



INTERIM REPORT *to the 86th Texas Legislature*



**HOUSE COMMITTEE ON
GENERAL INVESTIGATING & ETHICS**

December 2018

**HOUSE COMMITTEE ON GENERAL INVESTIGATING & ETHICS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2018**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
86TH TEXAS LEGISLATURE**

**SARAH DAVIS
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Committee On
General Investigating & Ethics

December 19, 2018

Rep. Sarah Davis
Chairman

P.O. Box 2910
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The Honorable Joe Straus
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:


The Committee on General Investigating & Ethics of the Eighty-fifth Legislature hereby submits its interim report including recommendations for consideration by the Eighty-sixth Legislature.

Respectfully submitted,


Sarah Davis, Chairman


Joe Moody, Vice-Chairman


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I. INTRODUCTION

At the beginning of the 85th Legislative Session, the Honorable Joe Straus, Speaker of the Texas House of Representatives appointed seven members to the House Committee on General Investigating and Ethics (the Committee). The Committee's membership consisted of the following seven members: Chairman Sarah Davis, Vice-Chairman Joe Moody, Giovanni Capriglione, Poncho Nevárez, Four Price, Hugh Shine, and Chris Turner.¹

The Rules of the Texas House grant the Committee jurisdiction over the following matters:²

(b) The committee has all the powers and duties of a general investigating committee and shall operate as the general investigating committee of the house according the procedures prescribed by Subchapter B, Chapter 301, Government Code, and the rules of the house, as applicable.

(c) The committee may investigate a matter related to the misconduct, malfeasance, misfeasance, abuse of office, or incompetency of an individual or officer under Chapter 665, Government Code. The committee has all the powers and duties conferred by that chapter for the purpose of conducting the investigation, including the authority to propose articles of impeachment.

(d) The committee has jurisdiction over all matters pertaining to the conduct of and ethical standards applicable to state and local government officers and employees, including individuals appointed to offices of the executive branch of state government for the purpose of ensuring that an appointed officer is acting in the best interests of the State of Texas.

(e) The committee has jurisdiction over the operation of, including transparency in the reporting of financial transactions by, agencies of the judicial and executive branches of state government and affiliated entities or foundations.

II. INTERIM STUDY CHARGES

During the 85th Interim, Speaker Straus assigned the Committee the following ten interim charges:³

1. Maintain oversight of federal, state, local, and charitable funds spent in response to Hurricane Harvey. Investigate instances of waste, fraud, or abuse involving such funds. Ensure that the State of Texas is maximizing federal disaster aid.
2. Review conflict of interest laws governing public officers and employees to ensure that laws are adequate to maintain the public's confidence in government decision-making. Review personal financial statement requirements to ensure that the public has sufficient information on the private financial interests of public officers.
3. Review criminal penalties under Chapter 305, Government Code (registration of lobbyists) and recommend improvements to maintain the integrity of legislative and administrative processes.
4. Examine the Judicial Campaign Fairness Act and identify opportunities to improve the Act.
5. Review procedures and processes used at the Texas Ethics Commission. Identify ways to resolve complaints more efficiently.
6. Examine employment policies and practices at state agencies relating to the hiring of individuals who were terminated from employment with another state agency for misconduct
7. Review the implementation of S.B. 73 (85R) relating to leave policies and procedures for state employees.
8. Examine laws and policies regulating travel by state agency officials to ensure that travel expenditures are in the best interest of the state.
9. Investigate the use of state agency resources to participate in trade associations and groups funded by industries regulated by the agency.
10. Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 85th Legislature.

III. ANALYSIS

The Committee studied the ten Speaker-assigned interim charges in a series of six hearings held in January, February, March, June, and October 2018. Of these hearings, three hearings were open to invited witnesses and three were open to both invited and public witnesses. This report includes a background on, discussion of, and recommendations for each charge based on the Committee's proceedings.

1. INTERIM CHARGE 1: OVERSIGHT OF HURRICANE HARVEY SPENDING

a. Background

In the aftermath of Hurricane Harvey, the Committee received a charge to (1) maintain oversight of federal, state, local, and charitable funds spent in response to Hurricane Harvey; (2) investigate instances of waste, fraud, or abuse involving such funds; and (3) ensure that the State of Texas is maximizing federal disaster aid. Given the state's ongoing recovery, the Committee dedicated its first interim hearing to oversight of the response to this unprecedented disaster.

The Committee met on Thursday, January 18, 2018 at 10:30 AM on the campus of Rice University at the Baker Hall, Rush Conference Center (Room 303) in Houston, Texas. The committee took invited testimony from the following stakeholders:

1. Charitable Organizations

- Ms. Anna Babin, Chief Executive Officer, United Way of Texas
- Ms. Melissa Noriega, Vice President, Policy and Partnerships, Baker Ripley
- Mr. Tony Chase, Co-Chair, Advisory Committee, Greater Houston Community Foundation
- Mr. William "Bill" Jackson, Co-Chair, Advisory Committee, Greater Houston Community Foundation
- Dr. Andy Keller, President and Chief Executive Officer, Meadows Mental Health Policy Institute
- Ms. Cynthia Colbert, President and Chief Executive Officer, Catholic Charities of the Archdiocese of Galveston-Houston
- Ms. Maria Magee, Chief Development Officer, Interfaith Ministries of Greater Houston
- Rev. Scott Moore, Director, Texas Annual Conference of the United Methodist Church
- Rev. Chris Lake, Evangelical Lutheran Church of America Gulf Coast Synod

2. Local Governments

- Mr. Marvin Odum, Chief Resiliency Officer, City of Houston
- Mr. William "Bill" Jackson, Director, Budget Management, Harris County
- Mr. David Turkel, Director, Community Services Department, Harris County

3. State Agencies

- Mr. Randy Hopmann, Director, District Operations, Texas Department of Transportation
- Mr. Michael Lee, Engineering and Safety Operations, Texas Department of Transportation
- Mr. Stephen Stewart, Director, Financial Management Division, Texas Department of Transportation

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- Mr. Mike Morath, Commissioner, Texas Education Agency
 - Mr. George P. Bush, Commissioner, General Land Office
 - Mr. W. Nim Kidd, Chief, Texas Division of Emergency Management
 - Mr. John Barton, Associate Vice Chancellor, Governor's Commission to Rebuild Texas
 - Ms. Suzy Whittenton, Chief Financial Officer, Texas Department of Public Safety
 - Mr. Larry Temple, Executive Director, Texas Workforce Commission
 - Dr. Gary Gibbs, Executive Director, Texas Commission on the Arts
 - Mr. Chris Adams, Deputy Executive Commissioner for System Support Services, Texas Health and Human Services Commission
 - Mr. Wayne Salter, Associate Commissioner, Access and Eligibility Services, Texas Health and Human Services Commission
 - Mr. Roland Luna, Deputy Inspector General, Investigations, Texas Health and Human Services Commission, Office of the Inspector General
 - Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts
 - Mr. Kelly Cook, Director of Critical Infrastructure Division, Texas Commission on Environmental Quality
 - Ms. Audrey O'Neill, Audit Manager, State Auditor's Office
 - Mr. James Timberlake, Audit Manager, State Auditor's Office
 - Ms. Sarah Keyton, Manager, Legislative Budget Board
 - Mr. Jacob Pugh, Manager, Legislative Budget Board

b. Discussion

This section provides an analysis of the committee's activities related to oversight of federal, state, local, and charitable funds. It then turns to investigation of fraud, waste, and abuse of Hurricane Harvey funds. Lastly, it discusses efforts by the State of Texas to maximize federal aid.

1. Oversight of Federal, State, Local, and Charitable Funds

This section first provides an analysis of federal funding authorized and appropriated by the U.S. Congress. It then discusses state funds, including specific details on state agencies' use of federal funds. Next, it provides an overview of local funds. It concludes by discussing charitable funds.

a. Federal Funds

This section reviews federal congressional action related to Hurricane Harvey funding. It then provides an overview of federal disaster assistance programs.

At the federal level, the U.S. Congress has appropriated a total of \$136,104,172 in three rounds of appropriations measures that in part provide funding for Hurricane Harvey response and relief.⁴ First, on September 8, 2017, the U.S. Congress passed and President Trump signed into law House Resolution (H.R.) 601, Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 which provided a total of \$15.25 billion for disaster relief and recovery.⁵ H.R. 601 provided \$450 million for the U.S. Small Business Administration

(SBA) Disaster Loan program,⁶ \$7.4 billion for the U.S. Federal Emergency Management Agency's (FEMA) Disaster Relief Fund,⁷ and \$7.4 billion for the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant Disaster Relief (CDBG-DR) Program.⁸

Second, the U.S. Congress passed and President Trump signed into law H.R. 2266, Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017 which provided an additional \$36.5 billion for disaster relief and response.⁹ In relevant part, H.R. 2266 appropriated an additional \$18.67 billion for the Disaster Relief Fund,¹⁰ including \$4.9 billion for FEMA's Disaster Assistance Direct Loan Program, and \$16 billion in debt cancellation authority for the National Flood Insurance Program (NFIP).¹¹

Third, the U.S. Congress passed and President Trump signed into law H.R. 1892, the Bipartisan Budget Act of 2018 which provided an additional \$84.3 billion for a various purposes, including disaster relief and recovery.¹² In relevant part, H.R. 1892 appropriated \$28 billion for the HUD CDBG-DR program,¹³ \$2.7 billion to the U.S. Department of Education for Hurricane Education Recovery,¹⁴ \$23.5 billion to the FEMA's Disaster Relief Fund,¹⁵ and \$1.6 billion for the SBA's Disaster Loan Program.¹⁶

Pursuant to the Governor's request for disaster declaration, FEMA issued a disaster declaration beginning on August 25, 2017 and expiring on September 15, 2017 relating to Hurricane Harvey.¹⁷ The disaster declaration and its amendments ultimately designated 41 Texas counties as eligible for individual assistance.¹⁸ Pursuant to this disaster declaration, FEMA obligated a total of \$1,018,752,011.86 in Public Assistance Grants and approved \$1,631,067,722.56 for its Individual and Households Program in Texas.¹⁹

Federal aid for disaster response and recovery provides assistance to individuals and to state and local governmental entities.²⁰ First, the Individuals and Households Program, administered by FEMA, provides direct assistance to individuals and families in the aftermath of a presidentially declared disaster.²¹ These grants provided under the Individuals and Households program cover temporary housing, limited repairs or replacements of housing, and other personal needs, including medical and dental needs not covered by insurance.²² The U.S. Department of Labor makes Disaster Unemployment Assistance benefits available to individuals who lost their job as a direct result of a natural disaster or who were previously unemployed and who are not otherwise eligible for federal or state unemployment assistance.²³ In addition, the SBA makes loans to individuals to replace certain types of personal property for home repairs.²⁴ Personal Property Loans provide a maximum of \$40,000 to homeowners and renters for the repair or replacement of un- or underinsured items including cars, furniture, and clothing that was damaged by a natural disaster.²⁵ The SBA also provides Real Property Loans of a maximum of \$200,000 to individuals repair or restore their primary residence to the condition it was in prior to a natural disaster.²⁶

Similarly, assistance for state and local governmental entities falls include Public Assistance Grants, Hazard Mitigation Grants, Community Disaster Loans, and the CDBG-DR.²⁷ Public Assistance Grants are administered by FEMA and are available for emergency work and permanent work.²⁸ Emergency work covers debris removal and emergency protective measures.²⁹ Debris removal grants are reimbursed with a 90 percent federal and 10 percent state match.

Emergency protective measures were subject to 100 percent federal match during the first 30 days after Hurricane Harvey, and a 90 percent federal and 10 percent state match thereafter. Permanent work was subject to a 75 percent federal and 25 percent state match. FEMA also provides Hazard Mitigation Grants to states after a natural disaster to minimize loss of life and future damage, as well as to mitigate damage from a previous natural disaster.³⁰ Community Disaster Loans, administered by FEMA, provide direct loans to local governmental entities that suffered a substantial loss of tax revenue in a major disaster declaration.³¹ They are not subject to federal matching requirements.³²

As of October 2, 2018, FEMA maintained 41 counties designated for individual assistance and 53 counties designated for public assistance.³³ During this period, the SBA approved \$3.4 billion in loans,³⁴ and the National Flood Insurance Program approved and paid an estimated \$8.8 billion in advance payments and claims.³⁵

In total, the federal government has made over \$3 billion available through FEMA's Individual Assistance, SBA Home Loans, and NFIP flood insurance as of October 2018.³⁶ In addition, the federal government allocated more than \$5 billion in the CDBG-DR to the Texas General Land Office (GLO), which submitted an action plan to the federal government in May 2018 detailing intended use of these funds.³⁷

b. State Funds

In addition to the Texas Legislature, oversight of state Hurricane Harvey funds is split between three agencies: the Legislative Budget Board (LBB), the Comptroller of Public Accounts (CPA), and the State Auditor's Office (SAO). The LBB is charged with monitoring appropriations, surveying state agencies and institutions of higher education to assess costs related to Hurricane Harvey, and monitoring contracts for Hurricane Harvey-related activities.³⁸ The CPA controls appropriations and provides guidance to state agencies on coding and tracking Hurricane Harvey expenditures.³⁹ Lastly, the SAO audits, investigates, and reviews expenditures by state agencies and entities receiving state funds.⁴⁰

To assist in monitoring the impact of Hurricane Harvey on state expenditures, the LBB has maintained a central website with self-reported data from agencies on their expenditures.⁴¹ As of July 2018, total actual expenditures by state agencies and institutions of higher education for Hurricane Harvey during state fiscal years 2017 and 2018 were \$2,667.8 million in All Funds.⁴² Based on LBB data, total expenditures for Hurricane Harvey reflect \$241.5 million in General Revenue, \$5.1 million in General Revenue-Dedicated, \$220.7 million in Other Funds, and \$2,200.6 million in Federal Funds.⁴³ Of this total, \$1,692.3 million has been passed through to state agencies, local governmental entities, and individuals pursuant to federal programs such as FEMA's Public Assistance, Direct Housing Assistance, and Other Needs Assistance, as well as the U.S. Department of Agriculture's Disaster Supplemental Nutrition Assistance program.⁴⁴

Similarly, total projected state expenditures by July 2018 totaled \$1,899.6 million in All Funds for state fiscal year 2018.⁴⁵ Projected expenditures comprise \$183.5 million in General Revenue and \$1,483.7 million in Federal Funds.⁴⁶

Data reported to the LBB indicates that 99 percent of all projected state expenditures anticipated to be spent by July 2018 were attributable to ten state agencies and institutions of higher education.⁴⁷ Of these, seven entities also had the highest actual expenditures and will be discussed below.

Of the remaining three entities, the Texas Education Agency projected expenditures of \$192,127,466 related to "communication with district staff, state and federal agencies" and reported that the "majority of costs are for 2-month USDA waiver for affected districts to offer free meals to 100% of students."⁴⁸ Next, the University of Texas at Austin projected expenditures of \$42,719,238 related to repairing major damage to the "Marine Science Institute, Winedale Historical Complex, and Stengl Lost Pines Biological Field Station in Bastrop."⁴⁹ Lastly, the Texas Parks and Wildlife Department projected expenditures of \$23,150,175 which it attributed to repairing facilities damage, deploying agency personnel "for emergency measures, water rescues, debris removal" and opening state parks free of cost to allow for camping by evacuees.⁵⁰

Based upon data reported to the LBB, spending by 12 state agencies and institutions of higher education represents 98 percent of all actual state expenditures related to Hurricane Harvey as of October 2, 2018.⁵¹ The Health and Human Services Commission (HHSC) had the highest total expenditures relating to Hurricane Harvey, comprising a total of \$1,296,644,387 in All Funds.⁵² Of this total, agency expenditures cost \$155,420,867 in General Revenue, \$0 in General Revenue - Dedicated, \$107,568 in Other Funds, \$1,141,115,952 in Federal Funds, and \$1,185,995,631 in Pass-Through funding.⁵³ The agency attributed the majority of its expenditures to "Federal Funds for FEMA Other Needs Assistance and USDA food benefits, assisting individual applicants for federal assistance, extending the certification period for Medicaid and CHIP, and waiving co-pays for CHIP."⁵⁴

The Department of Public Safety had the second highest Hurricane Harvey related expenditures, with a total of \$736,247,396 in All Funds.⁵⁵ Of this total, agency expenditures cost \$43,929,499 in General Revenue, \$0 in General Revenue - Dedicated, \$15,164,090 in Other Funds, \$677,153,807 in Federal Funds, and \$479,985,624 in Pass-Through funding.⁵⁶ The agency attributed its expenditures to "coordinat[ing] the state's response efforts including life safety, search and rescue, and security, [as well as] providing Public Assistance grants to local governments."⁵⁷

The GLO and Veterans Land Board had the third highest expenditures, comprising \$270,388,608 in All Funds.⁵⁸ Of this total, agency expenditures cost \$4,291,211 in General Revenue, \$0 in General Revenue - Dedicated, \$32,731,365 in Other Funds, \$233,366,032 in Federal Funds, and \$0 in Pass-Through funding.⁵⁹ The agency attributed its expenditures to its role as the lead agency for short- and long-term housing recovery, including use of "Federal Funds for short-term housing, including repair, leasing, and manufactured housing."⁶⁰

Expenditures by the Texas Department of Transportation (TxDOT) relating to Hurricane Harvey were the fourth highest reported, totaling \$96,724,038 in All Funds.⁶¹ Of this total, agency expenditures cost \$0 in General Revenue, \$0 in General Revenue - Dedicated, \$27,683,981 in Other Funds, \$69,040,057 in Federal Funds, and \$0 in Pass-Through funding.⁶² The agency reported that its expenditures were largely Federal Funds related to "costs for providing evacuation support, debris removal on state highways, recovery efforts including bridge inspections and road

repair."⁶³

Trusted Programs within the Office of the Governor had the fifth-highest reported expenditures, totaling \$74,635,182 in All Funds.⁶⁴ Of this total, the office's expenditures cost \$6,377,270 in General Revenue, \$0 in General Revenue - Dedicated, \$68,257,912 in Other Funds, \$0 in Federal Funds, and \$0 in Pass-Through funding.⁶⁵ The agency attributed its expenditures to "provid[ing] disaster grants to state and local entities to assist with response and recovery" and noted that state and local entities repay these grants upon receiving federal reimbursement.⁶⁶

Department of State Health Services had the sixth-highest reported expenditures, comprising \$34,114,562 in All Funds.⁶⁷ Of this total, agency expenditures cost \$19,223,402 in General Revenue, \$0 in General Revenue - Dedicated, \$0 in Other Funds, \$14,891,160 in Federal Funds, and \$0 in Pass-Through funding.⁶⁸ The agency attributed its costs, which it noted are largely eligible for reimbursement by FEMA, to "coordinating public health and medical service, including patient evacuation."⁶⁹

Texas Military Department had the seventh highest expenditures, comprising a total of \$29,437,973 in All Funds relating to Hurricane Harvey.⁷⁰ Of this total, agency expenditures cost \$2,609,473 in General Revenue, \$0 in General Revenue - Dedicated, \$0 in Other Funds, \$26,828,500 in Federal Funds, and \$0 in Pass-Through funding.⁷¹ The agency attributed its costs, which it noted are largely eligible for reimbursement by FEMA, to "mobilizing Air and Army National Guard and State Guard Service Members in coordination with Texas Task Force 1."⁷²

Texas Workforce Commission had the eighth highest expenditures relating to Hurricane Harvey, totaling \$24,419,463 in All Funds.⁷³ Of this total, agency expenditures cost \$0 in General Revenue, \$0 in General Revenue - Dedicated, \$0 in Other Funds, \$24,419,463 in Federal Funds, and \$22,060,954 in Pass-Through funding.⁷⁴ The agency attributed these expenditures, comprised entirely of Federal Funds, to "processing disaster-related Unemployment Insurance claims [and] a grant to support employment recovery and rebuilding efforts."

Four institutions of higher education had the remaining highest expenditures related to Hurricane Harvey, nearly all of which related to repairing facilities damage.⁷⁵ Lone Star College had the ninth highest expenditures, comprising \$17,488,376 in All Funds, which it attributed to repairing flood damage to 6 buildings and utilizing three campuses as shelters during the storm.⁷⁶ Of this total, \$17,609,294 were reported as Other Funds, with the remainder unclassified.⁷⁷

Next, University of Houston reported the tenth highest expenditures, totaling \$12,442,461 in All Funds, which it attributed to repairing damage to 135 buildings and utilizing teams to assist with disaster mitigation and debris removal.⁷⁸ Of this total, \$347,407 was classified as General Revenue and \$12,095,054 was classified as Other Funds.⁷⁹

The University of Texas MD Anderson Cancer Center reported the eleventh highest expenditures of \$9,981,785 in All Funds, which it attributed to repairing "facility damage, clean-up, and remediation, as well as overtime and stipends for personnel who remained on-site to care for patients and families."⁸⁰ All \$9,981,785 was classified as Other Funds.⁸¹

Lastly, the University of Houston - Downtown reported the twelfth highest expenditures of \$9,053,885 in All Funds.⁸² The agency attributed these costs to repairing "6 buildings [and utilizing] teams to assist with damage mitigation debris removal."⁸³ Of this total, \$72,490 was classified as General Revenue, \$8,981,395 was classified as Other Funds, and \$234,849 was classified as Pass-Through funding.⁸⁴

The CPA provided policy guidance to state agencies in its efforts to control and monitor state Hurricane Harvey spending.⁸⁵ First, the Comptroller issued an updated policy document in August 2017 to assist agency with resources on proper accounting and tracking of Harvey-related expenditures.⁸⁶ In addition, the Comptroller issued a policy statement in December 2017 directing state agencies to code Hurricane Harvey-related expenditures with a specific code to allow the Comptroller to monitor and track these expenditures in greater detail.⁸⁷ Under the policy statement, agencies had a deadline of January 31, 2018 to re-code any Hurricane Harvey-related expenditures made prior to the date the policy statement was issued.⁸⁸

The SAO is charged with monitoring and auditing expenditures, including those related to Hurricane Harvey.⁸⁹ The SAO has conducted ongoing monitoring of Hurricane Harvey related expenditures in three areas.⁹⁰ The SAO is participating in monthly calls with the U.S. Government Accountability Office and other stakeholders to discuss and monitor Harvey-related spending and identify risk areas, including areas susceptible to fraud, waste, and abuse.⁹¹ The SAO has met with federal offices of inspector general and serves as a resource to those offices on state-related matters.⁹² Lastly, the SAO has participated in ongoing discussion with internal auditors at state agencies.⁹³

Beginning with state fiscal year 2018, the SAO will also conduct the Statewide Single Audit, covering expenditures of federal funds, including those related to Hurricane Harvey, by state, local governmental, and nonprofit entities.⁹⁴ This audit considers the State of Texas as a single entity and is required of any non-federal entity that spends more than \$750,000 in federal funds in a fiscal year.⁹⁵ The audit is required to include an opinion on compliance with various federal programmatic requirements and a report on the state's internal controls over compliance.⁹⁶ Federal programmatic requirements include allowed/disallowed activities, allowable costs/cost principles, cash management, eligibility, equipment and real property management, matching/level of effort/earmarking, period of performance, procurement and suspensions/debarments, program income, reporting, sub-recipient monitoring, and other special tests and provisions.⁹⁷ Specific disaster-related federal programs included in statewide single audits include the CDBG-DR, Public Assistance Disaster Grants, and Hazard Mitigation Grants.⁹⁸

Under current program thresholds, programs that are deemed "major" under federal requirements will be included in the statewide single audit. Selected programs must provide coverage for 40 percent of total federal expenditures.⁹⁹ In contrast, programs expend less than \$84 million in federal funds are required to be audited at least once every three years.¹⁰⁰ In addition, these programs must have no internal control deficiencies classified as a material weakness in their most recent audit.¹⁰¹ They must also have received an unmodified opinion in their most recent audit. In addition, no more than five percent of total federal expenditures in each program may contain known or likely questioned costs.¹⁰²

c. Local Funds

The City of Houston leveraged data from federal and local sources to assess the level of damage, and estimates more over 300,000 individual residences being damaged and more than \$2.5 million in damage to city infrastructure.¹⁰³ Using \$50 million in advance state funding, the City of Houston was able to provide surge capacity debris removal shortly after Hurricane Harvey.¹⁰⁴

Similarly, Harris County leveraged its own dollars to jumpstart recovery, while ensuring that such expenditures would be eligible for federal reimbursement.¹⁰⁵ Harris County maintained a contingency fund of \$170 million for disaster response, which helped it retain debris removal contractors in the aftermath of Hurricane Harvey.¹⁰⁶ For example, Harris County paid \$12 million to first responders to ensure they received pay for work performed during and after Hurricane Harvey.¹⁰⁷ Harris County received \$44 million in funding from the state for additional debris and damage removal.¹⁰⁸ The federal government also reimbursed Harris County \$12 million to assist the county in paying overtime to employees who worked during and after the storm.¹⁰⁹ Harris County also engaged an outside entity to manage its accounting and document management to comply with federal requirements.¹¹⁰ In utilizing an outside entity, Harris County also identified additional areas that were eligible for federal reimbursement.¹¹¹ In total, Harris County submitted a request for reimbursement of \$170 million to the federal government across 12 separate line-items.¹¹²

d. Charitable Funds

Charitable funding provided in response to Hurricane Harvey was considerable, and testimony from nonprofit organizations indicated this funding helped expedite response in the immediate aftermath of Hurricane Harvey.¹¹³ In addition, coordination among nonprofits and federal, state, and local governmental entities allowed nonprofits to streamline referrals from the 211 hotline to prevent duplication of services.¹¹⁴

For example, United Way of Greater Houston raised over \$45 million for disaster recovery, distributing more than \$5.7 million within a week after Hurricane Harvey made landfall.¹¹⁵ By January 2018, the organization had distributed almost \$11 million. Similarly, Catholic Charities organizations across the state raised over \$20 million to assist the organization with relief and response efforts in Beaumont, Corpus Christi, Galveston-Houston, and Victoria.¹¹⁶ These funds also helped organize long-term shelter for families in Central Texas, Dallas, and Fort Worth.¹¹⁷

Lastly, the Greater Houston Community Foundation, a partnership between the City of Houston and Harris County, had raised approximately \$112 million for its Hurricane Harvey Relief Fund, of which it had distributed \$65 million to nonprofit entities by January 2018.¹¹⁸ Of this amount, approximately 25 percent supported temporary housing and home repairs, 21 percent supported direct financial assistance to individuals, 15 percent supported disaster case management, and 9 percent in furniture and fixtures.¹¹⁹ An additional \$2.3 million supported mental health programs and \$1 million to local school districts for direct assistance to families.¹²⁰

2. Investigate Fraud, Waste, and Abuse Involving Harvey Funds

While federal authorities are largely responsible for identifying and recovering fraudulent payments for disaster funds,¹²¹ state agencies have also taken steps to detect and prevent fraud. Because federal programmatic requirements govern the disbursement of funds, implementation of these requirements by state agencies is the best way to prevent fraud.¹²²

As previously mentioned, FEMA provides funding to state agencies for individual assistance including Other Needs Assistance and the U.S. Department of Agriculture provided funding through the Disaster Supplemental Nutritional Assistance Program (DSNAP). HHSC was responsible for administering both programs.¹²³ HHSC also provided \$500 one-time payments to households under the Critical Needs Assistance program.¹²⁴ HHSC also provided one-time food assistance under DSNAP to families impacted by Hurricane Harvey who were not already eligible for Supplemental Nutritional Assistance Program.¹²⁵ By January 3, 2018, HHSC processed 383,232 Other Needs Assistance grant applications, or more than \$360 million in All Funds.¹²⁶ Fraudulent activities in DSNAP were similar to those experienced in the Supplemental Nutritional Assistance Program, and involved provision of false eligibility information by applicants, selling or trading of benefits, or trafficking of benefits by businesses.¹²⁷ During the same timeframe, HHSC conducted 811 fraud-related investigations totaling \$420,952.¹²⁸ Of these, it had recovered \$305,393 with \$115,559 left outstanding.¹²⁹ As of January 2018, HHSC had provided DSNAP benefits to 1.6 million individuals, totaling \$550 million in benefits.¹³⁰

HHSC's fraud mitigation efforts took place both during processing and after benefits had been issued.¹³¹ During processing, HHSC verified applicants' identities, posted federally required fraud warnings at benefits application sites, and check applications against existing eligibility data to prevent duplication of benefits.¹³² HHSC also created special procedures to process applications for assistance submitted by agency employees.¹³³ Lastly, HHSC referred potentially fraudulent applications to on-site staff from the Office of the Inspector General (OIG) for in-depth interviews and enhanced application review.¹³⁴ By providing a three-day delay between approving benefits and making them available for payment, HHSC was successful in mitigating trafficking in benefits by businesses.¹³⁵

The OIG embedded agents at all DSNAP locations for enhanced interviews, and also coordinated with federal agencies to leverage fraud data.¹³⁶ By January 2018, the OIG had received 400 complaints related to DSNAP fraud, resulting in 90 investigations.¹³⁷

In addition, the CPA Treasury Operations Division conducted outreach to educate banks and business and tracked fraudulent warrants after Hurricane Harvey through mid-December 2017 when fraudulent activities began to subside.¹³⁸ The CPA notified banks of higher levels of payments from the State of Texas and highlighted security features on state warrants and the process to verify the status of state payments.¹³⁹ Inquiries related to Hurricane Harvey payments were directed to a live telephone agent.¹⁴⁰ Between Hurricane Harvey and January 2018, the line fielded more than 1,400 calls to validate state warrants, or checks guaranteed for payment by the CPA with state funds.¹⁴¹ The CPA also identified and conducted outreach to a number of businesses in the Houston area at which the majority of fraudulent warrants were presented for payment.¹⁴² Outreach efforts included providing information on how to identify fraudulent

warrants and verify the status of state payments.¹⁴³ Between Hurricane Harvey and December 2017, the CPA identified 115 fraudulent warrants totaling \$72,000. These warrants were either returned or rejected as altered or fictitious.¹⁴⁴

As for charitable funding, nonprofit organizations in Harris County coordinated with FEMA, local governmental entities, and other organizations to coordinate case management through a single intake 211 intake hotline.¹⁴⁵ Funneling all calls through a single case management system enabled these organizations to minimize duplication of services and prevent fraudulent or improper use of charitable dollars by individuals.¹⁴⁶ In addition, nonprofit organizations and foundations vetted other organizations to which they provided funding for direct assistance to individuals, screening those organizations to ensure they had been operating in their communities for some time and had good ratings for fiscal stewardship.¹⁴⁷

Lastly, the SAO has conducted ongoing monitoring for fraud by coordinating with the U.S. Government Accountability Office and other stakeholders to identify areas at risk for fraud and will include these programs in its statewide single audit.¹⁴⁸ As previously discussed, the SAO Single Audit covers any non-federal entity, including nonprofit organizations, that spend federal funds.¹⁴⁹

3. Ensure State of Texas is Maximizing Federal Aid

The State of Texas is largely maximizing federal aid which has been made available for Hurricane Harvey. However, additional federal funding and resources, including those to help individuals and local governmental entities in impacted areas apply for that funding, would be beneficial. During the aftermath of Hurricane Harvey, FEMA approved a 100 percent federal match for emergency protective measures during the first 30 days after Hurricane Harvey, and many other programs were subject to a 90 percent federal and 10 percent state match. In addition, as previously mentioned, total actual expenditures by state agencies and institutions of higher education for Hurricane Harvey during state fiscal years 2017 and 2018 were \$2,667.8 million in All Funds.¹⁵⁰ Of these, the state's total expenditures for Hurricane Harvey comprise \$2,200.6 million in Federal Funds, compared to \$241.5 in General Revenue, \$5.1 million in General Revenue-Dedicated, and \$220.7 million in Other Funds.¹⁵¹ Moreover, state agencies have passed through \$1,692.3 million in federal funding to local governmental entities.¹⁵² Based on this data, the State of Texas appears to have maximized federal aid made available for Hurricane Harvey. During future disasters, the State of Texas should negotiate similar matching rates and request additional federal aid.

e. Recommendations

The committee makes the following recommendation:

- Establish statewide revolving grant and loan programs for eligible entities in zones designated in a gubernatorial disaster proclamation that disburse funds in an expedited fashion to fast-track recovery while safeguarding funds from fraud, waste, and abuse;
- Create a single statewide disaster case management software to streamline governmental entities' and nongovernmental organizations' responses to individuals affected by a disaster;
- Implement a single inspection program that satisfies the inspection requirements for governmental entities and insurers to minimize duplication of effort and expedite the recovery process for individuals affected by a disaster;
- Require training in emergency management for local emergency managers similar to the requirement for local elected officials;
- Create a single state repository for local governmental budgets and spending for emergency preparedness, response, disaster mitigation, and capital improvements to allow the state to assess the actual cost of preparing for and responding to disasters.

2. INTERIM CHARGE 2: CONFLICT OF INTEREST LAWS AND PERSONAL FINANCIAL STATEMENTS

a. Background

As part of its overarching review of the state's ethics laws, the Committee received a charge to review conflict of interest laws governing public officers and employees to ensure that laws are adequate to maintain the public's confidence in government decision-making. The Committee was also charged with reviewing personal financial statement requirements to ensure that the public has sufficient information on the private financial interests of public officers.

The Committee met on Thursday, March 22, 2018 at 10:30 AM in Room E1.010 of the Texas Capitol. The committee took testimony from the following stakeholders:

1. Invited Testimony

- Ms. Sharon Talley, Director, Enforcement Division, Travis County Attorney's Office
- Ms. Amanda Cochran-McCall, Assistant Deputy Attorney General for Civil Litigation, Office of the Attorney General
- Mr. Jeff Collins, Major, Texas Rangers
- Mr. Ian Steusloff, General Counsel, Texas Ethics Commission

2. Public Testimony

- Ms. Joanne Richards, Common Ground for Texas
- Mr. Dave Jones, Clean Elections Texas

b. Discussion

This section reviews the Committee's activities regarding conflicts of interests involving state officials and employees. It then turns to a discussion of personal financial statements.

1. *Conflicts of Interest*

Jurisdiction over conflicts of interest involving state officials and employees is split between the Texas Ethics Commission (TEC), Texas Rangers Public Integrity Unit (PIU), Office of the Attorney General (OAG), and certain regulatory agencies.

The TEC has jurisdiction over campaign finance, personal financial statements, and the lobby law and can investigate a conflict of interest occurring in any of these provisions.¹⁵³ For example, Chapter 572 of the Government Code prohibits legislators from voting on a bill that affects a business interest of the legislator.¹⁵⁴ In contrast, the Texas Constitution provides broader restrictions, but falls outside of the TEC's enforcement authority.¹⁵⁵ Where the TEC receives a sworn complaint involving a criminal matter, it would refer the complaint over to the appropriate prosecuting attorney.¹⁵⁶ Of note, the TEC is prohibited by law from sharing the information in a

sworn complaint or proceeding involving a sworn complaint with other law enforcement officers.¹⁵⁷

The Texas Rangers PIU has jurisdiction to investigate criminal offenses against public administration, any lesser included offenses, and any conduct arising from an offense against public administration.¹⁵⁸ Because many conflict of interest offenses are administrative or civil in nature, the PIU would need to determine whether the violation also includes elements of a criminal offense, such as abuse of office or bribery.¹⁵⁹ Although the PIU's investigations largely focus on offenses by statewide elected officials and state employees, it does refer public trust investigations related to county and local government elected officials to its statewide field offices.¹⁶⁰

Complaints to the PIU may be formal or informal, including anonymous emails, letters, and phone calls.¹⁶¹ Statute provides the PIU with discretion to reject a complaint that has no basis in fact. The PIU also works to refer cases that do not meet the elements of a criminal offense to the TEC for civil investigations.¹⁶² Despite this collaborative agreement, the TEC is prohibited by statute from sharing information with law enforcement, including the PIU, unless that information is entered into the record of a judicial proceeding.¹⁶³ As a result, sworn complaints received by the TEC involving potential criminal matters could result in duplication of effort and conflicting information, all of which jeopardize the outcome of a PIU investigation.¹⁶⁴

Between December 1, 2015 and February 2018, the PIU completed 366 preliminary investigations of complaints and 39 full investigations.¹⁶⁵ The PIU is composed of two Texas Rangers, one attorney from the Texas Department of Public Safety Office of the General Counsel, and one financial crimes analyst.¹⁶⁶ The PIU also employs six field rangers throughout the state.¹⁶⁷

Lastly, the OAG lacks specific investigative and enforcement authority under the Texas Constitution and state statutes for nearly all offenses involving state officials' conflicts of interests.¹⁶⁸ However, Section 572.058 of the Government Code prohibits certain elected and appointed officials who serve on boards with direction over the policymaking activities of a state agency from voting on a measure, proposal or decision in which the individual has a private or personal interest.¹⁶⁹ The OAG has express statutory authority to pursue enforcement against a Section 572.058 conflict on its own initiative or pursuant to a complaint by a Texas resident or member of the board or commission.¹⁷⁰ The OAG has never received notice or become aware of a Section 572.058 conflict, and thus has not exercised enforcement authority under this section.¹⁷¹ As for other conflicts of interest, the OAG does not currently maintain a process to accept complaints or conduct intake, although the agency could be directed to do so.¹⁷²

Neither the Travis County Attorney's Office¹⁷³ nor the OAG¹⁷⁴ has received a referral to investigate a potential conflict of interest relating to a public official.

2. Personal Financial Statements

The TEC also has jurisdiction over the requirement in Chapter 572 of the Government Code for state officers, elected officials, and candidates for state office to file periodic personal financial statements.¹⁷⁵ Personal financial statements are required to be filed electronically, except for individuals appointed to office.¹⁷⁶ Pursuant to the Chapter 572 of the Government Code, personal

financial statements include 18 required disclosures, including, occupational income, investments, beneficial interests in real property, and assets in a trust account from which the filer receives \$500 or more as a beneficiary.¹⁷⁷ As required by House Bill 501 passed during the 85th Regular Session,¹⁷⁸ the TEC will also require filers to disclose income received as bond counsel and contracts with governmental entities. Although current requirements for personal financial statements involve 18 separate parts, federal law governing financial and personal interests provides more robust requirements.¹⁷⁹

The volume of personal financial statement filings received by the TEC varies from year to year, with higher numbers filed in even years, coinciding with elections.¹⁸⁰ For example, during the first fiscal year 2016, the TEC received approximately 3,000 personal financial statement filings, compared to only 2,700 in fiscal year 2017.¹⁸¹

Civil enforcement authority for failure to file personal financial statements is split between the TEC and the OAG. Currently, the TEC reviews personal financial statements to determine whether they are timely filed.¹⁸² If the TEC makes a determination of noncompliance, it must notify the appropriate prosecuting attorney in writing.¹⁸³ Additionally, late filings are subject to a statutory fine of \$500, which may be increased up to \$10,000.¹⁸⁴ Although the TEC has authority to assess fines, it lacks authority to collect them. As a result, it refers fines for collection to the OAG's Bankruptcy and Collections Division.

Based on an order and referral by the TEC, the OAG may pursue a two-pronged approach to collect fines owed to the state and bring a late filer into compliance. Options available to the OAG to collect fines include entering into payment plans, garnishing assets, and seeking warrant holds from the CPA. For elected officials, warrant holds are permissible against travel reimbursements and per diems, but impermissible against the official's constitutional salary. Absent legislative action, a warrant hold against an official's state wage would likely be unconstitutional. The OAG may also pursue an injunction to compel compliance by a late filer, if the filer has not already come into compliance. If a later filer fails to comply with an injunction, the OAG may also pursue motions to show cause, ordering a late filer to appear in court. Lastly, the OAG may file a writ of attachment against a person where the filer fails to comply with an injunction and fails to appear at a show cause hearing.

As for criminal enforcement, the TEC has developed an informal collaborative process with the Travis County Attorney's Office to refer misdemeanor cases involving failure to file a personal financial statement for prosecution.¹⁸⁵ The Travis County Attorney's Office sends a letter upon receipt of a referral to the late filer providing notice of a referral for criminal prosecution and asking the individual to contact the office regarding the matter.¹⁸⁶ The Travis County Attorney's Office works to ensure the individual comes into compliance, and does not file criminal charges if the individual does so.¹⁸⁷ If the individual does not come into compliance, the Travis County Attorney's Office seeks a probable cause affidavit from the TEC and files criminal charges.¹⁸⁸ For first time offenders, the Travis County Attorney's Office will dismiss charges upon providing proof that the individual has come into compliance.¹⁸⁹ The Travis County Attorney's Office indicated that no one has been re-referred by the TEC after completing their process.¹⁹⁰

Since beginning its collaborative with the TEC, the Travis County Attorney's Office has received

a total of 37 referrals (related to both failure to file personal financial statements and failure to register as a lobbyist or file lobby activity reports).¹⁹¹ Of these, 18 referrals resulted in not filing criminal charges.¹⁹² For those referrals which resulted in not filing criminal charges, 13 were resolved by the filer coming into compliance, four were not filed because they were barred by statute of limitations issues, and 1 was not filed because the late filer had died.¹⁹³ In contrast, 15 resulted in filing of criminal charges.¹⁹⁴ Of these, nine cases were resolved by the filer coming into compliance, and six are currently pending in court.¹⁹⁵ The Travis County Attorney's Office also received four recent referrals which were under review at the time testimony was taken.¹⁹⁶

In response to issues raised during the hearing, Chairman Davis submitted two requests for opinion to the OAG on May 2, 2018. The first request sought an opinion on whether a legislator may receive payment from a unit of local government for lobbying activities.¹⁹⁷ The second request sought confirmation and clarification of Attorney General Opinion GA-0386 (whether a state legislator may simultaneously serve as president of a municipal management district operating under chapter 375 of the Local Government Code).¹⁹⁸ The Government Code sets a 180-day statutory deadline for the Attorney General to issue an opinion, or explain why an opinion will be delayed, after receiving a request.¹⁹⁹ On October 29, 2018, the OAG notified the Committee that the opinions would be delayed because the office "need[s] more time to review the law and complete the analysis that [the Committee's] request requires."²⁰⁰ The OAG further indicated that it would issue the opinions as soon as possible.²⁰¹

c. Recommendations

The committee makes the following recommendation:

- Monitor the Attorney General's responses to the Chairman's Requests for Opinion (RQ-0228-KP) and (RQ-0229-KP) for potential legislative action;
- Monitor legislative recommendations contained in the TEC report to the Legislature due in December 2018;
- Amend the current Government Code prohibition on legislators' holding public office and simultaneously lobbying for compensation on behalf of persons and for-profit business entities to expressly extend the prohibition to other entities, including not-for-profit organizations and local governmental entities;
- Direct the TEC to review federal requirements governing the public reporting and disclosure of federal elected and appointed officials' personal financial information²⁰² to determine if enhancing requirements at the state level would provide additional transparency regarding state officials' financial interests to Texas taxpayers;
- Maximize transparency in personal financial statements by enhancing disclosure requirements surrounding candidates' and public officials' trust accounts and eliminating opportunities for candidates and public officials to avoid disclosing any assets and liabilities.

3. INTERIM CHARGE 3: CRIMINAL PENALTIES FOR LOBBYING VIOLATIONS

a. Background

As part of its overarching review of the state's ethics laws, the Committee received a charge to review criminal penalties under Chapter 305, Government Code (registration of lobbyists) and recommend improvements to maintain the integrity of legislative and administrative processes.

The Committee met on Thursday, March 22, 2018 at 10:30 AM in Room E1.010 of the Texas Capitol. The committee took invited testimony from the following stakeholders:

1. Mr. Tom Forbes, President, Professional Advocacy Association of Texas
2. Mr. Ian Steusloff, General Counsel, Texas Ethics Commission
3. Ms. Adrienne McFarland, Deputy Attorney General for Criminal Prosecutions, Office of the Attorney General
4. Ms. Sharon Talley, Director, Enforcement Division, Travis County Attorney's Office

b. Discussion

Chapter 305 of the Government Code imposes registration and reporting requirements on lobbyists and provides penalties for violations of these requirements and the commission of certain prohibited acts. With certain exceptions, an individual is required to register as a lobbyist if the individual spends more than \$500²⁰³ or receives more than \$1,000 in compensation²⁰⁴ during a calendar quarter to directly communicate with legislative or executive branch officials or employees with the intent to influence legislation or administrative action.

With the exception of accepting or offering a contingent fee for lobbying services, violations of the lobby law are all Class A misdemeanor offenses.²⁰⁵ In contrast, accepting or offering a contingent fee for lobbying is a third-degree felony.²⁰⁶ In addition to criminal penalties for violations of the lobby law, the TEC has authority to assess civil monetary penalties, including for failure to register²⁰⁷ and failure to file timely reports.²⁰⁸ The Texas Government Code grants enforcement authority for violations of the lobby law to the TEC, the OAG, and any county or district attorney.²⁰⁹ In addition, any person may file a sworn written complaint alleging a violation of the lobby law to the TEC or the appropriate prosecuting attorney.²¹⁰

The TEC and Travis County Attorney's Office have developed a referral program to prosecute misdemeanor violations of the lobby law.²¹¹ Under this collaborative, the TEC investigates cases and refers them onto the Travis County Attorney's Office for prosecution.²¹² Upon referral, the Travis County Attorney's Office contacts a delinquent filer to notify them of the potential for criminal charges and encourage them to contact the TEC to come into compliance.²¹³ If the TEC later confirms that an individual has voluntarily come into compliance, the Travis County Attorney's Office does not file criminal charges.²¹⁴ However, if an individual does not come into compliance, the Travis County Attorney's Office files criminal charges and seeks a summons requiring the individual to appear in court.²¹⁵ Over the course of the program, the Travis County

Attorney's Office has received a total of 37 referrals, of which criminal charges were filed in 15 cases and not filed in 18 cases.²¹⁶ A further four cases were recently referred and currently under review.²¹⁷ Of the cases in which criminal charges were filed, nine were resolved by the delinquent filer complying with the law and six cases which are currently pending.²¹⁸ Of the cases in which criminal charges were not filed, 13 were resolved by the individual coming into compliance before criminal charges were filed, four were not filed because charges were barred by the statute of limitations, and 1 was not filed because the individual died.²¹⁹

c. Recommendations

The committee makes the following recommendation:

- Monitor legislative recommendations contained in the TEC report to the Legislature due in December 2018;
- Align criminal penalties for lobbying violations to the severity of each offense to allow appropriate enforcement and prosecution, while preserving the integrity of the legislative and administrative processes;
- Monitor the TEC's rulemaking and implementation process to amend lobby forms to require disclosure by individuals who are registered foreign agents under the U.S. Foreign Agents Registration Act.

4. INTERIM CHARGE 4: JUDICIAL CAMPAIGN FAIRNESS ACT

a. Background

As part of its review of the state's ethics laws, the Committee received a charge to examine the Judicial Campaign Fairness Act and identify opportunities to improve the Act.

The Committee met on Thursday, March 29, 2018 at 9:00 AM in Room E1.010 of the Texas Capitol. The committee took testimony from the following stakeholders:

1. Invited Testimony

- Mr. David Slayton, Executive Director, Texas Judicial Council
- Mr. Ian Steusloff, General Counsel, Texas Ethics Commission

2. Public Testimony

- Ms. Joanne Richards, Texas Fair Courts Network
- Mr. Dave Jones, Clean Elections Texas

b. Discussion

The Texas Legislature passed the Judicial Campaign Fairness Act in 1995 to regulate political contributions, expenditures, and advertising for judicial campaigns. The Judicial Campaign Fairness Act also sets out requirements for filing personal financial statements for candidates for judicial office.

The Judicial Campaign Fairness Act imposes contribution limits for campaigns for certain judicial offices and sets voluntary expenditure limits on those candidates. It also limits the period of time during which candidates for certain judicial offices may accept contributions. The Judicial Campaign Fairness Act applies to candidates or officeholders including justices of the Texas Supreme Court, judges on the Court of Criminal Appeals, justices of courts of appeals, district court judges, statutory county court judges, and statutory probate court judges.²²⁰ In contrast, the Judicial Campaign Fairness Act does not apply to justices of the peace or municipal court judges.²²¹

Contribution limits under the Judicial Campaign Fairness Act apply to three types of contributions. First, the Judicial Campaign Fairness Act limits individual contributions in two classes.²²² Individual contributions to candidates for statewide judicial office are limited to \$5,000.²²³ Similarly, individual contributions to candidates for all other judicial offices are limited to a range of \$1,000 to \$5,000, depending on the population of the judicial district in which the candidate seeks election.²²⁴

Second, the Judicial Campaign Fairness Act establishes similar classes of limitations on political contributions by law firms.²²⁵ Law firm contributions to a candidate for a statewide judicial race are limited to \$30,000 per candidate.²²⁶ For candidates for courts of appeals, district courts, statutory county courts, and statutory probate courts, law firms may contribute a maximum range

of \$6,000 to \$30,000, depending on the population of the judicial district for which the candidate seeks election.²²⁷

Third, the Judicial Campaign Fairness Act imposes three classes of limits on contributions by political action committees. A political action committee may contribute a maximum of \$300,000 to a candidate for statewide judicial office. For candidates for courts of appeals, a political action committee may contribute a maximum range of \$52,500 to \$75,000, depending on the population of the judicial district for which the candidate seeks election. A political action committee may contribute a maximum range of \$15,000 to \$52,500 for a candidate for district court, statutory county court, or statutory probate court, depending on the population of the district for which the candidate seeks election.

In addition, the Judicial Campaign Fairness Act imposes three classes of voluntary expenditure limits for judicial candidates.²²⁸ First, the Judicial Campaign Fairness Act limits expenditures for statewide judicial offices to \$2 million.²²⁹ Second, the Judicial Campaign Fairness Act limits expenditures for courts of appeals to a range of \$350,000 to \$500,000, depending on the population of the district.²³⁰ Third, the Judicial Campaign Fairness Act limits expenditures for district courts to \$15,000 to \$52,000, depending on the population of the district.²³¹ Each candidate for judicial office must file a declaration with the TEC indicating whether they will comply or not comply with these voluntary limits.²³² If a candidate fails to comply with the voluntary expenditure limits or declares that he or she will not comply with the limits, opponents in the race are no longer bound by the expenditure limits.²³³ However, these expenditure limits will continue to apply to the noncomplying candidate.²³⁴

The Judicial Campaign Fairness Act also establishes a timeframe during which candidates²³⁵ and individuals appointed to fill a judicial vacancy may accept contributions.²³⁶ This period ends 120 days after the last election in which the candidate appeared on the ballot, regardless of whether the candidate had an opponent.

Despite subsequent judicial rulings that undermine the constitutionality of several provisions in the Judicial Campaign Fairness Act, it has not been substantially amended in the over two decades since it was enacted. Specifically, Supreme Court rulings in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010) and *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009) have made the expenditure limits in the Judicial Campaign Fairness Act potentially ripe for litigation.

In light of these decisions, the Texas Judicial Council issued a report in 2010 with five overarching recommendations to strengthen the Act.²³⁷ Of these recommendations, only one—related to eliminating straight-ticket voting—has been enacted into law.²³⁸

Although the Texas Judicial Council recommends keeping recusal standards contained in rules, it has recommended some statutory changes impacting recusal. For example, if statutory changes are to be made, the Office of Court Administration suggested creating a presumption against recusal where a judicial candidate is in compliance with the political contribution and expenditure limits, as well as campaign finance reporting requirements.

c. Recommendations

The committee makes the following recommendations:

- Enact legislation to reduce candidates' dependence on and the influence of pay-to-play endorsement slates in judicial elections, while preserving the integrity of the electoral and judicial processes;
- Assess the merits of un-enacted recommendations by the Texas Judicial Council to improve the Judicial Campaign Fairness Act and encourage a fair, impartial court system and well-qualified judiciary.

5. INTERIM CHARGE 5: TEXAS ETHICS COMMISSION COMPLAINT RESOLUTION PROCEDURES AND PROCESSES

a. Background

As part of its overarching review of the state's ethics laws, the Committee received a charge to review procedures and processes used at the TEC and identify ways to resolve complaints more efficiently.

The Committee met on Thursday, March 22, 2018 at 10:30 AM in Room E1.010 of the Texas Capitol. The committee took testimony from the following stakeholders:

1. Invited Testimony

- Mr. Ian Steusloff, General Counsel, Texas Ethics Commission
- Mr. John Montgomery, General Government Analyst, Legislative Budget Board
- Mr. Tom Forbes, President, Professional Advocacy Association of Texas

2. Public Testimony

- Ms. Joanne Richards, President, Common Ground for Texas

b. Discussion

Pursuant to its general enforcement authority,²³⁹ TEC uses two types of enforcement mechanisms: an administrative review process and the sworn complaint process.²⁴⁰ Under the administrative review process, agency staff conduct an initial review for timeliness and compliance.²⁴¹ Agency staff then notifies individuals who failed to file a required report.²⁴² Late reports are generally subject to a \$500 penalty as provided in statute.²⁴³ However, certain reports due before and after elections are subject to enhanced penalties of up to \$10,000.²⁴⁴ Agency staff also have authority to attempt to resolve technical and de minimis violations.²⁴⁵

Second, the TEC also conducts a sworn complaints process.²⁴⁶ Upon receiving a sworn, written complaint, the agency's executive director conducts an initial review to determine whether the agency can accept the complaint.²⁴⁷ Acceptable complaints must allege a violation of law under the TEC's authority and meet certain statutory form requirements.²⁴⁸ If a sworn complaint fails to meet statutory form requirements, it is dismissed on procedural grounds.²⁴⁹

If a sworn complaint is accepted, it is forwarded to a preliminary review process.²⁵⁰ During the initial preliminary review, agency staff conduct an investigation.²⁵¹ Statute requires the TEC to attempt to settle complaints by proposing a settlement to the respondent.²⁵² If a respondent accepts the settlement, the respondent signs an document known as an "Assurance of Voluntary Compliance" and returns it to the TEC.²⁵³ It is then signed and executed by the agency's executive director.²⁵⁴ If a respondent does not accept a settlement, the complaint is then set for a preliminary review hearing before the TEC.²⁵⁵ The TEC then proposes an Agreed Order which resolves the

complaint.²⁵⁶ The respondent may appeal and request a subsequent formal hearing before the TEC, and this hearing is subject to the Texas Administrative Procedure Act and Rules of Evidence.²⁵⁷

Because of the need to provide additional clarity, the TEC proposed rules governing the process and conduct of reviews and hearings of sworn complaints before the agency.²⁵⁸

In regard to the efficiency of the sworn complaint process, the TEC has performed fairly well according to assessments by the LBB.²⁵⁹ Enforcement, including sworn complaints, currently represents 29 percent of the agency's budget.²⁶⁰ Most cases do not proceed beyond the preliminary review and agreed order stage.²⁶¹ Often the agency lacks jurisdiction over the alleged violation, or the sworn complaint fails to comply with statutory form requirements.²⁶² As of the date of the Committee's hearing, the agency had received 176 total sworn complaints in state fiscal year 2019, and it had issued 60 public orders on its website.²⁶³ Moreover, since 2004, the agency has had a 100 percent compliance rate with a statutory requirement to respond to a sworn complaint within five days of receipt.²⁶⁴

Both the TEC and the LBB referenced recommendations made by the agency in reports to the Legislature to improve the efficiency of its sworn complaint processes.²⁶⁵ Neither of these recommendations has been enacted into law.²⁶⁶

c. Recommendations

The committee makes the following recommendations:

- Monitor the TEC's rulemaking and implementation of rules providing guidelines governing the preliminary review, preliminary review hearing, and formal hearings of sworn complaints before the Commission;
- Monitor legislative recommendations contained in the TEC report to the Legislature due in December 2018;
- Modify Section 571.176 of the Government Code to either:
 - Redefine "groundless complaint" to mean "a complaint that does not allege a violation of law that is material, non-technical, or non-clerical on its face"; or
 - Remove the term "groundless" from the definition of frivolous complaint;
- Amend Section 571.140 of the Government Code to clearly allow a respondent or respondent's counsel to waive confidentiality regarding a sworn complaint filed against the respondent.

6. INTERIM CHARGE 6: STATE AGENCY REHIRING OF EMPLOYEES TERMINATED FROM ANOTHER AGENCY FOR MISCONDUCT

a. Background

The Committee's investigation into the Texas Alcoholic Beverage Commission (TABC) during the 85th Regular Session revealed rehiring of a small number of individuals who resigned or were terminated from previous state agencies for misconduct. Against this backdrop, the Committee examined state agencies' policies and practices for rehiring individuals who had been terminated at a previous state agency for misconduct.

The Committee met on Thursday, February 15, 2018 at 10:30 AM in Room E1.010 of the Texas Capitol. The committee took invited testimony from the following stakeholders:

1. Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts
2. Mr. John Young, Audit Manager, State Auditor's Office
3. Ms. Sharon Schneider, Project Manager, State Auditor's Office
4. Ms. Ursula Parks, Executive Director, Legislative Budget Board

b. Discussion

The SAO annual report of state classified employee turnover revealed a turnover rate of 18.6 percent, the highest rate in a five year period.²⁶⁷ At the same time, resignation in lieu of involuntary separation increased 24.2 percent, or an increase of 2.5 percent since state fiscal year 2016.²⁶⁸

Despite the potential for a state agency to rehire an employee terminated from another agency for misconduct, creating a government-wide database raises constitutional concerns.²⁶⁹ Including an employees name in such a database would likely implicate due process protections.²⁷⁰ Providing due process protections before an employee's name could be placed in a centralized database could lead to a lengthy administrative process with the potential for additional appeals by the employee.²⁷¹

Potentially, a state agency that has concerns about a new hire with previous state service could make an open records request for the individual's employment records. The hiring state agency would need to make open records requests to all state agencies at which an employee previously worked. It would then need to receive and analyze those records prior to making a hiring decision.

The CPA is in the process of implementing a web-based application that will allow designated employees to access an individual's state employment history using the individual's Social Security Number or Texas State Payer Identification Number.²⁷² This application will contain the name of each employing agency, dates of employment, starting and final salaries, and a termination description including whether the individual was voluntarily or involuntarily terminated.²⁷³ Although the CPA maintains a uniform set of termination descriptions that applies across all state

agencies, employment history classification still depends on classification by human resources staff at each state agency.²⁷⁴ Thus, while the web-based state employment history application will facilitate more efficient access to employment information on previous state employees, continued action is necessary to ensure the accuracy of that information.

c. Recommendations

The committee makes the following recommendations:

- Monitor implementation of the CPA' state employee history web application;
- Ensure state agencies use and apply the state's uniform set of job termination descriptions in a consistent manner to maximize the quality of information available in the CPA' state employee history web application.

7. INTERIM CHARGE 7: SENATE BILL 73 (85R) IMPLEMENTATION

a. Background

The 85th Legislature passed Senate Bill 73 as a result of a reports of inconsistent and questionable use of emergency leave by state agencies. The bill requires agencies to establish and post guidelines governing the use of emergency leave and imposes various reporting requirements for state agencies that grant leave in excess of certain thresholds. The goal of the bill was to encourage responsible use of taxpayer dollars and emergency leave by state agencies, while preserving the ability of state employees to take such leave in the event of an authentic emergency.

The Committee met on Thursday, March 29, 2018 at 9:00 AM in Room E1.010 of the Texas Capitol to take up Interim Charge 7 relating to the implementation of Senate Bill 73. The committee took invited testimony from the following stakeholders:

1. Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts
2. Ms. Amanda Crawford, Deputy Attorney General for Administration and General Counsel, Office of the Attorney General
3. Ms. Katy Fallon-Brown, Budget Analyst, Legislative Budget Board
4. Ms. Lara Tai, Project Manager, State Auditor's Office

b. Discussion

This section provides a legislative history of Senate Bill 73. It then highlights issues raised during the Committee's analysis of the bill's implementation.

During committee action on Senate Bill 73, the bill's author highlighted a SAO report finding inconsistent leave policies across state government, as well as questionable use of emergency leave by certain state agencies.²⁷⁵ The goal of the bill was to provide common-sense guidelines for state agencies' use of emergency leave, while also allowing state employees to take leave for actual emergencies, such as a death in the family.

As signed into law, Senate Bill 73 requires a covered state agency to adopt a policy with clear guidelines governing the use of emergency leave. Each covered state agency must also post this policy on the agency's website. The bill limits an agency head's discretion to grant emergency leave to situations in which the employee requests the leave from the agency head and the agency head finds good cause for granting the leave. In addition, the bill prohibits the agency head from granting leave unless the agency head has a good faith belief that the employee will return upon termination of the leave period. The bill requires each state agency that grants emergency leave in excess of 32 hours during a single fiscal year to report to the CPA the name of the employee granted leave, the reason for the leave, and the total number of hours of emergency leave granted to that employee during the fiscal year. The bill also allows an agency to grant emergency leave to an employee who is involved in or the subject of an investigation by the agency. If the total hours of emergency leave granted to an employee who is involved in or the subject of an

investigation by the agency exceeds 168 hours in a fiscal year, the agency must report the employee's name, the reason for the leave, and the total amount of leave hours granted to that employee to the SAO and the LBB. The bill expressly allows a state agency to grant paid sick leave to veterans seeking or receiving physical or mental health care through the U.S. Department of Veterans Affairs. Lastly, the bill requires the CPA to adopt uniform policies and accounting codes for the reporting of leave for use on the Centralized Accounting and Payroll/Personnel system.

The Committee's examination of Senate Bill 73's implementation revealed two issues. First, despite clear legislative intent, state agencies still fail to provide consistent information when reporting emergency leave to the LBB. State agencies' justifications for granting emergency leave varied significantly in the two quarterly reports provided to the LBB since Senate Bill 73 took effect. For example, state agencies' individual responses for granting emergency leave included leaving the section for reason for granting leave blank, "investigation still ongoing", and "investigation due to alleged conduct violation". As of the date of the Committee's hearing, one state agency failed to provide a required report to the LBB, although the agency came into compliance shortly after. Amending statute to enhance the level of detail required in agency reports to the LBB could provide additional oversight and clarity of agency use of emergency leave.

Second, Senate Bill 73's definition of state agency creates ambiguity as to whether public junior colleges must comply with the bill's reporting requirements. Specifically, Senate Bill 73 cross-references the definition of "state agency" contained in Section 661.001 of the Government Code when defining entities subject to the bill's reporting requirements.²⁷⁶ In turn, this definition cross-references the definition of "institution of higher education" contained in Section 61.003 of the Education Code.²⁷⁷ While the definition of "institution of higher education" contained in Section 61.003 of the Education Code explicitly includes public junior colleges,²⁷⁸ Section 661.915 of the Government Code categorically exempts public junior colleges from the applicability of the chapter.²⁷⁹ As a result, it is unclear to both public junior colleges and the CPA whether public junior colleges must comply with Senate Bill 73's reporting requirements. Both the CPA and public junior colleges have interpreted this ambiguity to exclude public junior colleges from Senate Bill 73's reporting requirements. However, amending statute to include an express exclusion of public junior colleges could provide all parties with additional clarity.

c. Recommendations

The committee makes the following recommendations:

- Monitor state agencies' compliance with emergency leave reporting requirements, including the level of detail and consistency of reports to LBB when an agency reports the reason for granting an employee emergency leave in excess of 168 hours per fiscal year;
- Clarify law to expressly exclude public junior colleges from S.B. 73's reporting requirements.

8. INTERIM CHARGE 8: STATE AGENCY TRAVEL EXPENDITURES

a. Background

The Committee's investigation of the TABC during the 85th Regular Session uncovered suspect and questionable use of state resources for travel to industry-funded events in a variety of exotic locations. As such, the Committee examined laws and policies governing travel by state employees and officials to ensure that travel expenditures are in the best interest of the state.

The Committee met on Thursday, February 15, 2018 at 10:30 AM in Room E1.010 of the Texas Capitol. The committee took invited testimony from the following stakeholders:

1. Ms. Ursula Parks, Executive Director, Legislative Budget Board
2. Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts
3. Mr. Marc Williams, Deputy Executive Director, Texas Department of Transportation

b. Discussion

Three areas of Texas law and policy provide guidelines governing the reimbursement of travel expenses for travel by state officials and employees. Official travel on the state's aircraft fleet is subject to additional requirements imposed by TxDOT. To ensure compliance with these provisions, the CPA includes travel reimbursements in its annual post-payment audits of selected state agencies.

First, Article IX of the General Appropriations Act (GAA) stipulates the maximum amount of allowable reimbursement for travel-related expenses.²⁸⁰ Under Article IX, the maximum amount of reimbursement available for travel, meals, lodging, and incidental expenses for travel by state officials and employees is the amount appropriated for that particular purpose.²⁸¹ Vehicular travel is reimbursable at the U.S. Internal Revenue Service's published mileage rates, and travel-related meals and lodging are reimbursable at actual costs not to exceed limits imposed by federal travel regulations.²⁸² Although state law ties reimbursement to federal travel regulations, state agencies may request to exceed these limits in certain instances.²⁸³ In addition to these requirements, such travel must comply with all other applicable state laws.²⁸⁴

From 1998 to 2014, each GAA included provisions in Article IX that required state agencies to receive LBB approval to exceed travel costs in excess of certain thresholds.²⁸⁵ Of all requests to exceed received by the LBB during this timeframe, the largest portion involved this provision.²⁸⁶

Second, Chapter 660 of the Government Code permits a state agency to reimburse a state official or employee for official travel if the travel is reasonable and necessary, involves state business, and is consistent with the agency's express or implied legal authority. Pursuant to the Government Code, state agencies must minimize the amount of travel paid for or reimbursed by the agency. When agencies reimburse for travel, they must ensure the travel is the most cost-effective option available, maximizing savings and efficiency.²⁸⁷ To this end, state agencies are encouraged to

avoid travel where teleconferencing or other technology is available.²⁸⁸ In addition, out-of-state travel must be approved in advance by in accordance with the policies of the agency paying for the travel reimbursement.²⁸⁹ The Government Code expressly prohibits a state employee from accepting reimbursement for travel expenditures from a person the employee's employing agency intends to audit, investigate, or examine or who is the subject of an audit, investigation, or examination by the agency.²⁹⁰

Third, provisions of the Texas Government and Administrative Codes govern the approval of vouchers for reimbursement of official travel by state officials and employees.²⁹¹ These vouchers must contain a description of duties and dates on which the duties were performed.²⁹² Where a state official or employee mixed personal and official duties during official travel, the voucher must contain a description of dates and duties on which the official or employee performed state duties, as well as dates on which the individual was on personal time not at state expense.²⁹³ Texas Administrative Code provisions prohibit the reimbursement of travel on personal time.²⁹⁴

Lastly, state officials and employees using the state's aircraft fleet are subject to additional restrictions imposed by law and TxDOT policy.²⁹⁵ As with state travel more generally, use of the state aircraft fleet is limited to state business only and cannot be for political or paid purposes. In addition, travel via the state aircraft fleet is subject to standard necessity and cost-efficiency criteria. For example, in assessing the cost-effectiveness of traveling via state aircraft, considerations include whether the location is not served by commercial airlines and use of the state aircraft fleet is the most cost-efficient given all relevant circumstances. Although the state aircraft fleet may be used in emergency situations, state officials and employees must provide additional documentation in order to use the state fleet for emergency travel. Further, state officials and employees who travel via the state aircraft fleet must provide an affidavit certifying compliance with all applicable state laws and policies, and they must update this affidavit annually.²⁹⁶

The CPA has authority to review travel reimbursements in its pre- and post-payment audits of state agencies.²⁹⁷

c. Recommendations

The committee makes the following recommendation:

- Monitor state agencies' spending on travel to safeguard taxpayer dollars and ensure state officials' and employees' travel is in the best interests of the state;
- Require state agencies to request and receive LBB approval before expending funds on travel in excess of a certain percentage of the agency's expenditures on travel from the previous fiscal year.

9. INTERIM CHARGE 9: STATE AGENCY PARTICIPATION IN TRADE ASSOCIATIONS

a. Background

As with several charges assigned to the Committee, Interim Charge 9 arose out of the Committee's investigation of the TABC during the 85th Regular Session. The Committee's activities uncovered the agency's membership in a trade association funded by the same industry regulated by the agency. Because this raised questions of propriety, the Committee met to investigate the use of state agency resources to participate in trade associations and groups funded by industries regulated by the agency.

The Committee met on Thursday, February 15, 2018 at 10:30 AM in Room E1.010 of the Texas Capitol. The committee took invited testimony from the following stakeholders:

1. Ms. Ursula Parks, Executive Director, Legislative Budget Board
2. Mr. Jeff Archer, Executive Director, Texas Legislative Council
3. Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts

b. Discussion

Neither Texas law nor the GAA contain specific requirements governing the use of state resources to participate in trade associations. Rather, three areas of law and policy provide general guidance and safeguards covering the expenditures of funds, including those spent on professional and trade associations.

First, the Government Code prohibits a state agency from using appropriated funds to pay for membership in or dues for a professional association unless the agency's administrative head or designee reviews and approves the expenditure.²⁹⁸ Second, the same generally applicable restrictions governing reimbursement of state agency travel require travel to and from association conferences and events to be within the agency's express or implied authority to carry out its statutory duties and must be for official business.²⁹⁹ Third, statutory prohibitions on the acceptance of gifts, honoraria, and other benefits cover agency participation in trade associations.³⁰⁰

Beyond these restrictions, no express prohibitions or substantive criteria exist in statute.³⁰¹ As a result, state agencies ensure their own compliance with law subject only to high-level approval of dues by that same agency's administrative head or designee.³⁰²

As with other areas of state spending, the CPA conducts post-payment audits of selected agencies.³⁰³ Where an audit targets an agency's spending on professional associations, the CPA would review the payments, look for adequate documentation of the payments, and ensure the payments serve a state purpose.³⁰⁴

c. Recommendations

The committee makes the following recommendations:

- Monitor state agencies' spending on membership dues and fees for professional and trade associations to ensure expenditures are in the best interests of the state;
- Consider criteria to constrain state agency heads' and their designees' discretion in approving expenditures for membership dues or fees in professional or trade associations to ensure these expenditures are in the best interest of the state.

10. INTERIM CHARGE 10: OVERSIGHT OF STATE AGENCIES AND PROGRAMS AND IMPLEMENTATION OF 85TH LEGISLATION

a. Background

The Committee received a charge to monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 85th Legislature. Based on several SAO and media reports, the Committee's activities in this regard largely focused on HHSC. The Committee held a series of three hearings to investigate HHSC's actions and responses to these reports. Finally, it held a hearing to receive an update on HHSC's progress in addressing issues raised in the reports.

First, the Committee met on Thursday, February 15, 2018 at 10:30 AM in Room E1.010 of the Texas Capitol. As part of the Committee's review of Interim Charge 10, it reviewed the results of an SAO report³⁰⁵ on HHSC's management of Medicaid managed care contracts. The committee took invited testimony from the following stakeholders:

1. Ms. Ursula Parks, Executive Director, Legislative Budget Board
2. Mr. Benjamin Cross, Analyst, Legislative Budget Board
3. Mr. John Young, Audit Manager, State Auditor's Office
4. Mr. Arby Gonzales, Project Manager, State Auditor's Office
5. Mr. Charles Smith, Executive Commissioner, Health and Human Services Commission
6. Ms. Stephanie Muth, State Medicaid Director, Health and Human Services Commission
7. Mr. Rich Stebbins, Director of Financial Reporting and Audit Coordination, Health and Human Services Commission
8. Ms. Sylvia Kaufmann, Inspector General, Health and Human Services Commission
Office of the Inspector General

Second, the Committee met jointly with the Appropriations Subcommittee on Article II to consider Interim Charge 10, on Wednesday, June 27 at 8:00 AM in Room E1.030 of the Texas Capitol. This hearing focused on oversight of HHSC's management of Medicaid managed care contracts. The committees took invited and public testimony from the following stakeholders:

1. Invited Testimony

- Ms. Linda Badawo
- Ms. Nancy Toll
- Ms. Caroline Cheevers
- Mr. Mark Sanders, Chief Executive Officer, Superior HealthPlan
- Mr. David Harmon, Chief Medical Officer, Superior HealthPlan
- Ms. LeAnn Behrens, President for Medicaid, West Region, Amerigroup
- Mr. Daniel Chambers, Medicaid Executive Director, Cigna Health Spring
- Ms. Anne Rote, President, Molina Healthcare of Texas
- Mr. Don Langer, Chief Executive Officer, United Healthcare Community Plan of

Texas

- Ms. Sarah Keyton, Manager, Legislative Budget Board
- Ms. Leora Rodell, Manager - Health & Human Services Data Analysis Team, Legislative Budget Board
- Mr. Mike Diehl, Analyst, Legislative Budget Board
- Mr. Benjamin Cross, Analyst, Legislative Budget Board
- Mr. Kyle McKay, Analyst, Legislative Budget Board
- Mr. Jacob Pugh, Manager, Legislative Budget Board
- Mr. John Young, Audit Manager, State Auditor's Office
- Mr. Willie Hicks, Project Manager, State Auditor's Office
- Mr. Arby Gonzalez, Project Manager, State Auditor's Office
- Ms. Olga Rodriguez, Chief Strategy Officer, Health and Human Services Commission - Office of the Inspector General
- Mr. Henry "Hank" Whitman, Commissioner, Department of Family & Protective Services
- Ms. Elizabeth "Liz" Kromrei, Director of Medical Services & Accountability Division, Department of Family & Protective Services
- Ms. Stephanie Muth, State Medicaid Director, Health & Human Services Commission
- Mr. Enrique Marquez, Deputy Executive Commissioner for Medical & Social Services, Health & Human Services Commission
- Ms. Karen Ray, Chief Counsel, Health & Human Services Commission
- Mr. Ken Janda, President & Chief Executive Officer, Community Health Choice
- Ms. Kabby Thompson, Director of Managed Care, Texas Children's Hospital
- Dr. Ray Tsai, Senior Vice President, Children's Medical Center of Dallas
- Dr. Ruchi Kaushik, Medical Director, Comprehensive Peds for Complex Needs, The Children's Hospital of San Antonio
- Ms. Hannah Mehta, Protect Texas Fragile Kids
- Ms. Pamela McPeters, Vice President of Public Affairs, TexProtects
- Mr. Bob Kafka, Organizer, ADAPT/PACT of Texas
- Mr. Terry Anstee, Healthcare Staff Attorney, Disability Rights Texas
- Mr. Dennis Borel, Executive Director, Coalition of Texans with Disabilities
- Ms. Rachel Hammon, Executive Director, Texas Association of Home Care & Hospice
- Ms. Julie Ross, Board Member, The Arc of Texas
- Dr. Andrew "Andy" Keller, President, Meadows Mental Health Policy Institute
- Dr. M. Ray Perryman, President & Chief Executive Officer, The Perryman Group
- Dr. Deane Waldman, Director, Center for Healthcare Policy, Texas Public Policy Foundation
- Ms. Anne Dunkelberg, Associate Director, Center for Public Policy Priorities

2. Public Testimony

- Mr. Stephen Abshier
- Ms. Jill Bradshaw

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- Ms. Crystal Brown
 - Ms. Susan Burek
 - Ms. Cathy Cranston
 - Mr. Ron Cranston
 - Mr. Mark Gowen
 - Ms. Linda Litzinger
 - Ms. Laura Montgomery
 - Mr. Shawn Montgomery
 - Ms. Tammy Peper
 - Ms. Kristen Robinson
 - Ms. Renee Scepanski
 - Ms. Dora Smith
 - Ms. Jamie Watson

Lastly, the Committee met on Thursday, October 25, 2018 at 10:30 AM in Room E1.010 of the Texas Capitol. As part of the Committee's continued review of Interim Charge 10, it received a update from HHSC's management responses to SAO audit reports, progress in addressing issues identified during the Committee's previous interim hearings, and the recent Rider 61(b) report relating to contract management in Medicaid and CHIP managed care. The committee took invited testimony from the following stakeholders:

1. Ms. Audrey O'Neill, Audit Manager, State Auditor's Office
2. Mr. Willie Hicks, Project Manager, State Auditor's Office
3. Mr. Arby Gonzales, Project Manager, State Auditor's Office
4. Ms. Olga Rodriguez, Chief Strategy Officer, Office of the Inspector General
5. Dr. Courtney Phillips, Executive Commissioner, Texas Health and Human Services Commission
6. Ms. Victoria Ford, Chief Policy Officer, Texas Health and Human Services Commission
7. Ms. Stephanie Muth, State Medicaid Director, Texas Health and Human Services Commission

b. Discussion

This discussion provides an overview of the Committee's oversight of HHSC at its February hearing. It then summarizes oversight action taken at the joint hearing with the Appropriations Subcommittee on Article II. It concludes with a summary of the committee's October oversight hearing.

1. February 15, 2018 Hearing

The Committee met to review the results of an SAO audit report highlighting issues with HHSC's management of a managed care contract with Superior HealthPlan. SAO's audit report found, in part, that HHSC failed to ensure that its business practices and managed care contracts aligned.³⁰⁶ The Committee also investigated reports regarding the Medical Transportation Program.

Regarding the SAO Audit, HHSC's understanding of the term "affiliate" diverged from the definition provided in contract, allowing the organization to report costs of more than \$29 million in bonus and incentive payments paid to affiliate employees that would have been unallowable under the contract.³⁰⁷ HHSC testified that its understanding of the term "affiliate" has evolved over approximately 15 years.³⁰⁸ The SAO recommended that HHSC adhere to its cost principles that bonus and incentive payments are unallowable or amend the managed care contract to reflect current business practices.³⁰⁹ HHSC responded that it would clarify the definition of "affiliate" through a contract amendment in effective September 1, 2018.³¹⁰ HHSC prepared an amendment in May 2018, which was submitted to the U.S. Centers for Medicare and Medicaid Services for approval in June 2018.³¹¹

Under Texas' managed care model, HHSC contracts with 21 managed care organizations (MCO), including two dental organizations to provide services to more than 92 percent of the state's Medicaid population.³¹² In total, HHSC has more than 40 managed care contracts.³¹³ HHSC's oversight of these contracts occurs both at the pre- and post-contract phases. During the post-contract phase, HHSC conducts management and oversight in six areas including program and policy requirements, enrollment data, performance on quality metrics and initiatives, operational compliance, financial compliance, and utilization reviews.³¹⁴ HHSC's targeted reviews include validating contractual requirements, conducting a biennial operational review, conducting utilization reviews, and verifying MCOs' financial information, including financial statistical reports.³¹⁵

The goals of HHSC's enforcement tools are to function as a safeguard to ensure taxpayer funds are paying for benefits provided, protecting patients' health, and properly incentivizing managed care organizations to provide care.³¹⁶ HHSC's enforcement tools span five levels, depending on severity. To address lesser contract issues, the agency can utilize plans of action and corrective action plans.³¹⁷ For more severe issues involving financial damages, HHSC can use liquidated damages, suspension of default enrollment, and contract termination.³¹⁸

The agency also caps MCOs administrative expenses and profit to ensure fiscal responsibility.³¹⁹ Expenses that exceed an MCOs administrative cap are figured into the MCOs profit and net income.³²⁰ MCOs may keep profit of up to 3 percent.³²¹ HHSC recovers profits in excess of this threshold through the state's experience rebate.³²²

HHSC discussed its ability to assess liquidated damages against MCOs and provided historical overview of the rising amount of liquidated damages the agency has assessed. Liquidated damages "are predetermined sums a contractor must pay the procuring agency for specified contract breaches or performance failures."³²³ Between state fiscal years 2014 and the first and second quarters of state fiscal year 2017, liquidated damages assessed by HHSC rose from \$2 million to \$9.7 million.³²⁴ HHSC has significant flexibility in managed care contracts to assess damages based on damage to the state or impacted individuals. HHSC staff utilize guidelines contained in agency guidance to assess liquidated damages.³²⁵ Agency guidance also provides dollar thresholds that specify which agency staff have authority to assess and negotiate liquidated damages.³²⁶ For example, liquidated damages in excess of \$1 million fall within the Executive Commissioner's authority.³²⁷ HHSC is taking additional steps to ensure consistency in the application of liquidated damages.³²⁸

Lastly, HHSC collects quarterly financial statistical reports from MCOs, which are audited annually and as needed.³²⁹ The audit process takes between 18 to 20 months from the beginning of one year to the audit final report.³³⁰ During this time, an MCO would submit four quarterly financial statistical reports before initial books close.³³¹ Up to 12 months after, once claims have run out, final books are closed.³³² Afterwards, HHSC conducts an audit and issues a final report, before remedying any compliance issues identified in the audit.³³³

Beginning in 2014, HHSC was required by statute to conduct utilization reviews to ensure clients in the STAR + PLUS program were receiving medically necessary services.³³⁴ These utilization reviews include intensive reviews of client medical records and home visits.³³⁵ In 2014 and 2015, HHSC conducted smaller sample size utilization reviews with 15 cases reviewed in 2014³³⁶ and 272 cases reviewed in 2015.³³⁷ Based on issues identified in the 2015 utilization reviews, HHSC staff conducted intensive training and technical assistance, as well as an unspecified number of sample reviews.³³⁸ In 2017, HHSC's Utilization Review team conducted just over an estimated 350 home visits.³³⁹ Notably, the agency's team of 20 full-time equivalent (FTE) utilization review nurses has 6 vacancies.³⁴⁰

In addition, the Committee investigated a report from the OIG relating to the Medical Transportation Program. Although the OIG's investigative file is confidential, there were concerns regarding the final report. The Committee also expressed concern regarding the upcoming expiration of several MTP contracts and inquired as to HHSC's intent to re-procure those contracts.

2. June 27, 2018 Joint Hearing

The Committee continued its oversight of HHSC by holding a joint hearing on June 27, 2018 with the Appropriations Subcommittee on Article II. Against a backdrop of leadership changes within the agency and media reports uncovering systemic breakdowns within Medicaid managed care, both committees met to chart a strategic path forward for the agency. The committees identified six overarching issues related to oversight of managed care: medical necessity denials, appeals and fair hearings, complaints, network adequacy, utilization reviews, transparency, and oversight.

First, much of hearing focused on denials of services and prior authorizations based on medical necessity and several witnesses elaborated on their experiences with MCOs' denial of services based on medical necessity.³⁴¹ Pursuant to each MCO's contract with HHSC, the MCO defines policies and procedures for determining the medical necessity of a particular service, including subjecting services to prior authorizations, and denying that service if the MCO deems the service not medically necessary.³⁴² Where individuals receive a denial, the MCO must first offer a peer-to-peer review between the individual's medical provider and medical staff at the MCO.³⁴³ Testimony received by the committees highlighted the short timeline for providers to respond to a peer-to-peer review, with failure to respond timely to a peer-to-peer review request resulting in another denial.³⁴⁴

Second, testimony identified issues with the appeal and fair hearings process.³⁴⁵ Pursuant to federal and state regulations, individuals whose services are denied by their MCO must first exhaust

appeals through the MCO.³⁴⁶ After exhausting these appeals, individuals may request a fair hearing before HHSC.³⁴⁷ Fair Hearings fall within the purview of HHSC's Legal Division and are conducted by staff who do not necessarily have medical training.³⁴⁸ In addition, fair hearings review only whether the MCO properly followed its own procedures and policies in reaching a denial decision and do not review the underlying medical necessity on which a denial was based.³⁴⁹ Because HHSC contracts with MCOs to provide services, conducts fair hearings of appeals of MCO decisions, and also takes enforcement action against MCOs, testimony raised questions regarding the impartiality of HHSC's reviewing appeals and conducting fair hearings.³⁵⁰ Testimony also indicated that the level of services a member received were often reduced during the pendency of an appeal, even where the underlying appeal or request for fair hearing contesting a reduction in the level of services received by a member.³⁵¹ Moreover, testimony revealed that members, families, and providers often receive inadequate notice when the date of a fair hearing has been delayed.³⁵² Based on testimony, wait times for fair hearings and delays resulted in members not receiving the level of services they need, while also discouraging members, families, and providers from appealing and requesting fair hearings.³⁵³

Third, testimony received by the committees indicated disparate classification, treatment, and tracking of complaints within MCO product lines and across HHSC divisions.³⁵⁴ Because there is no consistent definition of what constitutes a complaint across product lines and divisions, complaint data has not been consistently tracked and reported.³⁵⁵ The lack of consistency has also hindered HHSC's ability to identify and respond to systemic issues within product lines and MCOs.³⁵⁶ As a result, it also undercut HHSC's ability to oversee and initiate enforcement action.³⁵⁷

Fourth, the hearing revealed issues relating to network adequacy among product lines and within MCOs.³⁵⁸ HHSC must ensure MCOs give members sufficient access to and choice from an adequate network of providers.³⁵⁹ To determine network adequacy, HHSC analyzes a variety of data.³⁶⁰ First, HHSC tracks travel time and distance standards between a member's residence and the location of their provider.³⁶¹ HHSC also measures out-of-network utilization by members and single case agreements between MCOs with non-contracted providers.³⁶² In addition, HHSC reviews annual surveys and analyzes member complaints.³⁶³ HHSC also engages an external quality review organization to monitor network adequacy.³⁶⁴ In reviewing MCOs' networks, the EQRO called providers listed in each MCO's provider directory to verify that the provider was included in the MCO's network and was accepting new patients.³⁶⁵ Testimony revealed that network adequacy analysis may not fully capture the adequacy of an MCO's network, because the EQRO's review methodology excluded providers who were no longer in network or who were not accepting patients.³⁶⁶ In addition, inconsistency in tracking complaints data across product lines further diminishes HHSC's ability to determine the adequacy of an MCO's network.³⁶⁷

Fifth, testimony received by the committees highlighted issues regarding HHSC's utilization reviews. Specifically, questions arose regarding the adequacy of sample sizes used by the agency for conducting utilization reviews. Testimony also raised concerns relating to HHSC's follow-up on issues identified by utilization review staff during home visits to clients.³⁶⁸ The committee also requested information on HHSC's intention to expand utilization reviews beyond the STAR+PLUS Home and Community Based Services Program to other populations. HHSC indicated it will expand utilization reviews to include oversight of STAR Kids and STAR Health Medically Dependent Children's Program.³⁶⁹

Sixth, the committees heard concerns regarding MCOs self-reporting of financial data in quarterly financial statistical reports, and HHSC's ability to verify that data.³⁷⁰ As highlighted in SAO reports and the Committee's February 15, 2018 hearing, additional transparency into reporting of administrative costs by MCOs and clarification of HHSCs business practices and managed care contracts would enable HHSC to conduct better oversight.³⁷¹

Lastly, testimony indicated inconsistent application of penalties, including liquidated damages, by HHSC against MCOs.³⁷² Specifically, testimony revealed that HHSC staff initially recommended liquidated damages and penalties that were subsequently adjusted without adequate documentation or justification.³⁷³ HHSC's testimony at previous hearings indicated it was taking steps to provide additional consistency in the application of liquidated damages.³⁷⁴ However, improving tracking and monitoring of complaints, enforcement of network adequacy standards, and posting of liquidated damages recommendations and final assessments will provide additional consistency.³⁷⁵

It should be noted that prior to the hearing, HHSC requested and LBB approved a request to transfer funds and FTEs between strategies to increase the agency's contract oversight, utilization review, risk monitoring, and quality review functions.³⁷⁶ The agency requested a total of \$4,198,947 in General Revenue and 295 FTEs in state fiscal year 2018 and \$16,795,786 in General Revenue and 295 FTEs in state fiscal year 2019.³⁷⁷ To enhance its contract oversight capabilities, HHSC requested and received approval to transfer \$891,993 in General Revenue and 98 FTEs in state fiscal year 2018 and \$3,567,973 in General Revenue and 98 FTEs in state fiscal year 2019 for its budget strategy related to contract administration and oversight.³⁷⁸

After the hearing, the committee continued to work with stakeholders to identify long-term solutions to strengthen the Medicaid managed care system, enhance oversight and transparency, improve outcomes for all interested parties.

3. October 25, 2018 Hearing

On October 25, 2018, the Committee met to receive a status update from HHSC. Testimony included updates on HHSC's progress on implementing changes identified at previous hearings and the agency's management responses to findings in previous SAO reports.³⁷⁹ The Committee also heard from the agency regarding the results of its recent report on contract management and oversight functions in the Medicaid and Children's Health Insurance Program³⁸⁰ pursuant to Rider 61(b) of the GAA.³⁸¹

Both before and after the hearing, the committee continued its work with stakeholders to identify long-term legislative solutions to strengthen the Medicaid managed care system, enhance oversight and transparency, and improve outcomes for all stakeholders.

c. Recommendations

The committee makes the following recommendations:

- Monitor HHSC's progress on outstanding management responses to audit reports and

issues raised during oversight hearings conducted during the 85th Interim;

- Encourage an impartial, neutral decision-making process for prior authorizations, appeals, and fair hearings based on clinical data and medical necessity;
- Implement streamlined policies and procedures that reduce administrative burden for providers and patients;
- Improve tracking, processing, and analysis of complaints and increase transparency in reporting of complaint data;
- Increase care coordination and opportunities for participation by patients and families
- Provide for data-driven, efficient, stronger, and more transparent contract management and oversight by HHSC and OIG;
- Strengthen HHSC's capacity to conduct meaningful, actionable network adequacy analyses and utilization reviews;
- Enhance consistency and transparency in financial reporting by MCOs and contract management and oversight by HHSC and OIG.

IV. ENDNOTES

¹ H.J. of Tex., 85th Leg., R.S. 263, 64 (2017).

² Tex. H.R. Rule 3, §14(b)-(e), 85th Leg., R.S., Tex. H.R. 4, 85th Leg., R.S., 2017 H.J. of Tex., 41, 56-7, *reprinted in Rules of the House*, Texas Legislative Manual 298-99 (2017).

³ Speaker Joe Straus, Interim Committee Charges, Texas House of Representatives, 85th Legislature (Oct. 2017), http://www.house.state.tx.us/_media/pdf/interim-charges-85th.pdf.

⁴ WILLIAM L. PAINTER, CONG. RESEARCH SERV., R45084, 2017 DISASTER SUPPLEMENTAL APPROPRIATIONS: OVERVIEW 15 (2018).

⁵ Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017, Pub. L. No. 115-56, 131 Stat. 1129, 1136-39 div. B (2017).

⁶ *Id.* at 1137.

⁷ *Id.* at 1136.

⁸ Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017, Pub. L. No. 115-56, 131 Stat. 1129, 1137-39, div. B (2017).

⁹ Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017, Pub. L. No. 115-72, 131 Stat. 1224 (2017).

¹⁰ Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017, Pub. L. No. 115-72, 131 Stat. 1224, 1224-26, div. A., tit. I (2017).

¹¹ Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017, Pub. L. No. 115-72, 131 Stat. 1224, 1224-26, div. A., tit. III, § 308 (2017).

¹² Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (2018).

¹³ Bipartisan Budget Act of 2018, H.R. 1892, Pub. L. No. 115-123, tit. XI, 42 (2018).

¹⁴ Bipartisan Budget Act of 2018, H.R. 1892, Pub. L. No. 115-123, tit. VIII, 32 (2018).

¹⁵ Bipartisan Budget Act of 2018, H.R. 1892, Pub. L. No. 115-123, tit. VI, 20 (2018).

¹⁶ Bipartisan Budget Act of 2018, H.R. 1892, Pub. L. No. 115-123, tit. V, 17 (2018).

¹⁷ *Texas; Major Disaster and Related Determinations*, 82 Fed. Reg. 42691 (Sept. 11, 2018).

¹⁸ *Texas Hurricane Harvey (DR-4332)*, FEMA, <https://www.fema.gov/disaster/4332> (designating the following counties as eligible for Individual Assistance: Aransas, Austin, Bastrop, Bee, Brazoria, Caldwell, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Hardin, Harris, Jackson, Jasper, Jefferson, Karnes, Kleberg, Lavaca, Lee, Liberty, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Tyler, Victoria, Walker, Waller, and Wharton Counties).

¹⁹ *Texas Hurricane Harvey (DR-4332)*, FEMA, <https://www.fema.gov/disaster/4332>.

²⁰ See MARIA KREISER, MAURA MULLINS, AND JARED C. NAGEL, CONG. RESEARCH SERV., RL31734, FEDERAL DISASTER ASSISTANCE RESPONSE AND RECOVERY PROGRAMS: BRIEF SUMMARIES (2018).

²¹ *See Id.*

²² *Id.* at 2.

²³ *See Id.*

²⁴ *See Id.* at 4.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See Id.* at 2.

²⁸ *See Id.* at 7.

²⁹ *See Id.* at 7.

³⁰ *See Id.* at 7-8.

³¹ *See Id.* at 8.

³² *See Id.* at 4.

³³ *Hurricane Harvey Weekly Fact Sheet Day 403*, FEMA, (Oct. 2, 2018).

³⁴ *Id.*

³⁵ *Id.*

³⁶ CITY OF HOUSTON LOCAL HOUSING NEEDS ASSESSMENT HURRICANE HARVEY HOUSING RECOVERY 1 (2018), https://houstontx.gov/housing/Draft_Local_Housing_Needs_Assessment_v2.pdf.

³⁷ *Id.*

³⁸ TEX. LEGIS. BUDGET BD., HURRICANE HARVEY CONTRACT REPORTING AND OVERSIGHT 6 (2018),

http://www.lbb.state.tx.us/Documents/Publications/Presentation/5165_HurricaneHarveyExpenditures_Oversight.pdf

39 *Id.*

40 *Id.*

41 *Hurricane Harvey: Fiscal Analyses and Resources*, Tex. Legis. Budget Bd., <http://www.lbb.state.tx.us/Harvey.aspx>.

42 *Id.*

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.*

57 *Id.*

58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.*

62 *Id.*

63 *Id.*

64 *Id.*

65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.*

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 *Id.*

75 *Id.*

76 *Id.*

77 *Id.*

78 *Id.*

79 *Id.*

80 *Id.*

81 *Id.*

82 *Id.*

83 *Id.*

84 *Id.*

85 *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts).

86 Tex. Comptroller of Pub. Accts., *Accounting for Natural Disaster Relief Efforts*, Fiscal Policies & Procedures No. K.011 (Aug. 31, 2017), <https://fm.x.cpa.texas.gov/fm/disasterrecovery/index.php>.

87 Tex. Comptroller of Pub. Accts., *Tracking Expenditures and Revenues Related to Natural Disaster Relief Efforts*, Fiscal Policies & Procedures No. K.014 (Dec. 11, 2017), <https://fm.x.cpa.texas.gov/fm/disasterrecovery/tracking/index.php>.

88 *Id.*

⁸⁹ TEX. STATE AUDITOR'S OFF., AN OVERVIEW OF THE STATE AUDITOR'S OFFICE'S ROLES RELATED TO HURRICANE HARVEY 1 (2018).

⁹⁰ *Id.* at 2.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 4.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 7.

⁹⁸ *Id.* at 9.

⁹⁹ *Id.* at 5.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Mr. Marvin Odum, Chief Resiliency Officer, City of Houston).

¹⁰⁴ *Id.*

¹⁰⁵ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Mr. Bill Jackson, Director of Budget Management, Harris County).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See, e.g., Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Ms. Melissa Noriega, Vice President - Policy and Partnerships, BakerRipley).

¹¹⁴ *See Id.*; *see also Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Ms. Anna Babin, Chief Executive Officer, United Way of Greater Houston).

¹¹⁵ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Ms. Anna Babin, Chief Executive Officer, United Way of Greater Houston).

¹¹⁶ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Ms. Cynthia Colbert, President and Chief Executive Officer, Catholic Charities of the Archdiocese of Galveston-Houston).

¹¹⁷ *Id.*

¹¹⁸ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Mr. Tony Chase, Co-Chair, Greater Houston Community Foundation).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *See* TEX. LEGIS. BUDGET BD., HURRICANE HARVEY CONTRACT REPORTING AND OVERSIGHT 7-8 (2018), http://www.lbb.state.tx.us/Documents/Publications/Presentation/5165_HurricaneHarveyExpenditures_Oversight.pdf ; *see also* TEX. HEALTH & HUM. SERVS. COMM'N, PRESENTATION TO HOUSE COMMITTEE ON GENERAL INVESTIGATING AND ETHICS 5 (2018).

¹²² *See* Tex. Legis. Budget Bd., *supra* Note 121, at 7.

¹²³ *See* Tex. Health & Human Servs. Comm'n, *supra* Note 121.

¹²⁴ *Id.* at 6.

¹²⁵ *Id.* at 7.

¹²⁶ *Id.* at 3.

¹²⁷ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Mr. Roland Luna, Deputy Inspector General for Investigations, Office of the Inspector General).

¹²⁸ Tex. Health & Hum. Servs. Comm'n, *supra* Note 121, at 7.

¹²⁹ *Id.*

¹³⁰ *Id.* at 5.

¹³¹ *See Id.* at 7-8.

¹³² *Id.* at 7.
¹³³ *Id.*
¹³⁴ *Id.*
¹³⁵ Luna, *supra* Note 127.
¹³⁶ *Id.*
¹³⁷ *Id.*
¹³⁸ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Jan. 18, 2018) (statement of Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts).
¹³⁹ *Id.*
¹⁴⁰ *Id.*
¹⁴¹ *Id.*
¹⁴² *Id.*
¹⁴³ *Id.*
¹⁴⁴ *Id.*
¹⁴⁵ Babin, *supra* Note 114.
¹⁴⁶ *Id.*
¹⁴⁷ Jackson, *supra* Note 105.
¹⁴⁸ TEX. STATE AUDITOR'S OFF., AN OVERVIEW OF THE STATE AUDITOR'S OFFICE'S ROLES RELATED TO HURRICANE HARVEY 2 & 4 (2018).
¹⁴⁹ *Id.* at 4.
¹⁵⁰ *See* Tex. Legis. Budget Bd., *supra* Note 41.
¹⁵¹ *Id.*
¹⁵² *Id.*
¹⁵³ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Mar. 22, 2018) (statement of Mr. Ian Steusloff, General Counsel, Texas Ethics Commission).
¹⁵⁴ *Id.*
¹⁵⁵ *Id.*
¹⁵⁶ *Id.*
¹⁵⁷ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Mar. 22, 2018) (statement of Major Jeffery Collins, Texas Rangers Public Integrity Unit).
¹⁵⁸ *Id.*
¹⁵⁹ *Id.*
¹⁶⁰ *Id.*
¹⁶¹ *Id.*
¹⁶² *Id.*
¹⁶³ *Id.*
¹⁶⁴ *Id.*
¹⁶⁵ *Id.*
¹⁶⁶ *Id.*
¹⁶⁷ *Id.*
¹⁶⁸ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Mar. 22, 2018) (statement of Ms. Amanda Cochran-McCall, Assistant Deputy Attorney General for Civil Litigation, Office of the Attorney General).
¹⁶⁹ TEX. GOV'T CODE § 572.058(a).
¹⁷⁰ TEX. GOV'T CODE § 572.058(b).
¹⁷¹ Cochran-McCall, *supra* Note 168.
¹⁷² *Id.*
¹⁷³ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Mar. 22, 2018) (statement of Ms. Sharon Talley, Deputy Executive Director, Travis County Attorney's Office).
¹⁷⁴ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Mar. 22, 2018) (statement of Ms. Adrienne McFarland, Deputy Attorney General for Criminal Prosecutions, Office of the Attorney General).
¹⁷⁵ *See* TEX. GOV'T CODE § 572.021.
¹⁷⁶ TEX. GOV'T CODE § 572.0291(a)-(b).
¹⁷⁷ *See* TEX. GOV'T CODE § 572.023(a)-(b), et seq.
¹⁷⁸ *See* 85th Leg., R.S., H.B. 501 (2017); Acts 2017, 85th Leg., R.S., ch. 439 at 1159-62.
¹⁷⁹ *See, e.g.*, JACK MASKELL, CONG. RESEARCH SERV., R43186, FINANCIAL DISCLOSURE BY FEDERAL OFFICIALS AND PUBLICATION OF DISCLOSURE REPORTS 3 (2013) (citing 5 U.S.C. app. § 102(a)(1)-(8) which requires the

disclosure of items including income, gifts, assets, liabilities, transactions, outside positions, agreements, and blind trusts).

¹⁸⁰ See Steusloff, *supra* Note 153.

¹⁸¹ *Id.*

¹⁸² See TEX. GOV'T CODE § 572.031(a)-(b).

¹⁸³ TEX. GOV'T CODE § 572.031(b).

¹⁸⁴ See 1 Tex. Admin. Code § 18.13(a) & 18.13(b) (2017) (Tex. Ethics Comm'n - Fine For A Late Report).

¹⁸⁵ Talley, *supra* Note 173.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ See Letter from Honorable Sarah Davis, Chair, Comm. on Gen. Investigating & Ethics to Honorable Ken Paxton, Tex. Att'y Gen. (Apr. 30, 2018),

<https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2018/pdf/RQ0228KP.pdf> ("Request RE-0228-KP").

¹⁹⁸ See Letter from Honorable Sarah Davis, Chair, Comm. on Gen. Investigating & Ethics to Honorable Ken Paxton, Tex. Att'y Gen. (Apr. 30, 2018),

<https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2018/pdf/RQ0229KP.pdf> ("Request RE-0229-KP").

¹⁹⁹ TEX. GOV'T CODE § 402.042(c)(2).

²⁰⁰ Letter from Virginia Hoelscher, Chair, Opinions Committee, Tex. Att'y Gen. to Honorable Sarah Davis, Chair, Comm. on General Investigating & Ethics (Oct. 29, 2018).

²⁰¹ *Id.*

²⁰² See, e.g., Maskell, *supra* Note 179; see also UNITED STATES HOUSE OF REPRESENTATIVES ETHICS IN GOVERNMENT ACT 2017 FINANCIAL DISCLOSURE STATEMENT FORM A (2017), https://ethics.house.gov/sites/ethics.house.gov/files/CY%202017%20Financial%20Disclosure%20Form%20A_0.pdf.

²⁰³ TEX. GOV'T CODE § 305.003(a)(1); 1 Tex. Admin. Code § 34.41(a) (2017) (Tex. Ethics Comm'n - Expenditure Threshold).

²⁰⁴ TEX. GOV'T CODE § 305.003(a)(2); 1 Tex. Admin. Code § 34.43(a) (2017) (Tex. Ethics Comm'n - Compensation and Reimbursement Threshold).

²⁰⁵ TEX. GOV'T CODE § 305.031(a).

²⁰⁶ TEX. GOV'T CODE § 305.031(b).

²⁰⁷ TEX. GOV'T CODE § 305.032.

²⁰⁸ TEX. GOV'T CODE § 305.033.

²⁰⁹ TEX. GOV'T CODE § 305.035(a).

²¹⁰ TEX. GOV'T CODE § 305.035(c)

²¹¹ Tulley, *supra* Note 173.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ TEX. ELEC. CODE § 253.151 (1)-(6).

²²¹ See TEX. ELEC. CODE § 253.151.

²²² TEX. ELEC. CODE § 233.155.

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- 223 TEX. ELEC. CODE § 233.155(b)(1).
- 224 TEX. ELEC. CODE § 233.155(b)(2)(A)-(C).
- 225 See TEX. ELEC. CODE § 253.157.
- 226 See TEX. ELEC. CODE §§ 253.157(a)(2) & 253.155(b)(1).
- 227 See TEX. ELEC. CODE §§ 253.157(a)(2) & 253.155(b)(2)(A)-(C).
- 228 TEX. ELEC. CODE §§ 253.164 & 253.168.
- 229 TEX. ELEC. CODE § 253.168(a)(1).
- 230 TEX. ELEC. CODE § 253.167(a)(2)(A)-(B).
- 231 TEX. ELEC. CODE § 253.168(a)(3)(A)-(C).
- 232 See TEX. ELEC. CODE § 253.164.
- 233 See TEX. ELEC. CODE § 253.165(a)(1)-(4).
- 234 See Steusloff, *supra* Note 153.
- 235 TEX. ELEC. CODE § 253.153(a)(1)-(2).
- 236 TEX. ELEC. CODE § 253.1541.
- 237 See TEX. JUD. COUNCIL, REPORT OF THE TEXAS JUDICIAL COUNCIL COMMITTEE ON JUDICIAL SELECTION (Aug. 2010).
- 238 See Tex. H.B. 25, 85th Leg., R.S. (2017); Acts 2017, 85th Leg., R.S., ch. 404, at 1081.
- 239 See TEX. GOV'T CODE § 571.061.
- 240 See Steusloff, *supra* Note 153.
- 241 See *Id.*
- 242 See *Id.*
- 243 See TEX. GOV'T CODE § 571.173; see also 1 Tex. Admin. Code §§ 12.36, 18.13(a).
- 244 See TEX. GOV'T CODE § 571.173; see also 1 Tex. Admin. Code §§ 12.36, 18.13(b) & 18.13(c).
- 245 See TEX. GOV'T CODE § 571.075; see also 1 Tex. Admin. Code §§ 6.23, 12.11 (2017).
- 246 See TEX. GOV'T CODE § 571.123; see also 1 Tex. Admin. Code § 12.5 et. seq.
- 247 See Steusloff, *supra* Note 153.
- 248 TEX. GOV'T CODE § 522.122; 1 Tex. Admin. Code § 12.51.
- 249 See *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Mar. 22, 2018) (statement of Mr. Ian Steusloff, General Counsel, Texas Ethics Commission).
- 250 See *Id.*
- 251 See *Id.*
- 252 See Tex. Gov't Code §§ 571.121(a)(2), 571.126(b).
- 253 See *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Mar. 22, 2018) (statement of Mr. Ian Steusloff, General Counsel, Texas Ethics Commission).
- 254 See *Id.*
- 255 *Id.*
- 256 *Id.*
- 257 *Id.*
- 258 See 43 Tex. Reg. 2653-2664 (2018).
- 259 See TEX. LEGIS. BUDGET BD., SWORN COMPLAINT ENFORCEMENT AT THE TEXAS ETHICS COMMISSION (2018), http://www.lbb.state.tx.us/Documents/Publications/Presentation/5202_Sworn_Complaint.pdf.
- 260 *Id.*
- 261 See *Id.* at 6 & 9.
- 262 See *Id.* at 9.
- 263 *Id.* at 8.
- 264 *Id.* at 10.
- 265 See *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Mar. 22, 2018) (statement of John Montgomery, General Government Analyst, Legislative Budget Board).
- 266 See *Id.*
- 267 See *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Feb. 15, 2018) (statement of Sharon Schneider, Project Manager, State Auditor's Office); see also TEX. STATE AUDITOR'S OFF., AN ANNUAL REPORT ON CLASSIFIED EMPLOYEE TURNOVER FOR FISCAL YEAR 2017 (2017).
- 268 *Id.*
- 269 *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Feb. 15, 2018) (statement of Ms. Ursula Parks, Executive Director, Legislative Budget Board).
- 270 *Id.*
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²⁷¹ *Id.*

²⁷² *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Feb. 15, 2018) (statement of Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts).

²⁷³ *Id.*

²⁷⁴ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Feb. 15, 2018) (statement of Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts).

²⁷⁵ TEX. STATE AUDITOR'S OFF., STATE AGENCY ADMINISTRATION OF EMERGENCY AND ADMINISTRATIVE LEAVE (2016).

²⁷⁶ See TEX. GOV'T CODE § 661.001(4)(B) (defining "state agency" to include "an institution of higher education as defined by Section 61.003, Education Code").

²⁷⁷ See TEX. ED. CODE § 61.003(8) (defining "institution of higher education" to include public junior colleges).

²⁷⁸ See TEX. ED. CODE § 61.003(2) (defining "public junior college" to include "any junior college certified by the Board in accordance with Section 61.063 of this chapter").

²⁷⁹ See TEX. GOV'T CODE § 661.915 (exempting public junior colleges, as defined by Section 61.003, Education Code, from the provisions of Chapter 661, Government Code).

²⁸⁰ General Appropriations Act, 85th Leg., R.S., S.B. 1, art. IX, § 5.02 (IX-25) (2017); General Appropriations Act, Acts 2017, 85th Leg., R.S., ch. 605, art. IX, § 5.02 at 2508-10.

²⁸¹ General Appropriations Act, 85th Leg., R.S., S.B. 1, art. IX, § 5.02 (IX-25) (2017); General Appropriations Act, Acts 2017, 85th Leg., R.S., ch. 605, art. IX, § 5.02 at 2508, 2509.

²⁸² See General Appropriations Act, 85th Leg., R.S., S.B. 1, art. IX, §§ 5.03, 5.05 (IX-25) (2017); General Appropriations Act, Acts 2017, 85th Leg., R.S., ch. 605, art. IX, § 5.02 at 2508-10; 41 C.F.R. §§ 300-301 (2017).

²⁸³ General Appropriations Act, 85th Leg., R.S., S.B. 1, art. IX, § 5 (IX-25) (2017); General Appropriations Act, Acts 2017, 85th Leg., R.S., ch. 605, art. IX, § 5 at 2508.

²⁸⁴ General Appropriations Act, 85th Leg., R.S., S.B. 1, art. IX, § 5.02 (IX-25) (2017); General Appropriations Act, Acts 2017, 85th Leg., R.S., ch. 605, art. IX, § 5.02 at 2508, 2509.

²⁸⁵ See, e.g., General Appropriations Act, 81st Leg., R.S., H.B. 1, art. IX § 5.08 (IX-23 & IX-24); General Appropriations Act, Acts 2011, 82nd Leg., R.S., ch. 1355, art. IX, § 5.08 at 4837-41.

²⁸⁶ Parks, *supra* Note 267.

²⁸⁷ See TEX. GOV'T CODE § 660.007(a).

²⁸⁸ See TEX. GOV'T CODE § 660.147.

²⁸⁹ General Appropriations Act, 85th Leg., R.S., S.B. 1, art. IX, § 5 (IX-24 to IX-26) (2017); General Appropriations Act, Acts 2017, 85th Leg., R.S., ch. 605, art. IX, § 5.02 at 2508-10.

²⁹⁰ TEX. GOV'T CODE § 660.016(a).

²⁹¹ TEX. GOV'T CODE § 660.027;

²⁹² See *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Mar. 22, 2018).

²⁹³ See *Id.*

²⁹⁴ See *Id.*

²⁹⁵ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Feb. 15, 2018) (statement of Mr. Marc Williams, Deputy Executive Director, Texas Department of Transportation).

²⁹⁶ *Id.*

²⁹⁷ TEX. GOV'T CODE § 660.028; 34 Tex. Admin. Code § 20.411(c) (2017) (Tex. Comptroller of Pub. Accounts - State Agency Reimbursement and Reporting).

²⁹⁸ TEX. GOV'T CODE § 2113.104.

²⁹⁹ See General Appropriations Act, 85th Leg., R.S., S.B. 1, art. IX, § 5 (IX-24 to IX-26) (2017); General Appropriations Act, Acts 2017, 85th Leg., R.S., ch. 605, art. IX, § 5 at 2508-10; TEX. GOV'T CODE ch. 660; 34 Tex. Admin. Code §§ 20.406-20.413 (2017) (Tex. Comptroller of Pub. Accounts, State Support Services - Travel and Vehicles).

³⁰⁰ See TEX. PENAL CODE §§ 36.02, 36.07, & 36.08; TEX. GOV'T CODE § 305.024.

³⁰¹ Parks, *supra* Note 267,

³⁰² *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Feb. 15, 2018) (statement of Mr. Jeff Archer, Executive Director, Texas Legislative Council).

³⁰³ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Feb. 15, 2018) (statement of Mr. Rob Coleman, Director of Fiscal Management, Comptroller of Public Accounts).

³⁰⁴ *Id.*

³⁰⁵ See TEX. STATE AUDITOR'S OFF., THE HEALTH AND HUMAN SERVICES COMMISSION'S MANAGEMENT OF ITS MEDICAID MANAGED CARE CONTRACT WITH SUPERIOR HEALTHPLAN, INC. AND SUPERIOR HEALTHPLAN NETWORK,

AND SUPERIOR'S COMPLIANCE WITH REPORTING REQUIREMENTS (2018).

³⁰⁶ *Id.*

³⁰⁷ *Id.* at 1.

³⁰⁸ *Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Feb. 15, 2018) (statement of Mr. Charles Smith, Executive Commissioner, Texas Health and Human Services Commission).

³⁰⁹ Tex. State Auditor's Off., *supra* Note 303, at 2-3.

³¹⁰ *Id.* at 3.

³¹¹ Smith, *supra* Note 306.

³¹² *See Hearing before the House Comm. on Gen. Investigating & Ethics*, 85th Int. (Feb. 15, 2018) (statement of Ms. Stephanie Muth, State Medicaid Director, Texas Health and Human Services Commission).

³¹³ *Id.*

³¹⁴ TEX. HEALTH & HUM. SERVS. COMM'N, PRESENTATION TO HOUSE COMMITTEE ON GENERAL INVESTIGATING AND ETHICS 5 (2018), <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2018/leg-presentations/general-investigating-ethics-feb-15-2018.pdf>.

³¹⁵ *Id.* at 6.

³¹⁶ *See* Smith, *supra* Note 306; *see also* Tex. Health & Hum. Servs. Comm'n, *supra* Note 312, at 4.

³¹⁷ Tex. Health & Hum. Servs. Comm'n, *supra* Note 312, at 4.

³¹⁸ *Id.* at 7.

³¹⁹ *Id.* at 11.

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ DAVID H. CARPENTER & KATHLEEN ANN RUANE, CONG. RESEARCH SERV., R45322, SELECTED LEGAL TOOLS FOR MAINTAINING GOVERNMENT CONTRACTOR ACCOUNTABILITY 10 (2018) (citing Ralph C. Nash, Jr., Steve L. Schooner, Karen R. O'Brien-DeBakey & Vernon J. Edwards, *The Government Contracts Reference Book* 318 (Wolters Kluwer L. & Bus. 4th ed. 2013)).

³²⁴ Tex. Health & Hum. Servs. Comm'n, *supra* Note 312, at 8.

³²⁵ Muth, *supra* Note 310.

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ Smith, *supra* Note 306.

³²⁹ Tex. Health & Hum. Servs. Comm'n, *supra* Note 312, at 10.

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ TEX. GOV'T CODE § 533.00281.

³³⁵ Muth, *supra* Note 310.

³³⁶ TEX. HEALTH & HUM. SERVS. COMM'N., UTILIZATION REVIEW IN STAR+PLUS MEDICAID MANAGED CARE 6 (2014).

³³⁷ *Id.* at 5.

³³⁸ *See Id.*

³³⁹ Muth, *supra* Note 310; *see also* Tex. Health & Hum. Servs. Comm'n, *supra* Note 334.

³⁴⁰ Smith, *supra* Note 306.

³⁴¹ *Hearing before the House Comms. on Gen. Investigating & Ethics and Appropriations Subcomm. on Art. II*, 85th Int. (June 27, 2018).

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

352 *Id.*

353 *Id.*

354 *Id.*

355 *Id.*

356 *Id.*

357 *Id.*

358 *Id.*

359 *Id.*

360 *Id.*

361 *Id.*

362 *Id.*

363 *Id.*

364 *Id.*

365 *Id.*

366 *Id.*

367 *Id.*

368 *Id.*

369 TEX. HEALTH & HUM. SERVS. COMM'N, PRESENTATION TO HOUSE COMMITTEES ON GENERAL INVESTIGATING AND ETHICS AND APPROPRIATIONS SUBCOMMITTEE ON ART. II 11 (2018), <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2018/leg-presentations/house-appropriations-june-27-2018.pdf>.

370 *Hearing before the House Comms. on Gen. Investigating & Ethics and Appropriations Subcomm. on Art. II*, 85th Int. (June 27, 2018).

371 *Id.*

372 *Id.*

373 *Id.*

374 *See Muth, supra* Note 310.

375 *Hearing before the House Comms. on Gen. Investigating & Ethics and Appropriations Subcomm. on Art. II*, 85th Int. (June 27, 2018).

376 *See* Letter from Ursula Parks, Executive Director, Legislative Budget Board to Cecile Young, Acting Executive Commissioner, Texas Health and Human Services Commission (June 1, 2018).

377 *Id.*

378 *Id.*

379 *See* Tex. State Auditor's Off., *supra* Note 303; *see also*, TEX. STATE AUDITOR'S OFF., SCORING AND EVALUATION OF SELECTED PROCUREMENTS AT THE HEALTH AND HUMAN SERVICES COMMISSION (2018).

380 *See* TEX. HEALTH & HUM. SERVS. COMM'N, RIDER 61(B): EVALUATION OF MEDICAID AND CHIP MANAGED CARE - REVIEW OF MANAGED CARE CONTRACT REVIEW AND OVERSIGHT FUNCTIONS (2018), <https://hhs.texas.gov/reports/2018/08/rider-61b-evaluation-medicaid-chip-managed-care-review-managed-care-contract-review-oversight>.

381 *See* General Appropriations Act, 85th Leg., R.S., S.B. 1, art. II, (II-65 to II-66) (2017); General Appropriations Act, Acts 2017, 85th Leg., R.S., ch. 605, art. II at 1866-67.