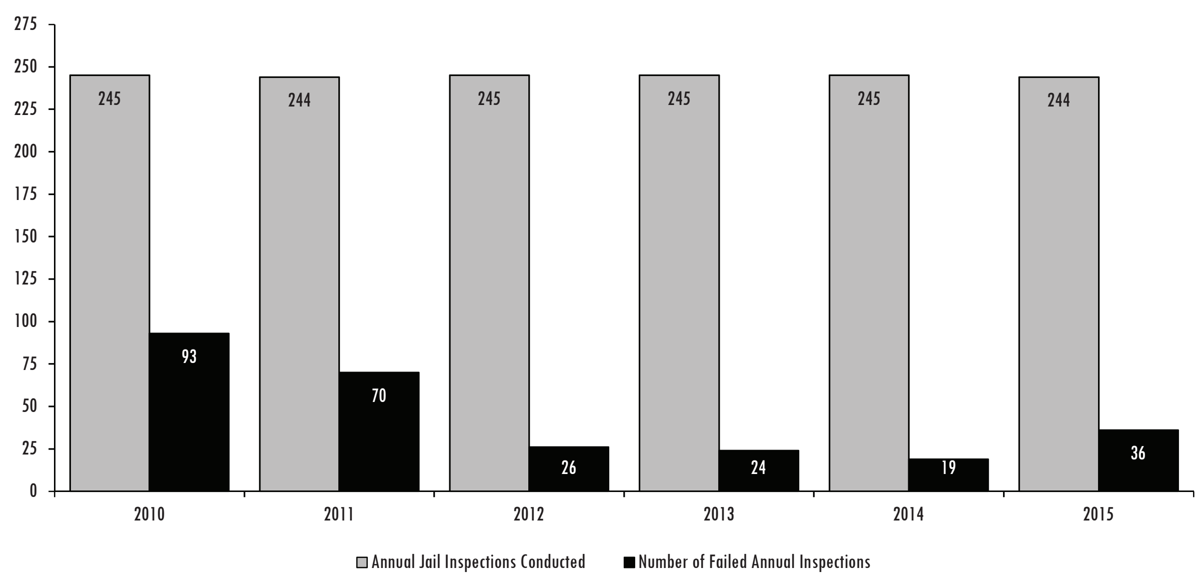
TCJS' four inspectors are integral to ensuring safe, effective jails with each inspector overseeing approximately 60 jails each year. They are responsible for coordinating and conducting annual and special jail inspections and re-inspections, as well as preparing reports certifying compliance/non-compliance and providing technical assistance. TCJS reports inspectors regularly work long hours due to travel and complications that may occur during inspections. Therefore, inspectors often work in excess of 40 hours per week, without compensatory time or overtime pay. The agency does not formally collect data on the amount of overtime worked. **Figure 3** shows the inspector territory map as of fiscal year 2016.

TECHNICAL ASSISTANCE AND TRAINING

To complement inspections, TCJS provides support to help jails meet and maintain compliance. Technical assistance is typically provided as a reaction to existing problems or deficiencies to county officials and jail staff, usually during a facility's annual inspection. When the agency assists counties achieve and maintain compliance with minimum standards, local jails are less likely to be legal liabilities to local communities.

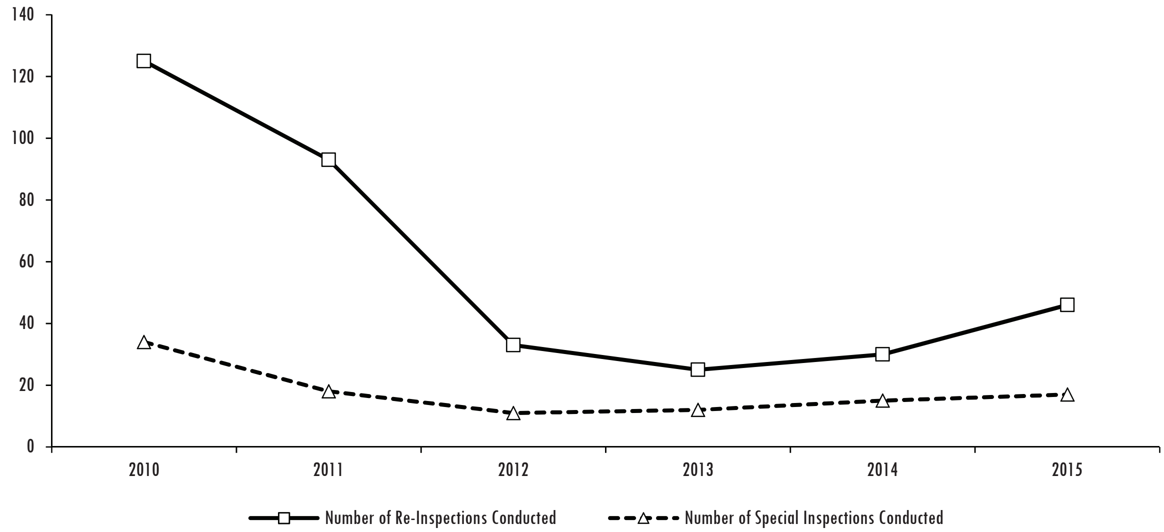
To obtain and maintain the basic jailer license an individual is required to initially complete a 96-hour training course and complete a course on cultural diversity every four years. In 2009, House Bill 2093 amended the Texas Occupations Code, Section 1701.404, to add county jailers to the list of named positions that are eligible to receive a TCOLE certification for mental health assignments. Prior to this legislation, jailers could attend the training but TCOLE was not authorized to provide certification. In addition to the 96-hour basic training, jailers must attend a course on cultural diversity at least every four years. Per minimum standards and in compliance with a jail's operational plan, all jails must provide mental disabilities/suicide prevention training. As stated earlier, the duration and frequency of the training are not specified, creating inconsistencies throughout the state.

FIGURE 1
JAIL INSPECTIONS CONDUCTED BY THE TEXAS COMMISSION ON JAIL STANDARDS, FISCAL YEARS 2010 TO 2015



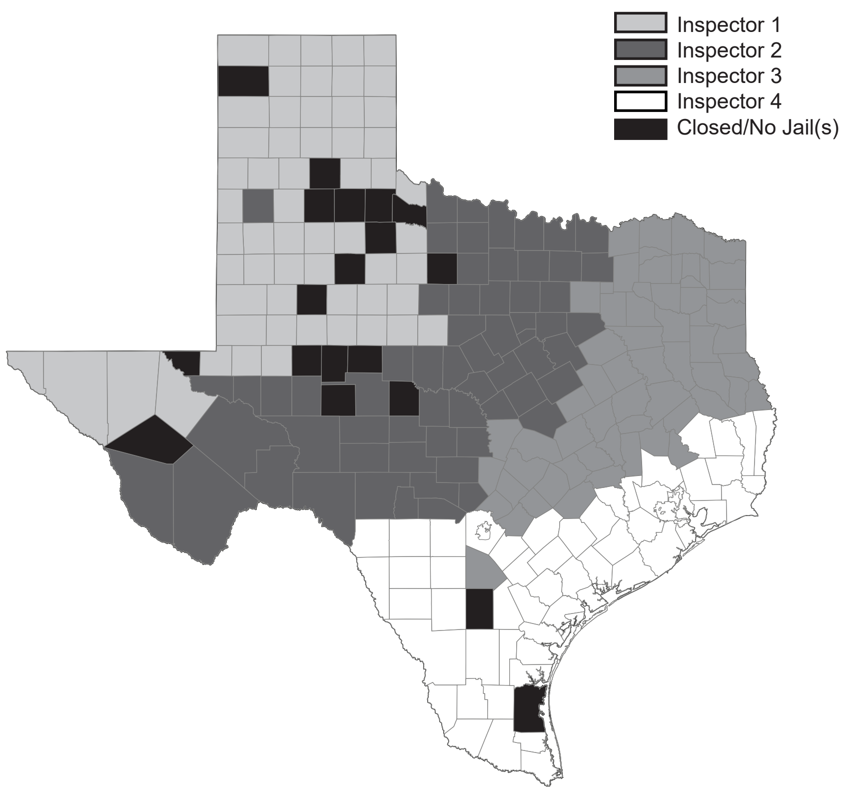
SOURCE: Texas Commission on Jail Standards.

FIGURE 2
RE-INSPECTIONS AND SPECIAL INSPECTIONS CONDUCTED BY THE TEXAS COMMISSION ON JAIL STANDARDS
FISCAL YEARS 2010 TO 2015



SOURCE: Texas Commission on Jail Standards.

FIGURE 3
TERRITORY MAP FOR TEXAS COMMISSION ON JAIL STANDARDS INSPECTORS, FISCAL YEAR 2016



SOURCE: Texas Commission on Jail Standards.

There are no other specific training courses required by statute or minimum jail standards. Jails may offer training per the approved operational plan, but that varies by county. TCOLE offers basic, intermediate, advanced, and master jailer proficiency certifications. However, jailers are not required by statute or minimum standards to obtain these certifications. Additional training may be required by a county or sheriff's department, but often sheriffs' departments have neither the funding nor the staffing to send jailers to training. Rural jails are especially prone to understaffing.

TCJS is certified to provide training for TCOLE registered course number 3518, Assessing for Suicide, Medical, and Mental Impairments, which provides four training hours. The course objective is to provide jailers with the resources to assess individuals for suicide, medical, or mental impairments when an offender is booked into a county jail. The course provides an overview of mental illness in correctional facilities, examines common mental disorders and their symptoms, common medications, and ways to recognize the illness. In addition, the course emphasizes that proper assessment procedures are the key to early identification and treatment that can improve outcomes and reduce the number of suicides. In 2015, the course provided training to 194 participants in 5 classes; in 2014, the course provided training to 744 participants in 22 classes.

The vast majority of TCJS' training and technical assistance occurs in conjunction with jail inspection activities. Due to limited funding, the agency is typically unable to offer individual training to local jails outside of an inspection. A county may request training on a specific topic, such as mental health, and if the county is able to recruit enough participants, typically 25, TCJS may provide the requested training in the field. These trainings are free to attend, but jail staffing issues and limited resources make it difficult for counties to pay for travel or ensure adequate staffing of the jail while a portion of the work force is attending training. TCJS staff conducted a training course on key issues of jail operations during the first quarter of fiscal year 2015 at 10 regional sites serving 398 participants. In 2015, TCJS staff also provided 7 classes to 56 participants in classification training, 2 classes to three participants in population reporting, 3 classes to 51 participants in legislative updates, and 6 classes to 164 participants in inspection training.

Currently, when inspectors provide technical assistance during an inspection, it is limited to staff who are on duty at the time of the inspection and may be limited by the inspector's time and travel constraints. Limited county budgets may prevent jail administrators or jailers from attending out-of-town training. By proactively providing training to local jails, TCJS may help jail staff prevent problems before they occur and reduce the number of notices of non-compliance. To provide assistance to counties, training programs should be conducted regularly statewide. By providing more training opportunities, especially in rural areas, TCJS could address specific issues in a consistent manner and ensure all facilities and jailers are receiving the same instructions and advice. Additional funding would ensure that the agency can provide training to local jail personnel in the field at no cost to local governments.

JAIL STANDARD VARIANCES

Variances are exceptions to minimum jail standards requested by counties and approved by the commission's members. The process for a local jail to request a variance has been in place since the establishment of TCJS and is codified in the Texas Government Code, Section 511.009. If a facility does not meet minimum jail standards or if a county official plans to construct or operate a facility that does not comply with minimum jail standards, the county official may file an application for variance with the TCJS. Variances approved by TCJS may be granted for a specific length of time, are eligible for review and extension by the agency, or may be approved indefinitely. The extended periods typically are 6 to 12 months, depending upon the requirements of the variance.

TCJS reported 493 active variances in March 2015. More than 50 percent of these variances were granted prior to 1982 and were issued to facilities operated prior to the establishment of TCJS or to facilities that were built from 1976 to 1982. The agency does not grant variances that create unhealthy, unsanitary, or unsafe conditions or otherwise compromise the security or supervision of offenders. A variance may be cancelled, by either the TCJS or at the request of a county, once it has expired or the condition requiring the variance is no longer applicable. According to TCJS, 91 variances were cancelled from fiscal years 2010 to 2016.

The most common variance is for construction, particularly offender congregation levels and the size of dormitories. Dormitories are limited to 48 offenders under minimum jail standards. During the planning stages of new construction or renovation, counties may request a variance based on a housing design concept which exceeds the 48-bed capacity. Typically, there is a local cost savings associated with granting variances. TCJS reports that no variance has been associated with any injury or death.

While variances may represent a cost saving to counties, they could limit the county from seeking alternative long-term solutions. Instead of expanding the size of dormitories to hold more than the prescribed number of beds, counties could work to reduce incarceration levels by utilizing diversion programs, good-time credit, and reentry efforts to reduce recidivism. Variances may be cost effective in the short-term and allow a jail to be excepted from certain minimum standards, but exceptions may also prevent long-term solutions to issues like overcrowding.

OFFENDER GRIEVANCES

One of the major responsibilities of TCJS is to establish policies and procedures for the timely and fair review of allegations brought by offenders or their representatives. The agency is authorized to investigate a complaint if it occurs at a facility within its purview. TCJS has only one dedicated employee who reviews, investigates, and adjudicates complaints. With the exception of medical or life safety issues offenders must first follow the grievance procedure, including the appeals process, of the jail in which they are held.

Once a complaint is received by TCJS staff, it is date stamped and forwarded to the complaints investigator. The investigator determines if the facility is under the agency's purview and if the complaint is a violation under TCJS' authority. If the complaint does not qualify under these requirements, the offender is notified in writing. If the complaint is found to be criminal in nature, the complaint investigator refers the complaint in writing to the appropriate law enforcement agency, which may include the local police agency or sheriff's office, the Texas Rangers, the local district or county attorney, or the Federal Bureau of Investigation. If the complaint is not criminal in nature, the complaints investigator reviews the complaint based on priority level. Complaints which involve life safety, overcrowding, and supervision are given immediate priority. The complaints investigator has the authority to request information and documentation from the local sheriff's office or jail administrator, perform a site visit or investigation, and is granted full access to the facility, records, books, and witnesses to determine if further action is required. The sheriff or jail operator is given a chance to respond to the complaint. After the complaint has been investigated, the complaints investigator determines if a violation of a minimum jail standard has occurred. If a complaint is substantiated, the sheriff is notified in writing within 10 days of the conclusion of the investigation. TCJS staff may opt to monitor the facility, provide technical assistance, conduct a special investigation, or issue a notice of non-compliance depending on the seriousness of the violation. Any appeals made by the offenders are reviewed by the TCJS assistant director. After the assistant director has reviewed the appeal and rendered an opinion, the decision is final.

In calendar year 2015, TCJS received 1,903 written requests for offender assistance or grievance with 715 requests requiring a written response by county officials and possible action by TCJS staff. A total of 86 complaints were substantiated by the complaints investigator while 1,188 requests required either no response, were beyond the purview of TCJS, or required that the offender first use the local facility's grievance process. The most frequent grievance requiring a formal reply was for medical services which is consistent with past years. In 2015, 50 percent of the grievances submitted were related to medical services. If a local jail had multiple complaints related to similar issues, the concerns were often addressed through technical assistance.

INVESTIGATION OF DEATH IN CUSTODY

Upon notification of a death in custody, TCJS launches an inquiry into the death as it relates to minimum jail standards. Jails are required to notify the agency within 24 hours of a custodial death via a direct email account. TCJS staff gather information related to booking, the DSHS Continuity of Care Query, magistrate notification, and the suicide/mental health screening form. Austin-based staff generally conduct the custodial death investigations. During the investigation, TCJS staff request documents as needed and, if necessary, do an on-site inspection of the jail. However, funding for travel is very limited and it is extremely rare for a staff member to conduct an on-site investigation of a death in custody. This inquiry is often parallel to a local law enforcement or a Texas Rangers' investigation. TCJS has no authority to file criminal charges or complaints and may only investigate possible violations of minimum jail standards. Generally, the areas of non-compliance following a death include failure to complete the intake screening form immediately upon admittance, failure to notify a magistrate, failure to follow a physician's orders, or failure to conduct supervision checks. If a notice of non-compliance is issued, the jail has 30 days to submit a corrective plan.

SCREENING FORM FOR SUICIDE AND MEDICAL/ MENTAL/DEVELOPMENTAL IMPAIRMENTS

On December 1, 2015, a revised mental health intake and screening form was implemented in local jails with the intent of increasing awareness and treatment for offenders who are undergoing mental health crises. The purpose of the mental health intake screening is to allow correctional staff to identify which offenders may be at risk for suicide or may be in distress from a mental health disorder or complications from substance abuse. The expanded form, developed in conjunction with TCJS and local mental health officials, requires that jail staff ask more detailed questions related to offender medical and mental health history, behavior, and disabilities. TCJS direction provides specific instructions on when to contact a supervisor or refer the offender to the local mental health authority. According to TCJS, incorrectly filling out the Mental Health/Suicide Prevention Screening Form or not completing the form during booking may increase the number of suicides in a jail. Proper identification of mental health issues and subsequent action may prevent offenders from harming themselves or others. While implementation of the new form could potentially increase the number of offenders requiring services as the result of a mental health crisis, jails may lack the resources to provide a mental health counselor or the facilities to hold multiple offenders on suicide watch.

The Texas Code of Criminal Procedure, Section 16.22, requires that jail staff notify a magistrate if the screening form indicates an offender may be at risk for suicide or in distress from a mental health disorder or experiencing substance abuse complications. The magistrate is authorized to order a comprehensive mental health exam. TCJS reports that in some jurisdictions, jailers and magistrates remain unaware of this statutory requirement. Additional information regarding mental health and jails is provided in the *Legislative Budget Board Staff Report*, Survey Results of Mental Health Services in Texas Jails, 2017. The report provides an assessment of county and city jail practices relating to mental illness identification, monitoring, service provision, staff training, and data collection.

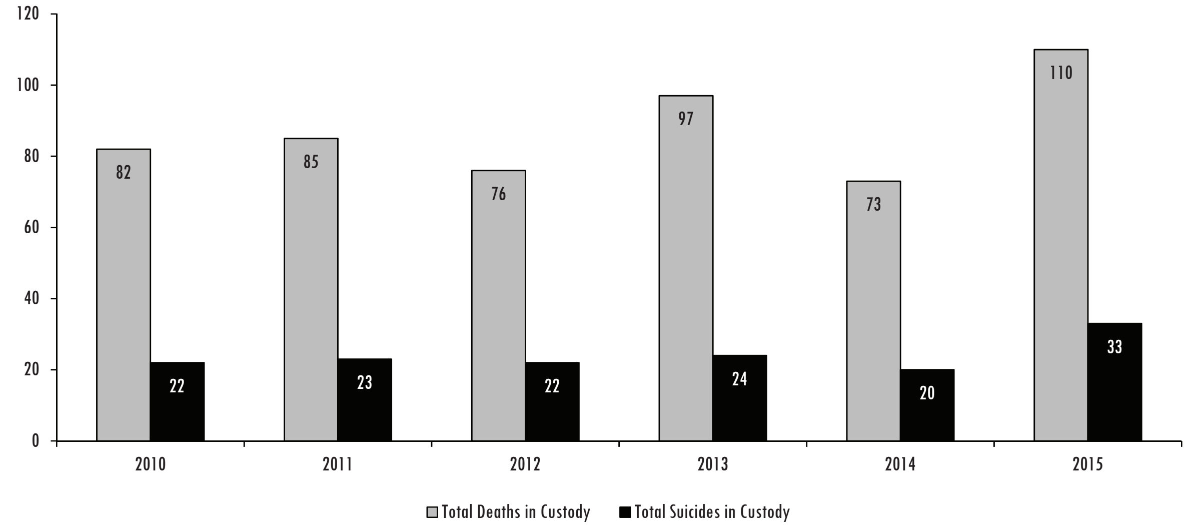
After implementation of the new screening form, six suicides occurred in jails between December 15 and May 31. After TCJS staff completed the death in custody investigations at the affected facilities, five facilities were found to be in non-compliance at the time of the suicides. Of the non-compliant jails, five were cited for jailers failing to perform appropriate observation checks. TCJS' investigation determined that in some cases, logs documenting 30-minute visual checks did not match video surveillance. In one case, TCJS determined that the required 30-minute visual check was not performed for several hours, providing the opportunity for an offender to commit suicide while in custody. On June 2, 2016, TCJS issued a memorandum to sheriffs and jail administrators advising them of the recent suicides and cautioning jail staff to conduct observation checks as required. After the memorandum was issued and as of August 16, 2016, an additional seven suicides occurred in other jails. One of the affected jails was found in non-compliance for failing to notify a magistrate. Although it is impossible to determine if these deaths could have been prevented, compliance with minimum standards helps reduce the opportunity for self-harm. While being fully compliant with minimum jail standards may not prevent all suicides, performing regularly scheduled checks and properly administering the mental health screening form may improve access to care and prevent an offender from self-harm. **Figure 4** shows the number of deaths and suicides in Texas jails from fiscal years 2010 to 2015.

The recent rate of suicide in Texas jails has brought attention to mental health issues of county jail offenders. The burden of providing mental health resources and reducing suicide lies with local jail administrators; however, required jailer training is insufficient to properly train staff how to address significant mental health issues. TCJS has the programming and technical knowledge to provide training and technical assistance yet implementing a widespread, comprehensive training program is beyond the agency's resourses. Inspectors may be able to provide some training while conducting annual inspection, but each inspector's time and resources are stretched across a quarter of the state. With the following resources, TCJS would be positioned to provide regular inspections, technical assistance, and to better address issues of non-compliance.

STRENGTHEN INSPECTION AND TRAINING PROCESSES TO IMPROVE COMPLIANCE

The time and resources of the four jail inspectors are limited. With each inspector responsible for a quarter of the state, they are unable to effectively conduct special inspections of high risk jails or conduct in-person investigations of deaths in custody. Due to the large territories assigned to inspectors, TCJS is responsible for hotel, mileage, and per diem costs associated with inspector travel. Option 1 would increase appropriations by $132,681 in General Revenue Funds per fiscal year to fund three additional jail inspectors to provide technical assistance, training, and follow-up after inspections. The additional staff would also reduce the workload of the current team of jail inspectors and reduce the number of overnight hotel stays and per diem expenses. Three additional inspectors would reduce each inspector territory from 60 to 35 jails.

FIGURE 4
DEATHS IN TEXAS JAILS, FISCAL YEARS 2010 TO 2015



SOURCE: Texas Commission on Jail Standards.

In fiscal year 2015, suicides comprised 30 percent of all deaths in Texas jails. Non-compliance issues, particularly failure to perform regular observation of offenders identified as having a mental health need are a factor in the number of suicides. Option 2 would amend statute to require mental health and suicide prevention training for jailers every two years and require TCJS to provide the training to local jails. Comprehensive mental health training for all local jailers will likely reduce the risk of suicides and provide a safer environment for offenders held in local jails. TCJS training would allow jail administrators to employ better trained staff at no additional cost to local governments.

Current training requirements for jail staff are insufficient. TCJS provides some training to local jail staff, but the lack of sufficient training funds prevents TCJS from providing comprehensive, state-wide training to all facilities under its purview. As a result, training is largely left to the discretion and availability resources of the local jails. Adherence to minimum jail standards protects local governments from potentially costly litigation. TCJS can provide consistent training with a focus on adherence to best practices to reinforce mental health screening procedures, proper observation procedures with the goal of reducing jail suicides, and provide a greater understanding of mental illness. Option 3 would increase appropriations by $123,015 in General Revenue Funds per fiscal year to fund three trainers to provide training to jails on a two-year cycle with each trainer covering approximately 40 jails annually.

FISCAL IMPACT OF THE OPTIONS

The options would have a total cost of $511,392 in General Revenue Funds for the 2018–19 biennium. The fiscal impact of Option 1 would be approximately $132,681 in General Revenue Funds per fiscal year for three inspectors including salary and equipment and not including benefits. The fiscal implication for Option 3 would be approximately $123,015 in General Revenue Funds per fiscal year for three trainers (Program Specialist I) not including benefits. Option 2 would have no fiscal impact but would amend statute to require TCJS to provide mental health training to jails biennially. **Figure 5** shows the five-year fiscal impact of Options 1 and 3.

FIGURE 5
FIVE-YEAR FISCAL IMPACT OF OPTIONS 1 AND 3
FISCAL YEARS 2018 TO 2022

YEAR	PROBABLE SAVINGS/ (COST) IN GENERAL REVENUE FUNDS	PROBABLE ADDITION OF FULL-TIME-EQUIVALENT POSITIONS
2018	($255,696)	6.0
2019	($255,696)	6.0
2020	($255,696)	6.0
2021	($255,696)	6.0
2022	($255,696)	6.0

SOURCE: Legislative Budget Board.

The House introduced 2018–19 General Appropriations Bill includes an increase in appropriated amounts and riders to implement Option1 and Option 3.

OVERVIEW OF THE REVIEW AND APPROVAL OF NEW DRUG THERAPIES IN CORRECTIONAL MANAGED HEALTH CARE

The Texas Department of Criminal Justice is responsible for providing healthcare to offenders incarcerated in state correctional institutions. The agency provides this care through the Correctional Managed Health Care program. For the 2016–17 biennium, $1.1 billion was appropriated to the Texas Department of Criminal Justice for Correctional Managed Health Care, including $118.7 million for pharmacy benefits. Prescription drug prices have increased in recent years. Some new drug therapies that are more effective than previously available options are expected to increase drug costs. This trend will disproportionately affect the state's correctional healthcare costs because the incarcerated population tends to be less healthy than the general population.

Correctional Managed Health Care uses various strategies to contain the costs of care for inmates. Texas is unique among states in its use of a federal drug pricing program that helps contain pharmaceutical costs in Correctional Managed Health Care. The following summary of the process used to review and approve new drug therapies for correctional healthcare discusses the policies and procedures of the correctional healthcare pharmacy activities.

FACTS AND FINDINGS

- ♦ The Texas Department of Criminal Justice contracts with The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center to provide the daily administration, organization, management, and supervision of operations for Correctional Managed Health Care.
- ♦ Correctional Managed Health Care uses a statewide, standardized formulary to provide direction on which medications can be prescribed. A subcommittee reviews new federally approved drugs for formulary inclusion when the drugs' therapeutic categories are scheduled for review.
- ♦ The University of Texas Medical Branch at Galveston is responsible for procuring medications for all state correctional units and operates a centralized pharmacy in Huntsville. The university's participation in the federal 340B Drug Pricing Program results in savings for Correctional Managed Health Care. However, according to the Texas Department of Criminal Justice, proposed federal guidance for this program that would prohibit use of it for correctional populations could lead to an annual cost increase of approximately $67.4 million. Final federal guidance for the 340B Program omnibus guidelines was expected in December 2016, and, if adopted as proposed, could have taken immediate effect. According to the Texas Department of Criminal Justice, the proposed changes are not anticipated to be finalized due to the change in federal administration.
- ♦ Correctional Managed Health Care employs various other strategies to control pharmaceutical costs. These strategies include contracts with prime vendors that negotiate with pharmaceutical manufacturers, University of Texas Medical Branch at Galveston's direct negotiations on behalf of all University of Texas System pharmacies, purchasing high-volume generics, and reclaiming unused medications.

DISCUSSION

The Texas Department of Criminal Justice (TDCJ) provides healthcare for inmates in state correctional institutions, who have a constitutional right to medical care, including access to medically necessary medications. The Seventy-third Legislature, 1993, established the Texas Correctional Managed Health Care (CMHC) program within TDCJ in an effort to control costs and to ensure adequate medical care for inmates.

CORRECTIONAL MANAGED HEALTH CARE

CMHC is directed by the Correctional Managed Health Care Committee. Statute requires the committee to develop and approve a managed healthcare plan and to develop policies for delivering correctional healthcare. The CMHC committee also monitors the quality of care delivered by healthcare providers and provides fiscal oversight of the funds appropriated for inmate healthcare. The CMHC Committee consists of nine members, including: an employee of TDCJ; four physicians from certain public medical schools; two licensed, mental health professionals appointed by the Governor; two public representatives (at least one licensed to practice medicine in Texas) appointed by the Governor; and a nonvoting representative of the Texas Medicaid program. TDCJ provides some administrative support for the operation of the committee. Statute requires that, in contracting for the implementation of the correctional managed healthcare plan, TDCJ, to the extent possible, integrates the managed healthcare provider network with the state's medical schools and the component and affiliated hospitals of those medical schools.

The CMHC Committee delegates the administration, organization, management, and daily operations supervision to the healthcare providers that contract with TDCJ: The University of Texas Medical Branch at Galveston (UTMB) and the Texas Tech University Health Sciences Center (TTUHSC). The committee, TDCJ, UTMB, and TTUHSC coordinate as partner agencies. The partner agencies defined each entity's functional responsibilities to strengthen the delivery of correctional healthcare and avoid unnecessary duplication. The committee has 22 subcommittees that address specific areas of correctional healthcare and set the correctional healthcare standards, policies, and procedures for CMHC. **Figure 1** shows the organizational relationships among each of the partner agencies, with oversight from the Office of the Governor and the Legislature.

APPROPRIATIONS FOR THE CORRECTIONAL MANAGED HEALTH CARE PROGRAM

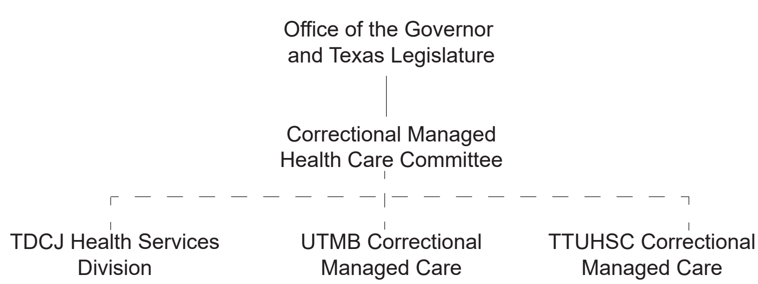
CMHC is funded in three separate strategies within TDCJ's appropriations goal for incarcerating felons: Unit and Psychiatric Care; Hospital and Clinical Care; and Managed Health Care – Pharmacy. According to TDCJ, UTMB and TTUHSC follow similar methodology in developing requested appropriations. For the Managed Health Care – Pharmacy strategy, the university providers use a roster of positions to cost projected labor expenses, overtime, longevity pay, and shift differentials. Staff benefit costs are estimated using previous ratios of benefits to salary expense. Maintenance and operations expense estimates are calculated using previous trends and applying inflationary factors. Pharmaceutical costs are estimated by analyzing previous annual population averages, total distributed pharmaceutical costs, volumes of filled prescriptions, and average prescriptions filled per patient. Based on observed trends, UTMB and TTUHSC then estimate upcoming needs using data for projected populations and filled prescriptions. An estimated prescription inflation factor for drug cost and volume growth is also applied.

The Legislature appropriated $6.7 billion in All Funds for the 2016–17 biennium to TDCJ for the incarceration, probation, and parole of adult offenders. These appropriations include housing, security, classification, food and necessities, healthcare, and treatment services. Of that amount, $1.1 billion in General Revenue Funds was appropriated for CMHC. During fiscal years 2010 to 2015, TDCJ spent on average $40.6 million on prescription drugs for inmates per fiscal year. **Figure 2** shows the CMHC expenditures for fiscal year 2016. **Figure 3** shows the CMHC drug costs for fiscal years 2010 to 2015.

CORRECTIONAL MANAGED HEALTH CARE PHARMACY

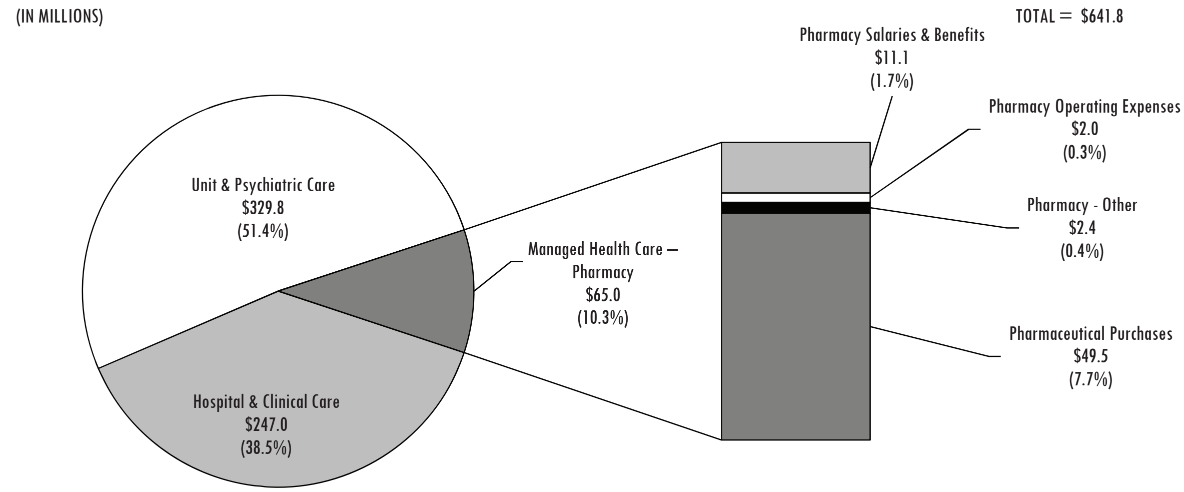
A subcommittee of the CMHC Committee, the Joint Pharmacy and Therapeutics Committee (P&T), develops and maintains the statewide prescription drug formulary, drug use policies, and disease management guidelines for use in the state prison system. The P&T committee also determines policies for the evaluation, selection, procurement, distribution, control, and use of medications in CMHC. In July 2016, this subcommittee consisted of 34 physicians, nurses, clinicians, dentists, and pharmacists representing

FIGURE 1
CORRECTIONAL MANAGED HEALTH CARE PROGRAM ORGANIZATIONAL RELATIONSHIPS, AS OF OCTOBER 2016



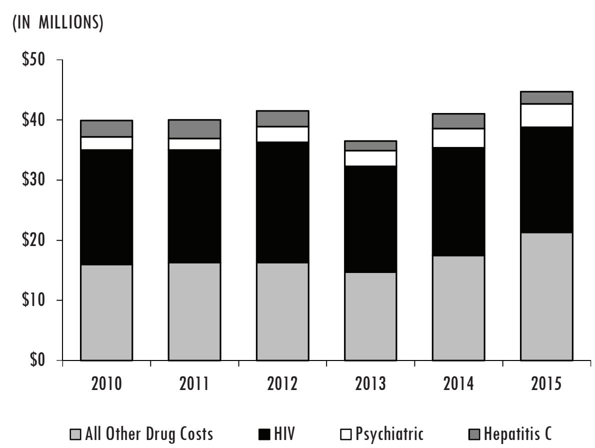
Note: The Office of the Governor and the Legislature provide direct supervision of the Correctional Managed Health Care Committee. The committee helps to coordinate healthcare services with the Texas Department of Criminal Justice (TDCJ), the University of Texas Medical Branch at Galveston (UTMB), and the Texas Tech University Health Sciences Center (TTUHSC).
Source: Texas Department of Criminal Justice, Correctional Managed Health Care Committee.

FIGURE 2
CORRECTIONAL MANAGED HEALTH CARE PROGRAM EXPENDITURES, FISCAL YEAR 2016



SOURCE: Texas Criminal Justice Department, Financial Report on Correctional Managed Health Care, Quarterly Report, Fiscal Year 2016, Fourth Quarter, September 2015 to August 2016.

FIGURE 3
CORRECTIONAL MANAGED HEALTH CARE DRUG COSTS FISCAL YEARS 2010 TO 2015



NOTE: The decrease for fiscal year 2013 is primarily due to a switch to generic HIV medication.
SOURCE: Texas Department of Criminal Justice.

UTMB, TTUHSC, and TDCJ. UTMB is responsible for procuring medications for all TDCJ units and operates a centralized pharmacy in Huntsville. Pharmacy Services, a division of UTMB Correctional Managed Care (UTMB CMC), ensures that pharmacy needs at each facility are met in accordance with applicable state and federal regulations regarding the prescribing, dispensing, administering, and procuring of pharmaceuticals. **Figure 4** shows the centralized pharmacy's service statistics for fiscal year 2015.

No specific federal or state laws provide guidance about pharmacy services for correctional healthcare. Industry groups that publish correctional healthcare guidelines or standards include the American Society of Health-System Pharmacists, the American Correctional Association (ACA), and the National Commission on Correctional Health Care (NCCHC). ACA and NCCHC offer voluntary health services accreditations. All TDCJ units are ACA-accredited, except the Hospital Galveston unit, which is accredited by the not-for-profit organization Joint Commission on Accreditation of Health Care.

PHARMACY AND THERAPEUTICS REVIEW AND THE FORMULARY

The P&T committee is responsible for routinely reviewing pharmaceuticals for use in CMHC. The P&T committee monitors the U.S. Food and Drug Administration's (FDA) approval of new drugs with assistance from UTMB CMC Pharmacy Services. Newly approved drug therapies are considered for the CMHC formulary by the P&T committee during routine reviews. The determination of whether to include a drug on the statewide CMHC formulary is based on the following three main criteria, which consider the unique characteristics of the patient population being served:

- an evaluation of a drug's value based on clinical evidence from medical literature, safety, and cost;
- availability of other drugs on the formulary, avoiding duplication; and
- a priority for use of generic equivalents whenever possible.

FIGURE 4
CORRECTIONAL MANAGED HEALTH CARE PHARMACY SERVICE STATISTICS, FISCAL YEAR 2015

Facilities at end of year (1)	109
Average number of patients per month	148,569
Total prescriptions dispensed (2)	4,707,973
Average number of prescriptions dispensed per month	392,331
Average number of prescriptions dispensed per business day	18,908
Average number of prescriptions per inmate per year	31.7
Generic utilization	90.5%
Average cost per prescription	$9.43
Average cost per formulary prescription	$7.78
Average cost per nonformulary prescription	$119.77
Percentage of cost from nonformulary medications	18.8%
Percentage of volume from nonformulary medications	1.5%
Average nondrug cost per prescription	$2.45

NOTES:
(1) Facilities refers to the units operated by the Texas Department of Criminal Justice or a private contractor of the agency where the Correctional Managed Health Care program provides pharmacy services.
(2) Inmates must get prescriptions for all drugs, including those that are available over-the-counter outside of correctional settings, such as aspirin.
SOURCE: Texas Department of Criminal Justice, Pharmacy Annual Review.

Medications are reviewed according to therapeutic category (i.e., respiratory, anti-infectives, psychotropic agents, etc.) regularly and at least annually. The routinely scheduled therapeutic category reviews are conducted at each bimonthly meeting of the P&T committee. A medication may also be reviewed as part of a medication use evaluation, during a review of disease management guidelines, or when a provider submits a special formulary addition request.

A prescriber may order a new drug therapy for an incarcerated offender before the drug is reviewed for the formulary by submitting a nonformulary medication approval request. If a prescriber believes a new drug therapy will be used routinely, the prescriber may request the addition of the medication to the formulary through a formal process. If no specific request is made, the new drug is reviewed when the drug's therapeutic category is scheduled for review, typically within one year or less of FDA approval.

Any FDA-approved drug can be available for an incarcerated offender; however, the CMHC formulary uses a five-tiered system to categorize medications. **Figure 5** shows the five tiers of drug agents in the CMHC formulary. Formulary agents are routinely used for the CMHC patient population and are less expensive and more likely to be generic than nonformulary drugs. However, some branded drugs are on the formulary, such as some HIV treatments, because they are routinely used for the CMHC patient population. Restricted agents, clinic-use-only agents, and prior-authorization agents may only be used in certain circumstances, defined in the formulary or by the P&T committee. The tier of nonformulary agents covers all the medications that are not included in the formulary. A prescriber must obtain approval from a clinical pharmacist designated by the P&T committee before the pharmacy will dispense the medication. The prescriber must provide documentation that the patient needs the particular medication and that no acceptable substitute exists on the formulary.

FIGURE 5
CORRECTIONAL MANAGED HEALTH CARE PHARMACY DRUG AGENT TIERS, AS OF MARCH 2016

AGENTS	DESCRIPTION
Formulary	Medications listed in the formulary that may be prescribed for any patient at any facility.
Restricted	Medications that may be prescribed at specific facilities only. Restrictions will be noted for individual medications in the formulary. All other uses require nonformulary approval.
Clinic Use Only	Medications that may only be administered to patients one dose at a time when they are in clinics. These medications may not be prescribed to patients as individual orders to be dispensed by the pharmacy.
Prior Authorization	Medications that may be prescribed if specific clinical criteria are met. All other uses require nonformulary approval.
Nonformulary	Medications not included in the formulary. Approval must be obtained before their use.

SOURCE: Correctional Managed Care Pharmacy Policy and Procedure Manual, 2016.

The Correctional Managed Care Pharmacy Policy and Procedure Manual, the pharmacy manual available at each unit, directs clinical pharmacists to base nonformulary recommendations on the following factors: target disease, concomitant drugs, comorbidities, previous medications used for the indication, dosages, compliances, allergies, laboratory and diagnostic procedure results, patient information, CMHC disease management guidelines, national standards and guidelines, and applicable scientific literature. The clinical pharmacist may defer approval and may offer an alternate recommendation; if the prescriber does not accept the recommendation, the prescriber may contact the regional medical director to request the nonformulary approval.

PRESCRIPTION DRUG PRICE TRENDS

A February 2016 report from the nonprofit organization AARP's Public Policy Institute found the increase in cost of brand-name drugs was greater than the savings from use of generic equivalents. A systematic review of 25 studies conducted across 1996 to 2010 found three main factors affected pharmaceutical expenditures: changes in drug quantities and therapies, the introduction of new drugs, and changes in prices for existing drugs. Changes in drug quantities and therapies occur when a drug is prescribed more or less often, is prescribed at higher or lower dosages, or is used with other drugs as a combined treatment. These changes are also influenced by the introduction of newer, more effective drugs or by the development of generic equivalents and biological products similar to FDA-approved products, among other factors. Newly introduced drugs tend to be more expensive and must gain regulators' approval and prescribers' acceptance. Prescribers may also have concerns about safety and higher costs. News reports in 2015 also note that manufacturing shortages and decreased competition due to mergers and acquisitions in the pharmaceutical industry have contributed to rising prescription drug costs. This trend will disproportionately affect the state's correctional healthcare costs because the incarcerated population tends to be less healthy than the general population. **Figure 6** shows the top 10 prescription drugs in CMHC by prescription volume and the cost of each of those drugs per patient for the second quarter of fiscal year 2016.

Just as for the broader healthcare market, drug prices continue to rise for TDCJ, and new therapies are usually more expensive. According to TDCJ, some new therapies provide opportunities to treat conditions that had previously been untreatable or provide drug treatments that prevent the need for more expensive treatments such as surgery or hospitalization. These therapies are sometimes referred to as high-impact drugs—drugs that are more effective than previous drug therapies. Such innovations often result in a change in clinical practice. For example, in recent years, cancer treatment has shifted toward daily oral therapies, similarly to the treatment of other chronic illnesses. Cancer treatment agents were 0.05 percent of the total prescription

FIGURE 6
TOP 10 DRUGS BY PRESCRIPTION VOLUME, SECOND QUARTER OF FISCAL YEAR 2016

DRUG	TREATMENT	FORMULARY STATUS	PATIENT COUNT	QUARTERLY COST	COST PER PATIENT
Aspirin EC (enteric-coated) 81 milligram (mg) tablet	Pain reliever, fever reducer, antiplatelet	F	15,573	$7,585.71	$0.49
Hydrochlorothiazide 25 mg tablet	Diuretic, hypertension	F	14,559	$9,050.14	$0.62
Omeprazole 20 mg capsule	Gastroesophageal reflux disease (GERD), heartburn, ulcers	F	13,906	$27,748.31	$2.00
Ranitidine 150 mg tablet	Heartburn, GERD, ulcers	F	13,834	$54,545.61	$3.94
Amlodipine 10 mg tablet	Hypertension	F	11,230	$13,344.55	$1.19
Lisinopril 40 mg tablet	Hypertension	F	9,691	$12,545.96	$1.29
Lisinopril 20 mg tablet	Hypertension	F	10,059	$9,344.32	$0.93
Ibuprofen 600 mg tablet	Pain reliever, fever reducer	F	13,526	$21,381.76	$1.58
Loratadine 10 mg tablet	Seasonal allergies, urticaria	F	10,204	$26,264.35	$2.57
Novolin N (neutral-pH suspension insulin) 100 units per milliliter (u/ml) 10 milliliter (ml) vial	Diabetes	F	3,632	$1,340.09	$0.37

Note: F = formulary.
Source: Texas Department of Criminal Justice.

volume for CMHC in fiscal year 2015, and they accounted for 2.0 percent of total drug costs.

Similarly, advances in treatment for the hepatitis C virus (HCV) are resulting in increased costs for CMHC. Assuming the number of patients treated for HCV remains similar to previous years, cost for the treatment of this population may increase as newer, more expensive therapies are approved. In November 2015, CMHC implemented changes in treatment protocol in an effort to control costs associated with the development and availability of new HCV drugs by prioritizing patients for treatment based on severity of disease. CMHC updated its disease management guide for HCV, requiring that a patient meet certain advanced-stage clinical criteria before receiving treatment. This change in treatment protocol resulted in a decrease in the number of patients with HCV that receive treatment. For fiscal year 2016, CMHC provided treatment for 833 HCV patients at a drug cost of $3.1 million, compared to 2,532 HCV patients for fiscal year 2015 at a drug cost of $2.0 million. Changes such as this increased cost are considered by UTMB and TTUHSC in the development of their estimate of upcoming resource needs.

Lawsuits pertaining to changes in HCV treatment protocols in state Medicaid programs and in correctional settings have been filed in several states. Medicaid is a joint federal–state entitlement program to provide medical care for low-income individuals. In a case in Washington, a judge struck down restrictions on HCV medications in that state's Medicaid program, requiring that the program cover HCV treatment for all patients with severe liver disease, not just patients with the most extensive liver damage. As of August 2016, three states—Massachusetts, Minnesota, and Pennsylvania—are awaiting judgment in class action litigation after groups of inmates sued the states' prison systems for restricting HCV treatment to patients with advanced stages of the disease for nonmedical reasons. Limitations on HCV treatment may also affect public health and the spread of this infectious disease when an offender with HCV is released from incarceration. **Figure 7** shows the top 10 prescription drugs in CMHC by overall cost and the cost of each of those drugs per patient for the second quarter of fiscal year 2016.

PRESCRIPTION DRUG COST-CONTAINMENT STRATEGIES

CMHC uses several strategies to contain drug costs, such as the standardized drug formulary. The formulary and disease management guidelines prioritize use of the most cost-effective treatments for inmates. This prioritization includes the use of generic drugs that are as effective as more expensive branded products. The guidelines also provide guidance to prescribers to ensure an effective and efficient standard of care. For fiscal year 2015, the utilization rate for generic drugs (formulary and nonformulary) in CMHC was 90.5 percent, which accounted for 28.1 percent of the overall prescription costs. The same year, nonformulary medications made up 1.5 percent of the volume of drugs dispensed and accounted for 18.8 percent of the program's overall prescription costs.

FIGURE 7
TOP 10 DRUGS BY COST, SECOND QUARTER OF FISCAL YEAR 2016

DRUG	TREATMENT	FORMULARY STATUS	PATIENT COUNT	QUARTERLY COST	COST PER PATIENT
Viread 300 milligram (mg) tablet	Human immunodeficiency virus (HIV)	F	1,691	$1,164,677.48	$688.75
Prezista 800 mg tablet	HIV	F	561	$1,133,359.93	$2,020.25
Renagel 800 mg tablet	Kidney disease	PA	256	$718,067.32	$2,804.95
Harvoni 90–400 mg tablet	Hepatitis C	NF	34	$636,077.84	$18,708.17
Reyataz 300 mg capsule	HIV	F	369	$627,683.22	$1,701.04
Tivicay 50 mg tablet	HIV	F	259	$601,119.36	$2,320.92
Lamivudine 300 mg tablet	HIV	F	1,694	$327,107.87	$193.10
Isentress 400 mg tablet	HIV	F	171	$318,793.12	$1,864.29
Sustiva 600 mg tablet	HIV	F	401	$304,419.66	$759.15
Qvar 80 microgram (mcg) inhaler	Asthma, chronic obstructive pulmonary disease	F	5,736	$294,361.65	$51.32

NOTE: F = formulary; PA = prior authorization; NF = nonformulary.
SOURCE: Texas Department of Criminal Justice.

CMHC also uses discount pricing programs to contain drug costs. For the 80.0 percent of inmates treated through CMHC that are treated by UTMB, the state benefits from the university's participation in the federal 340B Drug Pricing Program (340B Program). The 340B Program was established in the U.S. Code, Title 42, Section 256b, referred to as the Public Health Service Act (PHSA), in 1992. PHSA, Section 340B, is administered by the federal Office of Pharmacy Affairs (OPA) in the Health Resources and Services Administration (HRSA). The 340B Program provides qualified safety-net organizations, known as covered entities, access to outpatient drugs at reduced prices. Only covered entities, such as disproportionate share hospitals, are eligible to receive outpatient drugs at reduced prices. OPA reports that, on average, covered entities save from 25.0 percent to 50.0 percent through the 340B Program. The Seventy-seventh Legislature, 2001, required TDCJ to make a good faith effort to qualify for pricing through the 340B Program using UTMB's status as a disproportionate share hospital. TDCJ and UTMB received federal approval in April 2002, and the program was implemented for CMHC patients served by UTMB in May 2002.

As of July 2016, CMHC has saved an estimated total of $431.0 million due to participation in the 340B Program. For fiscal year 2015, savings were approximately $67.4 million. According to TDCJ, some states use the discount to purchase certain treatments, such as HIV drugs, but no other state has purchased all drugs through the program for close to 80.0 percent of its correctional healthcare population.

According to TDCJ, TTUHSC does not qualify as an eligible entity for participation in the 340B Program because it does not own a hospital. TTUHSC drugs are purchased at wholesaler acquisition cost pricing minus the wholesaler discount (6.46 percent, shown in **Figure 8**). Individuals treated by TTUHSC are not eligible to be treated with drugs purchased using the 340B Program.

Although UTMB procures medications for all of CMHC, the centralized pharmacy in Huntsville maintains separate inventories for each university provider. The UTMB drugs purchased at 340B Program pricing may be used only for inmates in UTMB's care. The central pharmacy also fills orders for each university provider at different times of the day to keep the drug inventories separate.

TDCJ further maximizes savings from the 340B Program by relocating certain inmates—those with chronic illnesses that require costly drug treatment, such as HIV—to UTMB-sector units whenever possible. An inmate's need for specific

FIGURE 8
CORRECTIONAL MANAGED HEALTH CARE PROGRAM'S PHARMACY COST-SAVING STRATEGIES, AS OF FISCAL YEAR 2016

STRATEGY	DESCRIPTION	ESTIMATED SAVINGS
340B Prime Vendor Program	The exclusive prime vendor for the 340B Drug Pricing Program offers covered entities several services, including: the negotiation of subceiling 340B pricing; subceiling wholesaler acquisition cost pricing; and an annual share-back of funds if the vendor generates revenues that exceed the expense to manage the program. Entities receive the share-back in the form of wholesaler credits to their respective 340B accounts.	Share-back savings valued at $297,750 since fiscal year 2010
Wholesaler Prime Vendor	The University of Texas Medical Branch at Galveston (UTMB) has a prime vendor agreement with a pharmaceutical wholesaler that enables the pharmacy to receive a volume discount through a combined agreement. The agreement considers the volume purchased by UTMB and other University of Texas System pharmacies. As of fiscal year 2014, the discount is 6.46 percent.	Approximately $2.8 million for fiscal year 2015
Negotiation of Best Pricing	UTMB negotiates directly with manufacturers to obtain prices less than the 340B Program price (i.e., subceiling 340B Program prices) whenever possible.	Varies per drug
Annual bid for high volume generics	UTMB requests bids for high volume generics at the beginning of each year to ensure best price.	Varies per drug
Reclamation Program	Unused medications may be returned to the Correctional Managed Health Care Pharmacy for reuse as long as they are not expired and were not issued to a patient.	Average annual savings of $8.2 million

Source: The University of Texas Medical Branch at Galveston.

correctional programming, such as substance abuse or sex offender treatment, may require placement in a specific unit. If the program is not available in a UTMB unit, the inmate is not relocated because participation in the correctional program takes priority. Inmates continue to receive the same medical treatment at their respective units, but CMHC is not able to receive the 340B Program discount for their drugs.

Figure 8 shows other cost-saving strategies employed by CMHC. These strategies include: contracts with prime vendors that negotiate with pharmaceutical manufacturers on behalf of entities such as CMHC or UTMB; UTMB's direct negotiations on behalf of all UT System pharmacies; purchasing high-volume generics; and the reclamation of unused medications within CMHC.

POTENTIAL COSTS DUE TO PROPOSED CHANGES IN THE 340B DRUG PRICING PROGRAM

In August 2015, HRSA released proposed omnibus guidance that, if finalized as proposed, would have disqualified CMHC from the 340B Program. According to HRSA, the intention of the proposed guidance is to assist 340B Program covered entities and drug manufacturers in complying with the federal PHSA. According to UTMB, the proposed patient definition and a requirement that facilities have Medicare charges on their cost reports would prohibit inmates from receiving drugs eligible for the 340B Program. Other proposed requirements would have increased the administrative burden of the program, according to TDCJ. UTMB estimated that using 340B Program pricing for CMHC resulted in a savings of approximately $67.4 million in fiscal year 2015.

If the rule had been finalized as proposed and UTMB lost eligibility for the 340B Program pricing, CMHC pharmaceuticals would be purchased through the university's group purchasing organization, and the university would try to negotiate greater savings in bids and contracts. These group savings could have offset some of the expected cost increase resulting from the loss of 340B Program eligibility, but to an unknown extent. According to the unified agenda maintained by the federal Office of Management and Budget, the final guidance action for the 340B Program omnibus guidelines was expected in December 2016. However, according to TDCJ, the proposed changes are no longer expected to be finalized and released due to the change in federal administration. UTMB does not have an immediate concern about losing its status as a covered entity in the 340B Program.

MONITOR FEDERAL REGULATIONS OF PRISON TELEPHONE RATES THAT AFFECT REVENUE TO THE CRIME VICTIMS COMPENSATION ACCOUNT

Senate Bill 1580, Eightieth Legislature, 2007, required the Texas Department of Criminal Justice to enter into a contract with a vendor to provide coinless pay telephone services to eligible offenders in state prison. The Legislature directed the that system should be fully automated, should not require an operator, and should use biometric data for inmate identification. Implementation of the Offender Telephone System fulfills the requirements of the legislation.

The agency receives a commission from its vendor of 40.0 percent of gross revenue generated by inmate telephone calls. The first $10.0 million of commissions generated by this contract are directed to the General Revenue–Dedicated Account No. 469, Compensation to Victims of Crime. After this initial deposit into the account, half of additional agency commissions are directed to the account, and half are credited to the General Revenue Fund.

In October 2015, the Federal Communications Commission capped the rates of intrastate and interstate prison phone calls at $0.11 per minute. This limitation decreased the Texas Department of Criminal Justice's contract rates ranging from 47.6 percent to 57.7 percent depending on call type. These reductions were scheduled to take effect March 16, 2016. However, the U.S. Court of Appeals for the District of Columbia Circuit stayed the intrastate reduction March 7, 2016. Although this rate change is stayed, continuing Federal Communications Commission rule making could lead to revenue reductions from Texas' system.

FACTS AND FINDINGS

- ♦ In fiscal year 2016, $17.8 million in total revenue from the Offender Telephone System contributed $13.9 million to the General Revenue–Dedicated Account No. 469, Compensation to Victims of Crime and $3.9 million to the General Revenue Fund. In fiscal year 2016, the System contributed 15.6 percent of revenue accruing to the Compensation of Victims of Crime account. This proportion has increased from 6.0 percent in fiscal year 2012.
- ♦ As of the beginning of fiscal year 2016, the General Revenue–Dedicated Account No. 469, Compensation to Victims of Crime, had a balance of $50.1 million, a decrease from its highest balance of $269.5 million as of the end of fiscal year 2001.
- ♦ Implementation of the Offender Telephone System at the Texas Department of Criminal Justice by its vendor fulfills the requirements of state legislation. In August 2016, 122,525 eligible inmates (83.3 percent of the offender population) made an average of 10.2 calls per month at an average call length of 11.5 minutes.
- ♦ The Texas Department of Criminal Justice complied with state law and best practices in conducting its solicitation and procurement for the Offender Telephone System contract, including negotiating substantial discounts in initially proposed vendor rates. During the contract negotiation process, the agency reduced vendor-proposed per-minute call rates, some by as much as 27.6 percent.

CONCERN

- ♦ Although the federal intrastate cap on per-minute rates is stayed following litigation, the intrastate rate schedule for the Offender Telephone System is substantially higher than additional potential rate caps sought by the Federal Communications Commission. Potential revenue losses from the program would adversely affect revenues to the General Revenue–Dedicated Account No. 469, Compensation to Victims of Crime.

OPTION

- ♦ **Option 1:** Include a rider in the 2018–19 General Appropriations Bill to require the Texas Department of Criminal Justice to notify the Legislative Budget Board and the Comptroller of Public Accounts if federal rules lead to a reduction in expected commissions from the agency's Offender Telephone System. The rider would require the agency's notification to include a five-year projection of expected revenues that considers lower per-minute rates and an estimate of increases in system use as a result of fee reductions.

DISCUSSION

Senate Bill 1580, Eightieth Legislature, 2007, required the Texas Department of Criminal Justice (TDCJ) to enter into a contract with a vendor to provide coinless pay telephone services to eligible offenders in state prison. The vendor was to be responsible for installing, operating, and maintaining the system without cost to the state. The vendor was also required to provide onsite monitoring of calling patterns to prevent unauthorized communication, including implementing an approved call list for each inmate, and ensuring confidential attorney-client telephone communications. The Legislature directed that the system should be fully automated, should not require a TDCJ operator, and should use biometric data for inmate identification.

To implement the requirements of the legislation, TDCJ initiated the Offender Telephone System (OTS). The agency receives a commission from its vendor of 40.0 percent of gross revenue generated by inmate telephone calls. The first $10.0 million of commissions generated by this contract are directed to the General Revenue–Dedicated Account No. 469, Compensation to Victims of Crime (CVC). After this initial deposit into the account, half of additional TDCJ commissions are directed to the account, and half are credited to the General Revenue Fund.

OVERVIEW OF REVENUES TO THE COMPENSATION OF VICTIMS OF CRIME ACCOUNT

The CVC account is administered by the Office of the Attorney General and is a constitutionally dedicated account established to monetarily compensate crime victims. The account reimburses victims of violent crimes for costs such as medical expenses, lost wages, funeral expenses, and attorney fees incurred as a result of a crime. Funds greater than the amount needed for compensation payments in a given year can be appropriated for victims' services programs. These appropriations reduce the amount available for compensation payments in subsequent years. As of the beginning of fiscal year 2016, the CVC account had a balance of $50.1 million, a decrease from its highest balance of $269.5 million as of the end of fiscal year 2001. However, this amount was an increase from $21.7 million in fiscal year 2012. The majority of this decrease in the account balance occurred from fiscal years 2001 to 2006. For more information about General Revenue–Dedicated Account No. 469, Compensation to Victims of Crime, see the Legislative Budget Board staff Issue Brief, *Compensation to Victims of Crime Fund*, February 2013, at www.lbb.state.tx.us.

Figure 1 shows the major revenue sources for the CVC account since fiscal year 2012. The Comptroller of Public Accounts' (CPA) revenue source categories do not categorize revenue from OTS separately; OTS revenue is included in the category Fees for Administrative Services. OTS revenue contributes the majority of the revenue for Fees for Administrative Services, 86.0 percent for fiscal year 2016.

Since fiscal year 2012, the distribution of revenue to the CVC account has changed, most significantly an 88.0 percent decrease in annual revenue of $31.4 million from matched federal receipts. From fiscal years 2012 to 2016,

FIGURE 1
MAJOR REVENUE SOURCES FOR THE GENERAL REVENUE–DEDICATED ACCOUNT NO. 469, COMPENSATION OF VICTIMS OF CRIME, FISCAL YEARS 2012 TO 2016

(IN MILLIONS)

SOURCE	2012	2013	2014	2015	2016
Court Costs	$69.6	$70.2	$68.1	$64.2	$62.9
Federal Receipts Matched	$35.7	$24.8	$22.3	$16.3	$4.3
Fees for Administrative Services (all sources)	$11.3	$16.1	$17.0	$17.8	$18.3
Portion of Fees for Administrative Services from OTS	*$7.2*	*$11.5*	*$12.4*	*$13.1*	*$13.9*
Restitution	$1.2	$1.3	$1.3	$1.2	$1.0
Subrogation Recoveries	$0.9	$0.8	$0.7	$0.6	$0.5
Other Cash Transfers	$0.3	$1.6	$1.5	$1.7	$1.6
All other objects	$0.6	$0.5	$0.5	$0.4	$0.7
Total Revenue	**$119.7**	**$115.4**	**$111.4**	**$102.2**	**$89.3**

NOTES:
(1) Totals may not sum due to rounding.
(2) OTS = The Texas Department of Criminal Justice Offender Telephone System.
SOURCES: Texas Comptroller of Public Accounts; Texas Department of Criminal Justice.

revenue from the revenue source category Court Costs decreased by $6.7 million. These reductions in the other two largest sources of revenue for the CVC, along with the increase in revenue from OTS from $7.2 million for fiscal year 2012 to $13.9 million for fiscal year 2016, have led to an overall shift in total revenue supplied to the CVC account.

During the contract negotiation process, TDCJ was able to reduce the vendor's proposed per-minute call rates by the following: 27.6 percent for prepaid and collect intrastate calls; 26.3 percent for prepaid interstate calls; and 25.7 percent for collect interstate calls. On May 16, 2015, rates for prepaid interstate calls were reduced by a further 45.7 percent and for collect interstate calls by 41.9 percent to comport with an interim cap on interstate rates imposed by the FCC in advance of future reforms to the prison telephone industry.

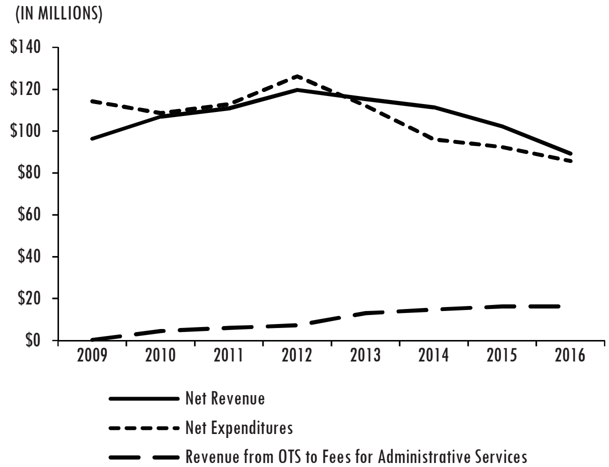
Figure 2 shows total revenues and expenditures for the CVC account since the beginning of the OTS program. At the time the legislation was enacted, it was expected that OTS would generate $7.5 million in revenue per year for the CVC account from fiscal years 2008 to 2012. Initial revenue from OTS was less than these projections. However, by the end of the five-year projection period, revenues were approximately in line with initial projections, resulting in $7.2 million for fiscal year 2012. Since fiscal year 2012, revenue from OTS has exceeded initial projections. Although the program is generating revenue greater than expected rates, decreases in other major revenue sources to the account have led to a 25.4 percent decrease in total revenue.

EFFECTS ON ACCOUNT 469

Increases in CVC revenue from OTS have been the result of by inmates' increased usage of the program. **Figure 3** shows how the number of calls made and average call length have changed since the beginning of the program. The number of calls has grown annually since the inception of the program, although the rate of growth has slowed since fiscal year 2014.

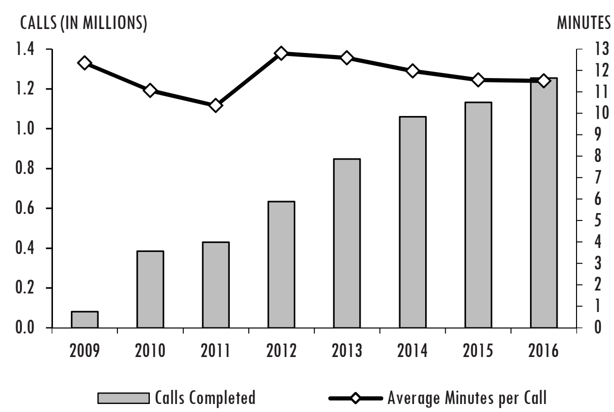
Figure 4 shows yearly gross revenues for the OTS and commissions remitted to the state. The rapid increases in offender use of the OTS led to substantial increases in state revenue through fiscal year 2013 before a slower rate of increase began. In fiscal year 2013, after exceeding the $10.0 million commission threshold set in Senate Bill 1580, Eightieth Legislature, 2007, the program began generating revenue to the General Revenue Fund. For fiscal year 2016, $17.8 million in total commissions contributed $13.9 million to the CVC account and $3.9 to the General Revenue Fund.

FIGURE 2
REVENUES AND EXPENDITURES FOR THE GENERAL REVENUE–DEDICATED ACCOUNT NO. 469, COMPENSATION TO VICTIMS OF CRIME, FISCAL YEARS 2009 TO 2016



NOTE: OTS = The Texas Department of Criminal Justice Offender Telephone System.
SOURCES: Texas Comptroller of Public Accounts; Texas Department of Criminal Justice.

FIGURE 3
UTILIZATION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE OFFENDER TELEPHONE SYSTEM, AUGUST IN FISCAL YEARS 2009 TO 2016

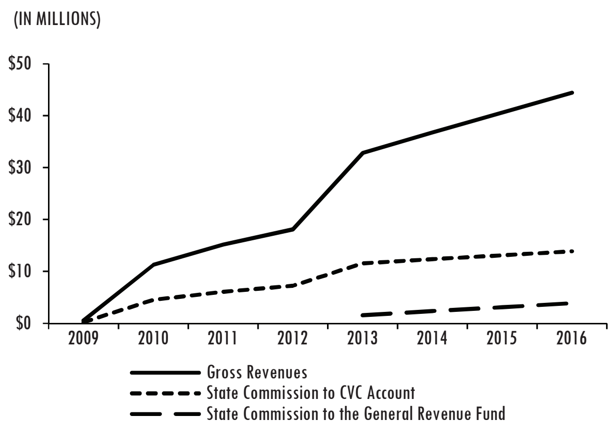


SOURCE: Texas Department of Criminal Justice.

THE OFFENDER TELEPHONE SYSTEM AND FEDERAL RULES

On October 22, 2015, the FCC capped rates for intrastate and interstate prison phone calls at $0.11 per minute, a decrease ranging from 57.7 percent to 47.6 percent in the

FIGURE 4
REVENUES GENERATED BY THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE OFFENDER TELEPHONE SYSTEM, FISCAL YEARS 2009 TO 2016



Note: CVC Account refers to the General Revenue–Dedicated Account No. 469, Compensation to Victims of Crime.
Source: Texas Department of Criminal Justice.

OTS contract terms depending on call type. These federal rules were scheduled to take effect March 16, 2016. However, the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit stayed these rules on March 7, 2016, in the case *Global Tel*Link et al. v. Federal Communications Commission*. Nine states are also parties to this suit; Texas is not among them. Following this stay, the FCC attempted to impose the existing interim caps on interstate calls to intrastate calls. This effort was again stayed by the D.C. Circuit Court on March 23, 2016.

On August 4, 2016, the FCC proposed a new, slightly higher per-minute rate structure. As of November 1, 2016, this proposal was under challenge in the D.C. Circuit Court. The nine states in the initial suit and a variety of industry stakeholders have questioned the FCC's authority to make this proposal. The states argue that the FCC lacks authority to regulate intrastate telephone calls. The industry stakeholders argue that the FCC is violating a fundamental principle of regulation in preventing a company from profiting from an investment. A second group of states, again not including Texas, have filed an brief asking the court to uphold the FCC regulatory action.

The FCC is conducting a third round of rule making in which the use of revenue-sharing arrangements such as the Texas system could be subject to additional reforms. Considering the reduction in other CVC revenue sources, the possibility of FCC action to restrict rates in the OTS program poses a risk to funding for the CVC account. However, it is also possible that any reduction in revenue per minute that occurs due to FCC-mandated rate reductions could be offset by increased OTS use by inmates, which could deliver similar revenue for the CVC account.

Option 1 would include a rider in the 2018–19 General Appropriations Bill to require TDCJ to notify LBB and CPA if federal rules lead to a reduction in expected commissions from the agency's Offender Telephone System. TDCJ's notification would be required to include a five-year projection of expected revenues. Inmates' phone use could increase with lower per-minute rates; therefore, the projection would consider lower per-minute rates and an estimate of increases in inmates' telephone use as a result of fee reductions.

OVERVIEW OF OFFENDER TELEPHONE SYSTEM

Senate Bill 1580, Eightieth Legislature, 2007, directed TDCJ to ensure that agency polices enabled an average usage rate of eight calls per month per eligible inmate, with an average duration of no less than 10 minutes per call. The legislation established a minimum ratio of communications devices of at least one for every 30 eligible inmates. Charges for local calls were prohibited from exceeding the highest rate for local calls in Texas county jails, and prepayment was required for each eligible inmate or person acting on an inmate's behalf. TDCJ was also directed to develop a policy to determine inmate eligibility for this service.

TDCJ'S IMPLEMENTATION

The Legislature specified that all phone calls, with the exception of confidential attorney–client communications, were to be recorded and preserved. The contract was to be no less than seven years in length and to contain renewal provisions of two-year terms. Additionally, the vendor was required to submit reports about calling patterns to TDCJ and to provide financial records for the service for periodic review by the State Auditor's Office.

Implementation of OTS at TDCJ by its vendor fulfills the requirements of the legislation. Inmates in the general population and protective custody Level 1 have unrestricted access to telephone hardware from 7:00 am to 10:00 pm. All calls are placed through an automated system that does not require TDCJ personnel. Inmate identity is verified through a two-step procedure including a voice match recorded at prison intake and a personal identification number. Inmates may only call individuals on an approved calling list.

Individuals that receive these calls are informed before accepting the calls who is calling, whether the individual or the inmate is paying for the call, and that the call will be recorded. Recorded inmate calls are stored for use as needed. Except during an active investigation, TDCJ employees do not monitor these calls in real time.

Calls to attorneys of record are not recorded or monitored. To be eligible for communications to receive attorney–client protection from recording, the attorneys of record for inmates must register with TDCJ.

In August 2016, 122,525 eligible inmates (83.3 percent of the offender population) made an average of 10.2 calls per month at an average call length of 11.5 minutes. Each installed phone serves an average of 22.7 offenders. These benchmarks exceed the legislation's performance requirements.

CONTRACT TERMS

The agency selected its vendor due to the technical quality of its product and the quality of its public safety system. The original contract term was from September 1, 2008, to August 31, 2015, and included the right for TDCJ to extend for two additional two-year terms. The first extension was exercised in 2015; TDCJ may exercise the second extension in 2017. The capital equipment was transferred to TDCJ ownership at the end of the initial contract period; therefore, other vendors could be used for OTS service if TDCJ chooses at the end of the contract, upon providing six months' notice to the vendor.

An LBB staff analysis of the provisions of this contract determined the following: (1) that the contract award process followed best practices; (1) that the terms and conditions of the contract preserve the state's rights; and (3) that appropriate clauses pertaining to monitoring performance and penalties for nonperformance were included in the contract.

FISCAL IMPACT OF THE OPTION

This option would have no fiscal impact to TDCJ and could be completed using existing resources.

The House introduced 2018–19 General Appropriations Bill includes a rider implementing Option 1.

ESTIMATED NET COSTS OF TECHNICAL REVOCATIONS FROM COMMUNITY SUPERVISION AND PAROLE

In the Texas criminal justice system, certain individuals who have been convicted of a felony and sentenced can avoid incarceration in prison or state jail through community supervision. Some offenders, following a period of incarceration, can be paroled. For the duration of their sentences, these felons may be sent or returned to incarceration either for a new crime or for failing to fulfill their conditions of release from incarceration. Revocations issued upon the failure to fulfill these conditions are known as technical revocations. In fiscal year 2015, 50.0 percent of offenders entering Texas prisons entered as a result of a technical revocation.

Prison or state jail is more expensive than community supervision; therefore, the decision to revoke parole or community supervision imposes a cost upon the state. However, felons that are not revoked may engage in new criminal activities that generate new costs to law enforcement, county jails, and courts. As a result, the net cost to the state for a decision to send an individual to prison or state jail may be calculated by considering the known cost of incarceration and the estimated costs of these potential new crimes.

FACTS AND FINDINGS

- ♦ The five-year net cost to the state for technical revocations from parole imposed during fiscal year 2007 was $24.8 million.
- ♦ The five-year net cost to the state for technical revocations from community supervision imposed during fiscal year 2010 was $60.5 million.
- ♦ For every $1.00 spent by the state incarcerating parolees on technical revocations, $0.92 of victimization costs were avoided.
- ♦ For every $1.00 spent by the state incarcerating probationers on technical revocations, $0.78 of victimization costs were avoided.

DISCUSSION

Texas has the largest population of state-incarcerated offenders in the country, housing almost 150,000 felons in its 109 correctional institutions as of November 2016. In fiscal year 2015, 50.0 percent of offenders entering Texas prisons entered as a result of a revoked term of community supervision (probation) or parole supervision. The estimated marginal daily cost of incarceration for these felons was $33.25 per day, determined by adding the contract rate for private state jails to the Texas Department of Criminal Justice's (TDCJ) estimate of fixed allocated costs. This cost estimate is 9.9 times the average cost of community supervision ($3.36 per day, shared among state and local sources) and 8.2 times higher than the cost of parole supervision ($4.06 per day). As a result, the decision to revoke parole or community supervision results in significant costs to the state.

However, when offenders that violate conditions of supervision are not incarcerated, they may engage in new criminal activities that generate new costs to law enforcement, county jails, and courts. This new criminal activity also results in tangible victim costs (e.g., healthcare expenses, property damage, and losses in future earnings) and intangible victim costs (e.g., jury awards for pain, suffering, and decreased quality of life). The net cost to the state for technical revocations can be estimated by reducing the known state costs of incarceration by the estimated state costs that result from new crimes committed if offenders are not incarcerated.

This report discusses the net costs of technical revocation. It presents the results of an econometric model that estimates costs of crimes that were avoided due to the incarceration of offenders due to technical revocation. This estimate of the costs of avoided crimes is then subtracted from the known cost of incarceration.

COMMUNITY SUPERVISION AND PAROLE

Community Supervision and Corrections Departments (CSCD) in Texas are operated at the county level. CSCDs are administered by staff hired by the judiciary to supervise and rehabilitate offenders sentenced to community supervision in Texas by local courts. Texas' 254 counties have 123 CSCDs; several highly populated counties have their own CSCDs and some departments serve two or more less-populated counties. TDCJ's Community Justice Assistance Division (CJAD) enforces standards, provides training, and monitors the performance of departments. In addition to oversight of the local supervision function, CJAD also provides state formula and diversion funding.

A revocation from community supervision can occur when an individual commits a new crime or as a technical violation when the offender fails to fulfill the terms of community supervision. In these cases, the CSCD officer refers the case to court, which considers either a motion to revoke probation or a motion to adjudicate (for defendants on deferred adjudication). This felony revocation hearing is held before a district court judge. Technical violations of community supervision conditions can include: failure to report to a probation officer; failure to report a subsequent arrest to the probation officer; or failing a drug test. The judge can rule to modify a probationer's terms of community supervision and continue the case, or to revoke community supervision and send the offender to incarceration.

Revocations from community supervision can result in incarceration in a prison, state jail, or (when a judge sentences a state jail felon to serve that sentence locally) in a county jail. A 2007 Legislative Budget Board (LBB) staff study of community supervision revocations showed that 94.3 percent of community supervision revocations led to incarceration in a state jail (52.4 percent) or prison (41.9 percent).

In contrast to the locally controlled community supervision system, parole is administered at the state level. TDCJ's Parole Division administers the parole supervision system in Texas. The Board of Pardons and Paroles (BPP) reviews allegations of parole violations and decides whether to continue or revoke supervision. In addition to the parole or revocation decision, BPP has other options to manage offenders who do not comply with conditions of parole such as Intermediate Sanction Facilities (ISF). These secure facilities house parolees that serve from three to four months in lieu of a revocation. ISFs offer programs to address behavioral problems and substance abuse issues.

For more than a decade, the Legislature has invested in funding rehabilitation programs, treatment programs, and alternatives to incarceration. The Seventy-ninth Legislature, Regular Session, 2005, appropriated $55.0 million for community supervision to be used for caseload reduction and residential treatment and sanction beds. At the beginning of the Eightieth Legislature, 2007, LBB staff issued correctional population projections that indicated that, without change to existing policies, practices, and statute, the state would not have sufficient capacity to meet the need of the projected correctional institution population. The Eightieth Legislature responded by appropriating $258.6 million to fund diversion initiatives within community supervision, correctional institutions, and parole. The Legislature subsequently has continued to support these efforts, appropriating additional funds for diversion programs.

Since the implementation of diversion initiatives in Texas, revocations in the parole population decreased substantially. In fiscal year 2009, 7,471 parole revocations were issued out of a parole supervision population of 80,286—a revocation rate of 9.3 percent. Technical revocations accounted for 1,045 of all revocations (14.0 percent). By 2015, total parole revocations had decreased to 5,608 out of 87,546 felons on parole (6.4 percent). Technical revocations accounted for 910 of all revocations (16.2 percent).

In contrast to the significant decreases in parole revocations, revocations from community supervision have remained largely consistent. In fiscal year 2009, according to CJAD data, 24,194 felons were revoked from community supervision to prison out of 172,514 felons on community supervision; this number represents a revocation rate of 15.2 percent. By fiscal year 2015, this rate increased slightly to 15.3 percent (24,062 revocations out of a population of 156,909 felons). Technical revocations from community supervision also have changed following additional state funding for community diversion. In fiscal year 2009, technical revocations from community supervision accounted for 12,858 of all revocations (49.1 percent). By fiscal year 2015, this percentage had increased to 51.4 percent (12,362 out of 24,062 revocations).

Parole revocations to TDCJ custody are recorded within TDCJ's record-keeping system. However, no equivalent method is in place to identify individuals entering TDCJ custody who were sent to prison or state jail due to a revocation of community supervision. To identify individuals who were incarcerated due to a technical revocation of supervision, LBB staff used a community supervision termination file from TDCJ–CJAD. The analysis selected from this file all felony supervision revocations with a valid identification number and for which the revocation was not a subsequent arrest or offense. These offenders were then matched by identification number, offense code, and offense date against state jail and prison release records to determine the length of stays following revocation. This approach does not include offenders who were revoked from community supervision to county jails, because these offenders are not tracked at the state level. Using this methodology, LBB staff identified a population of 6,871 felons from fiscal year 2010 who were sent to a prison or state jail as a result of a technical revocation from community supervision. The analysis for this report uses this population. Because this analysis does not include individuals revoked from community supervision to county jails, the cost estimates for these revocations are likely to be conservative, and the total costs to the state could be more than these presented costs.

METHODOLOGY FOR ESTIMATING THE NET COSTS OF TECHNICAL REVOCATION OF COMMUNITY SUPERVISION

During fiscal year 2007, TDCJ facilities received 1,413 felons after parole technical revocation. From fiscal years 2007 to 2011, these offenders were in TDCJ custody for an average of 654.4 days—924,621 total bed days of incarceration. At $33.25 per day, the state's cost of this incarceration was $30.7 million. However, because these individuals were not on parole supervision, the state avoided $3.1 million in parole costs for a gross cost to the state for incarceration of $27.6 million.

LBB staff identified 6,871 felons who were received at TDCJ facilities during fiscal year 2010 following technical revocations of community supervision. From fiscal years 2010 to 2015, these offenders were in TDCJ custody for an average of 309.5 days—2,126,863 total bed days of incarceration. At $33.25 per day, the state's cost of this incarceration was $70.7 million. However, because these individuals were not on community supervision, the state avoided $2.9 million in its share of the cost of community supervision for a gross cost to the state of $67.8 million.

Figure 1 shows that the average length of stay in prison or state jail following a technical revocation varied for parolees and probationers by the offenses that led to their original felony sentences (fiscal year 2008 cohort for parolees and fiscal year 2010 cohort for community supervision). The most substantial difference in length of stays are for offenders in the nonviolent crime categories of Burglary and Other. In these categories, probationers spend less than half the time than parolees in incarceration following technical revocations. This difference is driven by the large number of state jail felons within this probation supervision population, who have a maximum sentence of two years.

The Washington State Institute for Public Policy (WSIPP), as directed by the Washington State Legislature, developed a rigorous econometric approach to model costs and benefits of public policies to identify evidence-based programs. The Pew Charitable Trusts and the John D. and Catherine T. MacArthur Foundation initiated an effort to make this model and other evidence-based policy-making tools available to other states through the Pew–MacArthur Results First Initiative. A key part of this initiative involves providing technical assistance to enable other states to customize the Results First model using their state-specific data. Texas is a member state of this initiative.

FIGURE 1
AVERAGE NUMBER OF DAYS OF INCARCERATION IN A TEXAS CORRECTIONAL FACILITY FOLLOWING TECHNICAL REVOCATION BY OFFENSE CATEGORY, FISCAL YEAR 2007 (PAROLEES) AND FISCAL YEAR 2010 (PROBATIONERS)

CRIME CATEGORY (1)	PAROLEES	COMMUNITY SUPERVISION (PROBATION)
Murder (2)	1,112.9	661.7
Felony Sex Offense	850.8	959.4
Robbery	861.5	664.0
Assault	512.9	513.2
Burglary	629.7	254.9
Other (Includes Drug-related Felonies)	546.4	255.8

NOTES:
(1) These categories are those defined in the Pew–MacArthur Results First Initiative model.
(2) Murder refers to any crime where a death occurs. A small number of individuals whose crime involved the death of another person (e.g., fatalities related to charges of Driving While Intoxicated) receive community supervision in lieu of prison sentences. Only nine of these offenders were revoked on technical grounds during 2010.
SOURCE: Legislative Budget Board.

The Results First simulation model includes the following four main elements:

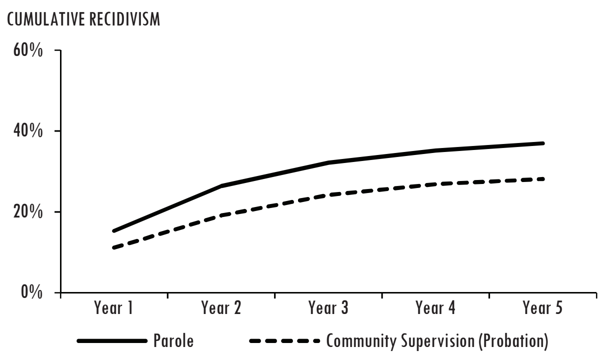
- an estimate of the length of incarceration and parole supervision for seven broad crime categories;
- estimates of overall criminal victimization in a state;
- estimates of the likelihood and the severity of recidivism measured while on community supervision or parole and capped at five years; and
- estimates of costs for law enforcement, courts, county jail, prison, supervision, and victimization.

In fiscal year 2016, LBB staff used an older version of the Pew–MacArthur Results First Initiative model to estimate the net costs of technical revocations from parole in the LBB staff publication, *Texas State Government Effectiveness and Efficiency Report*, Overview of Estimated Net Costs of Technical Revocations from Parole, 2015. Estimates for costs from technical revocations from parole in this current report reflect the most recent version of the Results First model, and costs have been updated to calendar year 2014 constant dollars.

RECIDIVISM AMONG THE COMMUNITY SUPERVISION AND PAROLE POPULATIONS

Figure 2 shows the five-year cumulative recidivism rate for parole compared to community supervision, a major element of the Results First model. Offenders were tracked to Texas Department of Public Safety conviction records from parole release or imposition of sentences of community supervision through the lengths of their sentences to a maximum of five years. If offenders were convicted of new offenses, and those offenses occurred during the periods of parole or community supervision, the offenders are considered recidivists. Offenders on community supervision are less likely to recidivate while on court order than offenders on parole. For the fiscal year 2007 release cohort, the recidivism rate for offenders supervised on parole is 37.0 percent, and the rate for the fiscal year 2010 cohort of offenders on community supervision is 28.1 percent.

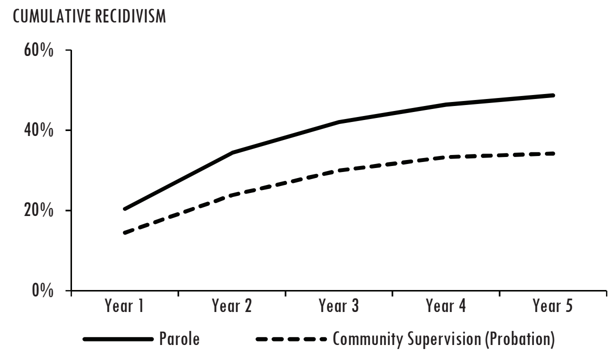
FIGURE 2
FIVE-YEAR CUMULATIVE RECIDIVISM FOR OFFENDERS PLACED ON PAROLE OR COMMUNITY SUPERVISION FISCAL YEARS 2007 TO 2012



NOTE: Recidivism is measured through the end of the supervision or parole sentence, and is capped at five years. Parole is for a cohort released during fiscal year 2007. Community Supervision is for a cohort sentenced during fiscal year 2010.
SOURCE: Legislative Budget Board.

Lower recidivism rates among the community supervision population are also apparent within broad crime categories. **Figure 3** shows the five-year cumulative recidivism rates for offenders who committed property crimes. The recidivism rate among offenders on community supervision was 34.2 percent, less than for those on parole at 48.7 percent.

FIGURE 3
FIVE-YEAR CUMULATIVE RECIDIVISM FOR OFFENDERS PLACED ON PAROLE OR COMMUNITY SUPERVISION WHOSE MOST SERIOUS OFFENSES OF CONVICTION WERE PROPERTY CRIMES, FISCAL YEARS 2007 TO 2015



NOTE: Recidivism is measured through the end of the supervision or parole sentence, and is capped at five years. Parole is for a cohort released during fiscal year 2007. Community Supervision is for a cohort sentenced during fiscal year 2010.
SOURCE: Legislative Budget Board.

Figure 4 shows the most serious offenses for the parole and community supervision population, another major element of the Results First model. The community supervision population is somewhat more likely to recidivate for serious offenses; this population also is substantially more likely to recidivate based on misdemeanors, but less likely to recidivate for crimes in the Other category, which include drug-related felonies.

ESTIMATING THE NET COSTS OF TECHNICAL REVOCATION OF PAROLE AND COMMUNITY SUPERVISION

Using the Results First model, LBB staff ran 10,000 simulations for each broad crime category for the parole and community supervision populations. The average results from these simulations were used to estimate the total cost per new crime these felons would have committed if they had been released from incarceration, measured across five years.

Estimated state costs from new crimes committed by the fiscal year 2007 cohort of technical revocation parolees released from incarceration were less than the costs imposed by re-incarcerating these offenders. The five-year estimated gross cost to the state for incarcerating these 1,413 technical revocations was $27.6 million. In contrast, the estimated five-year cost that would have been imposed on the state from new crimes if these offenders had been released instead of in prison was $2.8 million. Another $2.6 million in local costs and $24.0 million in tangible and intangible victimization costs also would have been generated by these

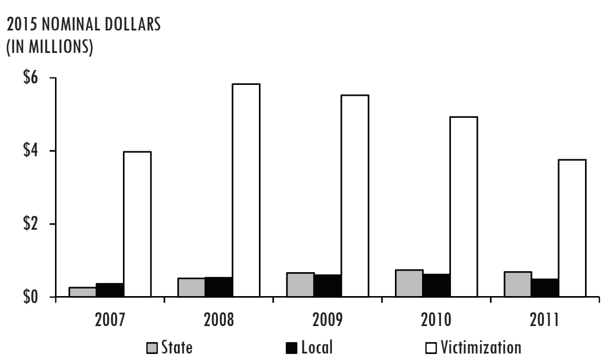
FIGURE 4
RECIDIVISM RATES BY PEW–MACARTHUR RESULTS FIRST INITIATIVE CRIME CATEGORY, FISCAL YEARS 2008 TO 2013 (PAROLE) AND FISCAL YEARS 2010 TO 2015 (COMMUNITY SUPERVISION)

RELEASE CATEGORY	MURDER	FELONY SEX OFFENSE	ROBBERY	FELONY ASSAULT	BURGLARY	OTHER	MISDEMEANOR
Parolees	0.4%	0.8%	1.9%	3.8%	16.8%	40.4%	36.0%
Community Supervision	0.3%	1.3%	2.6%	8.2%	20.0%	24.7%	43.0%

NOTE: Recidivism is measured through the end of the supervision or parole sentence, and is capped at five years.
SOURCE: Legislative Budget Board.

crimes. These costs are shown by year in **Figure 5**. As a result, the five-year net cost to the state from technical revocations for these parolees was $24.8 million.

FIGURE 5
ESTIMATED FIVE-YEAR STATE, LOCAL, AND VICTIMIZATION COSTS GENERATED FROM NEW OFFENSES BY PAROLEES, FISCAL YEARS 2007 TO 2011

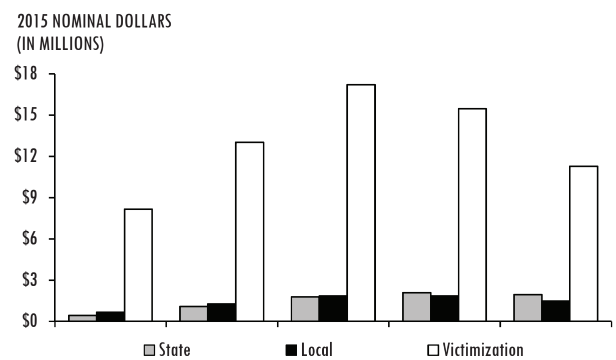


SOURCE: Legislative Budget Board.

State costs from new crimes committed by the fiscal year 2010 cohort of technical revocation probationers on community supervision were also less than the costs imposed by incarcerating these felons. The estimated five-year gross cost to the state for incarcerating these 6,871 technical revocations was $67.8 million. In contrast, the estimated five-year cost that would have been imposed on the state from new crimes if these offenders had been released instead of in prison or state jail was $7.3 million. Another $7.1 million in local costs and $65.1 million in victimization costs would have been generated from these new crimes. These costs are shown by year in **Figure 6**. As a result, the five-year net cost to the state from technical revocations from community supervision was $60.5 million.

In the Texas budget process, victimization and other secondary costs and benefits are not directly included in the fiscal analysis of bills as they do not have a direct effect on the state Treasury. When available, these estimates may be useful

FIGURE 6
ESTIMATED FIVE-YEAR STATE, LOCAL, AND VICTIMIZATION COSTS GENERATED FROM NEW OFFENSES BY OFFENDERS ON COMMUNITY SUPERVISION FISCAL YEARS 2010 TO 2015



SOURCE: Legislative Budget Board.

in other analyses. While most costs in the model are based on Texas sources, estimates of tangible and intangible victimization were estimated by WSIPP from national research.

For parole technical revocations, using the Results First model, LBB staff estimate that the five-year cost of tangible and intangible victimizations would have been $24.0 million—$16,992 per individual parolee revoked. For community supervision technical revocations, the five-year cost of these victimizations would have been $65.1 million—$9,477 per offender revoked. To put these estimates into perspective, the victimization costs in the Results First model of a robbery is estimated at $14,925, a burglary at $2,027, a sex crime at $174,039, and a murder at $7,065,127.

One way of understanding this victimization cost is for every $1.00 spent by the state incarcerating parolees on technical revocations, $0.92 of victimization costs were avoided. For every $1.00 spent by the state incarcerating probationers on technical revocations, $0.78 of victimization costs were avoided.

OVERVIEW OF THE POTENTIAL EFFECTS OF RAISING THE AGE OF CRIMINAL RESPONSIBILITY

Texas is one of nine states in the U.S. whose criminal justice system considers an individual to be an adult at age 17. This law is inconsistent with how Texas defines adult for many other legal purposes. The Eighty-fourth Legislature, 2015, considered raising the age of criminal responsibility in Texas to age 18. This discussion considers research on age and crime and explains differences between the juvenile justice and adult criminal justice systems to inform discourse regarding this potential policy change.

The juvenile justice and adult criminal justice systems have different costs and operate differently. Raising the age of criminal responsibility from age 17 to age 18 would add cases to juvenile court dockets, shift caseloads from adult to juvenile probation officers, add offenders to populations in state and local juvenile facilities, and require programming adjustments to meet older juveniles' needs. Juvenile probation departments would likely experience the greatest effects of changing the age from 17 to 18. Adult probation departments have indicated, generally, this change would not significantly decrease the need for resources in a way that would make it feasible to shift funding from adult probation to juvenile probation. Raising the age of criminal responsibility would cost the state approximately $63.8 million during the first two fiscal years of implementation and would have ongoing costs in subsequent fiscal years. The cost to local governments would vary by jurisdiction and is expected to be significant.

FACTS AND FINDINGS

- ♦ Raising the age of criminal responsibility would increase the number of juveniles served by the juvenile justice system. In fiscal year 2015, there were 22,503 arrests of individuals who would be eligible to receive services in the juvenile justice system if the age of criminal responsibility were raised from age 17 to age 18. This represents a 44.2 percent increase in arrests that would potentially be processed in the juvenile justice system. A total of 15,476 persons accounted for those 22,503 arrests in fiscal year 2015, which represents a 44.3 percent increase in the number of individuals who would potentially be processed in the juvenile justice system. This increase is potential because some of those individuals arrested could be diverted before being referred to a juvenile probation department; and some of those referred to a juvenile probation department could be diverted before being placed on juvenile probation supervision or being committed to a state residential facility.
- ♦ While awaiting trial, individuals age 17 who are arrested for a crime are held primarily in county jails unless they can secure bail or are released on personal bond.
- ♦ Many county jails in Texas do not meet federal Prison Rape Elimination Act standards, whose mandates include offenders younger than age 18 are separated from contact with adult offenders by sight and sound without use of isolation or denial of programming.
- ♦ Consequences to local governments for not complying with the federal Prison Rape Elimination Act may be limited to the risk of civil litigation and the potential loss of federal contracts for housing other inmates.
- ♦ Research on changing the default age of criminal responsibility shows little effect on juvenile crime rates and short-term recidivism. However, few studies have been conducted; therefore, more research is needed to understand the effects on long-term recidivism.

DISCUSSION

In Texas, an individual age 17 who commits an offense is considered an adult for criminal justice purposes. The Texas Juvenile Justice Code, within the Texas Family Code, Chapter 51, defines a child as ages 10 to 16. For this report, the age threshold at which someone is eligible to be processed through the adult criminal justice system, rather than the juvenile justice system, is referred to as the age of criminal responsibility. The Legislature has considered raising the age of criminal responsibility in Texas from 17 to 18 for a number of reasons. According to the American Psychological Association, impulse control and decision-making capacity is not fully developed until the early 20s. Other concerns include the inconsistencies in law regarding age of adulthood in different contexts, and uncertainty about the potential effects of the federal Prison Rape Elimination Act (PREA) on local jails and residential correctional facilities. Changing the age of criminal responsibility would affect whether a 17 year old is adjudicated in the juvenile justice system or the adult criminal justice system. Because of the additional services provided to juveniles and greater fixed costs in the juvenile justice system, such a change would increase juvenile justice costs to the state and local governments more than it would decrease costs in the adult system in the short-term. The long-term effects on individuals, recidivism, and state and local resources remains unknown. Changing the age at which juveniles can be certified to stand trial as adults is not within the scope of this report.

In this report, the population that would be affected by this change will be referred to as juvenile system eligible. Juvenile system eligible individuals are those who are 17 at the time of the offense and would be eligible to receive services in the juvenile justice system if the age of criminal responsibility were raised from age 17 to age 18. One of the services these individuals would be eligible to receive in the juvenile justice system is supervision by a local juvenile probation department. In this report, juvenile supervision refers to deferred prosecution supervision, adjudicated probation supervision, and conditional predisposition supervision.

AGE OF CRIMINAL RESPONSIBILITY IN TEXAS

The age of criminal responsibility in Texas was established in law as early as 1913. House Bill 99, Thirty-third Legislature, Regular Session, 1913, defined a delinquent child as "any male child under the age of 17 years, or any female child who while under the age of 18 years, violates any law of this state." This definition of delinquent child remained until 1972. House Bill 77, Sixty-second Legislature, Fourth Called Session, 1972, removed the portion of the definition that referred to females younger than age 18. The legislation maintained the definition of child as "any person over the age of 10 years and under the age of 17 years," and defined a delinquent child as a child who committed an offense.

Although this definition remained as the upper limit for a juvenile in the Texas Juvenile Justice Code, many other portions of statute define a child or minor as someone younger than age 18. The lower limit for a juvenile in the Texas Juvenile Justice Code is age 10. **Figure 1** shows certain statutory references that define a child, minor, or an adult. **Figure 1** is not a comprehensive list.

AGE OF CRIMINAL RESPONSIBILITY IN OTHER STATES

Youth in the United States are generally prosecuted as adults after they turn age 18. As of June 21, 2016, seven states, including Texas, set the age of adult criminal responsibility at age 17, as shown in **Figure 2**. Two states, New York and North Carolina, have kept the age of criminal responsibility at age 16. Louisiana and South Carolina have passed legislation to raise the age of criminal responsibility to age 18, but the laws do not take effect until 2018 or later. Since 2007, eight states, including Louisiana and South Carolina, have raised the age of adult criminal responsibility from age 17 to age 18.

AGE AND CRIME

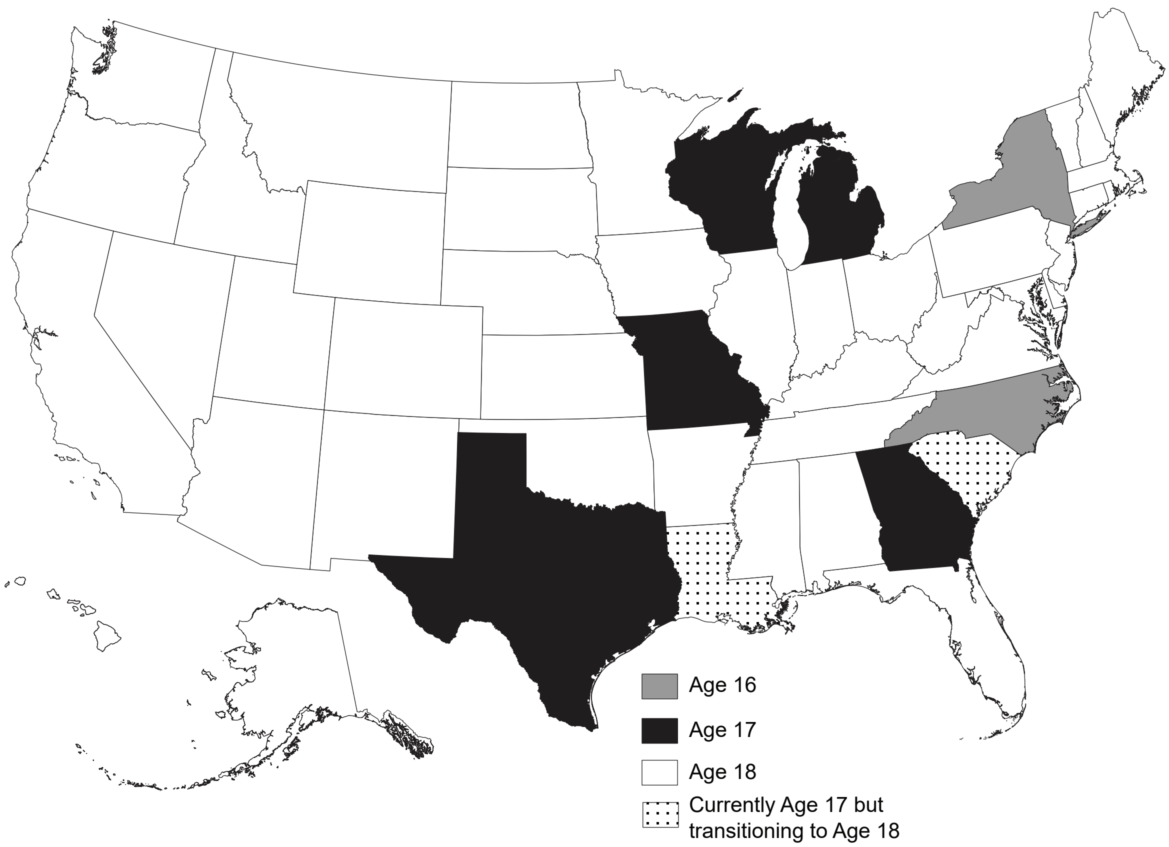
Criminal behavior correlates to age and can be depicted by a statistical curve according to the U.S. Department of Justice (DOJ), National Institute for Justice, the rate of criminal behavior tends to increase from late childhood, peak in the teenage years (from ages 15 to 19), and decrease in the early 20s. However, specific statistics vary significantly by sex, type of offense, and the individuals' surroundings. The statistical curve for violent crimes tends to peak later for property

FIGURE 1
AGE THRESHOLDS IN CERTAIN TEXAS STATUTES, 2016

THRESHOLD	AGE	STATUTE
Age of majority	18	The Texas Civil Practices and Remedies Code, §129.001
Age to be eligible to marry without parental consent	18	The Texas Family Code, §2.101
Age eligible to serve on a jury	18	The Texas Government Code, §62.102
Age eligible to vote	18	The Texas Election Code, §11.002
Parents are liable for child's behavior until	18	The Texas Family Code, §41.001(2)
A person must petition court to remove the disabilities of minority if younger than	18	The Texas Family Code, §31.001(2)
Bodily injury to a child defines child as younger than	18	The Texas Code of Criminal Procedure, §13.075
Age of consent for sex (unless already married with parental consent)	17	The Texas Penal Code, §21.11
Adult for criminal justice purposes	17	The Texas Family Code, §51.02

SOURCE: Legislative Budget Board.

FIGURE 2
AGE OF CRIMINAL RESPONSIBILITY BY STATE, JULY 2016



NOTE: Mississippi's age of criminal responsibility is age 18, except for juveniles charged with murder, rape, or armed robbery.
SOURCE: Legislative Budget Board.

crimes. The curve is higher and wider for young males growing up in the most disadvantaged neighborhoods. Developmental studies of late adolescence and early adulthood do not indicate any naturally occurring break in the prevalence of offending at age 18.

A number of studies, including the Pathways to Desistance study sponsored in part by the federal Office of Juvenile Justice and Delinquency Prevention, suggest youth develop cognitive skills before they completely mature socially and emotionally. Cognitive reasoning skills typically develop around age 16, but psychosocial maturity continues to develop into the mid-twenties. Adolescents are more likely than adults to be swayed by their emotions, and they are more likely to engage in dangerous behavior, despite understanding the risks involved. Literature from neuroscience, including a study in Neuropsychiatric Disease and Treatment, describes continuing development of the prefrontal cortex until the mid 20s. **Figure 3** shows many of the functions for which the prefrontal cortex is responsible.

Because research suggests adolescents and young adults are developmentally different from older adults, providing a developmentally appropriate response to anti-social behavior may require other reforms. In "Community-Based Responses to Justice-Involved Young Adults," a report published in September 2015, researchers at the Harvard Kennedy School of Government recommend keeping young adults in the community whenever possible to maintain and build prosocial relationships through education, housing, family, and employment.

FEDERAL LEGAL FRAMEWORK

The distinction between child and adult regarding culpability for criminal behavior in the U.S. has changed. Reforms during the 1800s led to many changes in the treatment of children and older juveniles, including the establishment of the first juvenile courts. During the 1960s, the U.S. Supreme Court held the nation's juvenile courts' lack of procedures led to the denial of due process. After these rulings, juvenile

FIGURE 3
EXECUTIVE BRAIN FUNCTIONS GOVERNED BY PREFRONTAL CORTEX, 2013

Ability to balance short-term rewards with long-term goals	Considering future and making predictions	Focusing attention
Organizing thoughts and problem solving	Forming strategies and planning	Inhibiting inappropriate behavior and initiating appropriate behavior
Impulse control and delaying gratification	Adjusting behavior when situations change	Foreseeing and weighing possible consequences of behavior
Modulation of intense emotions	Simultaneously considering multiple streams of information when faced with complex and challenging information	

Source: Neuropsychiatric Disease and Treatment, "Maturation of the Adolescent Brain," by Mariam Arain, et al., April 2013.

courts were required to adopt many of the procedures used in adult criminal courts to protect the due process rights of juveniles.

The federal government has taken steps to differentiate the treatment of offenders based on age and status as juveniles. Although the federal government does not administer state juvenile justice agencies, it can influence state systems through legislation, research, education, and grant funding.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

The primary federal legislation regarding juvenile justice issues is the U.S. Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974. The legislation was reauthorized in 2002, and legislation introduced to reauthorize it in 2015 is pending. The JJDPA established the following:

- institutions in the federal government to coordinate and administer federal juvenile justice initiatives;
- grant programs to assist state juvenile justice agencies; and
- requirements states must follow to receive grant funding.

JJDPA includes two core requirements related to age: (1) juveniles are not to be detained or confined in any institution in which they would have contact with adult inmates, and staff must be certified to work with juveniles; and (2) juveniles are not to be detained or confined in a jail or lockup for adults, unless they are accused of nonstatus offenses, and then only for a limited time, which depends on the location. Pursuant to this second requirement, juveniles held in facilities for adults must not have contact with adult inmates. Staff assigned to juveniles in these facilities must be certified to work with juveniles. JJDPA defines an adult inmate as an individual who has reached the age of full criminal responsibility pursuant to applicable state law.

RECENT U.S. SUPREME COURT DECISIONS

The U.S. Supreme Court has ruled certain psychological and cognitive features of adolescence require different legal treatment than is authorized for adults in the criminal justice system. In Roper v. Simmons, 2005, the court invalidated the death penalty as a possible punishment for offenders younger than age 18 at the time of offense. The court specifically recognized the immaturity of adolescents, the susceptibility of juveniles to outside influences, and the impermanence of personality traits in adolescence as reasons why juveniles could not be considered as culpable for crimes as adults. In Graham v. Florida, 2010, based on findings from Roper v. Simmons, the Supreme Court determined life without parole for a nonhomicide offense was also an invalid sentence. The court held life without parole for a nonhomicide constituted cruel and unusual punishment because juveniles should be allowed the opportunity to be released if they demonstrate maturity and rehabilitation. In 2012 in Miller v. Alabama, the court also prohibited mandatory life without parole for a person who committed homicide before age 18, holding it also constituted cruel and unusual punishment.

PRISON RAPE ELIMINATION ACT OF 2003

Rates of sexual abuse are higher for confined juveniles than for adult prisoners. According to a DOJ Bureau of Justice Statistics report published in 2009, the 2006 rates of substantiated allegations recorded by juvenile facilities were more than five times the rates in adult facilities. Juveniles incarcerated with adults are particularly at risk when confined with adults, according to the 2009 National Prison Rape Elimination Commission Report.

The federal Prison Rape Elimination Act (PREA) of 2003 addresses sexual abuse of inmates and affects state and local correctional systems that house offenders younger than age 18 in the same facilities as older inmates. PREA establishes a zero-tolerance standard against sexual abuse and applies to federal, state, and local adult and juvenile correctional facilities. In 2012, the DOJ issued final standards related to PREA. These standards require correctional facilities to adhere to certain policies related to sexual abuse and to undergo PREA-specific audits once every three years. Failure to comply with PREA standards in certain circumstances may result in states receiving fewer federal grants for criminal and/or juvenile justice purposes.

As of August 2016, each of the Texas Juvenile Justice Department's (TJJD) five secure facilities and eight halfway houses have been audited and are PREA-compliant. Ten county juvenile detention facilities (out of the 49 operating as of November 2016) have been audited and are compliant. Other counties' juvenile detention facilities are being audited.

The Youthful Inmate standard set forth in PREA prohibits inmates younger than age 18 from being placed in housing units with older inmates in adult correctional facilities. Outside of housing units, sight and sound separation must be maintained between inmates younger than age 18 and those age 18 and older, unless direct staff supervision is present. Additionally, correctional facilities are required to make efforts to implement these standards without relying on isolation of inmates younger than age 18. Facilities must also make efforts to provide inmates younger than age 18 with certain exercise, work, and educational opportunities. TDCJ offers a youthful offender program for prison inmates younger than age 18, called the Courage Program. The program is located in a prison facility where sight and sound separation between inmates younger than age 18 and those age 18 or older is maintained for housing. As of November 1, 2016, 92 of TDCJ's 109 facilities had been audited for PREA compliance. Of the 92 units, 85 units were deemed compliant, and seven units' audit reports were pending completion.

In addition to state facilities, TDCJ requires local Community Supervision and Corrections Departments (CSCD) to maintain PREA compliance in all Community Corrections Facilities. All CSCDs report their residential facilities are PREA-compliant.

Compliance with PREA's Youthful Inmate standard varies among county jails in Texas. Youthful inmates are defined as younger than 18 years of age; therefore all individuals age 17 arrested in Texas are included in this definition and are afforded additional protection pursuant to PREA standards. However, many county jails are unable to or choose not to comply with the Youthful Inmate standard for several reasons, including:

- inadequate space in facilities to separate inmates age 17 from other inmates given other classification constraints;
- not enough staff to supervise separate areas, or to eliminate cross-gender supervision; and
- the only available space is administrative separation or single cells.

The Texas Commission on Jail Standards (TCJS) monitors jails' compliance with state standards. According to TCJS, the agency has not modified minimum jail standards specific to offenders age 17 or to PREA and does not enforce PREA standards.

SURVEY OF TEXAS COUNTY JAILS' RESPONSE TO PREA

Legislative Budget Board (LBB) staff conducted a survey of Texas county jails in March 2016. Of 243 jails surveyed, 99 responded, representing 40.7 percent. Not all jails responding to the survey responded to each question. The survey of county jails included questions on whether changes had been made as a result of PREA and what would be required to comply with PREA.

A total of 41.8 percent of county jails indicated they housed 17 year olds separately from other inmates, while nearly one-third indicated they had made no changes to comply with PREA. The most common response to what changes were needed to comply with PREA was additional housing.

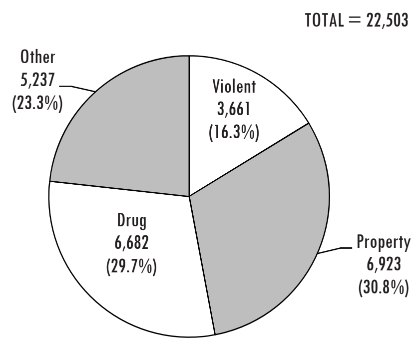
Unlike state governments, local governmental entities are not subject to direct financial penalties from the federal government for PREA noncompliance. Failure to comply with PREA standards could result in civil litigation for county jails and other local correctional facilities. However, according to the DOJ's National Standards to Prevent, Detect, and Respond to Prison Rape, PREA standards do not define "the contours of constitutionally required conditions of confinement." The DOJ's standards also state compliance with PREA standards alone does not provide a defense to litigation related to sexual abuse. Failure to comply with PREA standards may also potentially result in the loss of or failure to gain accreditation status or of federal contracts to house inmates in local jails. It is unknown if any active contracts would be jeopardized by PREA noncompliance, nor the fiscal impact from a potential loss of a contract.

INDIVIDUALS AGE 17 IN THE JUVENILE AND ADULT SYSTEMS

In fiscal year 2015, there were 22,503 arrests of persons who were juvenile system eligible. A total of 28.5 percent of these arrests were for felony offenses, while 71.5 percent were for misdemeanor offenses.

As **Figure 4** shows, approximately 16.3 percent of arrests were for violent offenses, while 83.7 percent were for property, drug, and other offenses.

FIGURE 4
ARRESTS IN TEXAS OF PERSONS WHO WERE JUVENILE SYSTEM-ELIGIBLE BY OFFENSE CATEGORY
FISCAL YEAR 2015



SOURCES: Legislative Budget Board; Texas Department of Public Safety.

A total of 15,476 persons accounted for the 22,503 juvenile system eligible arrests in fiscal year 2015. Of those, a total of 19.1 percent (2,945 persons) had three or more additional arrests or referrals for violation of juvenile probation prior to their arrest in fiscal year 2015. A total of 23.6 percent (3,660 persons) had one or two prior arrests or referrals for violation of juvenile probation, and 57.3 percent (8,871 individuals) had none.

In fiscal year 2015, there were 50,916 arrests of persons who were ages 10 to 16 at arrest or age 17 at the date of arrest and age 16 or younger at the date of offense. A total of 34,932 persons accounted for these 50,916 arrests. These persons are currently eligible to be served in the juvenile justice system of Texas. Raising the age of criminal responsibility would increase the number of persons served by the juvenile justice system. The number of arrests of juvenile system eligible persons in fiscal year 2015 (22,503) who would potentially be added to the juvenile justice system represents a 44.2 percent increase from the 50,916 arrests currently eligible to be served in the juvenile justice system. The number of juvenile system eligible persons arrested in fiscal year 2015 (15,476) who would potentially be added to the juvenile justice system represents a 44.3 percent increase from the 34,932 persons currently eligible to be served in the juvenile justice system. This increase is potential because some of those arrested could be diverted before being referred to a juvenile probation department, and some of those referred to a juvenile probation department could be diverted before being placed on juvenile supervision or committed to a state residential facility.

JUVENILE INFORMATION

Under current law, certain individuals who are age 17 are already served in the juvenile justice system. These are juveniles who are committed to TJJD for offenses committed between the ages of 10 and 16. These juveniles can remain in state residential facilities or on juvenile parole until their 19th birthday.

Juveniles who are age 17 may also be under supervision with a local juvenile probation department if they committed an offense from ages 10 to 16 or were referred for a technical violation of juvenile probation at age 17. These juveniles can remain under the supervision of a local juvenile probation department until their 18th birthday, unless they are given determinate sentence probation. On determinate sentence probation, offenders may remain under local supervision until their 19th birthday. Determinate sentence probation requires juveniles who have not completed their probation by their 19th birthday to complete the rest of their probation term under the supervision of an adult community supervision and corrections department.

A total of 2,778 persons who were age 17 began juvenile supervision in fiscal year 2015. Juvenile supervision includes deferred prosecution supervision, adjudicated probation supervision, and conditional predisposition supervision. A total of 2,005 individuals age 17 were detained, and 609 began residential placement (secure or nonsecure) in fiscal year 2015. A number of these juveniles were in rehabilitation programs while under some form of local supervision, including 1,050 in educational programs, 871 in substance abuse prevention or treatment programs, 785 in counseling services, and 746 in life skills programs.

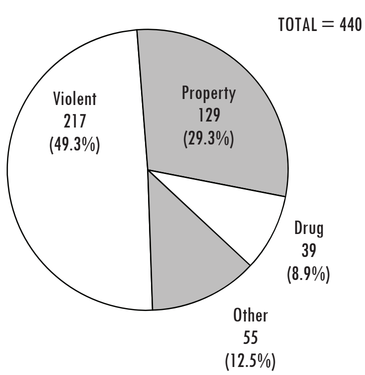
In fiscal year 2015, 271 juveniles were committed to TJJD at age 17. Of these commitments, 215 were new commitments and 56 were revocations or other types of commitments. A total of 277 of those who started juvenile parole supervision in fiscal year 2015 were age 17.

ADULT INFORMATION

Individuals who were age 17 when they committed an offense are currently served in the adult criminal justice system. In fiscal year 2015, a total of 970 persons admitted to prison or state jail were age 17 when they committed the offense and were juvenile system-eligible when they were received. Of those 970, a total of 440 were new admissions, and 530 were revocations. The total number of juveniles of all ages newly admitted to TJJD in fiscal year 2015 was 808. Although not all new admissions of offenders age 17 to the adult prison system would likely be committed to TJJD in the juvenile system, the 440 admissions represent 54.5 percent of all new admissions to TJJD in fiscal year 2015.

Figure 5 shows almost half of the admissions to prison or state jail in fiscal year 2015 of persons age 17 when they committed an offense and juvenile system-eligible were for violent offenses.

FIGURE 5
NUMBER OF PERSONS AGE 17 AT OFFENSE AND JUVENILE SYSTEM-ELIGIBLE NEWLY ADMITTED TO PRISON OR STATE JAIL BY OFFENSE CATEGORY, FISCAL YEAR 2015



SOURCES: Legislative Budget Board; Texas Department of Criminal Justice.

The average length of stay for those released from prison in fiscal year 2015 who were age 17 when they committed their offense and juvenile system-eligible was 4.6 years. The average length of stay for those released from state jail in fiscal year 2015 for this age group was six months.

In fiscal year 2015, a total of 7,012 of those who began community supervision were age 17 when they committed their offense and juvenile system-eligible. For those released from community supervision in fiscal year 2015 who were age 17 when they committed their offense and juvenile system-eligible at placement, the average length of supervision was 2.8 years for felons and 1.1 years for misdemeanants.

DIFFERENCES BETWEEN JUVENILE AND ADULT SYSTEMS IN TEXAS

Raising the age of criminal responsibility would transfer some offenders from the adult criminal justice system to the juvenile justice system. The juvenile and adult systems are very different, not only in terms of official policies and procedures, but also the implementation of those policies varies across the state due to differences in resources and culture.

In evaluating whether or not to raise the age of criminal responsibility, policy makers should consider differences between the juvenile justice and adult criminal justice systems regarding:

- arrest and diversion;
- pretrial detention and indigent defense;
- courts and sentencing;
- juvenile probation and community supervision;
- commitment to state or local facilities;
- parole; and
- records.

Several differences in the systems show the effects raising the age of criminal responsibility could have on individuals and on the adult criminal and juvenile justice systems. These effects extend beyond the year in which offenders age 17 commit offenses to all subsequent years in which they are involved with the justice systems.

ARREST AND DIVERSION PROGRAMS

Upon arrest, juveniles have additional protections from police questioning and may have more opportunities for informal disposition of their cases.

When a police officer arrives at an incident, one of the first responsibilities after ensuring public safety is identifying suspects. Officers ask for identification, birthdates, and names of suspects. If an individual is identified as a juvenile (younger than age 17), that individual is separated from adult suspects, and is processed separately at a juvenile processing office.

Laws differ on how police can obtain statements from juveniles and adults. Juveniles must be warned by magistrates before they can be questioned by police, and additional requirements govern statements from children to be admissible in court. Therefore, a change in the age of criminal responsibility could affect how a suspect age 17 is questioned.

The outcome of an adult arrest or juvenile referral is called the disposition. Dispositions in the juvenile justice system are informed by an optional progressive sanctions model set in the Texas Family Code, Chapter 59. In the juvenile justice system, the juvenile probation department may informally dispose of certain referrals without sending them to the prosecutor. This informal disposition does not occur in the adult criminal justice system. If the age of criminal responsibility were increased, some cases that might have moved forward in the adult criminal justice system might not move forward in the juvenile justice system.

Some jurisdictions have established pretrial diversion programs for certain, often first-time, offenders. In the juvenile justice system, diversion may be a formal first offender program or a disposition of a supervisory caution, which are typically handled informally by the local juvenile probation department. In the adult criminal justice system, some pretrial intervention programs are operated by the CSCD or local Pretrial Services office. Compliance with the conditions of these programs can result in the dismissal of a person's charges and possible expunction of records of the charges.

Another means of diversion from a conviction is deferred prosecution in the juvenile justice system or deferred adjudication in the adult criminal justice system. If the individual complies with the conditions imposed by the court and probation department, the petition or charges are ultimately dismissed without being formally adjudicated. However, this dismissal does not typically result in the expunction of records in the adult system. Therefore, a record of the deferred adjudication is usually visible to the public unless the individual is able to petition for an order of nondisclosure. The Texas Code of Criminal Procedure, Article 42.12, concerning adult probation, has a section covering orders of nondisclosure. The statute requires a judge who dismisses such charges to inform the person of their eligibility to receive an order of nondisclosure and the earliest date they are eligible to receive the order. The statute also specifies certain offenses are not eligible for deferred adjudication and establishes minimum and maximum amounts of time for this type of supervision. In addition, the arrest always remains visible; only the conviction is covered by the order of nondisclosure.

If an individual placed on deferred adjudication in the adult system violates the conditions of their supervision the judge can adjudicate them and revoke their supervision in the same hearing. The judge can also impose the full penalty range available upon adjudication of the offense. In some cases, once individuals turn 17, they may be considered first offenders in the adult system if they commit a new offense. If the age of criminal responsibility were raised, some individuals who might have qualified for a first offender program in the adult system may not qualify for a similar program in the juvenile system.

PRETRIAL DETENTION AND INDIGENT DEFENSE

Individuals accused of violating the law could spend different amounts of time in detention depending on whether their case is processed in the juvenile justice or adult criminal justice system. Their access to appointed legal counsel could also be affected by which system adjudicates their case.

The juvenile justice system typically requires less time to process cases than the adult criminal justice system. The average time from referral to a disposition of deferred prosecution or adjudicated probation in fiscal year 2015 for juveniles age 16 at referral was 93 days for those disposed of a felony offense and 72 days for those disposed of a misdemeanor offense. The average time from arrest to placement on community supervision in fiscal year 2015 for individuals age 17 at offense and juvenile system eligible was 198 days for those disposed of a felony and 165 days for those disposed of a misdemeanor.

The average time from referral to commitment to TJJD in fiscal year 2015 for juveniles age 16 at referral was 91 days. The average time from offense to admission in fiscal year 2015 for individuals age 17 at offense and juvenile system eligible was 257 days for those sent to state jail and 365 days for those sent to prison.

In the juvenile justice system, release from detention before disposition of the case is the default, unless certain conditions indicate detention of the juvenile is warranted for safety reasons. If a juvenile is detained, statute requires periodic hearings to determine whether detention should continue.

In the adult criminal justice system, release from detention before trial typically depends on posting bail. Bail bonds are intended to enable defendants who have not yet been convicted to be released from jail, and to also ensure the defendants do not abscond before their hearings. The Texas Constitution guarantees a right to bail except for capital offenses or certain repeat offenders. Most types of bail require the defendant to give money to either the court or a surety who guarantees they will later appear in court. Under certain circumstances a magistrate may release the defendant on a personal bond without sureties or other security. The magistrate may impose conditions on this bond, such as drug testing or electronic monitoring. The court may also order the defendant to pay a fee for the personal bond, up to 3.0 percent of the total bail, but the fee may also be reduced or waived. If the age of criminal responsibility were raised, 17 year olds would be detained based on whether or not they were considered dangerous to themselves or others, rather than their ability to pay bail.

Legal counsel is appointed at different points in the process in each system, which could affect length of stay in detention. Typically, if the juvenile is kept in custody, the appointment of counsel must be made before the first detention hearing. **Figure 6** shows the processes for how counsel is appointed for indigent defense, and how detention determinations are made.

In the adult criminal justice system, legal counsel is not necessarily present at the point at which bond is set. **Figure 7** shows counsel is not required to be appointed before setting bond. The request for counsel and the setting of bond occur during the same hearing. Therefore, adult defendants typically do not have counsel during the hearing affecting their pretrial detention, unless they provide their own counsel. Legal counsel may be able to argue for a lower bond amount that would enable a defendant to be more likely to bond out of jail.

Raising the age of criminal responsibility may also affect whether or not a defendant is eligible for appointed legal counsel. Defendants age 17 who may be considered indigent in the adult criminal justice system based on their own resources might not be considered indigent in the juvenile system if their parents' resources were greater than the threshold in a county's juvenile indigent defense plan. Each county in Texas must have an adult criminal court indigent defense plan and a juvenile indigent defense plan which includes financial standards for determining whether a defendant is indigent. Among indigent defense plans in Texas counties, the median threshold for presuming indigence is a gross income of 125 percent of the federal poverty guidelines, which in 2016 is $30,375 for a family of four.

Services differ for juveniles and adults who are detained while awaiting trial. While detained in juvenile pre-adjudication facilities, all juveniles are required to receive education services. TJJD audits facilities on this standard. The requirement is not as clear in the adult system. Jails are required to have written plans for inmate rehabilitation and education which include voluntary participation by inmates in academic, reading, or training programs where feasible and where community resources are available. School districts are required to provide services to enrolled students if they are in jail, but data is not collected on whether school districts provide this service. Of those jails responding to the LBB staff survey, 49.3 percent indicated individuals age 17 receive education services while in a county jail. Some of those age 17 may not have received education services because they already have a high school diploma or high school equivalency certificate.

COURTS AND SENTENCING

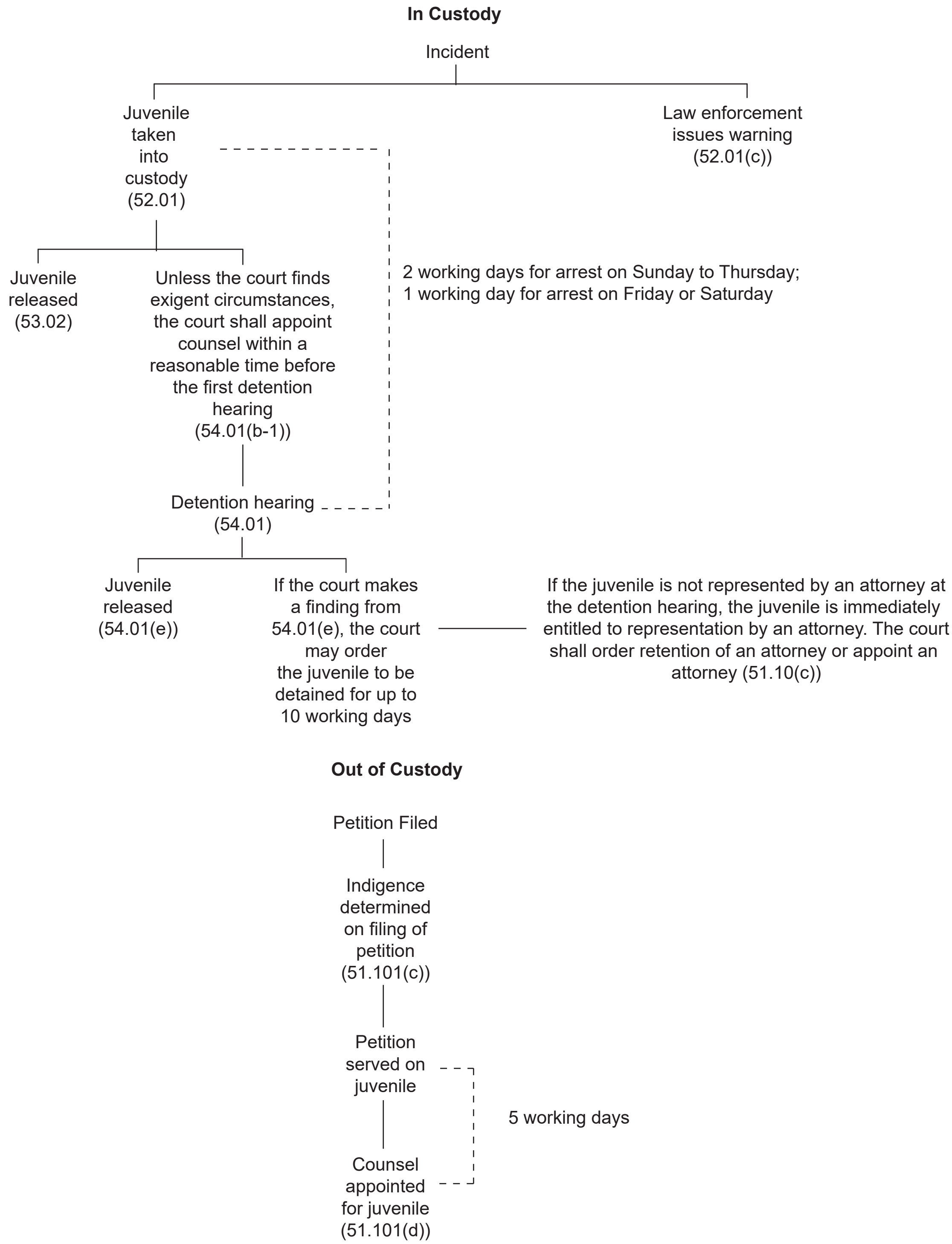
If a case continues to trial (adjudication in the juvenile justice system), there are differences in the way juvenile and adult courts operate. There are procedural differences between the systems and they use different terminology. While adult courts are criminal courts, juvenile courts are civil courts. In 1973, the Texas Family Code, Title 3, was enacted to govern juvenile law. One goal of the law was to remove the stigma of criminality from the unlawful acts of a child.

The juvenile and adult systems each utilize trial by jury to determine culpability. In the adult system, the defendant typically has a right to also be sentenced by a jury. However, there is no right to a jury in a juvenile disposition hearing except in determinate sentencing cases. Because of this difference, if the age of criminal responsibility were raised, an offender age 17 could receive a longer or shorter sentence depending on whether a judge might differ from a jury in imposing sentence lengths and conditions.

According to the Texas Attorney General, an order of adjudication or disposition in juvenile court is not a criminal conviction and does not impose any of the civil disabilities an adult criminal conviction would impose. Therefore, if the age of criminal responsibility were increased, defendants age 17 whose cases were processed through the juvenile justice system would no longer receive criminal convictions. Additionally, these offenders would no longer have the same long-term civil disabilities from those convictions.

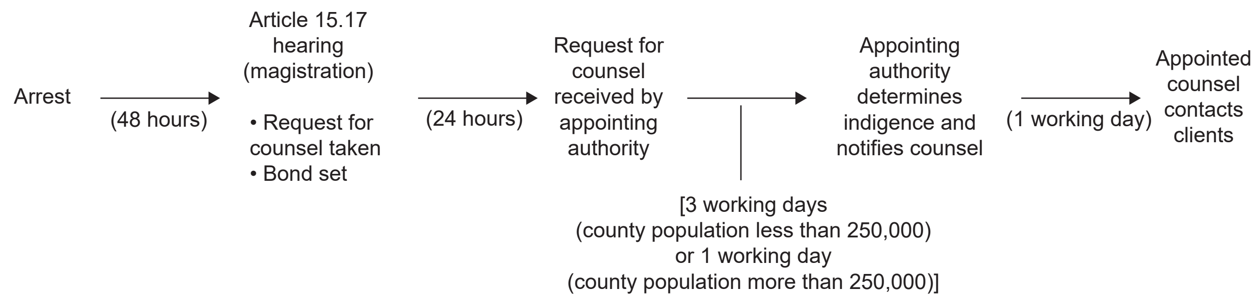
If the age of criminal responsibility were increased, defendants age 17 who were found to have committed offenses could

FIGURE 6
STATUTORY ATTORNEY APPOINTMENT TIMELINE FOR JUVENILES ARRESTED IN TEXAS, 2016



SOURCE: Indigent Defense Commission of Texas. All statutory references in this figure refer to the Texas Family Code.

FIGURE 7
STATUTORY ATTORNEY APPOINTMENT TIMELINE FOR ADULTS IN THE TEXAS CRIMINAL JUSTICE SYSTEM, 2016



NOTE: Article 15.17 refers to the Texas Code of Criminal Procedure.
SOURCE: Indigent Defense Commission of Texas.

receive different sentencing through the juvenile justice system. Juvenile offenses can be broadly divided into two categories: conduct indicating a need for supervision (CINS) and delinquent conduct. The categories affect where they may be placed and for how long. CINS is conduct, other than a traffic offense, involving fine only misdemeanors, running away, inhalant abuse, expulsion from school, prostitution, and sexting. Delinquent conduct is conduct that violates a state or federal criminal law and is punishable by imprisonment or by confinement in county jail. It does not include traffic offenses.

If juveniles are found to have committed a CINS violation, their disposition may involve placement on varying levels of supervision up to the offender's 18th birthday. They may not be committed to TJJD for CINS violations.

If juveniles are found to have engaged in delinquent conduct, they may be placed on juvenile supervision or committed to TJJD. If juveniles are committed to TJJD, they may receive an indeterminate sentence, which allows TJJD to release them before they turn age 19. For serious felony cases, a judge may give youth a determinate sentence, which means offenders may serve some of their sentence after their 19th birthday in the adult system. For example, a capital felony, a first-degree felony, or an aggravated controlled-substance felony may result in a term of no more than 40 years. A second-degree felony may result in a maximum term of 20 years; and a third-degree felony carries a sentence of up to 10 years. Juveniles may also be given determinate sentences to probation. For certain serious offenses, juveniles age 14 or older at the time of the alleged offense may be certified to stand trial as an adult and be transferred from the juvenile to the adult court.

In accordance with the U.S. Supreme Court's rulings regarding age of offenders, individuals who were younger than age 18 at the time of offense cannot be sentenced to mandatory life without parole or the death penalty. However, these offenders can be sentenced to life with the possibility of parole for a capital felony. Adults may be required to serve their sentences on house arrest, on community supervision, or by confinement in county jail, state jail, or prison. If the age of criminal responsibility were raised, an offender age 17 who commits a capital felony and was not certified as an adult would serve a maximum determinate sentence of 40 years, instead of the current maximum sentence of life with the possibility of parole.

The juvenile and adult justice systems may charge court costs; typically, these costs are less in the juvenile system. If a disposition hearing is held, juvenile courts may assess a court cost of $20 on the child, parents, or guardians. Other fees and court costs may apply if juveniles are adjudicated as having engaged in certain delinquent conduct. In the adult criminal justice system, court costs are assessed earlier in the process, even when the defendant receives deferred adjudication. Court costs in felony cases are at least $215 and at least $178 for class A or B misdemeanors that are not moving violations. Fees and fines may be waived by the judge in some instances. Statewide data on the frequency of this practice is not available. If the age of criminal responsibility were increased, offenders age 17 would typically owe less in court costs and fees in the juvenile system than in the adult system.

JUVENILE PROBATION AND COMMUNITY SUPERVISION

Both the juvenile and adult systems supervise offenders in the community in lieu of detention. In the juvenile justice system, 166 local juvenile probation departments across the state supervise youth. In the adult criminal justice system, 123 CSCDs supervise adults as of December 1, 2016. If the age of criminal responsibility were raised, an offender age 17 sentenced to juvenile probation would likely have more frequent meetings with a supervision officer and would be more likely to receive educational services in the juvenile system than in the adult system. These offenders also are likely to have shorter probation terms in the juvenile system, especially for more serious offenses.

Juvenile probation departments typically have fewer individuals on their caseloads per officer. According to TJJD, the average caseload size of felons and misdemeanants in juvenile probation departments for calendar year 2014 was 19, while according to the TDCJ, the average regular supervision caseload size of felons and misdemeanants in CSCDs for fiscal year 2014 was 104.

Educational services may differ among the juvenile and adult probation departments. Typically, offenders age 17 are still required to be enrolled in school. Juvenile probation departments work exclusively with school-age juveniles. Adult probation departments may provide educational programs and support for those who are court-ordered to complete a high school diploma or obtain a GED, and older probationers may also work on educational goals during supervision.

Juvenile and adult probation departments may also offer other programs to attempt to rehabilitate offenders. According to the TJJD Annual Report to the Office of the Governor and LBB, December 2015, of juveniles leaving probation supervision in fiscal year 2015, 80 percent had participated in at least one such program. According to data from TDCJ 30.3 percent of offenders who were age 17 years at offense, who would be juvenile system eligible, and whose community supervision was terminated (successfully or unsuccessfully) in fiscal year 2015 had participated in at least one program.

Some CSCDs expressed concerns to LBB staff about the lack of options available to effectively treat and supervise offenders age 17 in the adult system. There are certain residential placements in adult probation for which 17 year olds are ineligible because they are under 18 and the residential placement programs will not accept them. Among CSCDs who responded to the LBB staff survey, 29.2 percent said there were residential placement programs in which offenders age 17 could not participate solely because of their age. Residential placements for substance abuse treatment were cited most often by respondents as excluding these offenders. Therefore, if the age of criminal responsibility were raised, those offenders may be eligible for other residential treatment programs through the juvenile probation system, if local resources are sufficient.

Probation term lengths differ between the adult and juvenile systems. Juvenile probation supervision typically lasts for one year, but may last until the juvenile's 18th birthday. This term may be longer than one year if the juvenile begins probation before age 17. Adult community supervision terms range from up to two years for misdemeanors to up to 10 years for certain felonies. The supervision term for an offender age 17 likely would be affected if the age of criminal responsibility were increased, but it could be longer or shorter than adult community supervision depending on the circumstances of the case. For more serious offenses, probation terms would likely be shorter in the juvenile system than in the adult system.

An offender age 17 probably would owe less in probation fees if the age of criminal responsibility were increased. Adult community supervision fees are outlined in statute and are set from $25 to $60 per month. According to the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota, adult probation fees can be waived for indigence, and may be extended because of unpaid fees. For juvenile probation, the juveniles, parents, or guardians may be charged a supervision fee of up to $15 per month if they are financially able to pay.

PAROLE

If the age of criminal responsibility were increased, it could affect whether offenders age 17 receive parole, when they might be paroled, and the length of time they might spend on parole.

Decisions to grant parole are structured differently in the juvenile and adult systems. The juvenile justice system has two types of sentences: indeterminate and determinate. An indeterminate sentence is a commitment for an unspecified length of time up the juvenile's 19th birthday. When a juvenile is admitted to TJJD for an indeterminate sentence, the agency conducts a risk assessment to determine a minimum length of stay which can range from nine months to 24 months, based on the severity of the juvenile's offense and the risk to the public. After the minimum time has been completed, release on parole supervision is based on treatment progress as determined by a TJJD review release panel. Juveniles with determinate sentences, which are sentences for a specific duration, who have not completed their sentence length by their 19th birthday are transferred to the adult system to complete their sentence in prison and may be paroled by the Texas Board of Pardons and Paroles (BPP). If juveniles with determinate sentences are successful in TJJD treatment and are paroled by TJJD, they can serve the balance of their sentence on adult parole rather than in adult prison.

In the adult criminal justice system, BPP—a separate state agency from TDCJ—makes the decision to parole an offender from prison. Statute specifies eligibility requirements for various classes of offenders. To make a decision regarding release and supervision conditions, BPP reviews an offender's criminal, social, medical, psychological, and institutional adjustment history. BPP also screens for other issues, including disciplinary conduct and effects of the crime on victims. If approved, the offender is released when eligible on a date BPP specifies. If denied, the offender's case cannot be reviewed again for a minimum of one year, and it must be reviewed again within five years. The maximum length of parole is the balance of the sentence remaining; however, an offender may be recommended for early release from parole if certain conditions are met. Parole is not an option for offenders sentenced to a state jail.

RECORDS

Another difference between the juvenile and adult systems is the difference in public access to legal records. Absent expunction or nondisclosure provisions, adult criminal records are fully public. Conversely, juvenile records are fully confidential and may be disclosed only as provided by statute. Having an adult criminal record that is publicly accessible can affect an individual's options for education, jobs, and housing. Therefore, if the age of criminal responsibility were increased, offenders who committed offenses at age 17 typically would have more protected records than provided by existing statute.

RESEARCH ON RECIDIVISM AND TRANSFER POLICIES

The LBB staff publication *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, February 2015, shows rearrest rates in Texas tend to be higher for individuals committed to TJJD in the juvenile justice system than for individuals sent to prison or state jail in the adult criminal justice system. For example, looking at specific age groups, the three-year rearrest rate for juveniles who were age 16 at the time of referral and released from TJJD in fiscal year 2011 was 74.7 percent. However, the three-year rearrest rate for individuals age 17 at offense and released from prison in fiscal year 2011 was 58.1 percent. The three-year rearrest rate for individuals age 17 at offense and released from state jail in fiscal year 2011 was 65.8 percent.

Since only felony offenders can be committed to TJJD or sent to prison or state jail, no misdemeanor offenders are included in these rates. The best comparison of rates would include both felony and misdemeanor offenders, especially since misdemeanants constitute the majority of those in both the juvenile and adult justice systems who are the subject of this analysis. Unfortunately, data to calculate these rates is not currently available.

Because research on this issue is limited, discussions often include references to evaluations of the effects of transfer policies. Transfer policies allow individuals who would otherwise be processed in the juvenile system to be transferred by some mechanism to the adult system (e.g. by certifying a juvenile to stand trial as an adult). However, results of these studies may not be comparable because the populations affected by most transfer policies can be different from those that would be affected by raising the age of criminal responsibility.

One study on transfer policies is a systematic review conducted in 2007 by the Task Force on Community Preventive Services, which is composed of a number of public health experts from the Centers for Disease Control and justice experts. The review examined published scientific evidence on the effectiveness of laws and policies that facilitate the transfer of juveniles to the adult criminal justice system to determine whether these transfers prevent or reduce violence among youth.

The review acknowledged the major methodological concern in these studies: selection bias in studies of transfers. Transfer to adult criminal court is more likely for those perceived to be more serious offenders, therefore transferred youth may have a greater risk for later violence compared to youth not transferred. The systematic review only included studies that attempted to control for potential selection bias, but this also limited the research to comparisons of relatively serious offenses. This reduces comparability with nonviolent offenses or misdemeanors, which are the majority of offenders age 17. Among the six studies included in the systematic review, four found an increase in crime. The median effect size of those four was a 34 percent relative increase in violent or general crime for transferred juveniles compared to retained juveniles.

The other two studies included in the systematic review showed either a decrease in violence and crime or no effect.

The DOJ's Office of Juvenile Justice and Delinquency Prevention also reviewed literature on transferring juveniles into the adult system in 2010. The agency concluded, with some exceptions, transferring juveniles to the adult system substantially increases recidivism for those juveniles. The exceptions are two studies found decreased recidivism rates for drug offenders tried in criminal court, and four studies on nonviolent property offenders which found mixed results.

Social science literature relevant to raising the age of criminal responsibility that does not involve transfers of specific individuals or certain groups of youth is very limited. Eight states have changed the age of criminal responsibility since 2007, but few academic studies have been published on the effects of those changes.

Prior to 2015, according to researchers at the University of Pennsylvania, no studies had examined the effect on recidivism of legislative changes raising or lowering the age of majority for all misdemeanor or felony crimes. These researchers published an evaluation in the Journal of Legal Studies, June 2015, of the effects of raising the age of criminal responsibility on misdemeanors that occurred in Illinois in 2010. Their study concluded this change had no effect on juvenile recidivism as measured by rearrest within two years of offense. Researchers at the University of Pennsylvania and the University of Chicago jointly posted a working paper evaluating Connecticut's increase of the age of criminal responsibility. Connecticut raised the age of criminal responsibility from age 16 to age 17 in 2010 and then to age 18 in 2012 for all but the most serious offenses. This analysis also found no significant change in immediate juvenile offending that could be attributed to the policy change. However, the evaluation found evidence suggesting the arresting behavior of law enforcement officers changed when offenders were processed in the juvenile system rather than the adult system. The study found police may have temporarily reduced arrests of nonviolent offenses for 16 year olds when the change occurred.

For many reasons, the experiences of Illinois and Connecticut may or may not be comparable to Texas', and more studies are needed to evaluate the effects on offending and recidivism. Because of these several limitations, this discussion of the fiscal impact of raising the age of criminal responsibility assumes no effect on recidivism. In addition, raising the age of criminal responsibility would not necessarily impact the certification of juveniles as adults, and changing the laws governing the certification of juveniles as adults was not the target of the Texas legislation proposed during the Eighty-fourth Legislature, 2015.

ESTIMATED FISCAL IMPACT TO THE STATE

The actual fiscal impact of raising the age of criminal responsibility in Texas will depend on the specific language of any proposed legislation. As shown in **Figure 8**, based on the methodology and assumptions described, raising the age of criminal responsibility from age 17 to age 18 would cost the state approximately $63.8 million during the first two fiscal years after implementation.

FIGURE 8
FIVE-YEAR FISCAL IMPACT OF RAISING THE AGE OF CRIMINAL RESPONSIBILITY, FISCAL YEARS 2018 TO 2022

YEAR	PROBABLE SAVINGS/(COST) IN GENERAL REVENUE FUNDS
2018	($14,040,073)
2019	($49,789,560)
2020	($51,630,648)
2021	($43,690,098)
2022	($36,366,867)

Source: Legislative Budget Board.

This fiscal impact is based upon legislation filed during the Eighty-fourth Legislature, 2015, which amended various codes to require individuals who are age 17 at the time of the offense to be considered juveniles and be under the jurisdiction of juvenile courts and the juvenile justice system instead of the adult criminal justice system. The legislation also made conforming changes to the jurisdiction of juvenile courts, juvenile probation, and state residential facilities. Fiscal impact statements for this legislation were based on fiscal year 2014 data from the Texas Department of Public Safety (DPS), TDCJ, and TJJD, and on fiscal year 2014 costs per day for the state's adult criminal justice and juvenile justice systems. The five-year fiscal impact shown in **Figure 8** is based on fiscal year 2015 data and estimated fiscal year 2015 costs per day.

To estimate the state fiscal impact of raising the age of criminal responsibility to age 18, sentencing trends in the juvenile and adult justice systems were analyzed to determine the proportion of adult correctional institution, community supervision, and parole supervision admissions who would be served by the juvenile justice system in the future. The projected increase or decrease of correctional populations was also factored into the estimate. The fiscal impact of raising the age for any year would depend upon the effective date and specific provisions of the proposed legislation.

In fiscal year 2015, there were 440 new admissions to adult correctional institutions for individuals who were 17 at offense and who would be eligible for commitment to juvenile state residential facilities if the age of criminal responsibility were raised. All of these individuals could be eligible for commitment to juvenile state residential facilities. This analysis assumes a portion, 62 percent, of these individuals would be committed to juvenile state residential facilities, 9 percent would be certified as an adult, and 29 percent would be supervised by juvenile probation departments. These proportions are based on commitment trends in the juvenile justice system. This analysis also assumes a portion, 77 percent, of those admitted to juvenile state residential facilities would be released to juvenile parole supervision. This portion is based on the parole trends in the juvenile justice system observed in fiscal year 2015.

In fiscal year 2015, a total of 7,012 individuals were placed on adult community supervision who were 17 at offense and would be eligible to be supervised by juvenile probation departments. All of these persons could be eligible to be placed on juvenile supervision. This analysis assumes a portion, 69 percent, of these individuals would be supervised by juvenile probation departments and 31 percent would receive no supervision. These proportions are based on the percentage of those receiving supervision in the juvenile justice system.

Savings are estimated based on the state costs per day for adults in TDCJ correctional institutions systemwide ($55.61), on adult parole supervision ($4.07), and under adult community supervision ($1.72). Costs are estimated based on the state costs per day for juveniles in TJJD state residential facilities ($427.91), juvenile parole supervision ($36.26), juvenile supervision ($7.71), and juvenile detention ($8.82). Based on these calculations, during the first two fiscal years the state cost to the juvenile justice system would be $82.3 million, the state savings to the adult criminal justice system would be $18.5 million, and the resulting net cost to the state would be approximately $63.8 million.

This analysis does not include potentially significant costs associated with services which would be provided to the additional persons on juvenile supervision such as mental health, substance abuse, other specialized services, and placement in residential post-adjudication facilities. The analysis also does not reflect any possible fiscal impacts to state courts, the Texas Education Agency, DPS, or TCJS.

ESTIMATED LOCAL GOVERNMENT IMPACT

To understand the local fiscal impact of raising the age of criminal responsibility on local corrections resources in Texas, LBB staff surveyed all local juvenile probation departments and community supervision and corrections departments across the state. A total of 80 of the 166 local juvenile probation departments (48.2 percent) responded to the survey. Those responding included large (juvenile age population of 80,000 or more), medium (juvenile age population of 7,500 to 79,999), and small (juvenile age population of less than 7,500) departments, as well as departments located in all regions of the state. A majority of the 80 local juvenile probation departments responding to the survey said they would need additional resources if the age of criminal responsibility were raised to age 18, with 15 departments specifically identifying the need to build or expand facilities. Other one-time costs cited besides facility construction included additional vehicles to transport juveniles and the expansion of office space to accommodate more staff.

FISCAL IMPACT TO LOCAL JUVENILE PROBATION DEPARTMENTS

In addition to one-time costs juvenile probation departments provided information on additional ongoing operating costs which would occur if the age of criminal responsibility was raised. Most of these costs involved additional supervision staff, rehabilitation services, and costs associated with admitting juveniles to detention and residential placement facilities. A total of 89.3 percent of juvenile probation departments indicated they would need additional funds to provide rehabilitation programs needed for offenders age 17 while 69.3 percent indicated they lacked qualified professionals; and 40.0 percent indicated they lacked transportation to provide these programs. Regarding specific programs, departments most often said they would need additional capacity in counseling services, substance abuse treatment, aftercare management, mental health, and vocational and employment programs. While 15 departments indicated the need to build or expand facilities they operate in urban or suburban areas of the state, an additional 50 departments, most of which are small or medium-sized, responded they would need to contract out for additional detention or residential placements for those age 17 they would serve if the age of criminal responsibility was raised.

Seven of the 10 large-sized departments, 26 of the 43 medium-sized departments, and 28 of the 113 small-sized departments in the state responded to the survey. A sample of their estimated costs is shown in **Figure 9**.

In addition to issues concerning funding, staffing, and capacity in local residential placement facilities, some juvenile probation departments indicated raising the age of criminal responsibility would result in placing older juvenile offenders with younger juvenile offenders, and this would have an adverse effect on the rehabilitation of younger juvenile offenders.

FISCAL IMPACT TO LOCAL CSCDS

A total of 98 of the 122 adult community supervision and corrections departments (80.3 percent) responded to the LBB staff survey. Those CSCDs responding included urban, rural, and midsize departments, as well as departments located in all regions of the state. A total of 93.9 percent of departments responding to the survey said no change in resources (neither an increase nor a decrease) would be needed if the age of criminal responsibility was raised from age 17 to age 18.

None of the departments indicated fewer program staff would be needed, and none indicated fewer professional providers, such as mental health professionals and substance abuse counselors, would be needed. None of the departments said fewer residential placement beds would be needed.

Many departments indicated they were concerned the loss of offenders age 17 from the adult criminal justice system, although not reducing the need for staff or programs, would result in a loss of state funding and community supervision fees.

FIGURE 9
ESTIMATED FISCAL IMPACT OF RAISING THE TEXAS AGE OF CRIMINAL RESPONSIBILITY TO A SAMPLE OF LOCAL JUVENILE PROBATION DEPARTMENTS, AS OF MARCH 2016

DEPARTMENT	SIZE (1)	ONETIME COSTS (2)	ONGOING COSTS
Bexar	Large	Costs associated with implementing new or expanded programs (i.e., needs assessments, curriculum manuals, training for trainers, etc.)	Annual costs of $8.2 million to $8.5 million, including funds for additional staff, residential placement services, and program services
Collin	Large	$8.5 million to expand the residential facility	$2.9 million per year to hire additional staff to provide supervision and rehabilitation services and to cover additional maintenance and medical costs
El Paso	Large	$15.0 million to expand their residential facility	$540,000 per year to operate the expanded facility
Harris	Large	$60.0 million to construct an additional residential facility	$30.0 million per year to operate the new facility, hire additional probation staff, and operate an additional juvenile court
Tarrant	Large	N/A	$2.8 million to $3.2 million per year for additional probation staff, program services, residential placement, and detention services
Lubbock	Medium	$5.4 million to expand their residential facility	$1.1 million per year to hire additional staff and provide additional placement services
Nueces	Medium	N/A	$779,000 per year to provide more probation and intensive supervision services and account for the increase in juveniles to detention and residential facilities
Potter	Medium	N/A	$2.0 million per year to cover the cost of an increase in contracts for residential placement beds, program services, juvenile probation officers, and support staff
Rockwall	Medium	N/A	$177,000 per year for an additional court officer, community-based services, detention, and residential placement services
Tom Green	Medium	$400,000 to expand the residential facility	$240,000 to $265,000 per year for additional probation staff and residential placement services
Calhoun	Small	N/A	$200,000 per year for an additional employee, increased detention and placement services, increased counseling and programming services, and additional psychological evaluations
Dallam	Small	N/A	$15,000 to $25,000 per year for additional counseling, substance abuse treatment, and detention services
Montague	Small	N/A	$66,600 per year for an additional juvenile probation officer, counseling services, detention, and residential placement services
Navarro	Small	N/A	$298,000 per year to hire more supervision staff, increase community-based services, and account for the increase in juveniles to detention and residential facilities
Titus	Small	$30,000 to purchase a vehicle to transport additional juveniles	$200,000 per year for additional probation staff, community-based services, detention, and residential placement services

NOTES:
(1) Large = general population of 80,000 or more juveniles; medium = general population of 7,500 to 79,999 juveniles; small = general population of fewer than 7,500 juveniles.
(2) N/A indicates departments responding to a Legislative Budget Board survey did not provide specific onetime costs in their responses.
SOURCE: Legislative Budget Board Staff Survey of Texas Juvenile Probation Departments.

IMPLEMENTATION OF THE FEDERAL PRISON RAPE ELIMINATION ACT IN TEXAS

The federal Prison Rape Elimination Act was passed by the 108th U.S. Congress, Public Law 108–79, 2003. The legislation is the first comprehensive federal law that addresses sexual abuse of incarcerated individuals. The Prison Rape Elimination Act applies to federal, state, and local adult and juvenile facilities, establishing a zero-tolerance standard against sexual abuse. The federal statute established a zero-tolerance standard of prison rape, commissioned the collection of data and research, authorized grants to states, established a National Prison Rape Reduction Commission, and directed national standards to be established. The standards became effective in 2012. Since then, the Texas Department of Criminal Justice and the Texas Juvenile Justice Department have implemented new policies and operations to become compliant in all correctional units.

This report provides background information regarding the federal Prison Rape Elimination Act and its provisions, with a focus on the Youthful Inmate standard. This report also considers the U.S. Department of Justice's enforcement of the legislation's standards and Texas' response to and compliance with these standards, including the results from federal audits.

FACTS AND FINDINGS

- ♦ According to the U.S. Bureau of Justice Statistics' National Inmate Survey in 2007, 4.5 percent of offenders reported they had experienced sexual violence within the previous 12 months. The survey found Texas had five of the 10 prison units with the highest rates of sexual victimization.
- ♦ The Texas Department of Criminal Justice has been awarded three grants related to the Prison Rape Elimination Act totaling $2.4 million since 2003. Funding was provided primarily for counselors and surveillance cameras. The Texas Juvenile Justice Department was awarded a grant for $0.6 million from the U.S. Department of Justice in 2011, primarily to enhance the agency's youth orientation process, develop training strategies to promote sexual safety, and to provide leadership and coaching skills training to staff.
- ♦ Texas submitted an assurance of compliance to the Department of Justice in 2015. The Texas Department of Criminal Justice and the Texas Juvenile Justice Department are in compliance with the Prison Rape Elimination Act as of fiscal year 2017. New standards relating to ratios of staff to juvenile offenders will become effective in fiscal year 2018; the Texas Juvenile Justice Department requested an additional $6.3 million from the Eighty-fifth Legislature for the 2018–19 biennium to achieve compliance. For fiscal year 2014, $0.8 million from three grant programs was reallocated or reduced from funds to Texas due to noncompliance.
- ♦ The Texas Department of Criminal Justice reported modest costs related to compliance with the Prison Rape Elimination Act, mainly for privacy screens to reduce cross-gender viewing, at a cost of less than $0.2 million. From fiscal years 2014 to 2016, the agency spent approximately $0.4 million on facility audits. Audits are required every three years to certify compliance. The Texas Juvenile Justice Department expenditures for compliance totaled $0.2 million during the 2014–15 biennium. The Office of the Independent Ombudsman conducts audits of the juvenile facilities and is reimbursed travel costs.
- ♦ According to the Texas Department of Criminal Justice, implementation of Prison Rape Elimination Act standards did not have a significant effect on sexual assault and sexual assault attempts because many of the policies and procedures were previously implemented in accordance with the agency's Safe Prison Plan. The Texas Juvenile Justice Department reports that the implementation of the legislative standards has reduced the frequency of sexual abuse in its facilities.

DISCUSSION

The federal Prison Rape Elimination Act (PREA) called for a federal commission to study the causes and consequences of sexual abuse of incarcerated individuals and to promulgate standards aimed at reducing abuse in correctional facilities. In addition, PREA's intent was to provide for victims of sexual assault when prevention methods did not work. To establish the foundations of PREA, the U.S. Congress conducted hearings from June 2002 to April 2003 regarding a Prison Rape Reductions Act. Congress tasked the federal Bureau of Justice Statistics (BJS) with producing national statistics of sexual abuse in prisons by directly surveying offenders. BJS found that an estimated 60,500 state and federal offenders reported sexual assault in a 12-month period; juveniles in adult facilities and mentally ill offenders were found to be at greater risk than other offenders. Prison rape affects the victims, the correctional facilities, and the communities to which offenders return. Sexual assaults were often unreported, and prison staff were not adequately trained to prevent or respond to sexual assaults. Congress noted that such assaults increased sexually transmitted disease, violence, and recidivism, and led to higher mental health expenditures.

The PREA federal statute was enacted in 2003. The statute established a zero-tolerance standard of prison rape, commissioned the collection of data and research, authorized grants to states, established a National Prison Rape Reduction Commission, and directed that national standards should be established within a certain timeline. The legislation also established an annual governor's certification requirement and timeline; reallocation or reductions of U.S. Department of Justice (DOJ) grants were to be issued for noncompliance. Before Texas' certification in 2015, the state's anticipated federal grant awards were reduced by $0.8 million for PREA noncompliance.

NATIONAL INMATE SURVEY

PREA requires BJS to conduct a comprehensive statistical review and analysis of the incidents and effects of prison rape each calendar year. The first statutorily required National Inmate Survey of 282 local jails and 146 state and federal prisons, including 15 Texas facilities, was completed in 2007. A total of 63,817 offenders completed the surveys. This number represents a significant change in data collection because past surveys on prison rape were based on administrative records, not offender surveys. The National Inmate Survey found that 4.5 percent of offenders self-reported an experience of sexual violence within the previous 12 months. The 2007 survey found Texas to have five of the 10 facilities with the highest rates of sexual victimization.

NATIONAL PRISON RAPE ELIMINATION COMMISSION

Congress established the nine-member, bipartisan National Prison Rape Elimination Commission (NPREC) in June 2004. The commission held public hearings and collected information to draft national standards. Eight public hearings were conducted from 2005 to 2007. Texas Department of Criminal Justice (TDCJ) administrators testified in three hearings and provided documents that assisted in developing the standards. The Allred Unit in Iowa Park provided feedback for the commission's Standards Implementation Needs Assessment Project in 2008. The commission identified common characteristics of sexual assault victims and perpetrators, prisons and prison systems with high and low prevalence of prison rape, and best practices to reduce sexual victimization.

DELAYS IN IMPLEMENTATION

Although PREA was authorized in 2003, the rules were not published in the National Archives and Records Administration's Federal Register until August 2012. The following factors contributed to delayed implementation of PREA:

- establishment of NPREC in June 2004, seven months after the date that had been mandated (within 60 days of passage);
- a bill signing statement reduced NPREC's ability to gather data by authorizing the executive branch of government to withhold information;
- a PREA mandate that national standards should not impose substantial additional costs to federal, state, and local prison authorities; DOJ hired a consulting firm to study potential costs;
- NPREC was required to submit a final report within two years of its original meeting; legislation extended the reporting requirements by three years; and
- NPREC held public hearings across the country within four years; 60-day public comment periods resulted in written comments from more than 225 institutions, entities, and individuals.

The NPREC draft standards were released in 2008, five years after the passage of PREA. The final report and proposed standards were submitted to the U.S. President, the Office of the U.S. Attorney General, and other federal and state officials in 2009. The DOJ final standards reflected significant revisions as a result of comments from institutions regarding costs of implementing the proposed standards. The final standards were modified to limit costs to institutions and minimally meet the Congressional mandate to eliminate sexual abuse in confinement.

PREA STANDARDS

PREA standards, considered best practice for eliminating sexual assault in prison, became effective in August 2012, nearly two years after the statutory deadline. The standards differ based on the type of facility, including adult prisons and jails, lockups, community confinement facilities, and juvenile facilities. Major provisions required of each agency and facility include the following:

- designate an employee to coordinate PREA compliance efforts and develop written guidelines detailing a response plan to an incident of abuse;
- develop a staffing plan that provides for an adequate level of staffing, supervision, and monitoring;
- maintain sight and sound separation of youthful offenders younger than age 18 and adult offenders unless direct staff supervision is provided; youthful offenders may not be housed in the same units as adult offenders;
- ban cross-gender searches and viewing with the exception of medical staff and exigent circumstances, and require members of the opposite sex to announce their presence when entering correctional housing units;
- provide training to staff related to preventing, detecting, and responding to sexual abuse;
- implement sexual assault risk-screening tools to inform staff making assignments for housing, work, and other programs;
- implement new reporting requirements that provide offenders different avenues to report abuse and provide the option to report anonymously;
- provide offenders with access to rape crisis centers and victim advocates; and
- request that each unit be audited by certified PREA auditors every three years.

The standards were immediately applicable to the Federal Bureau of Prisons, and other correctional agencies were granted a one-year implementation period to provide initial PREA training to employees. The standards established an audit process for facilities to attain PREA compliance through a three-year audit cycle beginning August 20, 2013. One-third of each type of state correctional facility is subject to audits each year. Standards regarding cross-gender searches of prisoners went into effect in August 2015. The minimum staffing ratios for certain juvenile facilities take effect in 2017.

PREA audits include a review of relevant documents and applicable standards to ensure compliance, and a unit walk-through. After the audit, the auditor debriefs the PREA coordinator and facility management team. The auditor issues the interim report within 30 days and establishes a corrective action period of up to 180 days if necessary. After this period ends, the auditor verifies whether corrective actions occurred and issues the final audit report. As of October 2016, 25 PREA auditors were certified for juvenile facilities and 32 were certified for adult facilities in Texas.

OTHER STATES AND PREA

During fiscal year 2014, only two states submitted certifications out of 56 jurisdictions subject to PREA – 50 states, five territories, and the District of Columbia. During fiscal year 2015, the second implementation year of PREA standards, 50 jurisdictions submitted statements of compliance or assurances to commit to spending 5.0 percent of certain DOJ grant funds to achieve compliance. States that did not submit assurances were subject to a 5.0 percent funding reduction. Ten states certified full compliance with PREA standards: Iowa, Maine, Mississippi, Missouri, New Hampshire, New Jersey, North Dakota, Oregon, Tennessee, and Washington. During fiscal year 2014, Texas was among eight jurisdictions that did not commit DOJ grant funds to implement the PREA standards. Subsequently, the state received a reduction of $0.8 million in DOJ grant funds. Texas submitted an assurance of compliance in fiscal year 2015.

PREA AND THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

TDCJ operates 109 secure facilities across the state, housing 147,590 offenders during fiscal year 2016. Before the passage of the national standards in 2005, TDCJ developed an internal program called the Safe Prisons Plan. This program was intended to reduce the number of sexual assaults in TDCJ facilities. According to the agency, the majority of Safe Prisons Plan policies and procedures were consistent with PREA standards. To become fully compliant, TDCJ implemented the following procedures: incorporated other forms of sexual abuse prevention into the Safe Prisons Plan; enhanced staff and correctional officer training; limited cross-gender viewing; required offenders age 17 or younger to be housed separately from adult offenders; provided separate showering for transgender offenders from other offenders; and added additional elements into the offender assessment screening to help identify an offender's risk of sexual abuse and victimization. The agency also required correctional units to engage local rape crisis centers and authorize third-party reports regarding sexual abuse to be treated as offender grievances. In addition to policy and procedural changes, TDCJ constructed modesty screens to reduce cross-gender viewing, installed additional cameras, posted signs to instruct staff of the opposite gender to announce their entrance to housing areas, and posted other required PREA information. Every unit has a PREA coordinator who is responsible for monitoring the Safe Prisons/PREA Program and compliance with PREA standards. These coordinators are tasked with ensuring proper training for staff and offenders and conducting offender assessment screening and investigations, among other duties.

PREA-RELATED GRANTS

TDCJ has been awarded three grants related to PREA since 2003. In 2004, TDCJ was awarded a $1.0 million federal grant from the DOJ's Office of Justice Programs for the Protecting Inmates and Safeguarding Communities Program. The grant provided funding for four new agency staff positions, including a victims and peer education coordinator, a unit character profile coordinator, an analyst for the Office of the Inspector General, and a sexual assault nurse examiner. TDCJ also used the funding for development of a sexual assault awareness curriculum and the installation of 270 surveillance cameras and 216 impact-resistant doors at 10 correctional units. In 2006, TDCJ received the same $1.0 million grant for the continuation of the positions established with the first grant; the agency also added four unit intake orientation coordinators and a formal offender intake orientation program. Another grant was awarded in 2015, and TDCJ received $437,663 from the Office of Justice Programs to establish a Safe Prisons Information Tracking system. According to TDCJ, the agency has not forfeited or received less federal funding related to statewide PREA noncompliance.

PREA-RELATED COSTS

TDCJ reported modest costs related to achieving PREA compliance. TDCJ installed privacy screens to reduce cross-gender viewing at costs of $74,000 for fiscal year 2014 and $63,000 for fiscal year 2015. The agency spent less than $50,000 on material and supplies for the last installations of privacy screens for fiscal year 2016. Audits on its facilities began in 2014, totaling $6,000 for fiscal year 2014, $185,000 for fiscal year 2015, and $190,000 for fiscal year 2016. For fiscal year 2016, 48 units were audited, 46 were deemed compliant, and two are pending the results. For fiscal year 2017, 37 audits are scheduled. Audits are required every three years to certify compliance. Additional costs likely will accrue as the units undergo PREA audits; TDCJ anticipates expending $0.9 million from fiscal years 2016 to 2020.

Updating training programs to incorporate PREA standards did not increase costs significantly. TDCJ correctional officers receive 8.5 preservice training hours and 1.0 in-service training hour specific to PREA and the Safe Prisons Plan. According to TDCJ, agency policies and procedures were compliant with PREA standards as a result of the Safe Prisons Plan's course content predating PREA standards.

All privately operated secure facilities that contract with TDCJ are required to adhere to the TDCJ Safe Prisons/PREA Program policy and were required to be compliant by August 31, 2016. All contract facilities that have been audited as of November 1, 2016, have been in compliance or are pending results. Privately operated secure facilities are responsible for procedural, policy, and facilities changes and may have incurred costs; however, these costs are the contractor's responsibility.

CORRECTIONAL INSTITUTIONS DIVISION

According to TDCJ, implementation of PREA standards did not have a significant effect on sexual assault and sexual assault attempts because many of the policies and procedures were previously implemented in accordance with the Safe Prisons Plan. **Figure 1** shows the number of offender-on-offender sexual assault allegations, and the number of confirmed cases where the case was referred for criminal prosecution from 2011 to 2014.

PREA standards require correctional units to attempt to engage local rape crisis centers to aid alleged sexual abuse victims. Only one such partnership with TDCJ is in place, and it serves six units. However, as of January 1, 2016, TDCJ was working to enter into additional partnerships with rape crisis centers across the state. If these centers are unavailable, TDCJ has a trained unit of 249 offender victim representatives that are able to provide emotional support, crisis intervention, information, and referrals for services. Unit mental health providers may also provide crisis intervention care and emotional support.

FIGURE 1
SEXUAL ASSAULT CASES REPORTED IN TEXAS DEPARTMENT OF CRIMINAL JUSTICE FACILITIES 2011 TO 2014

REPORTING YEAR	SEXUAL ASSAULT ALLEGATIONS	CONFIRMED
Fiscal year 2011	411	5
Fiscal year 2012	335	6
Fiscal year 2013	334	1
Calendar year 2014	316	13
Calendar year 2015	334	3

NOTE: The Texas Department of Criminal Justice revised reporting standards from fiscal year to calendar year in 2014 to better align with the U.S. Bureau of Justice Statistics requirement.
SOURCE: Texas Department of Criminal Justice.

COMMUNITY SUPERVISION AND CORRECTION DEPARTMENTS

Community Supervision and Correction Departments (CSCD) are responsible for implementing and sustaining PREA training locally, primarily through in-house training programs. In fiscal year 2013, the TDCJ Community Justice Assistance Division provided local CSCDs with training about prevention and identification strategies related to sexual assault at a onetime cost of $41,200. According to TDCJ, CSCDs reported additional costs of approximately $8 to $10 per workbook for ongoing training, totaling approximately $20,000 as of January 27, 2016. CSCDs reported no cost associated with bringing facilities into PREA compliance.

CSCDs may undergo PREA audits; to date only Cameron County CSCD has been audited. TDCJ requires all residential CSCDs to become compliant and maintain the required PREA plans. According to TDCJ, reports of sexual assault or attempted sexual assault in probation facilities remain low. From fiscal years 2011 to 2015, 19 of 21 community corrections facilities (CCF) had no reported incidences of sexual assault or attempted sexual assault. Dallas County CCF had one substantiated allegation in 2014, and Harris County had three substantiated allegations from 2013 to 2015.

PREA AND THE TEXAS JUVENILE JUSTICE DEPARTMENT

The Texas Juvenile Justice Department (TJJD) operates secure and nonsecure residential programs for juvenile offenders and supervises them on parole after release from state facilities. Juveniles are committed to TJJD state facilities as the result of a court order related to the commission of a felony crime. Juveniles may also be committed to state facilities by revocation of felony parole and technical violations of the terms of felony parole. The state provides three types of custody: state-operated secure facilities; state-operated halfway houses; and contract placements. TJJD operates five secure correctional facilities, eight halfway house programs, and contracts with multiple facilities for placements. Contract facilities provide specialized treatment for offenders in less secure residential environments. The agency's three-year cycle began in August 2013; audits began in July 2014. By June 2016, all TJJD halfway houses and state-operated secure facilities were PREA-compliant.

PREA-RELATED GRANTS

On October 1, 2011, TJJD was awarded a three-year, $0.6 million grant from DOJ. The grant period was subsequently condensed to two years and ended December 31, 2013. The goals were to enhance TJJD's youth orientation process, develop training strategies to promote sexual safety, provide leadership and coaching skills training to selected facility administrative staff, develop cultural guidelines, and evaluate the agency's data collection and reporting systems.

PREA-RELATED COSTS

TJJD's expenditures related to PREA compliance totaled $0.2 million during the 2014–15 biennium. Minimal historical expenditures are identified as specifically PREA-related because overlapping issues motivate facility expenditures. For example, TJJD's staffing patterns may achieve PREA supervision ratios at some facilities on some units, but PREA may not be the primary motivating factor. Similarly, in addressing a needed repair issue, TJJD may improve compliance with a PREA standard. The Office of the Independent Ombudsman (OIO), which conducts audits of TJJD facilities, expended travel funds during the 2014–15 biennium to conduct PREA audits at the agency's facilities. TJJD began reimbursing OIO for PREA-related travel costs in fiscal year 2016. Existing TJJD resources were used for these minimal costs. Additionally, 6.0 full-time-equivalent (FTE) positions for individual placement coordinators focus 15.0 percent to 20.0 percent of their work hours on PREA standard compliance.

For contract facilities, the costs of PREA audits and ongoing compliance are the contractors' sole responsibility; however, many have requested or will request a daily rate increase to cover these costs. Private facilities with a completed PREA audit have experienced costs ranging from $4,000 to $7,000.

STATE SECURE FACILITIES

TJJD's planning for implementation of PREA standards began in 2008, when the standards were still in draft form. Implementation included updating agency policy and procedures, staff education and training activities, youth education, and internal compliance reviews. With assistance from a PREA Demonstration Grant, TJJD's target was to achieve compliance with all 41 standards by August 2013; the agency's three-year audit cycle began that month.

From fiscal years 2011 to 2015, PREA standards led to an enhanced reporting of sexual assaults in state facilities. The newly established DOJ reporting category youth-on-youth sexual harassment provides a venue for reporting allegations that may not have been reported previously. Education and training activities encourage staff, juveniles, volunteers, and contractors to notify appropriate authorities of suspicion of or actual sexual misconduct against a juvenile. According to TJJD, the implementation of PREA standards has reduced the frequency of sexual abuse in state facilities, when controlling for the new reporting category. **Figure 2** shows the number of sexual assault allegations and the number substantiated, shown by DOJ reporting categories.

TJJD requested additional staff in its biennial 2016–17 Legislative Appropriations Request (LAR) to meet the new ratio of one juvenile correctional officer to eight juvenile offenders in advance of the requirement's effective date of October 2017. The agency requested 78.0 FTE positions and $6.3 million. The agency again requested funding for this purpose in its biennial 2018–19 LAR. TJJD may risk a reduction in federal funding if facilities are noncompliant with the enhanced supervision ratio requirement. All TJJD's state-operated facilities are compliant with applicable PREA standards. Subsequent noncompliance could occur with regard to the enhanced supervision ratio requirement that becomes effective October 1, 2017.

LOCAL GOVERNMENT

Unlike state governments, local government entities are not subject to direct financial penalties from the federal government for noncompliance with PREA standards. Failure to comply with PREA may result in civil litigation for county jails or other local correctional facilities. However, compliance with PREA standards is not a sole defense to litigation related to sexual assault. Jails may undergo audits to reduce potential litigation or because the U.S. Marshals Service requires PREA compliance for facilities holding federal offenders.

Failure to comply with PREA standards could result in the loss or failure to gain accreditation status or of federal

FIGURE 2
SEXUAL ASSAULT CASES REPORTED IN TEXAS JUVENILE JUSTICE DEPARTMENT FACILITIES
FISCAL YEARS 2011 TO 2015

CASES	2011	2012	2013	2014	2015	2016
Alleged						
Nonconsensual sexual acts	5	45	7	2	30	30
Abusive sexual contact	23	36	14	7	21	33
Youth-on-youth sexual harassment (1)	N/A	N/A	N/A	N/A	173	89
Voluntary sexual contact between youth (2)	N/A	N/A	N/A	N/A	N/A	N/A
Staff sexual misconduct	19	89	52	2	39	43
Staff sexual harassment	17	45	52	1	1	19
Substantiated						
Nonconsensual sexual acts	1	0	1	0	3	2
Abusive sexual contact	0	0	1	3	0	2
Youth-on-youth sexual harassment (1)	N/A	N/A	N/A	N/A	6	3
Voluntary sexual contact between youth (2)	0	2	0	0	0	0
Staff sexual misconduct	1	0	4	0	0	0
Staff sexual harassment	2	0	5	0	0	0

NOTES:
(1) The category youth-on-youth sexual harassment was established June 2015.
(2) The category voluntary sexual contact between youth is not applicable to allegations.
SOURCE: Texas Juvenile Justice Department.

contracts to house offenders in local jails. Whether county jails with active contracts would jeopardize those contracts by PREA noncompliance is unknown; the fiscal impact from a potential loss of a contract is also unknown.

The Texas Commission on Jail Standards (TCJS) does not offer training specific to PREA. Questions are referred to the PREA resource center or to a PREA auditor. According to TCJS, the agency does not plan to update the minimum standards to reflect PREA guidelines.

AGE OF CRIMINAL RESPONSIBILITY AND PREA

Texas is one of nine states in the U.S. whose criminal justice system considers an individual to be an adult at age 17. This definition is referred to as the age of criminal responsibility. Two states have set the age of criminal responsibility at age 16; two others have raised the age to age 18, but those laws have not yet gone into effect. Other states consider the age of adult ctiminal responsibility to be age 18. While awaiting trial in Texas, juveniles age 17 that are arrested for alleged offenses are primarily held in county jails unless they are released on bond. Compliance with PREA's Youthful Inmate standard varies among county jails in Texas. Youthful inmates are defined as younger than age 18; therefore, all individuals age 17 arrested in Texas are included in this definition and are afforded additional protection pursuant to PREA standards. However, many county jails are unable to or choose not to comply with the Youthful Inmate standard for several reasons, including:

- inadequate space in facilities to separate offenders age 17 from other offenders given other classification constraints;
- inadequate staffing to supervise separate areas, or to eliminate cross-gender supervision; and
- inadequate cell or housing capacity that limits offenders age 17 to only administrative separation or single cells.

The Eighty-fourth Legislature, 2015, considered raising the age of criminal responsibility in Texas from age 17 to age 18. Costs and operations of the juvenile justice and adult criminal justice systems vary greatly. The resulting fiscal impact could increase costs per day for juveniles in TJJD state residential facilities.

SURVEY RESULTS OF MENTAL HEALTH SERVICES IN TEXAS JAILS

County jails and city jails and lockups in Texas are responsible for holding individuals while they await trial. Jail facilities also hold individuals convicted of misdemeanor offenses. Compared to jail facilities, prisons are longer-term facilities and typically hold inmates with felony convictions. Some individuals brought to jail have mental health conditions that put them at higher risk for crisis and suicide. The Texas Commission on Jail Standards sets standards for county jails to maintain the safety of inmates and staff. The agency requires county jails to screen all inmates to identify medical, mental health, or other special needs that require placing inmates in special housing units. The agency revised its jail intake screening in October 2015 to assist jail personnel in identifying inmates in need of close supervision and in-depth assessment by mental health professionals. The Texas Commission on Jail Standards sets several other requirements relating to screening, assessment, procedures, and provision of services to offenders with mental health conditions while in custody.

County jail standards typically do not apply to city jails and lockups, and mental health screening practices and services vary among jails and lockups. In 1999, the Texas Criminal Justice Policy Council conducted a survey on mental health issues in county jails and found a need for: improved data on the number of mentally ill offenders in jails; automating mental health data to facilitate sharing among relevant and authorized agencies; and more evaluation of the quality of mental health services provided in jails, especially smaller jails. In July 2016, Legislative Budget Board staff surveyed county and city jails and lockups to assess changes in practice since the 1999 survey, and to collect additional information relating to mental illness identification, monitoring, service provision, staff training, and data collection.

FACTS AND FINDINGS

- ♦ The 2015 Texas Commission on Jail Standards intake screening form is used by almost all county jail respondents but by less than one-third of city jail respondents.
- ♦ Approximately half of county jail respondents indicated that a follow-up assessment is conducted after every positive mental health screening; 40.5 percent said follow-up occurred by case necessity. Approximately 8.1 percent of responding jails indicated that no follow-up assessments are completed after an initial positive screening.
- ♦ All county jail respondents indicated that magistrate notification occurs within 72 hours of determining that an inmate may have a mental illness.
- ♦ Mental health services are more widely available in Texas county jails in 2016 compared to 1999. However, more than half of county jail respondents in 2016 report that follow-up case management or discharge planning services are not offered to individuals with mental health diagnoses upon release from jail.
- ♦ Approximately half of county jail respondents report wait times of more than twenty-one days to secure a bed in a state hospital with a court order.
- ♦ Approximately half of county jail respondents report jail staff receive ongoing training on mental health issues that are greater than the required minimum standards.
- ♦ Based on county jail responses to the 2016 survey, 57.8 percent of county jails store at least some mental health data electronically; 50.0 percent of respondents reported doing so in 1999.

DISCUSSION

In Texas, an adult offender may be detained or supervised in several types of correctional settings. The Texas Department of Criminal Justice (TDCJ) is responsible for incarcerating adult felons, supervising adult felons on parole, and providing state funding for supervising felons and misdemeanants on community supervision. Offenders incarcerated within correctional institutions have been sentenced to prison, sentenced to state jail, or placed in a substance abuse felony punishment facility. Sentence lengths and release considerations are based on offense dates and are outlined in statute.

The state uses a system of county jails administered by sheriffs to detain offenders who are not sentenced to incarceration in state jail or prison, or for most offenders' initial detention in a correctional facility while their cases are adjudicated. County jails are funded primarily by commissioners courts and house adult offenders in pretrial status, post-trial status, those with out-of-state or federal detainers, and parole violators. Inmates in pretrial status may have one or multiple charges, which range from class B misdemeanors to capital felonies. Offenders in post-trial status convicted of felony-level offenses can be awaiting preparation of prison transfer materials, can be awaiting transfer to TDCJ, or in certain cases can have their punishments reduced and serve their sentences in county jails. Offenders in post-trial status convicted of misdemeanor-level offense serve their sentences, the longest of which would be one year, in county jails.

When individuals are arrested, they are taken to jail to be detained while certain legal proceedings are completed. During this initial confinement in jail, a mental health issue or episode can combine with the fear of the unknown and isolation from family to place an inmate in a crisis situation. For this reason, the state has established requirements and procedures to ensure that certain inmates with mental health needs receive some services to improve and maintain their mental health status.

According to the Texas Department of State Health Services (DSHS), in fiscal year 2015, more than 70,000 people with a previous mental health encounter were arrested. As of August 1, 2015, 66,625 inmates were incarcerated in county jails. DSHS estimates that 30.0 percent of these inmates have one or more serious mental illnesses. Since 2009, 140 deaths as a result of suicide have occurred in Texas' county jails; 29 inmate suicides were reported for fiscal year 2015.

In 2000, the Texas Criminal Justice Policy Council (CJPC), now an inactive agency, issued the report Mentally Ill Offenders and County Jails: Survey Results and Policy Issues. The report included results from a 1999 mental health in jails survey that the agency conducted in cooperation with state agencies. At that time, CJPC found a need for: improved data on the number of mentally ill offenders in jails; automating mental health data to facilitate sharing among relevant and authorized agencies; and more evaluation of the quality of mental health services provided in jails, especially smaller jails. This review updates and expands on the CJPC survey to provide an overview of practices in county and city jails across Texas in the areas of mental illness identification, monitoring, service provision, staff training, and data collection.

MENTAL HEALTH SCREENING AND ASSESSMENT REQUIREMENTS

The Texas Commission on Jail Standards (TCJS) establishes standards for jail operations and monitors Texas' 242 county jail facilities. At least once each fiscal year, each county jail is inspected to determine compliance with minimum jail standards. The minimum jail standards in Texas are based on case law and U.S. Supreme Court rulings to ensure a constitutional level of confinement is provided. These inspections review security, control, general physical conditions, and facility operations. When a county jail fails to meet minimum standards, TCJS issues a notice of noncompliance that includes the specific deficient standard and detailed information to correct the deficiencies. Special inspections may be conducted on facilities that have either been identified as high-risk or found to be in noncompliance. These unannounced inspections may also be performed when county officials indicate that the noncompliant items have been corrected, in which case the inspector must examine the areas that required correction.

The Texas Code of Criminal Procedure, Article 16.22, requires certain mental health information to be collected by county jails. TCJS requires all inmates to be screened for potential mental illness. When mental illness is identified, TCJS requires jails to defer to mental health and medical professionals to determine the best plan of action while the defendant is incarcerated. During the inspection process, TCJS reviews inmate records to ensure that all doctors' orders are followed, including those for medications and appointments.

TCJS does not monitor city jails and lockups; therefore, these facilities are not subject to the minimum jail standards that apply to county jails. Statewide information is limited regarding how these facilities operate, particularly with regard to how inmates with mental health concerns are processed.

The Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), a program within the Reentry and Integration Division of TDCJ, provides prerelease screening and referral to aftercare treatment services for inmates with mental illness that are released from correctional settings, local jails, or other referral sources. TCOOMMI contracts with local mental health authorities (LMHAs) across the state to provide continuity of care services for offenders on probation or parole by linking them with community-based interventions and support services.

Although TCOOMMI is primarily involved with inmates released from state prisons, it also has a role in the release of county jail inmates. According to TCOOMMI, in fiscal year 2015, the agency received $2.0 million for mental health diversion that was distributed to the LMHAs in large urban areas including El Paso, Harris, Bexar, Dallas, and Travis counties. According to TCOOMMI, the goal of diversion is to avoid booking inmates with mental illness into jail. If that avoidance is not possible, this action diverts inmates from jail within 72 hours and connects them with mental health services such as pretrial diversion programs, court diversion programs, or crisis intervention and stabilization services. TCOOMMI reports that the office works closely with TDCJ's Community Justice Assistance Division to address criminogenic risks and mental illness in pretrial and probation populations. Furthermore, TCOOMMI, DSHS, and TCJS jointly work to address situations concerning individual inmates monthly. This joint effort was initiated to address cases in the Texas jail system in need of continuity of care between systems. This effort has sought to help prepare jails for these offenders' return and to improve overall care and problem solving for the agencies.

SURVEYS OF TEXAS COUNTY AND CITY JAILS

The 1999 CJPC jail survey was conducted in cooperation with TCJS and the Texas Council on Offenders with Mental Impairments (this agency's name was changed to TCOOMMI in 2003). The survey's purpose was to examine issues relating to the availability of mental health services and the storing and sharing of mental health data. In July 2016, Legislative Budget Board (LBB) staff surveyed county and city jails and lockups to assess changes in practice since the 1999 CJPC survey. State and federal facilities were not surveyed. The LBB staff survey also addressed the areas of mental illness identification, monitoring, service provision, staff training, and data collection. LBB staff surveyed 242 county jails and 349 city jails and lockups in Texas. From this survey, 116 county jails and 70 city jails and lockups responded, representing 47.9 percent and 20.0 percent response rates, respectively. Not all respondents answered every question.

SCREENING AND IDENTIFICATION

TCJS standards require county jails to screen all inmates to identify medical, mental health, or other special needs that require placing inmates in special housing units. As of December 1, 2015, all county jails are required to use the TCJS Screening Form for Suicide and Medical/Mental/Developmental Impairments that was developed with the assistance of TCOOMMI and the Meadows Mental Health Policy Institute for Texas. According to TCOOMMI, this tool addresses the most urgent of all concerns in the county jail system: the detection and prevention of suicide. Although Texas county jail staff receive basic training about mental illness, the use of this suicide assessment tool was intended to strengthen collaborations between jails and LMHAs.

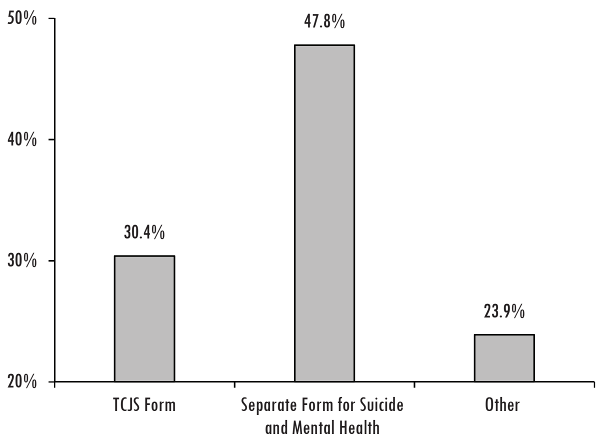
Almost all county jails (115 of 116, or 99.1 percent) responding to the LBB staff survey reported using the TCJS screening form. In addition, 109 of 116, or 94.8 percent, of county jail respondents indicated that the screening form used is regularly reviewed by a second staff for accuracy, completeness, legibility, and completion of appropriate referrals. Screening is less common in city jails and lockups: 51 out of 69 city jail and lockup respondents, or 73.9 percent, indicated that they conduct screenings on inmates held at city jails and lockups; and 58.1 percent of these respondents indicated that a screening is reviewed by a second staff. City jails and lockups are not required to use the TCJS screening form because they are not subject to TCJS standards or review. The LBB staff survey found that the TCJS screening form is not the screening most used by city jail and lockup respondents. **Figure 1** shows the types of screening conducted at city jails and lockups among those who responded to the survey.

Since the implementation of the TCJS intake screening form on December 1, 2015, 65.8 percent of county jails responding reported that positive screens for mental health impairments have increased. However, 32.5 percent of respondents indicated no change in the number of positive screens.

When an offender's screening for mental health risk is positive, a follow-up assessment is not always conducted. Of 111 county jails responding to the associated question, 57 (51.4 percent) indicated that a follow-up assessment is conducted after every positive mental health screening; 45 (40.5 percent) said follow-up occurred by case necessity; and 9 (8.1 percent) indicated that no follow-up assessments are completed after an initial positive screening.

FIGURE 1
MENTAL HEALTH SCREENING USED IN TEXAS CITY JAILS AND LOCKUPS, JULY 2016

Survey Question: Please indicate the type of suicide or mental health screening used at your city jail or lockup.



NOTES:
(1) TCJS = Texas Commission on Jail Standards.
(2) Of 70 city jails and lockups, 46 responded to this question.
(3) Totals may not sum because respondents could choose multiple responses.
SOURCE: Legislative Budget Board, Survey of Mental Health in Jails, July 2016.

When follow-up assessments occur, they may be performed by different types of professionals. **Figure 2** shows the type of mental health professional conducting the follow-up assessment, according to responses to the 1999 CJPC and 2016 LBB staff surveys. Since the CJPC survey in 1999, use of licensed vocational nurses and other nurses to perform follow-up assessments has increased, and use of medical doctors and psychiatrists or psychologists has decreased.

When using the TCJS form to screen inmates, county jails are also required to use the Continuity of Care Query (CCQ) to identify whether the inmate previously has received state-funded mental health services. The CCQ system was developed by DSHS and the Department of Public Safety. Since December 31, 2010, TCJS has required county jails to use the CCQ to check each inmate upon intake into jail and to include any relevant mental health information on the mental health screening instrument.

FIGURE 2
PROVIDERS OF FOLLOW-UP MENTAL HEALTH ASSESSMENT IN TEXAS COUNTY JAILS, 1999 AND 2016

Survey Question: Who conducts the follow-up mental health assessment of inmates who have screened positive for mental illness?

PROVIDER	1999	2016
Licensed Vocational Nurse/Nurse	22.0%	32.4%
Psychiatric Nurse	4.0%	4.5%
Medical Doctor	32.0%	14.4%
Psychiatrist or Psychologist	46.0%	26.1%
Social Worker/Counselor/Therapist	48.0%	48.6%
Local Mental Health Authority	27.0%	28.8%
Other	N/A	10.8%
Follow-Up Assessments Not Complete	N/A	6.3%

NOTES:
(1) Of 116 county jails, 111 responded to this question.
(2) Totals may not sum because respondents could choose multiple responses.
SOURCES: Legislative Budget Board, Survey of Mental Health in Jails, July 2016; Criminal Justice Policy Council, Mentally Ill Offenders and County Jails: Survey Results and Policy Issues, February 2000.

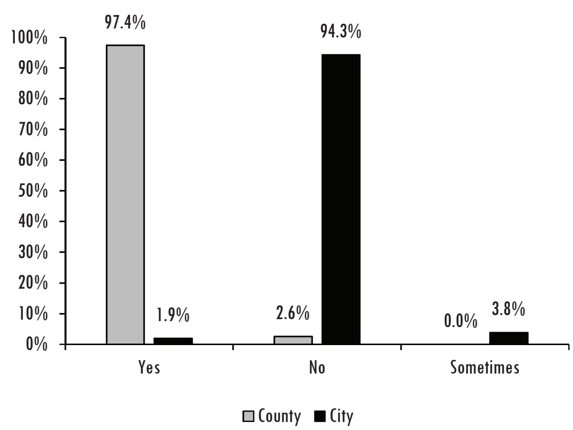
Figure 3 shows that most but not all county jails use the CCQ, and most city jails and lockups do not.

Another survey question asked county jails about the use of previous mental health diagnoses to determine whether to identify an individual as mentally ill. A previous mental health diagnosis can be obtained from data kept by the jail or from a LMHA. Of 116 respondents to this question, 93 (83.8 percent) said that their jails use previous mental health assessments.

In many cases, arrestees exhibit signs of mental illness at the time of arrest and transport to the jail facility. Sharing this information between the arresting agency and the jail can assist jails in more efficiently addressing inmates' mental health needs. County and city jails and lockups were asked whether arresting/transporting officers are required to complete a pre-incarceration form identifying mental health risk issues upon booking and/or transfer. **Figure 4** shows survey respondents' requirements for pre-incarceration forms to be completed by arresting/transporting officers for both county jails and city jails and lockups.

FIGURE 3
PERCENTAGE OF TEXAS COUNTY AND CITY JAILS AND LOCKUPS USING THE CONTINUITY OF CARE QUERY TO IDENTIFY INDIVIDUALS WITH MENTAL ILLNESSES JULY 2016

Survey Question: Does your jail use the Continuity of Care Query to assist in identifying individuals with mental illnesses?



NOTE: Among respondents, 115 of 116 county jails and 53 of 70 city jails and lockups responded to this question.
SOURCE: Legislative Budget Board, Survey of Mental Health in Jails, July 2016.

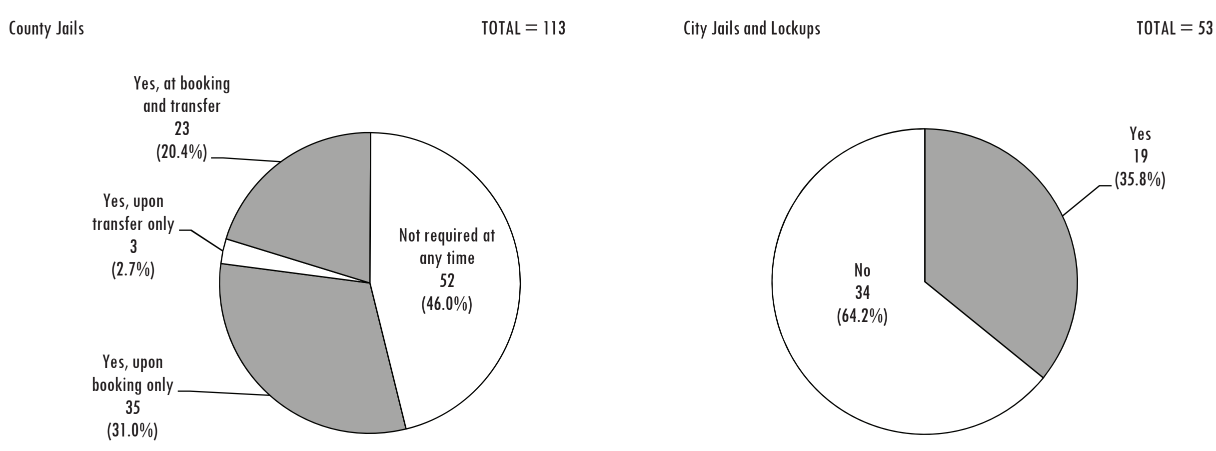
MAGISTRATE NOTIFICATION AND MANDATORY RELEASE REQUIREMENTS

If a jail screening indicates that an inmate may have a mental illness, statute outlines a formal process the jail must follow. The Texas Code of Criminal Procedure, Article 16.22, requires a sheriff to notify a magistrate within 72 hours if the sheriff has cause to believe that an individual in custody has a mental illness. If it is determined that reasonable cause exists to believe the individual has a mental illness, the magistrate is required to order a LMHA or other qualified mental health expert to evaluate that individual for mental illness. The expert is also ordered to determine whether the defendant may require a competency examination and to provide the results of that examination to the magistrate. The magistrate can use the results of a previous determination that the defendant suffers from mental illness if that determination was made within one year from the date of the applicable arrest. However, according to TCJS, following implementation of this requirement in fiscal year 2010, county jails were misinterpreting application of Article 16.22 to mean that an inmate had to be in crisis or suicidal before the jails could or should notify a magistrate. **Figure 5** shows the notification process required for individuals suspected of having a mental illness.

County jail responses to the LBB staff survey show that if a mental health screening indicates that an individual is at risk for mental illness, on average, 87.8 percent of jails notified a

FIGURE 4
PREINCARCERATION FORM REQUIREMENTS AT TEXAS COUNTY JAILS AND CITY JAILS AND LOCKUPS, JULY 2016

Survey Question: Are arresting or transporting officers required to provide preincarceration forms identifying mental health risk issues to the receiving jail?



NOTES:
(1) Among respondents, 113 of 116 county jails and 53 of 70 city jails and lockups responded to this question.
(2) Totals may not sum due to rounding.
SOURCE: Legislative Budget Board, Survey of Mental Health in Jails, July 2016.

FIGURE 5
THE TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 16.22, REQUIREMENTS FOR MENTAL HEALTH EVALUATION AS OF FISCAL YEAR 2010

Arrest

The sheriff's office receives credible evidence that an individual in custody may have mental illness or intellectual disability. (1)

Within 72 hours, the sheriff notifies magistrate of possible mental health issue. (2)

The magistrate determines reasonable cause to believe that the individual has a mental illness or intellectual disability.
The reasonable cause may be provided from outside the sheriff's office.

The magistrate determines a reasonable cause.

In the past year, has the individual had a qualifying mental health assessment? (2)

No

The magistrate orders a local mental health authority or other qualified mental health expert to:
- collect information showing whether the individual has mental illness (2); and
- provide the magistrate with a written assessment.

If the individual refuses to submit to collection of information, the magistrate may order the individual to submit to examination in a mental health facility, not to exceed 21 days.

Yes

A written assessment is provided to the magistrate, within 30 days for felony offenses and within 10 days for misdemeanor offenses. Findings include:
- whether the individual has mental illness;
- whether clinical evidence supports the belief that the individual may be incompetent to stand trial; and
- recommended treatment.

The magistrate provides copies of the assessment to the defense counsel, the prosecuting attorney, and the trial court.

The trial court may:
- resume criminal proceedings, including a release on personal recognizance bond, pursuant to the Texas Code of Criminal Procedure, Article 17.032;
- resume or initiate competency proceedings; or
- consider the written assessment during punishment phase after conviction for the offense.

The magistrate determines no reasonable cause.

No further action is needed.

NOTES:
(1) The Texas Commission on Jail Standards (TCJS) administrative rule is pursuant to the Texas Administrative Code, Title 37, Part 9, Section 273.5, which requires that jails check each inmate upon intake against the Department of State Health Services' (DSHS) Client Assessment and Registration System (CARE) or Continuity of Care Query (CCQ) system to determine if the inmate has previously received state mental healthcare.
(2) A qualifying mental health assessment pursuant to the Texas Health and Safety Code, Section 571.003, for mental illness, or Section 591.003, for intellectual disability.
SOURCE: Texas Indigent Defense Commission.

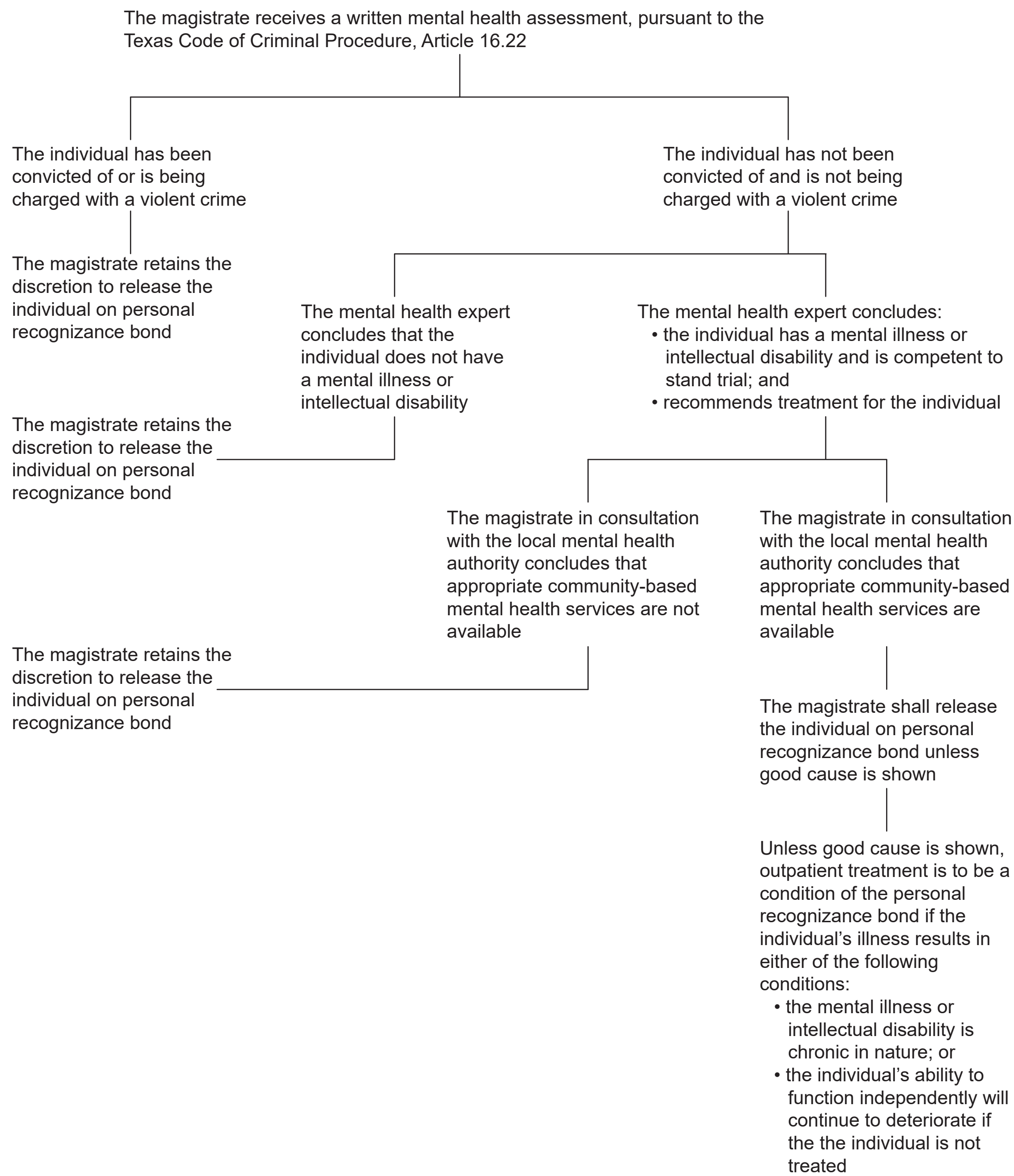
magistrate within 24 hours; 5.2 percent made the notification within 48 hours; and 7.0 percent notified a magistrate within 72 hours.

After a mental health assessment has been completed and provided to the magistrate, the Texas Code of Criminal Procedure, Article 17.032, establishes procedures for releasing certain defendants believed to have a mental illness on personal bond. Magistrates are required to release those who qualify, unless good cause is shown. **Figure 6** shows the process of releasing eligible defendants on personal bond.

STAFF TRAINING

TCJS requires jail staff to be licensed by the Texas Commission on Law Enforcement (TCOLE). TCJS establishes staff

FIGURE 6
THE TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 17.032, REQUIREMENTS FOR RELEASING DEFENDANTS ON BOND AS OF FISCAL YEAR 2012



SOURCE: Texas Indigent Defense Commission.

training requirements for mental health and suicide prevention. Each jail must develop and implement a mental illness and suicide prevention plan that includes staff training about the procedures for recognition, supervision, documentation, and handling of inmates who are mentally disabled or potentially suicidal. Staff members responsible for intake screening are required to be provided supplemental training.

According to the Texas Council of Community Centers (TCCC), an organization representing community centers statewide, many LMHAs note that mental health training is key to helping law enforcement staff recognize mental health issues and divert people to appropriate treatment settings. The LBB staff survey asked whether jail staff receive ongoing training on mental health issues that are greater than the required minimum standards; 54 of 110 county jail respondents (49.1 percent) indicated that their jails provide such ongoing training. Of 53 city jail respondents, 34 (64.2 percent) indicated that jail staff who interact directly with inmates do not receive ongoing mental health training.

MONITORING INMATES WITH MENTAL ILLNESS

Standards define two levels of inmate observation. The minimum supervision level for a county jail facility is a documented visual observation of all inmates by jail staff no less than once every 60 minutes. TCJS requires closer monitoring of inmates known to be assaultive, potentially suicidal, or mentally ill, or inmates that have demonstrated significantly unusual behavior while confined. For this level of supervision, a documented observation must be performed at least every 30 minutes. This level of observation is also referred to as suicide watch.

Most county jails indicated that they observe those on suicide watch at least every 15 minutes. **Figure 7** shows the comparison between city jails and county jails in practices for monitoring inmates placed on suicide watch. Of the 54 city jail and lockup respondents, 12 (22.2 percent) indicated that the facilities have no suicide watch policies.

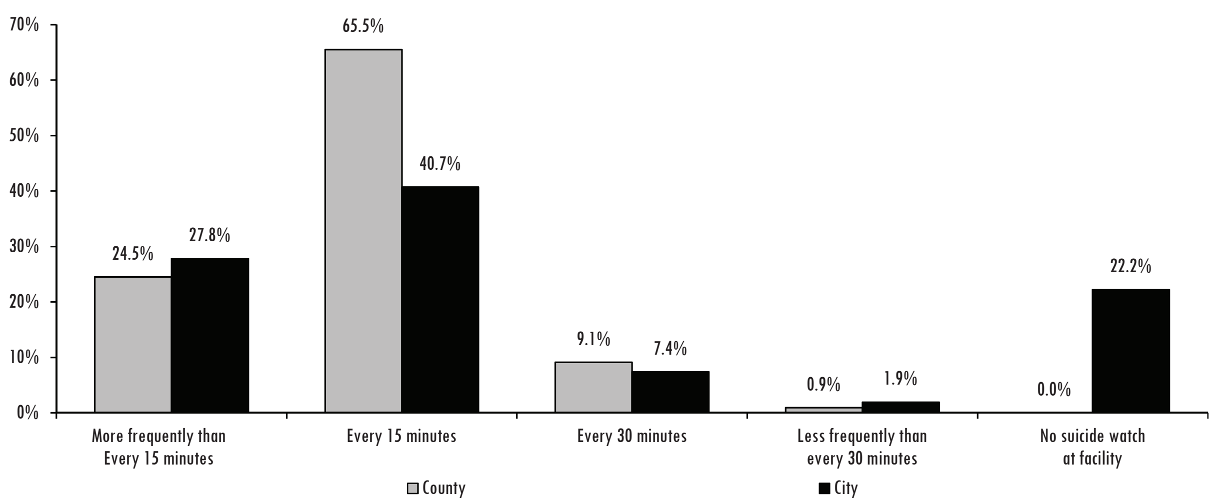
PROVISION OF MENTAL HEALTH SERVICES

DSHS contracts with 39 community mental health centers, 37 of which are LMHAs, to deliver mental health services in communities across Texas. DSHS requires each LMHA to plan, develop policy, coordinate, and allocate and develop resources for mental health services in the local service area. According to TCCC, all 37 LMHAs partner with local jails to provide mental health services; however, the amounts and types of services vary significantly by jail, based on differences in geographic location, resources, and service needs. Some LMHAs deploy mobile crisis outreach teams (MCOT) that help divert individuals with mental health crises from jails.

A key finding from the 1999 CJPC survey on mental health in jails was that mental health services were not available in

FIGURE 7
MONITORING FREQUENCY OF INMATES ON SUICIDE WATCH, JULY 2016

Survey Question: How often are inmates who are screened positive for mental illness and placed on suicide watch observed?



NOTE: Among respondents, 110 of 116 county jails and 54 of 70 city jails and lockups responded to this question.
SOURCE Legislative Budget Board, Survey of Mental Health in Jails, July 2016.

all Texas county jails. Based on responses from 107 of 116 county jails, the availability of mental health services has increased since the 1999 CJPC survey. **Figure 8** shows the availability of mental health services in county jails in 2016, compared to the availability of these services at the time of the survey in 1999.

Of the 54 city jail and lockup respondents, 7 (13.0 percent) indicated that they provide mental health services, and the remaining 47 (87.0 percent) indicated that no mental health services are provided at the facilities.

Regarding an individual's ability to request mental health services, other than medications, 105 of 110 county jail respondents (95.5 percent) report that inmates may request mental health services. All seven city jail respondents that provide mental health services indicated that inmates may request mental health services.

Of 108 county jail respondents, 56 (51.9 percent) indicated that follow-up case management or discharge planning services are not offered to inmates with mental health diagnoses upon release from jail.

PSYCHIATRIC HOSPITALS FOR CRISIS STABILIZATION AND COMPETENCY RESTORATION

Psychiatric hospitals, also referred to as state hospitals, are used by jails for crisis stabilization and competency restoration of inmates. Crisis stabilization is a short-term hospitalization service provided to individuals who are demonstrating a psychiatric crisis that cannot be stabilized in a less restrictive setting.

There are two types of commitments to state hospitals, civil and forensic. A civil commitment occurs when an individual is involuntarily detained with or without a warrant by a peace officer and presented to a state hospital for evaluation. This occurs when an individual is determined to be in need of detention and treatment to protect the welfare of themselves and others. Pursuant to the Texas Code of Criminal Procedure, criminal defendants can be ordered by the court to an involuntary commitment, known as a forensic commitment. This commitment is for competency restoration or because of an insanity defense.

According to TCCC, LMHAs track wait times through a DSHS waitlist for forensic beds, and the state hospital inpatient care waitlist for civil beds. **Figure 9** shows average wait times for a psychiatric bed for crisis stabilization services. Of 106 county jail respondents, 44 (41.5 percent) indicated that a bed can be obtained for an inmate within three days.

If a court or jury determines an individual to be incompetent to stand trial based on examination by a qualified expert, the individual can be committed to a state hospital for a period of up to 120 days as prescribed by law or as specified by a judge's order. In 2012, a Texas court ruling required DSHS to make beds available for incompetent defendants within 21 days of the date that the agency receives a criminal court's commitment order. **Figure 10** shows average wait times of

FIGURE 8
MENTAL HEALTH SERVICES IN TEXAS COUNTY JAILS BY PROVIDER TYPE, JULY 2016

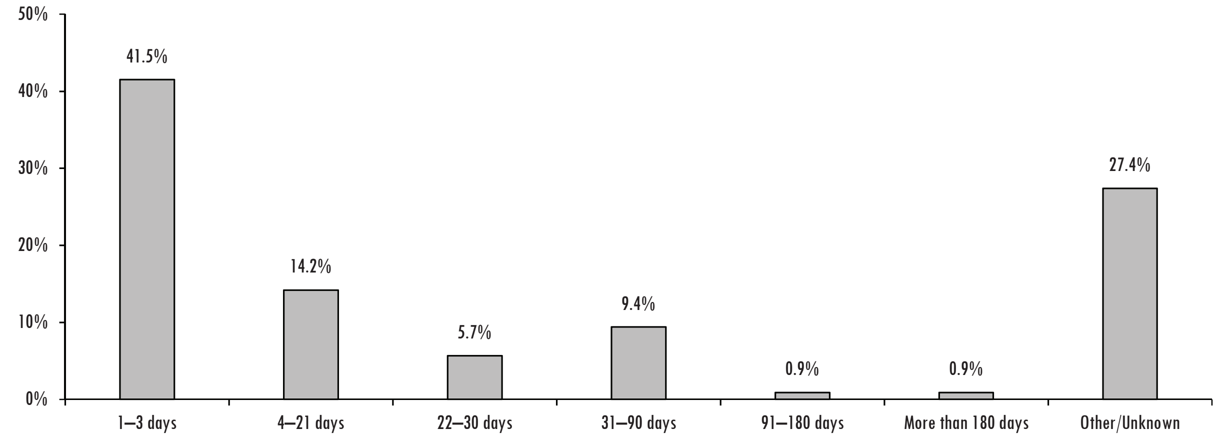
Survey Question: If any of the following mental health services are available through your jail, please indicate whether the service is provided by jail staff, local mental health authority (LMHA), or a vendor.

			2016		
SERVICE	**1999 TOTAL**	**2016 TOTAL**	**JAIL STAFF**	**LOCAL MENTAL HEALTH AUTHORITY**	**VENDOR**
Psychiatric Assessment	63.0%	89.7%	15.9%	71.0%	15.0%
Suicide Prevention	85.0%	94.4%	68.2%	55.1%	11.2%
Crisis Intervention	62.0%	92.5%	43.9%	67.3%	11.2%
Psychiatric Medication	74.0%	90.7%	23.4%	58.9%	22.4%
Therapy/Counseling	64.0%	79.4%	8.4%	57.9%	19.6%
Discharge Planning	34.0%	72.9%	12.1%	58.9%	11.2%
Other	N/A	13.1%	N/A	N/A	N/A

NOTES:
(1) Of 116 county jails, 107 responded to this question.
(2) Totals may not sum because jails could choose multiple responses.
SOURCES: Legislative Budget Board, Survey of Mental Health in Jails, July 2016; Criminal Justice Policy Council, Mentally Ill Offenders and County Jails: Survey Results and Policy Issues, February 2000.

FIGURE 9
TEXAS COUNTY JAIL AVERAGE WAIT TIME FOR PSYCHIATRIC BED FOR CRISIS STABILIZATION SERVICES, JULY 2016

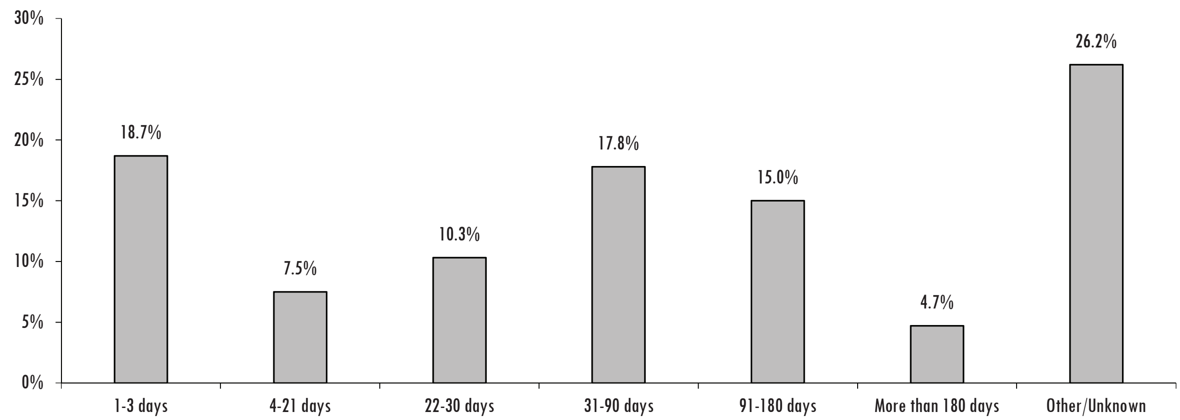
Survey Question: What is the average wait time, in days, to place an eligible inmate into a psychiatric hospital for crisis stabilization services?



NOTE: Of 116 county jails, 106 responded to this question.
SOURCE: Legislative Budget Board, Survey of Mental Health in Jails, July 2016.

FIGURE 10
AVERAGE WAIT TIME FOR TEXAS STATE HOSPITAL PSYCHIATRIC BED FOR COMPETENCY RESTORATION WITH COURT ORDER JULY 2016

Survey Question: What is the average wait time, in days, to place an eligible inmate into a state psychiatric hospital with a court order for competency restoration?



NOTE: Of 116 county jails, 107 responded to this question.
SOURCE: Legislative Budget Board, Survey of Mental Health in Jails, July 2016.

county jail respondents for placement in a psychiatric bed for court-ordered competency restoration. Of 107 respondents, 51 county jails (47.6 percent) reported that it takes more than 21 days for an inmate to receive a psychiatric bed with a court order.

MEDICATION

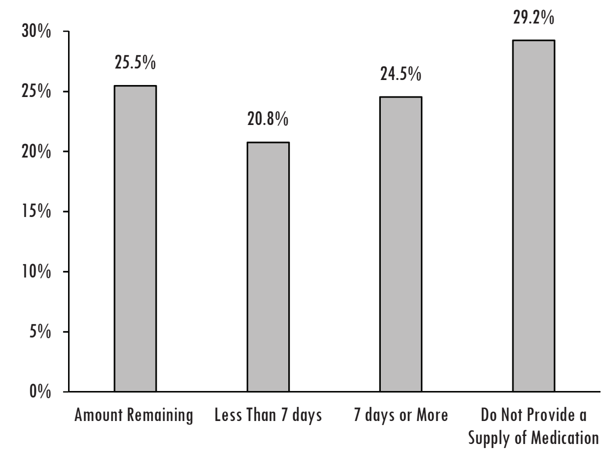
Medications may be prescribed to individuals who suffer from mental illness. Some inmates are prescribed psychotropic medications to treat mental illness. In most cases, these medications cannot be abruptly stopped without placing an individual at risk of withdrawal and possible psychiatric crisis. For this reason, it is important that jail facilities have procedures to continue proper medication. TCJS sets standards for dispensing medication in county jails. These standards do not require specific action on the part of county jails, but they require that jails have procedures for the control, distribution, secured storage, inventory, and disposal of prescriptions.

According to TCJS, jails often receive transferred inmates who have been prescribed medications that are not on the receiving entities' formulary. A formulary is a list of medications that have been approved for use. In this case, the approval is by a facility or contracted health care provider. Dispensing an amount of medication to an inmate for transition to another facility may decrease the risk of the inmate's mental decomposition while the inmate waits to receive medications at the receiving facility. Many mental health-related medications cannot be abruptly discontinued without serious side effects; therefore, the longer an inmate is without medications, the greater the risk of mental decomposition. Of 106 county jail respondents, 75 (70.8 percent) indicated that they provide a supply of prescribed medications upon transfer to another facility. Conversely, of 52 city jail and lockup respondents, 40 (76.9 percent) reported that medications are not provided upon transfer. Of the 12 city jail and lockup respondents that indicated that medications are transferred, all indicated the amount of medication provided was that which the individuals had with them upon arrival at the facility. **Figure 11** shows the number of days of medication that county jail respondents indicated they provide for inmates upon leaving the facility.

If an inmate enters a state hospital for competency restoration, when the inmate is returned to the jail, TCOOMMI can reimburse the jail for certain medications for up to 76 days to help keep that individual stable and competent to stand trial. To obtain reimbursement, the county must submit a request to the LMHA, which then will submit a request to TCOOMMI. According to TCOOMMI, this service is not widely utilized.

FIGURE 11
DAYS OF MEDICATION GIVEN TO INMATES UPON TRANSFER TO ANOTHER FACILITY FROM A COUNTY JAIL AS OF JULY 2016

Survey Question: When you transfer an individual to another facility, do you provide him or her with a supply of prescribed medications?



NOTE: Of 116 county jails, 106 jails responded to this question.
SOURCE: Legislative Budget Board, Survey of Mental Health in Jails, July 2016.

MENTAL HEALTH DATA COLLECTED BY JAILS

According to the 1999 CJPC's mental health in jails survey, a lack of computerized data affected jails' ability to determine the resources needed to effectively detain the offender population that had mental health issues, to provide appropriate mental health services, and to effectively share information. To update this information, the 2016 LBB staff survey asked county jails about the types of mental health data they collected and the method used to store the data. **Figure 12** shows the types and methods used to store data at the time of the CJPC survey in 1999 compared to the 2016 LBB staff survey. Based on county jail respondents in the 2016 survey, more jails now collect mental health data, and more jails store data electronically.

Although inmate data are collected at jails, LMHAs also maintain inmate information for clients with whom they work. The type of data collected may vary; however, most LMHAs maintain similar mental health records for inmates and clients that are not in jail. This data includes screenings and assessments, referrals, treatment plans, progress notes, services delivered, and medications. In addition, TCOOMMI requires LMHAs to collect data that is specific to jail populations regarding the number of court-ordered assessments and services, competency and sanity evaluations, and forensic programs involved.

MENTAL HEALTH IN JAILS POLICY ISSUES

The LBB staff survey identified several areas that present policy choices for the Legislature regarding county and city jails. The initial period of confinement is when many jail inmates are at risk; however, screening for identification of mental health risks are not consistent among county and city jails. The TCJS screening form is typically completed by jail staff. LMHAs have indicated jail staff training in the area of

FIGURE 12
TEXAS COUNTY JAIL SURVEY RETENTION OF MENTAL HEALTH INFORMATION BY TYPE AND METHOD OF DATA COLLECTION 1999 AND 2016

Survey Question: For each event, please indicate how you store the following information.

	IN ANY FORMAT		ELECTRONIC	
DATA	**1999**	**2016**	**1999**	**2016**
Intake Screening Results	96.0%	99.0%	47.0%	65.7%
Follow-up Assessment Results	65.0%	88.7%	12.0%	30.9%
Psychiatric Assessment Results	57.0%	82.5%	6.0%	27.8%
Mental Illness Diagnosis (2)	56.0%	83.7%	7.0%	28.6%
Total (3)	**97.0%**	**100.0%**	**50.0%**	**57.8%**

NOTES:
(1) Of 116 county jails, 99 jails responded to this question.
(2) In the 2016 survey, the question asked about psychiatric diagnosis instead of mental illness diagnosis.
(3) Totals are percent of jails that store at least one type of mental health data.
SOURCES: Legislative Budget Board, Survey of Mental Health in Jails, July 2016; Criminal Justice Policy Council, Mentally Ill Offenders and County Jails: Survey Results and Policy Issues, February 2000.

mental health as an area for improvement. The survey results indicate variation among county jail training requirements in mental health. Also, wait times for inmates in need of a state hospital bed, for either crisis stabilization or competency restoration, are significant. These areas will continue to affect mental health policy for county and city jails.

APPLY REMAINING TEXAS WATER RESOURCES FINANCE AUTHORITY FUNDS TO TEXAS WATER DEVELOPMENT BOARD DEBT SERVICE

The Texas Water Resources Finance Authority was established in 1987 to defease outstanding General Obligation bond debt held by the Texas Water Development Board. In 1989, the Authority issued approximately $500 million in initial revenue bonds for this purpose, but has otherwise been inactive. Proceeds from the Authority have been appropriated to support a portion of administration costs at the Texas Water Development Board. This practice has continued over time; in the 2014–15 biennium, approximately 9 percent of the agency's total salary and wage costs were supported by TWRFA funds. Authority proceeds are a declining revenue source and, assuming no changes to current appropriations, funds will be substantially depleted by fiscal year 2021. By amending statute to eliminate the Authority and appropriating the balance of its fund proceeds to Texas Water Development Board's General Obligation bond debt service, Texas would realize a one-time net savings of $6.7 million in General Revenue Funds.

FACTS AND FINDINGS

- Proceeds from Texas Water Resources Finance Authority bonds have not been used as a debt finance mechanism since the initial issuance in 1989.
- Texas Water Resources Finance Authority debt service has been paid off since fiscal year 2010. Ongoing annual revenue of $0.5 million is projected to continue through fiscal year 2025.
- Significant debt service needs remain for Texas Water Development Board programs.

CONCERNS

- Texas Water Resources Finance Authority functions are no longer necessary, given the establishment of newer programs at the Texas Water Development Board, such as the State Water Implementation Fund for Texas.
- Although the original intent of the Texas Water Resources Finance Authority was to help defease outstanding General Obligation bonds, funds have largely been appropriated for administrative and operating costs.

OPTIONS

- **Option1:** Amend statute to eliminate the Texas Water Resources Finance Authority.
- **Option 2:** Appropriate the balance of the Texas Water Resources Finance Authority to supplant General Revenue Funds for Texas Water Development Board General Obligation bond debt service in the 2018–19 General Appropriations Bill. Increase General Revenue Funds appropriations to the Texas Water Development Board for administration to offset reduced Texas Water Resources Finance Authority funding for that purpose, and make conforming changes to existing riders in the agency's bill pattern.

DISCUSSION

The Texas Water Resources Finance Authority (TWRFA) was established by House Bill 734, Seventieth Legislature, Regular Session, 1987, to increase the availability of financing for water projects by purchasing political subdivision bonds from the Texas Water Development Board (TWDB). Although TWRFA is an entity legally separate from TWDB, its board of directors is composed of the three members of TWDB who are appointed by the Governor. TWDB manages TWRFA's operations through a sales and servicing agreement. Enactment of House Bill 734 authorized TWRFA to issue revenue bonds and use the proceeds from this action to purchase General Obligation (GO) bonds held by TWDB. House Bill 734 also authorized TWDB to sell municipal bonds to TWRFA. TWRFA is authorized to pay debt service on its revenue bonds with proceeds derived from TWDB's municipal bonds.

TWRFA was established to reduce the need for General Revenue Funds to support TWDB bond payments, should the agency's bond income fall short of its bond payments. Bonds were issued twice since the inception of TWRFA because, according to TWDB staff, the agency believed that TWRFA was intended as a financing mechanism to address financial issues at that time, rather than serve as an ongoing program. In 1989, the first TWRFA bonds were issued for a par value of $511.8 million and included a portfolio of more than 500 political subdivision bonds. In 1999, three series of TWRFA bonds were issued to refund the Series 1989

TWRFA bonds. TWRFA has not made any new issuances or engaged in other significant activity since this time. TWRFA debt was paid off in fiscal year 2010, and there are no outstanding bond issuances. As of fiscal year 2015, TWRFA holds a portfolio containing six loans outstanding with a cumulative value of approximately $5.5 million. Revenue from loan funds and investment income are projected to be approximately $0.5 million per fiscal year until the end of fiscal year 2025. TWRFA is not listed as an agency subject to review by the Sunset Advisory Commission, nor was it included in the scope of the Commission's most recent review of TWDB for the Eighty-second Legislature, Regular Session, 2011.

OVERLAP IN AUTHORITY BETWEEN TWRFA AND OTHER TWDB PROGRAMS

The Eighty-third Legislature, Regular Session, 2013, passed House Bill 4 and Senate Joint Resolution 1, the latter of which was also adopted by voters in November, 2013, as Proposition 6. These actions culminated in the establishment of the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT), and a $2.0 billion capitalization from the Economic Stabilization Fund. The SWIFT and SWIRFT were established to provide ongoing financial assistance for projects listed in the State Water Plan, facilitating low-interest loans, extended repayment terms, deferral of loan repayments, and incremental repurchase terms. Similar to TWRFA, these programs are also authorized to purchase political subdivision bonds. As these programs were funded by an appropriation from the Economic Stabilization Fund and will continue to be self-supporting, they are not subject to the Constitutional Debt Limit (CDL). The CDL restricts the authorization of additional state debt that is repaid with unrestricted General Revenue Funds (not self-supporting debt) to an amount that ensures annual debt service payments do not exceed 5 percent of the three-year average of unrestricted General Revenue Funds. Given this overlap in ability and significant capitalization to SWIFT and SWIRFT, TWRFA is no longer necessary.

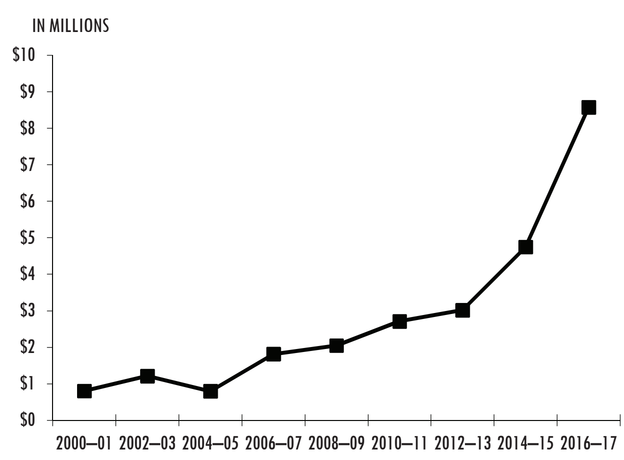
Option 1 would amend the Texas Water Code, Chapter 20, to eliminate TWRFA. According to statute, if TWRFA is dissolved, all of its rights and properties, including financial assets, would vest to the state. By acquiring the rights and properties of TWRFA, the State of Texas would not incur any negative liability and would continue to receive projected loan revenue and investment income through fiscal year 2025.

DIMINISHING TWRFA FUNDS AVAILABLE FOR TWDB SUPPORT

In 2002, TWDB, in consultation with outside counsel, evaluated the purposes for which TWRFA funds may be used. This analysis was initially conducted at a time when TWDB faced potential reductions in appropriations of General Revenue Funds due to a projected state budget shortfall. The evaluation concluded that the agency could transfer funds from TWRFA into other TWDB accounts if the purposes were consistent with the purposes of TWRFA outlined in the Texas Water Code, Section 20.001(a). A variety of purposes are listed in this section of statute, including encouraging and assisting in the conservation and development of the water resources of the state, and financing projects necessary to accomplish those purposes. The Legislature allowed that TWRFA funds could be applied to various administrative and operating expenses incurred by TWDB to assist in accomplishing these purposes.

Since that time, appropriation of TWRFA funds to support TWDB operations has increased, as shown in **Figure 1**. For example, the portion of total TWRFA appropriations used to support TWDB salaries increased from approximately $550,000 in fiscal year 2007 to $1.8 million in fiscal year 2014. In fiscal year 2016 there were 28.2 full-time-equivalent (FTE) positions supported by TWRFA funds, representing an increase of almost 200 percent from the 9.5 FTE positions funded with TWRFA proceeds in fiscal year 2009. Other expenditures in the 2014–15 biennium also included $0.2

FIGURE 1
APPROPRIATIONS OF TEXAS WATER RESOURCES FINANCE AUTHORITY FUNDS, 2000–01 TO 2016–17 BIENNIA



NOTE: All amounts as specified from applicable General Appropriations Act.
SOURCE: Legislative Budget Board.

million for conducting groundwater analysis and $0.5 million for studies related to bays and estuaries.

TWRFA funds are appropriated primarily to support FTEs in Finance and Operation and Administration. FTEs in Governmental Relations and Agency Communications, Internal Audit, and Water Science and Conservation are also supported by the appropriation of TWRFA funds. TWRFA receipts are deposited into the Water Assistance Fund No. 480 as Appropriated Receipts and are authorized in the 2016–17 General Appropriations Act (GAA) through Rider 4 in TWDB's bill pattern to be used by TWDB for any authorized purposes related to the Water Assistance Fund. Rider 10 also provides a summary of the appropriation of $8.6 million in TWRFA Appropriated Receipts to various TWDB strategies in the 2016–17 biennium:

- A.1.3, Automated Information Collection, Maintenance, and Dissemination;
- A.2.1, Technical Assistance and Modeling;
- A.2.2, Water Resources Planning;
- B.1.1, State and Federal Financial Assistance Programs;
- C.1.1, Central Administration; and
- C.1.2, Information Resources.

Based on cash flow analysis performed by TWDB staff and shown in **Figure 2**, in fiscal year 2021, $3.5 million in TWRFA funds will be available, which is less than the current annual funding level of $4.3 million. After fiscal year 2020 TWRFA will not have sufficient funds to maintain deposits at the 2016 level. If TWRFA funding were not replaced, TWDB would be required to reduce FTEs, grant programs, professional fees and services, and other operating expenses.

NON-SELF SUPPORTING DEBT AT TWDB

Significant debt service requirements for non-self supporting bonds remain for TWDB programs. Prior issuances made through the Water Infrastructure Fund (WIF) and Economically Distressed Areas Program (EDAP) are two programs that are not backed by a dedicated funding source and require appropriations from the state for these non-self supporting debt service payments. Debt service for these programs is subject to the CDL. Appropriations for non-self supporting GO debt service for the 2016–17 biennium included $145.7 million in General Revenue Funds for WIF and $62.0 million for EDAP. As of fiscal year 2016, there is approximately $685.0 million of debt principal attributed to these two programs, all of which is classified as non-self supporting.

The original intent of TWRFA was to help defease outstanding GO bonds, such as WIF and EDAP. Option 2 would appropriate the balance of TWRFA for the 2018–19 biennium, estimated to be approximately $15.3 million at the end of fiscal year 2019, to TWDB in Strategy C.1.1 for EDAP debt service obligations. Appropriations of General Revenue Funds for debt service would be reduced by a like amount, and General Revenue Funds would be appropriated in lieu of TWRFA proceeds for administration at TWDB. Existing riders would be modified to reflect these changes. Alternatively, the Legislature could choose to identify other methods of finance available to maintain current funding of TWDB operations, such as an increase in fee revenue deposited to the Water Resource Management Account No. 153.

FIGURE 2
TEXAS WATER RESOURCES FINANCE AUTHORITY PROJECTED CASH FLOW, FISCAL YEARS 2016 TO 2021

FISCAL YEAR	BEGINNING BALANCE	LOAN RECEIPTS, INVESTMENT INCOME	ADMINISTRATIVE AND OTHER OPERATING COSTS	ENDING BALANCE
2016	$21,867,008	$501,681	$4,279,844	$18,088,845
2017	$18,088,845	$496,540	$4,279,844	$14,305,541
2018	$14,305,541	$496,892	$4,279,844	$10,522,589
2019	$10,522,589	$497,760	$4,279,844	$6,740,505
2020	$6,740,505	$498,108	$4,279,844	$2,958,769
2021	$2,958,769	$520,935	$4,279,844	($800,140)

NOTE: All amounts other than fiscal year 2016 are estimated. Administrative and other operating costs assume identical levels compared to 2016–17 biennial appropriations.
SOURCE: Texas Water Development Board.

FISCAL IMPACT OF THE OPTIONS

Option 1, the elimination of TWRFA, would have no significant fiscal impact, as there are no FTEs whose exclusive or sole responsibility is to administer TWRFA. Option 2, appropriating the balance of TWRFA funds toward debt service costs in lieu of General Revenue Funds and appropriating General Revenue Funds for administrative costs in lieu of TWRFA funds, would result in net savings of $6.7 million in General Revenue Funds for the 2018–19 biennium. The option, shown in **Figure 3**, would increase appropriation of General Revenue Funds for agency administration by $8.6 million, based on the amount of TWRFA funds appropriated for this purpose for the 2016–17 biennium. The use of General Revenue Funds to pay for TWDB debt service would be reduced, and would be replaced with a like amount of TWRFA funds. This approach would result in a one-time net savings of $6.7 million. The fiscal impact shown after fiscal year 2019 assumes the Legislature continues the practice of applying TWRFA funds for debt service obligations at TWDB.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

FIGURE 3
FIVE-YEAR FISCAL IMPACT OF OPTIONS, FISCAL YEARS 2018 TO 2022

FISCAL YEAR	PROBABLE COST IN GENERAL REVENUE FUNDS	PROBABLE SAVINGS IN GENERAL REVENUE FUNDS	PROBABLE COST IN APPROPRIATED RECEIPTS	PROBABLE SAVINGS IN APPROPRIATED RECEIPTS
2018	($4,279,844)	$7,650,097	($7,650,097)	$4,279,844
2019	($4,279,844)	$7,650,097	($7,650,097)	$4,279,844
2020	($4,279,844)	$500,000	($500,000)	$0
2021	($4,279,844)	$500,000	($500,000)	$0
2022	($4,279,844)	$500,000	($500,000)	$0

SOURCE: Legislative Budget Board.

IMPROVE THE STATE'S DAM INFRASTRUCTURE TO INCREASE PUBLIC SAFETY

The state of Texas monitors 7,213 dams, more than any other state in the nation. Since fiscal year 2010, there have been 11 dam failures and 81 incidents in which a dam failure would have occurred had there been no intervention from emergency management. The Texas Commission on Environmental Quality's Dam Safety Program is charged with monitoring the state's dams while protecting the public from dam failures and preserving the beneficial uses of dams and reservoirs. Additionally, the Texas State Soil and Water Conservation Board administers two flood control programs, which provide grants for dam maintenance, rehabilitation, and repairs for the 2,041 dams that were constructed in partnership with the federal government. The Texas Legislature has appropriated $48.6 million in General Revenue Funds for the Texas State Soil and Water Conservation Board's two programs since their establishment in fiscal year 2010, including $14.8 million in the 2016–17 biennium.

Increasing development, aging dam infrastructure, and maintenance and repair costs that exceed available funding reduce the state's effectiveness in ensuring dam safety. Authorizing the Texas Commission on Environmental Quality to inspect all dams that pose significant risks to the public, providing authority to recover reasonable costs for dam inspections, and requiring that existing information and data be used to identify areas of downstream development from dams will help maximize public safety. Additionally, transferring flood control programs from the Texas State Soil and Water Conservation Board to the Texas Commission on Environmental Quality and expanding the programs' eligibility criteria would help ensure the state allocates financial assistance to the dams that have been identified as most in need of repair or rehabilitation. Implementing proposed options would result in an estimated net revenue gain of $3.0 million in General Revenue–Dedicated Funds for the 2018–19 biennium.

FACTS AND FINDINGS

- The Texas Commission on Environmental Quality estimates $2.5 billion is needed for immediate repair and rehabilitation of 1,090 dams. This amount includes $885.0 million for rehabilitation and repairs on 599 federally sponsored dams, which are eligible for grant funding from the Texas State Soil and Water Conservation Board's flood control programs.
- According to the Texas Dam Inventory, the average age of all dams in the state is 52.3 years, 5.8 percent of dams are less than 30 years in age.

CONCERNS

- The failure of a significant hazard dam could result in a loss of life or other threat to public safety. There are 211 significant hazard dams exempt from state safety regulations, and therefore not inspected through the Dam Safety Program on a regular basis.
- There are no formal communication requirements to notify dam owners and the Dam Safety Program of new development occurring downstream. As a result, downstream development can increase the hazard classification of a dam and its threat to public safety without the knowledge of Dam Safety Program personnel.
- Since fiscal year 2010, the state has spent an average of $2.4 million in All Funds each fiscal year on dam safety assessments with no cost recovery mechanism. State dam safety assessments benefit dam owners by providing inspections that would otherwise be purchased from private engineers.
- Approximately 45.0 percent of dams the Texas Commission on Environmental Quality has identified as needing immediate repair and rehabilitation are currently ineligible to receive state grants for these repairs under eligibility criteria of the Texas State Soil and Water Conservation Board's flood control programs.

OPTIONS

- **Option 1:** Amend statute to authorize the Texas Commission on Environmental Quality to conduct on-site inspections and dam safety assessments of all significant hazard dams that pose a risk to public safety or available water supplies. Owners of significant hazard dams previously exempt from safety regulations would be subject to related requirements.

- ♦ **Option 2:** Amend statute to require the Texas Commission on Environmental Quality to collect and use existing information submitted to the agency on developments occurring around the state, specifically focusing on areas downstream from dams.
- ♦ **Option 3:** Amend statute and the 2018–19 General Appropriations Bill to authorize the Texas Commission on Environmental Quality to recover reasonable costs for providing on-site dam inspections, allocate the revenue to the Water Resource Management Account No. 153 for administering the Dam Safety Program at the Texas Commission on Environmental Quality, and appropriate resulting revenue to the Texas Commission on Environmental Quality in an amount sufficient to cover the costs of Option 1, contingent on the enactment of legislation authorizing the recovery of reasonable costs for providing on-site dam inspections.
- ♦ **Option 4:** Amend statute and the 2018–19 General Appropriations Bill to transfer the flood control programs from Texas State Soil and Water Conservation Board to the Texas Commission on Environmental Quality and expand the programs' eligibility criteria to include all dams that are statutorily regulated by the Texas Commission on Environmental Quality and listed in the Texas Dam Inventory. The transfer of funding for the flood control programs would be contingent on the enactment of legislation transferring the programs to the Texas Commission on Environmental Quality.

DISCUSSION

According to the U.S. Army Corps of Engineers National Inventory of Dams, Texas has 7,310 dams—the most in the nation. The federal government, through agencies such as the Army Corps of Engineers, the International Boundary and Water Commission, and the Bureau of Reclamation, owns and regulates 97 dams in Texas. The remaining 7,213 dams, which are owned by various private and public entities, are monitored through the Texas Commission on Environmental Quality's (TCEQ) Dam Safety Program. Additionally, the Texas State Soil and Water Conservation Board (TSSWCB) and the Texas Water Development Board (TWDB) offer financial assistance for various dam projects.

The Dam Safety Program at TCEQ is charged with monitoring the state's dams while protecting the public from dam failures and preserving the beneficial uses of dams and reservoirs throughout the state. The program oversees the construction and modification of dams and works with owners to ensure all dams are safely operated and maintained. The program also performs on-site inspections and assessments of dams for classification purposes and to ensure they are structurally and hydraulically adequate. Hydraulic adequacy is a measure of a dam's ability to store and pass a particular storm without being overtopped and suffering damages or failure. The Dam Safety Program also manages the Texas Dam Inventory, which is a database that contains an array of information on dams in the state such as ownership, hazard classification, and location. TCEQ's regulatory authority relating to dam safety applies to 55.2 percent of the state-monitored dams.

Additionally, TSSWCB and TWDB offer funding options to assist with dam construction, maintenance, repair, and rehabilitation. The two flood control programs administered by TSSWCB are the Operation and Maintenance Grant Program and the Structural Repair Grant Program. These programs offer grants to public entities that serve as watershed sponsors for flood control dams constructed in partnership with the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS). According to TSSWCB, 28.3 percent of dams in Texas are eligible for funding assistance through their two flood control programs. TWDB also administers four programs that provide financial assistance to entities constructing or repairing a dam. Most of the financial assistance from TWDB is offered in the form of loans and is only available to projects related to water supply or flood control.

CLASSIFICATION OF DAMS

Dams in Texas are classified based on downstream hazard and size. TCEQ is responsible for classifying all proposed and existing dams that are not federally owned. Downstream hazard classifications are determined by assessing a dam's potential to cause loss of human life and property damage to areas downstream if the dam were to fail or malfunction. The three categories used for classifying a dam's downstream hazard are: low, significant, and high. **Figure 1** shows the number of dams classified in each downstream hazard category, with the definition for each category. Size classifications are based on the larger of the height or the maximum storage capacity of a dam. Size categories are: small, intermediate, and large. **Figure 2** shows the number of dams classified in each size category, with the definition for each category.

FIGURE 1
DAM CLASSIFICATIONS BY DOWNSTREAM HAZARD JANUARY 2016

HAZARD CATEGORY	IMPACT OF FAILURE	DAMS
Low	No loss of human life expected; minimal economic loss	5,308
Significant	Loss of one to six human lives possible; appreciable economic loss	658
High	Loss of seven or more lives expected; excessive economic loss	1,206
Total		**7,172**

NOTE: Hazard classifications are unknown on 41 dams, therefore, the total does not equal the total amount of state monitored dams.
SOURCE: Texas Commission on Environmental Quality, Texas Dam Inventory.

FIGURE 2
DAM CLASSIFICATIONS BY SIZE, JANUARY 2016

SIZE CATEGORY	IMPOUNDMENT MAXIMUM STORAGE (ACRE-FOOT)	HEIGHT (FEET)	DAMS
Small	Equal to or Greater than 15 and Less than 1,000	Greater than 6 and Less than 40	5,506
Intermediate	Equal to or Greater than 1,000 and Less than 50,000	Equal to or Greater than 40 and Less than 100	1,623
Large	Equal to or Greater than 50,000	Equal to or Greater than 100	84
Total			**7,213**

SOURCE: Texas Commission on Environmental Quality, Texas Dam Inventory.

Additionally, TCEQ monitors the condition of dams. Although not used for official classification purposes, condition classifications allow TCEQ to rate dams that could pose a risk to lives and property based on structural deficiencies. Categories used to rate the condition of a dam are:

- Poor—major maintenance, structural, and/or hydraulic deficiencies were observed at the time of the inspection that could threaten the integrity of the dam; or the dam could not be inspected due to deficiencies.
- Fair—moderate maintenance, structural, and/or hydraulic deficiencies were observed at the time of the inspection which, could eventually lead to failure of one of the features of the dam.
- Good—only minor maintenance deficiencies were observed at the time of the inspection. There were also no visible structural or hydraulic deficiencies that could lead to possible failure of one of the features of the dam.

If a dam has been breached or has failed, TCEQ notes the event in lieu of the condition. A dam breach occurs when there is an opening or breakthrough of the dam because the dam was incapable of impounding the amount of water present at that given moment. A dam failure occurs when there is an uncontrolled release of water from a dam. The Texas Dam Inventory includes the condition of 2,525 dams, with most in the high or significant hazard classifications. As of January 2016, TCEQ had not assessed the condition of 4,688 dams, although 4,565 of these are classified as low hazard. **Figure 3** shows the number of dams in each condition category for each of the three hazard classifications.

INCREASING DAM SAFETY

The mission of the Dam Safety Program at TCEQ is to protect the lives, safety, and health of the public in Texas from dam failure or improper operation, and to preserve the beneficial uses of dams and reservoirs. The Dam Safety Program carries out its mission by monitoring and regulating both private and public dams throughout the state. One major function of the program is to conduct dam safety assessments to detect any deficiencies or underlying conditions that may be detrimental to the structure.

In an effort to focus the Dam Safety Program's resources on dams that are a public safety concern, House Bill 2694, Eighty-second Legislature, Regular Session, 2011, temporarily exempted certain low and significant hazard dams from safety regulations. In accordance with provisions of the bill, the exemption of these dams would have expired August 31, 2015. However, House Bill 677, Eighty-third Legislature, Regular Session, 2013, made the exemption permanent and exempted additional dams in an effort to reduce the burden on financial resources of owners who operate low or significant hazard dams in rural areas. Together, these actions resulted in the exemption of 211 significant hazard dams from dam safety regulations, of which 66.4 percent were deemed to be in either poor condition or hydraulically inadequate. Because these dams are exempted from dam safety requirements, the Dam Safety Program no longer conducts regular on-site inspections or safety assessments. On-site inspections typically consist of a visual, systematic evaluation of a dam in order to detect any

FIGURE 3
DAM CONDITIONS BY HAZARD CLASSIFICATION, JANUARY 2016

HAZARD CLASSIFICATION	BREACHED	FAILED	POOR	FAIR	GOOD	NOT RATED
High	2	0	111	343	693	57
Significant	0	3	103	250	274	28
Low	2	1	73	251	416	4,565

NOTES:
(1) Hazard classifications are unknown for 41 dams, resulting in an unknown condition rating.
(2) The three failed significant hazard dams are exempted from dam safety regulations.
SOURCE: Texas Commission on Environmental Quality.

deficiencies or underlying conditions that may be detrimental to the structure. Dam safety assessments consist of in-house reviews of plans and specifications for dams, such as hydrologic and hydraulic adequacy assessments, breach analyses, emergency actions plans, engineering reports, water use permit applications, and certain water district information pertaining to dams.

State officials perform onsite inspections of exempted dams only when requested or in response to a complaint. During these inspections, officials review and make recommendations on maintenance items. The operators of exempted dams are no longer required to submit emergency action plans, which identify potential emergency conditions and specify pre-planned actions to be followed to minimize property damage or loss as a result of a dam failure or misoperation. According to the Texas Dam Inventory, 58.8 percent of the 211 exempted dams that are rated as a significant-hazard have no emergency action plan on file.

As shown in **Figure 1**, a failure or misoperation of a significant hazard dam could result in the loss of life. It could also cause economic loss associated with isolated homes, highways, and railroads, or interrupt public utility services. Inspecting and assessing all significant hazard dams would allow TCEQ to improve the effectiveness of the Dam Safety Program and increase safety for all Texans residing downstream from significant hazard dams. Option 1 would amend the Texas Water Code, Section 12.052, to authorize TCEQ to conduct on-site inspections and dam safety assessments of all significant hazard dams that pose a significant risk to public safety or available water supplies. This would improve public safety by allowing TCEQ to regularly conduct on-site inspections and dam safety assessments of all significant hazard dams in the state. TCEQ currently performs on-site inspections and dam safety assessments of regulated dams on a five-year cycle. However, if a dam's deficiencies pose a significant risk to public safety, TCEQ has the authority to inspect the dam more frequently. Additionally, Option 1 would also ensure that owners of all significant hazard dams in the state would be required to submit emergency action plans. This would improve public safety for individuals and communities downstream by ensuring local emergency responders have safety measures in place to protect communities located downstream from the dam.

DOWNSTREAM DEVELOPMENT

According to the U.S. Census Bureau population estimate, Texas' population has increased by 2.2 million from 2010 to 2015, with the state's suburban population growth outpacing growth in major metropolitan areas. As the population of Texas increases and more people move into suburban areas, new development that has occurred downstream from dams could be affected by dam failures. These areas could include large subdivisions or individual residential properties. To ensure public safety, TCEQ requires all dam owners that are not exempted from dam safety regulations to prepare an emergency action plan so that procedures exist to notify downstream parties in the event of a problem with the dam. However, this requirement only impacts dams for which TCEQ is aware of existing downstream development and that have either high or significant hazard classifications. According to TCEQ, the agency is usually not notified about new development downstream of a dam, and there is no requirement for developers to make such notification. According to the agency, when TCEQ does learn of new development it is typically from the owner of a dam, through the inspection of a dam, or by reviewing aerial photographs.

Additionally, there are no restrictions on living downstream from a dam, and there are no reporting requirements for notifying property owners that they are downstream of a dam. The inundation area that would be affected by a dam failure can be significantly larger than a 100-year or even a 500-year floodplain.

According to TCEQ, downstream development poses three potential concerns. First, a downstream property owner may not be aware that his or her property is in a breach zone, in which property damage and possibly loss of life could result if the dam should fail. Second, the hazard classification of a dam might need to be raised, since the classification is based on the population and property expected to be affected by a dam breach. Raising a dam's hazard classification level could result in dam upgrades being required in order to meet state standards. Finally, there are hundreds of dams that would not meet state standards should the hazard classification be raised due to downstream development. According to TCEQ, most dam owners do not likely have the funds to pay for required modifications.

Amending statute to improve TCEQ's ability to identify downstream development would enhance the Dam Safety Program's effectiveness. Option 2 would amend the Texas Water Code, Section 12.052, to require TCEQ to collect and use existing information already submitted by the agency on developments occurring around the state, specifically focusing on areas downstream from dams. This option would require TCEQ to emphasize public safety by more quickly identifying downstream developments to ensure owners of upstream dams are aware of downstream development and of any required upgrades to the dam.

One resource available to the Dam Safety Program to identify downstream-development is to leverage information submitted to the agency on certain permit applications. The Texas Pollutant Discharge Elimination System Program (TPDES) at TCEQ has federal regulatory authority under the National Pollutant Discharge Elimination System to control discharges of pollutants to surface waters in the state. Under the TPDES, TCEQ authorizes the use of a Construction General Permit, which is required of construction sites that discharge storm water associated with construction activity located in Texas. A notice of intent for authorization under the Construction General Permit is required to be submitted to TCEQ for construction activities that disturb five or more acres of land or are part of a larger common plan of development that would disturb five or more acres. Notice of intent applications sent to TCEQ contain geographic information on the construction project or site. The Dam Safety Program could leverage information received from these notices of intent to determine if development is occurring downstream from a dam.

DAM SAFETY PROGRAM FUNDING

Funding for the Dam Safety Program at TCEQ totaled $5.2 million in the 2016–17 biennium. Funding sources include the Water Resource Management Account No. 153 (Account No. 153) and Federal Funds. This account funds the majority of the program's budget, with approximately $4.0 million appropriated from that account in the 2016–17 biennium. The program also received $1.1 million in Federal Funds during the 2016–17 biennium through the National Dam Safety Program, which provides financial assistance to states for strengthening their dam safety programs.

TCEQ conducts on-site inspections and dam safety assessments through the program. On-site inspections typically consist of a visual systematic evaluation of a dam in order to detect any deficiencies or underlying conditions that may be detrimental to the structure. According to TCEQ, an average of $2.4 million in All Funds was expended each year on providing these services to dam owners from fiscal years 2010 to 2015. Although some of these services directly benefit dam owners, there are no associated fees.

This practice is inconsistent with other services provided by state regulatory agencies, including TCEQ. For example, TCEQ assesses a fee on applications for water permits and the establishment of water districts. TCEQ also assesses a fee for impounding water at $0.50 per acre-foot of storage. These fees are deposited into Account No. 153 and appropriated to the Public Utility Commission for water and wastewater regulation, the Office of Public Utility Council to provide representation for certain consumers and utility projects, and TCEQ for their water programs. However, no fees are assessed on dam owners for on-site inspections or the review of plans and specifications for dams.

In fiscal year 2015, there were 274 on-site inspections performed; 238 were completed by Dam Safety Program personnel and 18 were completed by a private engineer contracted by the dam owner. The remaining on-site inspections were completed by a staff engineer for the dam owner or a federal agency. When a site inspection is performed by Dam Safety Program personnel, it negates the need for dam owners to pay for an inspection they would otherwise purchase from private engineers.

Option 3 would amend the Texas Water Code, Section 12.052, to authorize TCEQ to recover reasonable costs for conducting on-site dam inspections, and allocate the revenue to Account No. 153 for purposes of administering the Dam Safety Program at TCEQ. Option 3 would also include a contingency rider in the 2018–19 General Appropriations Bill to appropriate the resulting revenue to TCEQ in an amount sufficient to cover the costs of Option 1, contingent on the enactment of legislation authorizing TCEQ to recover reasonable costs for providing on-site dam inspections. Dam safety programs in other states, including Tennessee and Washington, assess fees for inspections. Option 3 is expected to increase revenue deposited into Account No. 153, which also receives revenue collected from a variety of permit fees and penalties related to the water system. The increase in revenue collections would allow for TCEQ to adjust fees accordingly to reduce revenue collections. Alternatively, the Legislature could choose to appropriate the additional revenue generated from inspections to TCEQ for grants to finance projects related to the maintenance, repair, or rehabilitation of dams.

FEDERALLY SPONSORED FLOOD CONTROL DAMS

The U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) was first authorized by the U.S. Congress in 1944 to assist agriculture communities across the U.S. with controlling soil erosion and preventing floods. To assist these agriculture communities, the NRCS partnered with units of local government and landowners to construct flood control earthen dams on private property in watersheds. Since the inception of this program, NRCS has constructed nearly 11,000 dams in 2,000 watersheds across the nation. These flood control dams were constructed with the understanding that the landowner would provide the land, NRCS would provide technical design expertise and funding to construct the dam, and the units of local government would become the watershed project sponsor by assuming responsibility for operating and maintaining the dam into the future. For each flood control dam constructed under the program, a watershed agreement was signed between NRCS, a watershed sponsor, and a taxing entity (if the watershed sponsor did not have taxing authority). The watershed agreements outline each entity's duties and responsibilities for the lifetime of each flood control dam. NRCS is required to provide technical assistance to local watershed sponsors and fund the design and construction of each flood control dam. Watershed sponsors are responsible for obtaining and enforcing easements, conducting operations and maintenance on the dam, and implementing land treatment measures in the watershed.

According to TSSWCB, 2,041 NRCS flood control dams exist in Texas. The average age of these dams is 51.5 years. Soil and Water Conservation Districts (SWCD) are the watershed sponsors for each of these dams, and 97.0 percent contain a cosponsor with taxing authority, such as a county, city, or a water control and improvement district. Watershed sponsor types and totals for each type are shown in **Figure 4**.

FIGURE 4
WATERSHED SPONSORS IN TEXAS, JANUARY 2016

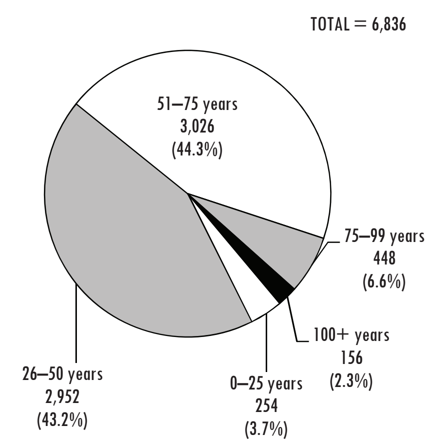
SPONSOR TYPE	SPONSORS
Soil and Water Conservation Districts	106
Counties	86
Cities	50
Water Control and Improvement Districts	20
Watershed Authorities and Associations	6
Other Special Purpose Districts	14
River Authorities	1
State Recreation Areas	1
Total	**284**

SOURCE: Texas State Soil and Water Conservation Board.

AGING DAM INFRASTRUCTURE

According to the Texas Dam Inventory, the average age of all dams in the state is 52.3 years; 5.8 percent of dams are less than 30 years in age. The average age of non-NRCS and non-exempt dams in the state is 55.0 years. **Figure 5** includes more information on the age of state monitored dams. According to TCEQ, the number of dams needing some type of repair or rehabilitation due to problems associated with age has increased. The agency indicates that the costs associated with regular maintenance combined with the need

FIGURE 5
NUMBER OF DAMS IN EACH AGE RANGE, JANUARY 2016



NOTE: The age is unknown for 377 dams; therefore, the total does not equal the total amount of state monitored dams.
SOURCE: Texas Commission on Environmental Quality.

for more extensive repairs or rehabilitation is burdensome for some dam owners.

DAM FUNDING NEEDS AND CHALLENGES

According to TCEQ, 1,090 high and significant hazard dams need repair or rehabilitation because they are either in poor condition or hydraulically inadequate. Included in this amount are 140 significant hazard dams that are statutorily exempted from dam safety regulations.

Using the Association of State Dam Safety Officials methodology, TCEQ estimated $2.5 billion is needed to address dam repair and rehabilitation needs in Texas. This includes an estimated $885.0 million to repair and rehabilitate 599 NRCS constructed dams. Additionally, $14.3 million is needed for operations and maintenance on a majority of NRCS constructed dams in the state. TCEQ defines maintenance, repairs, and rehabilitation as follows:

- Maintenance—those tasks that are generally recurring and are necessary to keep the dam and appurtenant structures in sound condition, free from defect or damage that could hinder the dam's functions as designed, including adjacent areas that also could affect the function and operation of the dam.
- Repairs—any work done on a dam that may affect the integrity, safety, and operation of the dam.
- Rehabilitation—the completion of all work necessary to extend the service life of a dam and meet the safety and performance standards.

Funding for dam maintenance, repair, and rehabilitation is available from local governments and various state and federal programs. Pursuant to the Texas Transportation Code, Chapter 256, counties that have received voter approval are authorized to impose an ad valorem tax for flood control purposes, including soil conservation, water conservation, and water control. Counties are also authorized to use this revenue in connection with plans and programs of NRCS, Soil and Water Conservation Districts, and other special purpose districts.

Federal funding is offered by the NRCS through the Watershed Rehabilitation Program and the Emergency Watershed Protection Program. The Texas Department of Agriculture (TDA), TWDB, and TSSWCB each administer funding programs for dams at the state level. A comparison of both federal and state programs is shown in **Figure 6**.

The Watershed Rehabilitation Program and the Emergency Watershed Protection Program are administered by NRCS and only available to assist watershed sponsors of NRCS constructed dams. The Watershed Rehabilitation Program assists watershed sponsors with funding for rehabilitation projects, while the Emergency Watershed Protection Program assists watershed sponsors with funding for repair needs to flood control dams that have suffered damage created by natural disasters. Under these programs, approved projects are funded by both federal and local matching dollars. For the Watershed Rehabilitation Program, the federal government is responsible for 65.0 percent of the project costs, and the remaining 35.0 percent is the responsibility of the watershed sponsor. Under the Emergency Watershed Protection Program, the federal government is responsible for 75.0 percent of the project costs, while the remaining 25.0 percent is the responsibility of the watershed sponsor. According to TSSWCB, as of December 2015, watershed sponsors had received $23.4 million from the Watershed Rehabilitation Program in fiscal years 2014 and 2015.

TSSWCB FLOOD CONTROL PROGRAMS

The two flood control programs administered by TSSWCB are the Operation and Maintenance Grant Program and the Structural Repair Grant Program. These two flood control programs offer grants to public entities that serve as watershed sponsors for flood control dams constructed in partnership with the NRCS. These grants are provided to public entities to reimburse them for the costs of maintenance and repairs. Prior to the creation of the flood control programs at TSSWCB in fiscal year 2010, watershed sponsors of NRCS dams performed needed operation and maintenance and repairs on dams using their own financing. Maintenance work can include clearing trees from dams and spillways, repairing soil erosion damage, repairing damage after heavy storms, and keeping the principal spillway clear of debris. Federal funding was also made available in some cases for repair and rehabilitation needs. However, watershed sponsors found they were having difficulty raising adequate funds to keep up with required operation, maintenance, and repair needs. Based on a survey completed by NRCS in 2008, an estimated $11.6 million was needed for maintenance and $53.5 million was needed for repair on NRCS dams in the state at that time.

In response, the Eight-first Legislature, Regular Session, 2009, appropriated $15.0 million in General Revenue Funds to the TSSWCB for the 2010–11 biennium, for issuing grants to local watershed sponsors for maintenance and

FIGURE 6
AVAILABLE FUNDING PROGRAMS FOR DAM MAINTENANCE, REPAIRS, AND REHABILITATION, JANUARY 2016

ADMINISTERING AGENCY	PROGRAM	RECIPIENTS	PROJECTS
U.S. Department of Agriculture – Natural Resource Conservation Service (NRCS)	Watershed Rehabilitation Program	Watershed Sponsors	NRCS Flood Control Dam Rehabilitation
U.S. Department of Agriculture – Natural Resource Conservation Service (NRCS)	Emergency Watershed Protection Program	Watershed Sponsors	NRCS Flood Control Dam Repairs
Texas State Soil and Water Conservation Board	Flood Control Program – Operation and Maintenance Program	Watershed Sponsors	NRCS Flood Control Dam Operation and Maintenance
Texas State Soil and Water Conservation Board	Flood Control Program – Structural Repair Program	Watershed Sponsors	NRCS Flood Control Dam Repairs or Rehabilitation
Texas Water Development Board	Clean Water State Revolving Fund (CWSRF)	Political subdivisions, authorized Indian tribal organizations, and private entities	Certain projects relating to wastewater, storm water, and pollution control. Projects must be listed in current CWSRF Intended Use plan
Texas Water Development Board	Texas Water Development Fund	Political subdivisions and nonprofit water supply corporations	Certain infrastructure projects
Texas Water Development Board	State Participation	Political subdivisions and nonprofit water supply corporations	Certain projects relating to water supply, wastewater, and flood control
Texas Water Development Board	Water Assistance Fund	Various	Certain projects relating to water development, conservation, water quality, and flood control
Texas Department of Agriculture	Texas Community Development Block Grant Program, Disaster Relief Fund	Certain cities under 50,000 in population and non-entitlement counties that have a non-metropolitan population under 200,000	Repairs

SOURCES: U.S. Department of Agriculture – Natural Resources Conservation Service; Texas State Soil Water Conservation Board; Texas Water Development Board; Texas Department of Agriculture.

repair needs. Based on recommendations made by a TSSWCB stakeholder group, the agency established two separate programs for purposes of administering these funds. A total of $48.6 million in General Revenue Funds has been appropriated since the two program's inception, including $14.8 million in the 2016–17 biennium. As of January 2016, $29.1 million had been expended.

STRUCTURAL REPAIR GRANT PROGRAM

The Structural Repair Grant Program administered by TSSWCB provides grants to watershed sponsors to assist in funding certain repair projects. According to TSSWCB rules, each structural repair grant must be matched by 5.0 percent in non-state funding provided by the sponsor. However, watershed sponsors that do not have a taxing entity as a cosponsor are exempted from the matching requirement. The Structural Repair Grant Program also assists watershed sponsors in meeting the required local match for the Watershed Rehabilitation Program and the Emergency Watershed Protection Program, which are both administered by NRCS. According to TSSWCB rules, grants provide watershed sponsors 95.0 percent of the required local match; the remaining amount is provided by the watershed sponsor. In certain instances, TSSWCB may issue watershed sponsors a grant that covers 100 percent of the required local match for the federal grants. The Structural Repair Grant Program provided a total of $14.7 million in matching funds for this purpose in fiscal years 2014 and 2015.

OPERATION AND MAINTENANCE GRANT PROGRAM

The Operation and Maintenance Grant Program issues grants to watershed sponsors for NRCS dam operation and maintenance needs. According to TSSWCB rules, each grant must be matched by non-state funds from the watershed sponsor. A 10.0 percent match is required for operation and maintenance grants. However, watershed sponsors that do not have a taxing entity as a cosponsor are exempted from the local match requirement.

Since the inception of the Structural Repair Grant Program and the Operation and Maintenance Grant Program in fiscal year 2010, TSSWCB has issued $13.7 million in repair grants, and $8.4 million in operation and maintenance grants. **Figure 7** shows an overview of grants issued under each program from fiscal years 2010 to 2016.

TRANSFER AND EXPAND THE FLOOD CONTROL PROGRAMS

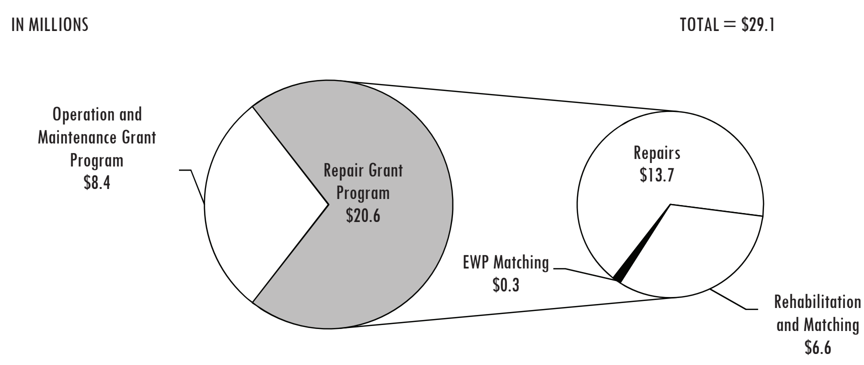
As of January 2016, funding provided by the Flood Control Programs at TSSWCB has assisted 1,841 NRCS dams with operation and maintenance needs, 20 dams with repair needs, 7 dams with rehabilitation needs, and 7 dams with damages caused by natural disasters. However, because of the programs' eligibility criteria, which are set by TSSWCB's administrative rules, only NRCS constructed dams benefit from the programs. Additionally, there are no similar programs offered by the state or the federal government to assist non-NRCS constructed dams—thereby leaving 71.7 percent (5,172) of the state's dams ineligible for funding from the programs. This includes approximately 491 of the dams TCEQ has identified as needing immediate repair and rehabilitation, which is estimated to cost $1.6 billion. Expanding the program to include all of the state's dams would help ensure the state allocates assistance to the dams that have been identified as most in need of repair or rehabilitation.

However, expanding the eligibility criteria of the flood control programs while they remain under the administration of TSSWCB would provide an ineffective and inefficient structure. The mission of the TSSWCB is to work in conjunction with local soil and water conservation districts to encourage wise and productive use of natural resources, and the expansion of the program's eligibility criteria would require TSSWCB to work with entities outside their scope of statutory responsibilities. TCEQ has existing responsibilities related to these entities and transferring the flood control programs to TCEQ would align with the agency's current statutory responsibility to administer the state's Dam Safety Program.

Option 4, would amend the Texas Water Code, Chapter 12, Subchapter C, to transfer the flood control programs from TSSWCB to TCEQ and expand the programs' eligibility criteria to include all dams that are statutorily regulated by TCEQ and listed in the Texas Dam Inventory. This option would also include a contingency rider in the 2018–19 General Appropriations Bill to require TSSWCB to enter into a Memorandum of Understanding with TCEQ and transfer funds and full-time equivalent positions appropriated to TSSWCB for the administration of the flood control programs, contingent on the enactment of this legislation.

Transferring the flood control programs from TSSWCB to TCEQ would place the Texas Dam Inventory and available funding for dam maintenance, repairs, and rehabilitation at one location. With this change, 900 additional dams would become eligible for maintenance, repair, and rehabilitation funding. Grants provided to eligible dams would still be awarded based on a reimbursable basis.

FIGURE 7
TOTAL STATE GRANTS ISSUED BY FLOOD CONTROL PROGRAM, FISCAL YEARS 2010 TO 2016



NOTES:
(1) Amounts may not sum due to rounding.
(2) EWP = Emergency Watershed Protection Program matching funds.
SOURCE: Texas State Soil and Water Conservation Board.

FISCAL IMPACT OF THE OPTIONS

Options 1 and 3 would result in an estimated net revenue gain of $3.0 million in General Revenue–Dedicated Funds for the 2018–19 biennium; Options 2 and 4 would result in no net fiscal impact.

Opton 1 would authorize TCEQ to conduct on-site inspections and dam safety assessments of all significant hazard dams that pose a risk to public safety or available water supplies. This option would add an additional 211 dams to TCEQ's five-year dam inspection cycle, resulting in approximately 42 additional dams inspected each fiscal year. According to TCEQ, the average cost to perform one dam inspection in fiscal year 2017 is estimated to be $4,407. Assuming the cost of inspections remains unchanged, the increase in inspections could result in an additional cost of $185,094 each fiscal year. This cost would be offset by the revenue collected as authorized by Option 3.

Option 2 would require TCEQ to collect and use existing information submitted to the agency on developments occurring downstream from dams. This option can be implemented using existing resources.

Option 3 would authorize TCEQ to collect a reasonable cost for conducting on-site inspections of dams. Assuming TCEQ performs approximately 336 dam inspections per fiscal year as reported by the agency, and assesses a fee on each inspection to recover their average total costs of $4,407 to perform the inspection; Option 3 would result in a revenue gain of $1.7 million each fiscal year to Account No. 153. An amount of $185,094 would be appropriated to the agency each fiscal year to cover the costs of Option 1. The Legislature could chose to appropriate the net gain of $1.5 million per fiscal year for a different purpose or TCEQ could adjust fees accordingly to reduce revenue collections. The five-year impact is shown in **Figure 8** and assumes the increased new fees and expenditure of additional revenue would continue into future biennia.

Option 4 would transfer the flood control grant program from TSSWCB to TCEQ for the purpose of issuing grants to finance projects related to the maintenance, repair, or rehabilitation of dams that are statutorily regulated by TCEQ and listed in the Texas Dam Inventory. No net fiscal impact to the state is anticipated as a result of this option as TSSWCB would be required to enter into a Memorandum of Understanding with TCEQ to transfer funds and full-time equivalent positions appropriated to TSSWCB for the administration of the flood control programs, estimated to be $6,984,430 in General Revenue Funds, $10,286,668 in Federal Watershed Rehabilitation Funds, and 5.0 FTEs in fiscal year 2018, and $6,984,430 in General Revenue Funds, $300,000 in Federal Watershed Rehabilitation Funds, and 5.0 FTEs in fiscal year 2019.

In September 2014, $13.0 million in federal funding was made available to TSSWCB for flood control dams. Based on Legislative Budget Board staff assessment of requirements relating to the federal funds, the transfer of the flood control programs from TSSWCB to TCEQ would have no impact on federal funding available to TSSWCB for flood control dams.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

FIGURE 8
FIVE-YEAR FISCAL IMPACT OF OPTIONS 1 AND 3, FISCAL YEARS 2018 TO 2022

FISCAL YEAR	PROBABLE SAVINGS/(COST) IN GENERAL REVENUE–DEDICATED FUNDS	PROBABLE REVENUE GAIN/(LOSS) IN GENERAL REVENUE–DEDICATED FUNDS
2018	($185,094)	$1,665,881
2019	($185,094)	$1,665,881
2020	($185,094)	$1,665,881
2021	($185,094)	$1,665,881
2022	($185,094)	$1,665,881

Source: Legislative Budget Board.

INCREASE TRANSPARENCY OF REVENUE SOURCES AVAILABLE TO THE TEXAS ANIMAL HEALTH COMMISSION

According to the Texas Department of Agriculture, the livestock industry generates more cash receipts than any other sector of Texas' agricultural economy with an estimated value of $16.6 billion in calendar year 2015. The Texas Animal Health Commission administers various programs that protect the livestock industry of Texas from disease threats. These programs are also intended to enhance the marketability of Texas livestock commodities at the state, national, and international levels.

The Texas Animal Health Commission is also granted statutory authority to assess fees in an effort to recover costs of administering a number of these programs. However, the agency has inconsistently assessed fees under its authorization. Requiring the agency to annually review all fees authorized under its authority and submit a report to the Legislative Budget Board and the Office of the Governor that compares actual revenue collections to fee authority would increase the transparency of revenue sources available to the Texas Animal Health Commission and ensure that the Legislature has this information available when making appropriations decisions.

FACTS AND FINDINGS

- Since fiscal year 2012, the Texas Animal Health Commission has instituted 318 quarantines for 11 different diseases. The agency estimated 199 of these quarantines resulted in a cost of $3.1 million in General Revenue Funds.
- During the 2014–15 biennium, the agency experienced a budget shortfall resulting from its efforts to address the nation's largest tuberculosis outbreak and implementation of a quarantine zone for cattle fever ticks in the Rio Grande Valley region.
- The Eighty-fourth Legislature approved supplemental appropriations of approximately $0.8 million in General Revenue Funds for fiscal year 2015 for disease response activities.
- The Texas Animal Health Commission's revenue collections decreased from fiscal years 2013 to 2015, although fee authority was expanded during this same period.

CONCERN

- The Texas Animal Health Commission is continuing to provide services to the livestock industry without collecting all authorized fees. Most inspections performed by the agency are funded by General Revenue Fund appropriations, although explicit fee collection authority exists in statute for all inspections.

OPTION

- **Option 1:** Include a rider in the 2018–19 General Appropriations Bill to require the Texas Animal Health Commission to annually review all fees the agency is authorized or required to assess and produce a report that lists all fees assessed, fee amounts, annual revenue collected for each fee, and where applicable, an explanation of why the agency elected not to assess fees as set forth in statute or administrative rule. The report would be submitted to the Legislative Budget Board and the Office of the Governor no later than November 1 of each year of the biennium.

DISCUSSION

The Texas Animal Health Commission (TAHC) was established in 1949 as the successor to the Livestock Sanitary Commission of Texas, which was established by the Legislature in 1893. The agency's mission is to protect and enhance the health of Texas' animal populations by preventing, controlling, and/or eliminating diseases; monitoring and diagnosing animal illnesses; responding to emergency situations involving animals; and promoting productivity and marketability of animal agriculture while minimizing risks to human health.

Activities paid for from the Eighty-fourth Legislature, General Appropriations Act (GAA), 2016–17 Biennium, Strategy A.1.1, Field Operations, constitute the primary workload of TAHC, including various methods to prevent, monitor, diagnose, control, and eradicate diseases within livestock herds and flocks. Eight field offices serve as a base of operations for inspectors and other agency personnel who perform their duties at auction sites, ranches, and other remote locations. Within this strategy, the agency performs the following duties:

- inspections at concentration points such as livestock auctions and slaughterhouses;
- inspects, tests, and quarantines infected herds and flocks;
- inspects livestock shipments;
- issues movement permits and monitors livestock movements;
- maintains databases containing animal, herd, and premises information;
- serves as a resource on disease and management problems for the livestock and poultry industries;
- registers certain poultry sellers, distributors, and transporters; and
- depopulates certain infected herds and flocks when necessary.

TAHC allocates a portion of its field operations budget toward programs related to specific species, diseases, or parasites. **Figure 1** shows the biennial funding amounts specified for certain diseases and species programs within the field operations strategy.

Cattle tuberculosis, chronic wasting disease, and cattle fever ticks have posed a challenge for TAHC during the 2016–17 biennium. The United States Department of Agriculture (USDA) has designated Texas as the state most at risk for contracting Foot and Mouth Disease. TAHC has also increased its preparedness efforts for any incursions of Highly Pathogenic Avian Influenza (HPAI) that may directly affect the Texas poultry industry. According to TAHC, HPAI devastated poultry producers across the country during the winter and spring of 2015. This outbreak was deemed the worst animal disease epidemic in U.S. history infecting more than 48.8 million birds in 21 states.

PROVIDE OVERSIGHT OF TEXAS ANIMAL HEALTH COMMISSION FEES AND COLLECTIONS

As provided by statute, TAHC is authorized to assess a fee for any inspections made by the agency and for the administration of certain programs. Currently, TAHC assesses fees to recover costs of providing inspections to the farmed and captive cervid industry, and to recover the costs of administering certain programs within the field operations strategy, such as Cattle Health and Poultry Registration.

The Eighty-second Legislature, Regular Session, 2011, expanded TAHC's fee authority to collect fees for a service for which the agency incurred a cost, and to bring TAHC's budget in line with similar regulatory agencies across the state. The Eighty-second Legislature also made 57.5 full-time-equivalent (FTE) positions and $9.9 million (out of $22.3 million) in appropriations contingent on collecting additional fee revenues. Despite expanding the agency's fee authority, actual agency fee revenue collections for the 2012–13 biennium totaled $0.5 million, which resulted in a reduction of $9.4 million in General Revenue Funds and 57.5 FTE positions for the agency's 2012–13 biennial budget.

The expanded fee authority granted to TAHC has since expired and the Legislature reduced appropriations contingent on fee revenue collections for TAHC by $0.4 million for the 2016–17 biennium. **Figure 2** shows the fees assessed by TAHC, actual revenue collections for the 2014–15 biennium, and estimated collections for the 2016–17 biennium.

TAHC has expressed concerns about the negative impact of cost recovery mechanisms on animal disease surveillance programs. TAHC has not approved fee proposals in the past, and the agency is providing services without assessing fees that they have the authority to collect. TAHC does not collect fees for several programs that have explicit authority to assess fees in statutes or administrative code. TAHC has also assessed fees at rates lower than those set forth in the Texas Administrative Code. **Figure 3** shows the fees the agency is not collecting but has authority to collect.

During the 2014–15 biennium, TAHC expended a total of $1.0 million in General Revenue Funds to administer inspections on the livestock industry. TAHC performs a total of 15 different inspections, but only collects fees for two, which recovered 11.7 percent of the total costs for all inspection related programs during the 2014–15 biennium.

Option 1 would include a rider in the 2018–19 General Appropriations Bill to require TAHC to annually review all fees the agency is authorized or required to assess and produce a report that lists all fees assessed, fee amounts, annual revenue collected for each fee, and where applicable, an explanation why the agency elected not to assess fees as set forth in statute or administrative rule. The report would be submitted to the Legislative Budget Board and the Office of the Governor no later than November 1 of each year of the biennium. TAHC would be required to list the amount of

FIGURE 1
FIELD OPERATIONS PROGRAM DESCRIPTIONS AND FUNDING BY SPECIES, 2016–17 BIENNIUM

SPECIES	PROGRAM	DESCRIPTION	2016–17 APPROPRIATIONS
Avian	Avian Influenza/ Avian Health	Provide increased surveillance, monitor and identify poultry populations at greatest risk of infection, biosecurity enforcement and record audits to support the avian influenza control program.	$424,188
	Infectious Laryngoracheitis (ILT)	Monitor and respond to outbreaks of infectious laryngoracheitis through surveillance, testing, promotion of biosecurity, and identification of poultry populations at greatest risk of infection.	$90,000
	Poultry/ Fowl Registration Program	A registration program for fowl sellers, distributors and transporters who do not participate in recognized poultry or fowl disease surveillance.	$220,000
		Avian Total	**$734,188**
Cattle	Cattle Fever Tick	Cattle fever tick prevention, control, and eradication activities, including livestock inspections and monitoring carriers such as deer and other wild animals.	$531,000
	Cattle Health	Testing to facilitate rapid detection and response to disease outbreaks and providing timely and accurate information. Programs to prevent, control, and eradicate multiple bovine diseases, including brucellosis and tuberculosis.	$3,338,120
	Johne's Disease	Education of livestock producers about the disease and how to prevent its introduction or control and eliminate the disease from their herds.	$1,000
	Trichomoniasis	Development and implementation of regulations to prevent the introduction and spread of trichomoniasis.	$770,000
		Cattle Total	**$4,640,120**
Swine	Swine Health	Surveillance of swine, garbage feeding operations, and rapid detection and response to various swine diseases through testing.	$1,628,328
		Swine Total	**$1,628,328**
Other	Chronic Wasting Disease (CWD)	Surveillance of captive deer to reduce risk of introduction of CWD and provide early disease detection.	$400,000
	Equine, Cervids, and Small Ruminants	Rapid detection and response to disease outbreaks in horses, sheep, goats, and captive deer.	$811,970
	Foreign Animal Disease	Plan, prepare for, and provide surveillance to lower risk of introduction and provide early detection of a foreign animal disease.	$265,000
	Zoonotic Diseases	Development of a network and printed guides for linkage of state-level animal health authorities, human health authorities, and federal health authorities in cases of zoonotic disease in either the human or animal population of Texas.	$31,492
		Other Total	**$1,508,462**
Total for Species Programs within Field Operations, in All Funds			**$8,511,098**

NOTE: Total refers to certain disease and species programs within the field operations strategy, and does not reflect the total appropriation made for the field operations strategy in the 2016–17 biennium.
SOURCE: Legislative Budget Board.

revenue collected in the prior fiscal year for each authorized fee; including fees authorized in statute or administrative rule that the agency chooses not to collect. The agency would also be required to provide a justification for why it elected to not charge fees authorized but not collected, which would allow for the comparison of actual revenue collections to fee authority granted to the agency and ensure that the Legislature has this information available when making appropriations decisions.

ECONOMIC IMPACT OF ANIMAL AGRICULTURE

According to the Texas Department of Agriculture's most recent Texas Ag statistics, animal agriculture generates more cash receipts than any other sector of Texas' agricultural

FIGURE 2
TEXAS ANIMAL HEALTH COMMISSION FEES 2014–15 AND 2016–17 BIENNIA

FEE	ACTUAL 2014–15	ESTIMATED 2016–17
Health Certificate	$878,518	$922,000
Chronic Wasting Disease (1)	$12,400	$10,000
Herd Certification (2)	$46,350	$0
Laboratory Testing Fee – In State (2)	$357,520	$0
Laboratory Testing Fee – Out of State (2)	$1,729	$0
Fowl Registration Fees	$107,010	$102,000
Total Collected	**$1,403,527**	**$1,034,000**

NOTES:
(1) Fees collected in the 2016–17 biennium from chronic wasting disease inspections are amounts estimated to be greater than the Texas Comptroller of Public Accounts' 2016–17 Biennial Revenue Estimate.
(2) Authority to collect fees expired in fiscal year 2015.
SOURCE: Texas Animal Health Commission.

economy. The state also led the nation in cash receipts generated by animal agriculture and animal products in calendar year 2015. **Figure 4** shows the cash receipts generated by the state's animal agriculture and products in calendar year 2015 as reported by USDA.

RECENT DISEASE OUTBREAKS

According to the State's Animal Disease Preparedness and Response Plan, a disease outbreak is defined as occurrences of disease cases that are in excess of what is normally expected in a given population. TAHC is designated in statute as the agency responsible for eradicating or controlling any disease or agent of transmission that affects livestock or fowl in the state. TAHC completes this task by issuing quarantines and performing epidemiological investigations that can include additional diagnostic sampling of infected and linked animals.

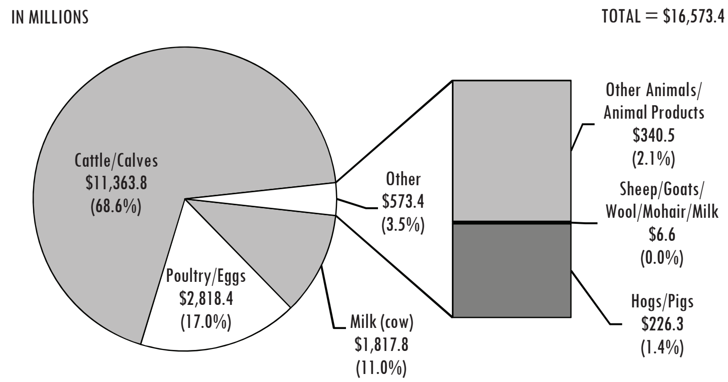
During the 2014–15 biennium Texas experienced four significant disease outbreaks that were detrimental to the livestock industry. **Figure 5** shows a timeline of all outbreaks that occurred from fiscal years 2014 to 2016. Two specific outbreaks resulted in the Eighty-fourth Legislature, 2015, approving supplemental appropriations to TAHC totaling $0.8 million. Supplemental appropriations funded TAHC's efforts in instituting a temporary quarantine zone in response to the spread of cattle fever tick in South Texas and combatting the largest tuberculosis outbreak in U.S. history.

FIGURE 3
FEES NOT COLLECTED BY TEXAS ANIMAL HEALTH COMMISSION, AS OF FISCAL YEAR 2016

FEE	AUTHORITY	AUTHORIZED AMOUNT
Brucellosis Control	Texas Agriculture Code, Section 163.003	Determined by Commission
Waste Food Feeder Inspections	Texas Agriculture Code, Section 165.026(c)	Up to $25/year
Inspection of Foreign Cattle	Tittle 4, Texas Administrative Code, Part 2, Rule 33.3	$1.00/animal
Feedlot Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Slaughter Plant Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Livestock Market Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
EIA Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
M-Branded Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Live Bird Market Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Feral Swine Holding Facilities	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Feral Swine Hunting Preserve Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Piro Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Tick Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Livestock Shipment Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Slaughter Plan Inspections	Texas Agriculture Code, Section 161.060(a)	Determined by Commission
Dairy Calf Health and Inspection Report	Texas Agriculture Code, Section 161.060(a)	Determined by Commission

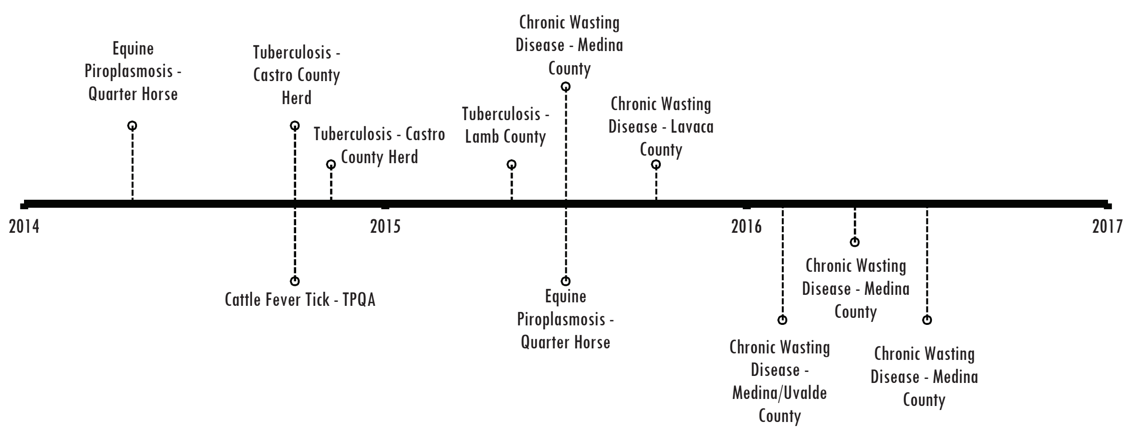
NOTE: Texas Animal Health Commission does not collect fees for the inspection of foreign cattle due to conflicts with federal law.
SOURCE: Legislative Budget Board.

FIGURE 4
CASH RECEIPTS GENERATED BY TEXAS ANIMALS AND PRODUCTS, CALENDAR YEAR 2015



SOURCE: United States Department of Agriculture, Economic Research Service.

FIGURE 5
TIMELINE OF SIGNIFICANT DISEASE OUTBREAKS ADDRESSED BY THE TEXAS ANIMAL HEALTH COMMISSION FISCAL YEARS 2014 TO 2016



NOTE: Figure only displays disease outbreaks, and not all disease cases.
SOURCE: Legislative Budget Board.

As shown in **Figure 5**, four different diseases have affected the livestock industry since fiscal year 2014. **Figure 6** shows the total cost TAHC incurred during the 2014–15 biennium for selected disease outbreak quarantines.

BOVINE PIROPLASMOSIS

Cattle fever ticks are agricultural pests capable of carrying bovine piroplasmosis, which reduces animal productivity by destroying red blood cells, causing acute anemia, high fever, and enlargement of the spleen and liver. In October 2014, TAHC confirmed the presence of cattle fever ticks on six premises located outside the permanent quarantine zone established on the Texas-Mexico border. TAHC responded by instituting a temporary preventative quarantine area (TPQA), consisting of approximately 223,000 acres, to control and prevent the spread of fever ticks to other areas of the state. Due to increasing costs associated with instituting the TPQA, the Eighty-fourth Legislature, 2015, approved supplemental appropriations for TAHC totaling $0.6 million. Additionally, federal funding was provided from USDA. **Figure 6** shows the total cost associated with the TPQA in fiscal year 2015. TAHC expects that financial and staff resources to contain infestations will be required through fiscal year 2021.

FIGURE 6
TEXAS ANIMAL HEALTH COMMISSION'S EXPENDITURES FOR DISEASE QUARANTINES, 2014–15 BIENNIUM

DISEASE	OBJECT OF EXPENSE	EXPENDED
Cattle Fever Tick	Salaries	$565,464
	Travel	$388,828
	Utilities/Phones	$241
	Equipment	$167,970
	Materials/Supplies/Operating Expenses	$98,484
	Cattle Fever Tick Total	**$1,220,987**
Tuberculosis	Salaries	$365,720
	Travel	$126,125
	Rents/Leases	$625
	Utilities/Phones	$623
	Equipment	$4,162
	Materials/Supplies/Operating Expenses	$69,144
	Tuberculosis Total	**$557,089**
Chronic Wasting Disease	Salaries	$108,601
	Travel	$6,190
	Lab Testing	$11,680
	Chronic Wasting Disease Total	**$126,471**
Equine Piroplasmosis	Salaries	$153,253
	Travel	$29,375
	Materials/Supplies/Operating Expenses	$1,306
	Equine Piroplasmosis Total	**$183,934**
Disease Response (All Funds) Total		**$2,088,481**

Notes:
(1) Method of finance includes both General Revenue Funds and Federal Funds.
(2) Equine Piroplasmosis includes expenditures for the 2014–15 biennium. All other diseases only include expenditures for fiscal year 2015.
Source: Texas Animal Health Commission.

CATTLE TUBERCULOSIS

Cattle tuberculosis (TB) is a chronic debilitating disease that primarily affects the respiratory system of the animal causing progressive weight loss, chronic cough, and unexplained death. During fiscal year 2015, TAHC discovered two TB infestations located in the Texas Panhandle, which the agency deemed as the largest cattle TB outbreak in U.S. history. To assist the agency in addressing the infestations, the Eighty-fourth Legislature, 2015, approved $0.2 million in supplemental appropriations to TAHC for fiscal year 2015. **Figure 6** shows amounts expended by TAHC to combat TB in fiscal year 2015. As of August 2016, three quarantines remain active.

CHRONIC WASTING DISEASE

Chronic Wasting Disease (CWD) is a progressive fatal neurological disease that affects cervids, such as deer, elk, and moose. In June 2015, CWD was detected in a captive white-tailed deer located at a Medina County deer breeding facility. According to TAHC, this incident marked the first time CWD had been detected in the Texas captive deer population. In fiscal year 2015, TAHC expended approximately $0.3 million on CWD efforts, and almost half of the expenses were spent on Medina County. **Figure 6** shows expenditures made for Medina County. TAHC is working cooperatively with the Texas Parks and Wildlife Department and USDA to control and potentially eradicate CWD in Texas. As of August 2016, there were seven premises under quarantine.

EQUINE PIROPLASMOSIS

Equine piroplasmosis is a disease that affects horses, donkeys, mules, and zebras. The disease can be spread by ticks or by any transfer of blood. This disease is considered a foreign animal disease by USDA, but it was detected in Texas in 2009. As a result of detecting piroplasmosis, TAHC implemented rules that authorized the agency to issue orders to classify an area or county as high risk for equine piroplasmosis. These orders were ultimately imposed on several counties in South Texas from fiscal years 2012 to 2015, which resulted in 46 quarantines at a cost of $0.4 million in General Revenue Funds. **Figure 6** shows the total cost the agency incurred during the 2014–15 biennium for piroplasmosis quarantines. TAHC projects piroplasmosis will continue to pose a threat to the state's equine industry due to the disease being prevalent in the Mexican horse population.

ANIMAL DISEASE RESPONSE FUNDING SOURCES

Funding for disease response is provided by some industry trade associations and both the federal and state government. Most funding from these sources assists with disease control strategies such as disease investigations, quarantines, and indemnity payments.

INDUSTRY ASSOCIATIONS

Certain industry associations, such as the Texas Poultry Federation, offer indemnity payments under certain circumstances to members whose flocks or herds are depopulated in response to a disease outbreak. Industry associations also assist TAHC with establishing cost tracking procedures and capturing animal disease outbreak-related costs and losses for reimbursement requests.

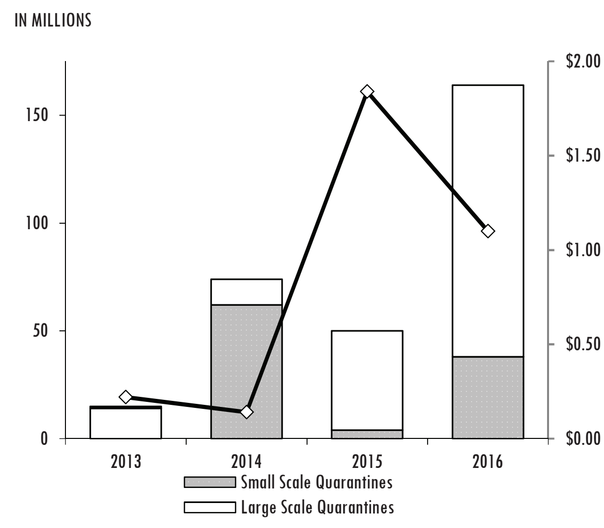
FEDERAL FUNDS

Federal funding and assistance for animal disease response is available through the USDA and other federal agencies. USDA's Animal and Plant Health Inspection Services (APHIS) – Veterinary Services (VS) provides the majority of federal assistance and funding for disease response in Texas. USDA-APHIS-VS assists TAHC by providing personnel and equipment for animal disease outbreak investigations. USDA-APHIS-VS also provides reimbursement payments to TAHC for certain disease outbreak-related costs and losses. Indemnity payments to owners whose herds were depopulated in response to an animal disease outbreak are also made by USDA-APHIS-VS. Since fiscal year 2015, TAHC has received a total of $0.5 million in funding assistance from USDA-APHIS-VS for disease response.

STATE FUNDS

Previous legislatures have appropriated General Revenue Funds to TAHC for most animal disease response activities, which are allocated to its field operations strategy within the GAA. In fiscal year 2013, the agency expended $0.2 million on disease response activities. For the past two biennia, the amount of General Revenue Funds expended by TAHC on disease response activities has increased, which is a trend the agency expects will continue into future biennia. This increase is shown in **Figure 7**. During high volumes of disease outbreaks, the agency uses additional appropriations that would have otherwise been expended on animal health assurance and management programs within the field operations strategy. Supplemental appropriations have also been provided to the agency to assist during high volumes of disease outbreaks. During the 2014–15 biennium, the agency submitted a supplemental appropriations request of $1.1 million for fiscal year 2015 to assist with expenditures related to combating a TB outbreak and maintaining the temporary quarantine zone in Cameron County. The Eighty-fourth Legislature, 2015, did not approve the fully requested amount, but provided $0.8 million in General Revenue Funds as supplemental appropriations to TAHC. The agency

FIGURE 7
DISEASE RESPONSE EXPENDITURES AND QUARANTINES FISCAL YEARS 2013 TO 2016



NOTES:
(1) Disease response expenditures only include General Revenue Funds.
(2) The Texas Animal Health Commission received $0.8 million in supplemental appropriations during fiscal year 2015.
SOURCE: Texas Animal Health Commission.

is also authorized to assess fees to offset the cost of certain animal health programs. However, revenue collections for the 2016–17 biennium are expected to decrease by 26 percent, due to the expiration of statutory authority authorizing the agency to assess certain fees.

FISCAL IMPACT OF THE OPTION

Option 1 would not have a fiscal impact. It is anticipated that Option 1 could be implemented within existing agency resources.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of this option.

PROVIDE STATE FUNDING FOR SEAPORT CAPITAL IMPROVEMENTS

Texas has more than 367 miles of coastline that provide economic opportunities via the movement of waterborne commerce and trade. Much of this commerce and trade depends on the state's seaports. Texas ranks second nationwide for waterborne tonnage and moved more than 506.0 million tons in 2014. Seaports facilitate the movement of cargo statewide, including importing consumer goods and exporting Texas products. According to the Texas Ports Association, Texas seaports generated an estimated $277.0 billion in economic value and more than $6.5 billion tax revenue in 2011. Nearly 1.4 million jobs in Texas are related to cargo moving through Texas' marine terminals.

Although Texas' public seaports have been established through the state legislative process, seaports have not received state funding for infrastructure. Seaports are self-sustaining and generate revenue through fees, taxes, and bonds, with the exception of federal funding targeted for channel dredging or homeland security. The demand for new infrastructure has outpaced the seaports' ability to finance and construct projects in a timely manner. State funding provided to seaports as either grants or loans would enable ports to better address capital needs and continue to remain economically competitive.

FACTS AND FINDINGS

- Seaport revenues are typically generated through fees charged for handling cargo and berthing ships, their authority to levy taxes within their designated special districts, and bond initiatives.
- The 2016 opening of the Panama Canal expansion could increase opportunities to export natural gas and the number of containers arriving and departing from Texas seaports.
- In fiscal year 2001, the Texas Legislature passed legislation to establish the Port Access Account Fund to be used for eligible port security and facility projects. However, this fund was not capitalized and, due to the enactment of the fund consolidation bill, was abolished.
- The Eighty-fourth Legislature, 2015, appropriated $20.0 million from the Texas Mobility Fund (Other Funds) to provide funding for port capital improvement projects. After this legislative session ended, it was determined that the Texas Mobility Fund was eligible to provide funding for public transportation projects surrounding or connecting to a seaport, but not for projects within the gates of a seaport.

CONCERNS

- A Legislative Budget Board staff survey of Texas seaports found that while most seaports are leveraging available financing options, they have additional funding needs for capital improvement projects and maintaining channel depths.
- According to the Texas Department of Transportation, seaport infrastructure and channels are in need of maintenance, improvements, and expansion to help maintain the economic competitiveness of Texas seaports and take full advantage of the potential economic benefits of the Panama Canal expansion.
- Seaport projects require initial costs for preliminary studies and environmental permits to be considered viable projects. Smaller seaports do not always have the resources to pay for these costs, which may prevent them from applying for project funding.

OPTIONS

- **Option 1:** Adopt one or more of the following strategies to establish either a grant or loan program to provide funding for certain eligible seaport infrastructure projects:
  - **Strategy 1:** Amend statute to establish a port capital project grant program at the Texas Department of Transportation to provide funding for port projects. Include a contingency rider in the 2018–19 General Appropriations Bill to appropriate $25.0 million in General Revenue Funds to the Texas Department of Transportation to implement the grant program.
  - **Strategy 2:** Amend statute to establish a port capital project grant program at the Texas Department of Transportation to provide grant funding for port projects. Amend the Texas Constitution to authorize the Texas Department

of Transportation to issue General Obligation bonds or notes issued by the State of Texas in an aggregate amount not to exceed $100.0 million to implement the grant program. Include a contingency rider in the 2018–19 General Appropriations Bill to appropriate bond proceeds to the Texas Department of Transportation to provide grants for seaport projects.

- ◦ **Strategy 3:** Include a rider within the bill pattern for Trusteed Programs within the Office of the Governor in the 2018–19 General Appropriations Bill to direct $25.0 million out of appropriations from the General Revenue–Dedicated Account No. 5107, Texas Enterprise Fund, to be used to provide grant funding for seaport projects.
- ◦ **Strategy 4:** Amend the Texas Constitution to authorize money from the Texas Mobility Fund to provide grant funding for port projects. Include a contingency rider in the 2018–19 General Appropriations Bill to allocate $25.0 million appropriated in Other Funds, Texas Mobility Fund, to the Texas Department of Transportation to provide grant funding for seaport projects.
- ◦ **Strategy 5:** Amend statute to establish a port capital project revolving loan program at the Texas Department of Transportation to provide loans for port projects. Include a contingency rider in the 2018–19 General Appropriations Bill to appropriate $25.0 million in General Revenue Funds to the Texas Department of Transportation to implement the loan program.
- ◦ **Strategy 6:** Amend statute to establish a port capital project revolving loan program at the Texas Department of Transportation to provide loans for port projects. Amend the Texas Constitution to authorize the Texas Department of Transportation to issue General Obligation bonds or notes issued by the State of Texas in an aggregate amount not to exceed $100.0 million to implement the loan program. Include a contingency rider in the 2018–19 General Appropriations Bill to appropriate bond proceeds to the Texas Department of Transportation to provide loans for seaport projects.

- ♦ **Option 2:** Amend statute to establish a seaport preliminary studies grant program at the Texas Department of Transportation to provide grant funding for preliminary studies or permits that may be required to receive funding for seaport projects.
- ♦ **Option 3:** Amend statute to expand the allowable uses of the General Revenue–Dedicated Account No. 5003, Hotel Occupancy Tax for Economic Development, to include funding of the seaport preliminary studies grant program. Include a contingency rider in the 2018–19 General Appropriations Bill to appropriate $1.0 million in General Revenue–Dedicated Funds to the Texas Department of Transportation to implement the seaport preliminary studies grant program.

DISCUSSION

A seaport is the point at which coastal transportation and land transportation systems meet. Seaports are surrounded by a harbor and have one or more docks for moving goods and people via ships. Harbors include improved navigation channels with underwater clearance for ships to maneuver. According to the Port Authority Advisory Committee (PAAC), Texas has 11 deep draft public seaports, more than nine shallow draft public seaports, and numerous private seaport facilities. Although Texas' public seaports have been established through the state legislative process, seaports have not received direct funding from the state for port infrastructure. Most seaports have typically been self-sustaining with the exception of federal funding that is targeted to channel dredging or to homeland security purposes. For more details, see the Legislative Budget Board staff publication, *Texas State Government Effectiveness and Efficiency Report*, Overview of Texas Seaports, 2013.

Cargo moved via Texas' seaports includes items such as agricultural products grown in Texas and exported abroad, industrial machinery imported into and exported out of the state, automobiles and goods for retailers that are imported and distributed nationwide, and seafood processed through the ports and transported to inland consumers. According to a 2011 study commissioned by the Texas Ports Association, this cargo movement provides nearly 1.4 million jobs in Texas and generated an estimated $277.0 billion in economic value and more than $6.5 billion in tax revenue in 2011.

SEAPORT REVENUE SOURCES

Seaport operations vary and, therefore, so do their operating revenues and expenses. Operating revenues are derived from a variety of fees and tariffs that the seaports charge users.

Examples of these include wharfage, dockage, security, storage, or freight handling fees; building, equipment, or land rentals; conference center or warehouse services; user fees for foreign-trade zones; and other services. Operating expenses typically consist of maintenance and operations activities, general and administrative services, and depreciation. All revenues and expenses that do not meet this definition are typically reported in a seaport's comprehensive annual financial report as nonoperating revenues and expenses. Examples of these include revenues and expenses related to tax collections, bond revenue, financing and investing activities, and ancillary activities.

In fiscal year 2016, LBB staff surveyed 18 Texas seaports. Of the 10 seaports that responded, the Port of Houston had the largest total operating and nonoperating revenues ($351.2 million during the port's fiscal year 2015). The Port of Houston's total operating and nonoperating expenses during fiscal year 2015 were $265.9 million. The Port of Port Isabel had the lowest total operating and nonoperating revenues. In fiscal year 2015, total revenues for the Port of Port Isabel were $867,679, and total expenses were $863,994. **Figure 1** shows the operating and nonoperating revenues and expenses for the 10 responding seaports in fiscal year 2015.

Another revenue source for some seaports is taxes and bonds. Although most seaports have statutory authority to levy tax, not all of them exercise that authority. Of the 10 responding seaports, the specified reasons for not exercising that authority were the lack of necessary local voter support and not wanting to place a tax burden on local citizens. Nine of the responding seaports carry bond debt ranging from $14.3 million to $717.6 million in General Obligation and revenue bonds. Each seaport's bond or debt capacity is based on factors such as current debt or outstanding bonds, revenue, the size of their tax base, and local economic conditions. Some seaports indicated that they are at their bonding capacities or do not consider bonding as a viable, repeatable source for a long-term capital improvement plan. **Figure 2** shows tax revenue and bonds outstanding for the 10 responding seaports in fiscal year 2015.

FUNDING CHALLENGES

In fiscal year 2001, the Texas Legislature passed legislation to establish the Port Access Account Fund as a General Revenue–Dedicated Account that could be used to fund eligible port security and facility projects. The legislation defined these eligible projects in the Texas Transportation Code, Chapter 55. However, this fund was not capitalized and, due to the enactment of the Seventy-seventh Legislature's, 2001, fund consolidation bill, the fund was abolished. The 10 seaports responding to the LBB survey all identified unique funding challenges with varying impacts. The funding challenges identified result from factors such as the size of the seaport, the amount of revenue, the seaport's

FIGURE 1
SEAPORT REVENUES AND EXPENSES, FISCAL YEAR 2015

(IN MILLIONS)	OPERATING		NONOPERATING	
SEAPORT (COMMON NAME)	REVENUES	EXPENSES	REVENUES	EXPENSES
Port of Beaumont	$15.1	$18.7	$7.5	$1.2
Port of Brownsville	$19.7	$10.0	$3.5	$0.7
Calhoun Port Authority	$2.7	$7.8	$8.6	$0.07
Port of Corpus Christi	$93.4	$54.8	$0.7	$12.0
Port of Freeport	$18.6	$15.7	$4.9	$2.8
Port of Galveston	$33.0	$30.1	$0.2	$2.3
Port of Houston	$293.7	$225.9	$57.4	$39.9
Port of Port Arthur	$7.3	$10.6	$14.9	$1.5
Port of Port Isabel	$0.9	$0.8	$0.002	$0.03
Port of Victoria	$5.9	$9.4	(1)	(1)

NOTES:
(1) The Port of Victoria did not differentiate between operating and nonoperating revenues and expenses.
(2) Amounts shown are from the end of each seaport's fiscal year 2015 (June 30, 2015, for Calhoun; July 31, 2015, for Port Arthur; August 31, 2015, for Beaumont; September 30, 2015, for Freeport; and December 31, 2015, for all other seaports).
(3) The Port Isabel nonoperating revenues do not include the proceeds from a lawsuit.
SOURCES: Ports of Beaumont, Brownsville, Corpus Christi, Freeport, Galveston, Houston, Port Arthur, Port Isabel, and Victoria; Calhoun Port Authority.

FIGURE 2
SEAPORT TAX REVENUES AND BONDS OUTSTANDING
FISCAL YEAR 2015

(IN MILLIONS)

SEAPORT (COMMON NAME)	TAX REVENUE	BONDS OUTSTANDING
Port of Beaumont	$6.0	$24.8
Port of Brownsville	$3.1	$21.6
Calhoun Port Authority	$0.07	$32.4
Port of Corpus Christi	N/A	$115.0
Port of Freeport	$4.8	$73.4
Port of Galveston	N/A	$22.2
Port of Houston	$51.3	$717.6
Port of Port Arthur	$13.3	$26.6
Port of Port Isabel	N/A	$0.0
Port of Victoria	$1.7	$14.3

NOTES:
(1) Amounts shown are from the end of each seaport's fiscal year 2015 (June 30, 2015, for Calhoun; July 31, 2015, for Port Arthur; August 31, 2015, for Beaumont; September 30, 2015, for Freeport; and December 31, 2015, for all other seaports).
(2) Amount shown as outstanding bonds for Port of Victoria is for fiscal year 2014.
SOURCES: Ports of Beaumont, Brownsville, Corpus Christi, Freeport, Galveston, Houston, Port Arthur, Port Isabel, and Victoria; Calhoun Port Authority.

tax base, the seaport's existing infrastructure, and the seaport's planned dredging cycle. Two challenges common to all the responding seaports are the need for additional funding for capital infrastructure improvements and dredging to maintain or increase channel depths. Seaport operations are capital-intensive and require infrastructure investment. Seaports are required to build costly infrastructure to provide value for decades. As a result, planning is challenging and may require financial assistance for seaports to meet changing market demands.

According to the U.S. Army Corps of Engineers, Texas' total waterborne tonnage has increased since calendar year 2010. Seaports also reported increased operating revenues. This increasing activity at Texas' seaports is expected to continue to grow with the 2016 expansion of the Panama Canal. To address this increased activity, Texas seaports have been advancing their own capital improvement projects—more than $300.0 million since calendar year 2010—to satisfy existing customers' needs and to meet the needs of new tenants. According to PAAC, seaports compete for new tenants and enhanced business opportunities. All other Gulf Coast states have provided state funding for capital improvement projects to seaports competing with those in Texas. This funding is provided through general revenue, grants, low-interest loans, tax incentives, economic development funds, or transportation programs. The states' funding has been used to subsidize channel deepening and widening projects, dockside infrastructure, warehouses, cruise terminals, security enhancements, and intermodal transportation projects to reduce congestion. The Texas seaports that responded to the LBB staff survey indicate it is difficult to determine whether specific infrastructure was a consideration in a tenant moving to another seaport. However, these subsidized port enhancements may make non-Texas ports more attractive to shippers and potential tenants.

INFRASTRUCTURE IMPROVEMENTS

Shippers consider several factors other than cost, including seaport infrastructure, when determining where their ships will dock. The size of a ship may necessitate deep waterways or a large terminal. Adequate space must be available for handling and warehousing a product. Access to road and rail facilities and the capacity of each to transport goods out of the seaport can influence a shipper's decision on where to dock. Although the final destination of container traffic may fluctuate due to business and demand changes, some forms of cargo have fewer options. For instance, oil refineries have specialized storage and infrastructure needs. When these facilities are developed at a seaport, an oil refinery is less likely than shippers of less specialized cargo, such as containers, to use an alternative seaport.

Most of the seaports responding to the LBB staff survey reported growth in their business and cargo movements. The seaports indicated that they want to expand their infrastructures to meet the expanding needs of existing customers to aid port growth. For example, the Port of Victoria is a shallow draft barge seaport located halfway between the ports of Houston and Corpus Christi that serves petrochemical plants, oil companies, and other regional businesses. The port is seeking new roads, rail, container barge facilities, and docks as part of its expansion plans. According to the Port of Victoria, this new infrastructure would make it an ideal location for distribution of deep draft seaport cargo that is brought to the port via barge from ships that offload cargo in larger seaports for distribution. This improvement would not just affect the Port of Victoria, but it could also remove trucks from Texas highways, reduce traffic congestion, and improve air quality.

DREDGING BACKLOG

Maintaining water depth is essential for seaports to provide safe and predictable vessel navigation. Routine dredging is necessary to maintain and maximize the full capability of a waterway. Sustaining water depth enables vessels to be loaded to their full capacity and maintain efficiency, as any reduction in vessel draft has a direct effect on the shipper's cost. Depending on a variety of factors, including geographic location, weather, and water movement, shoaling occurs at different rates along the Texas coast. This shallowing of the coastline leads to Texas seaports requiring dredging at different intervals, ranging from annually to every 10 years or more.

Six seaports responding to the LBB staff survey indicated that their channels are not at their authorized depth. Channel projects are a federal responsibility, but they require a nonfederal sponsor to pay a portion of the cost of the project. The nonfederal sponsor's portion is usually from 35.0 percent to 50.0 percent of the cost of the project. Typically, a state agency or port authority arranges for the nonfederal portion. However, if two or more ports share a waterway, a separate nonfederal sponsoring entity may be established as the coordinator (e.g., the Sabine–Neches Navigation District, which coordinates on behalf of the ports of Beaumont, Orange, and Port Arthur).

According to the Texas Transportation Institute at Texas A&M University (TTI), 17 channel projects currently have congressional authorization in 11 states. Eight of these projects are currently being constructed. Five of the authorized channel projects are in Texas, four of which are awaiting appropriations from the U.S. Congress. The Port of Houston recently invested its own funds to deepen and widen the federal channels that serve its container terminals. According to the port authority, this action enabled the channels to be ready in a matter of a few years rather than pursuing the federal process that could require decades to complete. The four projects on hold are estimated to cost approximately $2.0 billion, of which TTI estimates at least $800.0 million must be borne by nonfederal interests.

STRATEGIES TO PROVIDE FUNDING FOR SEAPORT INFRASTRUCTURE PROJECTS

Option 1 would provide funding to Texas seaports to help address infrastructure and dredging needs using one or more of six strategies. These strategies would provide either grants or loans to seaports and would be capitalized with funding sources that are available for appropriation or from the issuance of bonds. Establishing a grant program would result in a cost to the state of Texas because grants would not require repayment. Establishing a loan program would also cost the state, but the cost could be recovered via debt payments. Payments could be used to pay off the state's debt or, as proposed in the strategies, reinvested through a revolving fund that would be used to support subsequent seaport capital projects. Alternatively, Option 1 includes a strategy to allocate funds for an existing grant program for eligible seaport projects that would result in no cost to the state.

Funding for a seaport project through any of the strategies presented in Option 1 should be distributed to seaports using the selection process that PAAC and the Texas Department of Transportation (TxDOT) already have in place for including seaport projects through the Texas Ports Capital Program. PAAC develops the program every two years based on a list of projects submitted by Texas' seaports. PAAC then reviews these projects using predetermined selection criteria and provides recommendations to the Texas Transportation Commission (TTC) for funding port projects. The PAAC committee consists of seven members representing seaports that are appointed by TTC. TxDOT assists PAAC in determining guidelines for the project requests and in reviewing the submitted projects. The following guidance was established for the development of the 2015–2016 Texas Ports Capital Program:

- the project must abide by the guidance in the Texas Transportation Code, Title 4, Chapter 55, Funding of Port Security, Projects and Studies;
- each port may submit one high-priority project with an estimated cost around $10.0 million;
- each project must undergo an economic, environmental, and engineer review;
- large ports (1.0 million or more tons of cargo per year) share 50.0 percent of the cost of the project with the state sharing 50.0 percent; and
- smaller ports (less than 1.0 million tons of cargo per year) share 75.0 percent of the cost of the project with the state sharing 25.0 percent.

The strategies for Option 1 would result in a cost ranging from $0.0 to $100.0 million for the 2018–19 biennium, depending upon which strategies were implemented. The amounts proposed in these strategies are based on previous funding requests from PAAC. Appropriating $25.0 million for port capital projects would represent about half of the amount of state funding requested in the 2015–2016 Texas

Ports Capital Program. The average state funding requested for the nine projects recommended in the program was $5.8 million. Appropriating $100.0 million would enable more projects to be completed. This amount represents almost double the amount of state funding requested in the 2015–2016 program and almost matches the $132.9 million requested in the 2017–2018 program. If the Legislature chooses to appropriate more or less than the amounts proposed in these strategies, the number of projects that could receive funding would be affected. The 2017–2018 Texas Ports Capital Program recommends 20 projects with a combined cost of $217.2 million, including matching funds.

PROVIDE GRANTS FOR SEAPORT CAPITAL PROJECTS

Strategies to implement a grant program would require amending the Texas Transportation Code, Chapter 55, to establish a port capital project grant program at TxDOT. The grant program would provide funding for a port security project, a port transportation project, or a project eligible for funding pursuant to the Texas Transportation Code, Section 55.002(c). TxDOT would be authorized by rule to develop policies and procedures to administer the grant program and should consider PAAC's recommendations for developing rules. Alternatively, efforts could be made to ensure that seaports are included in projects eligible for grants that are issued through the General Revenue–Dedicated Account No. 5107, Texas Enterprise Fund (Account 5107), or are able to receive grant funding through the Texas Mobility Fund (Other Funds) (TMF). Strategies 1 to 4 would each result in grant funding for seaport capital projects by appropriating or redirecting either General Revenue Funds, General Revenue–Dedicated Funds, Other Funds, or bond proceeds for this purpose.

Strategy 1 would include a contingency rider in the 2018–19 General Appropriations Bill to appropriate $25.0 million in General Revenue Funds to the Texas Department of Transportation to implement the port capital project grant program. General Revenue Funds may be appropriated for general-purpose spending by the Legislature and could be appropriated to help address seaports' capital funding needs.

Strategy 2 would amend the Texas Constitution to authorize TxDOT to issue General Obligation bonds or notes issued by the State of Texas in an aggregate amount not to exceed $100.0 million to implement a port capital project grant program at TxDOT. Strategy 2 would also include a contingency rider in the 2018–19 General Appropriations Bill to appropriate bond proceeds to TxDOT to provide grants for seaport projects. These bonds would count against the state's constitutional debt limit. At the end of fiscal year 2015, the Texas Bond Review Board estimated that almost $12.8 billion in additional debt capacity was available before reaching the constitutional debt limit.

Strategy 3 would include a rider in the bill pattern for Trusteed Programs within the Office of the Governor in the 2018–19 General Appropriations Bill to direct the Office of the Governor to allocate $25.0 million out of appropriations from Account 5107 to provide grants for port projects. These projects must be eligible for funding in the Texas Transportation Code, Section 55.002(c), and the Texas Government Code, Section 481.078. The rider would also direct the Office of the Governor to work with TxDOT and PAAC to award the funds.

Account 5107 was established as a General Revenue–Dedicated account in 2003 to help attract new jobs and investment to the state. More than $461.0 million has been disbursed from the account since fiscal year 2004 to attract new business to Texas and to assist with the expansion of existing business. For example, $2.3 million was provided from Account 5107 to a spaceport in Cameron County in 2014. The Texas Government Code, Section 481.078, authorizes Account 5107 to be used only for economic development, infrastructure development, community development, job training programs, and business incentives. The statute also establishes the eligibility criteria for an enterprise fund grant. Most seaport projects included in the Texas Ports Capital Program meet the eligibility criteria and are expected to generate jobs and an economic impact from construction activity and from operations activity upon completion. The net cash balance of Account 5107 was $193.0 million at the end of fiscal year 2015. The Office of the Governor has indicated it plans to expend the balance in fiscal year 2017 and requested approximately $107.9 million in General Revenue Funds and General Revenue–Dedicated Funds in its Legislative Appropriations Request for the 2018–19 biennium.

Strategy 4 would amend the Texas Constitution to authorize the Texas Mobility Fund to be used to provide grant funding for port security projects, port transportation projects, or projects eligible for funding pursuant to the Texas Transportation Code, Section 55.002(c). Strategy 4 would also include a contingency rider in the 2018–19 General Appropriations Bill to appropriate $25.0 million in Texas Mobility Funds to provide such funding. The TMF was established to provide financing for the construction, reconstruction, acquisition, and expansion of state highways. The TMF also serves to fund a portion of the costs of constructing and providing publicly owned toll roads and other public transportation projects. The Eighty-fourth Legislature, 2015, appropriated $20.0 million from the fund to provide funding for port capital improvement projects selected by PAAC and approved by TTC. After this legislative session ended, TTC determined that the TMF was eligible to provide funding for transportation projects surrounding or connecting to a seaport, but not for projects within the gates of a seaport. Amending the constitution to authorize the TMF to fund eligible seaport projects would ensure that these funds could be appropriated for port projects identified in the Texas Transportation Code, Chapter 55, including infrastructure and dredging projects.

PROVIDE LOANS FOR SEAPORT CAPITAL PROJECTS

Strategies to implement a loan program would require amending the Texas Transportation Code, Chapter 55, to establish a port capital project revolving loan program at TxDOT to provide loans for port security projects, port transportation projects, or projects eligible for funding pursuant to the Texas Transportation Code, Section 55.002(c). TxDOT would be authorized by rule to develop policies and procedures to administer the loan program. TxDOT should consider PAAC's recommendations for developing rules. TxDOT also would be required to enter into a written agreement with a seaport that is awarded a loan. The agreement must contain the terms and conditions of the loan, including the loan repayment requirements. Instituting a loan program would also occur at a cost to the state. The cost could be recovered through debt service payments from ports or, as proposed in the strategies, reinvested through a revolving fund that would be used to support subsequent seaport capital projects. If the Legislature chooses to implement a revolving fund, the Port Access Account Fund may be reestablished to receive associated revenue. The reestablished fund would need to be exempted from fund consolidation to avoid abolishment. Strategies 5 and 6 would result in funding to provide loans for seaport capital projects by appropriating either General Revenue Funds or bond proceeds for this purpose.

Strategy 5 would include a contingency rider in the 2018–19 General Appropriations Bill to appropriate $25.0 million in General Revenue Funds to the Texas Department of Transportation to implement a port capital project revolving loan program at TxDOT.

Strategy 6 would amend the Texas Constitution to authorize TxDOT to issue General Obligation bonds or notes issued by the State of Texas in an aggregate amount not to exceed $100.0 million to implement the revolving loan program. Strategy 6 would also include a contingency rider in the 2018–19 General Appropriations Bill to appropriate bond proceeds to TxDOT to provide loans for seaport projects. These bonds would count against the state's constitutional debt limit. At the end of fiscal year 2015, the Texas Bond Review Board estimated that almost $12.8 billion in additional debt capacity was available before reaching the constitutional debt limit.

ADDRESSING CONCERNS REGARDING PROJECT DEVELOPMENT RESOURCES

Seaport projects require upfront expenditures for federal and state required preliminary studies and environmental permits to be considered a viable project. Depending on the project, estimated costs range from $25,000 to nearly $500,000 for the required studies and permitting. Although some seaports have the resources to invest in such project development, these costs may impede seaports with limited resources from undertaking infrastructure projects. In addition, the timeline for completing these studies and obtaining permits, particularly environmental clearances, can be as long as three years depending on the project. It may be difficult for smaller seaports with limited staff to complete this process. As a result, these projects may not be developed. Options 2 and 3 together, would implement a seaport preliminary studies grant program to assist these seaports.

Option 2 would amend the Texas Transportation Code, Chapter 55, to establish a seaport preliminary studies grant program at TxDOT to provide grant funding for preliminary studies or permits for eligible seaport projects. TxDOT would be authorized by rule to develop policies and procedures to administer the grant program that consider PAAC's recommendations. The General Revenue–Dedicated Account No. 5003, Hotel Occupancy Tax for Economic Development (Account 5003), is used for advertising and other marketing activities of the Trusteed Programs within the Office of the Governor, Economic Development and Tourism Division. For fiscal year 2015, the account received $43.6 million in revenue from an allocation of the state's portion of the hotel occupancy tax; the account's ending cash balance was $16.5 million. Option 3 would amend the Texas Tax Code, Chapter 156, to expand the allowable uses of Account 5003 to include funding of the seaport preliminary studies grant program. Option 3 would also include a contingency rider in the 2018–19 General Appropriations Bill to appropriate $1.0 million in General Revenue–Dedicated funds from Account 5003 to TxDOT to implement the program. Appropriating $1.0 million for this purpose would promote economic development in areas served by smaller seaports with limited resources. Funding through the grant program should be prioritized for seaports that are in need of capital improvements but that do not have the resources to fund required preliminary studies and permitting.

FISCAL IMPACT OF THE OPTIONS

It is assumed that TxDOT's Maritime Division would be able to implement a new program established as a result of Option 1 within existing resources. However, the fiscal impact of providing funding to ports as a result of Option 1 would vary depending on the strategy adopted. Option 1 would amend statute and include a contingency rider in the 2018–19 General Appropriations Bill to capitalize a port capital project grant program with $25.0 million in General Revenue Funds in the 2018–19 biennium. For the purposes of this analysis, it is assumed this funding would continue after the 2018–19 biennium. The five-year fiscal impact of Option 1, Strategy 1, is shown in **Figure 3**.

FIGURE 3
FIVE-YEAR FISCAL IMPACT OF OPTION 1, STRATEGY 1, FISCAL YEARS 2018 TO 2022

YEAR	PROBABLE SAVINGS/(COSTS) IN GENERAL REVENUE FUNDS
2018	($12,500,000)
2019	($12,500,000)
2020	($12,500,000)
2021	($12,500,000)
2022	($12,500,000)

SOURCE: Legislative Budget Board.

Strategy 2 would amend the Texas Constitution and include a contingency rider in the 2018–19 General Appropriations Bill to appropriate up to $100.0 million in General Obligation bond proceeds to TxDOT to provide grants for seaport projects. There is a cost to the state for publication of the resolution proposing an amendment to the constitution. A rider is included in the House introduced 2018–19 General Appropriations Bill to provide appropriations to the Secretary of State to cover the cost of proposed constitutional amendments. The fiscal impact of issuing and selling General Obligation bonds cannot be determined at this time because factors such as the projects selected for funding by TxDOT, the timing of the bond issues, and the annual debt service requirements are unknown.

Strategy 3 would allocate $25.0 million in General Revenue–Dedicated Funds from Account 5107 to Trusteed Programs within the Office of the Governor for the 2018–19 biennium. In the Eighty-fourth Legislature, General Appropriations Act, 2016–17 Biennium, $90.0 million was appropriated from Account 5107 to Trusteed Programs within the Office of the Governor. Because Strategy 3 is an allocation, not an appropriation of additional funds, this strategy would have no fiscal impact.

Strategy 4 would amend the constitution relating to the Texas Mobility Fund and include a contingency rider in the 2018–19 General Appropriations Bill to allocate $25.0 million in Other Funds for the 2018–19 biennium. Since this is an allocation, not an appropriation of new funds, there would be no cost associated with redirecting this revenue. The TMF had a net cash balance of $1.2 billion at the end of fiscal year 2015. There is a cost to the state for publication of the resolution proposing an amendment to the constitution. A rider is included in the House introduced 2018–19 General Appropriations Bill to provide appropriations to the Secretary of State to cover the cost of proposed constitutional amendments.

Strategy 5 would amend statute and include a contingency rider in the 2018–19 General Appropriations Bill to capitalize a port capital project revolving loan program with $25.0 million in General Revenue Funds for the 2018–19 biennium. For the purposes of this analysis, it is assumed this funding would continue after the 2018–19 biennium. Because the amount and terms of loans are unknown, including repayment schedules, this analysis does not account for any loan repayments within the next five fiscal years. The known five-year fiscal impact of Option 1, Strategy 5, is shown in **Figure 4**.

FIGURE 4
FIVE-YEAR FISCAL IMPACT OF OPTION 1, STRATEGY 5 FISCAL YEARS 2018 TO 2022

YEAR	PROBABLE SAVINGS/(COSTS) IN GENERAL REVENUE FUNDS
2018	($12,500,000)
2019	($12,500,000)
2020	($12,500,000)
2021	($12,500,000)
2022	($12,500,000)

SOURCE: Legislative Budget Board.

Strategy 6 would amend the Texas Constitution and include a contingency rider in the 2018–19 General Appropriations Bill to appropriate up to $100.0 million in General Obligation Bond Proceeds to TxDOT to provide loans for seaport projects. There is a cost to the state for publication of the resolution proposing an amendment to the constitution. A rider is included in the House introduced 2018–19 General Appropriations Bill to provide appropriations to the Secretary of State to cover the cost of proposed constitutional amendments. The fiscal impact of issuing and selling General Obligation bonds cannot be determined at this time because factors such as the projects selected for funding by TxDOT, the timing of bond issuances, and the annual debt service requirements are unknown.

Options 2 and 3 would amend statute and include a contingency rider in the 2018–19 General Appropriations Bill to appropriate $1.0 million in General Revenue–Dedicated funds from Account 5003 to TxDOT for the 2018–19 biennium to implement a seaport preliminary studies grant program. The five-year fiscal impact of Options 2 and 3 are shown in **Figure 5**.

FIGURE 5
FIVE-YEAR FISCAL IMPACT OF OPTIONS 2 AND 3, FISCAL YEARS 2018 TO 2022

YEAR	PROBABLE SAVINGS/(COSTS) IN GENERAL REVENUE–DEDICATED FUNDS
2018	($500,000)
2019	($500,000)
2020	($500,000)
2021	($500,000)
2022	($500,000)

SOURCE: Legislative Budget Board.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

USE EXCESS REVENUES TO PAY DOWN TEXAS MOBILITY FUND BOND DEBT

The Texas Mobility Fund was established by the Texas Constitution, Article III, Section 49-k, within the state Treasury. The intent of the fund is to provide a method of financing for the construction, reconstruction, acquisition and expansion of state highways, including costs of any necessary design and costs of acquisition of rights of way. The Texas Mobility Fund may also be used by the Texas Department of Transportation to pay a portion of the costs of constructing and providing publicly owned toll roads and other public transportation projects. The Texas Transportation Commission has issued bonds backed by revenue in the Texas Mobility Fund to finance transportation projects across the state. Texas Mobility Fund bonds are self-supporting General Obligation bonds; therefore, they are not considered in calculating the state's constitutional debt limit.

As of August 31, 2015, the Texas Mobility Fund had approximately $6.4 billion in bonds outstanding including both callable and noncallable bonds. Callable bonds may be paid off any time after their call date prior to maturity. Paying off callable bonds prior to maturity would reduce the interest paid over the life of these bonds. Applying revenue deposited to the Texas Mobility Fund in excess of what is necessary to pay annual debt service requirements would allow for an accelerated repayment of outstanding debt. It is estimated this repayment plan would result in all debt being paid off by the end of fiscal year 2034 and in interest cost avoidance of $1.5 billion in Other Funds. Paying off Texas Mobility Fund debt early would allow revenue in the fund to be more quickly utilized for transportation projects.

FACTS AND FINDINGS

- House Bill 122, Eighty-fourth Legislature, 2015, prohibits the issuance of new Texas Mobility Fund bonds after January 1, 2015, except for those issued to refund outstanding obligations to provide savings.
- Based on Texas Comptroller of Public Accounts estimates of future Texas Mobility Fund revenues, revenue generated will exceed required debt service payments.

CONCERN

- Paying off all callable bonds prior to maturity using current revenue sources deposited to the Texas Mobility Fund would result in $1.5 billion in debt service costs being avoided; however, the Texas Department of Transportation does not have plans to pay down the debt at an accelerated rate.

OPTION

- **Option 1:** Amend statute to require the Texas Department of Transportation to use excess Texas Mobility Fund revenues to pay off the fund's callable debt early.

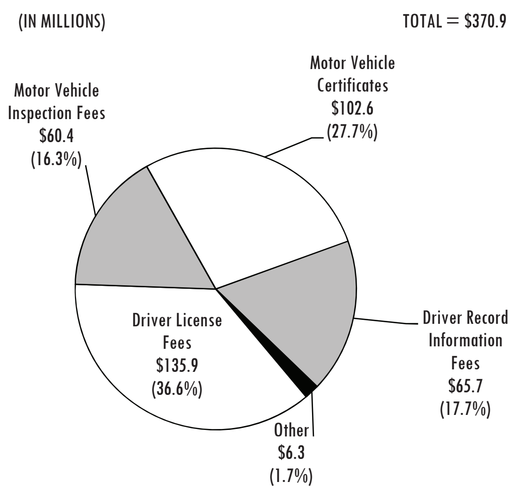
DISCUSSION

The Texas Mobility Fund (TMF) was established by voter approval of Proposition 15 on November 6, 2001, which added Article III, Section 49-k to the Texas Constitution. The TMF is administered by the Texas Transportation Commission (TTC) and may be used to finance the acquisition, construction, maintenance, reconstruction, and expansion of state highways, including costs of design and right-of-way acquisition. Senate Bill 4, Seventy-seventh Legislature, 2001, and Proposition 15, passed by voters in 2001, authorized TTC to issue bonds and to pledge the state's full faith and credit to guarantee payment of obligations issued in accordance with the TMF if certain requirements surrounding the bonds are adhered to. This was a deviation from the pay-as-you-go system and authorized TTC to issue bonds for construction and maintenance of the highway system for the first time.

The constitutional amendment establishing TMF did not specify any sources of dedicated revenue for the fund, although it did prohibit changing a dedication of revenue to the fund while bonds are outstanding, unless an alternative dedication of equal or greater value is made. Currently, the TMF receives 98 percent of its revenue from four sources. The largest of these is driver's license fees; vehicle certificate of title fees, driver record information fees, and vehicle inspection fees are also included. **Figure 1** shows the amount of revenue deposited to the TMF from these sources in fiscal year 2015.

Bonds and other obligations of the TMF issued to date are secured by a first lien interest on certain revenues of the fund. Prior to a TMF debt issuance, the Texas Comptroller of Public Accounts must certify that the projected dedicated

FIGURE 1
TEXAS MOBILITY FUND REVENUE, FISCAL YEAR 2015



NOTE: Other includes Motor Carrier Act Penalties, Motor Vehicle Registration Fees, and Depository Interest.
SOURCE: Texas Department of Transportation.

amounts on deposit in the fund will be equal to at least 110 percent of the annual debt service requirements. As General Obligation bonds, they are secured by the full faith and credit of the state. Therefore, if the amounts dedicated to and on deposit in the TMF are insufficient to make required payments on TMF bonds and other obligations, the Legislature appropriates funds into the state Treasury to service the debt.

The maximum maturity for bonds in the TMF is 30 years. As of August 31, 2015, the principal amount of debt outstanding was $6.4 billion. **Figure 2** shows the original and current outstanding principal amounts of TMF bonds as of August 31, 2015.

The enactment of House Bill 122, Eighty-fourth Legislature, 2015, prohibited the issuance of new TMF bond obligations after January 1, 2015. The legislation authorizes the TTC to issue obligations to refund outstanding TMF obligations to provide savings to the state and to renew or replace credit agreements related to variable rate obligations. Additionally, the legislation specified that money deposited to the TMF that is in excess of amounts required to meet bond obligations may be used for any purpose for which obligations may be issued other than for toll roads. More than 75.0 percent of TMF revenue currently goes to debt service. Enactment of House Bill 122 prohibited issuance of new bonds, thus limiting the proportion of revenue committed to debt service for this purpose in the future.

FIGURE 2
TEXAS MOBILITY FUND BONDS OUTSTANDING AS OF AUGUST 31, 2015

(IN MILLIONS)	PRINCIPAL	
DESCRIPTION OF ISSUANCE	ORIGINAL	OUTSTANDING
Series 2006 Fixed Rate Bonds	$750.0	$17.8
Series 2006-A Fixed Rate Bonds	$1,040.3	$538.7
Series 2006-B (Multi-Modal Bonds)(1)	$150.0	$150.0
Series 2007 Fixed Rate Bonds	$1,006.3	$727.2
Series 2008 Fixed Rate Bonds	$1,100.0	$954.3
Taxable Series 2009A (Build America Bonds)	$1,208.5	$1,208.5
Series 2014 Fixed Rate Refunding Bonds	$973.8	$973.8
Series 2014-A Fixed Rate & Refunding Bonds	$1,580.2	$1,580.2
Series 2014-B (SIFMA Index Floating Rate Bonds)	$250.0	$250.0
Total	**$8,059.1**	**$6,400.5**

NOTE: Some bond issuances were replaced by refunding bonds prior to their maturity dates and are not shown in this figure.
SOURCE: Texas Department of Transportation.

PAYING DOWN TEXAS MOBILITY FUND DEBT

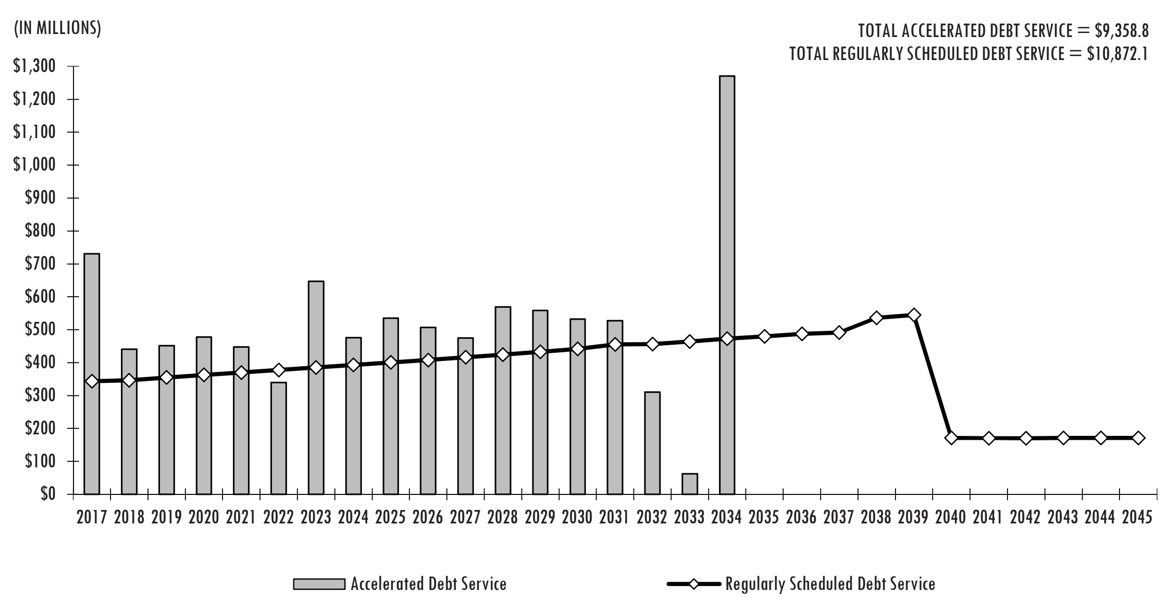
TxDOT's current TMF debt service schedule would result in all outstanding bonds being paid off in calendar year 2045. Total debt service over the life of the bonds is $8.7 billion, and $3.7 billion of this amount represents interest that would be due on bonds. TxDOT does not plan to pay off TMF debt at an accelerated rate, although TxDOT anticipates issuing refunding bonds in calendar year 2016 to refinance some outstanding principal. The current interest rate of the bonds that would be refunded ranges from 4.5 percent to 5.0 percent and the estimated interest rate of the refunding bonds is 3.2 percent. According to TxDOT, the maturity dates of the bonds to be refunded will not be extended, and the transaction will save approximately $185.0 million in interest payments.

There is no penalty associated with paying off TMF debt early, with the exception of Build America Bonds (BABs). BABs make up approximately $1.2 billion of currently outstanding TMF bonds. The remaining bonds include callable and noncallable bonds. Interest payments must continue to be paid on noncallable bonds until their maturity date. These make up approximately $934.0 million in outstanding TMF debt. The remaining $4.1 billion in outstanding TMF bond debt is callable and can be retired at an accelerated rate. TxDOT estimates that approximately $2.2 billion in debt service costs could be avoided and all callable TMF bonds could be retired by fiscal year 2026 if they are paid on their call date prior to maturity. However, revenue sources allocated to TMF do not generate enough to retire all callable bonds on their call dates. An additional $1.1 billion above currently estimated revenue would be needed between fiscal years 2017 and 2026 to retire the bonds.

According to TxDOT, all noncallable TMF debt is scheduled to be paid off by fiscal year 2034 and all callable TMF debt could be paid off by the same time using anticipated TMF revenue generated in excess of what is required to pay debt service for outstanding bonds. Option 1 would amend statute to require TxDOT to use excess TMF revenue to pay off all callable TMF debt early. Based on current bond issuances and anticipated revenue, this accelerated schedule would result in all TMF bonds being paid off in fiscal year 2034. The State of Texas would realize an estimated $1.5 billion in savings from reduced interest rate payments. Additionally, paying off TMF debt early would allow the fund to be fully used for financing transportation projects as a revolving fund on a cash basis beginning in fiscal year 2034. Using the current schedule for paying off TMF debt, all bonds would be repaid in fiscal year 2045, at which time the fund could be fully used on a cash basis to finance transportation projects in accordance with statute and the Texas Constitution.

As of July 2016, TxDOT plans to use excess TMF revenue for new transportation construction projects while maintaining a certain amount of funds in reserve each year in case actual revenues are lower than projected in the Comptroller of Public Accounts revenue estimate. TxDOT asserts that based on current rates of investment, it may be able to build more roads by using current funds in excess of debt service requirements than it could with future debt service savings. **Figure 3** shows TxDOT's planned debt repayment schedule and the accelerated debt repayment schedule using TMF excess revenue. Using the accelerated repayment schedule, the final payment towards TMF debt using accumulated excess revenues would occur in fiscal year 2034 in the amount of $1.2 billion.

FIGURE 3
SCHEDULED AND ESTIMATED ACCELERATED TEXAS MOBILITY FUND DEBT REPAYMENT, FISCAL YEARS 2017 TO 2034



NOTE: Accelerated debt repayment amounts in this figure were estimated based on data in July 2016.
SOURCE: Texas Department of Transportation.

FISCAL IMPACT OF THE OPTION

As a result of this option, there would be an estimated cost avoidance of $1.5 billion in Other Funds from reduced interest payments in fiscal years 2017 to 2034. It is assumed excess revenues in the fund would be spent on transportation projects if they are not directed toward paying down TMF debt; therefore, there is no cost or savings associated with redirecting this revenue to debt service payments.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of this option.

ALIGN STATE TRANSPORTATION POLICY TO REDUCE TRAFFIC FATALITIES

During calendar year 2014, Texas led the nation in motor vehicle-related fatalities, fatalities on rural roads, intoxication-related fatalities, speed-related fatalities, and work zone-related fatalities. Texas' fatality rate per 100 million vehicle miles traveled exceeded the national average every year from 1994 to 2014. In 2014, Texas had the sixth-highest urban fatality rate and the second-highest rural fatality rate among the states and District of Columbia. Texas has struggled with negative safety outcomes; therefore, it is designated a Focus State by the U.S. Department of Transportation. This designation means that the state is eligible for priority access to assistance from the federal government.

The federal government has set policies and established grant programs intended to help states eliminate fatalities as part of the National Strategy on Highway Safety Toward Zero Deaths policy. For the 2016–17 biennium, Texas expects to receive $8.4 billion in Federal Funds and reimbursements for transportation-related projects. The majority of those funds are for construction projects, but some are dedicated for traffic safety programs. These traffic safety funds support the state in meeting the Toward Zero Deaths goal. Texas has supplemented federal traffic safety funds, including requiring 20.0 percent of State Highway Fund Revenue Bond Proceeds (Other Funds) be used to fund traffic safety engineering projects in addition to those funded by Federal Funds. However, the amount of State Highway Fund revenue bonds that have been issued has reached the statutory limit.

In the 2014 Texas Strategic Highway Safety Plan, the Texas Department of Transportation stated goals of zero fatalities and consistent reductions in fatalities each year until that goal is reached. However, the state's approach to traffic safety has not resulted in consistent reductions in traffic fatalities, and the approach has not yielded the same improvements experienced in other states. Allocating funds for traffic safety engineering projects and identifying policies to reduce fatality rates would reduce fatalities and the related human, health, and financial costs.

FACTS AND FINDINGS

- ♦ As a result of voter approval of Proposition 7, 2015, the Texas Constitution was amended to allocate to the State Highway Fund revenue from the first $2.5 billion of state sales tax collected greater than $28.0 billion for a fiscal year, and 35.0 percent of motor vehicle sales and rental taxes collected greater than $5.0 billion for a fiscal year beginning in fiscal years 2018 and 2020, respectively.
- ♦ Through the Texas Traffic Safety Task Force, the Texas Department of Transportation has developed a five-year traffic safety plan with $2.7 billion in engineering, enforcement, and education-related traffic safety projects.
- ♦ Traffic safety engineering projects include adding medians and rumble strips to roadways, widening narrow rural roadways and bridges, reconfiguring urban roadways to reduce the risk of head-on collisions, and implementing traffic management systems to improve the flow of traffic.
- ♦ Crashes are a shock to the transportation network that can have unanticipated contributions to congestion. According to the National Highway Transportation Safety Administration, on average a motor vehicle crash disrupts traffic for 43 minutes, with crashes that do not result in injuries disrupting traffic for 41 minutes on average and fatal crashes disrupting traffic for 2.5 hours on average.

CONCERNS

- ♦ The Texas Department of Transportation has a goal of zero traffic fatalities; however, the agency estimates that, without changes to state traffic safety policy, motor vehicle-related fatalities will increase to the highest level of any state since at least calendar year 1994. The agency has identified traffic safety engineering projects that, if funded and completed, could result in the avoidance of an estimated 540 fatalities per year.
- ♦ Texas has the most traffic fatalities and among the highest fatality rates in the nation. Fatalities per 100 million vehicle miles traveled have increased in Texas in recent years while decreasing in the rest of the country. If Texas had achieved the national urban and rural motor vehicle fatality rates per 100 million vehicle miles traveled in calendar year 2014,

988 fewer motor vehicle-related fatalities would have occurred in the state that year.

OPTIONS

- **Option 1:** Amend statute to require the Texas Department of Transportation to develop a traffic safety plan that includes recommendations to align state transportation policy with the agency's zero fatality goal.
- **Option 2:** Amend statute to dedicate 20.0 percent of deposits from the state sales tax to the State Highway Fund for traffic safety engineering projects beginning in 2020.

DISCUSSION

Texas has led the nation in motor vehicle-related fatalities each year since calendar year 2008. During calendar year 2014, Texas had 3,538 motor vehicle-related fatalities. As **Figure 1** shows, Texas ranks in the bottom one-fifth among the states and the District of Columbia (D.C.) in almost every major traffic safety indicator, including: motor vehicle-related fatalities, fatalities on rural roads, intoxication-related fatalities, speed-related fatalities, and work zone-related fatalities. Texas reported approximately the same number of motor vehicle-related fatalities in calendar year 2014 as it did in 2005. However, from calendar years 2005 to 2014, the rest of the country experienced consistent reductions in motor vehicle-related fatalities. During this 10-year period, the rate of fatalities per 100 million vehicle miles traveled decreased 26.0 percent nationally. In Texas, the rate decreased by 2.7 percent during the same period. Alaska was the only state that reported an increase in its fatality rate. During this period, Texas had the smallest decrease in fatality rate among the states that reported a reduction.

FIGURE 1
TEXAS RANKING AMONG THE STATES AND THE DISTRICT OF COLUMBIA IN SELECT TRAFFIC SAFETY INDICATORS CALENDAR YEAR 2014

INDICATOR	TEXAS	RANKING
Motor Vehicle-related Fatalities	3,538	51
Fatalities on Urban Roadways	1,753	50
Fatalities on Rural Roadways (1)	1,779	50
Intoxication-related Fatalities	1,446	51
Speed-related Fatalities	1,284	51
Work Zone-related Fatalities	144	51
Motorcycle Fatalities	450	49
Pedestrian and Cyclist Fatalities	526	49
Fatalities per 100 Million Vehicle Miles Traveled	1.46	43
Urban Fatalities per 100 Million Vehicle Miles Traveled	1.00	46
Rural Fatalities per 100 Million Vehicle Miles Traveled (1)	2.62	49
Fatalities per 100,000 Population	13.1	35

NOTE: (1) The District of Columbia does not have rural roadways. The rankings related to Fatalities on Rural Roadways and Rural Fatalities Per 100 Million Vehicle Miles Traveled are 1 to 50; rankings for all other indicators are 1 to 51.
SOURCE: National Highway Traffic Safety Administration.

To address national causes of motor vehicle-related fatalities, the federal government sets general transportation policy and supports state efforts to implement that policy through grants and technical assistance. For the 2016–17 biennium, the Texas Department of Transportation (TxDOT) expects to receive $8.4 billion in direct Federal Funds and reimbursements for transportation. The majority of those funds are for construction projects, but a small portion is dedicated for traffic safety programs. These traffic safety funds are to support the state's effort in meeting federal traffic safety goals.

The American Association of State Highway and Transportation Officials (AASHTO) is a nonprofit, nonpartisan association that represents regional highway departments and develops design standards for transportation projects. AASHTO developed a comprehensive and systemic strategy to achieve traffic safety with the goal of building roads and infrastructure that meet capacity and environmental challenges without compromising traffic safety. The strategy is called Toward Zero Deaths (TZD). In this strategy, engineering is the most important component of traffic safety. The concept was originally implemented in Sweden, which has the lowest motor vehicle-related fatality rate among wealthy nations, according to the U.S. Centers for Disease Control and Prevention. TZD is a data-driven, interdisciplinary approach to traffic safety. It targets areas for improvement and employs proven countermeasures, integrating education, enforcement, engineering, and emergency medical and trauma services. The Federal Highway Administration (FHWA), within the U.S. Department of Transportation (USDOT), has a target to eliminate fatalities and serious injuries on U.S. roadways. This target was reported in USDOT's strategic plan for federal fiscal years 2014 to 2018. USDOT has adopted the

TZD approach to achieve its goal of having no fatalities across all modes of travel.

FHWA encourages states to use data-driven approaches for targeting traffic safety interventions that facilitate cost-effective approaches. FHWA recommends developing a systemic approach to safety, particularly on rural and local streets. A systemic approach requires evaluating risk across the entire system and identifying conditions that contribute to crashes and countermeasures that effectively address those conditions. The systemic approach to safety involves widely implemented improvements that are based on high-risk roadway features and are correlated with specific severe crash types. In urban areas, these improvements could include replacing through lanes on four-lane roads with left-turn lanes to reduce the risk of head-on collisions (this reconfiguration is known as a road diet). In rural areas, these improvements could include widening two-lane roads on curves to reduce the risk of run-off-the-road crashes. This approach provides a comprehensive method for safety planning and implementation that supplements and compliments traditional site analysis. It helps agencies to broaden traffic safety efforts and to consider risk and crash history when identifying where to make low-cost safety improvements. The federal government has set policies and established grant programs to help states eliminate fatalities using this systemic approach.

Texas has repeatedly had negative safety outcomes, and, thus, it is designated a Focus State by USDOT. There are three types of Focus States: roadway departure, intersection crashes, and pedestrian and bicycle crashes. Roadway departure and intersection Focus States have intersection and roadway departure-related fatalities that exceed what FHWA's model would predict for the state in these types of crashes. Bicycle and Pedestrian Focus States have at least one city that is among the top 20 cities nationwide for bicycle and pedestrian fatalities, or for which bicycle and pedestrian fatality rates exceed the average of the 50 cities with the largest number of fatalities. Texas is one of five states that qualify as each type of Focus State, along with Florida, Louisiana, Tennessee, and Arizona. Texas has been a Focus State since the program was established in 2004. As a result, Texas receives additional federal support to reduce the number of these fatalities. However, Texas has continued to report more fatalities and higher fatality rates than most other states.

TEXAS TRANSPORTATION AGENCIES

TxDOT's mission is to deliver, through collaboration and leadership, a safe, reliable, and integrated transportation system that enables the movement of people and goods. The agency serves as a pass-through for state and federal grants to local governments and works to ensure compliance with federal requirements. For the 2016–17 biennium, TxDOT was appropriated $23.1 billion, which included $8.4 billion in Federal Funds. This funding is used for maintenance or new construction projects that have multiple goals, such as improving safety or increasing capacity. For fiscal year 2015, TxDOT identified $229.6 million in primarily federally funded state and local traffic safety-related projects. The majority of TxDOT's funding is for road construction and maintenance projects.

TxDOT develops traffic safety initiatives intended to reduce fatalities and serious injuries from motor vehicle crashes. The agency is responsible for collecting and analyzing crash data that is used to plan highway safety and educational programs to promote safe driving practices. TxDOT has 30 traffic safety professionals at 25 regional offices to provide program support to local governments in the implementation of traffic safety programs.

The Texas A&M Transportation Institute (TTI) at Texas A&M University conducts research on traffic safety and plays a large role in the data-driven components of the state's traffic safety planning. The TTI Center for Transportation Safety conducts research on many issues related to traffic safety, including the design, maintenance, and operation of transportation infrastructure; behavioral research; data analysis; and program evaluation.

TRAFFIC SAFETY PROGRAMS IN TEXAS

According to TxDOT, promoting safety and protecting the lives of TxDOT employees and the public are the agency's top priorities. Texas has state and federally funded traffic safety programs that focus on improving transportation safety. These programs include federal engineering and construction grants, public information campaigns intended to encourage safe driving behavior, and state bond programs.

Traffic safety programs in Texas are primarily funded through grant programs administered through FHWA and the National Highway Traffic Safety Administration (NHTSA). NHTSA is an agency within USDOT that supports state and local governments in the development and implementation of traffic safety-related public information campaigns. Requirements for federal traffic safety grant programs guide the state's traffic safety planning process.

HIGHWAY SAFETY IMPROVEMENT PROGRAM

In 2015, TxDOT indicated a plan to fund 671 highway safety projects through the federal Highway Safety Improvement Program (HSIP) at a cost of $182.0 million, primarily using Federal Funds. FHWA administers HSIP, which allows states to target funds to their most critical safety needs. The program is intended to reduce the number and severity of traffic crashes by funding highway safety engineering projects. According to TxDOT, the projects funded through HSIP range from spot safety improvements and upgrading existing road conditions to new roadway construction. TxDOT indicated that, although none of the HSIP funds included in the state plan address systemic improvements, the state is developing a systemic safety program for subsequent HSIP submissions. In the state's 2015 HSIP submission, TxDOT indicated that approximately 20.0 percent to 30.0 percent of eligible project proposals are funded each program year.

The Strategic Highway Safety Plan (SHSP) is a federal requirement of the state's participation in HSIP. In Texas, the SHSP process is maintained through TTI. SHSP is a statewide, coordinated safety plan that provides a comprehensive framework for reducing highway fatalities and serious injuries on all public roads. SHSP is a data-driven, multiyear plan that establishes statewide targets, objectives, and key emphasis areas; the program integrates engineering, education, enforcement, and emergency medical services.

TEXAS TRAFFIC SAFETY PROGRAM

During fiscal year 2015, the Texas Traffic Safety Program funded 347 safety education and enforcement projects at a cost of $47.6 million in federal and state grant funds. These projects are intended to increase the proper use of safety belts and child safety seats, and to deter dangerous driving behaviors such as speeding, aggressive or distracted driving, and driving under the influence of alcohol or other drugs. NHTSA maintains the federal grant program that supports the Texas Traffic Safety Program.

Each federal fiscal year, TxDOT develops a state Highway Safety Plan (HSP) to qualify for approximately $47.0 million in federal highway safety funding from NHTSA. The projects in the HSP support the goals identified in the Strategic Highway Safety Plan. This grant money is awarded to state, local, and nonprofit agencies in Texas through the Texas Traffic Safety Program. The grants fund a variety of traffic safety education and enforcement initiatives. The 2014 HSP indicated that Texas supports the TZD strategy. Texas has a goal of achieving a consistent reduction in fatalities each year until this goal is reached.

TEXAS SAFETY BOND PROGRAM

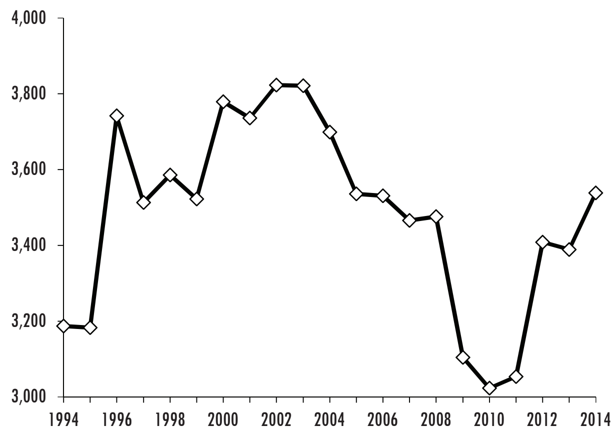
The enactment of legislation passed by the Seventy-eighth Legislature, Regular Session, 2003, and voter approval of an amendment to the Texas Constitution, Article 3, Sections 49-m and 49-n (Proposition 14, 2003), authorized the Texas Transportation Commission (TTC) to issue bonds secured by a pledge of and payable from revenue deposited to the credit of the State Highway Fund (Other Funds) (SHF). TTC is authorized to issue SHF revenue bonds and other public securities in an aggregate principal amount not to exceed $6.0 billion, with no more than $1.5 billion to be issued each year to finance state highway improvement projects. Of the $6.0 billion total, at least $1.2 billion, 20.0 percent, is required to be used for safety-related projects. Two traffic safety-related issuances have occurred. In 2005, TTC issued $605.0 million in bonds to fund projects to widen narrow rural highways, install medians, install left-turn lanes on rural highways, and build grade separation at highway intersections. In 2009, TTC issued an additional $600.0 million for similar projects. At the end of fiscal year 2015, $5.3 billion in SHF bond authorization had been used. TxDOT has committed the entire remaining authorized amount to construction projects and has indicated that it plans to issue the remaining bonds to make progress payments on projects.

STATE OUTCOMES

To date, the state's approach to traffic safety has not yielded the improved outcomes observed in other states. According to NHTSA data, Texas has had either the most or second-most motor vehicle-related fatalities for each year since at least calendar year 1994. Fatalities have decreased nationwide, but the number has increased in Texas. As **Figure 2** shows, Texas had 73,116 motor vehicle-related fatalities from calendar years 1994 to 2014, the most recent year for which data on all states was available. During this period, motor vehicle fatalities in Texas peaked in 2002 with 3,823 fatalities. Fatalities decreased steadily from 2002 through 2009, but since 2010 fatalities have increased 17.0 percent to 3,538.

Outside of Texas, motor vehicle-related fatalities peaked in calendar year 2005 and have decreased steadily since that

FIGURE 2
MOTOR VEHICLE-RELATED FATALITIES IN TEXAS
CALENDAR YEARS 1994 TO 2014



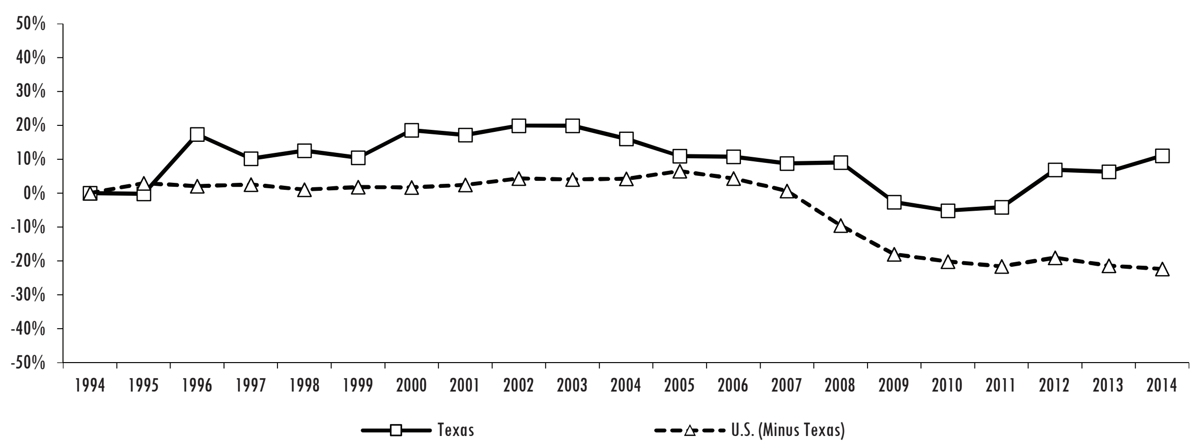
SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System.

year. From calendar years 1994 to 2014, motor vehicle-related fatalities decreased 22.4 percent in the rest of the country. In Texas, however, motor vehicle-related fatalities increased 11.0 percent during the same period. **Figure 3** shows the percentage change in motor vehicle-related fatalities in Texas and the rest of the country from calendar years 1994 to 2014.

TxDOT's key traffic safety-related performance measure pursuant to the Eighty-fourth Legislature, General Appropriations Act, 2016–17 Biennium, is fatalities per 100 million vehicle miles traveled (VMT). Analyzing fatality rates per 100 million VMT controls for total roadway usage and allows for comparisons across multiple years. During calendar year 1994, 40,716 motor vehicle-related fatalities and 2,358.0 billion VMT occurred nationally. These amounts equal a rate of 1.73 fatalities per 100 million VMT. In the same year in Texas, 3,187 motor vehicle-related fatalities and 178.0 billion VMT occurred. This rate is 1.79 fatalities per 100 million VMT. From calendar years 1994 to 2014, the fatality rates per 100 million VMT for Texas and the U.S. decreased; however, the percentage decrease in Texas was less than half the national decrease. The state's performance measure target is 1.3 fatalities per 100 million VMT. Fatality rates were less than this level in calendar years 2010 and 2011, but increased to 1.46 in 2014, the most recent year for which data is available. **Figure 4** shows the fatality rates per 100 million VMT for Texas and the U.S. from calendar years 1994 to 2014.

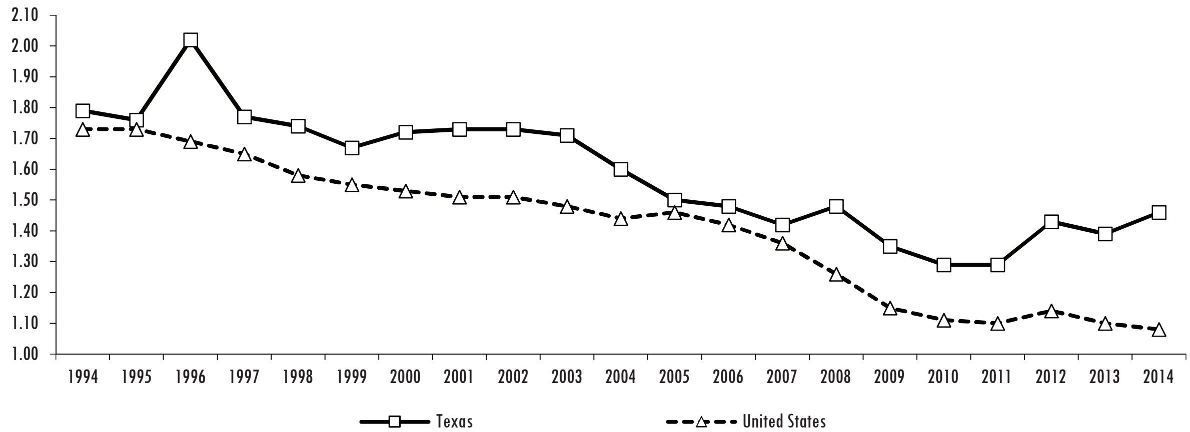
Fatality rates per VMT are higher on rural roads than they are on urban roads. Nationwide, the fatality rate in calendar year 2014 was 147.8 percent higher on rural roads than urban roads. In Texas in 2014, the fatality rate was 162.0 percent higher on rural roads than urban roads. In calendar year 2014,the state had the ninth-highest total motor vehicle-related fatality rate, the sixth-highest urban fatality rate, and the second-highest rural fatality rate. If every state had Texas' urban and rural rates in 2014, the U.S. would have had an increase in motor vehicle-related fatalities of 39.8 percent. In this hypothetical situation, every state would have had an

FIGURE 3
PERCENTAGE CHANGE IN MOTOR VEHICLE-RELATED FATALITIES IN TEXAS AND THE REST OF THE COUNTRY
CALENDAR YEARS 1994 TO 2014



SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System.

FIGURE 4
MOTOR VEHICLE-RELATED FATALITIES PER 100 MILLION VEHICLE MILES TRAVELED FOR TEXAS AND THE U.S.
CALENDAR YEARS 1994 TO 2014



SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System.

increase in motor vehicle-related fatalities. If Texas had the nationwide urban and rural fatality rates in 2014, the state would have had 988 fewer motor vehicle-related fatalities that year. **Figure 5** shows that, among the 10 states with the most motor vehicle-related fatalities in calendar year 2014, Texas had the highest fatality rate. This rate indicates that Texas roadways are less safe than the other nine states with the highest levels of fatalities.

FIGURE 5
TEN U.S. STATES WITH THE MOST MOTOR VEHICLE-RELATED FATALITIES BY FATALITY RATE
CALENDAR YEAR 2014

STATE	FATALITIES	VEHICLE MILES TRAVELED (VMT) (IN BILLIONS)	FATALITIES PER 100 MILLION VMT
New York	1,039	129.0	0.80
Illinois	924	105.0	0.88
Ohio	1,006	113.0	0.89
California	3,074	333.0	0.92
Georgia	1,164	112.0	1.04
North Carolina	1,284	108.0	1.19
Pennsylvania	1,195	100.0	1.20
Florida	2,494	201.0	1.24
Tennessee	962	72.0	1.33
Texas	3,538	243.0	1.46

SOURCE: National Highway Traffic Safety Administration.

Although Texas has made efforts to improve traffic safety, including participation in federal grant programs, the state's approach to traffic safety has not yielded consistent improvements in traffic safety outcomes.

FRAMEWORKS FOR TRAFFIC SAFETY POLICY

States use a variety of frameworks to develop a proactive, comprehensive, and coherent approach to improving traffic safety. Effective frameworks identify risk factors and strategies to reduce or eliminate those risk factors. An effective framework focuses on implementing strategies for which the jurisdiction has the most control.

The National Institute for Occupational Safety and Health (NIOSH) supports a public health framework to reduce users' risks within complex systems. NIOSH developed a hierarchy of controls for risk reduction that includes groupings of interventions to reduce hazards to system users. Interventions focused on systemically reducing or removing risks are typically more effective than interventions intended to improve or modify behavior. Including effective interventions during construction of traffic projects is the most cost-effective approach. The following interventions or controls for risks to health and safety are shown in order of effectiveness:

- elimination – eliminate hazardous conditions through development that reduces automobile travel;
- substitution – provide safer alternatives to automobile travel, such as public transportation;

- engineering controls – structural changes, erecting barriers;
- awareness devices – introducing warning lights, signage;
- administrative controls – modifying traffic laws; and
- personal protective equipment (PPE) – seatbelts, bike helmets, airbags, etc.

According to NIOSH, the interventions at the top of the hierarchy tend to be most effective; and the interventions at the bottom of the hierarchy tend to be least effective but also least expensive to implement. Interventions at the top of the hierarchy recognize and consider human fallibility. The use of PPE is at the bottom of the hierarchy of prevention and controls because the equipment is reliant on system users using the PPE effectively.

The Haddon Matrix is a tool that was developed to apply principles of public health to highway safety. The tool identifies factors that contribute to crashes and the points at which interventions could reduce specific types of crashes. **Figure 6** shows an example Haddon Matrix.

The World Health Organization (WHO) provides recommendations for implementing interventions to prevent traffic injuries that are similar to NIOSH's hierarchy of prevention and controls. WHO recommends traffic safety interventions that reduce exposure to risk through: transport and land-use policies; structuring the road network for road injury prevention; improving visibility of road users; promoting crash-protective vehicle design; enforcing road safety rules; and delivering postcrash care. The traffic safety approach Vision Zero is consistent with the recommendations of WHO and NIOSH and the basis of the TZD initiative in the U.S. The guiding principle of this initiative is that humans are prone to mistakes and distraction. The road system needs to reduce the risk that human error can result in fatalities or serious injuries by implementing systemic improvements. This approach primarily focuses on improving safety through the built environment. According to the Centers for Disease Control, Sweden, which was the first country to implement a Vision Zero type policy, has the lowest fatality rate among wealthy nations. Two Texas cities, Austin and San Antonio, have adopted Vision Zero policies.

TEXAS TRAFFIC SAFETY TASK FORCE

In response to the consistently high level of motor vehicle-related fatalities in Texas, the TTC formed the Texas Traffic Safety Task Force in fiscal year 2015. The task force includes transportation and law enforcement professionals, and representatives from a variety of transportation-related organizations, including insurance companies and Mothers Against Drunk Driving. In June 2016, the task force released the report Solutions for Saving Lives on Texas Roads. The report identifies practices and projects, in addition to those included in HSIP and SHSP, that could reduce crashes and the resulting injuries and fatalities. The identified projects are consistent with two stages of NIOSH's hierarchy of prevention and controls; engineering controls and awareness devices. For each of the identified engineering, enforcement, and education programs identified in the report, TxDOT estimates the number of lives that could be saved annually and for the duration of the project. The report serves as a five-year safety plan. **Figure 7** shows the engineering projects identified by the task force and projected costs of each, but TxDOT has not identified a funding source for this plan. Solutions for Saving Lives on Texas Roads also identifies interventions that other states have implemented to reduce crashes. Many of the identified programs focus on administrative controls such as adopting distracted driving

FIGURE 6
HADDON MATRIX EXAMPLE OF CRASH CONTRIBUTORS, AS OF OCTOBER 2016

TIME	HUMAN	VEHICLE OR EQUIPMENT	PHYSICAL ENVIRONMENT	SOCIOECONOMIC
Precrash	Poor vision or reaction time, alcohol or drugs, speeding, taking risks	Failed brakes, missing lights, lack of warning systems	Narrow roadway shoulders, ill-timed signals	Cultural norms permitting speeding, running red lights, driving under the influence
Crash	Failure to use occupant restraints	Malfunctioning safety belts, poorly engineered air bags	Poorly designed guard-rails	Lack of vehicle design regulations
Postcrash	High susceptibility, alcohol	Poorly designed fuel tanks	Poor emergency communication systems	Lack of support for emergency medical services and trauma systems

Source: U.S. Department of Transportation, Federal Highway Administration.

FIGURE 7
TEXAS TRAFFIC SAFETY TASK FORCE FIVE-YEAR ENGINEERING PLAN, AS OF JUNE 2016

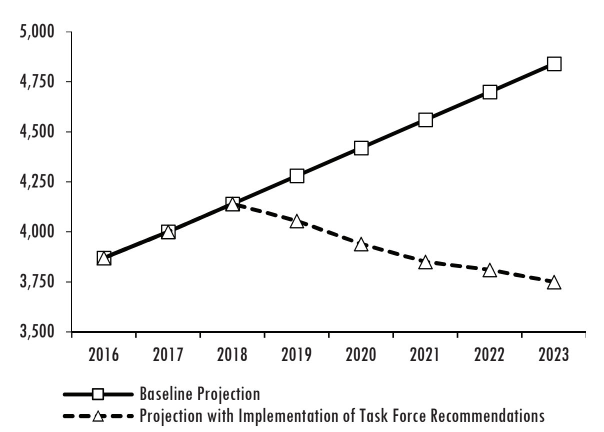
PROJECT	CATEGORY	COST (IN MILLIONS)
Rumble Strips	Engineering	$360.0
Urban Intersections	Engineering	$313.0
High-friction Surface Treatments	Engineering	$100.0
Median Barriers	Engineering	$590.0
Modernize Bridge Rail	Engineering	$70.0
Widen Narrow Highways and Bridges	Engineering	$636.0
Traffic Management Systems	Engineering	$300.0
Total		**$2,369.0**

SOURCE: Texas Traffic Safety Task Force, Solutions for Saving Lives on Texas Roads, June 2016.

laws, and encouraging the use of personal protective equipment such as motorcycle helmets and seatbelts.

As **Figure 8** shows, TxDOT projects that, absent changes to policy, the state will have 4,140 motor vehicle-related fatalities in calendar year 2018, and 4,840 fatalities in calendar year 2023. These projections would represent increases of 17.0 percent and 36.8 percent, respectively, from calendar year 2014. The estimated fatalities in calendar year 2023 would be the most fatalities of any state in a single year since at least calendar year 1994. According to NHTSA, the most fatalities in a state in a single year since calendar year 1994 occurred in California with 4,333 motor vehicle-related fatalities in 2005. If all of the engineering projects identified in the Traffic Safety Task Force report were successfully implemented, TxDOT estimates that 2,035 to 3,000 fatalities could be avoided over the 5- to 20-year service life of the project.

FIGURE 8
PROJECTED MOTOR VEHICLE-RELATED FATALITIES IN TEXAS, CALENDAR YEARS 2016 TO 2023



SOURCE: Texas Traffic Safety Task Force, Solutions for Saving Lives on Texas Roads, June 2016.

In addition to resulting in injuries and fatalities, crashes can also reduce throughput and increase congestion. Crashes are a shock to the transportation network that can have unanticipated contributions to congestion. According to NHTSA, motor vehicles crashes result in significant time delays to other motorists, primarily through causing unexpected lane closures. An NHTSA analysis estimated that crashes typically disrupt traffic for 43 minutes on average, with crashes that do not result in injuries disrupting traffic for 41 minutes on average and fatal crashes disrupting traffic for 2.5 hours on average. Implementing traffic safety engineering projects can reduce these shocks and avoid unexpected gridlock. Implementation of traffic management systems can improve the flow of traffic and improve throughput at any given level of roadway capacity.

DEVELOP A PLAN TO ALIGN STATE TRANSPORTATION POLICY TO SUPPORT THE STATE'S ZERO FATALITY GOAL

TxDOT forecasts that implementing the projects in the Traffic Safety Task Force's five-year plan would allow the state to slow the rate of increase in fatalities by avoiding 3,395 total motor vehicle-related fatalities from calendar years 2018 to 2023. However, TxDOT forecasts that, even with the implementation of the task force's plan, fatalities would increase from calendar year 2016 levels. To achieve TxDOT's zero fatality goal, transportation policy should be aligned with a traffic safety focus. Option 1 would amend statute to require TxDOT to develop a plan to align state transportation policy with the agency's zero fatality goal. The plan should be updated every five years. This plan could be developed using a similar process as the process used by the Traffic Safety Task Force and include the participation of stakeholders, such as law enforcement, metropolitan planning organizations, and TTI. The plan should:

- include a detailed traffic safety engineering plan;
- identify policies or programs that could support safer alternatives to automobile travel;
- identify traffic safety engineering projects that would increase the safety of transportation infrastructure and/or reduce crashes that cause shocks to the transportation system;

- identify changes to traffic laws that would encourage safer driving behavior;
- identify best practices for transportation projects that support development patterns to reduce the need for automobile travel;
- evaluate the feasibility of requiring traffic safety impact reviews to be completed before project approval to ensure that safety is considered from a project's design phase;
- identify TxDOT policies that present barriers to local governments for implementing effective traffic safety programs, such as road diets on state-controlled roadways in urban areas; and
- include recommendations for statutory and internal administrative change.

ESTABLISH A FUNDING SOURCE FOR TRAFFIC SAFETY ENGINEERING PROJECTS

In Solutions for Saving Lives on Texas Roads, the Traffic Safety Task Force recommended spending $2.4 billion—$473.8 million per year—on highway safety engineering projects during a five year period, in addition to funding identified through HSIP and SHSP. TxDOT also indicated that the state is able to fund only 20.0 percent to 30.0 percent of qualifying HSIP projects each year. During fiscal years 2005 and 2009, the state supplemented federally funded traffic safety efforts by issuing State Highway Fund Revenue Bonds. However, Texas has reached the statutory limit on SHF Revenue Bonds of $6.0 billion, 20.0 percent of which was required to be spent on traffic safety engineering projects.

The Eighty-fourth Legislature, 2015, dedicated a new funding source for highway construction projects. As a result of voter approval of Proposition 7, 2015, the Texas Constitution was amended to allocate the following to the State Highway Fund: (1) revenue from the first $2.5 billion of state sales tax collected in excess of $28.0 billion in a fiscal year, beginning in fiscal year 2018; and (2) 35.0 percent of motor vehicle sales and rental taxes collected in excess of $5.0 billion in a fiscal year beginning in fiscal year 2020. The allocation of sales tax revenue expires at the end of fiscal year 2032, and the allocation of the motor vehicle sales and rental taxes expires at the end of fiscal year 2029. No portion of this new revenue is required to be used to fund traffic safety engineering projects. Option 2 would amend statute to establish a funding source for traffic safety engineering projects by requiring that 20.0 percent of the deposit of state sales tax to the SHF is set aside for traffic safety-related engineering projects beginning in 2020. This option would generate approximately $500.0 million per fiscal year for these projects, assuming a total deposit to the SHF of $2.5 billion per fiscal year. Setting aside a portion of this revenue source for traffic safety-related engineering projects would be similar to the requirement that at least 20.0 percent of the proceeds from bonds backed by the State Highway Fund is used for traffic safety improvements. When prioritizing traffic safety engineering projects to implement with these funds, TxDOT should focus on the estimated reduction in fatalities and serious injuries of each project, and consider the impact of the projects on the state's connectivity, system maintenance, mobility, and congestion goals.

FISCAL IMPACT OF THE OPTIONS

Option 1 would have no significant fiscal impact. It is expected that the administrative functions associated with the traffic safety planning process could be absorbed by the agency. Option 2 would direct 20.0 percent of deposits from the sales tax to the State Highway Fund traffic safety engineering projects beginning in 2020. In 2015, the Texas Comptroller of Public Accounts estimated that $5.0 billion would be transferred for the 2018–19 biennium. If the deposit to the State Highway Fund remains at this level in the future, dedicating 20.0 percent of this amount would result in $1.0 billion for traffic safety projects in the 2020–21 biennium. This option would have no fiscal impact because it is an allocation of an existing appropriation and not an appropriation of additional funds.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

IMPROVE REPORTING OF COUNTY ROAD AND BRIDGE FUNDS

Statute authorizes Texas' 254 counties to make and enforce all necessary rules for the construction and maintenance of public roads and bridges in their jurisdictions. As of fiscal year 2016, counties manage more than 146,833 roadway miles and an estimated 10,258 off-system bridges. During the 2014–15 biennium, counties received $1.7 billion in local and state funds to assist with transportation projects related to roads and bridges.

To oversee the use of these funds, state law requires each county to submit a report to the Comptroller of Public Accounts that details certain annual expenditures made on county roads and bridges. The reports must include expenditures of funds that are required by the constitution or other law to be spent on public roads or highways. However, counties report this information using inconsistent methods. Additionally, expenditure data submitted on these reports is not collected by a transportation-related agency. The expenditure data collected by the state should be reviewed and assessed by the Texas A&M Transportation Institute to determine its usefulness and whether the state should continue collecting this data. This would not have a net fiscal impact for the 2018–19 biennium, but could lead to improved oversight or reduce unnecessary reporting in the future.

FACTS AND FINDINGS

- ♦ Counties received $1.7 billion in state-authorized funds for roads and bridges during the 2014–15 biennium. This amount was a 17.8 percent increase from the 2012–13 biennium, and was largely due to onetime funding of $224.5 million in General Revenue Funds for road projects in counties affected by increased energy sector activity.
- ♦ Statute requires all counties to file an annual report, the Texas County Lateral Road and Bridge Expenditures Yearly Report, with the Comptroller of Public Accounts to account for the total amount of expenditures made for county roads and bridges, as a prerequisite for receiving certain state funds.

CONCERNS

- ♦ County expenditures spent on county roads and bridges are not reported to a transportation-related agency.
- ♦ Some counties do not report total expenditures that are required to be spent on county roads and bridges, which is inconsistent with statutory requirements. As a result, this information is not consistently reported across counties, which limits the usefulness of the data.

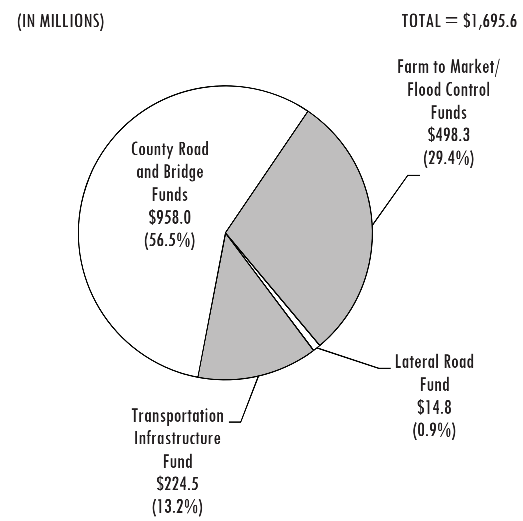
OPTION

- ♦ **Option 1:** Include a rider in the 2018–19 General Appropriations Bill to require the Texas A&M Transportation Institute to review county road and bridge expenditure data submitted to the Comptroller of Public Accounts. As part of the review, the Texas A&M Transportation Institute will collaborate with the Comptroller of Public Accounts and the Texas Department of Transportation to assess the need for and usefulness of collecting county road and bridge expenditure data and submit the results of their findings, and any recommendations for improving state data collection and state oversight of county road and bridge expenditures if it is recommended for continuation, to the Legislative Budget Board and the permanent standing committees of the House of Representatives and Senate with jurisdiction over transportation matters no later than November 1, 2018.

DISCUSSION

State law authorizes counties to assess certain local fees and taxes to generate revenue for road and bridge funding. The state also allocates funds to counties for this purpose; historically, these funds have been allocated primarily through the County and Road District Highway Fund (Other Funds) (Lateral Road Fund). In recent biennia, new sources of state funding have been provided, and counties have received additional authority to raise revenue. This funding has resulted in increased road and bridge funding for counties. During the 2014–15 biennium, state allocations and authorized fee and tax revenues generated $1.7 billion in road and bridge funding for counties, as shown in **Figure 1**.

FIGURE 1
STATE ALLOCATIONS AND AUTHORIZED COUNTY ROAD AND BRIDGE FUNDING, 2014–15 BIENNIUM



NOTES:
(1) County Road and Bridge Funds and Farm to Market/ Flood Control Funds are administered by counties and receive local fees and taxes that counties are authorized to assess and collect.
(2) The Lateral Road Fund and the Transportation Infrastructure Fund are administered by the state.
(3) A onetime increase of $0.2 million was allocated to counties from the Lateral Road Fund for the 2014–15 biennium due to the Legislature's appropriation of the remaining balance of the County and Road District Highway Fund (Lateral Road Fund) that remained since 1998.

SOURCES: Legislative Budget Board; Comptroller of Public Accounts; Texas Department of Motor Vehicles; Texas Department of Transportation.

Certain counties will also receive an additional source of funding for road projects, beginning in fiscal year 2018.

Of this funding, approximately $1.5 billion was generated from local fees and taxes that counties are statutorily authorized to assess; approximately $239.3 million was appropriated to counties from state funds. **Figure 2** shows the state-authorized funds and revenue sources that counties receive for road and bridge projects.

In accordance with state law, the appropriated state funds and authorized fee and tax revenue collections by counties shown in **Figure 2** are required to be spent on road and bridge projects. To ensure that counties are expending these funds in accordance with state law, each county is required to submit a report to the Comptroller of Public Accounts (CPA) that accounts for the total expenditures on certain county road and bridge projects. Counties are required to submit this report, no later than January 30 of each year, as a prerequisite for CPA to distribute funds from the Lateral Road Fund.

COUNTY AND ROAD DISTRICT HIGHWAY FUND (LATERAL ROAD FUND)

The Lateral Road Fund was established when voters approved an amendment in 1932 to add the Texas Constitution, Article VIII, Section 7.

The Lateral Road Fund was established to address outstanding county and road district indebtedness that was assumed by the state along with the highway system. The fund has since been expanded to include additional authorized uses, such as construction and maintenance of certain roads within a county's jurisdiction. The Lateral Road Fund receives an allocation of state gasoline tax, which is capped at $7.3 million each fiscal year by the Texas Tax Code, Section 162.503. This limit was established in 1954. **Figure 3** shows the allocation of gasoline tax revenues.

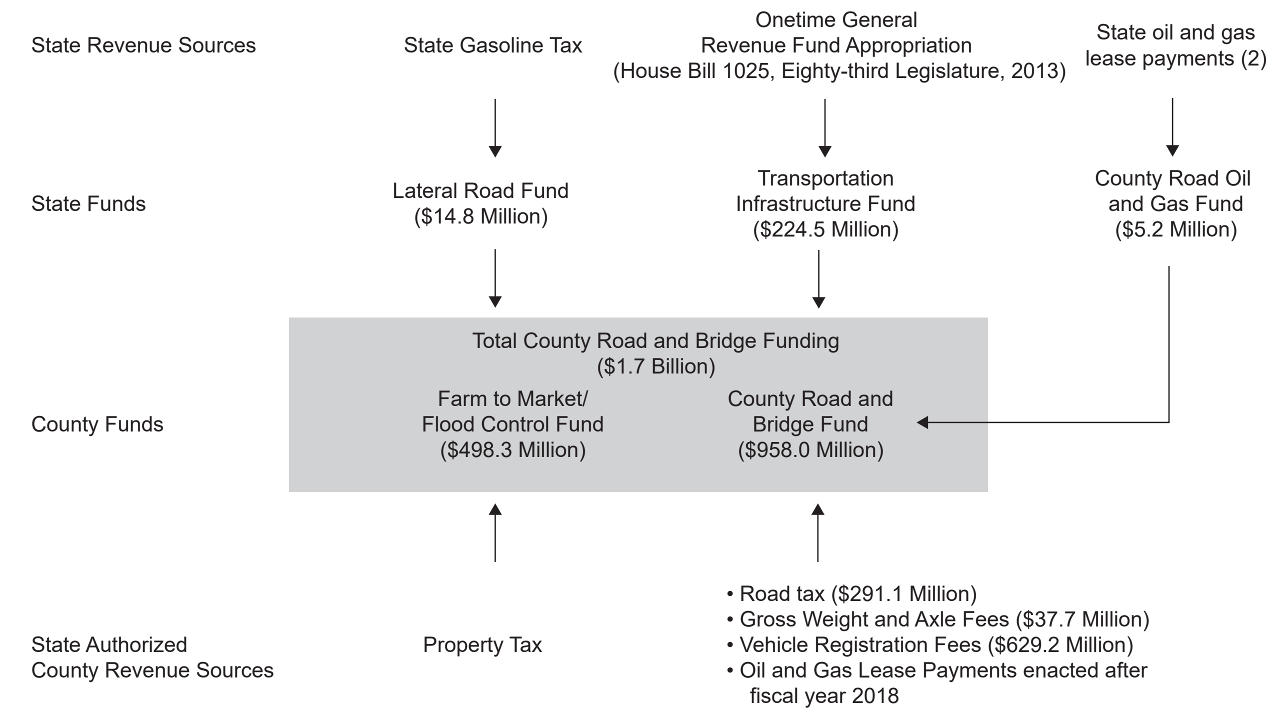
The Lateral Road Fund is administered by CPA, which distributes funds that the Legislature appropriates from the fund to Fiscal Programs within the Comptroller of Public Accounts. All counties are allocated a portion of the $7.3 million appropriated from the Lateral Road Fund on or after October 15 of each fiscal year. In accordance with the Texas Transportation Code, Section 256.002, allocation payments made to counties are based on their size, rural population, and lateral road mileage. According to CPA, a lateral road in this formula is defined as a county road that is situated at or extending to the side of a state highway. In fiscal year 2015, an average of $28,740 was dispersed per county; with payments ranging from $4,602 for Loving County to $156,066 for Harris County. The five counties that received the highest payments from the Lateral Road Fund are shown in **Figure 4**.

In accordance with the Texas Transportation Code, Section 256.003, counties are authorized to use funding from the Lateral Road Fund to construct and maintain lateral roads, and purchase rights-of-way for lateral roads, farm-to-market roads, and state highways. Counties may also use funds to pay the principal, interest, and sinking fund requirements on legal obligations incurred to finance certain transportation projects.

TEXAS COUNTY LATERAL ROAD AND BRIDGE EXPENDITURES YEARLY REPORT

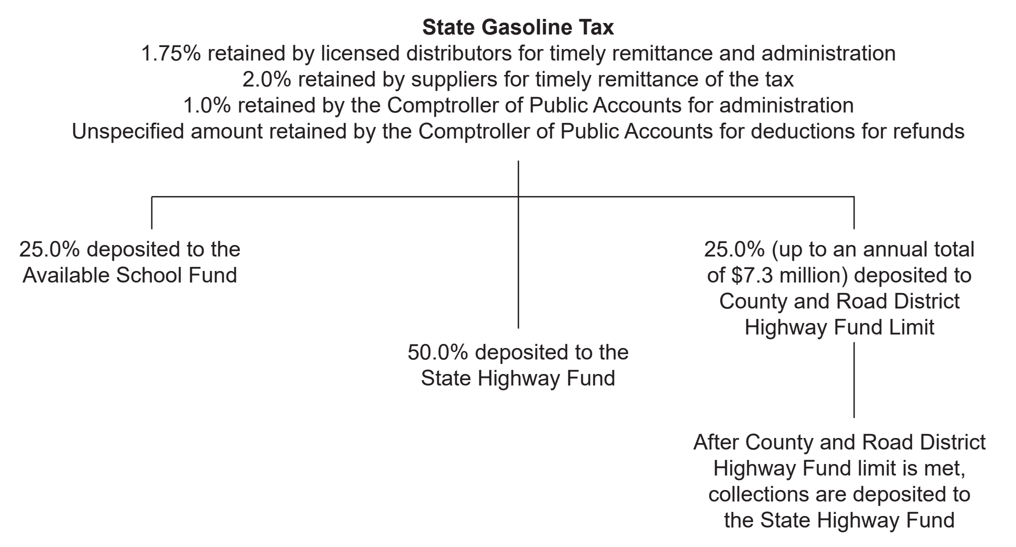
The Texas County Lateral Road and Bridge Expenditures Yearly Report is a form prescribed by CPA to comply with statutory requirements for each county to account for the

FIGURE 2
OVERVIEW OF FUNDS AVAILABLE FOR TEXAS ROAD AND BRIDGE PROJECTS, 2014–15 BIENNIUM



NOTES:
(1) Optional vehicle registration fee revenue collections is included in the Vehicle Registration Fee total listed in the figure.
(2) County Road Oil and Gas Fund will not provide payments to counties until fiscal year 2018.
SOURCES: Legislative Budget Board; Comptroller of Public Accounts; Texas Department of Motor Vehicles; Texas Department of Transportation.

FIGURE 3
ANNUAL TEXAS GASOLINE TAX REVENUE ALLOCATION, FISCAL YEAR 2015



SOURCE: Legislative Budget Board.

FIGURE 4
TOP FIVE TEXAS COUNTIES BY LATERAL ROAD FUND PAYMENTS, FISCAL YEAR 2015

COUNTY	PAYMENT
Harris	$156,066
Montgomery	$135,553
Bexar	$89,257
Brazoria	$85,152
Parker	$79,003

SOURCE: Comptroller of Public Accounts.

total amount of expenditures made for certain county road and bridge projects. The data submitted by counties is self reported and must be filed with CPA no later than January 30 of each year, or allocation payments will not be made to a county from the Lateral Road Fund in the following fiscal year. The original intent of this report was to provide oversight of the money that is constitutionally dedicated to the Lateral Road Fund and allocated to counties by requiring the counties to report how they spent these funds. However, the statute setting forth information on what is to be included in this report has been amended to include expenditures made from all funds that are required by the constitution or other law to be spent on public roads and highways. Not all counties report the total expenditures that are required to be spent on county roads and bridges; as a result, the expenditure data has been inconsistent and does not allow for oversight as intended.

Additionally, the current structure of reporting expenditure data to the CPA is inefficient because CPA only uses the Texas County Lateral Road and Bridge Expenditure Yearly Report to confirm statutory compliance with the Texas Transportation Code, Section 256.009. Information submitted via this report is not collected by a transportation-related agency as an effective accounting of expenditures made on county roads and bridges. To increase efficiency and improve oversight of county road and bridge expenditures, the expenditure data collected by the CPA should be reviewed and assessed by the Texas A&M Transportation Institute (TTI) to determine its usefulness and whether the state should continue collecting this data. TTI conducts applied research that addresses a rage of transportation challenges in the state. The agency also serves the Texas Legislature as an independent resource providing analysis of state and transportation policies and the economic impact of these policies. Option 1 would include a rider in the 2018–19 General Appropriations Bill to require TTI to review county road and bridge expenditure data submitted to the CPA. As part of the review, TTI would collaborate with CPA and the Texas Department of Transportation (TxDOT) to assess the need and usefulness of collecting county road and bridge expenditure data and submit the results of their findings, and any recommendations for improving state data collection and oversight of county road and bridge expenditures if it is recommended for continuation, to the Legislative Budget Board and the permanent standing committee in the House of Representatives and Senate with jurisdiction over transportation matters no later than November 1, 2018.

Under this option, counties would still be required to submit county road and bridge expenditure reports to the CPA, as a prerequisite for receiving allocations from the Later Road Fund. However, the data submitted in the reports along with previous versions submitted would be reviewed by TTI to assess the need for and usefulness of the state collecting data on county road and bridge expenditures. It is expected that TTI will coordinate with CPA to determine the best process for receiving this data to review.

OTHER STATE FUNDS AND ASSISTANCE FOR COUNTY ROADS AND BRIDGES

During the 2014–15 biennium, the state provided $239.3 million to counties for road and bridge projects, and maintenance and repair assistance through programs administered by TxDOT. In addition to the funds provided from the Lateral Road Fund, most counties also receive funding from the Transportation Infrastructure Fund (Other Funds), and beginning in fiscal year 2018 certain counties will start receiving allocations from the County Road Oil and Gas Fund, which was established by the Eighty-fourth Legislature, 2015.

TRANSPORTATION INFRASTRUCTURE FUND

The Eighty-third Legislature, Regular Session, 2013, established the Transportation Infrastructure Fund to be administered by TxDOT. The fund can consist of federal and state funding, and funds appropriated by the Legislature. The fund can also include gifts, grants, fees, and investment earnings. In accordance with the Texas Transportation Code, Section 256.102, money in the fund may only be appropriated to TxDOT for purposes of issuing grants to counties affected by increased oil and gas production.

House Bill 1025, Eighty-third Legislature, Regular Session, 2013—the supplemental appropriations bill—appropriated $450.0 million in General Revenue Funds to TxDOT to address roadway safety and maintenance in areas of the state affected by increased energy sector activity. The appropriation included $225.0 million for deposit to the State Highway Fund to repair or rehabilitate affected parts of the state highway system. The remaining $225.0 million was deposited to the Transportation Infrastructure Fund to provide grants for county transportation infrastructure projects in counties affected by increased energy sector activity, pursuant to Senate Bill 1747, Eighty-third Legislature, Regular Session, 2013.

The Transportation Infrastructure Fund received no additional appropriation during the 2016–17 biennium. However, House Bill 2, Eighty-fourth Legislature, 2015 (the supplemental appropriations bill) provided TxDOT with the authority to use any unexpended balances of previous appropriations from the fund. This unexpended balance authority enables TxDOT to continue fulfilling county grant obligations until June 20, 2017.

COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT PROGRAM

In addition to establishing the Transportation Infrastructure Fund, Senate Bill 1747, Eighty-third Legislature, Regular Session, 2013, established the County Transportation Infrastructure Fund Grant Program. Administered by TxDOT, the purpose of the grant program is to allocate funds from the Transportation Infrastructure Fund to counties for transportation projects located in areas of the state affected by increased oil and gas production. In accordance with TxDOT's administrative rules, grants are awarded to counties as a reimbursement of authorized costs related to the project.

To be eligible for grant funds, counties must be located entirely or partially in an area affected by increased oil and gas production, designate an area as a county energy transportation reinvestment zone (CETRZ), and maintain an advisory board for the CETRZ. To receive funding from the grant program, counties must enter into an agreement with TxDOT, and provide matching funds in an amount at least equal to 20.0 percent of the amount of the grant. Counties that have been designated as economically disadvantaged, as defined in the Texas Transportation Code, Section 22.053, are only required to provide matching funds in an amount at least equal to 10.0 percent of the amount of the grant. The formula for allocating grant funds to approved counties is as follows:

- 20.0 percent according to weight tolerance permits issued;
- 20.0 percent according to oil and gas production taxes;
- 50.0 percent according to well completions; and
- 10.0 percent according to the volume of oil and gas waste injected.

All of the state's 254 counties were eligible for grant funds, and TxDOT received applications from 191 counties. Combined, the 191 counties requested $1.3 billion in grant funding. TxDOT approved all applications received and awarded $224.5 million in grants. As of July 2016, $85.8 million remained unexpended from the total amount awarded in accordance with the County Transportation Infrastructure Grant Fund Program. **Figure 5** shows the 10 counties that received the largest grant awards and the unexpended amounts as of July 2016.

FIGURE 5
TOP TEN TEXAS COUNTIES BY COUNTY TRANSPORTATION INFRASTRUCTURE GRANT FUND PROGRAM AWARD JULY 2016

(IN MILLIONS)

COUNTY	REQUESTED	AWARDED	UNEXPENDED
Andrews	$21.5	$9.4	$0.9
Ector	$14.0	$7.8	$3.2
Karnes	$40.4	$7.8	$3.2
Martin	$49.9	$7.2	$5.0
Dimmit	$19.6	$6.8	$3.1
La Salle	$158.5	$6.5	$5.8
Glasscock	$10.6	$6.1	$0.9
Midland	$26.6	$6.0	$6.0
Upton	$8.0	$5.8	$2.7
Webb	$9.0	$5.6	$5.2

SOURCE: Texas Department of Transportation.

COUNTY ROAD OIL AND GAS FUND

House Bill 2521, Eighty-fourth Legislature, 2015, established the County Road Oil and Gas Fund with a deferred start date of September 1, 2017. The fund is intended to provide an additional revenue source for road maintenance to counties whose road systems have been affected by increased oil and gas production activities. Royalty payments to the state from leases of state oil and natural gas minerals under county roads and rights-of-way are deposited into this fund, rather than into the General Revenue Fund.

As established, the County Road Oil and Gas Fund will be a trust fund outside the state Treasury that will be held and administered by CPA. The fund will consist of payments to the state from leases of state oil and natural gas minerals under lands owned by the state that were or may be acquired for a county right-of-way. The fund will receive only those payments from leases that were entered before fiscal year 2018. Interest and other income from investment of the fund's balance will also be credited to the County Road Oil and Gas Fund. Payments from leases that were entered on or after fiscal year 2018 will be paid directly to the county road and bridge funds of the affected counties. **Figure 6** shows the process of royalty payments as prescribed by House Bill 2521, Eighty-fourth Legislature, 2015.

FIGURE 6
TEXAS OIL AND GAS ROYALTY PAYMENTS PROCESS BEGINNING FISCAL YEAR 2018

NOTE: Shows the effects of House Bill 2521, Eighty-fourth Legislature, 2015, which takes effect September 1, 2017.
SOURCE: Legislative Budget Board.

Because the fund is held outside the Treasury, funds may be expended without a legislative appropriation. As the trustee for the County Road Oil and Gas Fund, the CPA will distribute two payments from the fund each fiscal year to the county road and bridge funds of those affected counties. Payments distributed to counties from this fund are authorized to be used only on road maintenance projects. Based on historical information that the General Land Office provided on the four-year average of oil and natural gas lease payments derived from county highway rights-of-way, and adjusted for CPA's oil and gas price forecast for the 2016–17 biennium, the resulting estimate of revenue to be deposited into this new account is expected to be $5.2 million in fiscal year 2018 and to decrease subsequently.

ASSISTANCE THROUGH TXDOT PROGRAMS

In addition to funding, the state also assists counties through the Local Government Assistance Program and the Highway Bridge Program. In accordance with the Local Government Assistance Program, TxDOT provides materials worth at least $6.0 million each fiscal year to counties for maintenance and repair of county roads. Materials are allocated based on the number of weight tolerance permits issued by a county and the total vehicle and lane miles of county roads. Counties have received these materials from the state since the 1998–99 biennium.

The Highway Bridge Program is a federal program administered by TxDOT that provides funding to improve the condition of bridges across the state that the agency considers structurally deficient or functionally obsolete. Off-system bridges, which are within the jurisdiction of local governments, are authorized to receive funding from this program. In accordance with this program, the Federal Highway Administration funds up to 80.0 percent of an approved project's cost, and TxDOT and the local government share the remaining portion.

LOCAL FUNDS FOR COUNTY ROADS AND BRIDGES

The county road and bridge fund and the farm-to-market and lateral road fund are two funds dedicated to road and bridge projects that each county may establish and manage in accordance with state law. Revenue generated from certain local taxes and fees that the state authorizes counties to collect and receive are deposited into these funds. During the 2014–15 biennium, these funds combined received $1.5 billion in revenue collections.

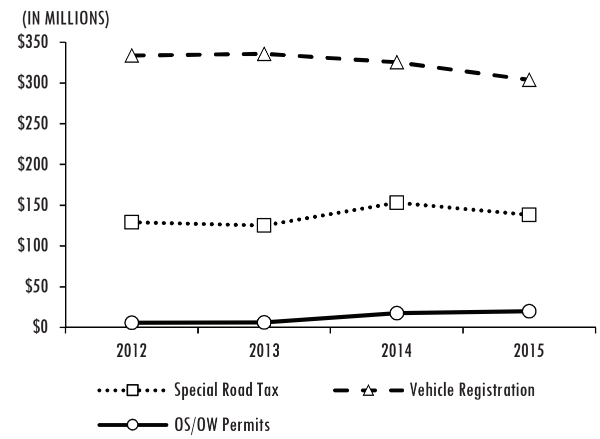
COUNTY ROAD AND BRIDGE FUNDS

Each county road and bridge fund is controlled by the county's commissioners court and is dedicated for working public roads and building bridges. In accordance with state law, the fund receives deposits from special road taxes, vehicle registration fees, and oversize/overweight permit fees. During the 2014–15 biennium, all counties combined generated $958.0 million from these revenue sources for their county road and bridge funds. This amount was an increase of 0.5 percent from the 2012–13 biennium. **Figure 7** shows trends in revenue dedicated to county road and bridge funds during the past four fiscal years.

REVENUE SOURCES

In accordance with state law, county road and bridge funds receive three sources of revenue: special road taxes, vehicle registration fees, and gross weight and axle fees. Special road tax dedicated to county road and bridge funds may be assessed after a county receives voter approval. Allocations of vehicle registration fees and oversize/overweight permit fees are distributed to county road and bridge funds based on formulas established in the Texas Transportation Code. **Figure 8** shows these revenue sources.

FIGURE 7
TEXAS COUNTY ROAD AND BRIDGE FUND REVENUE TRENDS, FISCAL YEARS 2012 TO FISCAL YEAR 2015



NOTE: Optional vehicle registration fees assessed by counties for road projects is included in the vehicle registration category.
SOURCE: Texas Department of Motor Vehicles.

SPECIAL ROAD TAX

Counties that have received voter approval may assess a $0.15 special road tax on each $100.00 valuation of property. This revenue is distributed into county road and bridge funds and may only be used for the further maintenance of county roads. In fiscal year 2014, 81 counties assessed a special road tax, and 79 counties assessed this tax in fiscal year 2015. The total amount of revenue generated by counties assessing a special road tax during the 2014–15 biennium was $291.1 million. This amount was a 12.7 percent increase in revenue from the previous biennium. **Figure 9** shows the increase in revenue generated from this tax.

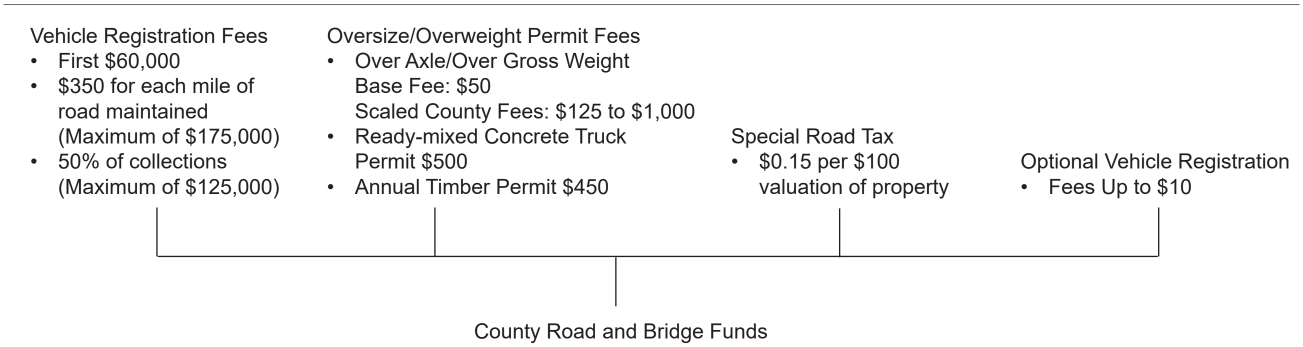
VEHICLE REGISTRATION FEES

Texas motor vehicle owners are required to annually renew their vehicle registration. As of January 2016, the base vehicle registration fee varies from $30.00 to $840.00, depending on vehicle weight and type. Owners of trailers and travel trailers are also required to renew their registration annually and pay a fee. All vehicle registration fees are set forth in the Texas Transportation Code, Chapter 502.

In accordance with the formula established by the Texas Transportation Code, Section 502.198, revenue from the vehicle registration fee assessed for most passenger vehicles is distributed among the state and the county where the vehicle is registered. Vehicle registration fees retained by counties are deposited in their county road and bridge funds and are authorized to be used only for the construction and maintenance of lateral roads, including payments on obligations issued for road projects in the county. **Figure 10** shows the formula distribution of vehicle registration fees among a county and the state.

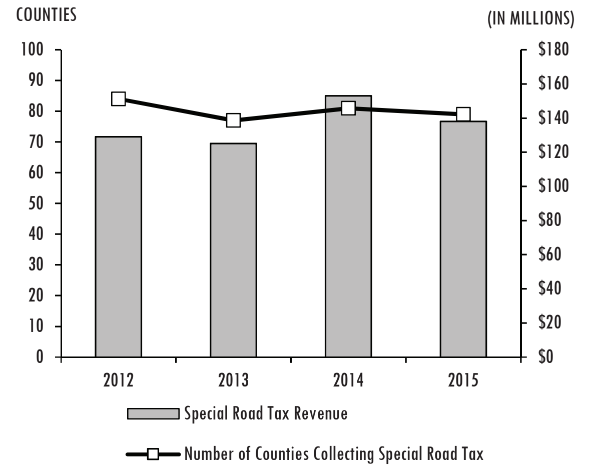
As shown in **Figure 10**, counties are authorized to retain the first $60,000 in registration fees collected for the calendar year. After the $60,000 limit is reached, counties are authorized to retain $350 for each mile of road maintained up to 500 miles, or a maximum of $175,000. Before fiscal year 2014, counties also retained an amount of vehicle registration fees equal to 5.0 percent of motor vehicle sales taxes, including penalties, collected during the previous calendar year. Due to statutory changes, counties no longer retain these fees. After a county reaches all authorized maximums, it may retain 50.0 percent of vehicle registration fees for the remainder of the calendar year until a maximum of $125,000 is collected. In accordance with this allocation formula, counties retained $170.1 million in vehicle registration fee revenue for their county road and bridge

FIGURE 8
DEDICATED REVENUE SOURCES FOR TEXAS COUNTY ROAD AND BRIDGE FUNDS, AUGUST 2016



SOURCE: Legislative Budget Board.

FIGURE 9
TEXAS COUNTY SPECIAL ROAD TAX REVENUE
FISCAL YEARS 2012 TO 2015



SOURCE: Comptroller of Public Accounts.

funds during the 2014–15 biennium. However, according to the DMV, vehicle registration fee collections for 67 counties were insufficient to cover the amounts that the counties are statutorily authorized to retain for their county road and bridge funds.

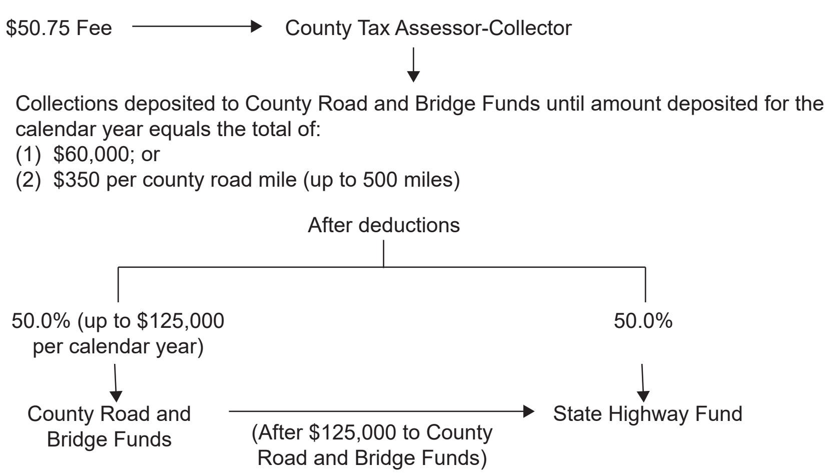
All counties are authorized to charge up to an additional $10 on vehicle registrations for road and bridge projects. Counties deposit fee revenue collected from these additional fees to their county road and bridge funds. During fiscal year 2015, 95.6 percent of counties assessed additional fees on vehicle registrations, generating $229.0 million in fee revenue. Fees ranged from $5 to the maximum of $10. However, 2.8 percent of those counties assessing additional fees assessed them at lower costs than the authorized maximum.

OVERSIZE OR OVERWEIGHT PERMIT FEES

Counties also receive revenue for their county road and bridge funds from oversize/overweight permit fees. DMV issues the permits to motor vehicle carriers that transport loads exceeding the state's authorized size and weight limits for roads and bridges. Oversize/overweight permits are intended to ensure the safety of the traveling public, and protect the integrity of highways and the bridges. DMV offers 27 permits to motor vehicle carriers depending on the type and purpose of their loads. Portions of fees generated from three of these permits are dedicated to counties. **Figure 11** shows permits that generate fee revenue for counties.

Over axle/gross weight tolerance permits are issued to motor vehicle carriers that transport divisible commodities, such as cotton, asphalt, water, and livestock. A weight tolerance permit allows a motor vehicle carrier to travel on county roads and state maintained roadways. When obtaining a weight tolerance permit, motor vehicle carriers are required to identify those counties that will be affected by the permit. An annual base fee of $90 and additional fees ranging from $175 to $1,000, depending on the number of counties that will be affected, are assessed for each permit. In accordance with state law, the base fee of $90 is shared among counties and the state. The county portion of the base fee is $50, which is distributed to each county based on the ratio of the miles of county roads compared to miles of county roads

FIGURE 10
ANNUAL TEXAS VEHICLE REGISTRATION FEE REVENUE ALLOCATION, AUGUST 2016



SOURCE: Legislative Budget Board.

FIGURE 11
TEXAS OVERSIZE/OVERWEIGHT PERMIT FEES, FISCAL YEAR 2015

					(IN MILLIONS)	
TYPE	STATUTE (THE TEXAS TRANSPORTATION CODE)	FEE	STATE PORTION	COUNTY PORTION	STATE REVENUE	COUNTY REVENUE
Over Axle/Gross Weight Base Fee	623.011(b)(3); 621.353(a)	$90	$40	$50	$2.3	$2.9
Over Axle/Gross Weight Additional Fee	623.0111(a)(2); 623.0111(c)	$175 to $1,000	$0 to $125	$125 to $1,000	$5.3	$17.1
Ready-Mixed Concrete Truck Fee	623.0171(c); 623.0171(l)	$1,000	$500	$500	$2.5	$2.5
Annual Timber Permit	623.322(a)(1); 623.324(a)	$900	$450	$450	$0.04	$0.04

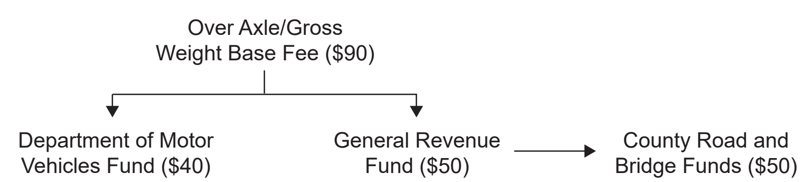
NOTE: County revenue is deposited into the General Revenue Fund before the Comptroller of Public Accounts makes distribution payments to the affected counties.
SOURCE: Texas Department of Motor Vehicles.

maintained by all 254 counties. The additional fees assessed for this permit are distributed only to those counties that were identified in the permit application, with each county receiving an amount that is based on the ratio of the total number of miles of county roads maintained to the total number of miles of county roads maintained by all of the identified counties. **Figure 12** shows the distribution of the base fee revenue collected for over axle/gross weight tolerance permits, and **Figure 13** shows the distribution of the additional fee collected for counties designated on the permit. During fiscal year 2015, 57,901 weight tolerance permits were issued, and $20.1 million in fee revenue was collected for county road and bridge funds.

Ready-mixed concrete truck permits are issued to ready-mixed concrete trucks or concrete pump trucks to authorize those trucks to exceed single-axle and tandem-axle weight allowances set in statute by a certain percentage of weight. A ready-mixed concrete truck permit authorizes travel on county roads and state-maintained roadways. An annual fee of $1,000 is collected for each permit issued. The fee is shared equally among the counties and the state, with each entity receiving $500 from each permit. In accordance with DMV's administrative rules, the $500 is distributed equally across all counties designated in the permit. **Figure 14** shows the distribution of fee revenue collected for ready-mixed concrete truck permits. During fiscal year 2015, 4,978 ready-mixed concrete truck permits were issued, and $2.5 million in fee revenue was collected for county road and bridge funds.

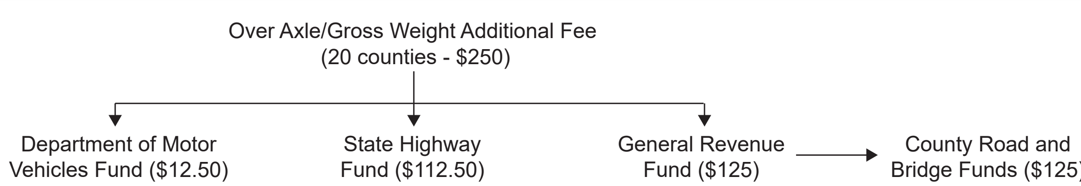
Annual timber permits are issued to trucks that transport unrefined timber, wood chips, or woody biomass to authorize

FIGURE 12
TEXAS OVER AXLE AND OVER GROSS WEIGHT BASE FEE DISTRIBUTION, AUGUST 2016



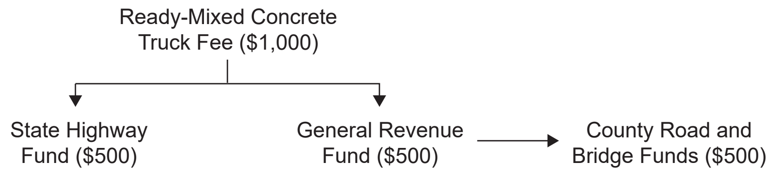
NOTE: The Comptroller of Public Accounts distributes fee revenue from the General Revenue Fund to all counties at least twice each fiscal year.
SOURCE: Legislative Budget Board.

FIGURE 13
TEXAS OVER AXLE AND OVER GROSS WEIGHT ADDITIONAL FEE DISTRIBUTION, AUGUST 2016



NOTES:
(1) Amounts shown may vary depending upon the number of counties for which the permit is obtained.
(2) The Comptroller of Public Accounts distributes fee revenue from the General Revenue Fund to all counties designated in the permit.
SOURCE: Legislative Budget Board.

FIGURE 14
TEXAS READY-MIXED CONCRETE TRUCK FEE REVENUE DISTRIBUTION, AUGUST 2016



NOTE: The Comptroller of Public Accounts distributes fee revenue from the General Revenue Fund to all counties designated in the permit.
SOURCE: Legislative Budget Board.

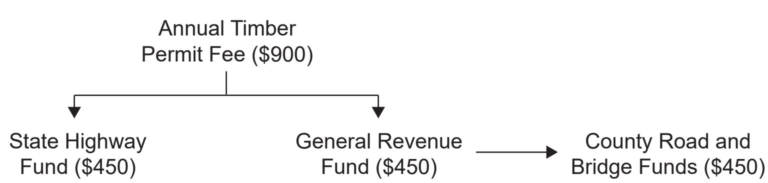
those trucks to exceed single-axle and tandem-axle weight allowances set in statute by a certain percentage of weight. An annual timber truck permit authorizes travel on county roads and state-maintained roadways. An annual fee of $900 is collected for each permit issued. The fee is shared equally among the counties and the state, with each receiving $450 in fee revenue. Pursuant to the Texas Transportation Code, Section 632.324, the revenue is distributed equally across all counties designated in the permit. **Figure 15** shows the distribution of fee revenue collected for annual timber truck permits. During fiscal year 2015, 59 annual timber truck permits were issued, and $41,850 in fee revenue was collected for county road and bridge funds.

FARM-TO-MARKET AND LATERAL ROAD FUND

Each farm-to-market and lateral road fund is administered by the county's commissioners court and is dedicated for acquiring rights-of-way, construction, and maintenance of farm-to-market and lateral roads. This fund can also be used in cooperation with TxDOT for farm-to-market or lateral road projects. The fund receives deposits from local property taxes.

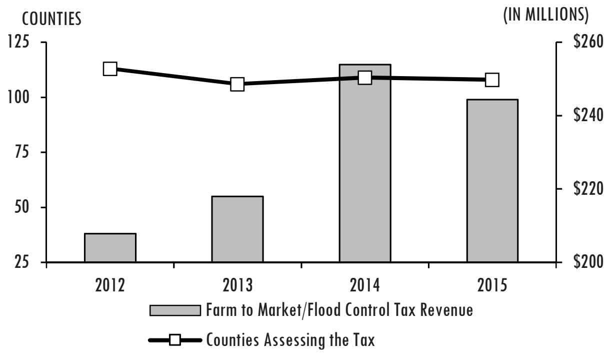
Pursuant to the Texas Constitution, counties that have received voter approval may assess a $0.30 farm-to-market/flood control tax on each $100.00 valuation of property taxes for deposit into either their farm-to-market and lateral road fund or their flood control fund. In fiscal year 2014, 109 counties assessed a farm-to-market/flood control tax, and 108 counties assessed this tax in fiscal year 2015. The total amount of revenue generated by counties assessing a farm-to-market/flood control tax during the 2014–15 biennium was $498.3 million. An average of $2.3 million was collected per county, with revenues ranging from $329 for Zapata County to $35.6 million for Bexar County. The amount generated from this tax has increased by 14.6 percent from the past two biennia. **Figure 16** shows the increase in revenue generated from this tax. However, the proportion of these revenues collected and expended on road construction and maintenance as opposed to flood control projects is unknown.

FIGURE 15
TEXAS ANNUAL TIMBER PERMIT FEE DISTRIBUTION, AUGUST 2016



NOTE: The Comptroller of Public Accounts distributes fee revenue from the General Revenue Fund equally across all counties designated in the permit at least once each fiscal year.
SOURCE: Legislative Budget Board.

FIGURE 16
TEXAS FARM-TO-MARKET/FLOOD CONTROL TAX REVENUE, FISCAL YEARS 2012 TO 2015



SOURCE: Comptroller of Public Accounts.

FISCAL IMPACT OF THE OPTION

Option 1 would include a rider in the 2018–19 General Appropriations Bill to require TTI to review and assess the need for and usefulness of the state collecting county road and bridge expenditure data by collaborating with CPA and TxDOT. TTI would be required to submit the results of its findings and recommendations relating to the continuation of collecting county road and bridge expenditure data to the Legislative Budget Board and the permanent standing committee in the House of Representatives and Senate with jurisdiction over transportation matters. It is estimated that the option would have no significant fiscal impact, and it is expected that TTI could implement the option within existing resources.

The introduced 2018–19 General Appropriations Bill includes a rider to implement Option 1.

IMPLEMENT COST SHARING FOR TOURISM PROMOTION ACTIVITIES

In calendar year 2015, tourism represented 2.1 percent of the state's gross domestic product, and an estimated 10.5 percent of Texas employment was in the tourism industry. It is estimated that tourist spending generated $3.8 billion in state taxes in 2015. The Hotel Occupancy Tax, which is the primary funding source of the state's tourism promotion activities, is projected to generate $550.3 million in fiscal year 2016.

For the 2016–17 biennium, the Legislature appropriated $67.7 million from the General Revenue–Dedicated Account No. 5003, Hotel Occupancy Tax Deposits, to the Trusteed Programs within the Office of the Governor for tourism promotion. These funds are expended by the Office of the Governor's Economic Development and Tourism Office for out-of-state domestic and international advertising campaigns, publications, events, and other activities intended to promote tourism. The state, businesses in the tourism industry, and businesses that support the industry benefit from this state-funded promotion. According to the Office of Economic Development and Tourism, the state's spending develops the state's brand, increases awareness of Texas as a destination, increases tourism in the state, and provides access to tourism research and contact information for people who have expressed interest in travel information. These benefits are provided at no cost to businesses in the tourism industry. To increase industry participation, the state could restructure the method of finance for promotional activities to implement cost sharing with the tourism industry and establish a formal venue for input on what those activities should be.

FACTS AND FINDINGS

- ♦ Many publicly funded tourism programs have transitioned from governmental agencies to private/public partnerships structured as not-for-profit organizations to increase input and guidance from industry leaders and to ease administrative barriers to revenue generation.
- ♦ Texas engages the tourism industry with a fee-for-service model through the Texas Department of Transportation's Tourism Oriented Directional Sign program. The state has also engaged in shared marketing expenses for Texas products through the Texas Department of Agriculture's Go Texan program, which, when funds are appropriated for this purpose, matches marketing dollars of Texas agribusinesses.
- ♦ Florida's tourism office requires a one-to-one match of private-to-public contributions for promotional activities. This requirement is consistently exceeded, with private contributions reaching $141.8 million to public funding of $73.0 million in fiscal year 2015.

CONCERN

- ♦ The Texas tourism industry's fiscal responsibility for the state's tourism promotion is inconsistent with other programs that charge fees, such as the Tourism Oriented Directional Sign program and the Go Texan program. As a result, the state is missing an opportunity to share costs and partner with private industry.

OPTIONS

- ♦ **Option 1:** Amend statute to limit the expenditure of funds appropriated to the Trusteed Programs within the Office of the Governor for tourism promotion, to no more than an amount equal to private contributions for tourism, not to exceed the amount appropriated by the Legislature. Funds could be released to the agency after private contributions have been certified by the Comptroller of Public Accounts.
- ♦ **Option 2:** Include a contingency rider in the 2018–19 General Appropriations Bill reducing appropriations to Trusteed Programs within the Office of the Governor from General Revenue–Dedicated Account No. 5003, Hotel Occupancy Tax Deposits, for tourism marketing by 25.0 percent in the second year of the biennium and apply the match requirement to one-third of the appropriation, contingent on the passage of legislation implementing Option 1.
- ♦ **Option 3:** Amend statute to establish an advisory body to oversee expenditure of all private and public sector funds by the tourism division of Trusteed Programs within the Office of the Governor. The advisory body could represent all regions of the state and include a diverse representation of businesses in

the tourism industry and local tourism marketing organizations.

DISCUSSION

The state began supporting the tourism industry in 1936 with the establishment of information bureaus located at strategic entry points to the state by the Texas State Highway Department. The agency produced its first tourism publication to encourage out-of-state visitors in 1960 after a change in the Texas Constitution authorized public funds to be expended on tourism promotion. Since then the role of tourism promotion has transferred among several agencies.

The Office of the Governor's Economic Development and Tourism Office (EDT) is the primary agency conducting the state's marketing activities to out-of-state markets. EDT is responsible for the marketing campaign "Texas. It's like a Whole Other Country." The mission of the tourism division of EDT is to enhance and extend local economic development efforts by marketing Texas as a tourist destination in out-of-state domestic and international markets and generating travel to the state, thereby generating tourism-related revenue and jobs.

Distinct from state tourism marketing to non-Texans, tourism promotion to state residents is conducted primarily by four agencies: the Texas Parks and Wildlife Department (TPWD), the Texas Department of Transportation (TxDOT), the Texas Historical Commission (THC), and the Texas Commission on the Arts (TCA). These agencies specialize in unique segments of Texas tourism and attract various types of travelers such as historical, wilderness, and cultural tourists.

The Texas Government Code, Section 481.172, requires EDT to produce an annual strategic tourism plan in collaboration with other state agencies engaging in tourism promotion. The goal of this plan, as described in statute, is to effectively meet consumer demands and emerging travel trends while minimizing duplication of efforts and realizing cost savings through economies of scale. EDT, TPWD, TxDOT, THC, and TCA have also signed a memorandum of understanding (MOU) outlining their partnership in the tourism field and developing the strategic plan. In fiscal year 2016, the five agencies collectively spent $47.7 million in All Funds on tourism promotion activities. These activities include advertising, marketing, and production of publications. Although EDT targets its marketing outside the state, the agency coordinates with the four other agency members of the MOU. These agencies serve as a resource for EDT to highlight attractions that are used to promote travel to Texas.

The work of these state agencies is intended to support and enhance the tourism industry, which represented 2.1 percent of the state's gross domestic product in 2015. The industry represents an estimated 10.5 percent of Texas employment, and spending by tourists generated $3.8 billion in state tax revenue in 2015. Approximately $550.3 million was generated through the state's hotel occupancy tax in fiscal year 2016.

OFFICE OF THE GOVERNOR ECONOMIC DEVELOPMENT AND TOURISM OFFICE OPERATIONS

The EDT tourism division operates three main functions: research, advertising, and public relations. For fiscal year 2016, the Legislature appropriated $35.3 million in All Funds for EDT's tourism promotion activities. EDT's staff perform various activities to help promote the tourism industry in the state. The role of EDT is intended to provide one unified message for the state of Texas as a tourism destination.

A main component of EDT's promotion of the Texas tourism brand is its website www.traveltexas.com. This website offers prospective visitors information about travel experiences in various geographical regions of the state. The website received 2.6 million unique visitors during fiscal year 2015. EDT partners with TxDOT to maintain business listings for this database; TxDOT maintains an updated directory of businesses for the Texas State Travel Guide publication. In addition to providing EDT with business information, TxDOT also maintains the list of travel leads, or people who have expressed interest in travel information. This information is available through the EDT's industry site, www.travel.texas.gov, to tourism businesses such as hotels and feature attractions, and to other tourism organizations such as visitor and convention bureaus. This site also provides access to cooperative advertising opportunities, the state's marketing plan, and tourism-related research. This information, in addition to business listings on the consumer-facing website, is provided to businesses and entities in the tourism industry at no charge.

EDT maintains a global presence through its marketing and public relations activities abroad. According to the agency, international residents are target audiences for Texas tourism promotion because these visitors spend more time and money when they visit the state compared to domestic tourists. The agency hires several firms to conduct these activities in countries such as the United Kingdom, Germany, and China.

EDT also conducts familiarization tours for travel journalists and industry professionals such as travel agents. These trips are a commonplace activity in the tourism industry. The agency coordinates these trips to provide travel writers and professionals with tours that highlight various aspects of the state. The agency conducted 46 industry tours and 46 media tours in fiscal year 2016. The media tours resulted in 498 publications and 857,400 impressions, which is the number of times the resulting content was displayed, promoting Texas as a tourism destination.

In addition to operating familiarization tours, EDT provides opportunities to participate in cooperative advertising. This program enables small businesses and local tourism agencies to advertise on a larger scale than they could afford to do individually. Cooperative advertising combines the official Texas tourism logo with that of the partner organization, providing benefit to both parties. This advertising takes place in nationally distributed magazines, on website banners, and in email newsletters.

EDT interacts with the tourism industry primarily through participating in conferences hosted by industry associations and informal meetings with industry leaders to receive input on the office's performance through its promotion activities. The EDT also seeks this input from local organizations such as convention and visitor bureaus and destination marketing organizations throughout the state.

LOCAL TOURISM EFFORTS

Local organizations, such as convention and visitor bureaus (CVB) or destination marketing organizations (DMO), are responsible for tourism marketing in their regions. These organizations encourage conventions, large meetings, and events to book at their destinations. This function is also part of many cities' chambers of commerce. Approximately 364 organizations are responsible for local tourism across Texas. These organizations vary greatly in size depending on the regions they represent. Smaller destinations are often operated by a few employees and represent regions consisting of several municipalities; such organizations are intended to provide a unified message promoting a region. For example, the neighboring cities of College Station and Bryan are represented by one CVB called the Bryan-College Station CVB.

The primary funding source for more than three-fourths of these organizations nationwide is through a hotel tax. Nationwide, however, 42.0 percent of these local organizations also have other funding sources, such as membership dues and revenue from sponsorships and hosting events. Many of these organizations no longer rely solely on municipal funding and have restructured as not-for-profit organizations, which enables more discretion in generating revenue. These organizations are structured pursuant to the U.S. Internal Revenue Code, Section 501(c)(6), which designates business leagues as not-for-profit and is commonly used by commerce chambers and real estate boards. Smaller DMOs and CVBs rely more on the activities of the agencies in the Texas State Agency Tourism Council to help promote their destinations due to limited resources. For example, smaller organizations may advertise in TxDOT's Texas Highways publication or through EDT's cooperative marketing program.

PUBLIC FUNDING FOR TOURISM ACTIVITIES

The hotel occupancy tax, which is the state's primary source of public funding for tourism activities, is applied to short-term lodging by the state and municipalities. The state rate is 6.0 percent, which is collected by the Comptroller of Public Accounts (CPA) and deposited into the General Revenue Fund. By statute, one-twelfth of the collected amount is allocated in the General Revenue Fund to be used for the purpose of promoting tourism in the state. This allocation is transferred to the General Revenue–Dedicated Account No. 5003, Hotel Occupancy Tax Deposits (Account 5003).

Municipalities set their own rates that may not exceed 7.0 percent, although certain exceptions authorize municipalities and special districts to set higher rates. The Texas Tax Code restricts the use of revenue from the municipal hotel tax to activities that support tourism and the convention and hotel industries. These expenditures can include construction of an event or sporting facility, local cultural event organizations, and funding for CVBs and DMOs.

MEASURING TOURISM PROMOTION ACTIVITIES

Effectiveness of the state's tourism advertising is often measured based on return on investment (ROI). This calculation can be difficult to compare with other states because methodologies vary. For example, some states measure ROI on specific advertising campaigns, and others measure the return based on a full year of advertising. Some states also include only direct advertising expenses; other states include operating costs.

Efforts to measure returns often include measuring the number of jobs in the industry, economic activity generated and multiplier effects, taxes generated, direct spending, and number of visitors. EDT contracts this research to a firm that performs tourism-related research for many organizations across the state. The contractor's process for measuring outcomes includes surveying visitors and using U.S. Bureau of Economic Analysis data to develop models that apply at the state and local levels. According to this analysis, in fiscal year 2015, tourism promotion activities by the state returned $7.36 in tax revenue for every dollar spent.

FUNDING MODELS

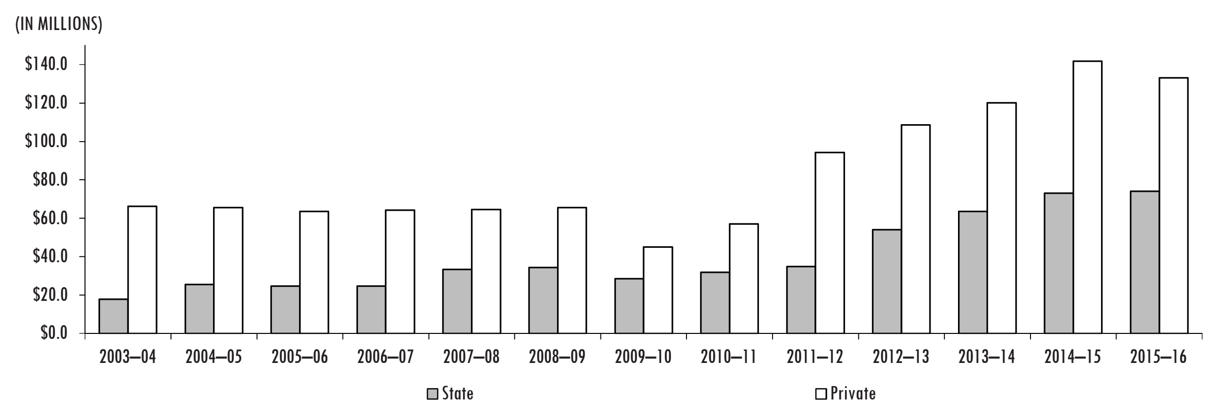
In Texas, like most other states, the Legislature has funded tourism marketing primarily through appropriation of General Revenue Funds. However, some states also use other models of funding. California has a special assessment tax on tourism businesses. The assessment is based on the percentage of revenue that a business generates from tourism. Five business types within the tourism industry are assessed. These businesses include accommodations, attractions, passenger car rental, restaurants and retail, and travel services. Businesses with gross receipts less than $1.0 million or with less than 1.0 percent of tourism revenue are exempt from the assessment. All businesses subject to the assessment self-certify their tourism-related income used to calculate individual assessment amounts. The maximum assessment per year for any business is $250,000. The assessment is self-imposed by all businesses affected through an industrywide vote that renews the tax. The assessment is the sole source of funding for the state's tourism marketing program.

Visit California is the state's 501(c)(6) not-for-profit organization responsible for marketing the state as a tourist destination. It was established in 1998 and reports to the Governor's Office of Business and Economic Development. The organization is responsible for the state's marketing plan and is overseen by a 37-member commission that includes individuals representing all regions of the state and the five industries included in the special assessment.

Florida funds its tourism marketing through a statutorily mandated one-to-one match that requires private funding for each public dollar spent. Although public funds must be matched by private funds, the level of public appropriations is not required to match private fund-raising. This private match can come in the form of cash contributions, shared advertising, or promotions. The Florida Legislature required the one-to-one match to be met within four years from enactment. Visit Florida, the state's tourism agency, met the match requirement two and one-half years after implementation. As shown in **Figure 1**, the state has consistently exceeded the required match of private funds. As part of its strategy to achieve this match, Visit Florida has established a membership model. Tourism businesses can become partners, which offers varying levels of membership and benefits. These partnerships range from $365 to $1,500 annually.

In addition to requiring private matching funds, the Florida Legislature established the Florida Tourism Industry Marketing Corporation, which operates as Visit Florida. Visit Florida contracts with Enterprise Florida, Inc., the state's economic development organization, to provide all the state's tourism marketing. The corporation is a 501(c)(6) not-for-profit, direct-support organization intended to

FIGURE 1
VISIT FLORIDA FUNDING BY SOURCE, FISCAL YEARS 2003 TO 2015



NOTE: Florida's state fiscal year is July 1 to June 30.
SOURCE: Visit Florida Annual Reports and Visit Florida Compliance and Operational Review.

organize, operate and manage activities that relate to promotion and marketing of tourism.

Visit Florida is led by a board of directors made up of 31 tourism industry representatives. The board represents geographical and business diversity within the state. In addition to the board of directors, Visit Florida has 11 special committees assigned to specific operations such as industry relations, visitor services, and global media.

Visit Florida operates all tourism functions in the state, including the five travel information centers across the state. The organization has more than 130 employees in addition to contracted staff working in several international markets.

RESTRUCTURING TEXAS TOURISM TO INCREASE STATE RETURNS

By solely using state funds for tourism promotion, the state is missing an opportunity to maximize its resources by partnering and sharing expenses with the tourism industry. Option 1 would amend the Texas Government Code to limit the expenditure of funds appropriated to the Trusteed Programs within the Office of the Governor for tourism marketing to no more than an amount equal to private contributions for the agency's tourism promotion activities. Dependent on the agency's ability to raise private contributions, this option would not result in the reduction of any tourism promotion activities of the state. The option also provides for the potential of expanded state promotion if the industry match exceeds the state's appropriated amount.

To achieve this match, EDT could implement several changes to its operations. These changes include developing a fee-for-service or membership model, which would monetize the agency's tourism assets. Agency assets include collective marketing power, industry research, travel leads, and EDT's comprehensive website. EDT's website has approximately 3,000 attractions listed, many of which are run by businesses. In addition, the state has 364 local tourism agencies. EDT could also meet the match proposed by Option 1 through engaging with industry partners to receive in-kind contributions, such as complimentary trips for travel journalists or donated vacation packages used for promotions.

EDT could consider options for restructuring operations to provide ease in collection of private funds. The Office of the Governor is authorized by statute to accept gifts; however, other models could simplify the transaction. In addition to the previously discussed model used in Florida, the TPWD offers a slightly different model. TPWD has an official nonprofit partner, the Texas Parks and Wildlife Foundation, which raises private funds from individuals and corporate sponsors to fund operations of TPWD.

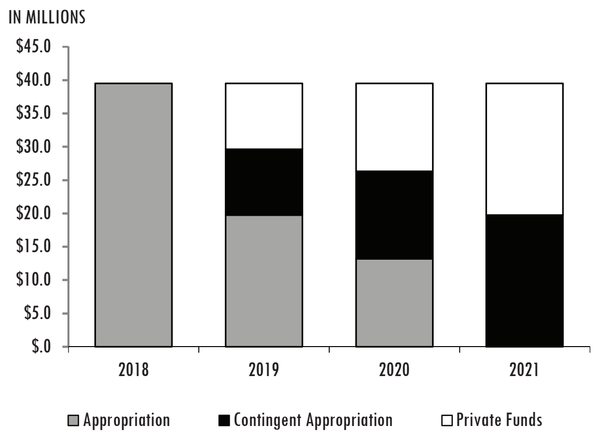
The limitation on expenditure of appropriated funds by EDT could be implemented incrementally across four years. This implementation would enable EDT to develop a strategy to raise and collect private contributions. The phase-in of a full match requirement could require no matching contributions in the first year following enactment, and no limitations on the expenditure of funds appropriated for that fiscal year. Beginning in fiscal year 2019, one-third of the appropriated amount could be subject to the match requirement. For fiscal year 2020, 50.0 percent of the appropriated amount could be subject to matching contributions, followed by a 100.0 percent match of private funding for fiscal year 2021 and thereafter.

Funds collected to meet the match requirement could be held in an account outside of the Treasury by the Texas Treasury Safekeeping Trust Company (TTSTC). For EDT to receive its share of the state's hotel occupancy tax, CPA could certify that matching private funds or in-kind contributions have been received. As a result of being held outside the Treasury, those funds would not require an appropriation to be expended.

Option 2 would include a contingency rider in the 2018–19 General Appropriations Bill to reduce appropriations from Account 5003 as described previously for the second year of the biennium, fiscal year 2019. This rider would reduce the appropriation to the agency from Account 5003 by 25.0 percent, $9.9 million, from the fiscal year 2018 level. The rider would also limit EDT's ability to expend one-third of this appropriation to no more than the amount of private contributions collected for tourism promotion. **Figure 2** shows a sample implementation schedule of the match requirement from Option 1 and reduction of appropriation from Option 2.

Options 1 and 2 would not change the allocation of hotel occupancy tax revenue available for tourism promotion activities at EDT. Reducing appropriations from Account 5003 and making a portion of it contingent on private matching contributions would result in an increasing amount of unappropriated but still dedicated funds. As an alternative to the reduction in the appropriation of state funds proposed in Option 2, the Texas Legislature could choose to implement Option 1 and fully appropriate the allocation of hotel occupancy tax dedicated for tourism

FIGURE 2
ESTIMATED MATCH REQUIREMENT IMPLEMENTATION
FISCAL YEARS 2018 TO 2021



Note: Amounts shown assume continuation of the 2016–17 total appropriation; the Legislature could choose to appropriate more or less and make a proportional change to amounts that would be contingent on private matching contributions.
Source: Legislative Budget Board.

promotion at EDT, which would increase the dollar amount of appropriations subject to the private funds matching requirement.

Alternatively, the Legislature could choose to reduce the amount of Hotel Occupancy Tax revenue deposited into Account 5003, as mandated by statute. This reduction would prevent exponential growth of unappropriated funds in this account while still meeting the intended level of appropriations for tourism marketing.

To support the engagement of businesses in the tourism industry, Option 3 would amend the Texas Government Code to establish an advisory board that would include industry professionals from across the state. While EDT engages with the industry informally, there is no formalized method of incorporating industry input. A board would provide better coordination of efforts as well as greater buy in from the private sector to achieve the 100.0 percent match proposed by Option 1. Industry input could also lead to a greater ROI as input from industry could guide expenditures to become more targeted and effective.

The reliance by state agencies on external advisors is common in many Texas agencies. State agencies have more than 120 active advisory committees. The advisory board for tourism would be made up of members of the tourism industry who represent all regions of the state and sectors of the industry. The board could be chaired by the Governor, who would appoint its representatives. This board would serve in an advisory role on all expenditures of private funds held by the Texas Treasury Safekeeping Trust Company and state funds appropriated to Trusteed Programs within the Office of the Governor for tourism promotion. Statute could prohibit state funds from being spent for advisory body reimbursements; however, the agency could choose to use private contributions other than those used to meet the required match for this purpose.

COST SHARING IN OTHER STATE AGENCIES

TxDOT and TDA run programs requiring the tourism industry to contribute to financing operations from which the industry directly benefits. TDA operates the Go Texan program. This program is intended to represent Texas agribusiness on state, national, and international levels by building recognition for the Go Texan brand and by helping consumers find Texas products. According to research conducted by the Department of Agricultural Sciences and Engineering Technology at Sam Houston State University, the program and its distinct logo has established a brand and has increased sales of products. Membership in the Go Texan program costs $100 to $5,000 depending on the level of benefits. The entry-level membership authorizes businesses to use the Go Texan logo on their product. In addition to product promotion through membership, businesses can apply for funding to market their products through the Go Texan Partner Program. This program, when funding is available, awards selected businesses who submit a marketing plan a grant for half of the costs associated with the plan. Funding of $1.1 million for this program was eliminated during the second year of the 2014–15 biennium. This program is designed to ensure businesses are engaged in the marketing by requiring them to be responsible for half of the funding. Similar to the state's spending on tourism, this program's benefits are shared among: the state in the form of sales tax revenue; the businesses from sales revenue; and supporting businesses, such as those producing packaging or transportation services for marketed products.

TxDOT operates the Tourist Oriented Directional Sign program. Through this program, businesses can purchase signage directing travelers to their locations. To be eligible, a business must have a majority of their visitors residing more than 50 miles away and located in an area with a population of 5,000 or less. These signs cost $500 to $2,000 per year, based on the area's daily traffic count. The signs posted are official Texas road signs, which serve to inform tourists that a business site is safe, clean and in good standing with the state. This endorsement benefits the general public by providing ease of travel, and it benefits businesses that choose to purchase the signage through increased visibility.

FISCAL IMPACT OF THE OPTIONS

Options 1 and 2, requiring private matching contributions in order to expend state funds for tourism, would result in a savings of approximately $9.9 million to General Revenue–Dedicated Account 5003 during the 2018–19 biennium. The fiscal impact shown in **Figure 3** is based on the reduction schedule of Option 1 and assumes appropriations are reduced to match the reduced reliance on state funds for tourism promotion.

FIGURE 3
FIVE-YEAR FISCAL IMPACT OF OPTIONS 1 AND 2
FISCAL YEARS 2018 TO 2022

YEAR	PROBABLE SAVINGS/(COSTS) TO GENERAL REVENUE–DEDICATED ACCOUNT NO. 5003, HOTEL OCCUPANCY TAX DEPOSITS
2018	$0
2019	$9,877,816
2020	$13,173,055
2021	$19,755,632
2022	$19,755,632

NOTE: Probable savings shown above assume continuation of the level of appropriations provided for the 2016–17 biennium; the Legislature could choose to appropriate more or less in the 2018–19 biennium.
SOURCE: Legislative Budget Board.

Option 3, the establishment of an advisory body to oversee expenditure of all private and public sector funds by the Economic Development and Tourism Office, would have no significant fiscal impact as any expenses for this purpose would be paid for using private contributions other than those required for matching purposes.

The House introduced 2018–19 General Appropriations Bill does not include any adjustments as a result of these options.

OVERVIEW OF TEXAS INSURANCE ASSOCIATIONS

Like many states, the Texas Legislature has established two types of safety-net programs as part of its regulation of the insurance industry. For instances when solvency regulations fail to prevent an insurance company's failure, Texas has established guaranty associations. Residual markets, or last-resort insurers, provide insurance coverage to people or entities that have been declined for coverage on the competitive, or voluntary, market.

Texas has separate guaranty associations for property and casualty insurance and for life and health insurance. Texas also has guaranty associations for title insurance and two that cover workers' compensation insurance for employers who self-insure. Protections provided by guaranty associations are financed by liquidating the failed insurer's remaining assets. If those assets are insufficient, the association collects assessments from its member insurance companies, who in most cases are authorized to recoup the cost of the assessments either via tax credits or their policyholders. Statewide, 2,182 insurers and 777 self-insuring employers are members of Texas' five guaranty associations. When an insurer is found to be in poor financial health, the Commissioner of Insurance may designate it as impaired. If regulatory actions cannot save the insurer, a judicial finding that the insurer is insolvent or unable to pay its obligations may follow. The state's two largest guaranty associations, the Texas Property and Casualty Insurance Guaranty Association and the Texas Life and Health Insurance Guaranty Association, have responded to a combined 229 insurers in poor financial health since 1992.

Texas has four insurers of last resort that operate statewide. They offer residential property, automobile liability, medical professional liability, and workers' compensation insurance. Texas also has an association that insures residential property along the coast of the Gulf of Mexico from wind and hail damage. Rates for insurance through associations that provide last-resort insurance can be more than an average policy in the voluntary market. However, the rates are often less than what they should be actuarially. As a result, although they may have a surplus in any given individual year, the associations may not be completely self-sufficient in the long term. At the end of calendar year 2015, 410,454 Texans had some form of insurance through an insurer of last resort.

FACTS AND FINDINGS

- ♦ Even though the state does not directly fund guaranty associations, insurance companies that pay assessments to guaranty associations may recoup these assessments via premium tax credits. The state may forgo revenue for more than a decade following an assessment, because companies can take these credits across several years. The state does not directly fund last-resort insurers, either, and under certain circumstances surcharges on voluntary market policies may be used to subsidize losses.
- ♦ Premium tax credits for members of the property and casualty and the life and health insurance guaranty associations have resulted in $988.5 million in foregone General Revenue Funds since 1993. That number represents approximately 4.6 percent of premium taxes due since 1993.
- ♦ The rates for coverage offered by insurers of last resort may not be sufficient to pay their operating expenses. Therefore, these associations may distribute operating losses among their policyholders, their member insurance companies, both, or, in some cases, voluntary market policyholders.
- ♦ At the end of calendar year 2015, 410,454 Texans had some form of insurance through an insurer of last resort. Approximately two-thirds of this group purchased windstorm and hail insurance through the Texas Windstorm Insurance Association. Approximately 99.0 percent of this group was insured by the Texas Windstorm Insurance Association or the Texas Fair Access to Insurance Requirements Plan Association.
- ♦ The number of Texans insured through one of the last-resort providers has increased by 39.7 percent since 2003. This increase is driven by increases in the number of people insured through the property insurance associations but mainly by increases in the number of Texas Windstorm Insurance Association policyholders. In the same period, the population of the counties with the largest shares of last-resort policyholders has increased 17.2 percent.

- The number of policies eligible for guaranty association protections is not collected from individual insurance companies.

DISCUSSION

State regulatory responsibilities for the insurance industry include solvency regulation and marketplace regulation. Solvency regulation includes monitoring the financial health of licensed insurance companies. State marketplace regulatory activities include monitoring the pricing of premiums and access to insurance. The Texas Department of Insurance (TDI) ensures compliance with the state's insurance code and other laws regarding insurance. TDI's Financial Regulation Division monitors the solvency of state licensed insurers and, if necessary, attempts to rehabilitate companies that fall short of solvency standards. The Commissioner of Insurance, TDI's chief executive, is appointed by the Governor with the consent of the Senate. The Commissioner reviews and approves rates for various lines of insurance under the state's file and use provisions.

The Texas Legislature has established guaranty associations for instances when solvency regulations fail to prevent an insurer's failure and insurers of last resort to provide access to insurance when the voluntary market declines to provide it. Both types of associations are subject to TDI oversight. Guaranty associations are subject to examination by TDI, and TDI staff attend association board meetings and consult with guaranty association staff regularly. TDI regulates all but one of the last-resort insurers in ways substantially similar to how it regulates traditional insurance companies, including approving or reviewing rates, policy forms, and financial statements. Last-resort insurers must also have qualified actuaries review their insurance reserves and be audited by independent certified public accountants. The Texas Automobile Insurance Plan Association, the state's last-resort insurer for automobile insurance, does not directly provide insurance, but is still subject to TDI's approval of its rates, forms, and changes to its plan of operation.

GUARANTY ASSOCIATIONS

State regulators monitor the financial health of insurance companies in their states. When an insurer is found to be in poor financial health, the state's insurance commissioner may designate it as impaired. If regulatory actions cannot save the insurer, a judicial finding that the insurer is insolvent or unable to pay its obligations as they come due may follow.

Guaranty associations protect policyholders from the risk of their insurers becoming insolvent. The National Conference of Insurance Guaranty Funds, an association of state property and casualty insurance guaranty associations, describes guaranty associations as a backstop for policyholders and a reputational safeguard for the insurance industry. Upon a finding that an insurer is insolvent, the insurer's respective guaranty association would arrange continuing insurance coverage or directly pay covered claims on behalf of the failed insurer's policyholders.

Protections provided by guaranty associations are financed by liquidating the failed carrier's remaining assets. If those assets are insufficient to cover outstanding or future claims, the association collects assessments from its members. This post-insolvency, or post-assessment, approach to financing is common to almost all states' property and casualty and life and health guaranty associations. An alternative to post-assessment financing is pre-assessment financing, in which insurers are assessed annually to maintain a specified minimum fund balance. New York is the only state with a pre-assessment model of financing for property and casualty and life and health insurance.

All states and the District of Columbia (D.C.) authorize insurers to recoup the cost of guaranty association assessments. Forty-four states, including Texas, and D.C. authorize members of life and health insurance guaranty associations to count assessments against their premium taxes. The other states either authorize insurers to recoup assessments from policyholders or have no recoupment provision. Among property and casualty associations, 16 states, including Texas, authorize premium tax credits; 31 states and D.C. authorize recoupment via rates or premium surcharges; and three states offer insurers the option of recouping assessments either through tax credits or rates.

The guaranty fund system dates to the late 1960s, following a number of insolvencies among insurers. During the late 1960s and 1970s, several bills that would have established a federal guaranty fund system failed in the U.S. Congress. In a parallel effort, state regulators, working through the National Association of Insurance Commissioners (NAIC), developed and promulgated model legislation for property and casualty and life and health insurance guaranty associations. During the 1990s and the first decade of the 2000s, state regulators and NAIC strengthened solvency regulations, in part because of renewed federal interest in solvency regulation.

Critics of the guaranty fund system say it has vulnerabilities. A December 2013 report by the U.S. Department of the Treasury's Federal Insurance Office (FIO) noted that guaranty fund payouts to policyholders are not uniform across states. For example, maximum per-claim payouts by property and casualty guaranty funds range from $100,000 to $500,000 (Texas' maximum payout is $300,000). FIO recommended that states adopt uniform policyholder recovery rules so that benefits are consistent regardless of where policyholders live.

FIO also noted that a significant life insurer has not failed since the early 1990s. The report concluded that "despite significant apparent capacity in the guaranty fund system, it is unclear how the system would fare in the event of a failure of a large insurance group in the United States." The FIO recommended periodic stress tests of the system, but did not recommend any changes to the guaranty fund system. This concern was echoed by a July 2015 report by the International Monetary Fund (IMF) that recommended that Congress extend to systemic insurance companies certain provisions of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010, that have to do with facilitating the resolution of financial institutions whose failure could cause severe systemic disruption and expose taxpayers to loss.

Like other states, Texas has separate guaranty associations for property and casualty insurance and life and health insurance. Texas also has guaranty associations for title insurance and two that cover workers' compensation insurance for employers who self-insure. Statewide, 2,182 insurers and 777 self-insuring employers are members of Texas' five guaranty associations. Neither TDI nor any of the guaranty associations collect the number of policies eligible for guaranty association protections from individual insurance companies. Premium tax credits for members of the property and casualty and the life and health insurance guaranty associations have resulted in $988.5 million in foregone General Revenue Funds since 1993. That number represents approximately 4.6 percent of premium taxes due since 1993. **Figure 1** summarizes each guaranty fund, including its governing statute, membership, and the amount of tax credits available to members, if applicable.

TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION

The Texas Property and Casualty Insurance Guaranty Association (TPCIGA) was established by the Legislature in 1977. It covers property, workers' compensation, and casualty lines of insurance such as auto, homeowner's, general liability, and professional liability policies. The Texas Insurance Code, Chapter 462, governs the association. Statute sets forth that the association is governed by a nine-member board of directors, which includes five seats for industry representatives and four for the public, all subject to the approval of the Commissioner of Insurance. Its membership includes all insurance companies licensed to sell property and casualty lines of insurance in Texas. As of March 2016, 1,079 such insurance companies operated in the state.

Since 1992, TPCIGA has responded to 92 impaired insurers. These impairments may result in long-term, multiyear liabilities. The association has collected assessments from its members in seven years, most recently in 2006. From 1993 to 2015, assessments from association members accounted for approximately 20.0 percent of TPCIGA's revenue. During this time, approximately 53.0 percent of the

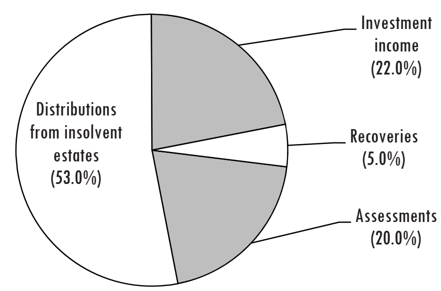
FIGURE 1
TEXAS INSURANCE GUARANTY ASSOCIATIONS, AS OF AUGUST 2016

ASSOCIATION	MEMBERS	ESTABLISHED	GOVERNING STATUTE	AVAILABLE TAX CREDITS	TAX CREDITS ELIGIBLE IN 2016
Texas Property and Casualty Guaranty Association	1,079	1977	The Texas Insurance Code, Chapter 462	$25,404,582	$6,036,504
Texas Life and Health Insurance Guaranty Association	1,076	1973	The Texas Insurance Code, Chapter 463	$42,564,361	$21,391,509
Texas Title Insurance Guaranty Association	27	1987	The Texas Insurance Code, Chapter 2602	$441,310	$110,327
Texas Certified Self-Insurer Guaranty Association	259 employers	1989	The Texas Labor Code, Chapter 407	N/A	N/A
Texas Self-Insurance Group Guaranty Fund	518 employers	2005	The Texas Labor Code, Chapter 407A	N/A	N/A

NOTE: Texas Title Insurance Guaranty Association members include nine members not actively writing any business in Texas as of April 2016.
SOURCES: Legislative Budget Board; Texas Department of Insurance.

association's revenue came from distributions from the estates of insolvent insurers. **Figure 2** shows TPCIGA's funding sources from calendar years 1993 to 2015.

FIGURE 2
TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTEE ASSOCIATION REVENUE SOURCES, CALENDAR YEARS 1993 TO 2015



NOTE: Total revenue for calendar years 1993 to 2015 was $1,800.5 million.
SOURCE: Texas Department of Insurance.

The association reported revenue of $40.2 million in calendar year 2015. Estates of insolvent insurance companies distributed a combined $31.4 million of that revenue. The remaining $8.8 million included investment and capital gains income. Expenses for the association in 2015 included $23.7 million in incurred claims and $2.3 million in net operating expenses. The net operating balance accrues to the association's reserves, which are used to pay claims and expenses arising from insolvencies.

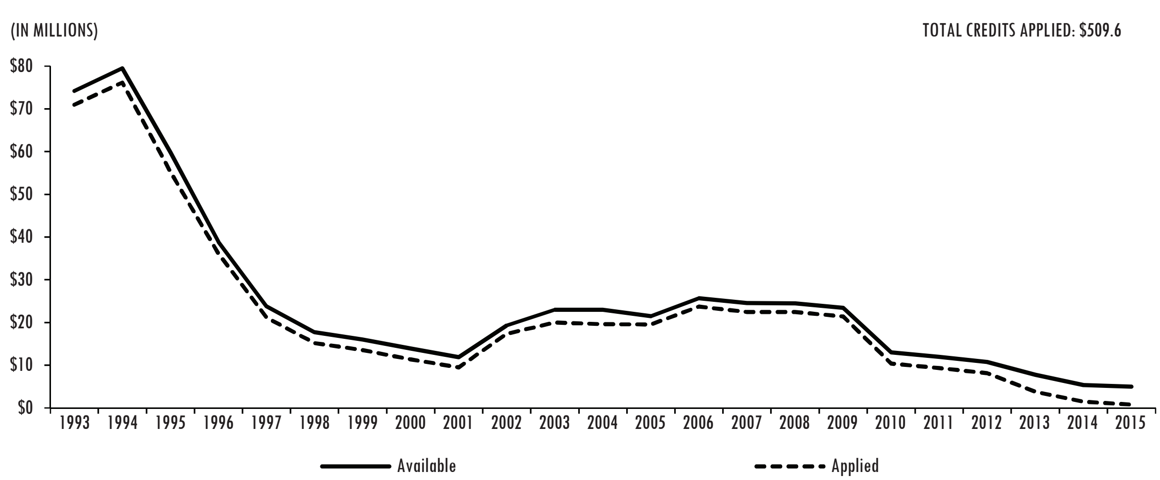
Association members are authorized to take 100.0 percent of TPCIGA assessments as credits against their premium taxes, but only at a maximum rate of 10.0 percent per year. Since 1993, TPCIGA members have redeemed $509.6 million in premium tax credits. **Figure 3** shows the value of available and applied tax credits for TPCIGA members from calendar years 1993 to 2015.

TEXAS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

The Legislature established the Texas Life and Health Insurance Guaranty Association (TLHIGA) in 1973. The association protects life, annuity, and health insurance policyholders and their beneficiaries against the insolvency of their insurers. TLHIGA is a nonprofit entity overseen by a nine-member board of directors that is appointed by the Commissioner of Insurance. As of April 2016, the association included 1,076 life and health insurers.

The association has responded to 137 insolvencies since 1992, and it is still funding some obligations for insolvencies before that time. The association has responded to a new insolvency every year since 1992, except for 1995, 2012, 2014, and 2015. The association responds to an insolvency by either directly paying policyholder benefits, continuing coverage in accordance the insurer's policies, or by negotiating

FIGURE 3
TEXAS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION REVENUE SOURCES CALENDAR YEARS 1993 TO 2015



NOTE: Each year's available credits include unused credits from previous years.
SOURCE: Texas Comptroller of Public Accounts.

substitute coverage with a solvent insurer. As of April 2016, TLHIGA provides continuing coverage to 1,906 policyholders of four insolvent member companies.

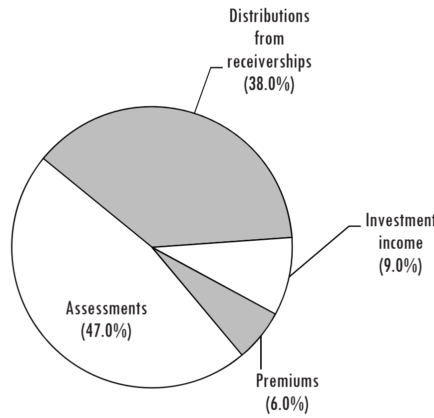
The association had revenues of $8.6 million in calendar year 2014, including $2.7 million in net member assessments, $5.8 million in estate recoveries, and $116,223 in premiums. Operating expenses for the association totaled $11.6 million in 2014, including $10.3 million in claims costs and $1.3 million in administrative costs. When operating losses exceed income, the association covers the shortfall through assessments collected from members. **Figure 4** shows TLHIGA's funding by source for calendar years 1993 to 2015.

The association has collected assessments every year since 1992, except for 2004, 2008, 2010, and 2015. TLHIGA members may recoup assessments as premium tax credits. Assessments related to an insolvency may be redeemed at up to 20.0 percent a year for five years. The value of tax credits redeemed by association members since 1993 is $478.9 million. **Figure 5** shows the value of available and applied tax credits for TLHIGA members from calendar years 1993 to 2015.

TEXAS TITLE INSURANCE GUARANTY ASSOCIATION

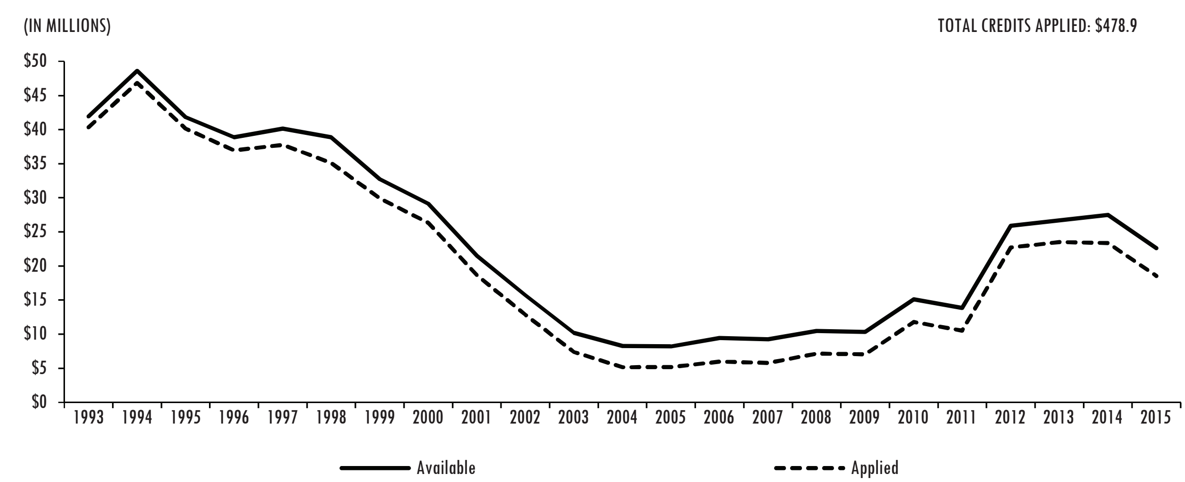
Title insurance protects real estate purchasers and lenders from losses arising from defects to the title that were not detected before closing on the property. For example, previously unknown liens, newly discovered fraud or forgery in a prior deed or transfer, or an ownership claim by an undisclosed or unknown heir could all be expensive to defend and could challenge the validity of the new owner's title. A title insurance policy provides coverage for the legal costs of resolving the problem, usually up to the purchase price of the property. In this sense, title insurance differs from most common types of insurance policies in that it protects the policyholder from events that happened before the policy was purchased. Other lines of insurance protect policyholders from events that happen after the policy is purchased. Title

FIGURE 4
TEXAS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION REVENUE SOURCES CALENDAR YEARS 1993 TO 2015



NOTE: Total revenue for calendar years 1993 to 2015 was $814.6 million.
SOURCE: Texas Department of Insurance.

FIGURE 5
TEXAS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION MEMBER TAX CREDITS, CALENDAR YEARS 1993 TO 2015



NOTE: Each year's available credits include unused credits from previous years.
SOURCE: Texas Comptroller of Public Accounts.

insurance is also relatively unique for having a onetime premium charge at the time the policy is purchased, as opposed to annual premiums. Title insurance policies stay in effect until the property is resold or refinanced. As of April 2016, Texas had 27 licensed title insurers, although only 18 of them are actively conducting business in the state.

TDI sets title insurance premium rates, taking into account loss experience and expense data submitted annually by title insurance companies and agents. The cost to a policyholder for a title insurance policy is based on the property's sale value. All title insurance agents charge the same premium for property of the same value.

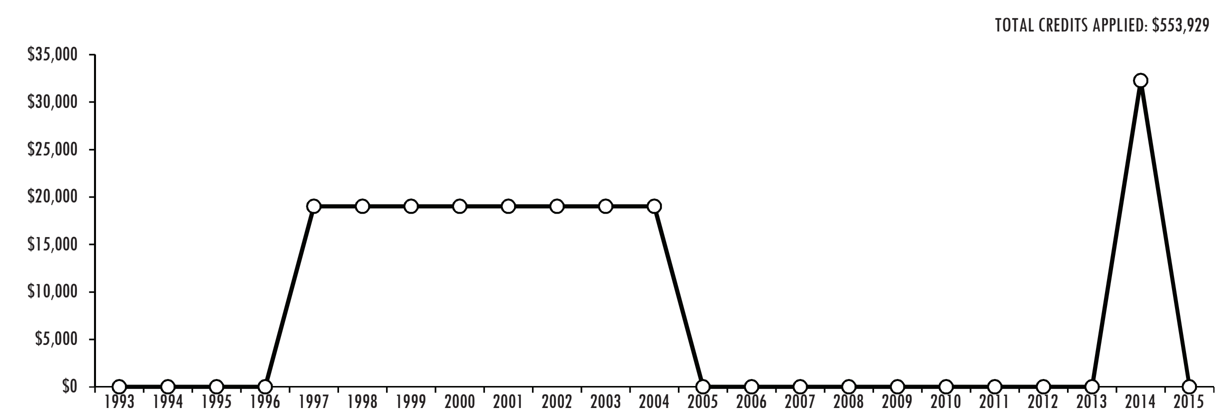
The Texas Title Insurance Guaranty Association (TTIGA) was established by the Seventieth Legislature, Regular Session, 1987. Its board of directors consists of nine individuals appointed by the Commissioner of Insurance. In accordance with statute, five board members are industry professionals, and four are public representatives. The association is responsible for claims against impaired title insurers and impaired title agents. Each of these protections has a separate method of finance.

The association collects a quarterly guaranty fee from title insurance agents or companies (if there is no agent) for each of its closed transactions. Fee revenue covers the cost of paying covered claims that result from shortages in a title insurance agent's escrow accounts when TDI finds the agent to be impaired. Salaries and expenses related to TDI's auditing of title agents are also funded by the quarterly fee revenue. The amount of the fee is set annually by the board, which considers the amount of money needed to be maintained in the guaranty fee account to maintain the association's operations efficiently. The fee was $2 per policy in 2013 and has been as high as $5. Fee revenue for 2013 was approximately $2.4 million. Collection of the fee was suspended January 1, 2014, but it had been reinstated at $3 per title as of April 1, 2016.

If a title insurer becomes impaired, the association estimates the amount of money it would need, in addition to the impaired insurer's assets, to pay covered current and future claims and administrative expenses, and assesses title insurers for that amount. Insurers may recover assessments, up to 1.0 percent of their direct written premiums through a Guaranty Assessment Recoupment Charge (GARC) paid by policyholders. The portion of the assessment not recovered by the GARC fee may be taken as a premium tax credit during the five years following the assessment.

Figure 6 shows that the available and applied tax credits for TTIGA members from calendar years 1993 to 2015 remained even during most years. This is because in most years there either have not been any credits available, as was the case between 2005 and 2013, or all available credits were applied in the same year, such as from 1993 to 1996. As with the other guaranty associations, a TTIGA member whose tax liability is lower than its available credits will carry the credit forward. As of 2015, all tax credits related to the TTIGA had been redeemed. The value of tax credits redeemed by TTIGA members since 1993 is $553,929.

FIGURE 6
DIFFERENCE BETWEEN AVAILABLE AND APPLIED MEMBER TAX CREDITS IN TEXAS TITLE INSURANCE GUARANTY ASSOCIATION, CALENDAR YEARS 1993 TO 2015



NOTE: Each year's available credits include unused credits from previous years.
SOURCE: Texas Comptroller of Public Accounts.

SELF-INSURANCE GUARANTY FUNDS

In Texas, workers' compensation coverage is not mandatory, although having it provides certain legal protections for employers. The majority of Texas employers who have workers' compensation insurance purchase it from the voluntary market. Those policyholders are protected from their insurer's insolvency by TPCIGA. Certain Texas employers have the option of self-insuring their workers' compensation liabilities, either individually or as part of a group. Coverage for these employers is backed up by either the Texas Certified Self-Insurer Guaranty Association or the Texas Self-Insurance Group Guaranty Fund. As of March 2016, 777 Texas employers are certified self-insurers or are part of a self-insurance group.

To be eligible for certification by TDI as a self-insurer or as a group self-insurer, employers must present audited financial statements; post a security deposit of at least $300,000; have a minimum net worth of $5.0 million (or a combined $2.0 million net worth for employers in a group); and obtain insurance for losses that exceed certain amounts.

The Certified Self-Insurer Guaranty Association was established by the Seventy-first Legislature, Second Called Session, 1989, to provide for the payment of workers' compensation insurance benefits for the injured employees of employers that TDI or a court has found to be impaired. As of April 2016, 43 TDI certificates of authority to self-insure were active. These represented 259 employers and approximately 140,000 employees (one certificate may cover multiple subsidiaries.) The association's board of directors is set forth by statute to include three certified self-insurers, one appointee by the Commissioner of Workers' Compensation at TDI, and the public counsel of the Office of Public Insurance Counsel. Upon determining that a certified self-insurer is impaired, the Commissioner of Workers' Compensation releases the employer's security deposit and estimates the additional funds needed to pay that employer's workers' compensation obligations. These additional funds are collected as assessments from other certified self-insurers. The association pays the workers' compensation liabilities of an impaired employer through its trust fund, which statute requires to maintain a balance of at least $1.0 million but not more than $2.0 million.

Certified group self-insurers are associations of five or more private employers in the same or similar type of business. The Texas Self-Insurance Group Guaranty Fund was established by the Seventy-ninth Legislature, Regular Session, 2005. Its board structure is similar to the Certified Self-Insurer Guaranty Association's board. Beginning in January 2006, the Group Guaranty Fund began collecting assessments from self-insurance groups. This collection complied with a statutory requirement for the association to establish over 10 years a trust fund of at least $1.0 million for paying workers' compensation benefits in the event that a self-insurance group becomes insolvent. As of the end of 2015, the trust fund balance was approximately $899,000, and the association's members had been notified of the tenth assessment required by statute.

Unlike assessments from TPCIGA, TLHIGA, or TTIGA, assessments collected by the two self-insurance guaranty associations in response to an impaired employer cannot be recouped as tax credits.

LAST-RESORT INSURANCE PROVIDERS

Residual markets, or last-resort insurers, provide insurance coverage to people or entities that have been declined for coverage on the competitive, or voluntary, market. In most states, automobile, property, and workers' compensation insurance are considered so essential that the state government has established some type of residual, or last-resort, insurer to provide them to individuals and businesses who cannot find an insurer to voluntarily cover them. Residual market associations either arrange for coverage or write insurance coverage themselves. This coverage may be provided to policyholders at rates that may not reflect the true cost of the risk they pose and thus may not be sufficient, without subsidization, to pay the association's operating expenses. Consequently, residual market associations have mechanisms for distributing operating losses among their policyholders, their member insurance companies, both, or, in some cases, voluntary market policyholders.

Texas has four residual market insurers that operate statewide. These insurers offer residential property, automobile liability, medical professional liability, and workers' compensation insurance. Texas also has an association that insures residential property along the Gulf Coast from wind and hail damage. Like most voluntary market rates, the rates for most residual market insurance are reviewed and approved by the Commissioner of Insurance. Rates for voluntary and residual market workers' compensation insurance are approved by the Commissioner of Worker's Compensation. To qualify for residual market insurance coverage, an applicant typically is required to have been declined by at least one, and sometimes two, voluntary insurers.

Rates for insurance through these associations may be higher than those for the voluntary market, but the rates are often less than what they should be actuarially. As a result, the associations may not be completely self-sufficient, but they may have a surplus in any single year. Three of Texas' five residual market associations assess member insurers and policyholders if the associations run deficits. Depending on the association, members may be able to recoup assessments. Two of the Texas entities can finance losses through bonds.

At the end of calendar year 2015, 410,454 Texans had some form of insurance through an insurer of last resort. Approximately two-thirds of this group purchased windstorm and hail insurance through the Texas Windstorm Insurance Association (TWIA). Approximately 99.0 percent of this group was insured by the TWIA or the Texas Fair Access to Insurance Requirements Plan Association. The number of Texans insured through one of the last-resort providers has increased by 39.7 percent since 2003. This increase is driven by increases in the number of people insured through the property insurance associations but mainly by increases in the number of TWIA policyholders. In the same period, the population of the counties with the largest shares of last-resort policyholders has increased 17.2 percent. **Figure 7** summarizes each insurer of last-resort, including policyholders and governing statute.

TEXAS WINDSTORM INSURANCE ASSOCIATION

Beach and windstorm insurance plans provide insurance against damage from hurricanes and other windstorms in states along the Atlantic Ocean and Gulf of Mexico coasts. The Texas Windstorm Insurance Association (TWIA) was established as the Texas Catastrophe Property Insurance Association in 1971. This establishment followed Hurricane Celia, which, in 1970, caused damages so expensive that many insurers stopped writing insurance in the state's coastal community. TWIA provides coverage to homeowners for wind and hail damage, loss of use, and other losses in 14 coastal counties and a portion of Harris County designated as a catastrophe area by the Commissioner of Insurance. The association also provides coverage for coastal tenants.

TWIA membership includes the state's authorized property insurers, which numbered 908 insurers as of May 2016. Although it is a last-resort insurer, the association can deny coverage to structures that do not meet certain building standards. As of the end of calendar year 2015, the coastal counties had 272,219 TWIA policyholders. The association had approximately 1.2 percent fewer policyholders at the end of 2015 than at the end of 2014. Before that decrease, the association had been growing since 2008. However, this growth in the number of policyholders was at rates that slowed annually. **Figure 8** shows the number of TWIA policyholders by calendar year from 1993 to 2015. **Figure 9** shows TWIA's 2015 policyholders by county.

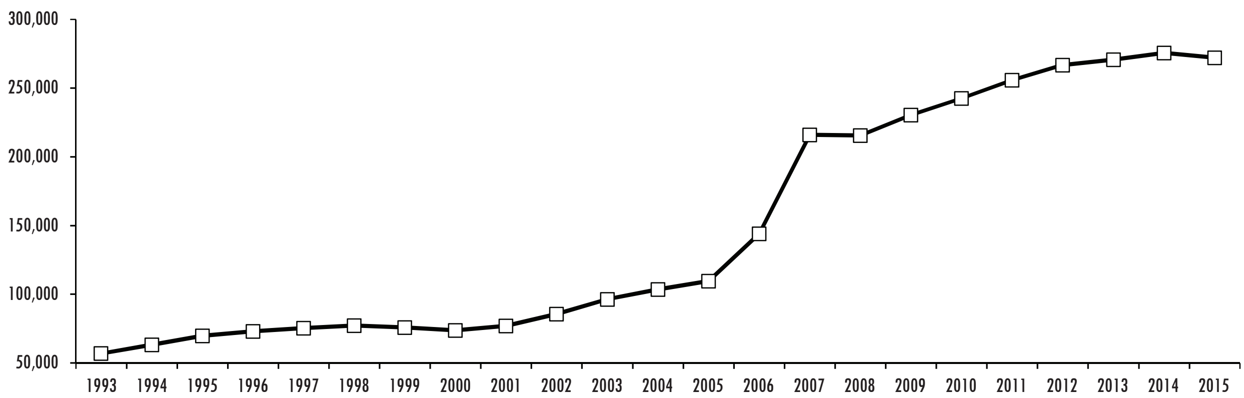
According to TDI, several factors explain the increase in the number of TWIA policyholders from 2005 to 2007. Most of the increase is due to reductions in voluntary market coverage that followed the 2004 and 2005 hurricane seasons. In addition, during spring 2006, the Commissioner of Insurance established a program that authorized TWIA coverage of

FIGURE 7
LAST-RESORT INSURANCE PROVIDERS, AS OF AUGUST 2016

ASSOCIATION	ESTABLISHED	POLICYHOLDERS AS OF 12/31/2015	GOVERNING STATUTE (THE TEXAS INSURANCE CODE)	FUNDS AVAILABLE TO PAY DEFICITS (IN MILLIONS)
Texas Windstorm Insurance Association	1971	272,219	Chapter 2210	$581.9 as of April 2016
Texas Fair Access To Insurance Requirements Plan Association	1995; operational in 2002	132,734	Chapter 2211	Deficits paid by assessments or bonds
Texas Medical Liability Insurance Underwriting Association	1975	51	Chapter 2203	$30.0 as of June 2016
Texas Automobile Insurance Plan Association	1952	2,625 private passenger automobiles	Chapter 2151	Member insurance companies absorb losses
Texas Mutual	1991	139 polices covering 2,825 employees	Chapter 2054	$2,800.0 as of June 2016

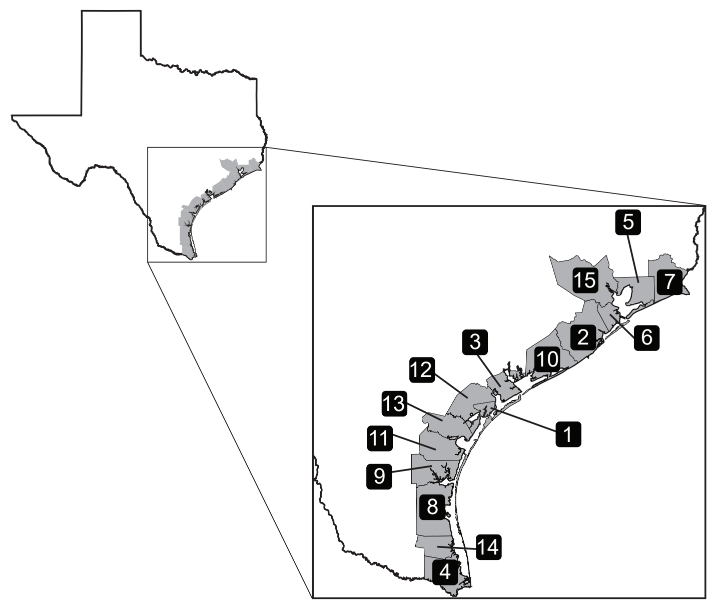
NOTES:
(1) Texas Automobile Insurance Plan Association policyholder count excludes commercial policyholders.
(2) Texas Mutual is primarily a voluntary insurer.
SOURCES: Legislative Budget Board; Texas Department of Insurance.

FIGURE 8
TEXAS WINDSTORM INSURANCE ASSOCIATION POLICYHOLDERS, CALENDAR YEARS 1993 TO 2015



SOURCE: Texas Department of Insurance.

FIGURE 9
TEXAS WINDSTORM INSURANCE ASSOCIATION POLICYHOLDERS BY COUNTY, DECEMBER 31, 2015



COUNTY	POLICYHOLDERS	COUNTY	POLICYHOLDERS
(1) Aransas	7,137	(9) Kleberg	1,291
(2) Brazoria	51,332	(10) Matagorda	5,447
(3) Calhoun	4,175	(11) Nueces	51,861
(4) Cameron	19,584	(12) Refugio	416
(5) Chambers	6,288	(13) San Patricio	8,786
(6) Galveston	73,666	(14) Willacy	616
(7) Jefferson	37,643	(15) Harris	3,956
(8) Kenedy	21	**Total**	**272,219**

SOURCE: Texas Department of Insurance.

certain residential structures that may not be fully compliant with applicable building codes but which had been voluntarily covered by another insurer.

Maximum liability limits for TWIA policies vary according to the type of structure being insured. Maximum limits of liability for TWIA policies are set by the association's board of directors and approved by the Commissioner of Insurance. Limits are also subject to annual adjustments for inflation. For calendar year 2016, the limit is $1.8 million for an individually owned dwelling and its contents.

TWIA must file proposed rates with TDI annually. The Commissioner must approve rate changes greater than 5.0 percent of the rate in effect on the filing date before TWIA can use them. The association may begin using filed rates that are 5.0 percent or less of the filing day rate after 30 days. Statute limits the average annual changes in rates and rating classes. However, these limits can be removed, subject to notice and hearing, following losses that meet certain criteria. The most recent occurrence of a limit removal happened in 2009. From 2011 to 2016, residential and commercial rates increased 5.0 percent per year.

TWIA is required by statute to maintain a Catastrophe Reserve Trust Fund (CRTF) for paying operating losses that exceed its premium and other revenue. The CRTF's balance as of April 2016 was $581.9 million. No events since 2008 have required TWIA to withdraw money from the CRTF. **Figure 10** shows CRTF deposits and end-of-year balances from calendar years 2011 to April 2016.

Before 2009, TWIA financed losses that exceeded premium revenue through an initial $100.0 million member assessment, the CRTF, a second round of member assessments up to $200.0 million, and, when necessary, a third and unlimited member assessment. Member insurance companies could recoup assessments through a premium tax credit. As of August 2016, $3.5 million in unredeemed tax credits were available to TWIA members.

House Bill 4409, Eighty-first Legislature, Regular Session, 2009, changed TWIA's funding structure. As a result of the legislation, the sequence of funding following a designation of a catastrophe started with available TWIA premium and other revenue, followed by any available funds in the CRTF. The next type of funding was public securities of up to $1.0 billion, to be repaid within 10 years from TWIA revenue. A second round of public securities, up to $1.0 billion, would be 30.0 percent financed by a member assessment and 70.0 percent by a policyholder surcharge collected from TWIA, Texas Fair Access to Insurance Requirements Plan Association, and certain voluntary market policyholders with insured property in the designated catastrophe area. A third round of public securities, up to $500.0 million per year, would have been paid by member insurers. The legislation also established net gains from TWIA operations as a method of finance for the CRTF and discontinued allowing members to recoup assessments via premium tax credits.

During 2008, Hurricanes Dolly and Ike resulted in more than 100,000 TWIA claims and almost $3.0 billion in losses covered by the association. Subsequent audits and lawsuits revealed fraud and irregularities in the handling of Ike-related claims, and the association was placed within the Commissioner of Insurance's administrative oversight until April 2016. House Bill 3, Eighty-second Legislature, First Called Session, 2011, made numerous changes to TWIA operations and procedures.

Senate Bill 900, Eighty-fourth Legislature, 2015, changed how TWIA finances losses that exceed reserves and amounts

FIGURE 10
TEXAS WINDSTORM INSURANCE ASSOCIATION CATASTROPHE RESERVE TRUST FUND DEPOSITS, WITHDRAWALS, INVESTMENT REVENUE, AND BALANCES (IN MILLIONS), CALENDAR YEAR 2011 TO APRIL 2016

CALENDAR YEAR	BEGINNING OF YEAR BALANCE	CRTF WITHDRAWALS	CRTF DEPOSITS	INVESTMENT INCOME	ENDING BALANCE
2011	$76.3	-	$70.3	$0.1	$146.6
2012	$146.6	-	$32.1	$0.2	$178.9
2013	$178.9	-	$7.2	$0.0	$186.2
2014	$186.2	-	$30.6	$0.0	$216.8
2015	$216.8	-	$270.2	$0.2	$487.2
2016 (January - April)	$487.2	-	$94.4	$0.4	$581.9

Note: CRTF = Catastrophe Reserve Trust Fund.
Source: Texas Department of Insurance.

in the CRTF. The bill established a sequence for funding losses of greater than CRTF amounts that alternates between bond financing and member assessments. **Figure 11** shows the legislation's sequence for loss financing.

Senate Bill 900 also changed TWIA's depopulation program, through which TWIA policyholders can find comparable voluntary coverage. The previous program, the Voluntary Coastal Windstorm Insurance Portal (VCWIP), provided TWIA policyholder information to 16 companies, who then made offers of voluntary coverage. As of April 30, 2016, the program resulted in 5,100 acceptances. The program was discontinued in December 2015 so that TWIA could transition to the new programs established by Senate Bill 900.

Senate Bill 900 authorized TWIA to establish two new depopulation programs. TDI rules governing these programs became effective December 22, 2015. The Voluntary Market Depopulation Program is similar to the VCWIP. As of May 2016, eight companies had returned nondisclosure agreements to gain access to TWIA policyholder data. The other program would use assumption reinsurance agreements between TWIA and participating insurers to enable TWIA policyholders to obtain comparable coverage and premiums from a private insurer. This process began in 2016 for the 2017 hurricane season.

TEXAS FAIR PLAN ASSOCIATION

The Texas Fair Access to Insurance Requirements Plan Association (TFPA) is the inland counterpart to TWIA. It issues residential property insurance when that coverage is not available via private sector companies. The Fair Access to Insurance Requirements (FAIR) plan concept was established by the U.S. Housing and Urban Development Act of 1968, which offered federal riot insurance to states that established property insurance pools. State FAIR plans initially provided coverage only for specific perils, such as fire, but in almost half the states that have these plans, the plans' scope has expanded to include some form of homeowners insurance. Thirty-two states and the District of Columbia have FAIR plans to make residential property insurance available in areas where applicants would have an abnormally high exposure to risk for which they have no control.

The TFPA was established by the Seventy-fourth Legislature, 1995, to provide residential property insurance in certain areas. The Commissioner of Insurance determined that a significant number of consumers in these areas would not have access to voluntary coverage for some of the perils typically included in residential policies. The association became operational in December 2002, following a number of mold and water damage claims that, in part, led at least

FIGURE 11
TEXAS WINDSTORM INSURANCE ASSOCIATION CATASTROPHE FUNDING SEQUENCE, FISCAL YEAR 2016

SOURCE	MAXIMUM AMOUNT (IN MILLIONS)	STATUTE (THE TEXAS INSURANCE CODE)	DETAILS	HOW FUNDING IS REPAID
Class 1 Securities	$500.0	§2210.072	Paid within 14 years	Catastrophe area premium surcharge on TWIA policyholders (§2210.612)
Class 1 Assessments	$500.0	§2210.0725	Calculated pursuant to §2210.052; not recoupable by surcharge or tax credit	N/A
Class 2 Securities	$250.0	§2210.073	Paid within 10 years	Catastrophe area premium surcharge on TWIA policyholders (2210.613)
Class 2 Assessments	$250.0	§2210.074	Calculated pursuant to §2210.052; not recoupable by surcharge or tax credit	N/A
Class 3 Securities	$250.0	§2210.0741	Paid within 10 years	Catastrophe area premium surcharge on TWIA policyholders (2210.6131)
Class 3 Assessments	$250.0	§2210.0742	Calculated pursuant to §2210.052; not recoupable by surcharge or tax credit	N/A

NOTE: The Texas Insurance Code, Section 2210.6132, provides for a contingent premium surcharge on certain voluntary property and casualty policies and all Texas Windstorm Insurance Association (TWIA) and Texas Fair Access to Insurance Requirements Plan Association policies in the catastrophe area if issuing Class 2 or 3 securities is not possible or determined by the Commissioner of Insurance to be financially unreasonable.
SOURCE: Legislative Budget Board.

two major insurers to reduce their writing of new and renewal policies. Texas FAIR Plan policies may include coverage for damage caused by:

- fire;
- lightning;
- sudden and accidental damage from smoke;
- windstorms, hurricanes, or hail;
- explosion;
- aircraft;
- vehicles;
- vandalism and malicious mischief;
- riot and civil commotion; and
- theft.

FAIR Plan policies insure dwellings up to $1.0 million. The policies cover personal property at limits between 50.0 percent to 70.0 percent of dwelling coverage amount, and up to $500,000 for renters and tenants. Although eligibility for the FAIR Plan is statewide, the association may not offer windstorm and hail coverage for property located within TWIA's service area. The association had 135 member insurers at the end of calendar year 2015. All TFPA member insurers are also TWIA members; however, not all TWIA member insurers are TFPA members. TWIA estimates that between 10,200 and 13,200 policyholders are covered by both associations.

At the end of calendar year 2015, TFPA had 132,734 active policies across the state. This number represented a growth of approximately 1.0 percent from TFPA's 2014 policyholder count. **Figure 12** shows TFPA's policyholders at the end of each calendar year from 2003 to 2015. **Figure 13** shows TFPA's 2015 policyholders by county.

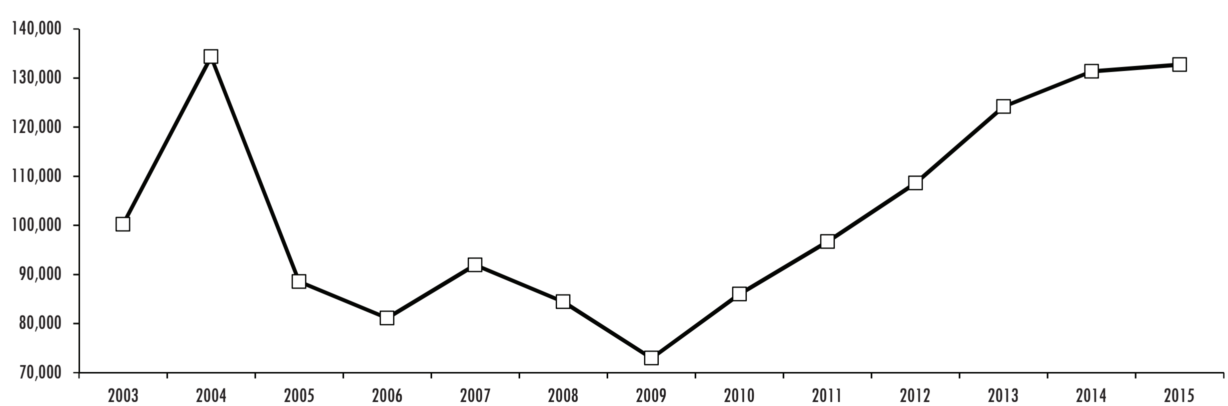
TFPA operations are funded by premium and investment revenue. TFPA does not currently hold funds that are available to absorb operating deficits. If a deficit occurs, the association, at the Commissioner's direction, either requests bond funding via the Texas Public Finance Authority or collects an assessment from its members. As of May 2016, the association had neither requested that bonds be issued nor assessed insurers. If assessments were collected, they would be proportional to each member's share of the overall Texas residential property market. In accordance with statute, bond financing wold not exceed $75 million. In either case, surcharges on every property insurance policy in the state ultimately pays for the deficit.

In accordance with statute, the FAIR Plan Association is governed by an 11-member board appointed by the commissioner. The governing board is composed of five insurance industry representatives, four representatives of the public, and two general property and casualty agents.

TEXAS MEDICAL LIABILITY INSURANCE JOINT UNDERWRITING ASSOCIATION

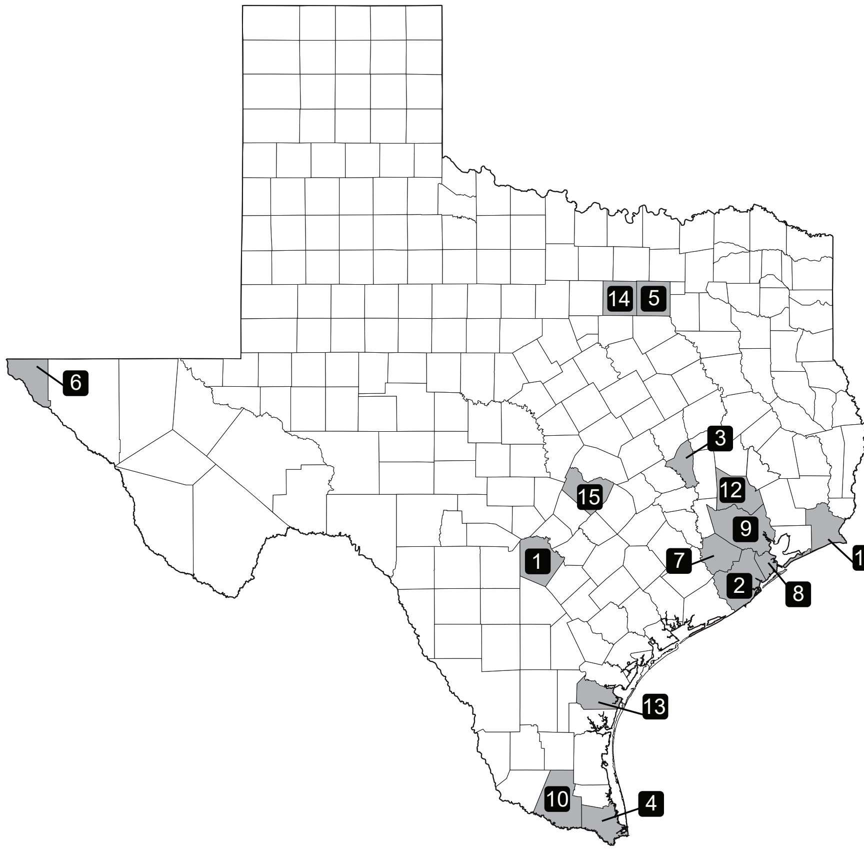
Medical liability insurance covers physicians and other medical providers, including institutions, for liability arising from their treatment of patients. A report published in the New England Journal of Medicine in 2011 estimated that

FIGURE 12
TEXAS FAIR ACCESS TO INSURANCE REQUIREMENTS PLAN ASSOCIATION POLICYHOLDERS, CALENDAR YEARS 2003 TO 2015



SOURCE: Texas Department of Insurance.

FIGURE 13
TEXAS FAIR PLAN ASSOCIATION POLICYHOLDERS BY COUNTY, AS OF DECEMBER 31, 2015



COUNTY	POLICYHOLDERS	COUNTY	POLICYHOLDERS
(1) Bexar	1,132	(10) Hidalgo	680
(2) Brazoria	2,433	(11) Jefferson	1,741
(3) Brazos	185	(12) Montgomery	1,352
(4) Cameron	648	(13) Nueces	1,664
(5) Dallas	4,424	(14) Tarrant	3,479
(6) El Paso	968	(15) Travis	544
(7) Fort Bend	9,493	All Other Counties	3,832
(8) Galveston	4,980		
(9) Harris	91,641	**Total**	**132,734**

SOURCE: Texas Department of Insurance.

7.4 percent of physicians will have a claim filed against them during their careers, and 1.6 percent of physicians will have a claim filed against them that results in a payout. Medical liability policies include defense costs and typically cover claims for medical error or neglect. Intentional or criminal acts are not covered.

In the early 1970s, growing claims and inadequate rates prompted several private insurers to leave the Texas medical liability market. In response, the Legislature established the Texas Medical Liability Insurance Joint Underwriting Association (JUA) in 1975. JUA ensures availability of insurance for physicians, other medical professionals, and institutions unable to find or afford it in the voluntary market. Policies through JUA offer liability protection from \$100,000 to \$1.0 million per occurrence, and from \$300,000 to \$3.0 million in annual aggregate coverage. JUA had 664 member insurers as of August 2015. The association's members include liability insurers authorized and engaged in writing liability insurance, including auto liability insurance.

Since JUA was established in 1975, Texas has experienced three increases in demand for JUA coverage: from 1976 to 1978; from 1985 to 1986; and from 2002 to 2003. **Figure 14** shows the changes in demand for JUA coverage from calendar years 1975 to 2015.

JUA had 51 policies in effect at the end of calendar year 2015. **Figure 15** shows those policyholders by county.

As set forth in statute, JUA is overseen by a nine-member board of directors, including industry representatives, public representatives, and appointees from the Texas Hospital Association and the Texas Medical Association. JUA's revenue is from policyholder premiums and investment income. Statute requires the association to maintain two reserve funds for paying operating deficits, one that covers physicians and other providers and one that covers nursing homes and assisted living facilities. The two reserve funds are capitalized through policyholder fees proportional to the policyholder's premiums. If JUA runs a deficit that exceeds the capacity of the respective reserve fund, it is required to assess policyholders in amounts that do not exceed their annual premiums. If the assessment does not recoup the entire deficit, the association assesses its member insurers. Member insurers are ultimately reimbursed for assessments, with interest, either by a premium tax credit or by the association. If a member chooses to recoup an assessment via tax credit, the association reimburses the state for the assessment. JUA may ask TFPA to issue bonds on its behalf for funds that provide coverage for nursing homes and assisted living facilities. JUA has not requested bonds nor collected assessments from members or policyholders since 1993.

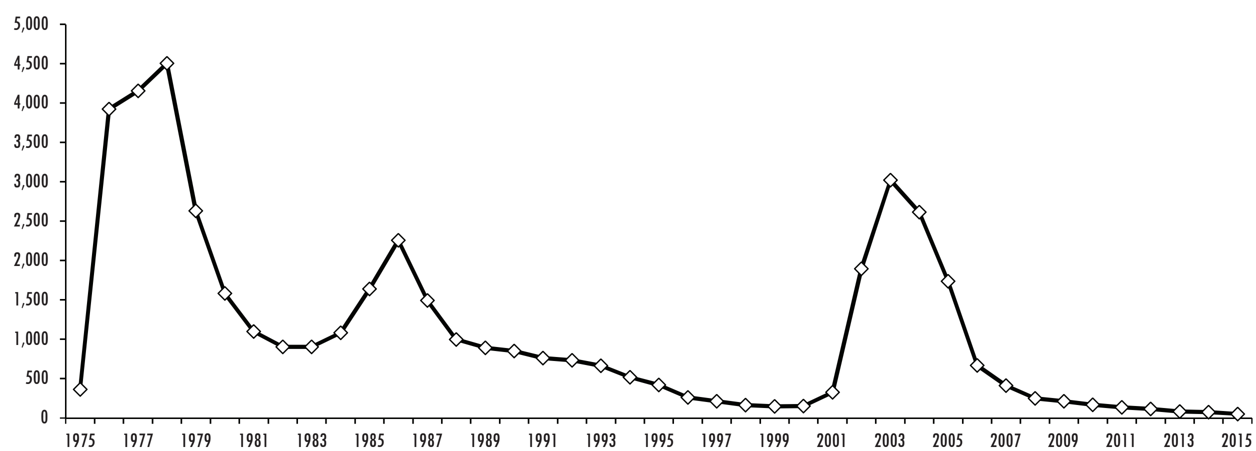
Statute includes language requiring TDI to dissolve JUA by December 31, 1985, and distribute any assets held by the agency to its policyholders. That dissolution has not occurred; consequently, JUA had accumulated assets with no mechanism to distribute them during ongoing operations.

Senate Bill 18, Eighty-fourth Legislature, 2015, required TDI to perform an actuarial assessment of the amount of statutory reserves the agency has accumulated that are needed for JUA's ongoing operations. The legislation required the transfer of the difference to the Permanent Fund Supporting Graduate Medical Education (Other Funds).

TDI completed its actuarial analysis of JUA in November 2015. The report found that JUA held much greater net-assets-to-written-premiums and net-assets-to-liabilities ratios than other medical malpractice insurers. The report estimated that $43.0 million was the amount of reserves necessary for the association's known and unknown claims costs and administrative expenses, including liabilities for employee retirement plans, through December 31, 2025. In December 2015, $250.0 million in reserve funds were transferred from the association to the Permanent Fund Supporting Graduate Medical Education.

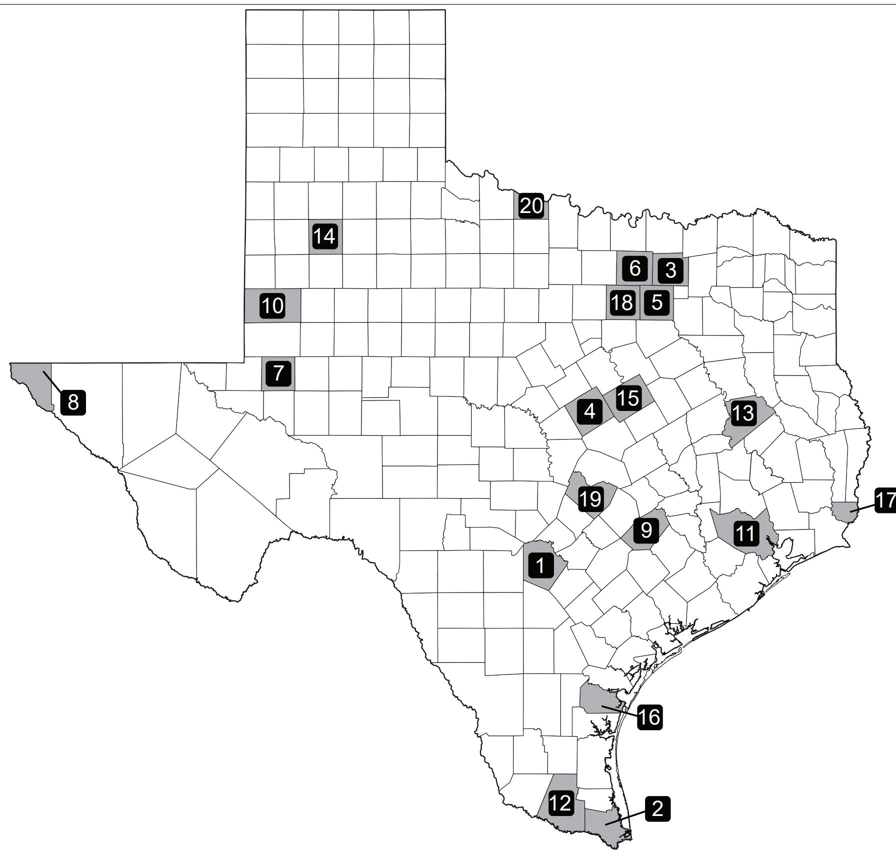
Senate Bill 18 also required TDI to determine whether to suspend the issuance of new policies by JUA. In December 2016, TDI asked JUA to provide written documentation of

FIGURE 14
TEXAS MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION POLICYHOLDERS, CALENDAR YEARS 1975 TO 2015



SOURCE: Texas Department of Insurance.

FIGURE 15
TEXAS MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION POLICYHOLDERS BY COUNTY, 2015



COUNTY	POLICYHOLDERS	COUNTY	POLICYHOLDERS
(1) Bexar	6	(12) Hidalgo	1
(2) Cameron	1	(13) Houston	1
(3) Collin	1	(14) Lubbock	1
(4) Coryell	1	(15) McLennan	1
(5) Dallas	6	(16) Nueces	1
(6) Denton	1	(17) Orange	1
(7) Ector	1	(18) Tarrant	7
(8) El Paso	1	(19) Travis	12
(9) Fayette	1	(20) Wichita	1
(10) Gaines	1		
(11) Harris	5	**Total**	**51**

SOURCE: Texas Department of Insurance.

their policyholder's inability to obtain voluntary coverage within 90 days. TDI's determination was left pending. If TDI suspends JUA's authority to issue new policies, the suspension expires on September 1, 2017 if the Eighty-fifth Legislature, 2017, takes no action.

TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION

All 50 states and the District of Columbia have mechanisms to guarantee auto insurance for all individuals and entities that need it. In 2012, such insurance mechanisms covered 1.0 percent of the total market nationwide, or approximately 1.87 million cars. Forty-three states, including Texas, use an assigned-risk plan. In this plan, applications for residual market coverage are distributed randomly to all auto insurance companies in the state based on their shares of the voluntary market. Of the remaining states, four use joint underwriting associations and two use reinsurance facilities to fund residual market losses. One state, Maryland, has a state-administered residual market mechanism.

The Texas Automobile Insurance Plan Association (TAIPA), established in 1952, is the state's automotive liability insurer of last resort for personal and commercial automobiles. Automotive liability insurance helps Texas drivers pay for the accidents they cause, including to repair or replace the other driver's car and pay other people's medical expenses. TAIPA policies provide the minimum amount of coverage required by state law, which is:

- $30,000 in liability coverage for each person injured in an accident, up to $60,000 per accident; and
- $25,000 in liability coverage for property damage per accident.

TAIPA policies also include $2,500 in personal injury protection (PIP) and uninsured and underinsured motorist (UM/UIM) coverage, although these can be declined in writing. TAIPA does not provide collision or comprehensive coverage, or higher liability limits than the law requires.

Unlike TWIA, TFPA, and JUA, which pool losses among members or policyholders, TAIPA members service the residual market clients themselves, including absorbing profits and losses.

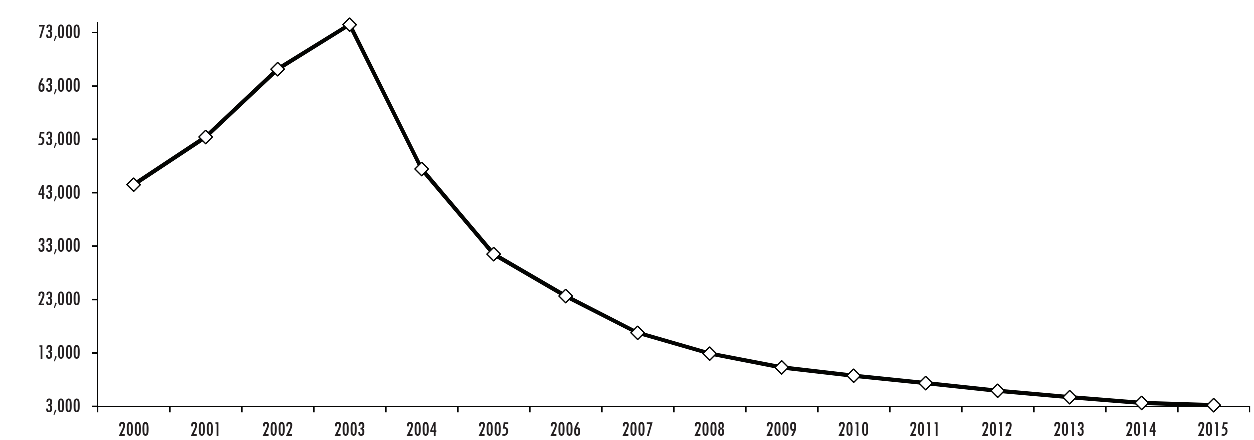
TAIPA's membership includes all authorized automobile liability insurance providers in the state (833 as of May 2016). The association does not collect policyholder counts, but it tracks the applications it assigns to member insurers. At the end of calendar year 2015, the association had assigned 3,217 applications to its members. TAIPA applications have decreased in number every year since 2004. **Figure 16** shows TAIPA assignments at the end of each calendar year from 2000 to 2015.

At the end of calendar year 2015, TAIPA covered 2,625 private passenger automobiles, excluding commercial automobile policyholders. **Figure 17** shows counties with the most TAIPA private passenger automobile policies in force as of the end of 2015 by county.

TAIPA's governing committee includes 15 members. Statute specifies that eight committee members represent the insurance industry, five public representatives are nominated by the Office of Public Insurance Counsel and approved by the Commissioner of Insurance, and two members are licensed insurance agents. The association collects a $100 annual membership fee from each insurer that funds the cost of administering the association. Administration expenses that exceed membership fee revenue are paid for by an assessment collected from member insurers. No statutory provision authorizes TAIPA members to recoup assessments. **Figure 18** shows the association's membership and assessment revenue for calendar years 2008 to 2015.

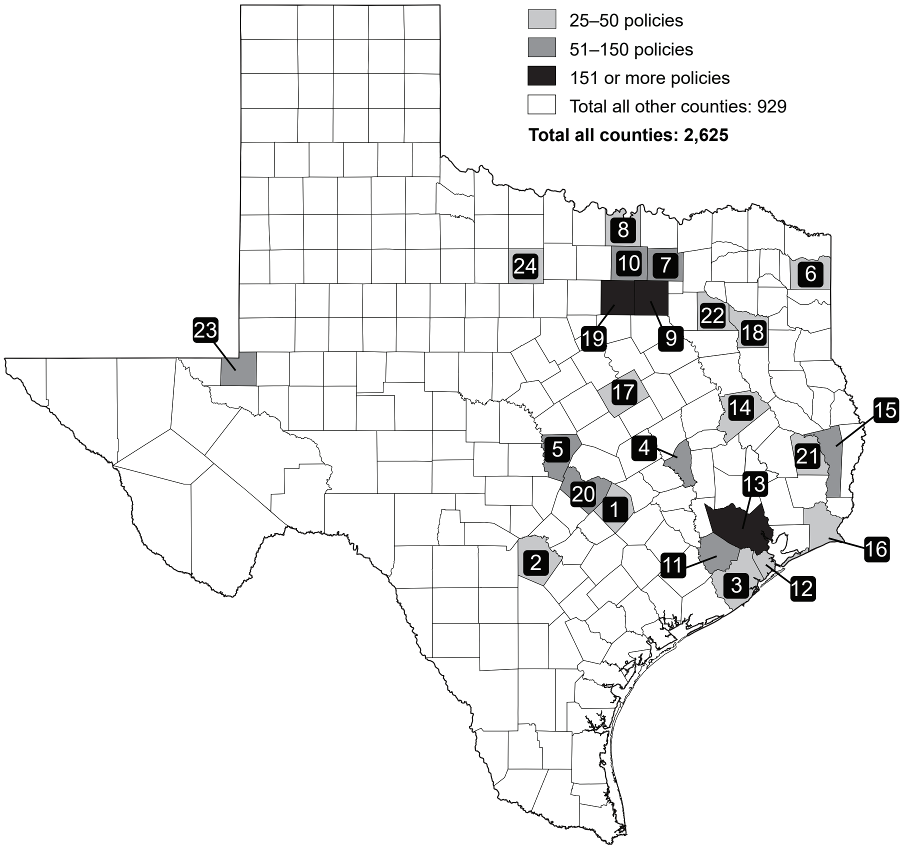
TAIPA rules require member insurers to voluntarily offer each policyholder coverage after three years if the policyholder has maintained a license, has not had any traffic violations, and has not been involved with any accidents during that period. Member insurers can earn credit toward their

FIGURE 16
TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION ASSIGNMENTS, CALENDAR YEAR 2000 TO 2015



Source: Texas Department of Insurance.

FIGURE 17
TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION PRIVATE PASSENGER POLICIES BY COUNTY, AS OF DECEMBER 31, 2015



COUNTY	POLICIES	COUNTY	POLICIES	COUNTY	POLICIES
(1) Bastrop	29	(10) Denton	51	(19) Tarrant	201
(2) Bexar	41	(11) Fort Bend	58	(20) Travis	143
(3) Brazoria	48	(12) Galveston	40	(21) Tyler	41
(4) Brazos	65	(13) Harris	289	(22) Van Zandt	29
(5) Burnet	51	(14) Houston	30	(23) Winkler	52
(6) Cass	50	(15) Jasper	55	(24) Young	50
(7) Collin	63	(16) Jefferson	47	All Other Counties	929
(8) Cooke	26	(17) McLennan	30		
(9) Dallas	168	(18) Smith	39	**Total**	**2,625**

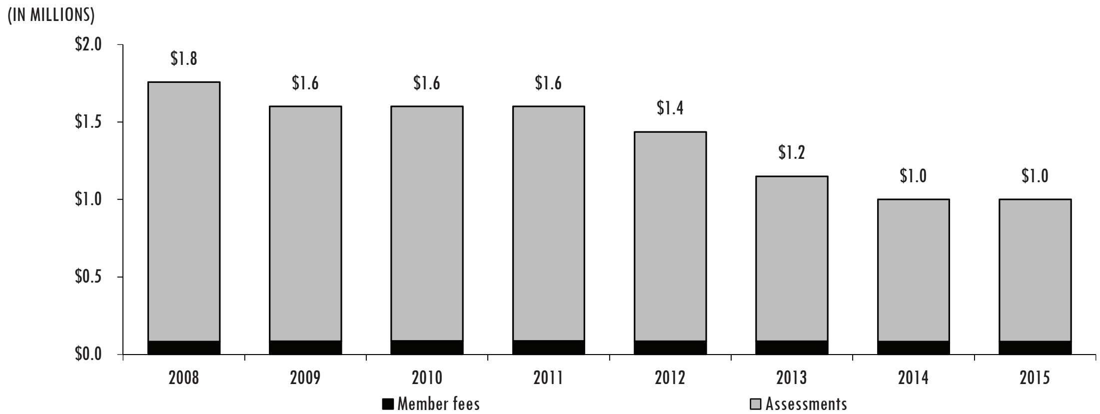
SOURCE: Texas Department of Insurance.

assignment quotas by offering less expensive voluntary coverage to policyholders who have been covered by TAIPA for at least a year. Since 2010, 47 TAIPA policyholders have obtained voluntary insurance through these rules.

TEXAS MUTUAL

The Legislature established the Texas Workers' Compensation Fund in 1991 to provide voluntary and residual market workers' compensation insurance. Legislation passed during the Seventy-seventh Legislature, 2001, converted the fund to a mutual insurance company, meaning it was owned by policyholders who share dividends. The association pays the same taxes and fees as any other domestic mutual insurer. Like other workers' compensation insurers, Texas Mutual is a member of TPCIGA and subject to that association's assessments.

FIGURE 18
TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION MEMBERSHIP AND ASSESSMENT REVENUE CALENDAR YEARS 2008 TO 2015



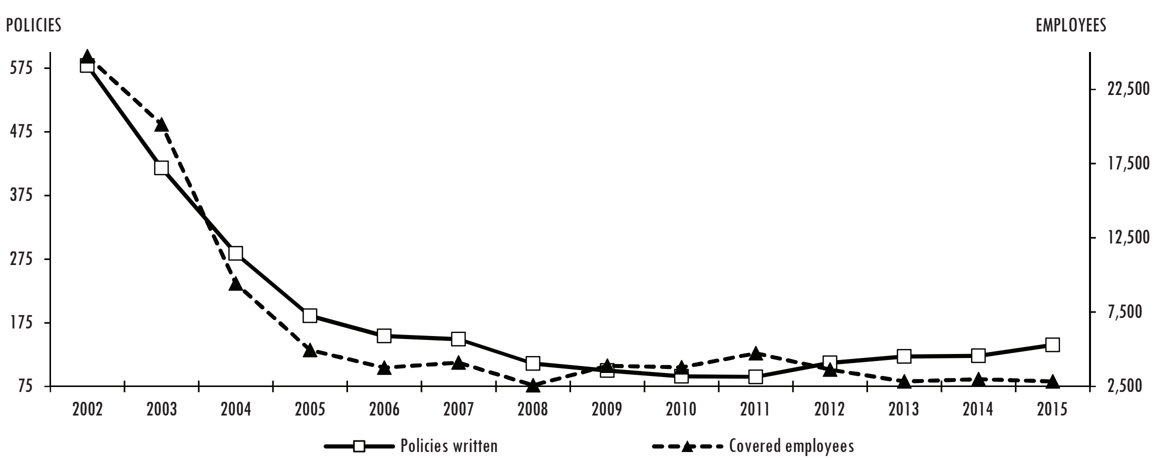
SOURCE: Texas Department of Insurance.

At the end of calendar year 2015, Texas Mutual had voluntarily insured 69,758 workers' compensation policies. These policies covered approximately 1.4 million Texas workers.

Texas Mutual's Start Program provides last-resort workers' compensation insurance coverage to employers who do not meet the underwriting standards for the association's voluntary market programs. At the end of calendar year 2015, Texas Mutual's Start Program had 139 policies in effect, covering 2,825 employees. **Figure 19** shows Start Program policies and covered employees from the ends of calendar years 2002 to 2015.

A nine-member board of directors is statutorily required to oversee the association. Five board members are gubernatorial appointees; four are elected by policyholders. Texas Mutual absorbs operating losses associated with the Start Program.

FIGURE 19
TEXAS MUTUAL START PROGRAM POLICIES AND COVERED EMPLOYEES, CALENDAR YEAR 2002 TO 2015



SOURCE: Texas Department of Insurance.