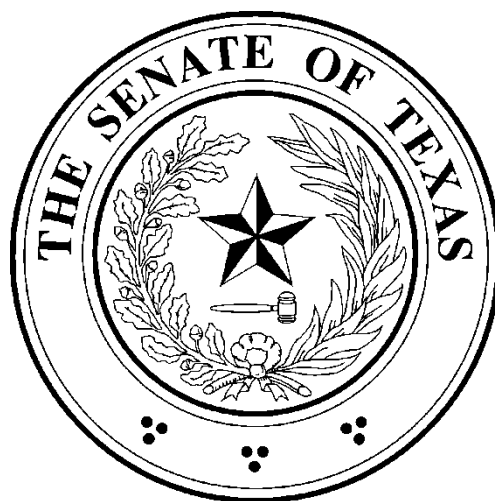


Senate Committee on Finance

Interim Report to the 88th Legislature



DECEMBER 2022

SENATOR JOAN HUFFMAN
CHAIR
SENATOR JUAN "CHUY" HINOJOSA
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SENATE COMMITTEE ON FINANCE

The Honorable Dan Patrick
Lieutenant Governor of Texas
Texas State Capitol
Austin, Texas 78701

Dear Lieutenant Governor Patrick:

The Senate Committee on Finance of the Eighty-Seventh Legislature hereby submits its interim report including findings and recommendations for consideration by the Eighty-Eighth Legislature.

Respectfully submitted,

Handwritten signature of Joan Huffman in cursive script.

Senator Joan Huffman, Chair

Handwritten signature of Juan Hinojosa in cursive script.

Senator Juan "Chuy" Hinojosa, Vice-Chair

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Senator Jane Nelson

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Senator Robert Nichols

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Senator Charles Schwertner

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Senator Donna Campbell

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Senator Lois Kolkhorst

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Senator Dawn Buckingham

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Senator John Whitmire

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Senator Royce West

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Senator Kelly Hancock

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Senator Charles Perry

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Senator Brandon Creighton

Handwritten signature of Paul Bettencourt in cursive script.

Senator Paul Bettencourt

Handwritten signature of Bryan Hughes in cursive script.

Senator Bryan Hughes

Table of Contents

Interim Charges.....	i
Senate Committee on Finance Interim Hearing.....	iii
Interim Charge Discussions and Recommendations.....	1
Charge No. 1 Federal Funds	1
Charge No. 2 Property Tax Relief.....	22
Charge No. 3 Inflation.....	30
Charge No. 4 Inflation.....	30
Charge No. 5 Tax Exemptions.....	22
Charge No. 6 Russia Divestiture.....	41
Charge No. 7 State Pension Reforms.....	45
Charge No. 8 Bail Bond Reforms.....	51
Charge No. 9 Operation Lone Star.....	59
Charge No. 10 Long-Term Care Funding.....	74
Charge No. 11 Medicaid.....	83
Charge No. 12 Mental Health Delivery.....	88
Appendix.....	102

Interim Charges

The Senate Committee on Finance is charged with conducting a thorough and detailed study of the following issues, and preparing recommendations, when appropriate, to address problems or issues that are identified.

1. **Federal Funds:** Report on the state use of federal COVID-19 relief funds provided under the Coronavirus Aid, Relief, and Economic Security Act, Coronavirus Response and Relief Supplemental Appropriations Act, the American Rescue Plan Act, Infrastructure Investment and Jobs Acts, and similar federal legislation. Examine local use of federal relief funding, including funding provided to school districts through the Elementary and Secondary School Emergency Relief (ESSER) Fund. Evaluate the overall fiscal impact of the COVID-19 pandemic on state agencies, including costs incurred due to federal mandates. Identify barriers to the effective utilization of funds and make recommendations on the expenditure of unappropriated funds. In addition, evaluate and report on the spending by state agencies that have been utilizing "one-time" federal funding (temporary enhancements, e.g., FMAP and ESSER) sources, where federal funding will likely be significantly reduced in future biennia.
2. **Property Tax Relief:** Examine and recommend ways to reduce Texans' property tax burden. Review and report on proposals to use or dedicate state revenues in excess of the state spending limit to eliminate the school district maintenance and operations property tax.
3. **Inflation:** Review and report on the effect inflation is having on the business community and state government, including state salaries, retiree benefits, the state economy, and cost of state services.
4. **Inflation:** Review and report on the impact of inflation on units of local governments' revenue collections and property taxpayers' tax bills, including the homestead exemption.
5. **Tax Exemptions:** Examine Texans' current tax exemptions and report on whether adjustments are merited because of inflation or any other factors.
6. **Russia Divestiture:** Examine and report on options for state asset owners to divest their positions in companies that invest in the Russian Federation.
7. **State Pension Reforms:** Monitor the implementation of recent statewide pension reforms to the Employees Retirement System of Texas and the Teacher Retirement System of Texas.
8. **Bail Bond Reforms:** Monitor the implementation of recent bail bond reform legislation along with its economic impact on the judicial and correctional system. Assess any barriers to implementation, the law's effect on pretrial release and jail populations, and ways to further promote public safety and efficiency.

9. **Operation Lone Star:** Monitor appropriations and spending supporting Operation Lone Star. Evaluate and report on the effectiveness of spending to secure the southern border. Identify and report on resources needed to ensure support for the State National Guard, as well as overall resources necessary for border security for future legislative consideration.
10. **Long-term Care Funding:** Examine state investments in the long-term care system. Study nursing facility funding issues and the impact of the pandemic on capacity and delivery of care. Explore nursing facility quality metrics and recommend strategies to improve the sustainability of the long-term care workforce.
11. **Medicaid:** Monitor the financial impact of federal decision-making affecting supplemental Medicaid funding for Texas hospitals and health care systems, including negotiations between the Centers for Medicare and Medicaid Services and the Texas Medicaid agency regarding the state's 1115 Medicaid waiver and other federal proposals reducing supplemental funding streams for Texas.
12. **Mental Health Delivery:** Examine the state mental health service delivery system. Study the state's Comprehensive Plan for State-Funded Inpatient Mental Health Services and the Statewide Behavioral Health Strategic Plan and evaluate the existing state investments in mental health services and state hospital capacity. Review current forensic and civil mental health service waitlists, and recommend ways to improve coordination and outcomes to reduce waitlists. Explore and report on options for additional mental health service capacity, including building state hospitals in the Panhandle and Rio Grande Valley areas.

Senate Committee on Finance Interim Hearings

May 4, 2022, E1.036

The Committee took invited and public testimony on Charge Nos. 3, 4, 6 & 7.

May 23, 2022, E1.036

The Committee took invited and public testimony on Charge Nos. 2 & 5.

June 14, 2022, E1.036

The Committee took invited and public testimony on Charge Nos. 10 & 11.

June 28, 2022, E1.036

The Committee took invited and public testimony on Charge No. 12.

July 11, 2022, E1.036

The Committee took invited and public testimony on Charge No. 1.

July 12, 2022, E1.036

The Committee took invited and public testimony on Charge Nos. 8 & 9.

Interim Charge Discussions and Recommendations

Charge No. 1

Federal Funds: Report on the state use of federal COVID-19 relief funds provided under the Coronavirus Aid, Relief, and Economic Security Act, Coronavirus Response and Relief Supplemental Appropriations Act, the American Rescue Plan Act, Infrastructure Investment and Jobs Acts, and similar federal legislation. Examine local use of federal relief funding, including funding provided to school districts through the Elementary and Secondary School Emergency Relief (ESSER) Fund. Evaluate the overall fiscal impact of the COVID-19 pandemic on state agencies, including costs incurred due to federal mandates. Identify barriers to the effective utilization of funds and make recommendations on the expenditure of unappropriated funds. In addition, evaluate and report on the spending by state agencies that have been utilizing "one-time" federal funding (temporary enhancements, e.g. FMAP and ESSER) sources, where federal funding will likely be significantly reduced in future biennia.

COVID-19 Relief Funds

When the COVID-19 pandemic struck in the spring of 2020, immediate fiscal impacts were felt by both state and local governments -- from decreased tax revenue¹ to the cost of responding to the pandemic. The United States (U.S.) Congress responded by passing legislation over the course of two years to authorize emergency funding and provide support to state and local governments. Between March of 2020 and March of 2021, six major pieces of federal COVID-19 relief legislation were enacted allocating trillions of dollars to individuals, businesses, states, local governments, federal agencies, and various other entities to mitigate the impacts of COVID-19²:

- Coronavirus Preparedness and Response Supplemental Appropriations Act (CPRSAA);
- Families First Coronavirus Response Act (FFCRA);
- Coronavirus Aid, Relief, and Economic Security Act (CARES);
- Paycheck Protection Program and Health Care Enhancement Act (PPPHCEA);
- Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA); and
- American Rescue Plan Act (ARPA).

The Legislative Budget Board (LBB) estimates that as of February 2022, over \$79 billion in federal COVID-19 relief funds have been awarded to Texas and its agencies.³ Funds allocated to Texas include funding for new programs and uses, as well as significant supplemental funding for existing programs that the state and its agencies already administer.⁴

The first legislation passed in response to COVID, the Coronavirus Preparedness and Response Supplemental Appropriations Act (CPRSAA), was signed into law on March 6, 2020.⁵ The legislation provided \$8.3 billion in emergency funding primarily to support immediate COVID-19 response efforts, including developing, manufacturing, and procuring vaccines and medical supplies; loans to

¹ <https://comptroller.texas.gov/economy/fiscal-notes/2021/jan/pandemic.php>.

² *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, Legislative Budget Board).

³ *Id.*

⁴ *Id.*

⁵ https://www.lbb.texas.gov/Documents/Covid/CPRSA_report.pdf.

affected small businesses; emergency preparedness activities abroad; humanitarian assistance; and grants for states, local governments, and tribes.⁶ Under CPRSAA, Texas received \$71.8 million,⁷ including awards to the Department of State Health Services (DSHS) for crisis response, training, and payroll costs; the Office of the Attorney General to address COVID-19-related violence issues; and a number of institutions of higher education for personal protective equipment (PPE), research activities, and fiscal relief.⁸

Next, the Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020.⁹ FFCRA provided \$3.5 billion for food assistance, testing, tax credits, and unemployment assistance.¹⁰ Of particular significance, FFCRA authorized increased federal funding to states through a 6.2 percentage point increase in the Federal Medical Assistance Percentage (FMAP), also known as the Medicaid matching rate, beginning in January of 2020.¹¹ The enhanced rate remains in place but is tied to the continuance of the COVID-19 public health emergency (declared by the U.S. Department of Health and Human Services), which was renewed in July of 2022.¹² Under FFCRA, Texas received \$213.4 million, including funding for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), assistance for food banks, and funding for administration of COVID-19 unemployment benefits.¹³

The Coronavirus Aid, Relief, and Economic Security Act (commonly known as CARES) was signed into law March 27, 2020.¹⁴ The CARES Act provided \$2 trillion¹⁵ for testing, vaccine resources, medical supplies, and PPE.¹⁶ It also provided financial support for public and higher education; direct assistance to individuals and businesses (including the establishment of the Paycheck Protection Program)¹⁷; child care and housing assistance; unemployment assistance; and relief for states and local governments (including the Coronavirus Relief Fund).¹⁸ LBB reports that Texas received \$24.5 billion¹⁹ under the CARES Act across various programs and funding streams.²⁰

The Paycheck Protection Program and Health Care Enhancement Act (PPHCEA) was subsequently signed into law April 24, 2020, providing an additional \$484 billion²¹ for the domestic response to COVID-19 and to supplement funding for many of the programs introduced under the CARES Act (such as the Provider Relief Fund and the Paycheck Protection Program).²² According to LBB, under the PPHCEA Texas received \$479.6 million.²³

The Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) was signed into

⁶ <https://www.kff.org/coronavirus-covid-19/issue-brief/the-u-s-response-to-coronavirus-summary-of-the-coronavirus-preparedness-and-response-supplemental-appropriations-act-2020/>.

⁷ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Eduardo Rodriguez, LBB).

⁸ https://www.lbb.texas.gov/Documents/Covid/CPRSA_report.pdf.

⁹ https://www.lbb.texas.gov/Documents/Covid/FFCRA_report.pdf.

¹⁰ <https://www.kff.org/coronavirus-covid-19/issue-brief/the-families-first-coronavirus-response-act-summary-of-key-provisions/>.

¹¹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Christopher Matthews, Health and Human Services Commission).

¹² <https://aspr.hhs.gov/legal/PHE/Pages/covid19-15jul2022.aspx>.

¹³ https://www.lbb.texas.gov/Documents/Covid/FFCRA_report.pdf.

¹⁴ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Eduardo Rodriguez, LBB).

¹⁵ https://www.lbb.texas.gov/Documents/Covid/CARES_Act_report.pdf.

¹⁶ <https://www.kff.org/coronavirus-covid-19/issue-brief/the-coronavirus-aid-relief-and-economic-security-act-summary-of-key-health-provisions/>.

¹⁷ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/paycheck-protection-program>.

¹⁸ <https://www.kff.org/coronavirus-covid-19/issue-brief/the-coronavirus-aid-relief-and-economic-security-act-summary-of-key-health-provisions/>.

¹⁹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Eduardo Rodriguez, LBB).

²⁰ https://www.lbb.texas.gov/Documents/Covid/CARES_Act_report.pdf.

²¹ https://www.lbb.texas.gov/Documents/Covid/PPHCEA_report.pdf.

²² <https://www.kff.org/coronavirus-covid-19/issue-brief/the-paycheck-protection-program-and-health-care-enhancement-act-summary-of-key-health-provisions/>.

²³ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Eduardo Rodriguez, LBB).

law December 27, 2020 and provided an additional \$900 billion in COVID-19-related stimulus,²⁴ building on certain programs authorized under the CARES Act and authorizing new initiatives such as the Emergency Rental Assistance program.²⁵ According to LBB, Texas received \$13.5 billion²⁶ under CRRSAA across various programs and funding streams.²⁷

Finally, the American Rescue Plan Act (ARPA) was signed into law March 11, 2021.²⁸ ARPA provided \$1.9 trillion²⁹ in additional COVID-19 relief to address the economic impacts of the pandemic on businesses, individuals, and state and local governments (including the Coronavirus State and Local Fiscal Recovery Funds). Furthermore, ARPA provided resources for medical and public health costs (including vaccines, testing, supplies, and mitigation); to address the pandemic's impact on public and higher education; and to provide additional emergency rental and housing assistance.³⁰ Texas received \$40.3 billion under ARPA.³¹

Though many grant awards and billions of dollars were allocated to the state under these pieces of federal legislation, FFCRA, CARES, PPPHCEA, CRRSAA, and ARPA are of particular significance. Under each of these bills, significant funding was awarded to Texas and high-impact programs and funding sources of the pandemic were established.

Under Senate Bill (SB) 8 during the Third Called Special Session of the 87th Legislature, LBB is required to collect information and post quarterly reports on COVID-19 awards and expenditures for the state. Reports on grant awards (including totals, recipient entities, and uses of funds) allocated to the state under CPRSAA, FFCRA, CARES, PPPHCEA, CRRSAA, and ARPA are available on LBB's website.³²

Families First Coronavirus Response Act (FFCRA)

Enhanced Federal Medical Assistance Percentage (FMAP)

Under FFCRA, Congress authorized an increase to the federal reimbursement rate for certain state expenditures under Medicaid, the Children's Health Insurance Program (CHIP), and the Healthy Texas Women (HTW) Program. Prior to the onset of the pandemic, the FMAP for Texas was set at 61.81 percent for federal fiscal year (FFY) 2021.³³ FFCRA authorized an increase of 6.2 percentage points in each qualifying state's rate, contingent upon the state maintaining eligibility for current enrollees.³⁴ The enhanced rate was made available (retroactively) from January of 2020 until the end of the month in which the COVID-19 public health emergency (PHE) comes to an end.³⁵

Prior to the passage of FFCRA, the Secretary of the U.S. Department of Health and Human Services declared COVID-19 a public health emergency effective January 27, 2020; the determination was

²⁴ https://www.lbb.texas.gov/Documents/Covid/CRRSA_report.pdf.

²⁵ <https://crsreports.congress.gov/product/pdf/R/R46688>.

²⁶ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

²⁷ https://www.lbb.texas.gov/Documents/Covid/CRRSA_report.pdf.

²⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

²⁹ https://www.lbb.texas.gov/Documents/Covid/ARPA_report.pdf.

³⁰ *Id.*

³¹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

³² https://www.lbb.texas.gov/Covid-19_Reporting.aspx.

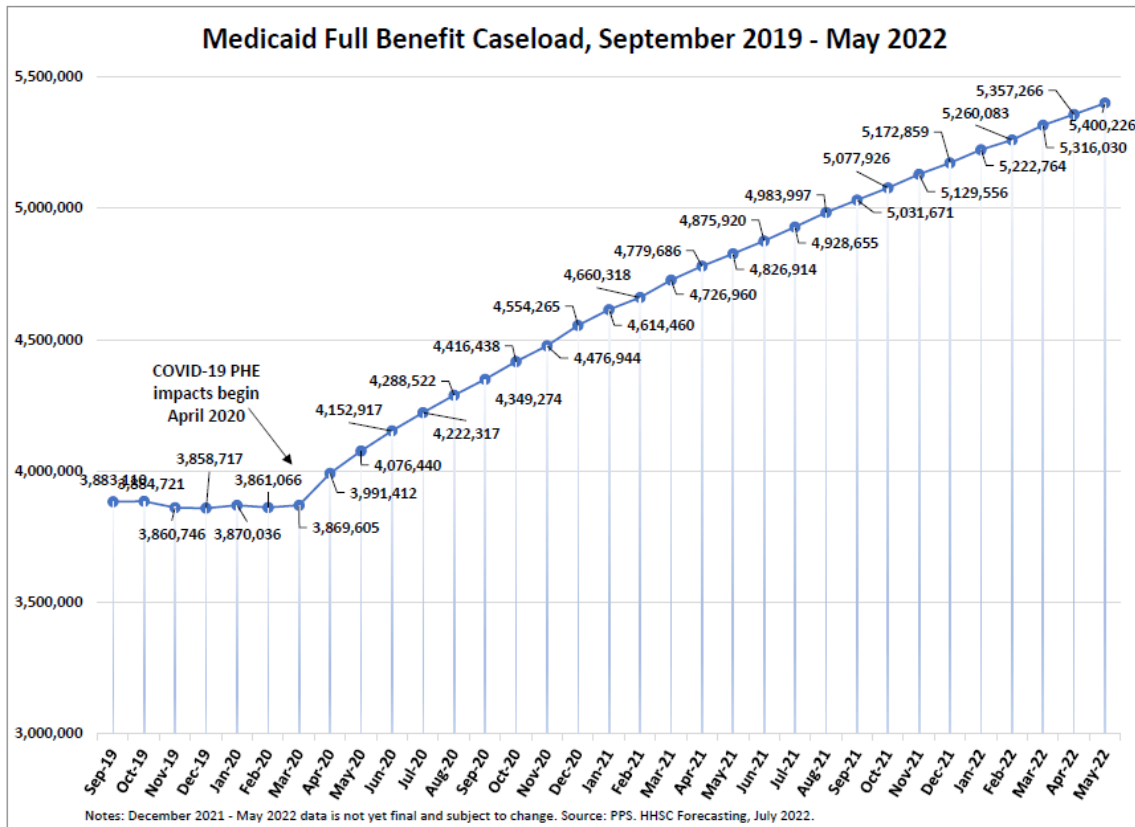
³³ <https://www.hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2021/house-appropriations-feb-23-2021.pdf>.

³⁴ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Christopher Matthews, HHSC).

³⁵ *Id.*

subsequently renewed ten times (recently on July 15, 2022) at 90 day intervals.³⁶ The Texas Health and Human Services Commission (HHSC) indicates that the federal government has pledged to give states at least 60 days notice regarding the end of the PHE.³⁷ Under the enhanced rate, Texas has received an additional \$5.8 billion in federal funding for the Medicaid, CHIP, and HTW programs since January of 2020.³⁸

Despite the increase in federal funding under the enhanced rate, the continuous eligibility requirement in combination with newly eligible individuals has driven a significant increase in the overall number of Medicaid enrollees in Texas since the onset of the pandemic. HHSC indicates that in June of 2022, the benefit of the enhanced FMAP was eclipsed by the cost to the state of serving such a significant number of enrollees.³⁹



After the PHE is allowed to lapse, HHSC will begin disenrolling individuals who are no longer eligible for Medicaid, but who merely remained enrolled under the continuous eligibility provision. HHSC indicates that disenrollment may not take effect before the first day of the month after the PHE ends, and that states are required to perform a full redetermination for current enrollees (following the guidelines laid out in 42 CFR 435.916) to determine whether they will retain coverage.⁴⁰

³⁶ <https://aspr.hhs.gov/legal/PHE/Pages/covid19-15jul2022.aspx>.

³⁷ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Christopher Matthews, HHSC).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

Coronavirus Aid, Relief, and Economic Security Act (CARES)

Coronavirus Relief Fund (CRF)

One of the most significant sources of pandemic-related discretionary funding was the Coronavirus Relief Fund (CRF) awarded under the CARES Act. The CRF was established to provide \$150 billion for relief and response directly to states and local governments.⁴¹ Texas was awarded \$11.24 billion⁴² -- with \$3.2 billion flowing directly to cities and counties with a population greater than 500,000 and the remainder distributed as a payment to the State.⁴³

The state's \$8.1 billion CRF allocation was appropriated to the Office of the Governor for use and distribution to state agencies and other units of government.⁴⁴ The Office of the Governor worked with the Lieutenant Governor, Speaker of the House, Chair and Vice Chair of the Senate Finance Committee, and Chair and Vice Chair of the House Appropriations Committee to determine how to utilize the state's allocation.⁴⁵

Per the CARES Act, CRF funds could only be used for expenditures that met three conditions:

1. expenditures were necessary due to the public health emergency;
2. expenditures were not accounted for in the budget most recently approved as of the date of enactment (March 27, 2020); and
3. expenditures were incurred during the period that began on March 1, 2020 and ended on December 30, 2020 (this requirement was later amended to reflect an end date of December 31, 2021 by the Coronavirus Response and Relief Supplemental Appropriations Act, or CRRSAA).⁴⁶

In guidance published by the U.S. Department of the Treasury (U.S. Treasury) to assist recipients, necessary expenditures incurred due to the public health emergency were defined as including (but not limited to)⁴⁷:

1. medical expenses such as the costs of providing testing;
2. public health expenses such as the acquisition and distribution of medical and protective supplies including sanitizing products and PPE;
3. payroll for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency;
4. actions to facilitate compliance with COVID-19-related measures such as expenses for food delivery to senior citizens and other vulnerable populations, expenses to facilitate distance learning, and expenses to improve telework capabilities for public employees;
5. expenses associated with the provision of economic support in connection with COVID-19 such as unemployment insurance costs related to the COVID-19 public health emergency; and

⁴¹ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/coronavirus-relief-fund>.

⁴² *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Sarah Hicks, Office of the Governor).

⁴³ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

⁴⁴ *Id.*

⁴⁵ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Sarah Hicks, OOG).

⁴⁶ *Id.*

⁴⁷ *Id.*

6. any other COVID-19-related expenses reasonably necessary to the function of government that satisfy eligibility criteria.⁴⁸

In accordance with eligibility criteria, Texas utilized its CRF allocation to support the public health response to COVID-19 and assist cities and counties (with populations less than 500,000) in developing response capabilities at the local level -- distributing \$546.7 million to local governments that did not receive CRF allocations directly from the U.S. Treasury.⁴⁹ The state also allocated \$4.2 billion for surge medical staffing, PPE, testing, foodbank operations, and addressing COVID-related costs in Texas State Veterans Homes.⁵⁰ As of July 2022, a total of \$3.6 billion of these public health response costs incurred by the state have been reimbursed by the Federal Emergency Management Agency (FEMA).⁵¹

Additionally, \$400 million was allocated to address the education-related impacts of COVID-19, to support the Operation Connectivity program overseen by the Texas Education Agency (TEA) (through which the state orchestrated a bulk purchase of computers and hot spot devices for Texas students who had transitioned to remote learning) and to reimburse local education agencies (LEAs) for COVID-19-related expenses.⁵² An additional \$28.6 million was utilized for a variety of initiatives, including to fund a bulk technology purchase program at the Department of Information Resources (DIR) to enable state agencies to transition to a work-from-home posture; to support the Secretary of State (SOS) in completing outreach for the 2020 Census; and to provide essential legal services through the Office of Court Administration (OCA) to individuals impacted by the pandemic.⁵³

The CRF was also used to enable a dollar-for-dollar method of finance change for state public health and public safety staff salaries.⁵⁴ Per guidance from the U.S. Treasury, eligible uses of CRF funding included payroll for "public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency."⁵⁵ A total of \$5.9 billion was utilized for this purpose.⁵⁶ This method of finance swap did not result in any reduction in funding for staff salaries of the affected agencies.

Finally, \$435 million was utilized to offset COVID-19 related healthcare costs incurred by the Teacher Retirement System of Texas (TRS) and to prevent an increase in healthcare premiums.⁵⁷ Any additional CRF funds that become available due to further FEMA reimbursement will be placed into the Unemployment Insurance Trust Fund to address outstanding Title XII debt.⁵⁸

Education Funding

The CARES Act established several significant programs to address the impacts of COVID-19 on both K-12 education and higher education, including the Governor's Emergency Education Relief Fund (GEER), the Elementary and Secondary School Emergency Relief Fund (ESSER), and the

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Sarah Hicks, OOG).

Higher Education Emergency Relief Fund (HEERF).⁵⁹ Under CARES, GEER allocated \$307 million to the Office of the Governor (GEER I) to be used for emergency support grants for local education agencies and state education agencies most significantly impacted by the pandemic to help maintain operations and ensure the provision of services to students.⁶⁰

The Office of the Governor allocated GEER I funding in collaboration with legislative leadership to address COVID-19-driven challenges and support the state's education system in recovering from the pandemic.⁶¹ TEA was allocated \$30 million⁶² in GEER I funds to support the Supplemental Special Education Services Program (SSES),⁶³ which included one-time grants for supplemental services to students enrolled in public schools and served by special education that were impacted by COVID-19 school closures.⁶⁴ Funds were also allocated to the Windham School District, the Texas School for the Deaf (TSD), and the Texas School for the Blind and Visually Impaired (TSBVI) to make them whole after the five percent budget reductions required in May of 2020.⁶⁵ GEER I investments for higher education were awarded to the Texas Higher Education Coordinating Board (THECB) for various initiatives, including maintaining financial aid commitments for Texas students (\$57 million); reskilling and upskilling grants (\$46.5 million); emergency education aid (\$46.5 million); online learning support (\$10 million); a data modernization initiative (\$15 million); data security and advising portals (\$18 million); financial aid enrollment support (\$28.5 million); and expanding capacity for high-demand, high value education (\$48.1 million).⁶⁶

The CARES Act likewise established the ESSER Fund (ESSER I). ESSER designated billions for states to provide emergency relief funding to LEAs to address the impacts of COVID-19 on elementary and secondary schools.⁶⁷ The state's ESSER I allocation was made up of both discretionary state funds and formula funds for LEAs. CARES stipulated that 90 percent of the state's ESSER I allocation should be considered formula funding for LEAs to support them in preparing for or responding to the pandemic; providing targeted student services; or any other allowable use under certain federal legislation.⁶⁸ Texas received \$1.157 billion in ESSER I formula funds⁶⁹ which were distributed for a hold harmless offset to make up for school closures during the spring 2020 school semester.⁷⁰ The state's ESSER I discretionary funds (\$122 million) were utilized for state programs, including offering technical assistance and supplemental direct funding to LEAs, to further support Operation Connectivity, and to provide support for virtual instruction through the Texas Home Learning program.⁷¹

Finally, the CARES Act established the HEERF program (HEERF I). HEERF I funds were awarded directly to institutions of higher education (IHEs) to offer support and relief to universities and students. Funds were primarily designated for emergency student aid; institutional support; additional support for Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions;

⁵⁹ <https://covid-relief-data.ed.gov/>.

⁶⁰ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Sarah Hicks, OOG).

⁶¹ *Id.*

⁶² *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Cory Green, Texas Education Agency).

⁶³ *Id.*

⁶⁴ <https://tea.texas.gov/academics/special-student-populations/special-education/supplemental-special-education-services-seses>.

⁶⁵ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Sarah Hicks, OOG).

⁶⁶ *Id.*

⁶⁷ <https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/>.

⁶⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Cory Green, TEA).

⁶⁹ *Id.*

⁷⁰ <https://gov.texas.gov/uploads/files/press/Governors-Budget-FY-2022-2023.pdf>.

⁷¹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Cory Green, TEA).

and to offer supplemental funding for institutions with the greatest need.⁷² Under HEERF I, a total of \$1 billion was allocated to state institutions in Texas.⁷³

Public Health Funding

The CARES Act included significant funding to bolster federal and state public health entities, including DSHS and HHSC. Aside from CRF funds allocated to DSHS for the state's COVID-19 response, the agency was likewise awarded various grants directly from federal entities. Among these awards were a \$39.1 million grant to support epidemiology activities and lab capacity⁷⁴; millions across several immunization-focused grants to help the agency plan for and implement vaccination services for both COVID-19 and influenza⁷⁵; and finally, \$8.7 million to support hospital preparedness.⁷⁶

HHSC was awarded funding across existing special programs for nutrition services, aging services, and to support COVID-19 prevention and response through Aging and Disability Resource Centers.⁷⁷ HHSC also received funding to assist the agency with COVID-19 costs (temporary staff, PPE and supplies, and technology for field staff).⁷⁸

The CARES Act also established the Provider Relief Fund (PRF) to support healthcare providers in preventing, preparing for, and responding to COVID-19.⁷⁹ The PRF was initially funded under CARES, and then subsequently replenished with additional allocations under later legislation (including PPPHCEA, CRRSAA, and ARPA).⁸⁰ Since the fund's establishment, over 32,500 providers in Texas have received billions of dollars from the PRF, including certain eligible state entities.⁸¹ For example, the Texas General Land Office (GLO) received \$8.5 million from the PRF for COVID-19 testing in State Veterans Homes, PPE, and general nursing home assistance.⁸² HHSC received \$19.5 million for COVID costs at state supported living centers and state hospitals.⁸³ Additionally, ten different health-related institutions (HRIs) received PRF awards to assist with clinical operations, labor costs, PPE/supplies, direct care, and to address lost revenues due to the pandemic.⁸⁴

Housing Assistance Funding

Under CARES, funds were made available to state and local governments to assist with housing challenges created or worsened by the pandemic. The Texas Department of Housing and Community Affairs (TDHCA) was awarded over \$382 million for a number of existing housing assistance programs to address increased need.⁸⁵ These awards included \$141 million in Community

⁷² <https://reportcenter.highered.texas.gov/reports/legislative/section-63-report/>.

⁷³ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

⁷⁴ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Donna Sheppard, Department of State Health Services).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Christopher Matthews, HHSC).

⁷⁸ *Id.*

⁷⁹ <https://www.hrsa.gov/provider-relief>.

⁸⁰ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

⁸¹ *Id.*

⁸² https://www.lbb.texas.gov/Documents/Covid/CARES_Act_report.pdf.

⁸³ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Christopher Matthews, HHSC).

⁸⁴ https://www.lbb.texas.gov/Documents/Covid/CARES_Act_report.pdf.

⁸⁵ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Bobby Wilkinson, Texas Department of Housing and Community Affairs).

Development Block Grant (CDBG) funding utilized for emergency rental and mortgage assistance, legal services for persons with disabilities, food distribution, and community resilience projects (to address the social and economic impacts of COVID)⁸⁶; \$97 million in Emergency Solutions Grant (ESG) funding utilized for homelessness prevention activities, rapid rehousing for homeless individuals, administration costs, and a Homeless Management Information System (HMIS)⁸⁷; and \$94 million for the Low Income Home Energy Assistance Program (LIHEAP) to provide utility assistance for eligible individuals.⁸⁸ Finally, the agency received \$48 million in Community Services Block Grant (CSBG) funding which was utilized for grants to help provide various essential services to low-income households.⁸⁹

Unemployment and Child Care Assistance Funding

In the spring of 2020, the federal government sought to address rising levels of unemployment by authorizing a series of pandemic-specific benefits to assist individuals who had experienced job loss related to the pandemic. Benefits authorized under the CARES Act included the Federal Pandemic Unemployment Compensation (FPUC) program, which provided supplemental funding to claimants who lost work as a result of the pandemic; the Pandemic Emergency Unemployment Compensation (PEUC) program, which provided an extra 13 weeks of benefits to individuals who had exhausted state benefits; and the Pandemic Unemployment Assistance (PUA) program, which offered benefits to contractors, self-employed individuals, and those who would not otherwise qualify for benefits.⁹⁰ In Texas alone, \$24.9 billion in federal UI benefits were distributed under the CARES-FPUC program; \$6.8 billion was distributed under CARES-PEUC; and \$5.68 billion was distributed under CARES-PUA.⁹¹ In order to support the Texas Workforce Commission (TWC) in administering additional unemployment assistance, the agency received a series of grants totaling over \$161 million to assist with administration, implementation, and to address increased instances of fraud.⁹²

Finally, CARES also sought to address the impacts of the pandemic and related closures on the childcare industry. Under these efforts, TWC was awarded \$371 million in COVID Childcare and Development Block Grant (CCDBG) funding.⁹³ The agency utilized the award for a variety of childcare-related initiatives, including enhanced reimbursement rates for childcare providers impacted by COVID, low-income childcare, and more.⁹⁴

Paycheck Protection Program and Health Care Enhancement Act (PPPHCEA)

Public Health Funding

Under the PPPHCEA, DSHS received a significant award to further support epidemiology activities and lab capacity. The \$473.6 million award was generally eligible for the development, purchase, administration, and analyzation of COVID-19 tests, COVID-19 surveillance, and related activities.⁹⁵ The agency utilized this award to fund additional response staff; to increase the state's testing and lab

⁸⁶ <https://www.tdhca.state.tx.us/CDBG-CARES.htm>.

⁸⁷ <https://www.tdhca.state.tx.us/home-division/esgp/index.htm>.

⁸⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Bobby Wilkinson, TDHCA).

⁸⁹ <https://www.tdhca.state.tx.us/covid19-response.htm>.

⁹⁰ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Chris Nelson, Texas Workforce Commission).

⁹¹ *Id.*

⁹² *Id.*

⁹³ https://www.lbb.texas.gov/Documents/Covid/CARES_Act_report.pdf.

⁹⁴ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(email from Joe Dyer, TWC).

⁹⁵ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Donna Sheppard, DSHS).

capacities; to purchase supplies; and for data and IT-related improvements.⁹⁶

Coronavirus Response and Relief Supplemental Appropriation Act (CRRSAA)

Education Funding

Each of the major education-related programs established under CARES received additional funding under CRRSAA, including GEER, ESSER, and HEERF. Under CRRSAA, the Office of the Governor was awarded an additional \$134.3 million in GEER funds (GEER II) to address COVID-19 driven challenges and support the state's education system in recovering from the impacts of the pandemic.⁹⁷ Further K-12 initiatives were funded through TEA, including another \$31 million⁹⁸ for the SSES program and \$10 million to provide incubator grants to charter schools.⁹⁹ GEER II investments for higher education (administered through THECB)¹⁰⁰ included \$25 million for nursing education and financial aid; \$12.5 million for financial aid investments; \$17.5 million for accelerating credentials in high-need areas; \$30.3 million for student success and advising; \$3 million for Commercial Driver License (CDL) training to improve transportation statewide and support the supply chain; and \$5 million for cybersecurity and modernizations to the state's educational and workforce data infrastructure.¹⁰¹

Under CRRSAA, Congress authorized the Emergency Assistance to the Non-Public Schools (EANS I) program as an addendum to GEER II. Under EANS I, Texas received \$152 million¹⁰² to mitigate the impacts of COVID-19 on private schools. Funds were administered through TEA and utilized for grants to non-public schools for costs associated with safely reopening schools, continuing instruction, addressing learning loss, supporting educational technology, and reimbursing certain COVID-related expenses.¹⁰³

Under ESSER II, funds were once again awarded for discretionary state uses and as formula for direct allocation to the state's LEAs. ESSER II formula funds totaled \$4.9 billion, with \$1.1 billion distributed for an additional hold harmless offset and the remaining \$3.8 billion made directly available to the state's LEAs.¹⁰⁴ The state's \$523 million ESSER II discretionary allocation was utilized for further technical assistance to LEAs, for continued support of Operation Connectivity, and to provide learning recovery support under the Texas COVID Learning Acceleration Supports (TCLAS) program through services to LEAs and Texas Home Learning (THL).¹⁰⁵

Finally, an additional allocation of funding was authorized under the HEERF program (HEERF II). Under CRRSAA, Texas public institutions received an additional \$1.7 billion in HEERF awards.¹⁰⁶

Public Health Funding

Additional significant public health-related grants were awarded to DSHS and HHSC under

⁹⁶ *Id.*

⁹⁷ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Sarah Hicks, OOG).

⁹⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Cory Green, TEA).

⁹⁹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Sarah Hicks, OOG).

¹⁰⁰ *Id.*

¹⁰¹ <https://gov.texas.gov/news/post/governor-abbott-announces-additional-123.3-million-in-education-funding>.

¹⁰² *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Cory Green, TEA).

¹⁰³ <https://tea.texas.gov/finance-and-grants/grants/crrsa-emergency-assistance-to-non-public-schools-eans-i-grant-program>.

¹⁰⁴ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Cory Green, TEA).

¹⁰⁵ *Id.*

¹⁰⁶ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

CRRSAA. DSHS received \$1.5 billion for additional epidemiology activities and to support lab capacity.¹⁰⁷ The agency utilized these funds to provide additional support to local health entities for their COVID-19 response efforts, including controlling and mitigating COVID-19 in high-risk populations and settings; for laboratory staffing to enable an increase in testing capacity and further streamline testing processes; to bolster statewide laboratory capacity and improve the state's disease surveillance capabilities; to improve data sharing with local jurisdictions; and more.¹⁰⁸ The agency was also awarded a \$39 million Health Disparities Grant to assist communities disproportionately impacted by COVID-19 in identifying and addressing response barriers.¹⁰⁹ The agency has utilized the award to engage numerous local health entities, IHEs, and state agencies; to improve access to testing and vaccines (for COVID-19 and influenza); to sponsor public health fellowship programs both within DSHS and at the local level; and to grow the agency's statewide partnership directory (to help grantees connect, collaborate, and share best practices).¹¹⁰ Finally, DSHS received \$227.1 million in additional COVID-19 Vaccine Preparedness funding, and utilized the award to continue monitoring and supporting COVID-19 vaccine operations and related outreach at the local level; for improvements to the state's vaccine allocation and ordering system; and for a statewide media campaign regarding vaccination for COVID and influenza.¹¹¹

Under CRRSAA, HHSC was awarded various grants totaling \$239.7 million.¹¹² These awards include additional funding to bolster existing programs to support the aging population, funding for nutrition services, and funds to support expanded access to COVID-19 vaccines through Aging and Disability Resource Centers.¹¹³ The agency also received several significant awards to address the mental health impacts of the pandemic and costs of COVID-19-related behavioral health service response activities -- including \$135.6 million in supplemental Substance Abuse Prevention and Treatment Block Grant funding and \$74.5 million in supplemental Mental Health Block Grant funding.¹¹⁴

Housing Assistance Funding

Significant additional funding was authorized under CRRSAA to address housing instability, including the \$25 billion Emergency Rental Assistance (ERA) program.¹¹⁵ Texas received \$1.28 billion¹¹⁶ in ERA funds to provide rental and utility assistance for income-eligible individuals.¹¹⁷ TDHCA administered these funds and utilized them to create the Texas Rent Relief (TRR) program¹¹⁸ to assist eligible individuals, experiencing hardship due to the pandemic with rental costs and utility expenses.¹¹⁹ A subset of ERA funds (\$72.7 million) was designated for the Housing Stability Services (HSS) program, likewise administered by TDHCA. HSS funds were utilized to provide eligible Texans with services to help them maintain or obtain housing (such as legal support, outreach, shelter, and more).¹²⁰ Using the first allocation of ERA funds, TDHCA was able to assist over 311,000 individuals through the TRR program and over 22,500 individuals through the HSS

¹⁰⁷ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Donna Sheppard, DSHS).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Christopher Matthews, HHSC).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program>.

¹¹⁶ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Bobby Wilkinson, TDHCA).

¹¹⁷ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program>.

¹¹⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Bobby Wilkinson, TDHCA).

¹¹⁹ <https://texasrentrelief.com/>.

¹²⁰ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(testimony of Bobby Wilkinson, TDHCA).

program.¹²¹ Finally, TDHCA received an additional \$51.8 million¹²² for the federal Low Income Household Water Assistance Program (LIHWAP), which provides income eligible households with financial assistance for water and wastewater services.¹²³

Child Care Assistance Funding

CRRSAA provided Texas with additional CCDBG funding to address capacity and instability in the childcare industry, totaling \$1.13 billion.¹²⁴ The agency utilized the award for various initiatives, including the 2021 Child Care Relief Fund¹²⁵ to assist childcare providers in responding to the impacts of COVID and increased operational expenses,¹²⁶ and the Service Industry Recovery Childcare program¹²⁷ to ensure quality, affordable childcare for low-wage workers in certain industries.¹²⁸

American Rescue Plan Act (ARPA)

CSFRF & Senate Bill 8

Additional discretionary funding designated to support response efforts and provide relief to both state and local governments was authorized under ARPA through the establishment of the Coronavirus State and Local Fiscal Recovery Funds (CSFRF/CLFRF).¹²⁹ Together, the funds included \$350 billion total in emergency funding for eligible governmental entities. Funds awarded under the CLFRF flowed directly from the U.S. Treasury to local governments, while CSFRF funds were awarded to the states. Cities, counties, and non-entitlement units (or NEUs -- governments typically serving <50,000)¹³⁰ in Texas received a total of \$10.4 billion under the CLFRF.¹³¹ Under the CSFRF, Texas received a \$15.8 billion state allocation.¹³²

Per the authorizing legislation, eligible uses for CSFRF funds included:

1. responding to the COVID-19 public health emergency with respect to the Coronavirus Disease;
2. responding to the negative economic impacts of the pandemic;
3. premium pay for eligible workers performing essential work;
4. replacing lost public sector revenue; and
5. to make necessary investments in water, sewer, or broadband infrastructure.¹³³

The legislation and related guidance indicate that ineligible uses for states include pensions, debt service, rainy day funds, paying off settlements, or using funds to offset a reduction in net tax revenue resulting from changes in statute or regulation.¹³⁴

¹²¹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Bobby Wilkinson, TDHCA).

¹²² *Id.*

¹²³ <https://www.acf.hhs.gov/ocs/programs/lihwap>.

¹²⁴ https://www.lbb.texas.gov/Documents/Covid/CRRSA_report.pdf.

¹²⁵ *Id.*

¹²⁶ <https://www.twc.texas.gov/news/child-care-stimulus-resources>.

¹²⁷ https://www.lbb.texas.gov/Documents/Covid/CRRSA_report.pdf.

¹²⁸ <https://www.twc.texas.gov/news/twc-child-care-funding-assist-service-industry-workers>.

¹²⁹ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

¹³⁰ *Id.*

¹³¹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

¹³² *Id.*

¹³³ <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf>.

¹³⁴ *Id.*

During the 87th Regular Legislative Session, Art. IX, Sec. 13.01 was amended to require that any CSFRF funds received by the state under ARPA be appropriated by the Legislature.¹³⁵ Subsequently, the Legislature determined uses for \$12.8 billion of the state's CSFRF allocation under SB 8 during the 87th Legislature, Third Called Session (87-3).¹³⁶ Allocations of the CSFRF under SB 8 were largely categorized as revenue replacement and included appropriations for cybersecurity projects, COVID-19 related medical costs, public health staffing needs, state hospital construction, state veterans homes, refreshing the unemployment insurance compensation fund, retiring Title XII debt, and more.¹³⁷

In order to follow federal guidelines regarding the use of CSFRF funds and avoid potential lapse of funds, the 88th Legislature will need to appropriate the state's remaining CSFRF. Funds must be obligated by end of 2024, and fully expended by end of 2026.¹³⁸

Capital Projects Fund

SB 8 also appropriated funds allocated to the state under the Capital Projects Fund (CPF). The CPF was established under ARPA to support state investments in critical capital projects that enable work, education, and health monitoring (including broadband).¹³⁹ Texas was allocated \$500.5 million under the CPF.¹⁴⁰ Under SB 8, these funds were appropriated to the Broadband Development Office within the Texas Comptroller of Public Accounts (CPA) for broadband infrastructure and for a pole replacement program.¹⁴¹

CPA indicated that a grant plan for use of these funds must be developed and submitted for federal review by late September 2022.¹⁴² The agency indicated that the grant plan must demonstrate how the state will identify those communities with the greatest need, define affordability for services, and outline a process by which the state will evaluate the best technology for delivery.¹⁴³

Under HB 1505, passed during the 87th Regular Legislative Session, the Legislature established the Texas Broadband Pole Replacement Program to support deployment of broadband to rural areas by reimbursing a portion of certain costs incurred for pole replacements¹⁴⁴ (pole is defined in the legislation as "any pole used, wholly or partly, for any wire communications or electric distribution, irrespective of who owns or operates the pole").¹⁴⁵ Under SB 8, the Legislature appropriated \$75 million of the state's CPF allocation to fund the Texas Broadband Pole Replacement Program.¹⁴⁶ However, since the time these funds were appropriated, the U.S. Treasury has clarified in CPF program guidance that states may not use CPF funds for a stand-alone pole replacement program.¹⁴⁷ CPA indicates that given this development, the \$75 million appropriated for pole replacement will have to be reappropriated in the coming legislative session.¹⁴⁸

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Tex. S.B. 8, 87th Leg., 3rd C.S. (2021).

¹³⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

¹³⁹ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>.

¹⁴⁰ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Glenn Hegar, Texas Comptroller of Public Accounts).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Tex. H.B. 1505, 87th Leg., R.S. (2021).

¹⁴⁶ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Glenn Hegar, CPA).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

Education Funding

ARPA authorized additional funding for the ESSER (ESSER III), EANS (EANS II), and HEERF (HEERF III) programs. Under ESSER III, Texas received \$1.18 billion in state discretionary funds and \$11.18 billion in formula funds.¹⁴⁹ The entire ESSER III formula fund allocation was made available directly to the state's LEAs, while the state's discretionary portion was leveraged for additional supplemental funding for LEAs, technical assistance, further support for Operation Connectivity, the SSES program, and over \$900 million to support COVID-19 learning recovery through the Texas COVID Learning Acceleration Supports (TCLAS) program (funding and services to LEAs, Texas Home Learning, and tutoring services).¹⁵⁰

Under EANS II, Texas was granted an additional allocation of \$151 million.¹⁵¹ The ARPA EANS allocation differed slightly from the first phase of funding, in that funds could only be used to provide services or assistance to non-public schools that enrolled a significant percentage of low-income students and were most impacted by the COVID-19 emergency.¹⁵² EANS II funds are once again being administered to non-public schools by TEA, with eligible recipients likely to begin receiving services at the start of the 2022-2023 school year.¹⁵³

Finally, ARPA authorized a third phase of funding for the HEERF program. Under HEERF III, state institutions in Texas received \$3 billion.¹⁵⁴

Public Health Funding

ARPA authorized significant public health-related funding. In addition to the \$2 billion in CSFRF funds appropriated to DSHS under SB 8 for further COVID-19 response and medical surge staffing,¹⁵⁵ the agency again received several awards directly from federal agencies for COVID-19 related activities and general public health response. Significant allocations include a \$157 million Public Health Workforce Grant for supporting the public health workforce at the state and local level.¹⁵⁶ DSHS utilized this award to contract with local health entities to hire and train staff to bolster the public health workforce in support of prevention, preparedness, response, and recovery initiatives, and to build capacity to address public health priorities resulting from the pandemic.¹⁵⁷ Funds have also been programmed for allocation to school districts to support hiring and training of nurses to expand school-based health programs.¹⁵⁸ The agency was also awarded \$803.5 million in Epidemiology and Lab Capacity (ELC) Re-Opening Schools COVID-19 funding for the development of a statewide testing program for schools (public and private) to help them operate safely.¹⁵⁹ Funds are also being awarded as direct grants to schools (under administration by TEA).¹⁶⁰ DSHS indicated that as of July 2022, 1,243 entities have opted into the statewide testing program.¹⁶¹

¹⁴⁹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Cory Green, TEA).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² <https://tea.texas.gov/finance-and-grants/grants/arp-emergency-assistance-to-non-public-schools-eans-ii-grant-program>.

¹⁵³ *Id.*

¹⁵⁴ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

¹⁵⁵ Tex. S.B. 8, 87th Leg., 3rd C.S. (2021).

¹⁵⁶ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Donna Sheppard, DSHS).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

Under ARPA, HHSC likewise received a number of federal grant awards totaling \$610.3 million, (excluding CSFRF funds appropriated to the agency under SB 8).¹⁶² Among these awards, HHSC again received extensive funding for existing programs (including for nutrition services, aging services, family violence services, etc.), TANF Pandemic Emergency Assistance funds (\$49.5M to provide short-term benefits to families impacted by COVID-19), as well as additional significant Mental Health Block Grant funding (\$4.4 million and \$128.8 million) and Substance Abuse Prevention and Treatment Block Grant funding (\$4.7 million and \$117 million) to assist states in addressing the mental health impacts of the pandemic, ensure continuity of services for individuals in need, administrative costs, and behavioral health related projects across the continuum of care.¹⁶³

Like the enhanced FMAP benefit authorized under FFCRA, ARPA provided qualifying states with a 10-percentage point increase to the FMAP for certain Medicaid expenditures for home- and community-based services (HCBS) between April 1, 2021, and March 31, 2022.¹⁶⁴ As with FFCRA, HHSC was required to abide by certain requirements in order to receive the benefit. Among these requirements, HHSC was required to maintain current eligibility requirements for HCBS services¹⁶⁵ and utilize any state savings accrued as a result of the enhanced benefit to support, not supplant, activities that enhance or strengthen HCBS.¹⁶⁶ HHSC indicates that state savings as a result of the increased match total \$495.18 million; funds have been utilized (subsequent to approval from the LBB and Office of the Governor) for a variety of initiatives, including provider retention bonuses, IT system enhancements, and other eligible HCBS services.¹⁶⁷

Housing Assistance Funding

ARPA authorized additional funding for several housing assistance programs, including the ERA (ERA II). Under ERA II, TDHCA received \$1 billion,¹⁶⁸ and utilized the funding to continue the Texas Rent Relief (TRR) program (providing eligible Texans with rental and utility assistance).¹⁶⁹ TDHCA also received an additional \$108 million for the Housing Stability Services (HSS) program (to encourage housing stability and provide Texans at risk of losing their homes with services and assistance).¹⁷⁰ ARPA also established the Homeowner Assistance Fund (HAF) to prevent mortgage delinquencies and defaults, foreclosures, loss of utilities, and displacement of homeowners due to the pandemic.¹⁷¹ Under the HAF, Texas received \$842.2 million.¹⁷² Using these funds, TDHCA created the Texas Homeowner Assistance Fund Program (TxHAF) to aid eligible Texans who have fallen behind on their mortgages, property taxes, property insurance payments, or homeowner/condo association fees.¹⁷³ As of July 2022, TDHCA indicates that the program has distributed \$61 million in assistance to 7,937 households.¹⁷⁴

¹⁶² *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Christopher Matthews, HHSC).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Christopher Matthews, HHSC).

¹⁶⁶ *Id.*

¹⁶⁷ <https://www.hhs.texas.gov/sites/default/files/documents/texas-hcbs-spending-plan-narrative-update-20220201.pdf>.

¹⁶⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Bobby Wilkinson, TDHCA).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund>.

¹⁷² *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Bobby Wilkinson, TDHCA).

¹⁷³ <https://texashomeownerassistance.com/>.

¹⁷⁴ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(testimony of Bobby Wilkinson, TDHCA).

Unemployment and Child Care Assistance Funding

The state received additional funding under ARPA to further expand the provision of childcare in Texas and stabilize the industry. TWC received \$2.7 billion in Childcare Stabilization Grant funding and another \$1.7 billion allocation of CCDBG funding.¹⁷⁵ The agency utilized the awards to enable a second iteration of the Childcare Relief Fund in 2022 and a variety of other initiatives aimed at improving the childcare workforce (such as training, business coaching, and professional development for providers; funding a Childcare Expansion Initiative to offer start up funding to help expand the availability of childcare in parts of the state where demand exceeds supply; and more).¹⁷⁶

In addition to funds awarded for childcare, TWC was likewise appropriated \$7.2 billion in CSFRF funds under SB 8 to pay back outstanding Title XII advances and replenish the Unemployment Compensation Trust Fund.¹⁷⁷ From March 2020 through May 2022, \$54.8 billion in UI benefits were distributed in Texas (with \$43.2 billion in federal benefits and the remainder coming from state benefits).¹⁷⁸ In order to address increased need and to be able to continue to pay benefits, the agency began drawing federal Title XII advances in the summer of 2020.¹⁷⁹ With the passage of SB 8, the agency was able to utilize the \$7.2 billion in CSFRF funds to replenish the state's UI Trust fund, pay off the state's outstanding Title XII balance,¹⁸⁰ and prevent an increase in UI tax rates for employers.¹⁸¹

Local Funding

In addition to the billions awarded to the state, significant federal funding flowed directly to eligible local governments, local education agencies, healthcare providers, and more under these six federal legislations.

¹⁷⁵ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Chris Nelson, TWC).

¹⁷⁶ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(email from Joe Dyer, TWC).

¹⁷⁷ Tex. S.B. 8, 87th Leg., 3rd C.S. (2021).

¹⁷⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(testimony of Chris Nelson, TWC).

¹⁷⁹ <https://comptroller.texas.gov/economy/fiscal-notes/2020/may/unemployment.php>.

¹⁸⁰ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(testimony of Chris Nelson, TWC).

¹⁸¹ <https://www.twc.texas.gov/texas-workforce-commission-adopts-no-new-increases-employer-tax-rates-2022>.

Coronavirus Relief Fund

Under the Coronavirus Relief Fund, six cities and 12 counties in Texas received direct payments from the U.S. Treasury for COVID-19-related costs and activities.

Texas	Total allocation	\$11,243,461,410.70
	<i>Eligible local governments that certified:</i>	
	Austin city	\$170,811,897.20
	Bexar County	\$79,626,415.00
	Collin County	\$171,453,156.40
	Dallas County	\$239,952,372.70
	Dallas city	\$234,443,127.60
	Denton County	\$147,733,721.60
	El Paso County	\$27,484,280.40
	El Paso city	\$118,956,278.90
	Fort Bend County	\$134,262,393.50
	Fort Worth city	\$158,715,568.30
	Harris County	\$425,942,656.10
	Hidalgo County	\$151,582,672.50
	Houston city	\$404,868,873.40
	Montgomery County	\$104,983,285.40
	San Antonio city	\$269,983,717.00
	Tarrant County	\$209,816,856.50
	Travis County	\$61,147,507.20
	Williamson County	\$93,382,340.10
	Payment to the state	\$8,038,314,290.90

*<https://home.treasury.gov/system/files/136/Payments-to-States-and-Units-of-Local-Government.pdf>.

Although these funds were allocated to cities and counties in Texas, the state has no jurisdiction over their use. Direct recipients of Coronavirus Relief Funds reported on the use of their awards directly to the U.S. Treasury. Information reported by local entities regarding use of funds, including COVID-19 testing, food programs, unemployment benefits, PPE, small business and housing assistance, economic support, public health and medical expenses, distance learning, payroll for public health and safety employees, and more can be reviewed on the Pandemic Response Accountability Committee website.¹⁸²

Provider Relief Fund

Though various state agencies and HRIs received PRF awards, significantly more funding was allocated directly to non-state entities in Texas. While awards to state health service entities totaled \$303.4 million across all phases of funding for the PRF, direct awards to over 32,500 eligible health care providers and centers across the state totaled \$9.3 billion in assistance.¹⁸³

ESSER

Under ESSER, \$17.5 billion in direct payments flowed to school systems.¹⁸⁴ Though ESSER I, II, and

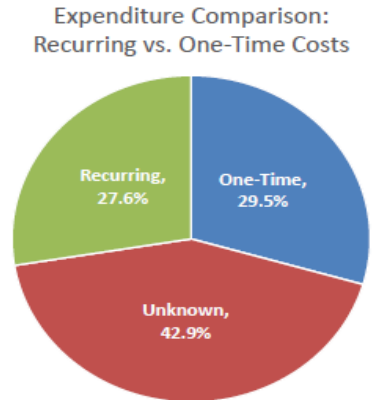
¹⁸² <https://www.pandemicoversight.gov/data-interactive-tools/interactive-dashboards/coronavirus-relief-fund>.

¹⁸³ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

¹⁸⁴ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Cory Green, TEA).

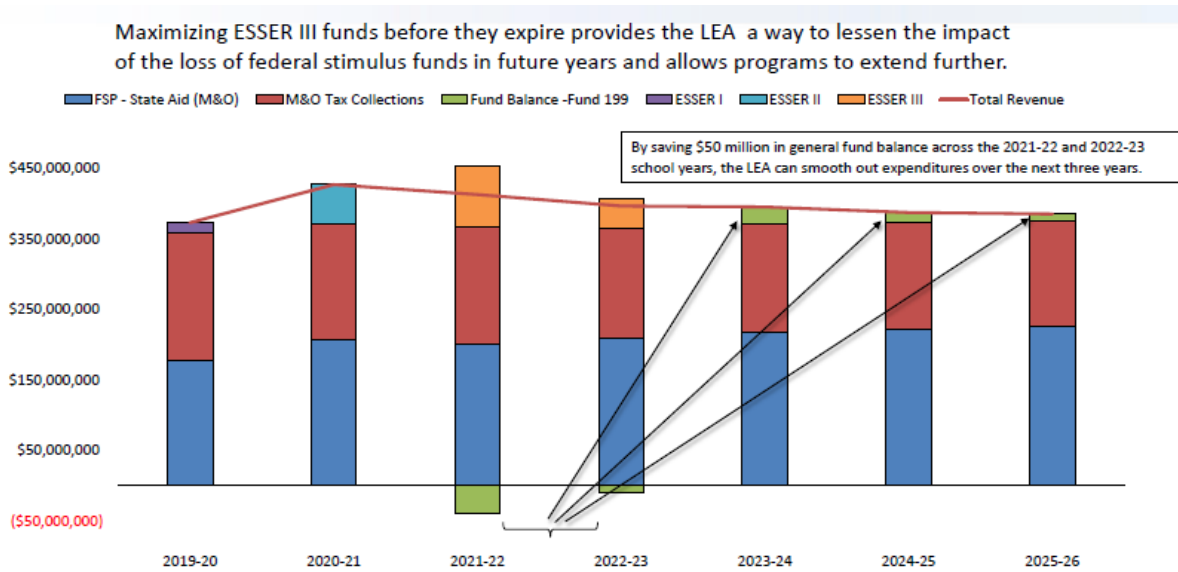
III formula funds awarded to Texas went through TEA for distribution, the recipients of those funds - - local education agencies -- were ultimately responsible for determining their use. Below, TEA has provided information regarding use of funds by ESSER recipient school districts as of July 2022.¹⁸⁵ TEA notes roughly 71 percent of all ESSER II and ESSER III formula funds distributed to LEAs remain unspent.¹⁸⁶ TEA also provided information regarding how LEAs have utilized ESSER formula funds thus far (are based on total formula funds spent to date; not total formula funds awarded).¹⁸⁷

Before/After/Summer School	\$123 M	3%
Tutoring	\$127 M	3%
Curricular Resources	\$222M	5%
Professional Development	\$27M	0.5%
Training Time Stipends	\$74M	1.5%
Staffing Model & Planning Supports	\$65 M	1.5%
Student Services (e.g., Counseling, Nursing, Food, etc.)	\$431M	9.5%
Additional Teachers	\$462 M	10%
Teacher Pay Increases	\$427 M	9.5%
COVID-related Facilities Supports (e.g., cleaning, PPE)	\$253M	5.5%
Technology	\$351 M	8%
Other	\$1,606M	36%
Indirect (administrative support)	\$323M	7%



*Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)(written testimony of Cory Green, TEA).

Given this massive influx of funding to LEAs, school districts risk developing a fiscal cliff if ESSER funds are utilized to expand budgets or programmed for ongoing costs. As of July 2022, 27.6 percent of expenditures are considered recurring. TEA has sought to inform ESSER recipients about utilizing ESSER funds as a one-time source.¹⁸⁸ TEA has also advised that school districts can avoid a fiscal cliff by maximizing ESSER funds before they expire while simultaneously saving a certain percentage of their general fund balances, as shown below.¹⁸⁹



*Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)(written testimony of Cory Green, TEA).

¹⁸⁵ *Id.*
¹⁸⁶ *Id.*
¹⁸⁷ *Id.*
¹⁸⁸ *Id.*
¹⁸⁹ *Id.*

A full listing of ESSER I, II, and III grants that flowed to LEAs and educational service centers are listed by the receiving entity on TEA's website.¹⁹⁰

Coronavirus Local Recovery Fund

Billions were awarded to local governments in Texas under the CLFRF -- including \$3.4 billion directly to 75 cities, \$5.7 billion directly to all 254 counties, and \$1.4 billion to 1,145 eligible non-entitlement units (NEUs) of local governments (serving <50,000) in Texas.¹⁹¹ A full listing of eligible recipients and allocations can be viewed on the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds webpage.¹⁹²

Barriers to Effective Utilization

Challenges to effective utilization of the influx of federal funds allocated to Texas under this legislation are largely derived from interactions with federal entities. State agencies have indicated that many significant details regarding these awards -- timing of allocations, terms, guidance regarding use and allowable expenses, etc. -- are revealed in phases by federal entities and can evolve.¹⁹³ Agencies have likewise indicated that it can be challenging to effectively leverage funds for state needs due to inflexibility as large federal grants often target federal (rather than state) priorities.¹⁹⁴ Furthermore, grant recipients must submit grant plans or use of funds narratives to federal entities for review and approval prior to receiving or expending awards and this process can often take significant time and involve fielding questions and requests for revision by federal entities.¹⁹⁵

At the state level, implementation can be hindered by challenges in hiring enough staff to administer and monitor funding, as well as challenges on the part of subrecipients (such as local health entities) in executing contracts or completing required grant-related work within federally specified timelines.¹⁹⁶

During an already chaotic and uncertain economic environment, decision-making by the Texas Legislature was also greatly affected by the timing and lack of clarity of emerging federal guidance. The Interim Final Rule for the CSFRF under ARPA was not published until May 2021, days away from the end of the regular legislative session.¹⁹⁷ Without adequate time to review the guidance and make informed funding decisions, the Legislature waited until months later to make CSFRF appropriations. When SB 8 was ultimately passed during the Third Called Special Session, the Final Rule for CSFRF had not yet been issued¹⁹⁸ -- leaving some uncertainty about eligible uses of the Fund.

Furthermore, the constitutionality of certain ARPA provisions has also contributed to uncertainty about eligible uses of the CSFRF. Specifically, the ARPA statute prohibits the use of ARPA funds from being used directly or indirectly for a tax reduction or to prevent a tax increase -- or face federal

¹⁹⁰ <https://tea.texas.gov/finance-and-grants/grants-administration/applying-for-a-grant/entitlements>.

¹⁹¹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Eduardo Rodriguez, LBB).

¹⁹² <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

¹⁹³ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(testimony of Donna Sheppard, DSHS; testimony of Glenn Hegar, CPA).

¹⁹⁴ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Donna Sheppard, DSHS; testimony of Glenn Hegar, CPA; testimony of Marc Williams, Texas Department of Transportation).

¹⁹⁵ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Donna Sheppard, DSHS; testimony of Glenn Hegar, CPA).

¹⁹⁶ *Federal Funds Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022)(written testimony of Donna Sheppard, DSHS).

¹⁹⁷ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

¹⁹⁸ *Id.*

recoupment of funds.¹⁹⁹ Several states, including Texas, have challenged the constitutionality of this tax mandate in court.²⁰⁰ In April of 2022, the U.S. District Court for the Northern District of Texas held that the tax mandate violated the state's sovereign taxing authority in Article X of the U.S. Constitution. The U.S. Treasury has appealed.

Infrastructure Investment and Jobs Act

In November of 2021, Congress passed the Infrastructure Investment and Jobs Act (IIJA).²⁰¹ The IIJA is unrelated to COVID-19, and instead focuses on funding significant investment in various types of infrastructure across the country. The legislation includes over \$1 trillion in funding and contract authority for hundreds of new and existing programs for highways, surface transportation, bridges, rail, aviation, energy, broadband, disaster response, clean water, drinking water, flood mitigation, coastal resources, watershed health, forestry, waste, cybersecurity, and more.²⁰²

The IIJA authorizes significant allocations and competitive funding opportunities for Texas (including the state, local governments, and other entitlement units)²⁰³ for some new programs and many existing programs. LBB indicates that most apportionments will be made available in annual tranches between FFY 2022 and FFY 2026.²⁰⁴ As of July 2022, 55 apportionments²⁰⁵ from the IIJA have been made available to the state for FFY 2022, including:

- The National Highway Performance Program - \$2.84 billion;
- Surface Transportation Block Grants - \$1.38 billion;
- Clean Water and Drinking Water State Revolving Funds - \$507.7 million;
- Airport Infrastructure Grants - \$241.6 million;
- Orphaned Well Site Plugging, Remediation, and Restoration - \$107.6 million;
- The National Electric Vehicle Infrastructure (NEVI) Program - \$60.4 million;²⁰⁶
- Broadband Equity, Access, and Deployment (BEAD) Program - min. \$100 million; and
- Digital Equity Act (DEA) Program - est. \$70 million to \$100 million via capacity grants.²⁰⁷

As federal agencies continue to implement the IIJA, information impacting the state will be fast-evolving. LBB remains engaged in researching and uncovering the opportunities and allocations that will be made available to the state and will keep the legislature apprised of those developments.²⁰⁸

Recommendations

The COVID-19 pandemic created enormous challenges for state and local governments, including significant disruption to fiscal conditions as revenues decreased due to shutdowns in economic activity, coupled with increased costs to support public health response efforts. As a result, the federal government passed unprecedented fiscal stimulus through six pieces of legislation to directly support federal, state, and local entities as well as provide economic support to businesses and households.

¹⁹⁹ 42 USC § 802(c)(2)(A).

²⁰⁰ *Texas v. Yellen*.

²⁰¹ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

²⁰² <https://www.brookings.edu/interactives/brookings-federal-infrastructure-hub/>.

²⁰³ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

²⁰⁴ *Id.*

²⁰⁵ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(testimony of Eduardo Rodriguez, LBB).

²⁰⁶ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Eduardo Rodriguez, LBB).

²⁰⁷ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(written testimony of Glenn Hegar, CPA).

²⁰⁸ *Federal Funds Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)*(testimony of Eduardo Rodriguez, LBB).

LBB estimates that roughly \$80 billion in federal COVID-19 relief funds have been awarded to the State of Texas. State leaders were tasked with leveraging these massive federal resources and ensuring fiscal accountability using the best information available at the time -- all while sifting through complex, and at times vague and/or incomplete, federal guidance. In developing SB 8, the Legislature prioritized strategic, one-time investments, as to not commit future legislatures to expenses without the guarantee of federal funds moving forward. SB 8 leveraged federal COVID-19 relief dollars to strengthen our state's public health infrastructure and pandemic response, support Texas businesses across many sectors of the economy, bolster access to internet and the state's broadband infrastructure, address the mental health crisis emerging from the pandemic, fortify workforce training through re-skilling and upskilling programs, among other state priorities.

Because the Final Rule for the CSFRF did not go into effect until April 1, 2022, the 88th Legislature may need to readdress some funding decisions made in SB 8 to ensure compliance with updated federal guidance. For any remaining CSFRF funds unappropriated, the 88th Legislature should use these federal funds to make strategic, one-time investments to address pressing state needs.

Moving forward, state agencies should closely vet federal funding opportunities made available to ensure accepting funds does not involve conditions that would harm or hinder state interests or limit the state's ability to respond to urgent state needs. Agencies should continue to proceed with caution when programming federal awards to not create fiscal cliffs and to avoid committing one-time funds for on-going needs.

Finally, LBB should continue to closely monitor developments related to the IJJA so that agencies and the Legislature may remain apprised of funding opportunities available to the state, as well as any potential fiscal impact (such as matching funds requirements).

Charges No. 2 & No. 5

***Property Tax Relief:** Examine and recommend ways to reduce Texans' property tax burden. Review and report on proposals to use or dedicate state revenues in excess of the state spending limit to eliminate the school district maintenance and operations property tax.*

***Tax Exemptions:** Examine Texans' current tax exemptions and report on whether adjustments are merited because of inflation or any other factors.*

Background

Property Tax Relief

Local governments set tax rates and collect property taxes that are used to provide local services including public schools, streets, roads, police, fire protection, and more. Texas law requires property values used in determining taxes to be equal and uniform and establishes the process that local officials must adhere to in determining property values, setting tax rates, and collecting taxes. Several types of local governments tax property in their jurisdiction. For example, Texas counties and local school districts tax all nonexempt property within their jurisdiction. Cities and special purpose districts such as hospitals, junior colleges or water districts may also collect certain property taxes.²⁰⁹

In 2021, Texas property taxes totaled \$73.1 billion, over half of which (53 percent) was levied by school districts for both maintenance and operations (M&O) and interest and sinking (I&S) (debt service). City property taxes accounted for \$12.5 billion, or 17 percent of the total. County property taxes were \$11.7 billion, or 16 percent of the total. Finally, property taxes levied by special purpose districts amounted to \$9.9 billion, or 13.5 percent of the total.²¹⁰

As demonstrated in the following chart, property tax levies in the state have grown by over \$50 billion since 2000, with school district levies accounting for most of the growth.²¹¹ House Bill (HB) 3, passed during the 86th Regular Session, compressed the school district Tier 1 M&O tax rate from \$1.00 per \$100 valuation in taxable value to \$.9134 as of fiscal year 2022. Additionally, districts can levee another 17 cents of tax effort through school board action for the first 8 cents, or through Voter Approved Tax Rate Election (VATRE) for the additional 9 cents. School districts may also levee an additional \$0.50 in I&S.²¹²

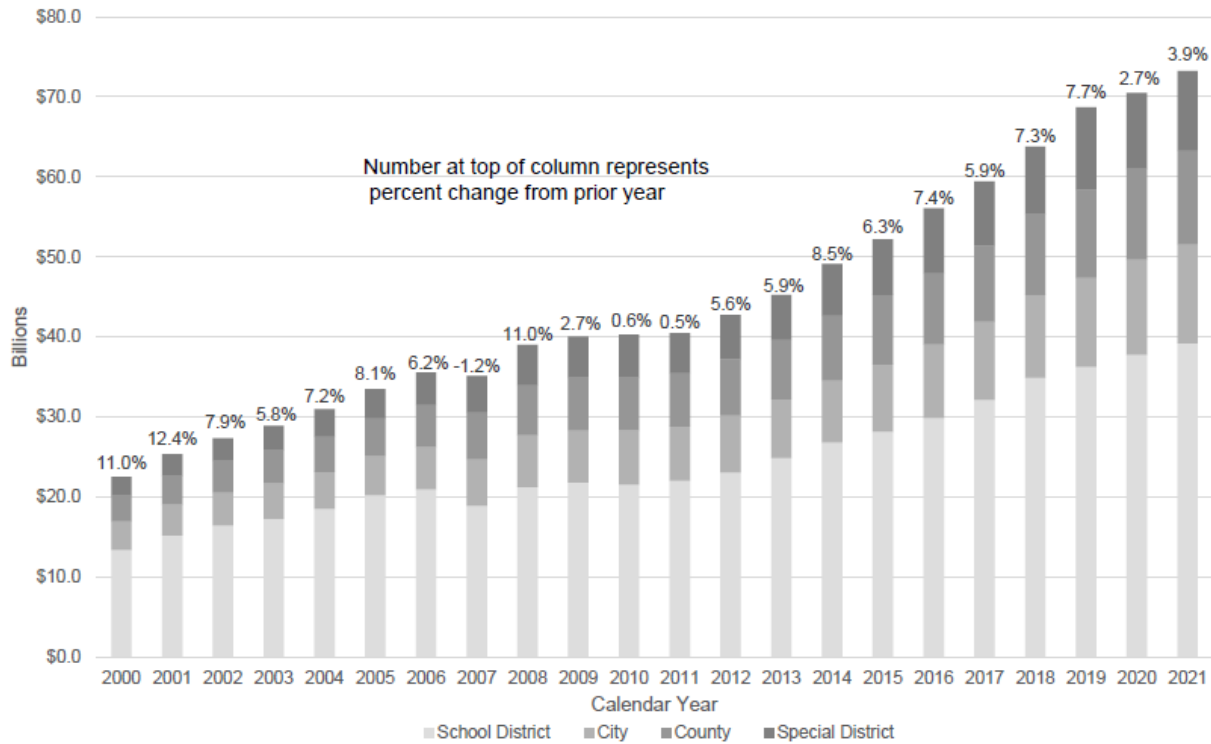
²⁰⁹ <https://comptroller.texas.gov/taxes/property-tax/docs/96-1425.pdf>

²¹⁰ https://bivisual2.cpa.texas.gov/QvAJAXZfc/CPA.aspx?document=documents%5Cbi_master_ui.qvw&lang=en-US&host=QVS%40daupswap84&sheet=PropTx_Sheet_1

²¹¹ Property Tax Relief Charge: Hearing Before S. Comm on Finance, 87th Interim (Tex. 2022)(testimony of Korry Castillo, Texas Comptroller of Public Accounts).

²¹² *Tex. H.B. 3, 86th Leg. R.S (2019).*

Property Tax Growth Since 2000²¹³



The Foundation School Program (FSP) formula funding for public schools is a shared obligation of the state and local school districts. District and charter school FSP entitlements are determined by statutory formulas based primarily on student attendance and student characteristics. Local district property taxes are the first funding source to pay for entitlements, with the state making up shortfalls for districts that cannot meet entitlements locally. Districts that generate revenue over entitlement locally are subject to recapture for a portion of surplus revenues. Recaptured funds are statutorily returned to the FSP as a method of public-school finance for the state and cannot be used for any other purpose.²¹⁴

School district M&O tax rates are made up of the district’s Tier 1 tax rates and, for most districts, an additional Tier 2 tax rate, which is an optional enrichment tax rate. Following the enactment of HB 3, Tier 1 tax rates are compressed annually based on the amount that a district’s property value growth rate or the statewide average property value growth rate exceeds 2.5 percent, whichever is greater. The tax rate based on statewide average property value growth is known as the State Compression Percentage (SCP). In addition to the statutorily required compression based on property value growth, the SCP may be reduced further by legislative appropriation. For the 2022–23 biennium, appropriations reduce the SCP by an additional 0.3 percent each fiscal year.²¹⁵

Other taxing entities, which do not receive state financial aid, are not held harmless for state constraint on levee growth. Senate Bill (SB) 2, which passed during the 86th Regular Session, moved the

²¹³ *Property Tax Relief Charge: Hearing Before S. Comm on Finance, 87th Interim (Tex. 2022)*(testimony of Korry Castillo, Texas Comptroller of Public Accounts).

²¹⁴ Tex. Edu. Code §48.257.

²¹⁵ *Id.*

automatic trigger for tax elections from 8 percent to 3.5 percent, leaving any growth above 3.5 percent to the will of the voters.²¹⁶

Historically, property tax relief has been provided through three mechanisms: rate reductions, exemptions, and special appraisal methods.²¹⁷ Rate reductions include state compression percentages, maximum compressed tax rates, and the voter approval rate. The state compression percentage (Edu. Code §48.255) is the percentage of the rate of \$1.00 per \$100 valuation of taxable property that is used to determine a school district's maximum compressed tax rate. The percentage is set by appropriation and is currently set at 93 percent. The maximum compressed rate (Edu. Code §48.2551) refers to the rate at which a district must levy M&O tax in order to receive the full amount of Tier 1 entitlement. Finally, the voter approval rate (Tax Code §26.04) relates to the point at which a taxing district must receive voter approval in order to exceed a limit, currently 3.5 percent as a result of SB 2.²¹⁸

Exemptions include: (1) residence homestead exemptions (Tax Code §11.13) by which the taxable property value of a homestead is reduced; (2) tangible personal property or freeport goods (Tax Code §11.251), relating to property that under Article VIII, Section 1-j of the Texas Constitution is not taxable; (3) income-producing personal property (Tax Code §11.145) which refers to an exemption from taxation of the tangible personal property a person owns that is held or used for the production of income that has a taxable value of less the \$2,500; and (4) public, religious, and charitable organizations (Tax Code §11.11, 11.18, and 11.20).²¹⁹

Special appraisal methods refer to the 10 percent year over year appraisal increase cap of residence homesteads (Tax Code §23.23); the over 65 years old and disabled school tax ceiling (Tax Code §11.26); and special appraisals for agriculture and timber land (Tax Code §23.41-23.73, 23.9803).²²⁰

Legislative Action

The Legislature has taken several steps to lower the local property tax burden on taxpayers. Dating back to 1997, HB 4 (75R) increased the state mandatory homestead exemption from \$5,000 to \$15,000. The 79th Legislature, through HB 1 of the 3rd Called Special Session, compressed school district tax rates by two-thirds beginning in fiscal year 2008, from \$1.50 to \$1.00 with an annual state cost of \$7.1 billion. This one-time rate compression created an ongoing cost that is currently imbedded in the school finance appropriation. Furthermore, the state allowed for an additional 17 cents of enrichment capacity for districts.

The 84th Legislature passed SB 1/SJR 1 which increased the state mandated school district homestead exemption from \$15,000 to \$25,000 beginning in fiscal year 2016. Like other measures, tax limitations for taxpayers over 65 years-old and the disabled were adjusted to reflect the additional exemptions and school districts were held harmless for the lost revenue, shifting a cost of \$615.9 million from property taxpayers to the state, and growing in subsequent years.

²¹⁶ *Tex. S.B. 2, 86th Leg, R.S (2019).*

²¹⁷ *Property Tax Relief Charge: Hearing Before S. Comm on Finance, 87th Interim (Tex. 2022)(testimony of Kevin Kavanaugh, LBB).*

²¹⁸ *Id.*

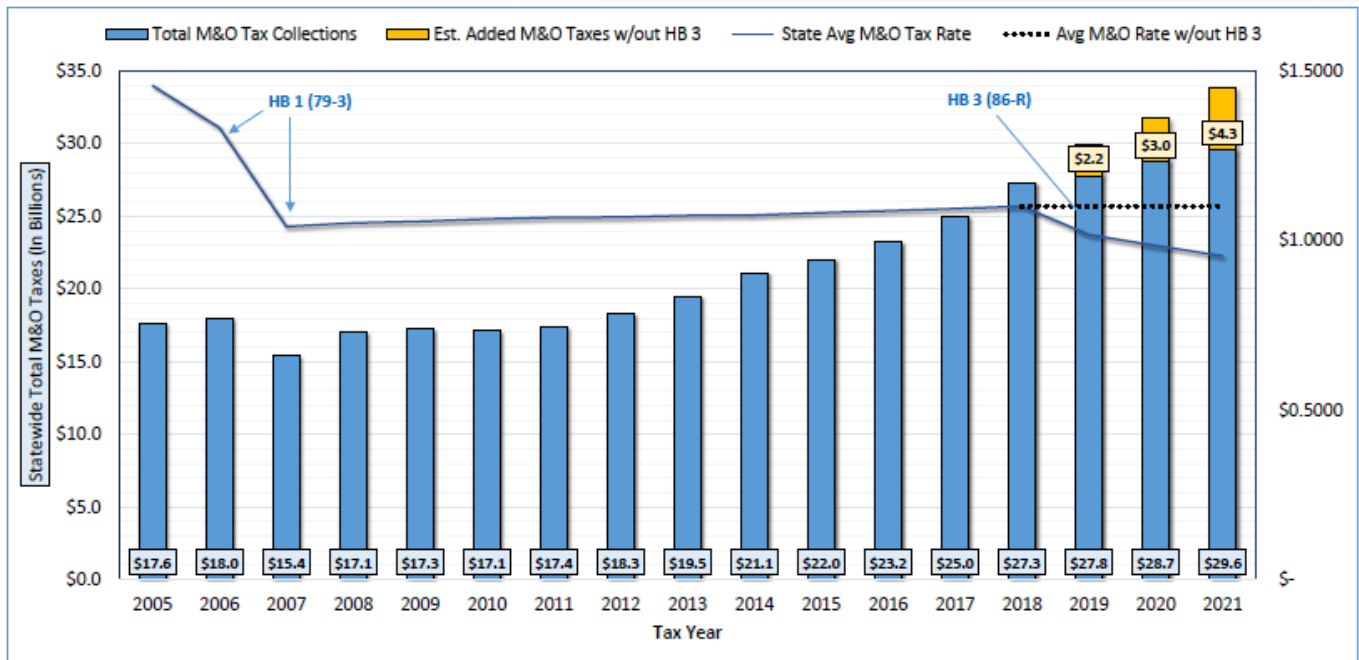
²¹⁹ *Id.*

²²⁰ *Id.*

In 2019, HB 3 compressed school district M&O Tier 1 tax rates by 7 pennies and Tier 2 rates by 3.2 pennies beginning in fiscal year 2020. HB 3 directed compression is ongoing as it is embedded in the school finance system and will automatically grow when district revenues increase by more than 2.5 percent. This mechanism does not limit the growth of a school district's budget by 2.5 percent, rather it ensures that a district's local share of Tier 1 does not increase by more than 2.5 percent annually. However, locally compressed tax rates may not be below 90 percent of the least compressed district's maximum compressed tax rate.²²¹

Initial estimated compression costs as a result of HB 3 totaled approximately \$5 billion for the 2020-2021 biennium²²² with actual compression increasing with growing district taxable property values. As shown in the table below, the Texas Education Agency (TEA) estimates that since HB 3 was implemented, over \$9 billion in property tax compression has occurred.

Tax Compression Resulting from HB 3²²³



The 86th Legislature also passed SB 2, which renamed the "rollback rate" the "voter approval rate." This legislative change lowered the threshold by which taxing districts are required to hold elections to adopt rates in excess of voter approval rates from 8 percent to 3.5 percent. As a result, the Legislative Budget Board estimated a \$1.3 billion reduction in property taxes in 2020-2021; the first full biennium after implementation of SB 2. While there has been clear slowed growth in taxing units' levies since its passage, future savings as a result of SB 2 are difficult to project due to the amount of variables that depend on property value growth and tax rate adoption.

Continuing to raise the homestead exemption amount is the Legislature's most recent action to provide additional property tax relief. Passed during the 87th Legislature, 3rd Called Special Session, SB

²²¹ Property Tax Relief Charge: Hearing Before S. Comm on Finance, 87th Interim (Tex. 2022)(testimony of Leo Lopez, TEA).

²²² Property Tax Relief Charge: Hearing Before S. Comm on Finance, 87th Interim (Tex. 2022)(testimony of Kevin Kavanaugh, LBB).

²²³ Property Tax Relief Charge: Hearing Before S. Comm on Finance, 87th Interim (Tex. 2022)(testimony of Leo Lopez, TEA).

1/SJR 1 increased the state mandated school district homestead exemption from \$25,000 to \$40,000 beginning with fiscal year 2023. School districts were held harmless for lost revenue at an estimated annual state cost of \$355.3 million in the first year, with slight growth estimated in subsequent years.²²⁴

These are just a few of the legislative actions that have been taken recently to curb rising property taxes across the state. Prioritizing these efforts has been a priority of the Legislature to ensure that Texas remains an affordable place to raise a family and operate a business.

Tax Exemptions

In December 2020, the Texas Comptroller of Public Accounts published its report on Tax Exemptions and Tax Incidence,²²⁵ which provided estimates of the value of each exemption, exclusion, discount, deduction, special accounting method, credit, refund, and special appraisal available to payers of Texas' sales, motor vehicle sales, franchise, and oil production taxes. The report also details property taxes levied by Texas school districts. The total value of exemptions, discounts, and exclusions covered in the report was \$58.6 billion, with \$44.5 billion related to state taxes and \$14.1 billion related to property taxes.

Furthermore, \$14.3 billion of the state exemptions reported are accounted for by exemptions to the sales tax for items that are taxable under other law including insurance premiums, motor vehicle sales, and motor fuels. Other exemptions include raw materials used in manufacturing (\$7.2 billion), food for home consumption (\$3.3 billion), and over the counter drugs and prescription medicine (\$1 billion).²²⁶

Most exemptions do not have a dollar limitation. As prices increase, sales tax revenue also rises so the value of an exemption increases. There are some exemptions that have explicit adjustments for inflation. For example, the no tax due threshold and compensation deduction for the franchise tax are adjusted every two years based on the Consumer Price Index (CPI).²²⁷

However, exemptions associated with sales tax holidays with fixed exemption amounts are affected by inflation, which include school clothing and supplies priced at less than \$100; energy efficient products such as air conditioners with sales prices not exceeding \$6,000; refrigerators not exceeding \$2,000; and certain emergency preparation supplies not exceeding \$3,000.²²⁸

Texas provides for a variety of exemptions from property taxes, one of the most common of which are exemptions on residence homesteads. Texas law mandates school districts to provide a \$40,000 exemption on general residence homesteads. Other mandatory homestead exemptions apply to individuals over the age of 65 or disabled, disabled veterans, and surviving spouses of U.S. military and first responders killed in the line of duty. Cities, counties, school districts, and special districts have the option of offering additional exemption amounts. The charts below list the various homestead exemptions offered to Texans, the relevant taxing units, and the exemption amounts.

²²⁴ *Id.*

²²⁵ <https://comptroller.texas.gov/transparency/reports/tax-exemptions-and-incidence/>.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

Residence Homestead Exemptions²²⁹

Exemption	Taxing Units	Mandatory or Optional	Total or Partial	Amount
General Residence Homestead, Sec. 11.13(b)	School Districts	Mandatory	Partial	\$40,000
General Residence Homestead, Sec. 11.13(n)	Cities, Counties, School Districts and Special Districts	Local Option	Partial	An amount up to 20% of the property's value, but not less than \$5,000
Farm-to-Market Roads or Flood Control (if collected), Sec. 11.13(a)	Counties	Mandatory	Partial	\$3,000
Age 65 or Older or Disabled, Sec. 11.13(c)	School Districts	Mandatory	Partial	\$10,000
Age 65 or Older or Disabled, Sec. 11.13(d)	Cities, Counties, School Districts and Special Districts	Local Option	Partial	An amount adopted by the taxing unit, but not less than \$3,000

Disabled Veteran's Exemptions

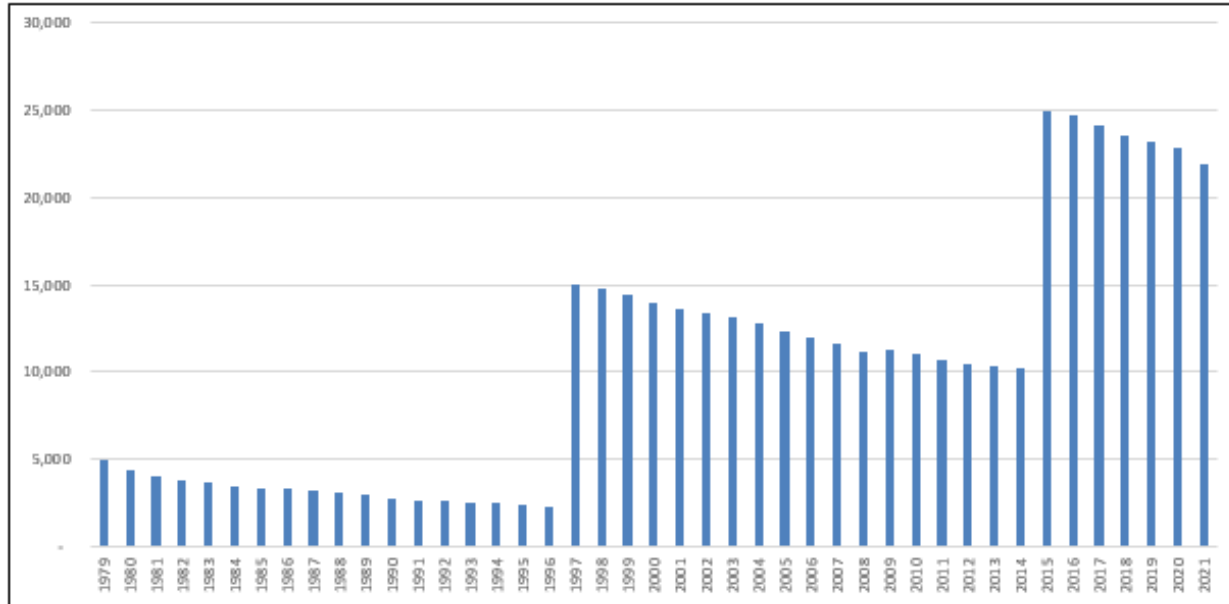
Exemption	Taxing Units	Mandatory or Optional	Total or Partial	Amount
Disabled Veterans, Sec. 11.22 (any property the disabled veteran owns)	Cities, Counties, School Districts and Special Districts	Mandatory	Partial	An amount determined by the percentage of service-connected disability
Disabled Veterans with Homes Donated by Charitable Organizations, Sec. 11.132	Cities, Counties, School Districts and Special Districts	Mandatory	Partial	An amount determined by the percentage of service-connected disability
100 Percent Disabled Veterans, Sec. 11.131	Cities, Counties, School Districts and Special Districts	Mandatory	Total	100% of the property's value
Surviving Spouse of U.S. Armed Services Member Killed in the Line of Duty, Sec. 11.133	Cities, Counties, School Districts and Special Districts	Mandatory	Total	100% of the property's value
Surviving Spouse of First Responder Killed or Fatally Injured in the Line of Duty, Sec. 11.134	Cities, Counties, School Districts and Special Districts	Mandatory	Total	100% of the property's value

The general residence homestead required by school districts is a fixed amount set in law and therefore loses its monetary value to taxpayers over time, as shown in the chart below. Therefore, the

²²⁹ Property Tax Relief Charge: Hearing Before S. Comm on Finance, 87th Interim (Tex. 2022)(testimony of Korry Castillo, Texas Comptroller of Public Accounts).

Texas Legislature has periodically increased the exemption amount to keep up with rising costs and inflation.

Homestead Exemption, Inflation Adjusted, 1979-2021²³⁰



Discussion

Developing methods to provide property tax relief has been a priority of the state for many years. Past legislative action has chipped away at homeowners' growing property tax bills. Some assert that further M&O compression needs to be considered to continue this positive movement of providing continued, impactful relief to property owners. M&O tax rate compression offers a uniform and proportionate avenue of relief for all property taxpayers. In fact, the reforms made through HB 3 in 2019 continue to compress M&O property taxes in perpetuity as property valuations and levies increase, resulting in built-in tax relief in Texas' school finance system when levies increase by more than 2.5 percent year-over-year. Therefore, any additional compression created in years with high levies becomes a permanent and ongoing cost to the state and may reduce the amount of discretionary General Revenue available to future legislatures. As HB 3 functions, school districts will not see a decline in revenue as a result of this compression because the state accounts for any differences. Many experts predict that with continued substantial property value growth, the compression created through HB 3 will drive down district tax rates to the point where many Texans realize a decline in their overall property tax burden.

Although HB 3 will continue to compress M&O property taxes, proposals have been made to go even further by attempting to eliminate M&O property taxes. Some assert that this can be accomplished by utilizing surplus state revenues and expanding the sales tax base by ending certain sales tax exemptions and dedicating future revenue increases strictly for the purpose of additional M&O compression. Proponents for the plan argue that it could lead to the eventual elimination of school

²³⁰ *Id.*

district M&O property taxes and a reduced tax burden on property taxpayers. However, some experts caution that shifting the entire M&O burden to the state would inherently reduce the state's ability to address vital needs of millions of Texans moving forward. Furthermore, ending certain sales tax exemptions may stifle economic growth in certain industries jeopardizing the state's ability to generate future surpluses necessary to buy down M&O. To abide by the Texas Constitution and state law, any commitment of revenue must fall within the constitutional state spending limit that prohibits appropriations funded with tax revenues not dedicated by the Texas Constitution from growing faster than the state's economy, unless the Texas Legislature votes to exceed those limitations.

Another route to provide relief has been through adjusting the amount of a homestead exemption to keep pace with rising values and general inflation. Increasing or indexing homestead exemptions provides an understandable, transparent value of property tax relief to homeowners. The homestead exemption also provides immediate relief at the lowest cost to the state as the cost can be absorbed by other non-homestead property owners.

Like increasing the homestead exemption, reducing the homestead appraisal cap from 10 percent year-over-year growth results in savings for homeowners, but may also shift the tax burden elsewhere within the tax base. This is another option that can provide homeowners with year-over-year tax relief without committing new state revenue and adjusting the homestead appraisal cap also enables the Legislature to retain the flexibility to address future revenue shortfalls.

Recommendations

For years, rising property taxes have been a growing concern of many Texans as the state continues to grow and property values increase year after year. Accordingly, the Legislature has taken action in the past several legislative sessions to provide property tax relief to homeowners. Although these measures have started to provide impactful relief to many homeowners, the Legislature must continue to monitor property value growth and its relationship to the ongoing compression within the school finance system. Even as HB 3 continues to provide property tax compression to homeowners, the Legislature should consider additional measures to lower the burden on homeowners. As the state enters the next budget cycle with a sizeable surplus, the Legislature should utilize a portion to provide relief back to Texas taxpayers. To that end, the Legislature could consider further increasing the state's homestead exemption and additional compression to provide continued relief to homeowners while maintaining the state's ability to provide for the fiscal needs of a growing state in future years.

Charges No. 3 and No. 4

***Inflation:** Review and report on the effect inflation is having on the business community and state government, including state salaries, retiree benefits, the state economy, and cost of state services.*

***Inflation:** Review and report on the impact of inflation on units of local governments' revenue collections and property taxpayers' tax bills, including the homestead exemption.*

Background

Inflation is generally defined as the rise in prices and the overall decline in the value of money over time. While modest inflation may represent signs of a healthy economy, dramatic increases in inflation puts additional fiscal pressures on all levels of government, as well as business finances and household budgets.

The most widely used measure of inflation is the Consumer Price Index (CPI), which is calculated by the United States (U.S.) Bureau of Labor Statistics (BLS) based on changes in prices urban consumers pay for a "basket" of goods and services.²³¹ This basket is arranged into eight categories: food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services.²³² Notably, the CPI is used to calculate cost-of-living increases for Social Security payments and over 2 million workers are covered by collective bargaining agreements which tie wages to the CPI.²³³ Other measures of inflation include the Personal Consumption Expenditures Price Index (PCE), which tracks changes in the selling prices of goods and services by businesses,²³⁴ and the Producer Price Index (PPI), which measures the average change over time in the selling prices received by domestic producers for their output.²³⁵

Supply and demand pressures, as well as massive amounts of federal stimulus, have contributed to recent significant rises in inflation. Supply-chain backlogs and reduced production significantly limited the supply of goods, while pandemic-related restrictions on businesses shifted consumer spending away from services, thereby increasing demand for goods. In the later part of 2021, consumer demand drove inflation as households boosted spending from funds saved during the pandemic, along with government stimulus checks. Most recently, Russia's invasion of Ukraine in February 2022 and continued lockdowns in China have exacerbated supply-chain issues and the price of crude oil -- further contributing to inflationary prices.

The BLS measures changes in CPI both from month to month and from year to year. As seen in *Figure 1* below, annual rates of change for the CPI index hovered between 1.0 percent and 1.4 percent for the later half of 2020, with a significant increase in the first half of 2021 -- jumping from 1.4 percent in January 2021 to 5.4 percent in June 2021.²³⁶ The All Items CPI ultimately reached 9.1 percent for the 12-month period ending in June 2022, the largest percentage change since November

²³¹ <https://www.bls.gov/cpi/overview.htm>.

²³² <https://www.bls.gov/cpi/questions-and-answers.htm>.

²³³ <https://www.bls.gov/cpi/overview.htm>.

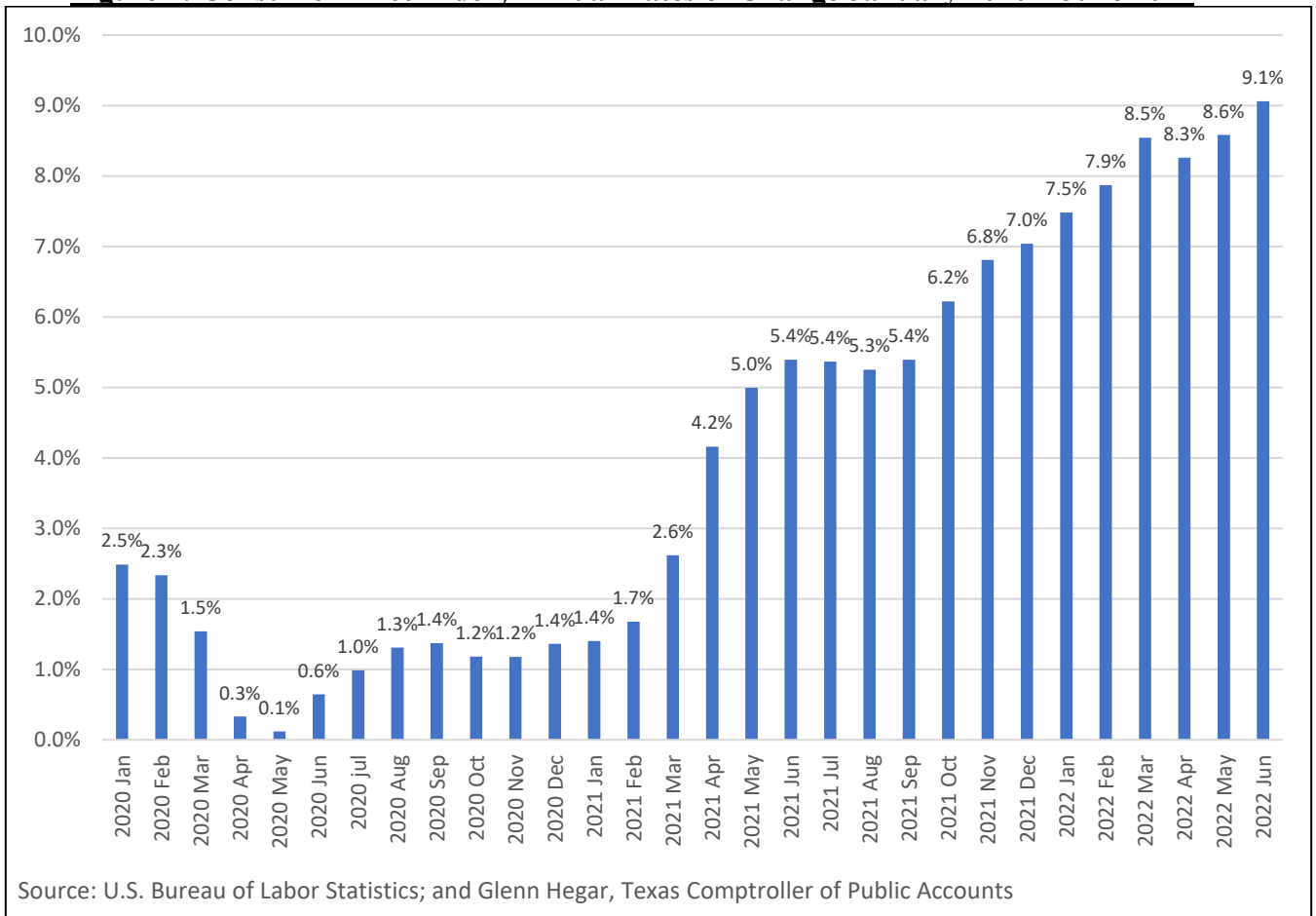
²³⁴ <https://www.bea.gov/data/personal-consumption-expenditures-price-index>.

²³⁵ <https://www.bls.gov/ppi/>.

²³⁶ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (written testimony of Brad Reynolds, Office of the Comptroller of Public Accounts, pg. 3).

1981.²³⁷ Figure 2 below shows the June 2022 annual rate of change by CPI category. The All-Items index in June 2022 discounting food and energy, also referred to as the "core" CPI, rose 5.9 percent over the last year.²³⁸ The energy index rose 41.6 percent over the previous year, with motor fuels up 60.2 percent.²³⁹ The food index increased 10.4 percent over the last year, the largest 12-month increase since February 1981.²⁴⁰

Figure 1: Consumer Price Index, Annual Rates of Change January 2020 – June 2022



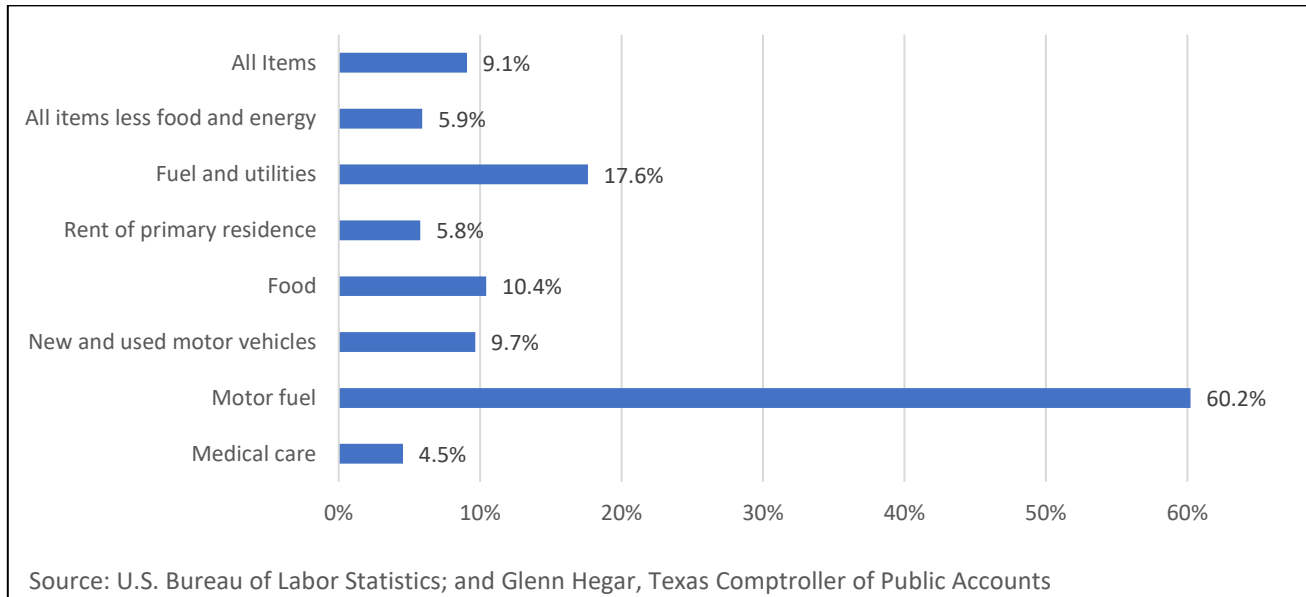
²³⁷ <https://www.bls.gov/opus/ted/2022/consumer-prices-up-9-1-percent-over-the-year-ended-june-2022-largest-increase-in-40-years.htm>.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

Figure 2: Consumer Price Index, Annual Rate of Change (June 2022)



Although CPI is considered the chief measure of inflation, some believe the CPI does not accurately capture the true increase in the price of goods and services. Given that the CPI "basket" is a sample, it is criticized as not fully representing all goods and services available to consumers.²⁴¹ Further, the CPI is largely focused on the purchasing habits of urban consumers and may not provide an accurate picture of inflation for those in rural areas.²⁴² Another critique of the CPI is that changes over the years to the methodology used to calculate the index have caused the true impact of inflation to be underreported.²⁴³

The primary job of the Federal Reserve, the central bank of the U.S., is to control inflation while avoiding a recession — with an ideal inflation rate hovering around two percent.²⁴⁴ The Federal Reserve primarily curbs inflation by raising interest rates to discourage borrowing and reduce consumer spending. As of July 2022, the Federal Reserve had raised its benchmark interest rate four times in 2022 for a total of 225 basis points, including two 75 basis point increases in June and July, with additional increases expected throughout the year.²⁴⁵

Discussion

Impact of Inflation on State Government

As the price of goods increase, state governments bring in additional tax revenue if consumer purchasing trends hold. As of May 2022, total state tax collections for fiscal year (FY) 2022 had

²⁴¹ <https://www.bls.gov/cpi/questions-and-answers.htm>.

²⁴² *Id.*

²⁴³ See *Inflation Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022) (statements of Sen. Robert Nichols and Sen. Lois Kolkhorst).

²⁴⁴ https://www.federalreserve.gov/faqs/economy_14400.htm.

²⁴⁵ <https://www.federalreserve.gov/monetarypolicy/files/fomcminutes20220727.pdf>.

already grown significantly -- exceeding estimates developed by the Texas Comptroller in the November 2021 Certification Revenue Estimate (CRE). Total state tax collections in FY 2022 through the month of April totaled \$46.3 billion, which was a near 30 percent increase over the same time period in FY 2021.²⁴⁶ However, collections in the first half of FY 2021 were likely depressed due to the pandemic and related restrictions on businesses. Accounting for constitutionally required transfers of severance tax collections to the Economic Stabilization Fund and the State Highway Fund, actual collections in FY 2022 through April were roughly \$5.5 billion higher than what collections would have been for the same time period using November's CRE annual growth rates.²⁴⁷ Out of the \$5.5 billion, \$3.6 billion was attributable to sales tax collections exceeding November's CRE estimates.²⁴⁸

As a result of the extraordinary growth in tax collections, the Comptroller revised the CRE on July 14, 2022.²⁴⁹ The revised CRE (RCRE) forecasts tax collections in the 2022-23 biennium to total \$134.89 billion, a 32.6 percent increase from 2020-21 collections of \$101.76 billion.²⁵⁰ All Funds sales tax revenue alone is expected to grow by 22.9 percent, to \$86.2 billion.²⁵¹ While a significant part of this increase is due to real growth of taxable goods and services, part is attributable to inflation. Specifically, the Comptroller estimated in the RCRE that out of the \$3.67 billion in sales tax collections for the month of June 2022, \$432 million was directly attributable to inflation.²⁵² Furthermore, largely a result of the price of oil, the RCRE projects oil tax collections will generate \$12.81 billion in the FY 2022-23 biennium, a 91.8 percent increase over FY 2020-21 collections.²⁵³ Natural gas tax collections are expected to be \$9.15 billion in the FY 2022-23 biennium, a 266.8 percent increase above FY 2020-21 collections.²⁵⁴ Since the release of the RCRE in July, total state revenues continue to outpace the Comptroller's most recent forecast. For FY 2022, All Funds tax collections were \$841 million above estimates in the RCRE -- driven by both economic growth and inflation.²⁵⁵

If inflation or interest rates reach high enough levels, consumers may be forced to pull back on spending that would result in a slowdown in tax revenue collections for the State of Texas. The Comptroller reports that although state revenue collections have substantially grown in 2022 due to inflation and robust economic activity following the end of pandemic-related restrictions, growth is expected to slow in 2023 as consumers spend down balances built up during the pandemic and as higher interest rates slow down demand.²⁵⁶

While state revenues may increase, the State of Texas will face significant additional expenses as the price of goods and services increase. In fact, inflation of goods and services acquired by state government tends to grow faster than the price of goods and services purchased by consumers.²⁵⁷

²⁴⁶ Email from Office of Comptroller of Public Accounts to author (May 22, 2022).

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, CERTIFICATION REVENUE ESTIMATE (REVISED July 2022).

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² <https://comptroller.texas.gov/about/media-center/infographics/2022/cre22-23/inflation.php#inflation>. Email from Office of Comptroller Accounts to author (July 9, 2022).

²⁵³ TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, CERTIFICATION REVENUE ESTIMATE (REVISED July 2022).

²⁵⁴ *Id.*

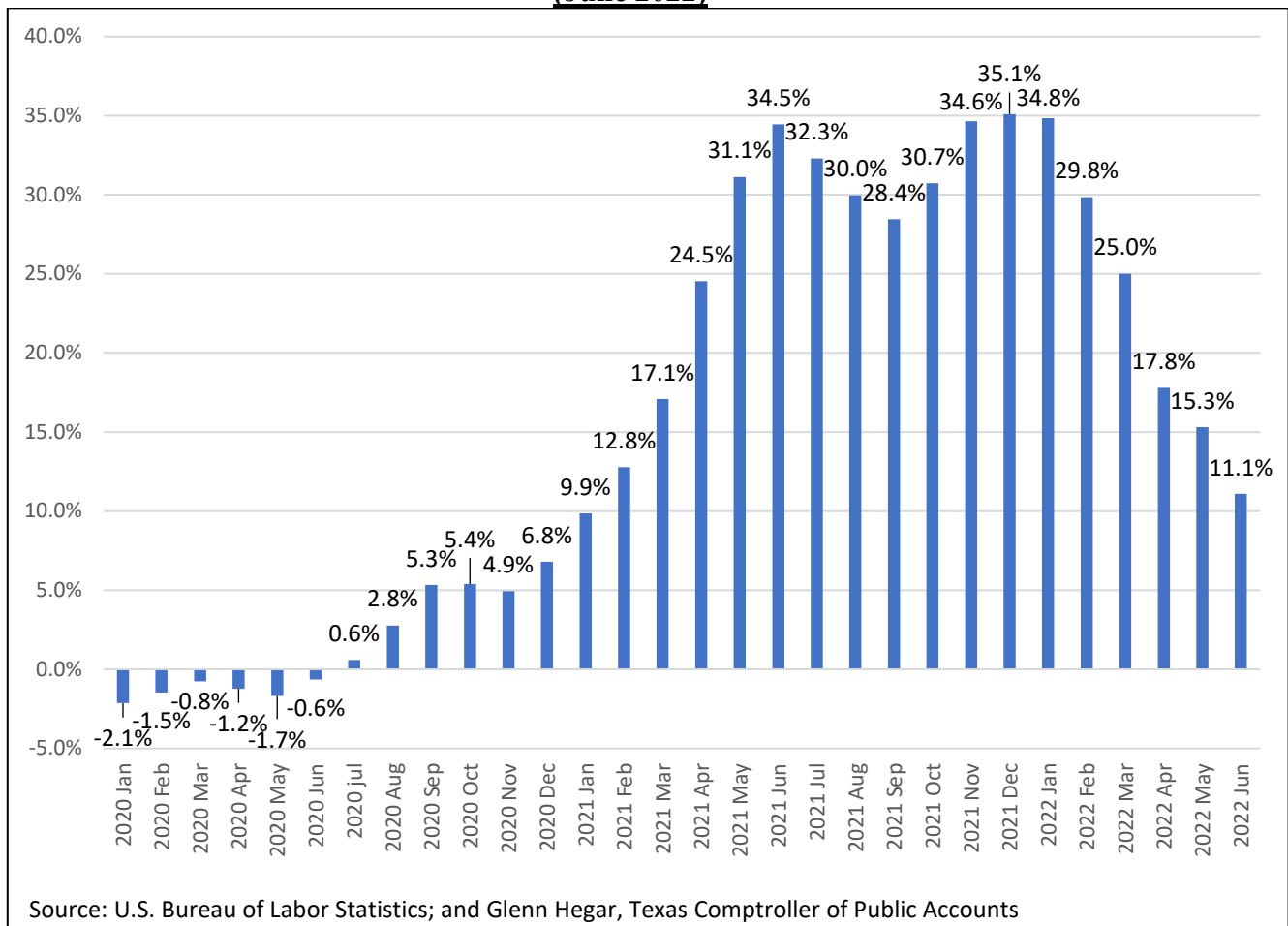
²⁵⁵ <https://comptroller.texas.gov/about/media-center/news/20220901-texas-comptroller-glenn-hegar-announces-revenue-for-fiscal-2022-august-state-sales-tax-collections-1662060818986>.

²⁵⁶ TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, CERTIFICATION REVENUE ESTIMATE (REVISED July 2022).

²⁵⁷ LEGISLATIVE BUDGET BOARD, FISCAL SIZE UP 2022-23 BIENNIUM (MARCH 2022).

State agencies are already reporting actual costs exceeding estimates used by the Legislature to authorize construction projects. For example, as of May 2022, the estimated cost to replace the roof of the Texas Capitol has more than doubled compared to 2019 estimates due to the rising costs of copper and other materials and labor.²⁵⁸ The Texas Department of Transportation (TxDOT) reported in May of 2022 that the Highway Construction Cost Index (HCI), which measures the average change over time in the prices paid by state transportation departments for roadway construction materials and services, had increased by 6.25 percent over the previous year due to increased fuel, material, and labor costs.²⁵⁹ As *Figure 3* shows below, the price of construction materials compared to the prior year has skyrocketed starting in early 2021, peaking at 35.1 percent growth from the prior year in December 2021.

Figure 3: Producer Price Index: Construction Materials, Percent Change from Prior Year (June 2022)



Additionally, supply chain disruptions and inflation have significantly impacted facility renovation and construction projects managed by the Health and Human Services Commission (HHSC). As of

²⁵⁸ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (written testimony of Brad Reynolds, Office of the Comptroller of Public Accounts, pg. 10).

²⁵⁹ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (written testimony of Brad Reynolds, Office of the Comptroller of Public Accounts, pg. 9).

March 2022, total material costs for State Hospital construction projects increased by 21.4 percent from March 2021.²⁶⁰ Specifically:

- Contractors' estimates for a laundry building at the Kerrville State Hospital increased by \$3.0 million due to 10-30 percent increases in electrical, plumbing, mechanical, door, drywall, and steel costs;
- Sub-contractors' pricing proposals for new construction at the Austin State Hospital increased by 15 percent (approximately \$16.9 million) from the contractor's budget; and
- Increased costs and labor shortages have caused sub-contractors to back out of certain projects, requiring the procurement of new sub-contractors at additional cost.²⁶¹

Day-to-day facility operations at State Hospitals and State Supported Living Centers have been significantly impacted by cost increases for materials such as cleaning chemicals, linens, food items and containers, which are necessary to properly serve the vulnerable populations in these settings. HHSC further reports cost increases for fleet vehicles have increased by approximately 25 percent on average.²⁶²

These are merely a handful of examples where inflation and material and labor shortages are having a dramatic impact on not only the state's budget, but also the state's infrastructure. Given the current economic conditions and uncertainty, these factors may continue to present challenges during the state's next budget cycle.

Impact of Inflation on State Employee Salaries & Retiree Benefits

As inflation soars to record highs, state employees and retirees are being negatively impacted as cost-of-living expenses rise. The increasing costs to goods and services has especially affected the state's workforce, and its retirees, as many have not been given a meaningful raise or a cost-of-living adjustment (COLA) in a significant period.

As a result, many state agencies are experiencing a high attrition rate. In fact, the FY 2021 statewide turnover rate for classified regular full- and part-time employees was 21.5 percent.²⁶³ This rate is based on 31,665 employee separations. When compared with FY 2020, this is an increase from the statewide turnover rate of 18.6 percent.²⁶⁴ Although the state's turnover rate has increased over the past ten years, except for fiscal year 2020 during the COVID-19 pandemic, fiscal year 2021 saw the greatest spike.²⁶⁵

As inflation started to surge, so too did the number of employees leaving state government. Voluntary separations, including retirements, accounted for 78.2 percent of the state's total separations in FY 2021 -- an increase of 20.4 percent in the number of voluntary separations compared with FY 2020.²⁶⁶

²⁶⁰ Email from Health and Human Services Commission to author (July 5, 2022).

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ STATE AUDITOR'S OFFICE, FISCAL YEAR 2021 ANNUAL CLASSIFIED EMPLOYEE TURNOVER REPORT (Mar. 2022).

²⁶⁴ *Id.*

²⁶⁵ *Inflation Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022) (testimony of Lisa Collier, State Auditor's Office).

²⁶⁶ STATE AUDITOR'S OFFICE, FISCAL YEAR 2021 ANNUAL CLASSIFIED EMPLOYEE TURNOVER REPORT (Mar. 2022).

Of the employees voluntarily separating, turnover was highest among employees under the age of 30, and most the employees who left state employment in FY 2021 had fewer than five years of state service.²⁶⁷ The turnover rate of 46 percent for employees aged 16 to 29 was more than twice the state's average.²⁶⁸ Additionally, employees with fewer than five years of state service accounted for 64.9 percent of total separations.²⁶⁹ As the economy started to recover from the pandemic, many state employees left for higher paying jobs in the private sector. Unfortunately, this has left many state agencies with a record number of vacancies placing a heavier workload on the existing workforce.

Inflation has also had a dramatic impact on both Employees Retirement System of Texas (ERS) and Teacher Retirement System of Texas (TRS) retirees. Although the total average annuity for an ERS retiree has gradually increased over the past decade, it has not kept up with inflation.²⁷⁰ Furthermore, ERS retirees have not received any type of benefit enhancement since 2002. Therefore, many ERS retirees are struggling to cover everyday necessities as their monthly annuity's purchasing power has declined significantly.

Although TRS retirees have received supplemental payments the past two legislative sessions, their last COLA was issued in 2013, after changes in contribution rates and retirement eligibility made TRS actuarially sound. The 83rd Legislature authorized a three percent COLA, capped at no more than \$100 per month, for annuitants who retired on or before August 31, 2004.²⁷¹ Thus, many recent retirees were not eligible for that COLA. One unique disadvantage that most TRS retirees also face is that a total of 96 percent of public-school employees do not participate in Social Security because the public-school employer they worked for did not opt-in to contribute to Social Security.²⁷² As a result, a TRS annuity is the sole source of retirement income for many TRS retirees. As the purchasing power of retirees continues to decline, so too does the value of their monthly annuity.²⁷³ Because many retirees are on fixed incomes, high inflation is placing a greater financial strain on those that depend on their monthly annuity checks from both ERS and TRS.

Impact of Inflation on Texas Businesses

The impact of inflation on Texas businesses has been significant, especially following several months of pandemic-related restrictions, supply chain issues, and ongoing staffing shortages. At the May 4, 2022 hearing, the Committee heard from several witnesses, including representatives from general business, agricultural, manufacturing, and restaurant industries about the challenges of doing business with high inflation rates.

An April 2022 survey by the National Federation of Independent Business (NFIB) showed that 93 percent of business owners report that inflation is having a "substantial or moderate impact" on their businesses.²⁷⁴ Among small business owners surveyed, 84 percent reported lower earnings and 86 percent reported having to increase prices on their goods or services.²⁷⁵

²⁶⁷ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (testimony of Lisa Collier, State Auditor's Office).

²⁶⁸ STATE AUDITOR'S OFFICE, FISCAL YEAR 2021 ANNUAL CLASSIFIED EMPLOYEE TURNOVER REPORT (Mar. 2022).

²⁶⁹ *Id.*

²⁷⁰ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (testimony of Porter Wilson, ERS).

²⁷¹ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (testimony of Brian Guthrie, TRS).

²⁷² <https://www.trs.texas.gov/>.

²⁷³ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (testimony of Porter Wilson, ERS).

²⁷⁴ Letter from National Federation of Independent Businesses to the S. Comm. on Finance, May 4, 2022 (on file with author).

²⁷⁵ *Id.*

Restaurants, particularly hit hard due to pandemic-related shutdowns, are now faced with additional hurdles due to inflation. Food, labor, and occupancy costs together ordinarily account for 70 cents of every dollar of sale.²⁷⁶ As of May 2022, the Texas Restaurant Association reported that wholesale food prices have increased more than 17 percent -- the largest increase in nearly five decades.²⁷⁷ The Restaurant Association also reported the following cost increase projections for the remainder of 2022 provided by the United States Department of Agriculture (USDA):²⁷⁸

- Beef and veal: +16.2%
- Pork: +14%
- Poultry: +12.5%
- Fats and oils: +11.7%
- Eggs: +11.4%
- Fresh fruits: +10.6%
- Fish and seafood: +10.4%
- Cereals and bakery products: +7.8%
- Processed fruits and vegetables: +7.6%
- Sugars and sweets: +7%
- Dairy: +5.2%
- Fresh vegetables: +4.3%

The Restaurant Association asserts that the restaurant industry typically can only operate at half of its capacity due to a lack of staff, despite increasing employee pay to \$20-\$30 per hour, plus offering other benefits such as meals, flexible schedules, insurance, bonuses, and interest-free loans in order to recruit and retain workers.²⁷⁹

Agricultural businesses, which already operate on small margins, have been greatly impacted by the price of fuel needed to operate equipment and transport goods. For example, the drastic increase in natural gas, which is used in the production of fertilizer, has caused a 133 percent increase in the price of fertilizer in just one year.²⁸⁰

To compound the problem, workforce shortages continue to negatively impact businesses. Although wages are increasing, inflation continues to significantly outpace any wage increase. *Figure 4* below shows the national Employment Cost Index compared to the CPI through the second quarter of 2022.

²⁷⁶ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (written testimony of Texas Restaurant Association, pg. 2).

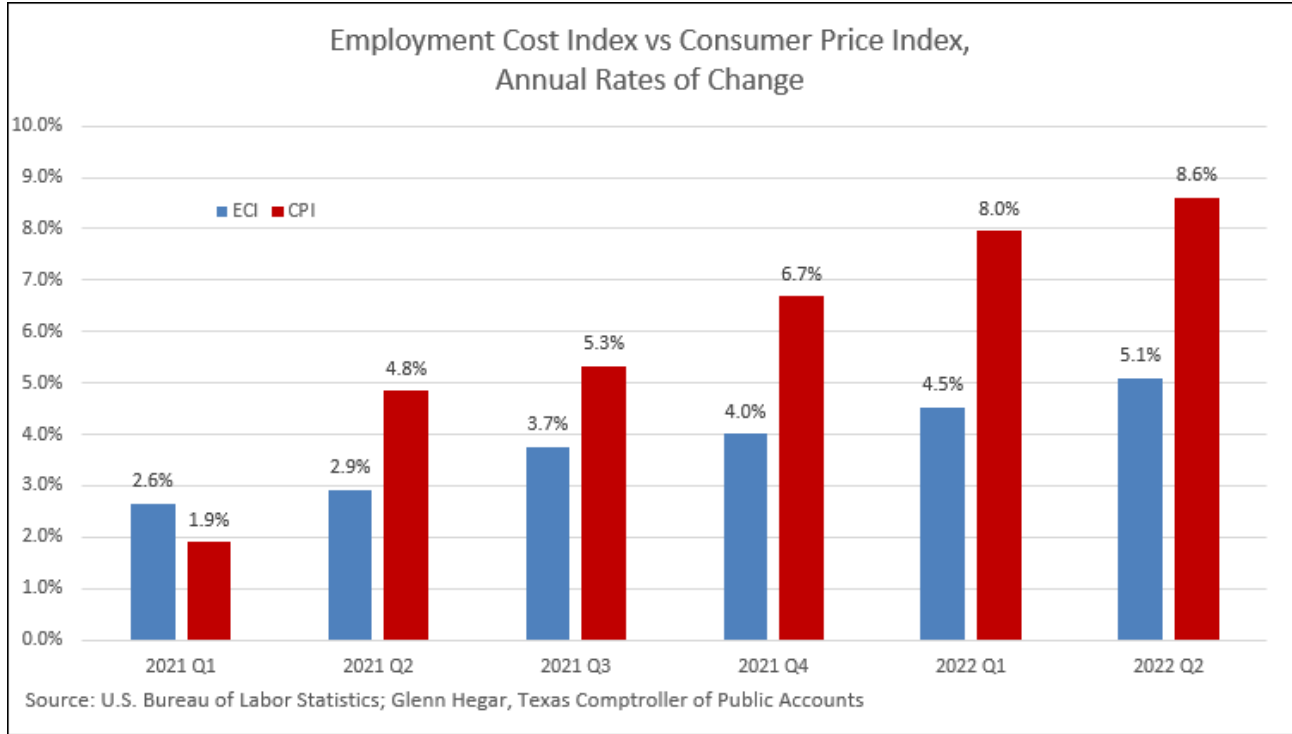
²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (testimony of Scooter Miller, Texas Restaurant Association).

²⁸⁰ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (testimony of Heston McBride, Lampasas County Farm Bureau).

Figure 4: Employment Cost Index vs. Consumer Price Index, Annual Rates of Change



Impact of Inflation on Property Taxpayers

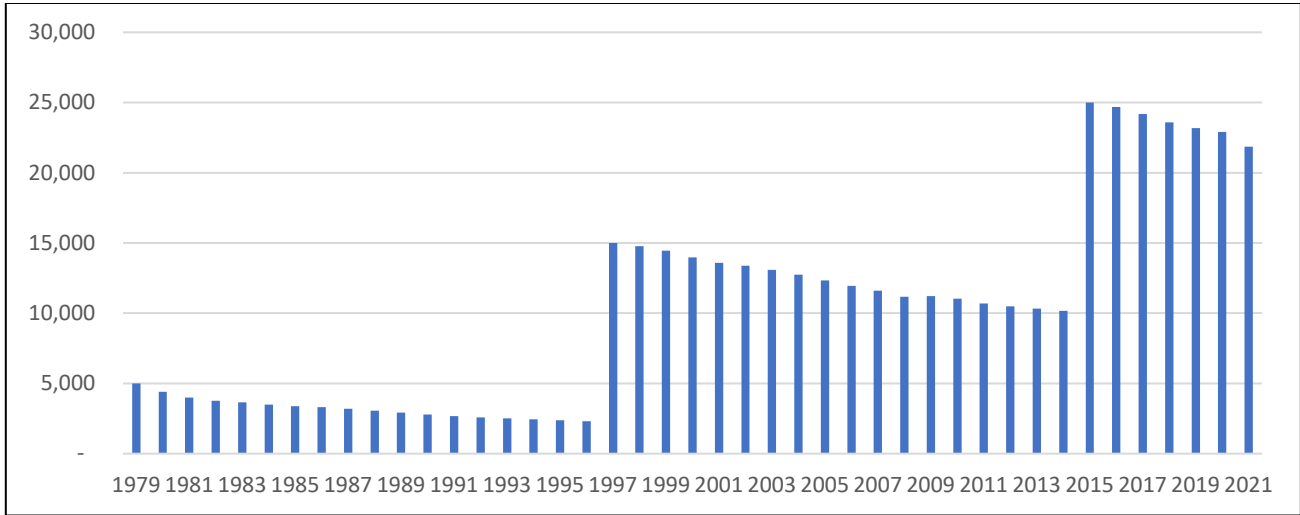
When coupled with rising prices of goods and services, increasing property values and the resulting taxes puts an additional financial strain on homeowners. Fortunately, the Texas Legislature has taken several actions to mitigate the tax burden felt by Texas property owners in recent years. House Bill 3 in 2019, landmark school finance reform passed by the 86th Legislature, created an automatic mechanism to compress school district Maintenance and Operations (M&O) tax rates.²⁸¹ During that same legislative session, Senate Bill 2 also limited the ability of cities, counties, and special districts to raise their property taxes above a certain threshold without voter approval.²⁸² Furthermore, Texas caps increases to a property's taxable value to 10 percent compared to the previous year on homestead properties.²⁸³

Additionally, the state mandatory homestead exemption for school district property taxes was raised for the third time during the most recent legislative session in 2021 to \$40,000, effective in the 2022 tax year.²⁸⁴ However, because the homestead exemption is a fixed amount, it loses its monetary value to taxpayers over time -- as demonstrated in *Figure 5* below. Because the value of the homestead exemption declines over time, the Legislature continues to evaluate whether the amount of the exemption needs to be adjusted to keep up with inflation. The overall impact of these tax relief efforts

²⁸¹ Tex. H.B. 3, 86th Leg., R.S. (2019).
²⁸² Tex. S.B. 2, 86th Leg., R.S. (2019).
²⁸³ TEX. TAX CODE § 23.23.
²⁸⁴ Tex. S.B. 1, 87th Leg., 3rd Spec. Sess. (2021).

by the Legislature will hopefully be realized when taxpayers receive their tax bills. For more information on property taxes, see Interim Charge Number 2.

Figure 5: Homestead Exemption, Inflation-Adjusted 1979-2021²⁸⁵



Recommendations

Record inflation is having a significant impact on consumers, homeowners, businesses, and state government. All Texans have felt the negative effects of inflation, especially lower-income families and small businesses, who have been hit hardest by the rising prices of essential needs such as food, gas, and rent. As property values continue to rise across the state, homeowners are also feeling the added burden of property taxes. While the Texas Legislature has provided significant property tax relief in recent years, additional action in the next legislative session is necessary to further reduce the tax burden on property owners. This may include, but is not limited to, additional tax rate compression and permanently increasing the homestead exemption yet again to help mitigate the impact of inflation. To keep the Texas economy thriving, families and businesses must be able to enjoy and afford everyday living expenses.

The number of state employees leaving state government is staggering. This is a problem for agencies across all spectrums and has started to negatively impact state services and operations. Agencies have been forced to develop internal recruitment and retention strategies, within existing resources, to ensure that critical state services are not interrupted for the remainder of the biennium. As the state workforce continues to dwindle post-pandemic, the Legislature must evaluate the state's workforce needs to ensure agencies have the resources necessary to provide essential state services.

Although state revenues have increased due to higher state tax collections, even outpacing updated revenue projections, agencies are already facing significant additional expenses. Costs for construction and agency operational needs have risen due to the increased price of fuel, labor, and materials. Along with workforce shortages, these problems across all agencies continue to present

²⁸⁵ *Inflation Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (written testimony of Brad Reynolds, Office of the Comptroller of Public Accounts, pg. 13).

budgeting challenges that the Legislature must tackle moving forward in order to provide the infrastructure and support a state of over 29 million people needs.

As inflation continues to reach record levels, ERS and TRS retirees have been hit particularly hard as the value of their monthly annuity continues to decline. The Legislature took drastic measures the past two sessions to put both pension funds on track to pay off all liabilities. These pension reforms for both public pension plans on the path towards long-term actuarial soundness and open the possibility of potential benefit enhancements during the 88th Legislature. Although the Legislature has provided supplemental payments to TRS retirees for the past couple of sessions, both ERS and TRS retirees need further financial assistance given the soaring prices of goods such as food and gas. Accordingly, the Legislature must evaluate the financial status of the ERS and TRS pension plans to determine if a potential benefit enhancement is allowable by law, and financially prudent.

Charge No. 6

***Russia Divestiture:** Examine and report on options for state asset owners to divest their positions in companies that invest in the Russian Federation.*

Background

The State of Texas has several established and substantial investments designed to meet state obligations for certain needs and to constituencies including students, public sector employees, and taxpayers. While history and use of proceeds from each fund vary, the state funds share a fiduciary responsibility to earn returns that abide by investment and management policies set forth by the funds' governing bodies, and in some cases, the Texas Legislature. Some of Texas' larger public investment funds include the Economic Stabilization Investment Fund (ESF); Teacher Retirement System of Texas Pension Trust Fund (TRS); Employees Retirement System of Texas Pension Trust Fund (ERS); Permanent School Fund (PSF); and University of Texas/Texas A&M Investment Management Company (UTIMCO).²⁸⁶

Figure 1: Selected State Investment Funds

Fund	Use	Approx. Value as of March 31, 2022
Economic Stabilization Investment Fund (ESF)	To supplement state revenues on an as-needed basis.	\$9.8 Billion
Teacher Retirement System Pension Trust Fund (TRS)	Provides retirement benefits for public educators and their beneficiaries.	\$200 Billion
Employees Retirement System Pension Trust Fund (ERS)	Provides retirement benefits for state employees and their beneficiaries.	\$35.2 Billion
Permanent School Fund (PSF)	Generates revenue to support public primary and secondary education in Texas.	\$46.1 Billion
University of Texas/Texas A&M Investment Management Company (UTIMCO)	Generates revenue to support The University of Texas and Texas A&M Systems.	\$67.6 Billion

Discussion

On February 24, 2022, after months of escalating tension, the Russian Federation invaded Ukraine. Because this military conflict was initiated by Russia, companies and public entities across the world began to offload, or announce plans to sell, Russian investments. Accordingly, values for Russian stocks and other investments tied to Russia plummeted. Further complicating divestiture plans was the temporary closure of Russia's main stock exchange, the Moscow Stock Exchange (MOEX), on

²⁸⁶ *Russia Divestiture Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (Written testimony from Mike Reissig, Texas Treasury Safekeeping Trust Company).

February 28, 2022 for nearly a month.²⁸⁷ Additionally, heavy restrictions on trading when the exchange finally reopened on March 24, 2022 presented problems for anyone looking to divest.²⁸⁸ For example, trading hours were initially limited to just four hours, and only 33 of the 50 ruble-denominated stocks were open for trading.²⁸⁹ Short-sellers were also banned, and non-Russian investors were forbidden from selling at that time. Therefore, there continue to be challenges for any investors that may be considering divesting their assets that have ties to Russia. As the year has progressed, the number and scope of economic sanctions against the Russian Federation continue to further limit financial market transactions.²⁹⁰

Regardless of these financial obstacles and challenges, multinational companies and public entities have been forced to re-examine their ties with Russia. Certain companies, like McDonald's, PepsiCo, and Shell, were faced with untangling complicated deals. Under pressure from investors and consumers, many Western companies have started to unwind their investments, close stores, and pause sales in Russia. Some, after first taking temporary measures, have revised their plans and decided to exit the country completely. And some that have begun the process of withdrawing from Russia have revealed the financial cost to their businesses.²⁹¹ Recently, McDonald's announced it would sell its Russia business and planned to leave the country after 32 years.²⁹² This is just one example of a major international company severing business and financial ties with Russia.

Since the conflict between Russia and Ukraine began, pension and other public investment funds from a number of states have prohibited new investments, fully divested, announced plans for divestiture, or taken other financial actions to disassociate from Russia.²⁹³ Several states, such as Alaska, Minnesota, and Georgia, have proposed legislation to ensure these actions are mandatory for public investments.²⁹⁴ Meanwhile, the United States federal government has instituted a number of sanctions on state and private owned Russian banks, on certain Russian businesses and individuals, and banned any new investment in the Russian Federation.²⁹⁵

State and local public pension plans are also studying the financial impact of selling Russian-related assets, and some have already initiated those steps. Lawmakers in at least a dozen states are pressuring their pension funds to divest from Russian-related investments.²⁹⁶ Divestment is not likely to have much impact on the funds themselves as Russian-domiciled investments make up less than one percent of most state portfolios.²⁹⁷ But collectively, it sends a message. For example, California's CalPERS is the largest pension fund in the world, and it alone holds nearly \$1 billion in Russian assets.²⁹⁸ However, it is likely that at least some of these pension funds will be selling at a loss.

²⁸⁷ <https://fortune.com/2022/03/24/russia-stock-market-reopen-moex-month-offline/>.

²⁸⁸ <https://www.forbes.com/sites/jonathanponciano/2022/03/23/russia-stock-exchange-will-finally-reopen-after-ukraine-invasion-but-under-these-restrictions/?sh=1ef06a0d66a3>.

²⁸⁹ <https://fortune.com/2022/03/24/russia-stock-market-reopen-moex-month-offline/>.

²⁹⁰ <https://graphics.reuters.com/UKRAINE-CRISIS/SANCTIONS/byvrjenzmve/>.

²⁹¹ <https://www.nytimes.com/article/russia-invasion-companies.html>.

²⁹² <https://www.nytimes.com/2022/05/16/business/mcdonalds-russia.html>.

²⁹³ *Russia Divestiture Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022) (Testimony of Mike Reissig, Texas Treasury Safekeeping Trust Company).*

²⁹⁴ *Russia Divestiture Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022) (Testimony of Mike Reissig, Texas Treasury Safekeeping Trust Company).*

²⁹⁵ <https://home.treasury.gov/news/press-releases/jy0705>.

²⁹⁶ <https://www.forbes.com/sites/lizfarmer/2022/03/11/the-pension-plans-divesting-from-russia/?sh=750c3bb92b04>.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

Therefore, the fund's governing body must weigh their fiduciary obligations towards the fund and its beneficiaries versus the pressure to divest.

Russia is considered an emerging market by economists, and accordingly, investment in the country has depended largely on the purpose of an investment and the acceptable risk tolerance to asset holders. Generally, investments are either directly held and traded by investment funds, or indirectly held and traded through a contracted fund manager. Like other states, Texas has minimal state investments tied to Russia.

Figure 2: Russian Exposure for Selected State Investment Funds

Fund	Direct		Indirect	
	\$	% of Total	\$	% of Total
Economic Stabilization Investment Fund (ESF)	\$906,668	0.011%	\$4,114	0.00004%
Teacher Retirement System Pension Trust Fund (TRS)	\$89,000,000	0.0445%	\$68,000,000	0.0340%
Employees Retirement System Pension Trust Fund (ERS)	\$13,553,489	0.0385%	\$22,704,216	0.0645%
State Board of Education - Permanent School Fund (PSF)	\$2,642	0.000%	\$14,226,510	0.0344%
School Land Board - Permanent School Fund (PSF)	\$1,223	0.000%	\$0	0.0000%
University of Texas/Texas A&M Investment Management Company (UTIMCO)	\$9,529,359	0.0141%	\$1,600,000	0.0024%

As depicted in *Figure 2* above, as of March 31, 2022, Texas' largest state investment funds are minimally exposed, indirectly and directly, to Russian interests.²⁹⁹ However, the low exposure is due in part to fund managers updating the value of certain investments to zero in recognition that the market for the assets had essentially collapsed.³⁰⁰ To more fully divest from Russian interests, investments must be sold. The uncertainty surrounding the conflict between Russia and the Ukraine, and potential future economic sanctions, provides an additional challenge for fund managers trying to eliminate financial involvement with Russia while balancing the responsibility to maximize investment returns for their beneficiaries. In fact, some governing bodies even have legal fiduciary obligations that must be strictly followed when making certain investment decisions. Additionally, governing bodies must carefully analyze the full financial impact of divesting these assets at a potential loss. In Texas alone, hundreds of thousands of families depend on retirement benefits from public pension funds such as ERS and TRS.

²⁹⁹ *Russia Divestiture Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (Written testimony of Mike Reissig, Texas Treasury Safekeeping Trust Company).

³⁰⁰ *Russia Divestiture Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (Testimony of Mike Reissig, Texas Treasury Safekeeping Trust Company).

Recommendations

The Texas Legislature has expressed a strong desire to protect the state's investment funds, but also condemn Russian military aggression.³⁰¹ Some states have directed their public investment funds to sell Russian assets immediately but have since realized financial losses as this approach may yield the lowest returns as the market for Russian stocks and other investments remains very limited.

Given the financial complexities and changing economic landscape, the Texas Legislature and investment fund governing bodies should continue to take a measured approach in divesting their positions in companies that invest in the Russian Federation to ensure that financial exposure to Russia is eliminated, while also preserving the health and stability of these public investment funds. Accordingly, the Legislature must continue to monitor the state's financial exposure to Russia and initiate protections to reduce financial exposure to Russia.

³⁰¹ <https://senate.texas.gov/members/d07/press/en/p20220302a.pdf>.

Charge No. 7

State Pension Reform: Monitor the implementation of recent statewide pension reforms to the Employees Retirement System of Texas and the Teacher Retirement System of Texas.

Implementation of Senate Bill 12 (86th Legislature)

Background

The Teacher Retirement System of Texas (TRS) was established in 1937. Article 16, Section 67, of the Texas Constitution charters TRS to provide retirement and related benefits for those employed by the public schools, colleges, and universities supported by the State of Texas. TRS is responsible for investing funds under its stewardship and for delivering benefits to members as authorized by the Texas Legislature. TRS is the largest public retirement system in Texas in both membership and assets. As of August 31, 2021, the agency serves 1,877,919 participants – 1,419,786 are public and higher education members, and 458,133 are retirement recipients.³⁰²

TRS administers a defined benefit retirement plan that is a qualified pension trust under Section 401(a) of the Internal Revenue Code.³⁰³ The pension fund provides service and disability retirement, as well as death and survivor benefits, to eligible Texas public education employees and their beneficiaries. Retirement benefits are financed by member and state contributions, employer contributions, and through investment earnings of the pension fund.

As of August 31, 2021, TRS net assets totaled \$201.8 billion.³⁰⁴ The average retirement payment in fiscal year 2021 was \$2,145 per month with \$11.7 billion paid in retirement benefits.³⁰⁵ These benefits were funded from a combination of cumulative investment income, member contributions, and state and employer contributions. The TRS pension fund earned a rate of return of 24.98 percent for fiscal year 2021 compared to 7.24 percent for fiscal year 2020.³⁰⁶ TRS' five-year return rate is 11.43 percent, which still outperforms the assumed rate of 7.25 percent.³⁰⁷ As of August 31, 2021, TRS has a funding period of 23 years with an unfunded actuarial accrued liability (“UAAL”) of \$47.6 billion.³⁰⁸

Discussion

Prior to the reforms made by the 86th Legislature in 2019, the TRS pension fund had an amortization period of approximately 87 years with the UAAL at \$46.2 billion.³⁰⁹ Projections from TRS' actuary at that time showed the UAAL was expected to increase to \$63.7 billion by 2028. Extending the projection further demonstrated that the UAAL increases each year until it starts to decrease in 2085 and is fully amortized 20 years after that (assuming all assumptions are exactly met, including a 7.25 percent return on assets).³¹⁰ Without a long-term, cost-efficient legislative proposal such as Senate

³⁰² <https://www.trs.texas.gov/TRS%20Documents/acfr-2021.pdf>.

³⁰³ 26 U.S. Code § 401.

³⁰⁴ *State Pension Reform Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (testimony of Brian Guthrie, TRS).

³⁰⁵ <https://www.trs.texas.gov/TRS%20Documents/acfr-2021.pdf>.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ <https://www.trs.texas.gov/TRS%20Documents/actuarial-valuation-pension-fund-2021.pdf>.

³⁰⁹ https://www.trs.texas.gov/TRS%20Documents/actuarial_valuation_pension_fund_2018.pdf#search=actuarial%20valuation.

³¹⁰ https://www.trs.texas.gov/TRS%20Documents/actuarial_valuation_pension_fund_2018.pdf#search=actuarial%20valuation.

Bill 12 (86R), TRS retirees were unlikely to ever see another benefit enhancement such as a cost-of-living adjustment or supplemental payment as the Legislature cannot grant a benefit enhancement by law unless the fund is actuarially sound.³¹¹

There were no simple answers to addressing the pension fund's financial woes during the 86th Legislature. However, it was clear that drastic funding changes needed to occur to ensure the pension fund is sustainable long-term. Without action, the TRS Board of Trustees would have had limited flexibility to maintain a pension fund capable of providing retirement benefits for generations to come. Additionally, approximately 96 percent of Texas public school employees do not earn Social Security.³¹² Because retirees are on fixed incomes and greatly depend on their monthly annuities, the 86th Legislature prioritized the reforms proposed in Senate Bill 12 (86R) and contributed additional state funding to ensure that the TRS pension fund remained solvent. Furthermore, the 86th Legislature provided TRS retirees that retired on or before December 31, 2018 a one-time supplemental payment in either the amount of their monthly annuity payment or \$2,000, whichever was less.³¹³ Prioritizing retired educators, the 86th Legislature overwhelmingly approved the reforms with support from the Texas Retired Teachers Association, the largest retiree advocate group.

Specifically, Senate Bill 12 (86R) provided for additional, permanent state, active employee, and required district contributions over a six-year period illustrating commitment to the pension fund. Senate Bill 12 (86R):

- Increased the state contribution gradually from 6.8 percent to 8.25 percent by fiscal year 2024;
- Increased the required district contributions gradually from 1.5 percent to 2 percent by fiscal year 2025;
- Increased the required active employees' contributions gradually from 7.7 percent to 8.25 percent by fiscal year 2024;
- Required all Social Security contributing public education employers to contribute; and
- Provided protection for contribution rates from being reduced in the future by tying the state contribution levels to district and employee contributions.³¹⁴

In total for fiscal years 2020-2021, Senate Bill 12 (86R) authorized, and Senate Bill 500 (86R) provided for, an additional \$1.113 billion towards the TRS pension fund and supplemental payments to retirees.³¹⁵ This was a significant infusion of additional funding to TRS and its members by the 86th Legislature. The statutory changes in Senate Bill 12 (86R) took effect June 10, 2019. As a result of Senate Bill 12 (86R) and the corresponding funding, the pension fund became actuarially sound immediately upon the bill becoming effective. These permanent funding increases will allocate

³¹¹ TEX. GOV'T CODE § 821.006.

³¹² https://www.trs.texas.gov/TRS%20Documents/pension_study_2018.pdf.

³¹³ https://www.trs.texas.gov/Pages/about_legislative_summary_2019.aspx.

³¹⁴ Tex. S.B. 12, 86th Leg., R.S. (2019).

³¹⁵ https://www.trs.texas.gov/Pages/about_legislative_summary_2019.aspx.

hundreds of millions of dollars to the pension fund annually and continue to highlight the Legislature's support of both current and future retired public educators.

Senate Bill 12 (86R) was a significant financial commitment from the State, and other contributors, but was far more cost-efficient than simply attempting to contribute one-time infusions of cash every so often. Furthermore, approximately 96 percent of public education employees are not covered by Social Security and TRS is the sole source of their retirement income. Therefore, it is important to understand that the TRS retirement annuities are not lavish retirement benefits, but they certainly are critical to hundreds of thousands of Texans and their families. In fact, one out of every twenty Texans is a member of TRS.³¹⁶ Unquestionably, Senate Bill 12 (86R) brought more financial stability to one of the largest pension funds in the world, while also securing the future retirement of public educators.

Recommendations

Without the reforms in Senate Bill 12 (86R), the TRS pension fund would continue to remain actuarially unsound, meaning it may not have been able to pay future benefits earned, which would have been detrimental to both current and future retirees. Senate Bill 12 (86R) implemented necessary statutory changes that established clear funding policies that will help secure the financial security of the TRS pension fund for decades to come. The required gradual contribution increases to the pension fund has certainly moved it towards long-term stability, while also paying down the state's unfunded pension liability.

Accordingly, the Legislature should continue to monitor the financial conditions of the pension fund to ensure long-term sustainability. As public pension systems from around the country continue to face challenges that threaten solvency and long-term sustainability, Texas must continue to lead to ensure its public retirees' benefits are safeguarded and future liabilities to taxpayers are reduced.

Implementation of Senate Bill 321 (87th Legislature)

Background

The Employees Retirement System of Texas (ERS) was created by the Texas Legislature in 1947 and is administered in accordance with the Texas Constitution. ERS operates primarily under Vernon's Texas Codes Annotated (V.T.C.A.), Texas Government Code, Title 8, Subtitle B.³¹⁷ ERS is governed by a board of trustees (the "board"), which is made up of six members responsible for the general administration and operations of ERS.³¹⁸ The six member board is composed of three elected members and three members who are appointed respectively by the Governor, the Speaker of the Texas House of Representatives, and the Chief Justice of the Supreme Court of Texas. The board appoints a person other than a member of the board to serve at the board's will as Executive Director to manage a staff to provide benefits to state and higher education employees, retirees, and beneficiaries.³¹⁹ The Legislature has the authority to set the contribution rates for both employee and employer retirement contributions.

³¹⁶ https://www.trsx.texas.gov/TRS%20Documents/trs_value_brochure.pdf.

³¹⁷ EMP. RET. SYS. OF TEX., 2021 ANNUAL COMPREHENSIVE FINANCIAL REPORT (Aug. 2021).

³¹⁸ *Id.*

³¹⁹ *Id.*

ERS provides a retirement and disability pension system for state employees, law enforcement and custodial officers, elected state officials, and two classes of judges.³²⁰ Currently, ERS provides retirement benefits to approximately 121,000 retirees and has 137,000 active contributing members.³²¹ ERS administers the trust funds, with a fiduciary obligation to the members and retirees of ERS who its beneficiaries are. The retirement programs complement the Social Security and Medicare programs by providing a retirement annuity with service, disability, and survivorship benefits. The ERS Plan, the Law Enforcement and Custodial Officer Supplemental Retirement Fund (LECOSRF), the Judicial Retirement System of Texas Plan One (JRS 1), and Judicial Retirement System of Texas Plan Two (JRS 2) are single employer defined benefit pension plans.³²² Each plan provides service retirement, death, and disability benefits. ERS disburses approximately \$2.8 billion in annuity payments annually.³²³ Benefit and contribution provisions of each plan are authorized by state law and may be amended by the Legislature. Member contribution rates of the ERS, LECOSRF, JRS 1, and JRS 2 and state contribution rates of the ERS, LECOSRF, and JRS 2 are set by state law. The law prohibits any amendment to the plan that would cause the period required to amortize any unfunded actuarial accrued liability to equal or exceed 31 years.³²⁴

There are two classes of membership within the ERS retirement plan: (1) the elected class and (2) the employee class. Membership in the elected class is limited to persons who hold state offices that are normally filled by statewide election (including legislators) and excludes officials covered by the JRS 1 and JRS 2. Membership in the employee class includes all employees and appointed officers of the state and excludes independent contractors and their employees, and employees covered by the Teacher Retirement System of Texas.³²⁵

The LECOSRF plan covers custodial officers employed by the Department of Criminal Justice, including the Board of Pardons and Paroles, and certified by that department according to statutory requirements as having a normal job assignment that requires frequent or infrequent regularly planned contact with inmates of that institution. The plan also covers law enforcement officers who have been commissioned by the Department of Public Safety, the Alcoholic Beverage Commission, the Parks and Wildlife Department, or the State Board of Pharmacy who are recognized as commissioned law enforcement officers by the Commission on Law Enforcement Officer Standards and Education. The monthly benefit amount payable from this plan is equal to the excess of the total benefit over the regular benefit payable to the member from the ERS plan.³²⁶

The JRS 1 plan covers judges, justices, and commissioners of the Supreme Court, the Court of Criminal Appeals, the Court of Appeals, District Courts, and certain commissions to a court who first became members before September 1, 1985. Members of JRS 2 are excluded from this plan. As a result of new judicial officers participating in JRS 2, JRS 1 membership and annuity payroll continue to decrease.³²⁷

The JRS 2 plan covers judges, justices, and commissioners of the Supreme Court, the Court of Criminal Appeals, the Court of Appeals, District Courts, and certain commissions to a court who first become members after August 31, 1985. Members of JRS 1 are excluded from this plan.

³²⁰ *Id.*

³²¹ *State Pension Reform Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022) (testimony of Porter Wilson, ERS).

³²² EMP. RET. SYS. OF TEX., 2021 ANNUAL COMPREHENSIVE FINANCIAL REPORT (Aug. 2021).

³²³ *State Pension Reform Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022) (testimony of Porter Wilson, ERS).

³²⁴ TEX. GOV'T CODE § 811.006.

³²⁵ EMP. RET. SYS. OF TEX., 2021 ANNUAL COMPREHENSIVE FINANCIAL REPORT (Aug. 2021).

³²⁶ *Id.*

³²⁷ *Id.*

Discussion

Prior to the reforms made by the 87th Legislature in 2021, the ERS trust fund had a funded ratio of 66 percent, and the unfunded liability was approximately \$14.7 billion.³²⁸ Furthermore, without structural changes, the unfunded liability was expected to grow by at least \$1.5 billion per biennium. Without a long-term, cost-efficient legislative proposal such as Senate Bill 321, the ERS plan was expected to deplete by 2061 and retirees were unlikely to ever see another cost-of-living adjustment as a benefit enhancement cannot be granted by law unless the fund is actuarially sound.³²⁹ Undoubtedly, the ERS trust fund was headed toward financial turmoil.

There were no simple answers to addressing the trust fund's financial woes during the 87th Legislature. However, significant funding and structural changes were necessary to ensure the trust fund was sustainable long-term. Because retirees are on fixed incomes and greatly depend on their monthly annuities, the 87th Legislature passed the reforms proposed in Senate Bill 321 and contributed additional state funding to ensure that the ERS trust fund remained solvent, while also starting to pay down its unfunded liability. Prioritizing both future and current retired state employees, the 87th Legislature approved the reforms with support from the Texas Public Employees Association, Retired State Employees Association, AFSCME Texas Retirees, and other state employee and law enforcement advocacy groups.

Senate Bill 321 established a new tier within the existing ERS plan (Group 4) for new regular state and Law Enforcement and Custodial Officer (LECO) employees starting on or after September 1, 2022.³³⁰ Specifically, Senate Bill 321:

- Creates a new Group 4 ERS plan, in which employees will participate in a new cash balance benefit and contribute 6 percent of their monthly pay;
- Guarantees annual 4 percent interest of the employee/retiree account;
- Implements a shared-risk investment gain share strategy for both the state and members to minimize future unfunded liabilities, but is capped at 3 percent annually for an employee or retiree;
- Credits employee accounts with a match by the employer/state at retirement;
- Provides an enhanced benefit for LECO employees;
- At the time of retirement, the employee's final cash balance is annuitized using the ERS trust fund providing a lifetime annuity based on the final cash balance value; and

³²⁸ <https://www.ers.texas.gov>.

³²⁹ TEX. GOV'T CODE § 811.006.

³³⁰ Tex. S.B. 321, 87th Leg., R.S. (2021).

- Establishes annual level dollar amortization payments to the ERS trust fund to start paying down the existing unfunded liability.³³¹

In totality for fiscal years 2022-2023, Senate Bill 321 provided for an additional \$1.02 billion towards the ERS plan³³² -- a massive infusion of additional funding to ERS and its members by the 87th Legislature. The statutory and structural changes in Senate Bill 321 took effect September 1, 2021. As a result of Senate Bill 321 and the corresponding funding, the trust fund is well on its way towards actuarial soundness. These permanent funding contributions to pay down the existing unfunded liability will allocate hundreds of millions of dollars to the trust fund until the debt is paid off and continues to highlight the Legislature's support of both current and future retired state employees.

Although Senate Bill 321 was a significant financial commitment from the state, it was far more cost-efficient than attempting to periodically contribute one-time infusions of cash. Furthermore, it puts the State on a path to pay off its existing ERS pension debt which many credit agencies praising this action. The new Group 4 cash balance benefit for new state and LECO employees will also stabilize the plan indefinitely moving forward. Unquestionably, Senate Bill 321 brought more financial stability to one of the largest public pension funds in Texas, while also securing the future retirement benefits of state employees.

Recommendations

Without the reforms in Senate Bill 321, the ERS trust fund may not have been able to pay future benefits earned, which would have been detrimental to both current and future retirees. Senate Bill 321 implemented necessary structural and statutory changes that will help secure the financial security of the ERS plan for future decades. The establishment of a new tier within the existing ERS plan (Group 4) has certainly moved it towards long-term stability, while also providing for a plan to pay down the state's unfunded pension liability.

The Legislature should continue to monitor the financial conditions of the trust fund to ensure long-term sustainability. As public pension systems from around the country continue to face challenges that threaten solvency and long-term sustainability, Texas must continue to lead to ensure its public retirees' benefits are safeguarded and future liabilities to taxpayers are reduced.

³³¹ *Id.*

³³² <https://www.ers.texas.gov>.

Charge No. 8

***Bail Bond Reform:** Monitor the implementation of recent bail bond reform legislation along with its economic impact on the judicial and correctional system. Assess any barriers to implementation, the law's effect on pretrial release and jail populations, and ways to further promote public safety and efficiency.*

Background

On November 23, 2012, Texas Department of Public Safety (DPS) Patrol Trooper Damon Allen made what he thought was a routine traffic stop in Freestone County. Unfortunately, Trooper Allen was shot while returning to his vehicle during this stop and later succumbed to those injuries. The individual convicted of this heinous crime was out on bond for multiple violent offenses at the time of the shooting. Furthermore, the criminal history of the defendant was not considered during his bail hearing prior to the shooting. This incident, along with several other concerning trends around the state, initiated a statewide public policy debate on bail reform in the State of Texas.

"Bail" is the security given by the accused that he or she will appear and answer before the proper court the accusation brought against him or her and includes a bail bond or a personal bond.³³³ Bail is the amount of money that defendants must post in order to stay home prior to, and during, their trial. Those who do not post bail have to wait for their trial behind bars. Defendants who post bail and then miss a court date forfeit their bail money. If the case is resolved and the defendant has not missed an appearance, the bail money will be returned.

Individuals accused of a crime in the State of Texas have a constitutional right to bail upon arraignment, except for certain cases where offenders have multiple prior felonies³³⁴, when there is a violation of conditions of release³³⁵, with felonies that involve family violence³³⁶, and capitol offenses³³⁷. There are two types of bonds issued in Texas: cash or surety bonds, commonly referred to in statute as "bail bond(s)", and personal bonds. The more common "bail bond" requires either the defendant or a surety to post collateral to ensure the defendant's reappearance in court. A surety can be the accused's family member or friend, a private business, a charitable organization, or a bail bondsman. Texas laws regulate the qualifications and licensing requiring for bail bondsmen. To be eligible, you must be a U.S. citizen residing in Texas who is at least 18 years old and has never been convicted of a felony or misdemeanor involving moral turpitude.³³⁸ Alternatively, a personal bond requires no payment and is a sworn agreement by the defendant that he or she will return to court. Along with the bail amount, judges or magistrates, can tie a defendant's bond to certain conditions of release. If these conditions are violated upon release, it can result in the revocation of a defendant's bail and require the individual's return to confinement.

The Texas Constitution states that bail, and the conditions of bail, shall not be "excessive".³³⁹

³³³ CCP Art. 17.01.

³³⁴ Tex. Const. art. 1, sec. 11a.

³³⁵ Tex. Const. art. 1, sec. 11b.

³³⁶ Tex. Const. art. 1, sec. 11c.

³³⁷ Tex. Const. art. 1, sec. 11.

³³⁸ CCP Art. 17.10.

³³⁹ Tex. Const. art. 1, sec. 13.

Therefore, it is the magistrate's duty to set a type of bail, and bail amount, that appropriately takes into consideration a defendant's public safety risk, severity of the accused crime, past criminal history, flight risk, and ability to pay, among other factors. Furthermore, bail decisions must be made under strict time constraints to ensure defendants have the opportunity for an expedient release prior to trial. Because Texas is a vast state with urban and rural areas that have various levels of resources, a defendant in Texas can have bail set by the arresting officer or a magistrate.

Texas law requires that a person be presented to a magistrate for arraignment within 72 hours of arrest.³⁴⁰ In order to meet these time constraints, some jurisdictions in Texas have experimented with new bail hearing processes, such as implementing bail schedules. Bail schedules are set bail amounts matched to specific offenses and were designed as an attempt to expedite the pre-trial process. Although bail schedules can expedite the process at times, these schedules have also created numerous legal and public safety issues. In fact, several lawsuits have cited bail schedules for their lack of individualized assessment and favoring wealthy defendants with the ability to pay for their release.³⁴¹ For example, Judge Lee Hyman Rosenthal of the United States 5th Circuit Court of Appeals wrote in a 2018 opinion that, "these de facto detention orders are not accompanied by the protections federal due process requires for pretrial detention orders."³⁴² As many of these lawsuits have progressed over recent years, some Texas jurisdictions have made conforming changes to their bail setting process to ensure compliance with the law. However, in Texas, no statewide guidelines exist to govern this process. As a result, there is not a uniform process for setting bail; reviewing a defendant's criminal history; collecting pertinent data for public dissemination; publishing bail information and results; and many other aspects of the process. Therefore, many interested parties and experts asserted that state oversight was a necessary component to ensure public safety and create transparency and accountability.

Discussion

During the 87th Legislature, Second Called Session, Senate Bill (SB) 6 was passed by the Legislature which thoughtfully reformed the bail system in Texas for both misdemeanor and felony cases. Texas has made strides in keeping low-level misdemeanor individuals from languishing in prison. Research has illustrated that these individuals present a low public safety risk and that their confinement -- even for a short period of time -- can greatly increase their re-offense probabilities. Furthermore, studies assert that confinement for these individuals also negatively impacts their mental health and ability to find work, among other things. Instead, referring these individuals to rehabilitation programs and probation have resulted in better outcomes for many cases, and provided cost savings to the state.

Although that approach may be appropriate for many low-level misdemeanor offenders, translating these same reforms to violent felony offenders has shown to have drastically different results. In fact, in 2019, after such reforms were applied to felony cases in Harris County, there was a drastic increase in personal bonds for first-time felony offenders, including violent individuals charged with offenses such as murder, manslaughter, aggravated robbery, sexual assault, and more (*Figure 1*). Shockingly, these individuals were often released immediately back into the community without any financial obligation to return to the court, regardless of the individual's criminal history or the nature of the

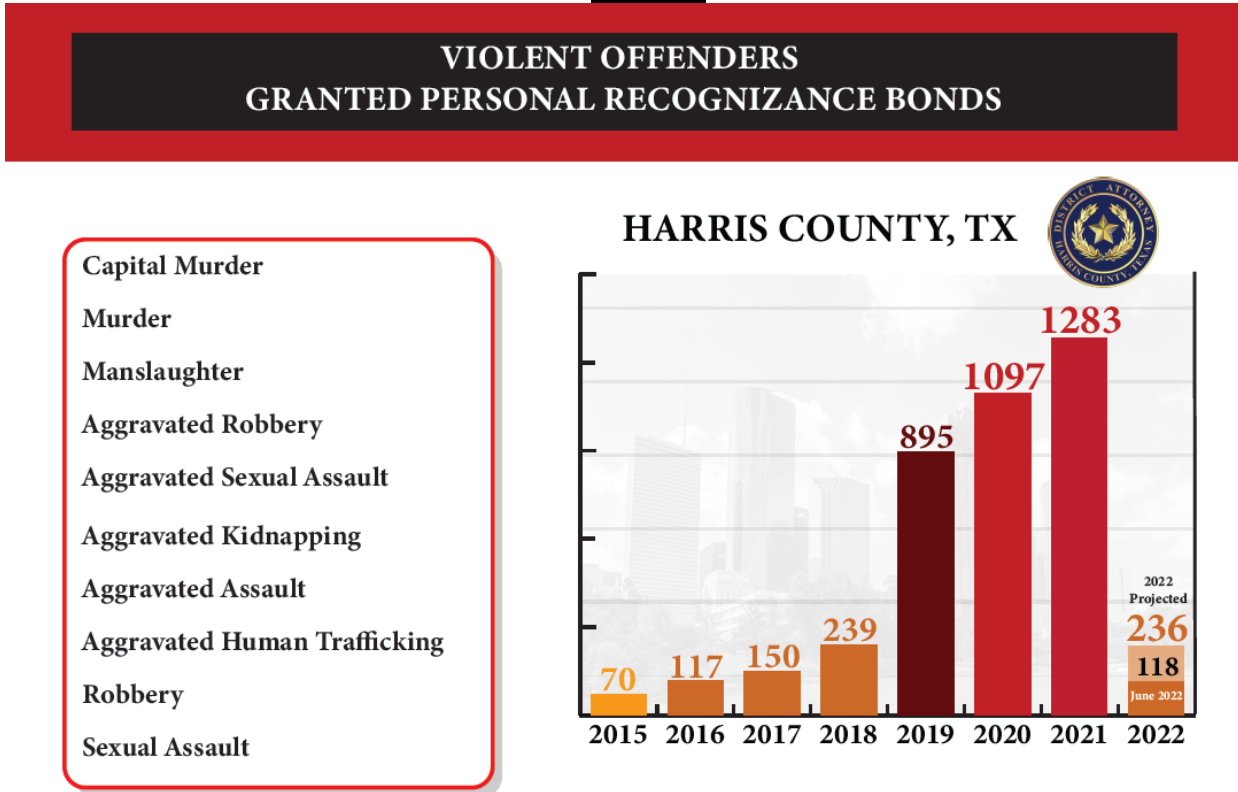
³⁴⁰ CCP. Art. 17.022.

³⁴¹ *Odonnell v. Harris Cnty.*, 251 F. Supp. 3d 1052, 1060 (S.D. Tex. 2017).

³⁴² *Id.*

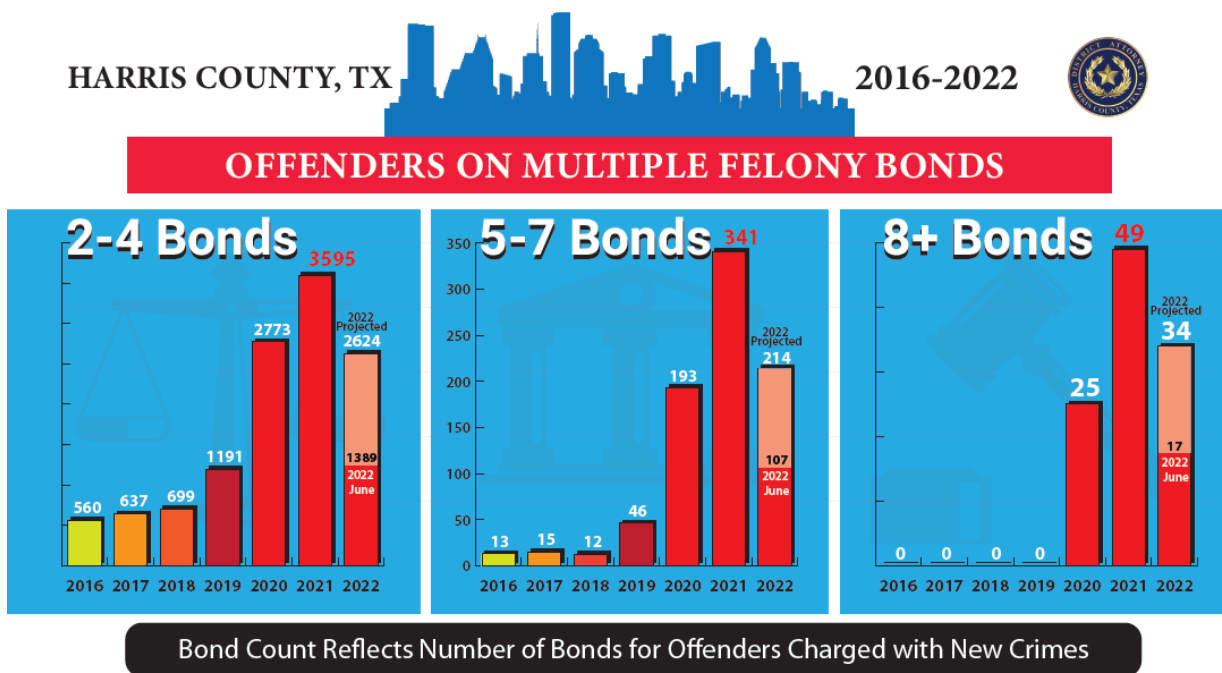
accused offense. Unfortunately, certain Harris County magistrates were even granting multiple personal bonds simultaneously to the same defendants for different crimes (*Figure 2*). As this new practice developed in Harris County, it coincided with a stark increase in criminal offenses committed by individuals that were released on a felony bond.

Figure 1



Data collected from Justice Information Systems (JWEB) maintained by Harris County and reflects data for each year through December 31 of that year, except for 2022. Data reflects personal recognizance (PR) bonds granted by a judge for violent crimes. Every bond is determined by a judge and this data is from records of their judicial actions.

Figure 2



Data collected from Justice Information Systems (JWEB) maintained by Harris County and reflects data for each year through December 31 of that year, except 2022. Data reflects new crimes filed against offenders who were on two or more bonds of any type and level or degree. Every bond is determined by a judge and this data is from records of their judicial actions.

According to the Harris County District Attorney, in 2015, 23 rapes were committed by defendants that were out on bond.³⁴³ In 2020, there were 92 rapes committed by defendants released on bond.³⁴⁴ In 2015, 667 assaults were committed by people out on bond. Last year, that number rose to 3,028.³⁴⁵ Furthermore, in 2015, 231 robberies were committed by defendants on bond.³⁴⁶ In 2020, that number more than doubled to 634 robberies.³⁴⁷ In 2015, some 3,200 offenders out on bond committed 6,438 crimes. In 2020, some 10,500 defendants out on bond committed 18,796 new crimes.³⁴⁸ These statistics were from Harris County alone. While many of these re-offense statistics are reported by urban counties, rural counties are also being affected by criminals that travel out of the metropolitan areas to then commit additional crimes. However, following the passage of SB 6 in 2021, Harris County data suggests that there will be a decrease in these rising re-offense numbers (*Figure 3*).

³⁴³ *Bail Bond Reform Charge: Hearing Before the S. Comm. on Jurisprudence*, 87th R.S. (Tex. 2021) (written testimony of Kim Ogg, Harris County District Attorney).

³⁴⁴ *Id.*

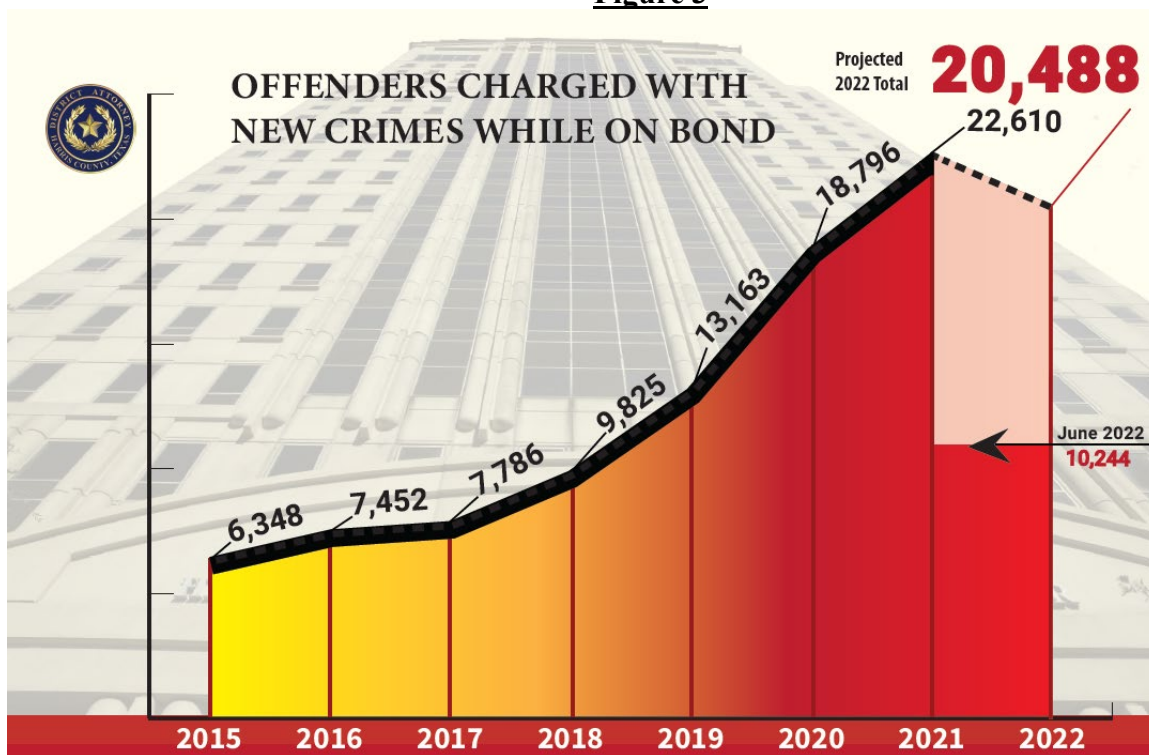
³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

Figure 3



Data collected from Justice Information Systems (JWEB) maintained by Harris County and reflects data for each year through December 31 of that year, except 2022. Data reflects the number of new crimes filed against offenders on bond of any type and level or degree. Every bond is determined by a judge and this data is from records of their judicial actions.

SB 6 was a direct result of these disturbing trends across the state that jeopardized the safety of many Texas communities and faith in our state's criminal justice system. SB 6 was necessary to restore order in the bail system by establishing a uniform process that all jurisdictions in the state must abide by. One critical component of SB 6 limited the list of criminal offenses that are eligible for personal bonds. The 87th Legislature deemed that "offense(s) involving violence" need additional safeguards in the bail setting process.³⁴⁹ However, upon review of a defendant's criminal history, circumstances of the case, and all other information required to set bail by Code of Criminal Procedure Article 17.15, magistrates are still given discretion to set a surety bond under the provisions of SB 6, if deemed appropriate.³⁵⁰ Similar to how certain offenses have required conditions of bail, SB 6 now requires that the most violent offenses have restrictions on the type of bond that a magistrate may issue.³⁵¹ SB 6 also expands Article 17.15 by requiring magistrates to consider the nature of the offense committed, particularly if the offense involves violence. For offenses involving violence, further examination of the defendant's history must be considered prior to setting bail. Furthermore, SB 6 requires criminal history and failures to appear to also be reviewed. As no case is alike, the law still enables magistrates to utilize judicial discretion to determine the relevancy of these factors.

The bill also created the Public Safety Report System for Class B Misdemeanors or higher.³⁵² The Office of Court Administration (OCA) developed this public safety report system that is available for

³⁴⁹ Tex. S.B. 6, 87th Leg., S.S. 2 (2021).

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² Tex. S.B. 6, 87th Leg., S.S. 2 (2021).

use to officers setting bail.³⁵³ The Public Safety Report must:

- (1) state the requirements for setting bail under Article 17.15 and list each factor provided by Article 17.15 (a);
- (2) provide the defendant's name and date of birth or, if impracticable, other identifying information, the cause number of the case, if available, and the offense for which the defendant was arrested;
- (3) provide information on the eligibility of the defendant for a personal bond;
- (4) provide information regarding the applicability of any required or discretionary bond conditions;
- (5) provide, in summary form, the criminal history of the defendant, including information regarding any:
 - (A) previous misdemeanor or felony convictions;
 - (B) pending charges;
 - (C) previous sentences imposing a term of confinement;
 - (D) previous convictions or pending charges for:
 - (i) offenses that are offenses involving violence as defined by Article 17.03; or
 - (ii) offenses involving violence directed against a peace officer; and
 - (E) previous failures of the defendant to appear in court following release on bail; and
- (6) be designed to collect and maintain the information provided on a bail form submitted under Section 72.038, Government Code.³⁵⁴

At its core, the Public Safety Report System is meant to provide bail setters with a streamlined process to review information required by Article 17.15, state requirements for bail setting, and provide basic information on the defendant (See *Figure 4*). To ensure all pertinent information is captured, the system links with the Texas Law Enforcement Telecommunication (TLET) System maintained by DPS to provide the defendant's criminal history report.³⁵⁵ This report must be delivered to magistrates within 48 hours of arrest to avoid delays in the process. Although implementation of this report system did not take effect until August 2022, it has already proven to be valuable.

Finally, the Public Safety Report System allows for the person setting bail to verify that all requirements of Article 17.15 have been considered and must then submit a "bail form." To increase transparency in this process, this bail form is made publicly accessible on the OCA website. This public form is a certification by the magistrate, or bail setting officer, that all information required by law has been considered prior to setting bail. This bail form also lists the type, and amount of bail, and must be signed by the officer.³⁵⁶ This information has never been easily accessible to the public and will undoubtedly increase transparency and accountability. Because many bail setters are elected officials, the public has a right to have easy access to public safety decisions being made in their official capacity. SB 6 also increases accountability by tying a defendant to the magistrate that sets their initial bond. Article 17.027 of the Code of Criminal Procedure states that if a defendant is charged with a new offense while out on bail, the defendant must be brought before the magistrate

³⁵³ CCP Art. 17.021.

³⁵⁴ *Id.*

³⁵⁵ Tex. S.B. 6, 87th Leg., S.S. 2 (2021).

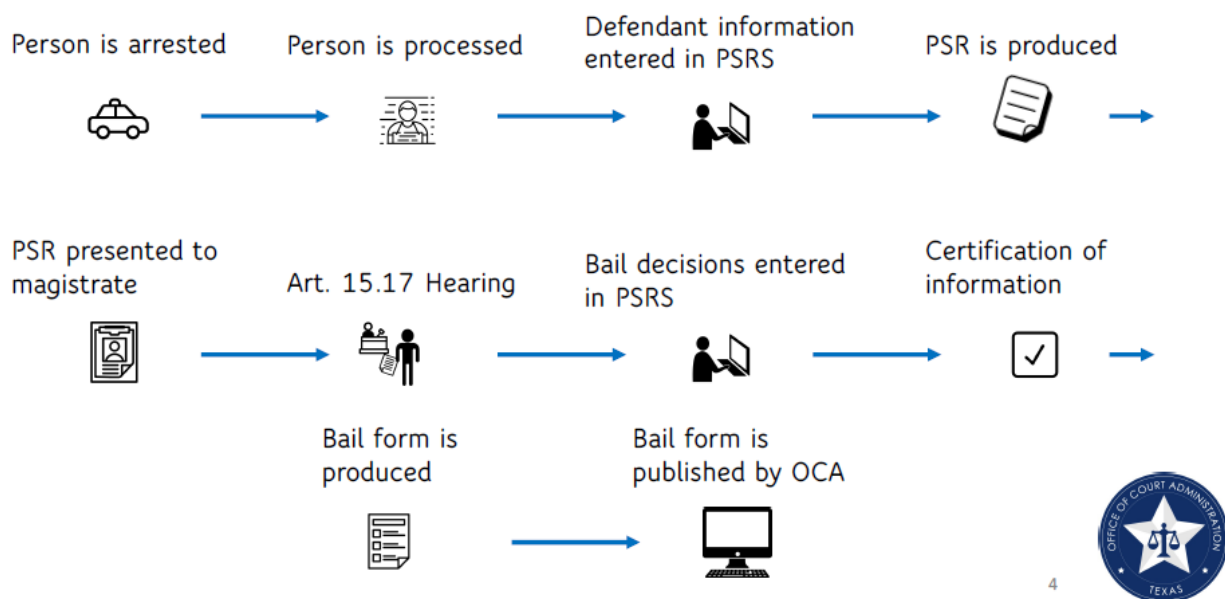
³⁵⁶ GC. Sec. 72.038.

who set bail in the previous offense.³⁵⁷ If the subsequent offense is committed outside the magistrate's jurisdiction, the magistrate must, at the very least, be made aware of the new charged offense for the purposes of reassessing bail and evaluating if bond conditions have been violated.³⁵⁸

In addition to creating a bail form, the Public Safety Report System collects statewide bail data. Previously, it was extremely difficult to evaluate bail data at a statewide level. This data will be useful to determine the effectiveness and efficiency of this new process.

Figure 4

PUBLIC SAFETY REPORT SYSTEM PROCESS



SB 6 also provided additional training for officers setting bail. This included training through DPS on the TLET system that allows a person setting bail to view criminal history information.³⁵⁹ Additionally, OCA was required to create an eight-hour course, and a two-hour continuing education course, regarding the duties and responsibilities of a magistrate throughout the bail setting process.

Recommendations

Although certain provisions of SB 6 were not fully implemented until 2022, the reforms to Texas' bail system have already begun to show measured improvements to public safety and transparency. However, these efforts are only a first step, and further policy change needs to be considered by the 88th Legislature to further streamline the bail-setting process and continue to ensure that public safety remains a priority.

³⁵⁷ CCP. Art. 17.027.

³⁵⁸ *Id.*

³⁵⁹ CCP. Art. 17.0501.

Limiting which offenses are eligible to receive personal bonds ensures that the most violent offenses, typically representing the highest-risk defendants, receive the most thoughtful bail determination. Even in the brief time period following implementation of SB 6, some magistrates are still granting inappropriate personal bonds in cases involving violent offenses. The Legislature must review the list of "offense(s) involving violence" to further promote public safety decisions. For example, the unlawful possession of a weapon by a convicted felon is another offense that should be added to the list of violent offenses. Additionally, violation of family violence protective orders is another public safety risk for victims and should be added to the list of offenses involving violence as defined by Code of Criminal Procedure Article 17.03.

Article 17.027, relating to release on bail of a defendant charged with a felony offense committed while on bail, presents some jurisdictional and logistical challenges. The notification of a new offense to magistrates is critical. Proper notification between jurisdictions is important to ensure that the initial magistrate can properly reevaluate bail, if warranted based on the new offense. Furthermore, the Legislature should consider expanding these provisions to include individuals out on parole or probation.

Unfortunately, not all officers setting bail are elected officials or appointed in a public forum. The Legislature should evaluate methods to ensure that all bail hearings are available to the public. Furthermore, some hearing officers are appointed by hiring boards that operate with little transparency. Because these decisions involve the public's safety, it is imperative that the public has full access to these forums and fully understand motives behind the decisions. These additional acts will further increase transparency to the process.

Lastly, multiple efforts during the 87th Legislative Session and subsequent called sessions fell short of expanding preventative detention in Texas. Per the Texas Constitution, current options to deny bail pending trial effectively require a full trial on the merits at the time bail is denied, or shortly thereafter. This impracticability effectively leads to its rare utilization, even in the most appropriate situations. Because of this limitation, the Texas Senate passed a bipartisan constitutional amendment multiple times in 2021 requiring a judge or magistrate to impose the least restrictive conditions of bail that may be necessary and authorizing the denial of bail under some circumstances to a person accused of a violent or sexual offense. Unfortunately, this proposed constitutional amendment failed to pass the Texas House. Texas voters should have the opportunity to expand the Texas Constitution to ensure that magistrates have another tool to deny bail to the most violent offenders that pose a significant safety risk to the public. The 88th Legislature must pursue this constitutional amendment again as it is a vital measure to safeguard the public from the most vicious and violent offenders.

Charge No. 9

Operation Lone Star: Monitor appropriations and spending supporting Operation Lone Star. Evaluate and report on the effectiveness of spending to secure the southern border. Identify and report on resources needed to ensure support for the State National Guard, as well as overall resources necessary for border security for future legislative consideration.

Background

Texas has the second longest international border of any state, sharing 1,254 miles with Mexico including 28 transnational bridges and border crossings. While this boundary provides Texas, and the rest of the country, with a rich cultural and economic exchange, it also serves as a conduit for illegal activity including illicit trafficking of people, goods, and narcotics. Federal and state engagement in border security has varied over the last century, but Texas' investment of state dollars toward the effort to secure the border has escalated sharply in recent years. Biennial state investments in border security have been consistently over \$800 million since the 2016-17 biennium, as shown in *Figure 1* below. Following Governor Greg Abbott's launch of Operation Lone Star (OLS) in March 2021, Texas' investment in border security has now reached nearly \$4.4 billion for fiscal years 2022-23. The Governor also issued a disaster declaration in June 2021 to further boost the state's efforts to secure the border.³⁶⁰

Figure 1

Historical Border Security Funding

(In millions)	84th 2016-17	85th 2018-19	86th 2020-21	87th 2021-23
Office of the Attorney General		2.6	2.6	2.6
Office of the Governor	38.4	52.7	53.5	1,566.2
Department of State Health Services				16.4
Office of Court Administration				32.5
Texas Alcoholic Beverage Commission	1.2	6.9	6.9	6.9
Texas Department of Criminal Justice	0.5	1.6	1.6	25.3
Texas Commission on Jail Standards				0.2
Texas Commission on Law Enforcement	0.2	0.3	0.3	0.3
Texas Military Department				1,733.1
Department of Public Safety	677.7	694.3	693.3	967.7
Texas Parks & Wildlife Department	10.0	33.0	29.0	31.3
Soil & Water Conservation Board		3.0	3.0	4.8
Texas Department of Motor Vehicles		5.6	10.4	8.8
Cross-agency (DPS and TMD)	72.0			
TOTAL	\$ 800.0	\$ 800.0	\$ 800.6	\$ 4,396.0

³⁶⁰Press release announcing Operation Lone Star, March 6, 2021, <https://gov.texas.gov/news/post/governor-abbott-dps-launch-operation-lone-star-to-address-crisis-at-southern-border>; Press release announcing disaster declaration, June 1, 2021, <https://gov.texas.gov/news/post/governor-abbott-issues-disaster-declaration-in-response-to-border-crisis-in-texas/>.

Appropriations for OLS, specifically, were made primarily in three separate bills during the 87th Legislative Session and subsequent special called sessions: Senate Bill (SB) 1 and House Bill (HB) 2 in the 87th Legislature's Regular Session and HB 9 in the 87th Legislature's Second Called Session as depicted in *Figure 2* below.

Figure 2

TEXAS BORDER SECURITY FUNDING, FY 2022-23

	Included in the Intro Bill	Added by the Legislature				TOTAL
		SB1	HB2	HB 9 87(2)	Combined	
Officer of the Governor - Border Security Funding	51.1					
<i>Border Surge Funding</i>			50.0		50.0	
<i>Border Security Grants</i>				1,020.3	1,020.3	
<i>Prosecution Resources</i>				3.8	3.8	
<i>Border Wall Reimbursement to TDCJ</i>				250.0	250.0	
Total, Office of the Governor	51.1		50.0	1,274.1	1,324.1	1,375.2
Attorney General Border Prosecutions	2.6					2.6
Department of State Health Services Ambulance Services				16.4	16.4	16.4
Office of Court Administration Operation Lone Star Expenses				32.5	32.5	32.5
Department of Public Safety - Border Security Funding	692.5					
<i>100 additional troopers - salaries, vehicles and equipment</i>		56.7	38.0		94.7	
<i>Operation Lone Star - additional FTEs, marine units, and salaries</i>				154.8	154.8	
Total, Department of Public Safety	692.5	56.7	38.0	154.8	249.5	942.0
Texas Alcoholic Beverage Commission Border Investigations	6.8					6.8
Texas Department of Criminal Justice - Anti-gang Intelligence	1.6					
<i>Operation Lone Star Detainees</i>				23.7	23.7	
Total, Texas Department of Criminal Justice	1.6			23.7	23.7	25.3
Texas Commission on Law Enforcement Border Investigators	0.3					0.3
Texas Military Department Operation Lone Star	-	88.6	22.3	301.0	411.9	411.9
Texas Commission on Jail Standards Operation Lone Star				0.2	0.2	0.2
Texas Parks & Wildlife Department Enforcement	29.0					29.0
Soil & Water Conservation Board Carrizo Cane Eradication	2.8					2.8
Texas Department of Motor Vehicles Prevention Grants	10.4					10.4
Pay Raises for Law Enforcement Employees (Schedule C, Est)		71.0			71.0	71.0
TOTAL	797.1	216.3	110.3	1,802.6	2,129.2	2,926.3

HB 5 in the Second Called Session also provided an additional \$180 million to support OLS through Texas Anti-Gang Units funded through the Department of Public Safety (DPS). In addition, *Figure 3* below shows three transfers made from the Office of the Governor to the Texas Military Department (TMD) and other state agencies to further support the OLS mission, bringing the total amount of funding authorized for border security to nearly \$4.4 billion for the current biennium.³⁶¹

³⁶¹ January 26, 2022 transfer of \$480 million, https://www.scribd.com/document/561404061/Approval-of-transfer-of-480-million-for-border-deployment#from_embed; April 29, 2022 transfer of \$495.3 million; <https://gov.texas.gov/uploads/files/press/O-LeadershipDisasterApproval202204290544.pdf>; October 27, 2022 transfer of \$359.7 million, https://gov.texas.gov/uploads/files/press/BUDGET_EXECUTION_proposal_from_LBB_and_GOV_order_SOS_TRANS_2022-10-27.pdf.

Figure 3

Source	Description	Amount
January 2022 Transfers	Governor granted funds to Texas Military Department for Operation Lone Star	\$479.7 million
April 2022 Transfers	Governor granted funds to Texas Military Department for Operation Lone Star	\$495.3 million
October 2022 Transfers	Governor granted funds to Texas Military Department and other agencies for Operation Lone Star	\$359.7 million

Discussion

With committed resources, the Governor's disaster declaration directs state agencies to prevent, protect, and mitigate damage, injury, and loss of life and property through the OLS mission. To that end, state agencies expended significant resources in fiscal year 2022, as shown in *Figure 4* below.³⁶²

Figure 4

Agency-reported Expenditures through August 2022 (millions)

	Budgeted Funds			Expended through August 2022	Percent Expended
	Available	Transfers	Final		
Office of the Attorney General	\$ 2.6	\$ -	2.6	\$ 1.4	55.1%
Office of the Governor*	1,546.2	-	1,546.2	284.9	18.4%
Department of State Health Services	16.4	-	16.4	3.8	22.9%
Office of Court Administration, Texas Judicial Council	32.5	-	32.5	9.9	30.6%
Texas Alcoholic Beverage Commission	6.9	-	6.9	2.5	36.7%
Texas Department of Criminal Justice	25.2	-	25.2	10.4	41.2%
Commission on Jail Standards	0.2	-	0.2	0.0	20.7%
Texas Commission on Law Enforcement	0.3	-	0.3	0.1	38.9%
Texas Military Department*	1,393.4	-	1,393.4	1,133.9	81.4%
Department of Public Safety	967.7	-	967.7	472.6	48.8%
Texas Parks and Wildlife	31.3	-	31.3	19.6	62.6%
Soil and Water Conservation Board	4.8	-	4.8	3.2	67.3%
Department of Motor Vehicles	8.8	-	8.8	2.6	29.3%
	\$ 4,036.2	\$ -	\$ 4,036.2	\$ 1,944.9	48.2%

*Additions to the Office of the Governor include \$180.0 million designated from HB 5, 87(2). The Office of the Governor also transferred \$479.7 million in January and \$495.3 million in April to the Texas Military Department.

State appropriations and transfers are designated for several initiatives, which include additional law enforcement and guard presence along the border; detainment and adjudication of illegal immigrants through the criminal justice system; technology and equipment for improved surveillance; landscape and land management; construction of both temporary and permanent border barriers; and support for local government entities that are working alongside the state to deter illegal activity.

³⁶² Legislative Budget Board, Texas Border Security Reporting through August 2022.

Law Enforcement and Guard Presence

The presence of law enforcement, guard troops, and federal agents are often cited as both a deterrent for criminal activity along the border and as a necessary component for the effective enforcement of laws and subsequent detainment of individuals in violation of those laws. DPS and TMD are Texas' primary agencies carrying out the OLS mission and have each significantly increased ranks since the start of OLS.

In recent years, DPS has maintained approximately 1,000 commissioned officers in the south and west regions of Texas closest to the border. As a result of this increased demand on the agency, DPS has continually adjusted its operations to support Texas' border security efforts including increasing its troopers to a 50-hour work week; establishing a new company of Texas rangers; and adding more than 200 new trooper positions dedicated to border security. These actions, along with many others, have allowed DPS to surge resources from across the state to meet needs at the border, building a presence of about 1,400 troopers in the region.³⁶³ In addition, DPS has further supported the OLS mission by increasing its anti-gang efforts across the state and serving as the initial point of contact for use agreements with landowners for border barrier construction.

Texas Guard personnel are charged with patrol along the border; temporary barrier construction; information support; and operational logistics. During the 87th Legislature, funding provided through SB 1 and HB 2 enabled the deployment of approximately 700 troops to the state's southern border. Additional funding through HB 9 provided \$301 million to add 1,800 guardsmen to support OLS. Furthermore, transfers from the Office of the Governor allowed for even more personnel dedicated to the mission, reaching nearly 10,000 TMD-affiliated individuals stationed along the border or supporting the mission from across the state. As OLS operations and administration has solidified, the number of TMD personnel supporting OLS from outside the border region has significantly declined, and as of December 8, 2022, TMD reported 4,469 personnel in the border region actively affiliated with OLS. Most TMD-affiliated troops are stationed at base camps near Del Rio, Eagle Pass, Laredo, and Zapata; while an about 500 personnel are working the mission from other locations across the state.³⁶⁴

At the onset of OLS, the rapid deployment of significant state resources presented logistical challenges for TMD, including administrative issues such as payroll, and operational issues like housing.³⁶⁵ Once these difficulties were reported, a concerted effort by several state agencies addressed these concerns. Since these initial challenges, TMD has reported a pay accuracy rate of 99.4 percent in April 2022, as well as improved sleeping quarters, recreational options, and distribution of improved equipment among those deployed.³⁶⁶

Law enforcement personnel from other state agencies are also supporting the OLS mission. For example, SB 1 appropriated \$29 million for 139 game wardens at the Texas Parks and Wildlife Department to conduct law enforcement and enhanced security operations along the Texas-Mexico border. Similarly, four Special Investigations Unit peace officers at the Texas Alcoholic Beverage Commission are assigned to the border region to assist with crime deterrence related to narcotics, human trafficking, and other criminal activity.

³⁶³ Information from Department of Public Safety, December 8, 2022.

³⁶⁴ Information from Texas Military Department, December 8, 2022.

³⁶⁵ <https://tmd.texas.gov/setting-the-record-straight-on-operation-lone-star>.

³⁶⁶ *Hearing Before the S. Comm. on Border Security, 87th Interim* (Tex. 2022) (testimony of Texas Adjutant General Thomas Suelzer, TMD).

The increased presence of law enforcement and guardsmen during OLS has resulted in significant seizures of drugs, weapons, and cash, and the apprehension of smugglers, cartel members, individuals on the Terrorist Watchlist, and illegal immigrants, recounted as of December 1, 2022 in *Figure 5*.³⁶⁷

Figure 5

Activities in the Operation Lone Star Area of Interest

	Criminal Arrests	Criminal Trespass Arrests	Felony Charges	Federal/Other Charges	Migrant Apprehensions & Referrals	Illegal Entries Deterred	Bailouts
TOTAL	22,648	5,725	20,236	1,756	333,294	30,358	3,049

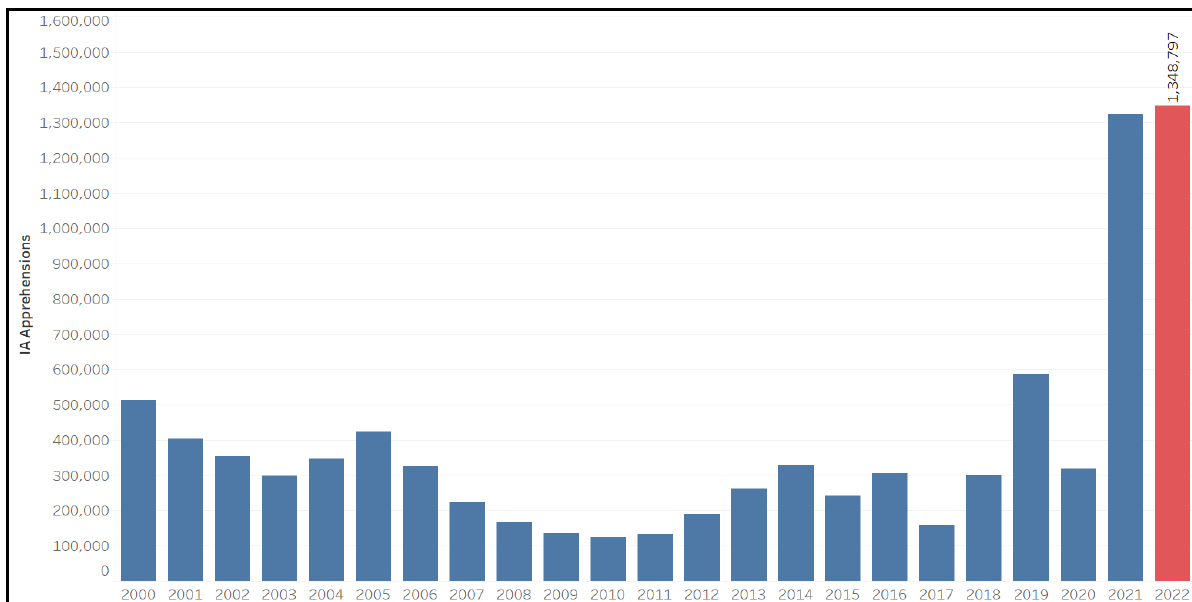
	Marijuana Seizures (lbs.)	Cocaine Seizures (lbs.)	Meth Seizures (lbs.)	Heroin Seizures (lbs.)	Fentanyl Seizures (lbs.)	Fentanyl Lethal Doses	Currency Seizures (USD)	Firearms
TOTAL	22,809	4,122	11,099	92	308	69,752,415	13,089,370	1,269

Statewide Operation Lone Star Activities

	Marijuana Seizures (lbs.)	Cocaine Seizures (lbs.)	Meth Seizures (lbs.)	Heroin Seizures (lbs.)	Fentanyl Seizures (lbs.)	Fentanyl Lethal Doses	Currency Seizures (USD)	Firearms
TOTAL	43,400	6,280	38,297	416	1,564	354,809,549	40,369,393	6,324

Figure 6

**IA Apprehensions in Texas Sectors by Calendar Year
CY 2000 – CYTD 2022, as of November 30, 2022**



* This chart compares apprehensions during CYTD 2022 compared to apprehension data for complete calendar years since CY 2000.
 * Most apprehension figures are based on publicly available data from the Customs and Border Protection (CBP) website.
 * November 01-30, 2022 apprehension figures are based on Operation Border Star reporting and are preliminary, unofficial, and subject to change.
 * Texas Sectors include the Rio Grande Valley, Laredo, Del Rio, Big Bend, and El Paso Sectors. The El Paso Sector covers a portion of Texas and the state of New Mexico

³⁶⁷ Operation Lone Star Dashboard from Department of Public Safety, December 1, 2022.

Figure 7

Stash House Events

Number of Stash Houses Events	Migrant Referrals from Stash Houses
212	2,404

A stash house is a home or building used to smuggle people or drugs. One (1) stash house event could involve multiple stash house locations. The number of migrants rescued and referred to USBP from stash house events are a subset of OLS Area of Interest numbers.

Based on reports tracking OLS (Figure 6), there was a significant increase in illegal immigrant apprehensions in 2021; more than two times the number of similar apprehensions during the unprecedented migrant caravans that arrived at the border in 2019; apprehensions in 2022 are expected to exceed 2021. Some migrants reach the border on their own accord, while others are escorted by criminal enterprises and ultimately trafficked upon arrival. Furthermore, migrants are also hidden in stash houses (Figure 7) along the border region before being transported further into the country.³⁶⁸ Unfortunately, smuggled individuals are at high-risk of victimization in the labor or sex trade industry. Law enforcement agencies such as DPS Special Agents in the South Texas region have initiated approximately 246 criminal cases against human smugglers since the onset of the OLS mission, often finding individuals working as modern-day slaves in deplorable conditions for little or no compensation. DPS resources committed to human trafficking enforcement include 68 special agents and 10 lieutenants which led to the agency's 1,369 human trafficking cases between September 1, 2021 and July 31, 2022.³⁶⁹

Since the beginning of OLS, DPS has seized more than 354 million lethal doses of fentanyl.³⁷⁰ Drugs are often concealed in hidden cavities of vehicles or inside other legal goods like toys, requiring extensive time and resources to conduct thorough examinations at border crossings. To enhance efforts to detect the smuggling of drugs, guns, and people, the Governor and DPS have taken actions to enhance inspections of vehicles crossing the border.³⁷¹ These actions have mitigated dangerous criminals and deadly drugs from flooding into communities across the country.

Detainment and Adjudication

When individuals are caught by Texas law enforcement entering the United States illegally along the Texas border, they are apprehended and either returned to the U.S.-Mexico border, or arrested and brought before a magistrate for a pretrial hearing and determination of probable cause within 48 hours.³⁷² The surge in migrants attempting to cross the border in 2021, combined with a larger Texas law enforcement presence in the area, resulted in a significant increase in arrests, detentions, and pretrial hearings. As a result, many local government jurisdictions along the border became overwhelmed by the number of individuals apprehended and quickly required assistance from the state to process and adjudicate detainees.

In 2021, HB 9 appropriated \$170.3 million to construct and operate three temporary processing centers

³⁶⁸ Operation Lone Star Dashboard from Department of Public Safety, December 1, 2022.

³⁶⁹ Information from Department of Public Safety, August 12, 2022.

³⁷⁰ Operation Lone Star Dashboard from Department of Public Safety, December 1, 2022.

³⁷¹ Press Release concerning the end of Title 42 expulsions, April 6, 2022, <https://gov.texas.gov/news/post/governor-abbott-takes-aggressive-action-to-secure-the-border-as-president-biden-ends-title-42-expulsions>; Press Release announcing enhanced checkpoints, June 29, 2022, <https://gov.texas.gov/news/post/governor-abbott-expands-border-security-operations>.

³⁷² Governor Greg Abbott, Executive Order GA-41 relating to returning illegal immigrants to the border, July 7, 2022, <https://gov.texas.gov/uploads/files/press/EO-GA-41.pdf>.

(TPCs) in Del Rio (Val Verde County); Hebbronville (Jim Hogg County); and a third to-be-determined location. These temporary processing centers were designed to alleviate the problem of overcrowding jails and other challenges local governments were facing because of the influx of illegal immigrants crossing the border. The Texas Division of Emergency Management (TDEM), tasked with logistics support for OLS, reports spending about \$40 million to help establish and operate these processing centers, including providing air conditioning, and fire and emergency medical services.³⁷³ HB 9 also provided \$16.4 million to the Department of State Health Services (DSHS) to purchase ambulance services for the TPCs and Texas Department of Criminal Justice (TDCJ) facilities in the border region.

Furthermore, HB 9 appropriated \$32.5 million to the Office of Court Administration (OCA) to help facilitate legal proceedings for detainees. OCA transferred \$29.7 million of that appropriation to the Texas Indigent Defense Commission (TIDC) for indigent defense counsel. Because of this additional funding to TIDC, detainees have been appointed legal counsel when requested. Of the remaining funding, OCA is utilizing \$1.8 million for court interpreters; resources for virtual magistration; equipment purchases; and program administration. OCA also transferred \$905,000 to the Comptroller's Judiciary Section to compensate 18 visiting judges appointed by the Supreme Court to conduct the legal proceedings.

As of November 30 2022, OCA reports that 7,230 individuals have gone through magistration as part of OLS, and 81 percent of those hearings have required language interpreters. As the number of case filings in border-adjacent counties has grown since the start of OLS, OCA has assisted many local governments with docket management. Many counties have never experienced this kind of activity before and simply did not have the employees to handle this increased caseload. However, OCA has worked diligently with judges, clerks, court coordinators, detention staff, and the defense counsel to streamline the legal proceedings, improve communications, and conduct virtual Zoom hearings.

Texas law requires indigent defendants be appointed legal counsel in any case that could result in incarceration, regardless of citizenship status, within one to three working days.³⁷⁴ As of November 30, 2022, 93.3 percent of defendants detained by the state were appointed counsel under OLS; of those not appointed counsel, 4.8 declined counsel and 1.8 percent were found not indigent.³⁷⁵ TIDC reports recruitment of attorneys has been the agency's biggest challenge in supporting the OLS effort. To ensure sufficient legal counsel was available, TIDC has recruited public defender offices wholly devoted to OLS and private counsel to volunteer. It has also utilized out-of-state attorneys and worked with Texas-based law schools for future legal assistance. As of August 31, 32 private attorneys were working OLS cases, at a rate of \$75 per hour, and more than 7,753 persons have been represented through TIDC facilitated counsel.³⁷⁶

Individuals arrested under OLS are processed and go through the magistration process at a state TPC. Then, they are transported by TDCJ to the Briscoe Unit in Frio County for intake at TDCJ. HB 9 appropriated \$23.7 million to bring three TDCJ units with 1,000 beds online, and \$214,000 to the Commission on Jail Standards to hire additional inspection staff and cover related travel to ensure that these facilities were up to state jail standards. As of July 12, 2022, TDCJ had spent \$8.6 million of its appropriation on additional staffing; medical expenses; and jail standards requirements. TDCJ projects

³⁷³ *Operation Lone Star Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (testimony of Nim Kidd, TDEM).

³⁷⁴ TEX. CODE OF CRIM. PROCEDURE. CH.1, ART. 1.051.

³⁷⁵ Information from Office of Court Administration, December 8, 2022.

³⁷⁶ Information from Office of Court Administration, December 8, 2022.

to spend the remaining balance of the \$23.7 million appropriation by the end of fiscal year 2023.³⁷⁷

The TDCJ Briscoe Unit began receiving individuals charged with state offenses under OLS on July 20, 2021, and the Segovia Unit opened for the same purpose shortly thereafter on September 11, 2021. As of December 8, 2022, 643 individuals were housed at the Segovia and Briscoe units. TDCJ is also preparing the Lopez State Jail facility in Edinburg as a third location to house more individuals. *Figure 8* documents the charges associated with OLS detainees in TDCJ facilities as of December 8, 2022, and *Figure 9* demonstrates that illegal immigrants crossing the border into Texas are coming from all over the world.³⁷⁸ TDCJ reports that most of the individuals arrested for human smuggling charges are U.S. citizens caught shepherding illegal immigrants into the state.

Figure 8

Active Confinees as of December 8, 2022, by Offense	
Aggravated Assault with a Deadly Weapon	3
Assault of a Public Servant	2
Attempt to Commit Smuggling of Persons	1
Criminal Trespass	131
Engaging in Organized Criminal Activity	2
Evading Arrest	78
Failure to Identify	1
Fraudulent Use/Possession of Identifying Information	1
Manufacture/Delivery of Controlled Substance	3
Possession of a Controlled Substance	30
Prohibited Substance/Item in Correctional/Civil Commitment Facility	1
Smuggling of Persons	373
Tamper/Fabricate Physical Evidence with Intent to Impair	1
Unauthorized Use of Vehicle	12
Unlawful Carrying Weapon	1
Unlawful Possession Firearm by Felon	3
Total	643

Within TDCJ facilities, the agency ensures that detainees can meet with their attorneys and participate in virtual court appearances, citing 17,508 attorney visits since the onset of the OLS mission. The overwhelming majority of these attorney-client visits were conducted virtually. Of the 7,307 individuals that TDCJ has held in custody since OLS began, 5,591 were not U.S. citizens and have bonded out or completed their sentence and subsequently been released back to the county of arrest to be processed by the United States Border Patrol or United States Immigration and Customs Enforcement (ICE).³⁷⁹ Non-citizens who complete their state detainer are also turned over to Border Patrol or ICE, where state tracking of the individual ends.

³⁷⁷ *Operation Long Star Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022) (written testimony of Bryan Collier, TDCJ).

³⁷⁸ Information from the Department of Criminal Justice, December 8, 2022.

³⁷⁹ Information from the Texas Department of Criminal Justice, December 8, 2022.

Figure 9

Nationality of Confinees as of December 8, 2022	
Belize	1
Bolivia	1
Cameroon	1
Columbia	1
Cuba	15
Dominican Republic	2
Ecuador	1
El Salvador	19
Guatemala	25
Honduras	49
Jordan	1
Mexico	150
Nicaragua	3
Panama	1
Singapore	1
Spain	1
USA	369
Venezuela	2

For the past two years, the federal government has turned away migrants at the U.S.-Mexico border, including those who are seeking asylum, using a public emergency health order designed to slow the spread of communicable diseases, such as COVID-19, across international borders, known as "Title 42." Title 42 was launched by President Donald Trump's administration at the start of the pandemic and continued under the Biden administration. Although the Biden administration attempted to end Title 42 in May of 2022, a federal court blocked the policy's termination on administrative grounds, which the Biden administration announced its intention to appeal in December.³⁸⁰ Because the influx of illegal immigration has increased across the border since the federal government's attempt to lift Title 42, Governor Abbott directed TDEM to transport migrants on buses to various locations across the country. These illegal immigrants have been processed and released from federal custody and volunteer to travel to communities outside of

Texas.³⁸¹ As of December 7, over 14,200 migrants have volunteered to depart Texas on more than 320 buses to Washington D.C., New York City, Philadelphia and Chicago.³⁸² Transporting thousands of migrants outside of the state has provided relief to many of the Texas border communities.

Finally, HB 9 provided \$3.7 million to the Border Prosecution Unit (BPU). The BPU is a collaboration among 17 District Attorney Offices and 49 counties to more effectively investigate and prosecute border-related offenses along the border as well as in counties that are significantly affected by border-related crimes. The BPU program provides close collaboration, communication, and coordination between state prosecutors and DPS. BPU lawyers work with their DPS counterparts daily to identify and disrupt the criminal organizations operating in the border region. These additional resources have provided for 51 additional BPU-supported attorneys, among whom 11 are stationed at Texas Anti-Gang Units throughout the state; three are dedicated to human trafficking and smuggling cases; and five prosecute other OLS-related charges.³⁸³

The BPU has provided almost all of the prosecutorial support for the 5,725 criminal trespass arrests from the beginning of OLS through December 1, 2022. During the same period, prosecutions in human smuggling felony cases have increased, primarily in Val Verde and Kinney counties. In Val Verde County, BPU reports that the number of human smuggling cases increased from four in fiscal year

³⁸⁰ What is Title 42, the COVID border policy used to expel migrants? CBS News, August 16, 2022. <https://www.cbsnews.com/news/title-42-immigration-border-biden-covid-19-cdc/>; <https://www.documentcloud.org/documents/23389489-notice-on-intention-to-appeal-title-42-ruling-from-biden-admin>.

³⁸¹ Press Release concerning the end of Title 42 Expulsions, April 6, 2022, <https://gov.texas.gov/news/post/governor-abbott-takes-aggressive-action-to-secure-the-border-as-president-biden-ends-title-42-expulsions>.

³⁸² Information from Texas Division of Emergency Management, December 8 2022.

³⁸³ *Operation Lone Star Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022) (testimony of Chairwoman Tonya Ahlschwede, District Attorney - 452nd Judicial District, BPU). https://tlcenate.granicus.com/MediaPlayer.php?view_id=52&clip_id=16996.

2020 to 598 in fiscal year 2022. In Kinney County, smuggling cases skyrocketed from 64 to 3,045 in the same period. Similar trends are also occurring in areas near the border, including the 112th Judicial District covering Pecos, Crockett, and Sutton counties.³⁸⁴ *Figure 10* further details the caseload growth at the BPU resulting from the OLS mission.³⁸⁵

Figure 10

BPU Measure	FY19	FY20	FY21	FY22 (Q1–Q3)
# / cases filed.	6,241	7,477	8,593	12,801
# / cases prosecuted.	5,746	5,700	6,360	8,055
# / cases resulting in convictions or community supervision	3,255	2,695	3,379	4,333
# / cases dismissed.	1,204	1,271	1,905	1,412
# / cases referred by federal agencies for state prosecution.	505	413	429	949
# / cases referred for federal prosecution.	169	162	212	222

Technology and Equipment

Terrain and vegetation challenges along the Texas border with Mexico require Texas law enforcement and military personnel to rely on technology to identify, assess, and respond to threats. Two key components of Texas' technology-based border security efforts are motion-activated game cameras used as part of the long-standing "Operation Drawbridge" mission along the border and the use of Unmanned Aerial Systems (UAS) to spot and observe illicit border activity. Stationary camera-based surveillance has been utilized by Texas since 2007, and in 2021, SB 1 included \$7 million for Operation Drawbridge camera purchases and maintenance costs. Furthermore, HB 2 appropriated an additional \$10 million for the same purpose. Currently, approximately 5,500 cameras send detection alerts instantaneously to Border Patrol, DPS, and other border law enforcement agencies who can respond with situational awareness to these alerts. Since the beginning of OLS, Operation Drawbridge has detected more than 730,000 individuals exploiting the international border and has resulted in the apprehension of more than 415,000 illegal immigrants. DPS also credits Operation Drawbridge with assisting in the seizure of more than 20 tons of narcotics.³⁸⁶

More recently, Texas law enforcement has adopted the use of Unmanned Aerial System (UAS) devices - often referred to as drones - to aid surveillance, tracking, and apprehension along the border. Appropriations made by the Legislature in 2021 include \$1.5 million for UAS equipment at DPS, and TMD reports having spent \$75,000 for the same purpose through the summer of 2022. These devices have clearly become a strong weapon to combat illegal activity along the border, especially at night when visibility is limited.

Carrizo Cane Management

The Carrizo Cane Eradication Program was established in 2015 to control cane along the Rio Grande

³⁸⁴ Information from Border Prosecution Unit, August 16, 2022.

³⁸⁵ Information from the Border Prosecution Unit, August 29, 2022.

³⁸⁶ Information from Department of Public Safety, August 12, 2022.

River to assist law enforcement by improving landscape visibility along the international border with Mexico.³⁸⁷ Staffed with two full-time positions and three contract positions, the program contracts out most eradication work to third-party providers. Cane is primarily treated with herbicide applied with the assistance of helicopters, drones, and boats at no cost to landowners. The program has been appropriated close to \$3 million each biennium since 2017, with some supplementation from the Office of the Governor. As the program has become more established, treated acreage has increased as additional land use agreements are executed with landowners.

A major challenge of the state's Carrizo Cane Eradication Program includes minimal partnerships with federal agencies responsible for managing portions of the land along the border. The Soil and Water Conservation Board reports that there is little engagement in cane management from the federal agencies responsible for managing wildlife refuges along the border, or, in other instances, the use of mechanical treatment by the federal government has been inefficient, temporary, and even aided in the spread of cane seeds.³⁸⁸

Cane Acres Treated*	
FY2016	760
FY2017	2,727
FY2018	64.4
FY2019	3,529
FY2020	6,047
FY2021	7,875
FY2022	7,988

**Texas State Soil and Water Conservation Board reports annual acres treated varies with seasonal weather shifts and landowner agreement executions.*

Border Barriers

A physical barrier along the United States and Mexico border serves as both a deterrent to illegal transport of people, drugs, or weapons, and redirects migrants toward lawful ports of entry. Under the Biden administration, the federal government has refused to move forward with constructing border barriers on land that was previously seized through condemnation powers for that purpose. Because federal efforts to construct a barrier along the border have halted, Governor Abbott demanded that the federal government return to Texans any land seized for border wall purposes. Part of the OLS mission is now to prioritize the construction of a border barrier.³⁸⁹ To illustrate these efforts, *Figures 11 and 12* highlight the total mileage of the state's border with Mexico; the portions on which a previously constructed or natural barrier already exists; and the miles identified for which the Texas Border

³⁸⁷ TEX. AG. CODE § 201.0225.

³⁸⁸ Texas State Soil and Water Conservation Board Carrizo Cane Eradication Program Update, June 29, 2022.

³⁸⁹ Governor Greg Abbot letter to President Joe Biden Jr, June 16, 2021. <https://gov.texas.gov/uploads/files/press/BidenJoseph.pdf>.

Infrastructure (TBI) project, managed by the Texas Facilities Commission (TFC), is needed.³⁹⁰ TFC is the lead agency for construction of the permanent wall, while TMD is lead agency for constructing temporary fencing.

Figure 11

Texas Border Infrastructure Mileage Chart							
Category	Mileage					Mileage Totals	
	El Paso Sector	Big Bend Sector	Del Rio Sector	Laredo Sector	RGV Sector		
Existing							
Secure Fence Act of 2006 (Bush Presidency)	11.6	2.0	3.3	0.0	57.4	74.3	
2017 Executive Order 13767 (Trump Presidency)	42.4	0.0	0.7	0.0	22.6	65.7	
Natural Barrier	0.0	132.7	23.2	24.0	0.0	179.9	
Subtotals Existing	54.0	134.7	27.2	24.0	80.0	319.9	
Identified							
TBI Short Term (Texas funds appropriated)	0.0	0.0	10.1	16.3	18.1	44.5	
TBI Long Term (No funding)	37.1	343.5	170.5	126.0	83.7	760.8	
Subtotals Identified	37.1	343.5	180.7	142.2	101.8	805.3	
Totals							
Total Barrier - Natural, Existing & TBI Identified	91.1	478.2	207.9	166.2	181.8	1125.2	
Miles of Border (River length)	100.3	537.5	225.3	178.8	212.1	1254.0	

Note: 1.6 Miles of TBI Completed as of 6 July 2022

Figure 12



³⁹⁰ Operation Lone Star Charge: Hearing Before the S. Committee on Finance, 87th Interim (Tex. 2022) (written testimony of Mike Novak, TFC).

OLS border barrier efforts began with a \$250 million transfer from TDCJ to the Office of the Governor's Disaster Fund to initiate the construction of physical barriers on "voluntarily donated private and public lands."³⁹¹ HB 9 reimbursed TDCJ for the \$250 million advance and appropriated an additional \$750 million for border barriers including temporary fencing, an intermediate barrier, and permanent wall. However, HB 9 prohibited the use of eminent domain by the state to acquire private property to build a barrier.³⁹² Therefore, both TMD and TFC must secure land access and use agreements with private landowners along the Texas border with Mexico before initiating construction of any barrier. Because of their local connections, DPS has been instrumental in working with local landowners in securing these agreements. Further complicating the effort to establish barriers is the terrain along the extensive international border, which greatly impacts both the production rate and cost per mile of border barrier construction, as outlined in *Figure 13* below.³⁹³

Figure 13

Level Of Complexity	Production Rate with 4 Crews	Est. Cost per Mile (\$M) Range	Description
LOW	9 days/mile	16.5-21	Flat terrain, steel bollard construction, easily accessible
MEDIUM	17.5 days/mile	19-24	Mountainous Terrain, steel bollard Construction; difficult accessibility
HIGH	34 days/mile	32-41	Levee Wall / Steel Bollard Combo; complex drainage structures; rock or sand; utility conflicts; difficult accessibility based on higher population density

As of December 8, 2022, TMD reports having completed construction of 71.1 miles of temporary fencing and has laid out 47.86 miles of concertina wire which is rolled out upon request of landowners. TDCJ inmates are producing the razor wire and fencing that is installed by TMD along the border, and Texas Correctional Industries (TCI) has delivered 32 miles of fencing and 183,875 feet of razor wire to support the construction of border barriers.³⁹⁴

For the permanent wall construction, TFC is utilizing excess steel border wall panels secured through the federal surplus program and has completed 1.6 miles of permanent wall as of July 6, 2022. An additional 12.8 miles worth of steel panels was secured in July 2022, after the federal government halted its southern U.S. border wall construction efforts in January 2021.³⁹⁵ Within existing appropriations, and utilizing \$55 million in privately donated funds, TFC reports that it will complete 40-45 miles of permanent border barrier, divided into five projects (*Figure 14*) at an average cost of \$20 million per mile.³⁹⁶

³⁹¹ Governor Greg Abbott letter to TDCJ Executive Director Bryan Collier, June 16, 2021. <https://gov.texas.gov/uploads/files/press/O-CollierBryan202106162544.pdf>.

³⁹² Tex. H.B. 9, 87th Leg., S. C. S., (2021).

³⁹³ *Operation Lone Star Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (written testimony of Mike Novak, TFC).

³⁹⁴ Information from Texas Military Department, December 8, 2022; Information from the Texas Department of Criminal Justice, December 8, 2022.

³⁹⁵ <https://www.tfc.texas.gov/wall/>.

³⁹⁶ *Operation Lone Star Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Tex. 2022)* (written testimony of Mike Novak, TFC).

Figure 14



Local Support

The cooperation and collaboration with local communities along Texas' border with Mexico are critical to the success of the OLS mission. HB 9 provided \$100 million for grants to local governments to supplement law enforcement surge operations in support of OLS; expand detention capacity; support the humane processing of the remains of undocumented migrants; increase capacity and expediency in the magistration and criminal trials of OLS defendants; and to supplement indigent defense expenses for OLS defendants.³⁹⁷ HB 9 also requires \$28 million of the \$100 million appropriation to be dedicated to counties adjacent to the international border. As of July 6, 2022, \$58 million had been awarded to eligible local entities and an additional \$30 million was made available for cities and counties in the third quarter of 2022.³⁹⁸

SB 1 also included financial support targeted to local governments affected by the increased border activity. This included \$1 million to the Office of the Governor Trusteed Programs for grants to border-zone fire departments to assist with the purchase of specialized equipment, maintenance and medical supplies for first responders, and \$15.1 million for border prosecution grants. These local partnerships with state agencies remain a critical aspect of OLS.

Recommendations

Border Security and immigration are primary federal responsibilities. However, continued inaction and non-responsiveness from the federal government to address the current border crisis has forced Texas to lead the way in taking proactive, constructive measures toward securing its border with Mexico. To the extent state actions are not preempted by federal law, Texas has a duty to act to support effective border security, combat illegal immigration, and foster lawful immigration. Texas must continue to protect landowners and local communities along the border who live in fear -- having strangers cross their land and flood their communities daily.

In the last two years, Texas has taken unprecedented steps to secure our southern border, including

³⁹⁷ Governor Abbott Press Release September 20, 2021. <https://gov.texas.gov/news/post/governor-abbott-announces-operation-lone-star-grant-program-to-enhance-border-security-operations>.

³⁹⁸ Governor Abbott Press Release, July 6, 2022. <https://gov.texas.gov/news/post/governor-abbott-announces-additional-30-million-in-grants-to-boost-local-border-security-efforts>.

committing nearly \$4.4 billion in state resources to increase law enforcement activity, bolster the legal and criminal justice system, and construct a physical barrier to deter the unlawful entry of people and goods. As a result of these efforts, Operation Lone Star has apprehended over 333,294 migrants and seized over 354 million lethal doses of fentanyl as of December 1, 2022. Clearly, these actions have prevented dangerous criminals and deadly drugs from flooding into communities across America. As of December 1, 2022, the multi-agency effort has also led to more than 22,648 criminal arrests, with more than 20,236 felony charges reported.

Moving forward, the state must continue to make every reasonable effort to secure the border through the presence of law enforcement, the targeted use of technology to enhance the efforts of state and local personnel, and the construction of a physical barrier where appropriate. State and local agencies must continue to work together to stop the smuggling of drugs, weapons, and people into Texas, and prevent, detect, and interdict transnational criminal behavior between ports of entry. Hopefully, the federal government will eventually adopt and fund the successful initiatives that Texas is implementing to ensure long-term sustainability of securing the border.

Charge No. 10

***Long-term Care Funding:** Examine state investments in the long-term care system. Study nursing facility funding issues and the impact of the pandemic on capacity and delivery of care. Explore nursing facility quality metrics and recommend strategies to improve the sustainability of the long-term care workforce.*

Background

As part of the state's Medicaid program, Texas provides long-term services and supports to eligible children and adults who have physical, mental, or developmental disabilities and people aged 65 and older. Long-term services make up roughly 31 percent of all Medicaid services.³⁹⁹ Some of these services and supports are provided in institutional settings, such as nursing facilities. Texas Medicaid contracts with over 1,200 nursing facilities and in 2021, Medicaid covered over 49,000 nursing facility residents per month costing the state an annual \$2.6 billion in All Funds.⁴⁰⁰ Of all nursing facility residents in the state, 62 percent are covered by Texas Medicaid. Other long-term care services are provided in the client's home or community at a cost of over \$7 billion annually in All Funds.⁴⁰¹

COVID-19 had a substantial impact on the long-term care system in Texas, especially in congregate institutional settings such as nursing facilities. To prevent and control transmission of COVID-19 to vulnerable long-term care patients and staff, providers encumbered significant additional operating expenses, such as purchasing personal protective equipment (PPE) at inflated prices and paying staff bonuses to recruit and retain staff. Enhanced regulatory requirements have continued, such as masking requirements and routine COVID-19 testing of residents. From January 2020 through January 2021, nursing facilities saw more than a ten percent decrease in resident census, resulting in some reduced costs for providers, but also immediate decreased revenue for these operations.⁴⁰²

COVID-19 Provider Funding

To offset pandemic-related expenses for health care providers, Congress approved significant COVID-related relief funding available to health care providers through various pieces of federal legislation. The following are examples of major federal pandemic-related relief funding for health care providers:

- **Provider Relief Fund** was established in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and augmented in the Paycheck Protection Program and Health Care Enhancement Act and the Consolidated Appropriations Act in 2021 to reimburse eligible health care providers for increased expenses or lost revenue attributable to COVID-19. Texas providers have received over \$9 billion in Provider Relief Funds as of June 2022.⁴⁰³

³⁹⁹ *Long-term Care Funding Charge: Hearing Before the S. Comm on Finance*, 87th Interim (Texas, 2022)(supplemental materials from the Texas Health and Human Services Commission).

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *PRB Provider Relief Fund General Information FAQ*, HEALTH RESOURCES & SERVICES ADMINISTRATION, <https://www.hrsa.gov/provider-relief/faq/general#:~:text=Provider%20Relief%20Fund%20payment%20amounts,must%20be%20returned%20to%20HHS> (last visited Sept. 20, 2022).

- **Paycheck Protection Program**, authorized by the CARES Act, provided loans for businesses, including long-term care providers, to keep their workforce employed. Many borrowers, including long-term care providers, are eligible for loan forgiveness.⁴⁰⁴
- **Economic Injury Disaster Loans** were provided as a federal small business loan program to support small business' recovery from COVID-19.⁴⁰⁵
- **Federal Emergency Management Agency (FEMA)** sent nursing facilities PPE supplies and testing equipment. FEMA also provided reimbursement for state-funded direct-care staff at certain nursing facility operations.⁴⁰⁶
- The **Federal Medical Assistance Percentage (FMAP)** was temporarily increased in the Families First Coronavirus Response Act by 6.2 percentage points for states that: (1) maintain eligibility policies for Medicaid and continues coverage for enrolled beneficiaries; (2) do not increase individual premiums; (3) cover COVID-19 testing, services, and treatment without cost sharing; and (4) do not increase local funding requirements. This enhanced FMAP is expected to be made available to states for the duration of the federally declared public health emergency.⁴⁰⁷
- **Temporary 10 percent FMAP increase for certain Medicaid Home and Community Based Services (HCBS) Programs.** The Legislative Budget Board (LBB) approved utilizing this temporary FMAP increase to funnel an additional \$963.1 million to Texas, including \$721.2 million for one-time bonuses for HCBS providers. HCBS programs include Community Living Assistance and Support Services (CLASS); Deaf-Blind with Multiple Disabilities (DBMD); Home and Community-based Services (HCS); Texas Home Living (TxHmL); Medically Dependent Children's Program (MDCP); Youth Empowerment Services (YES); STAR+PLUS HCB; Community First Choice (CFC) services; and HCBS Adult Mental Health (HCBS AMH).⁴⁰⁸

The State of Texas has also provided increased financial assistance to long-term care providers to assist with the enhanced costs caused by the pandemic. These include:

- **Nursing Facility Temporary Rate Add-on**, which provides an average 13 percent increase, or an additional \$19.63 per resident per day rate, to Texas nursing facilities. This temporary rate increase, using freed-up General Revenue from the 6.2 percent FMAP increase, was approved by the LBB and Governor's Office in April of 2020 to be used for COVID-related expenditures for nursing facilities, including direct care staff salary and wages, PPE, and dietary needs and supplies. Between April 2020 and April 2022, nursing facilities received an

⁴⁰⁴ *Paycheck Protection Program*, U.S. SMALL BUSINESS ADMINISTRATION, <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program> (last visited Sept. 20, 2022).

⁴⁰⁵ *COVID-19 Economic Injury Disaster Loan*, U.S. SMALL BUSINESS ADMINISTRATION, <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/eidl> (last visited Sept. 20, 2022).

⁴⁰⁶ *PPE Packages for Nursing Homes*, FEMA, <https://www.fema.gov/fact-sheet/ppe-packages-nursing-homes> (last visited Sept. 20, 2022).

⁴⁰⁷ *Unwinding and Returning to Regular Operations after COVID-19*, MEDICAID.GOV, <https://www.medicaid.gov/resources-for-states/coronavirus-disease-2019-covid-19/unwinding-and-returning-regular-operations-after-covid-19/index.html> (last visited Sept. 20, 2022).

⁴⁰⁸ *Texas: Home and Community Based Services Spending Plan Narrative*, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, <https://www.hhs.texas.gov/sites/default/files/documents/texas-hcbs-spending-plan-narrative-update-20220201.pdf> (last visited Sept. 20, 2022).

additional \$772.6 million in All Funds through these rate increases.⁴⁰⁹ These facilities are expected to receive this enhanced funding stream for the duration of the federal public health emergency (PHE). If this temporary rate add-on were continued into the next biennium, the Health and Human Services Commission (HHSC) estimates a financial impact of \$340.1 million General Revenue and \$847.3 million All Funds for fiscal years 2024-2025.⁴¹⁰

- **Provider Grant Funding Pool** was established in Senate Bill 8 (87-3) to ensure long-term care providers have the funding necessary to provide for COVID-related staffing expenses. The Texas Legislature appropriated a total of \$378.3 million from the Coronavirus State Fiscal Recovery Fund (established in the American Rescue Plan Act) as follows:
 - \$200 million for nursing facilities; and
 - \$178.3 million for assisted living facilities, community attendants, intermediate care facilities, and home health agencies.⁴¹¹
- **State of Texas Assistance Request (STAR)** allows organizations such as nursing facilities to request additional direct-care staffing such as nursing staff during the COVID-19 pandemic. Emergency staffing is temporary, and only approved for facilities that cannot provide necessary care to residents due to staffing shortages.⁴¹²

During the 87th Regular Session, the Texas Legislature established reporting requirements to increase transparency because of this enormous infusion of COVID-related funding into the long-term care system by passing Senate Bill 809 (87R) and including pertinent language in Senate Bill 1 (87R). These bills directed both HHSC and LBB to publicly report COVID-19 federal funds that were appropriated and distributed to Texas healthcare providers. Thus far, Texas providers have reported \$12.8 billion in federal COVID-19 funds to HHSC. However, this only accounts for those that self-reported. As of August of 2022, less than half of the 14,000 providers required to report in Texas submitted information to HHSC.⁴¹³

Discussion

Nursing Facility Medicaid Funding

State funding for nursing facilities is primarily provided through the state's Medicaid program. Nursing facility payments consist of a per person, per day Medicaid base rate, supplemental payments, separate payments for certain services, and optional add-on payments. Below, *Figure 1* includes all funding streams that nursing facilities receive and compares those funds to the average methodological rate, which is the rate HHSC calculates to reflect fully funding the average cost of nursing facility care.

⁴⁰⁹ *Long-term Care Funding Charge: Hearing Before the S. Comm on Finance, 87th Interim (Texas, 2022)*(testimony from the Legislative Budget Board).

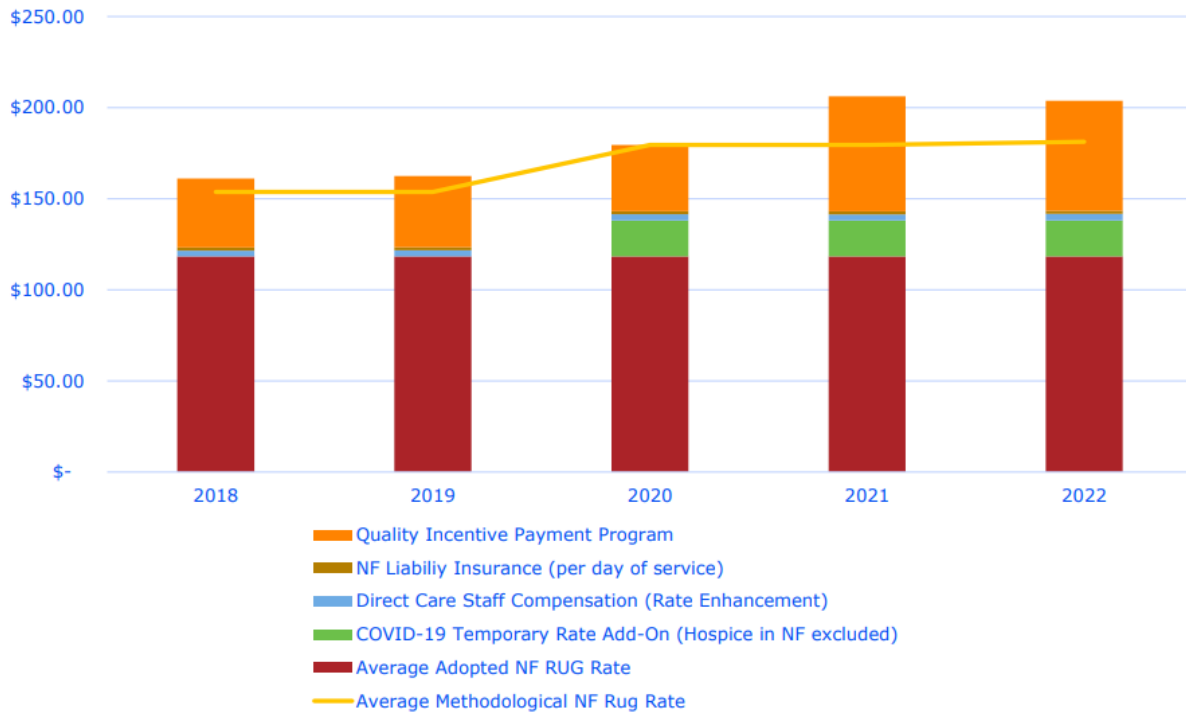
⁴¹⁰ *Id.*

⁴¹¹ Texas, S.B. 8, 87th Leg., S.S.-3 (2021).

⁴¹² *STAR Users Guide*, TEXAS DIVISION OF EMERGENCY MANAGEMENT, <https://star.tdem.texas.gov/> (last visited Sept. 20, 2022).

⁴¹³ *Coronavirus Disease (COVID-19) Public Health Emergency Reporting*, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, <https://www.hhs.texas.gov/sites/default/files/documents/covid-19-emergency-reporting-june-2022.pdf> (last visited Sept. 20, 2022).

Figure 1: Nursing Facility Daily Rates by Year⁴¹⁴



As shown in *Figure 1*, since fiscal year 2018, nursing facilities have received more funding for their Medicaid population than HHSC's calculated average cost of care (Average Methodological NF Rug Rate). In fact, in fiscal year 2022, funding for nursing facilities exceeded HHSC's methodology to fully fund the Medicaid rate by \$591.8 million, or 19 percent.⁴¹⁵ Furthermore, this does not include any funding the nursing facilities put up as IGT to draw down federal dollars through the Quality Incentive Payment Program (QIPP), which HHSC estimates to be approximately \$400 million annually. It also does not include federal and local COVID-19 funding that was awarded directly to nursing facilities, which has been self-reported by facilities to account for \$746.9 million.⁴¹⁶

Nursing Facility Resident Census

Occupancy rates for nursing facilities dramatically dropped due to COVID-19. As seen below in *Figure 2*, occupancy rates averaged 67.4 percent in 2019 and dropped even further to 56.2 percent in 2021. These lower occupancy rates often resulted in facilities receiving less revenue to cover increased expenses during the height of the COVID-19 pandemic. However, the nursing facility statewide census is slowly improving, with 60 percent occupancy in early 2022.⁴¹⁷

⁴¹⁴ *Long-term Care Funding Charge: Hearing Before the S. Comm. on Finance, 87th Interim (Texas, 2022)* (testimony from the Health and Human Services Commission).

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

Figure 2: Occupancy Trends for Nursing Facilities⁴¹⁸

Fiscal Year	Number of Occupants Nursing Facilities	Occupants: Percent Growth/ Loss	Occupancy Rates Nursing Facilities
2012	92,844	+6.1%	68.8%
2013	93,764	+1.0%	69.0%
2014	94,591	+0.9%	69.1%
2015	93,588	-1.1%	68.1%
2016	92,943	-0.7%	67.4%
2017	93,106	+0.2%	66.8%
2018	92,121	-1.1%	65.6%
2019	92,965	+0.9%	67.4%
2020	78,919	-17.8%	57.1%
2021	77,650	-1.6%	56.2%
Percent Change FY 2012 to 2021	NA	-16.4%	NA

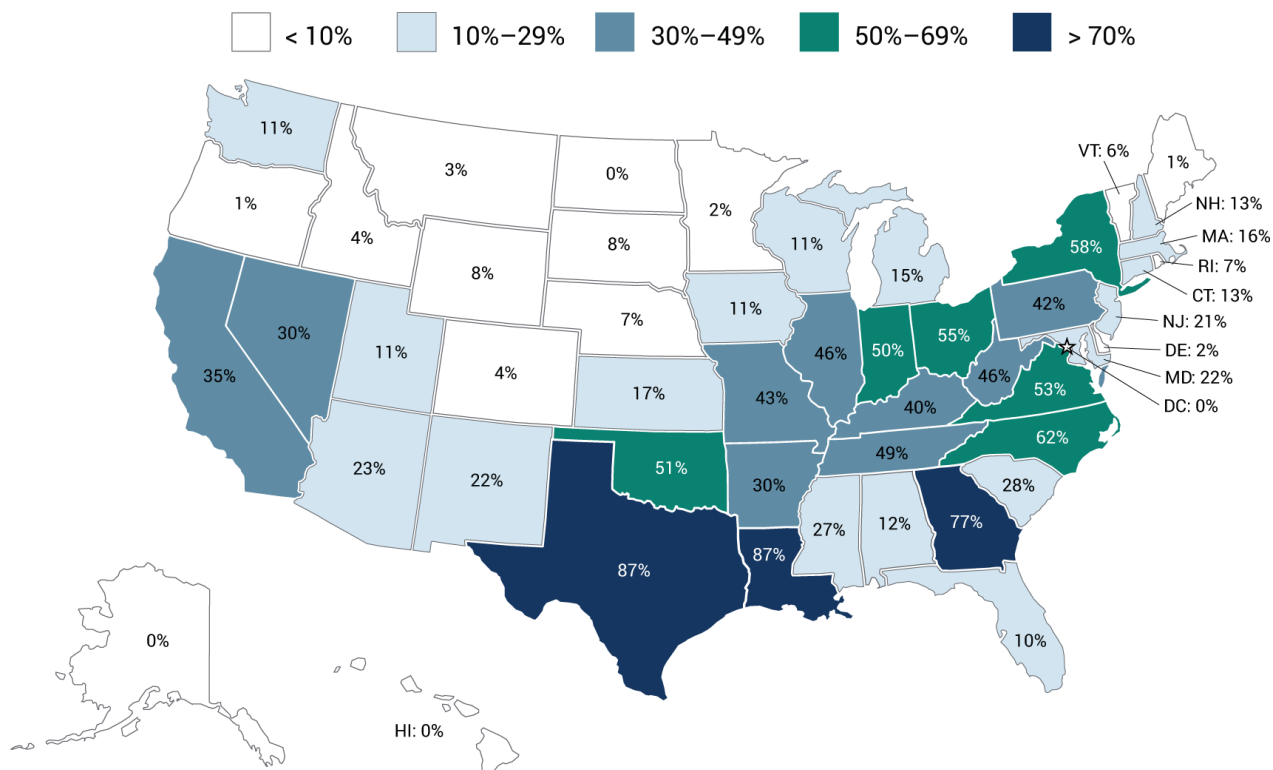
Long-Term Care Workforce

Across almost every industry, staffing is a challenge, and the healthcare sector is no different. Recruiting and retaining healthcare staff is a nationwide challenge that has been exacerbated by the COVID-19 pandemic. Long-term care providers, including nursing facilities, continue to report high turnover and vacancy rates for registered nurses and direct-care staff. Texas nursing facilities continue to struggle with staffing requirements as Texas continually ranks as one of the lowest states on the federal Centers for Medicare and Medicaid Services (CMS) 5-Star Quality Rating System. This federal ranking gives each nursing home a rating between 1- and 5-stars (5 stars have above average quality and 1-star are much below average quality). As shown below in *Figure 3*, in 2019, 87 percent of Texas nursing facilities were ranked 1- or 2-star on CMS' 5-star staffing measures.⁴¹⁹

⁴¹⁸ *Id.*

⁴¹⁹ *State Policy Levers to Address Nursing Facility Staffing Issues*, THE MEDICAID AND CHIP PAYMENT AND ACCESS COMMISSION, <https://www.macpac.gov/wp-content/uploads/2022/03/State-Policy-Levers-to-Address-Nursing-Facility-Staffing-Issues.pdf> (last visited Sept. 20, 2022).

Figure 3: Share of Nursing Facilities with 1- or 2-Star CMS Staffing Ratings by State in 2019⁴²⁰



An appropriate level of staffing at long-term care facilities, such as nursing facilities, is directly correlated with improved quality of care for residents. For example, studies have found that higher Registered Nurse (RN) staffing levels were associated with fewer pressure ulcers, decreased urinary tract infections, reduced emergency department (ED) use, fewer hospitalizations, and decreased mortality. Although RN staffing has the strongest link to quality, higher levels of total direct-care staffing are also associated with improved outcomes.⁴²¹ To address this problem, the Texas Legislature has invested heavily in staffing incentive programs and has directed HHSC to improve long-term care staffing levels. Examples of state investments in long-term care staffing include:

- **Nursing Facility Direct-Care Staff Enhancement Program:** Funding for fiscal year 2022 is \$56.2 million, which is based on provider requested levels of participation and legislative appropriations. Providers in this program agree to spend 85 percent of total attendant revenues on attendant compensation. Participation in this program is voluntary, and nursing facilities are eligible for increased funding if the facility maintains a certain direct-care staff level for

⁴²⁰ *Id.*

⁴²¹ Dellefield, et. al, (2015). The Relationship Between Registered Nurses and Nursing Home Quality: An Integrative Review, *National Library of Medicine*, <https://pubmed.ncbi.nlm.nih.gov/26281280/> (last visited Sept. 20, 2022).

registered nurses, licensed vocational nurses, certified nurse aides, and/or medication aide staffing. There are 27 levels at which a facility can participate with different staffing requirements, and the average add-on rate for this program is \$3.49 per day, which is in addition to the Medicaid base rate and other funding streams nursing facilities receive. In fiscal year 2022, over 81 percent of nursing facilities participated in this program at various staffing levels. Some have advocated for the Legislature to increase state funding to this program, as facilities are currently capped by appropriations on what level they can participate in this program. Fully funding the program would cost approximately \$411.9 million General Revenue and \$614.5 million All Funds.⁴²²

- **Community Care Attendant Compensation Rate Enhancement Program:** This program includes various Medicaid provider groups, including Community Living Assistance and Support (CLASS), Primary Home Care (PHC), Day Activity and Health Services (DAHS), Deaf-Blind with Multiple Disabilities (DBMD), Residential Care (RC), Home and Community-based Services (HCS), and Intermediate Care Facilities (ICF). Funding for fiscal year 2022 is \$182.5 million, which is based on provider requested levels of participation and legislative appropriations. Providers in this program agree to spend 90 percent of total attendant revenues on attendant compensation. Participation in this program is voluntary. There are 35 levels at which a provider can participate with different staffing requirements, and participation across various Medicaid Waiver programs varies from 60 percent to over 90 percent of providers participating in this program.⁴²³

Nursing Facility Quality of Care and Metrics

As mentioned above, Texas nursing facilities continue to be some of the lowest ranking facilities across the nation in terms of the federal CMS 5-Star Quality Rating System and has a higher percentage of 1- and 2-star nursing facilities than any other state. This was a trend prior to the COVID-19 pandemic, and it has continued. Nursing facilities are regulated by the federal government, but HHSC monitors quality of nursing facilities through three primary efforts:

1) Quality Incentive Payment Program (QIPP): This voluntary program provides a substantial \$1.1 billion annually to nursing facilities statewide based on quality benchmarks and innovation in services. Approximately 900 out of Texas' 1200 nursing facilities participate. Annual funding for the QIPP program has increased dramatically from \$200 million in fiscal year 2018 to the current funding pool of \$1.1 billion, a 450 percent increase. QIPP measures include:

- *Quality Assurance and Performance Improvement (QAPI):* Requires a facility hold a monthly QAPI meeting in accordance with CMS requirements and implementation of a facility's federally required improvement projects to examine performance and make needed improvements.
- *Workforce Development:* Requires facilities to maintain registered nurse staffing hours above federal requirements and develop a workforce development program to monitor workforce-related outcomes.
- *CMS Quality Measures:* Funding contingent on CMS quality measures, including percentage

⁴²² *Overview of Nursing Facility Direct Care Staff Enhancement Program & Accountability*, Texas Health and Human Services Commission, <https://pfd.hhs.texas.gov/sites/rad/files/documents/long-term-svcs/nf-enh-overview.pdf> (last visited Sept. 20, 2022).

⁴²³*Id.*

of residents with pressure ulcers, received antipsychotic medication, residents whose ability to move independently has worsened, and residents who have a urinary tract infection. Facility-specific targets are calculated as improvements upon a facility's initial baseline.

- *Infection Control*: Requires facilities to have active infection control programs.⁴²⁴

HHSC monitors these measures quarterly, and failure to meet these benchmarks results in a facility not receiving funding from this program. Additionally, HHSC is currently reviewing and revising its QIPP measures to include new measures making improvements to staff-to-patient ratios, with a goal of incorporating these new measures into QIPP by fiscal year 2024.

2) Managed Care Organization (MCO) Quality Measures: HHSC reviews quality measures to assess improvement outcomes for MCOs serving nursing facility members such as preventable emergency room and hospital visits, and medical preventative care.⁴²⁵

3) Quality Monitoring Program (QMP): This HHSC program helps detect conditions in nursing facilities that would be detrimental to the health, safety, and welfare of residents. QMP monitors focus on facilities that have a history of resident care deficiencies or have a higher-than-average risk of being cited during quality visits. During these visits, monitors make recommendations on policies and procedures, training opportunities, and offer technical assistance and educate staff about evidence-based best practices.⁴²⁶

These three quality programs are imperative to ensure our most vulnerable Texans are placed in residential settings where they are safe and receive quality care and support. During the COVID-19 pandemic, the Centers for Medicare and Medicaid Services (CMS) waived certain reporting requirements for nursing facilities, which included some quality measures used by HHSC for QIPP and other nursing facility quality programs. Because CMS waived certain reporting requirements, HHSC is currently analyzing how nursing facility quality measures were impacted during the pandemic.⁴²⁷

Recommendations

Long-term care facilities and agencies were negatively impacted by the COVID-19 pandemic. However, the total amount of COVID-19 funding received by operators directly from federal and local government sources has not been fully disclosed. Furthermore, the current impact of COVID-19 on nursing facilities and other long-term care operations is diminishing as positivity rates have significantly decreased.

The Legislature should continue monitoring the ongoing costs of COVID-19 on long-term care providers while also tracking additional funding that providers have received at the local, state, and federal level since the beginning of the pandemic. Long-term care providers have received enormous infusions of COVID-related funding in a short amount of time. The 87th Legislature required additional transparency pertaining to the amount of COVID-related federal funding providers have

⁴²⁴ *Long-term Care Funding Charge: Hearing Before the S. Comm on Finance, 87th Interim (Texas, 2022)*(testimony from the Texas Health and Human Services Commission).

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ *Id.*

received, but self-reported data has proved insufficient, as many providers choose to not report.

Furthermore, the Legislature should monitor the ongoing impact of COVID-19 on providers and acquire analysis from HHSC on the impact on quality of care during, and in the aftermath of, the pandemic. If the Legislature determines that additional financial support is needed, provider funding should be directly tied to enhanced quality of care and improving the direct-care workforce at those facilities and organizations.

Finally, the Legislature should evaluate the current investments in nursing facility quality programs and determine how future investments can result in better outcomes for both residents and long-term care staff. Based on expert reports, nursing facility quality of care is lacking in many Texas facilities. Although the Legislature has dedicated a significant amount of funding the past several sessions, it must determine additional methods to improve the quality of care for this vulnerable population. These Texans deserve nothing less.

Charge No. 11

***Medicaid:** Monitor the financial impact of federal decision-making affecting supplemental Medicaid funding for Texas hospitals and health care systems, including negotiations between the Centers for Medicare and Medicaid Services and the Texas Medicaid agency regarding the state's 1115 Medicaid waiver and other federal proposals reducing supplemental funding streams for Texas.*

Background

The Healthcare Transformation and Quality Improvement Program, or “1115 Waiver”, originated in Section 1115 of the federal Social Security Act⁴²⁸, which gives authority to the Secretary of the U.S. Department of Health and Human Services (HHS) to waive specific provisions of major health and welfare programs, including Medicaid and the Children's Health Insurance Program (CHIP). Section 1115 permits the Secretary to allow states to use federal Medicaid and CHIP funds in ways that federal rules do not otherwise allow if the Secretary determines that the initiative is an “experimental, pilot, or demonstration project” that “is likely to assist in promoting the objectives of the program.” States can obtain “comprehensive” Section 1115 waivers that make broad changes in Medicaid eligibility, benefits, provider payments, and other program rules across their programs.⁴²⁹

Federal costs under an 1115 Waiver must not exceed what federal costs would have been for that state without the waiver. In other words, a state's waiver must be budget neutral. Generally, the federal government establishes a per member per month cap on federal funds under the waiver. The Centers for Medicare and Medicaid Services (CMS) generally approves Medicaid waivers for three to five years, although it has approved waivers for a duration of up to ten years.⁴³⁰

Discussion

Initially approved in 2011, the waiver for Texas is currently set to expire in 2030. Through the 1115 Waiver, Texas continues to expand risk-based managed care statewide, support the development and maintenance of a coordinated care delivery system, improve outcomes while containing cost growth, and transition to quality-based payment systems across managed care and hospitals.

History of Texas' 1115 Waiver

In 2011, Senate Bill 7 (82R) directed HHSC to preserve federal hospital funding historically received as supplemental payments under the upper payment level (UPL) program. UPL payments were supplemental payments made to offset the difference between what Medicaid pays for a service and what Medicare would pay for the same service. House Bill 1 (82R) and Senate Bill 7 (82R) also instructed the Texas Health and Human Services Commission (HHSC) to expand its use of Medicaid managed care. Federal regulations issued by the CMS prohibit UPL payments to providers in managed care. Therefore, CMS advised HHSC that in order to continue the use of local funding to

⁴²⁸ 42 U.S.C. § 1315.

⁴²⁹ *About Section 1115 Demonstrations*, MEDICAID.GOV., <https://www.medicaid.gov/medicaid/section-1115-demonstrations/about-section-1115-demonstrations/index.html> (last visited Sept. 19, 2022).

⁴³⁰ *Medicaid Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Tex. 2022) (testimony from the Texas Health and Human Services Commission).

support supplemental payments to providers in managed care, the state should employ a waiver of the Medicaid state plan as provided by Section 1115 of the Social Security Act. In 2011, HHSC submitted, and CMS approved, a proposal for a five-year 1115 Waiver. Furthermore, in December 2017, CMS approved a five-year extension of the waiver through September 30, 2022. The Texas 1115 Waiver provides the federal authority for operations of most of the state's Medicaid managed care programs, certain provider supplemental payment programs, and uncompensated care pools for hospitals and other providers.⁴³¹ Since 2011, Texas' Waiver has consisted of two major funding pools:

- **Uncompensated Care (UC)**, which provides hospitals with funding for uncompensated care delivered to patients without insurance;⁴³² and
- **Delivery System Reform Incentive Payment Program (DSRIP)**, which provided communities with funding for innovative health care initiatives for both Medicaid and underinsured/uninsured individuals. DSRIP initiatives were tied to providers meeting certain performance metrics, and was intended to be a short-term program, with the goal of DSRIP funded projects becoming self-sustaining. The Texas DSRIP program ended in September 2021.

For the first five years of the waiver, which began in fiscal year 2012, combined UC and DSRIP funding totaled \$29 billion All Funds, with \$17.6 billion allocated for UC and \$11.4 billion allocated for DSRIP. For the first two years of the extension, the UC pool was \$3.1 billion and \$3.87 billion each year thereafter.⁴³³

The DSRIP pool was negotiated with CMS to end in fiscal year 2021. Part of the terms and conditions under Texas' 1115 Waiver was a requirement that HHSC submit a DSRIP Transition Plan to CMS by October 1, 2019 and finalize the plan by March 31, 2020. The purpose of the transition plan was to demonstrate how Texas would discontinue the DSRIP program. The DSRIP pool was originally \$2.91 billion annually, but was reduced to \$2.49 billion in fiscal year 2020, and eliminated in fiscal year 2021, with the plan of replacing DSRIP with other directed-payment programs.⁴³⁴

January 2021 Waiver Extension

In 2020, Texas began discussions with CMS for a "fast-track" extension application to re-authorize the 1115 Waiver for 10 years. "Fast-track" applications were established by CMS to facilitate a faster review of state 1115 waiver demonstrations with established programs to reduce the administrative burden on both states and the federal government.⁴³⁵ This extension was approved by CMS in January 2021, but then later rescinded in April 2021. CMS cited failure to adhere to public notice and comment requirements, to which HHSC then resubmitted in July 2021. As a result of the rescission, Texas also

⁴³¹ *Waiver Overview & Background Resources*, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, <https://www.hhs.texas.gov/regulations/policies-rules/waivers/medicaid-1115-waiver/waiver-overview-background-resources> (last visited Sept. 19, 2022).

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ *DSRIP Transition*, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, <https://www.hhs.texas.gov/regulations/policies-rules/waivers/medicaid-1115-waiver/dsrp-transition> (last visited Sept. 19, 2022).

⁴³⁵ *1115 Application Process*, MEDICAID.GOV, <https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-application-process/index.html> (last visited Sept. 19, 2022).

sued the federal government. In this court case, a federal court issued a preliminary injunction in August 2021 ruling that Texas could operate under the approved 10-year extension while the litigation continued. Later, CMS withdrew its rescission in April 2022 allowing the original 10-year extension approved in January 2021 to officially take effect.⁴³⁶

The current waiver extension extends from fiscal years 2022 to 2030, and averages \$11.4 billion per year above base expenditures. In addition, the current extension saves taxpayers an estimated \$10 billion over the 10-year timeframe.⁴³⁷ Programs included under the current extension include:

- **Comprehensive Hospital Increase Reimbursement Program (CHIRP):** New program that replaces the Uniform Hospital Rate Increase Program (UHRIP) to provide increased Medicaid payments to hospitals for inpatient and outpatient services in Medicaid. CHIRP is the successor to the existing UHRIP program for hospitals and includes \$5.2 billion in funding annually.
 - Uniform Hospital Rate Increase Program (UHRIP): This was a program that provided increased Medicaid managed care payments for hospital inpatient and outpatient services (replaced with CHIRP in Fiscal Year 22).
- **Quality Incentive Payment Program (QIPP):** Existing program that provides supplemental funding for nursing facilities based on achieving certain performance metrics and includes \$1.1 billion in annual funding.
- **Texas Incentives for Physicians and Professional Services (TIPPS):** New program for physician groups providing healthcare services to persons with Medicaid and includes approximately \$696 million in annual funding.
- **Network Access Improvement Program (NAIP):** Existing program that incentivizes health-related institutions and public hospitals to provide quality, well-coordinated, and continuous primary care for Medicaid enrolled individuals, and includes approximately \$250 million in annual funding.
- **Directed Payment Program for Behavioral Health Services (DPP BHS):** New value-based program to incentivize local mental health authorities (LMHA) to continue providing services that are aligned with the Certified Community Behavioral Health Clinic model of care to persons enrolled in Medicaid. This program includes approximately \$238 million in annual funding.
- **Rural Access to Primary and Preventive Services (RAPPS):** New program for rural health clinics that provide primary and preventive care to persons in rural areas, with a focus on the management of chronic conditions. This program includes approximately \$33 million in annual funding.

⁴³⁶ *Id.*

⁴³⁷ *1115 Waiver*, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, <https://www.hhs.texas.gov/sites/default/files/documents/about-hhs/communications-events/meetings-events/mcac/june-2021-mcac-agenda-item-5.pdf> (last visited Sept. 20, 2022).

- **Charity Care Pools:**

- Uncompensated Care: Existing pool providing payments to hospitals to reduce cost of care to uninsured individuals. This pool was recently resized and includes \$4.5 billion in annual funding.
- Public Health Provider Charity Care Pool (PHP-CCP): New pool to reimburse LMHAs for uncompensated care costs. It includes \$500 million in annual funding.⁴³⁸

Budget Neutrality

Under an 1115 Waiver, expenditures authorized under the waiver must not exceed what they would otherwise be. During renegotiations over an 1115 Waiver extension, the goal is to preserve budget neutrality. For Texas, the 1115 Waiver sustains an estimated \$7 billion per year budget neutrality for directed payment programs, in addition to the billions in funding for charity care.⁴³⁹

Budget neutrality is calculated by first estimating the “without waiver” limit. Initially this is an estimate of what a Fee-For-Service (FFS) Medicaid program would have paid, but in a mature waiver such as in Texas, it is based upon actual Medicaid managed care expenditures. Second, the “with waiver” actual expenditures are subtracted. If the “without waiver” limit is greater than the “with waiver” expenditures, it constitutes budget neutrality “room.” This room is used to fund any Medicaid rate increase, Medicaid cost growth, etc.⁴⁴⁰

In 2016, CMS began to limit the ability of states to use several years of accumulated savings for the purpose of calculating budget neutrality by only permitting states to carry forward savings from the five years prior. Accordingly, this updated policy will not allow Texas to assume as much savings over time, resulting in less budget neutrality “room” when Texas and CMS rebase late in 2022. The rebasing process evaluates how average costs have changed from the rate base year to the present date, while also accounting for inflation.⁴⁴¹

Any time the Legislature adopts a Medicaid rate increase, or expands Medicaid eligibility, it affects the budget neutrality room. Without additional action by CMS, this updated policy has the potential of limiting expansion of any new programs or rate increases as any new significant spending will further reduce budget neutrality room.⁴⁴²

Uncompensated Care Pool Re-sizing

Like the budget neutrality rebasing exercise, the uncompensated care pool for Texas is re-sized every few years. In fiscal year 2023, the pool grew from \$3.9 billion to \$4.5 billion. The next re-sizing will occur in fiscal year 2028. Hospital cost reports and Disproportionate Share Hospital (DSH) payment data is utilized during the re-sizing process.⁴⁴³

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ *Id.*

Local Provider Participation Funds (LPPFs)

Most programs under Texas' 1115 Waiver are funded with local dollars that are sent to HHSC as intergovernmental transfers (IGT) and matched with federal funds. Local dollars, otherwise known as the "non-federal share," are mostly provided to HHSC so the agency can draw down federal funds through Local Provider Participation Funds (LPPFs).

LPPFs were established by the Texas Legislature in 2013 for hospitals not operated by a governmental entity so they too can draw down federal supplemental funds. Since 2013, Texas hospitals in 28 cities and counties have legislative approval to create LPPFs so that hospitals not operating under a local hospital district can participate. Under the LPPF model, local governments impose a tax, up to 6 percent, on hospital net patient revenue. Funds are then transferred to HHSC as IGT to be used as the non-federal share of supplemental Medicaid payments.⁴⁴⁴

Monitoring and Reporting

HHSC provides both quarterly and annual reports to CMS on Texas' 1115 Waiver. Some of these reports are publicly available on HHSC's website and reveal how the goals and objectives under the 1115 Waiver were met through Medicaid managed care and other programs such as directed payment programs and charity care programs. CMS also requires a long-term evaluation of Texas' 1115 Waiver. HHSC contracts with a third party to collect this information.⁴⁴⁵

Recommendations

The 88th Legislature should monitor the budget neutrality rebasing exercise and determine its potential impact on budget neutrality "room" Texas may have moving into fiscal year 2024. Due to this uncertainty, the Legislature must closely evaluate potential Medicaid rate increases and benefit changes during the next legislative session. Changes to Texas' Medicaid Program may result in exceeding budget neutrality, which can then present challenges for Texas maintaining its 1115 Waiver.

Furthermore, the Legislature should continue to ensure appropriate oversight and reporting of funds provided under the 1115 Waiver. Although most of these funds arise from outside sources, legislative oversight of these funds is still necessary to ensure accountability of the billions of dollars that the Texas healthcare system receives on an annual basis. Transparency and accountability of these funds must continue to be prioritized to ensure that patient care remains the focus.

⁴⁴⁴*Local Provider Participation Funds in Texas*, Texas Hospital Association, https://www.tha.org/Portals/0/files/Issues/hospitalfinance/LPPF_Feb_2021.pdf?ver=2021-02-11-202818-010 (last visited Sept. 19, 2022).

⁴⁴⁵ *Id.*

Charge No. 12

Mental Health Delivery: *Examine the state mental health service delivery system. Study the state's Comprehensive Plan for State-Funded Inpatient Mental Health Services and the Statewide Behavioral Health Strategic Plan and evaluate the existing state investments in mental health services and state hospital capacity. Review current forensic and civil mental health service waitlists and recommend ways to improve coordination and outcomes to reduce waitlists. Explore and report on options for additional mental health service capacity, including building state hospitals in the Panhandle and Rio Grande Valley areas.*

Background

Over recent years, the Texas Legislature has invested heavily in the state behavioral health system. Since the 2015 legislative session, biennial appropriations have increased from \$6.7 billion to an estimated \$8.9 billion during the current biennium -- a 32 percent increase.⁴⁴⁶ As appropriations have increased, the Texas Legislature has also required additional transparency and accountability to ensure that any dollars appropriated for behavioral health services are spent in an efficient and effective manner. For example, in 2015, the Texas Legislature created the Statewide Behavioral Health Coordinating Council requiring all state agencies that receive behavioral health appropriations to coordinate funding and services annually and through a continually updated statewide five-year strategic plan.⁴⁴⁷

Due to this enhanced coordination of behavioral health services and funding, as well as new emerging challenges, it continues to be evident that there is a growing need for additional resources to support the state's mental health system. Most recently, the effects of COVID-19 exacerbated gaps in our nation's mental health systems, and Texas was no exception. Hundreds of state hospital beds across Texas went offline due to staffing shortages and certain isolation restrictions. In addition, waitlists for community mental health services at local mental health authorities (LMHAs) and other community services has grown in recent years despite significant investments from the Legislature.⁴⁴⁸ Compounding a shortage of beds and long waitlists for services, concerns about mental health and substance use have grown. Nationwide, more adults are reporting symptoms of anxiety disorder and/or depressive disorder, as well as new or increased substance use due to COVID-related stress.⁴⁴⁹ Texas' current mental health infrastructure is robust, but additional gaps remain that need addressing to ensure Texans have proper access to mental health care.

⁴⁴⁶ *Mental Health Delivery Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Texas, 2022) (testimony from the Legislative Budget Board).

⁴⁴⁷ *Id.*

⁴⁴⁸ *Mental Health Delivery Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Texas, 2022) (testimony from the Texas Health and Human Services Commission).

⁴⁴⁹ *Adults Reporting Symptoms of Anxiety or Depressive Disorder During the COVID-19 Pandemic by Age*, Kaiser Family Foundation, <https://www.kff.org/other/state-indicator/adults-reporting-symptoms-of-anxiety-or-depressive-disorder-during-the-covid-19-pandemic-by-age/?currentTimeframe=0&sortModel=%7B%22colld%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Sept. 23, 2022).

Discussion

Behavioral Health Funding

Until 2015, behavioral health appropriations and expenditures were not coordinated across state budget articles and agencies. As a result, it was difficult to collate and track how much funding was authorized for the state's behavioral health system. To address this uncertainty, the 84th Legislature established a Statewide Behavioral Health Coordinating Council, which identifies, plans, and coordinates behavioral health expenditures across Texas. Furthermore, this Council implements the five-year Statewide Behavioral Health Strategic Plan and submits an annual report to the Legislature on progress in implementing this plan. The Statewide Council, along with its annual reporting, has significantly increased transparency of appropriations for behavioral health allowing the Texas Legislature to strategically invest in the Texas' behavioral health system. These reports have also been critical to identify certain funding gaps in the system, which has facilitated both funding and policy changes designed to improve access to care and individual patient outcomes.⁴⁵⁰

In Article IX of the General Appropriations Act (GAA), the 84th Texas Legislature also included a new section requiring all behavioral health appropriations across all articles of the state budget to be accounted for in one location.⁴⁵¹ This budgetary maneuver was another attempt to better understand behavioral health appropriations and outcomes. It also enabled the public, and experts in the field, to easily access and comprehend the appropriations process as it relates to behavioral health. *Figure 1* below illustrates Section 10.04 of Article IX of the GAA for fiscal years 2022 and 2023:

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

Figure 1: Section 10.04. Statewide Behavioral Health Strategic Plan and Coordinated Expenditures in General Appropriations Act⁴⁵²

Sec. 10.04. Statewide Behavioral Health Strategic Plan and Coordinated Expenditures.

- (a) **Informational Listing - Behavioral Health and Substance Abuse Services Appropriations.**
The following is an informational listing of appropriations for behavioral health services made elsewhere in this Act.

Behavioral health services are programs or services directly or indirectly related to the research, prevention, or detection of mental disorders and disabilities, and all services necessary to treat, care for, control, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction. Certain non-behavioral health-related costs which could not be disaggregated from other healthcare costs are also included in the listing below.

	Fiscal Year 2022	Fiscal Year 2023
Article I		
Trusteed Programs, Office of the Governor	\$46,389,573	\$46,389,573
Veterans Commission	\$6,715,641	\$6,715,641
Article II		
Department of Family and Protective Services	\$29,045,334	\$29,045,334
Department of State Health Services	\$1,631,087	\$1,847,587
Health and Human Services Commission	\$1,631,879,460	\$1,658,420,464
Texas Civil Commitment Office	\$154,611	\$154,611
Article III		
Texas School for the Deaf	\$70,434	\$70,434
University of Texas - Health Science Center Houston	\$8,000,000	\$8,000,000
University of Texas - Health Science Center Tyler	\$6,730,000	\$6,730,000
Texas Tech University Health Sciences Center	\$2,500,000	\$2,500,000
Texas Higher Education Coordinating Board	\$59,254,136	\$59,254,136
Article IV		
Supreme Court of Texas	\$1,250,000	\$1,250,000
Court of Criminal Appeals	\$568,500	\$568,500
Office of Court Administration	\$2,500,000	\$2,500,000
Article V		
Commission on Jail Standards	\$186,933	\$186,933
Department of Criminal Justice	\$262,781,849	\$262,781,856
Juvenile Justice Department	\$92,602,880	\$92,621,393
Military Department	\$1,010,450	\$988,650
Commission on Law Enforcement	\$525,910	\$525,910
Article VIII		
State Board of Dental Examiners	\$132,240	\$132,240
Board of Pharmacy	\$294,203	\$294,202
Board of Veterinary Medical Examiners	\$45,000	\$45,000
Optometry Board	\$47,000	\$47,000
Board of Nursing	\$1,005,458	\$1,005,458
Medical Board	\$641,482	\$637,992
Total	\$2,155,962,181	\$2,182,712,914

⁴⁵² Texas S.B. 1, 87th Leg., R.S. (2021).

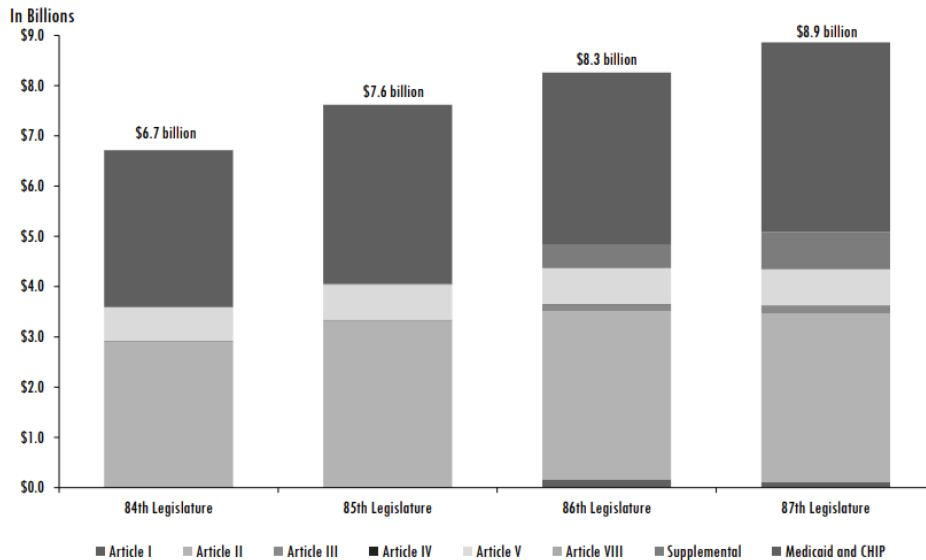
Method of Financing

General Revenue	\$1,686,948,724	\$1,717,563,151
General Revenue - Dedicated	\$11,188,461	\$11,188,461
Federal Funds	\$383,160,278	\$383,397,230
Other Funds	\$74,664,718	\$70,564,072
Subtotal	\$2,155,962,181	\$2,182,712,914
Estimated Medicaid Expenditures (All Funds)	\$1,821,395,628	\$1,855,720,482
Estimated CHIP Expenditures (All Funds)	\$47,853,482	\$51,022,624
Total	\$4,025,211,291	\$4,089,456,020

Medicaid and CHIP amounts in this table reflect estimated expenditures and may not align with the appropriations made elsewhere in this Act for Medicaid and CHIP.

Since 2015, the Texas GAA clearly lists behavioral health and substance abuse appropriations by both agency and budget article. Additionally, estimated behavioral health funding for Medicaid and the Children's Health Insurance Program (CHIP) is highlighted.⁴⁵³ Contrary to certain reports, there has been an increase of over \$2 billion in behavioral health funding since 2015. In fact, the 87th Legislature appropriated a total of \$8.9 billion, which is a 7.3 percent increase from the 86th Legislature.⁴⁵⁴ See *Figure 2* below demonstrating this significant increase in funding over the last four legislative sessions.

Figure 2: Behavioral Health Funding by Legislature⁴⁵⁵



⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

1115 Waiver Funding

Unbeknownst to many, behavioral health appropriations do not currently capture all behavioral health funds received by providers across Texas. In addition to the \$8.9 billion appropriated during the 87th Legislature, significant local and federal funding also flows through the 1115 Texas Healthcare Transformation and Quality Improvement Waiver for behavioral health services. For example, the Health and Human Services Commission (HHSC) reports that Texas psychiatric hospitals received approximately \$17.2 million in Uncompensated Care and another \$10.6 million through the Uniform Hospital Rate Increase program (UHRIP) in fiscal year 2021.⁴⁵⁶ Both programs are funded through the 1115 Waiver but are not captured in the GAA.

Furthermore, LMHAs and Local Health Departments (LHDs) received Delivery System Reform Incentive Payment (DSRIP) program funding through the 1115 Waiver until the program ended in fiscal year 2021. Additional funding opportunities were established through Texas' latest 1115 Waiver extension. Starting in fiscal year 2022, these providers are now receiving \$500 million annually through a new behavioral health uncompensated care program. Additionally, behavioral health providers are also eligible to receive funding from a new behavioral health services program, totaling \$175 million per year.⁴⁵⁷ These are just a few examples of other forms of funding outside of the GAA adopted by the Legislature.

Inpatient Services

State Mental Health Hospitals

The State of Texas operates ten mental health facilities and one inpatient residential treatment facility of adolescents. In addition, the state operates one outpatient clinic, contracts for beds at three facilities, and is currently constructing another psychiatric hospital.⁴⁵⁸

As state-operated facilities, HHSC is responsible for state hospital operations and maintenance. State hospitals receive both civil and forensic patients. Individuals may be admitted for inpatient treatment voluntarily, or under a civil or forensic commitment, at these facilities.⁴⁵⁹

Civil Commitments: A person with a mental illness who presents a danger to themselves is voluntarily or involuntarily committed. This may involve an Order of Protective Custody or Emergency Detention. Situations also arise in which an individual is committed to a Civil Maximum-Security Unit (MSU). Civil MSU commitments usually occur when an individual is already civilly committed but needs to be moved to an MSU because the individual is determined to be dangerous.⁴⁶⁰

⁴⁵⁶ *Mental Health Delivery Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Texas, 2022) (written testimony from the Texas Health and Human Services Commission).

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

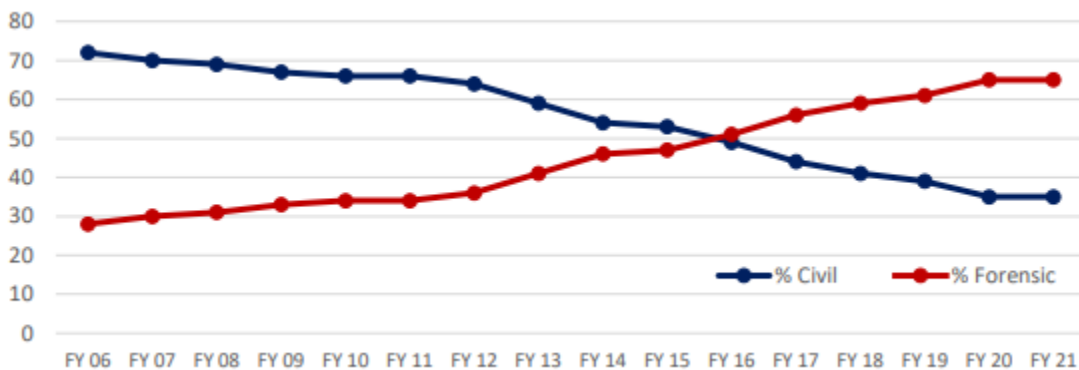
⁴⁶⁰ *Diversion and Forensic Capacity: Presentation to the Senate Committee on Health and Human Services*, Texas Department of State Health Services, <https://dshs.texas.gov/ConsumerandExternalAffairs/legislative/2016Reports/SenateHHSdiversionForensicCapacity.pdf> (last visited Sept. 23, 2022).

Forensic Commitments: A person is accused of a criminal offense but is found incompetent to stand trial or not guilty by reason of insanity.

- Incompetent to Stand Trial: An individual is committed to an inpatient mental health facility (such as a state hospital), residential care facility (such as a state supported living center), or an outpatient setting for restoration to competency. Whether restoration is inpatient or outpatient is at the discretion of the court. Once competency is restored, the individual returns to the criminal justice system for trial.
- Not Guilty by Reason of Insanity: An individual is acquitted of criminal charges and committed to inpatient or residential care until the court determines that the person is no longer an imminent risk to themselves or others and can safely be treated in a less restrictive setting.
- Forensic Commitments requiring Maximum Security: An individual is charged with capital murder or a similar offense, or an offense involving the use or display of a deadly weapon. While state hospitals serve forensic and civil patients, only the Rusk State Hospital, North Texas State Hospital (Vernon), and Kerrville State Hospital have MSUs.

For years, there has been a growing need for increased capacity within the state's mental health hospital system, especially for forensic beds. DSHS has worked to ensure that individuals committed to state mental health hospitals are admitted in a timelier manner; however, a significant challenge to timely admission is a shortage of maximum-security capacity for forensic patients. Additionally, the success of jail diversion programs across the state has resulted in individuals being diverted from the criminal justice system to inpatient psychiatric facilities and state hospitals, increasing demand. For perspective, the forensic population of state hospitals made up 28 percent of the state hospital population in fiscal year 2006 compared to 65 percent in fiscal year 2021 as shown in *Figure 3*.⁴⁶¹

Figure 3: State Hospital Average Daily Census - Fiscal Years 2006 to 2021⁴⁶²



⁴⁶¹ *Id.*

⁴⁶² *Id.*

Many state hospital buildings were built as far back as the 1850s, and unfortunately due to poor facility conditions, HHSC has not been able to utilize space in several facilities. To address this problem, the Legislature requested an external report in 2014 to recommend ways to improve the state's state hospital system.⁴⁶³ In 2017, the Legislature used this report as a framework to appropriate additional funding for significant repairs of existing facilities and start new construction. The 85th Legislature also directed HHSC to establish a comprehensive plan to update and modernize the state hospital system, known as the "Comprehensive Plan for State-Funded Inpatient Mental Health Services."⁴⁶⁴ Over the past four legislative sessions, the Texas Legislature has invested over \$1.3 billion in state hospital construction and infrastructure projects.⁴⁶⁵ This massive investment has started the process to re-build existing facilities and increase capacity of state hospitals through new construction -- resulting in a net 432 additional state hospital beds across the state.⁴⁶⁶ *Figure 4* shows the state hospital construction projects funded by the Legislature since 2017.

Figure 4: Overview of State Hospital Construction Funded by the Texas Legislature from 2015 to 2021⁴⁶⁷

Project	Cost	Beds
San Antonio State Hospital	\$357.2M	300 bed replacement
San Antonio State Hospital	\$9.8M	40 bed unit
Austin State Hospital	\$304.6M	240 bed replacement
Kerrville State Hospital	\$30.5M	70 bed MSU
Rusk State Hospital	\$191.8M	100-bed non-MSU, 100 bed MSU
Harris County	\$126.5M	228 bed unit
Dallas State Hospital	\$282.6M	200 bed unit, 100 bed pediatric unit
*Sunrise Canyon Hospital	\$15M	15-30 bed capacity run by local LMHA
*Permian Basin Hospital	\$40M	100 bed unit run by local hospital districts

**Denotes non-state-run facility*

This investment by the state has significantly bolstered inpatient infrastructure, but certain geographic gaps still need to be addressed for inpatient care. Interested parties assert that there is specifically a lack of inpatient, forensic capacity in certain areas of the state. Unfortunately, when there is no capacity, individuals may spend more time in jail waiting for a forensic, inpatient bed to become available. As seen in *Figure 5*, large geographical areas in the state lack nearby facilities. This is especially true for the Panhandle and Rio Grande Valley areas. Each geographical state psychiatric hospital service area is defined as a two-hour maximum drive time to the state hospital in that geographic area.⁴⁶⁸

⁴⁶³ *Analysis for the Ten-Year Plan for the Provision of Services to Persons Served by State Psychiatric Hospitals (SPHs), Consulting Services for DSHS Rider 83*, CannonDesign, <https://static1.squarespace.com/static/5bec7c0a1137a6f21d74e0ee/t/604ce0813a2cb004c0352b85/1615650992047/Appendix+1+-+DSHS+Report+2014+-+Cannon+Report.pdf> (last visited Sept. 23, 2022).

⁴⁶⁴ *A Comprehensive Plan for State-Funded Inpatient Mental Health Services*, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, <https://www.hhs.texas.gov/sites/default/files/documents/about-hhs/process-improvement/comprehensive-inpatient-mental-health-plan-8-23-17.pdf> (last visited Sept. 23, 2022).

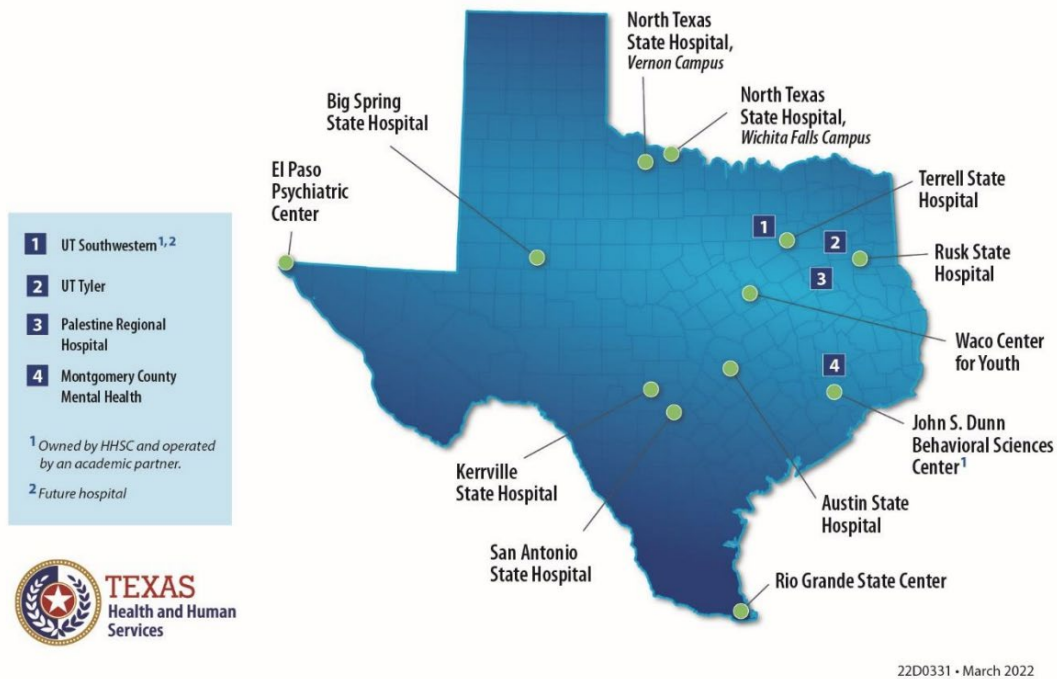
⁴⁶⁵ See *supra* note 1.

⁴⁶⁶ *Mental Health Delivery Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Texas, 2022) (supplemental information from the Legislative Budget Board).

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

Figure 5: Map of State Hospital Locations⁴⁶⁹



As the state's population has grown, so too has the need for forensic capacity. To compound this shortage, the impact of the COVID-19 pandemic significantly added to this problem. As of June 2022, over 700 state hospital beds were offline because HHSC has been unable to recruit and retain sufficient direct-care staff to meet necessary resident-to-staff ratios.⁴⁷⁰ This workforce crisis has resulted in MSU-bed wait times of approximately 521 days and non-maximum-security beds (non-MSU) wait times of approximately 241 days as of June 2022.⁴⁷¹ In addition, enhanced regulatory requirements for quarantining and isolating COVID-19 positive residents and staff greatly impacted state hospital operations and capacity. *Figure 6* highlights the significant impact that the pandemic had on these specialized facilities throughout the state.

Figure 6: Overview of State Hospital Forensic Waitlist⁴⁷²

Total Forensic Waiting List	October 2018	June 2022
Maximum Security (MSU)	453	942
Non-MSU	268	1,527
Total	721	2,469
Forensic Waitlist - Over 21 Days	October 2018	June 2022
Maximum Security (MSU)	432	896
Forensic, Non-MSU	161	1,407
Total	593	2,303

⁴⁶⁹ *Id.*

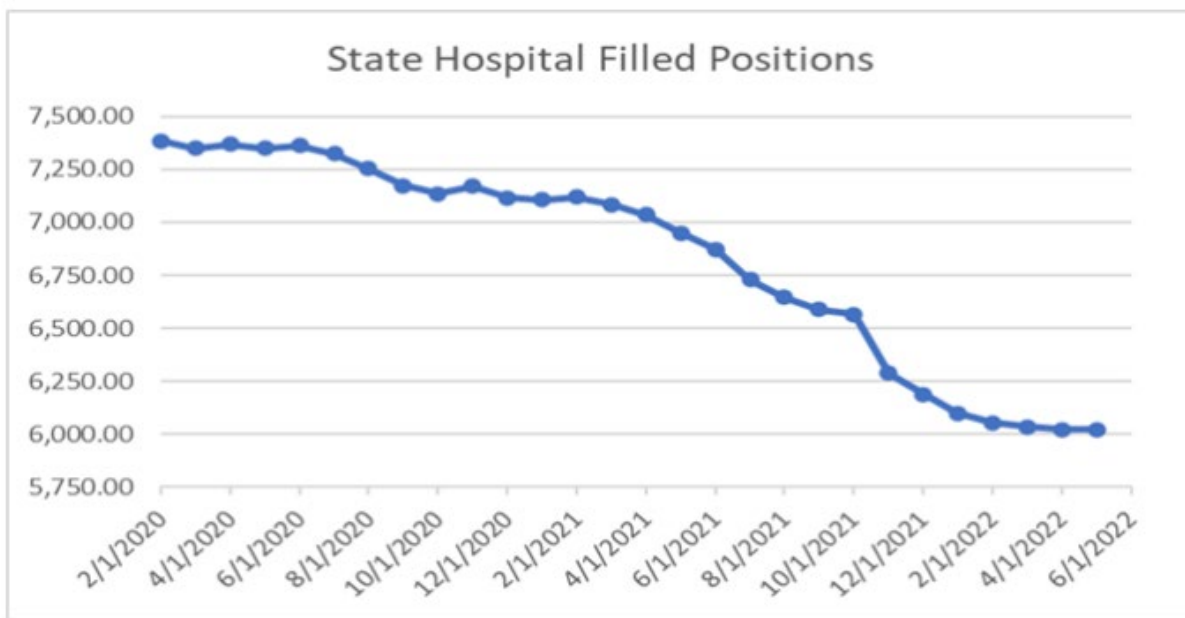
⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² *Mental Health Delivery Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Texas, 2022) (supplemental materials from the Texas Health and Human Services Commission).

To counteract these staff shortages, HHSC anticipates expending an additional \$34.1 million to provide one-time merit bonuses and salary increases to state hospital direct-care staff during fiscal years 2022-2023 to appropriately staff these facilities and allow for additional beds to come online.⁴⁷³ Although recently implemented, *Figure 7* illustrates that these one-time bonuses are in fact stabilizing the state hospital staff shortage. Another factor that has helped address this problem is the receipt of COVID-19 federal funds. State hospital and State Supported Living Centers (SSLCs) across Texas received \$558 million in COVID-19 relief funds through the Office of the Governor and \$28.4 million in federal Provider Relief Funds.⁴⁷⁴ These additional resources were critical in keeping state hospital operations going during the peak of the pandemic. Because this staffing problem is a long-term issue, HHSC included an exceptional item in the Commission's Legislative Appropriations Request for Fiscal Years 2024-2025 to raise salaries for state facility critical workforce staff.⁴⁷⁵

Figure 7: State Hospital Filled Positions from 2020 to 2022⁴⁷⁶



Outpatient and Jail-based Competency Restoration

Outpatient Competency Restoration (OCR) and Jail-based Competency Restoration services are designed for people with a mental health disorder or co-occurring psychiatric and substance use disorders who are found incompetent to stand trial and are court-ordered to participate in competency restoration treatment. These are programs that provide community-based competency restoration services, which include mental health and substance use treatment services, as well as legal education for people found incompetent to stand trial.⁴⁷⁷

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

⁴⁷⁵ *Legislative Appropriations Request for Fiscal Year 2024 and 2025*, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, <https://www.hhs.texas.gov/sites/default/files/documents/hhsc-legislative-appropriations-request-2024-2025.pdf> (last viewed Sept. 23, 2022).

⁴⁷⁶ *Id.*

⁴⁷⁷ Competency Restoration, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, <https://www.hhs.texas.gov/providers/behavioral-health-services-providers/competency-restoration> (last viewed Sept. 23, 2022).

There are currently 12 OCR programs operated by 12 LMHAs with the capacity to serve 324 individuals. The goal for OCR is the same as inpatient competency in achieving ongoing competency, but it is typically less costly. County-based jail competency restoration programs exist in communities across Texas and provide critical services especially because state hospitals have waitlists.⁴⁷⁸

Community Services

In addition to inpatient services, the state contracts with communities and other organizations to provide local outpatient services to ensure individuals can access services in the least restrictive setting.

Currently, HHSC contracts with 37 LMHAs and two Local Behavioral Health Authorities (LBHAs) to be the "safety-net provider" for behavioral health services. LMHAs deliver mental health services in communities across Texas by geographic area. HHSC requires each LMHA and LBHA to evaluate the mental health needs of communities in their area and plan, develop policy, coordinate services, and address the community's needs. LMHAs utilize the Texas Resilience and Recovery (TRR) model to determine if individuals are eligible to receive mental health services, and if so, the recommended level of care (LOC). Each LMHA and LBHA is also required to consider public input from the community to:

- Ensure people who need services can exercise consumer choice by helping them decide on their services, service provider, and location of services.
- Ensure the best use of public funds to create a network of service providers and determine whether to provide a service or to contract that service to another organization.
- Make recommendations on the most appropriate services available.

HHSC distributes both federal and state funding to LMHAs to support services for individuals who are medically indigent. LMHAs are also required to contribute a local funding match in order to receive state funds, which includes identifying and developing additional resources to support services in the local service area.

Community Mental Health Services

LMHAs receive state and federal funding to provide various community mental health services across Texas communities for both children and adults. These services include crisis hotlines, mobile outreach, outpatient services, walk-in services, extended observation, crisis stabilization units, crisis residential, respite service, and transportation. For crisis services alone, there are 35 facilities at 30 LMHAs that contract with HHSC to provide these services. HHSC reports that crisis services were provided to over 15,000 individuals and led to a 41 percent decrease in hospitalizations in fiscal year 2021.⁴⁷⁹

⁴⁷⁸ *Mental Health Delivery Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Texas, 2022) (supplemental information from the Texas Health and Human Services Commission).

⁴⁷⁹ *Id.*

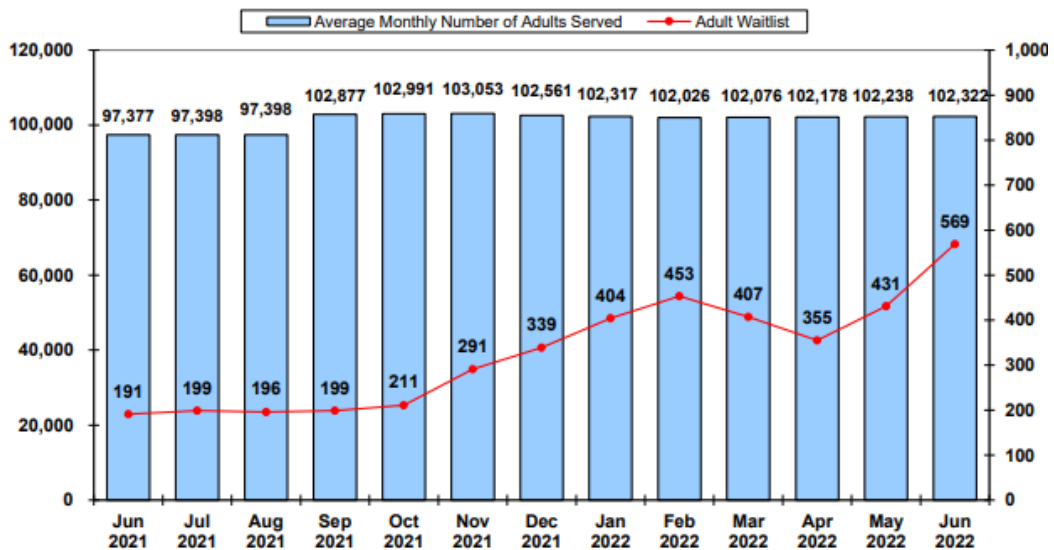
Community Inpatient Capacity

Since 2014, the Texas Legislature has invested significantly in increasing the number of state-contracted inpatient behavioral health beds statewide. In fact, since 2014, the Legislature has appropriated an additional \$200 million which has increased the number of community inpatient beds statewide from 77 beds in 2013 to 559 state-contracted beds in 2022. In fiscal year 2021, over 21,000 individuals utilized these services. These beds are typically contracted with a psychiatric facility/hospital and an LMHA. LMHAs manage these contracts and place clients in these facilities based on a comprehensive exam which determines an inpatient setting that is the least restrictive setting for that client.⁴⁸⁰

Community Waitlists

Waitlists for services at LMHAs rapidly increased during COVID-19, in large part because of workforce shortages. *Figure 8* shows the growing waitlist for adult community services at LMHAs. As of June 2022, the longest waitlist is at Tropical Texas Behavioral Health located in Edinburg.⁴⁸¹

Figure 8: Fiscal year 2021-2022 Adult Mental Health Number Served and Waitlist by Month⁴⁸²



Youth Empowerment Services (YES Waiver)

The "YES Waiver" served over 3,000 children aged three to eighteen in fiscal year 2021. This program is designed provide community wraparound services to help children and adolescents with severe emotional disturbance who would otherwise be institutionalized and/or have parental rights relinquished in order to obtain mental health services. This program has led to a 45 percent decrease

⁴⁸⁰ *Id.*

⁴⁸¹ *Mental Health Delivery Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Texas, 2022) (supplemental information from the Texas Health and Human Services Commission).

⁴⁸² *Id.*

in crisis episodes.⁴⁸³

Texas Child Mental Health Care Consortium (TCMHCC)

Senate Bill 11 from the 86th Legislature created the Texas Child Mental Health Care Consortium which unites 13 health-related higher education institutions (HRIs) across Texas to address urgent mental health challenges and improve the mental health system for children.⁴⁸⁴ The Consortium has five statewide programs which leverage telehealth to expand access to care, increase provider access and expertise through expert consultations, invest in mental health systems research, and work to expand Texas' mental health workforce. Programs include:

- *Child Psychiatry Access Network (CPAN)*: Network of psychiatrists that provides consultation services for primary care providers to improve children's behavioral health needs.
- *Texas Child Health Access Thorough Telemedicine (TCHAT)*: Statewide telemedicine program to identify and provide short-term, school-based treatment of mental health needs of at-risk children.
- *Community Psychiatry Workforce Expansion (CPWE)*: Partners HRIs with community mental health providers, such as LMHAs, to provide training opportunities for residents.
- *Child & Adolescent Psychiatry (CAP) Fellowships*: Allows HRIs to add fellowship capacity within psychiatry departments to address the ongoing mental health workforce shortage.
- *Children's Mental Health Research*: Statewide research networks of HRIs designed to improve children's mental health services.⁴⁸⁵

Workforce

Mental health professional workforce challenges are prevalent throughout the state and have been exacerbated by the COVID-19 pandemic. As a result, both inpatient and outpatient waitlists have dramatically increased, and patients are struggling to receive the appropriate level of care in a timely manner. Over recent years, the Legislature has prioritized bolstering the mental health workforce, in part, through the programs below.

Loan Repayment Program for Mental Health Professionals

The Legislature established this program in 2015 within the Texas Higher Education Coordinating Board (THECB) to encourage qualified mental health professionals to practice in a Mental Health Professional Shortage Area (MHPSA) and provide mental health care services to recipients under Medicaid and CHIP. This program allows mental health professionals at various levels to be eligible

⁴⁸³ *Id.*

⁴⁸⁴ Texas S.B. 10, 86th Leg., R.S. (2019).

⁴⁸⁵ *Mental Health Delivery Charge: Hearing Before the S. Comm. on Finance*, 87th Interim (Texas, 2022) (testimony from the Texas Child Mental Health Care Consortium).

to receive its benefits. Last session, the Legislature appropriated \$2 million for the program.⁴⁸⁶

Health-Related Institution (HRI) Partnerships

As part of the state hospital redesign projects, HHSC has partnered with HRIs to alleviate workforce shortages. Because HRIs and HHSC are developing new strategic plans to operate state hospitals, facilities with HRI partnerships typically do not have the same workforce struggles as other state hospitals.

Furthermore, the TCMHCC has multiple programs that include partnerships between HRIs and LMHAs such as the Community Psychiatry Workforce Expansion Program and Child and Adolescent Psychiatry Fellowships, which creates more residency and training opportunities for mental health professionals.

Behavioral Health Matching Grants

Over the last four sessions, the Texas Legislature has created community-driven mental health grant programs. These programs are run by HHSC and require a local funding match. In total, over 140,000 individuals were served through these grant programs in fiscal year 2021. These programs are successful as they require proven outcomes and data-driven systems that promote recovery and wellness.⁴⁸⁷

Mental Health Grant for Justice-Involved Individuals

During the 85th Legislature, Senate Bill 292 created a statewide pool of funds to support jail diversion programs to reduce recidivism, arrests, and incarceration of individuals with mental illness. SB 292 also helped reduce forensic commitment wait times. Lawmakers appropriated \$50 million for fiscal years 2022 and 2023 for these programs and served over 47,000 individuals in fiscal year 2021.⁴⁸⁸

Community Mental Health Grant Program

House Bill 13 in the 85th Legislature created a program to provide matching grants to support community mental health programs providing services and treatment to individuals experiencing mental illness. Local grantees must foster community collaboration, maximize existing community mental health resources, and strengthen continuity of care for individuals receiving services through a diverse network of local providers. Funds for this grant program included \$40 million for fiscal years 2022 and 2023 in state funds. In fiscal year 2021, this program served over 40,000 individuals.⁴⁸⁹

Healthy Community Collaboratives

In the 83rd Legislature, Senate Bill 58 created new "Healthy Community Collaborative" grants to

⁴⁸⁶ *Loan Repayment Program for Mental Health Professionals*, TEXAS HIGHER EDUCATION COORDINATING BOARD, <http://www.hhloans.com/index.cfm?objectid=E27A2130-C7DC-11EC-B45B0050560100A9> (last visited Sept. 23, 2022).

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

local entities that are designed to bring public and private providers together to provide services to individuals experiencing homelessness and mental illness and/or substance abuse. Funding included \$25 million for fiscal years 2022 and 2023 in state funds, and in fiscal year 2021, this program served over 33,000 individuals.⁴⁹⁰

Texas Veterans + Family Alliance

Senate Bill 55 in the 84th Legislature created the Texas Veterans + Family Alliance grant program to provide services to Texas veterans and their families. This grant program supports community-based, sustainable, research-informed, and accessible behavioral health services to Texas veterans and their families to augment the work of the United States Department of Veterans Affairs. The Legislature appropriated \$20 million for fiscal years 2022 and 2023 for this program. In fiscal year 2021, the program served over 18,000 individuals.⁴⁹¹

Recommendations

Rightfully so, Texas' mental health system has been prioritized by the Legislature in recent years. Significant funding increases have helped ensure that the full continuum of care is supported, but there is still more that needs to be done. Unfortunately, the pandemic exacerbated gaps within the mental health system, including extreme workforce shortages and a lack of capacity across the state. Therefore, the Texas Legislature must continue to address these needs during the 88th Legislature through targeted funding and policy strategies. HHSC is currently developing an updated strategic plan to improve access and quality of mental health care statewide. The Legislature should collaborate with HHSC on this critical strategic plan and work towards its implementation in the coming years.

The 88th Texas Legislature must pay particular attention to the ongoing need for additional inpatient capacity. Not only is there a need for additional state hospital beds to meet the state's increasing demand, but for sufficient staff to ensure that all beds are being utilized. Bringing back online the hundreds of beds currently unoccupied due to staffing shortages is a critical step toward meeting the state's inpatient needs. The current wait time to access a forensic state hospital bed is far too long, resulting in individuals taking up limited jail space. The Panhandle and Rio Grande Valley areas seem to be vast geographic areas that are currently underserved and the Legislature must evaluate the mental health service capacity needs in these specific areas to determine the most efficient and effective way to increase available services.

The Legislature must continue to develop and build upon behavioral health-related workforce initiatives and determine whether additional funding is appropriate. Additionally, the Legislature should continue to evaluate initiatives to divert individuals away from state hospital beds, and instead, receive services offered in their local community.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

Appendix

Written testimony from the committee's interim hearings is available upon request.