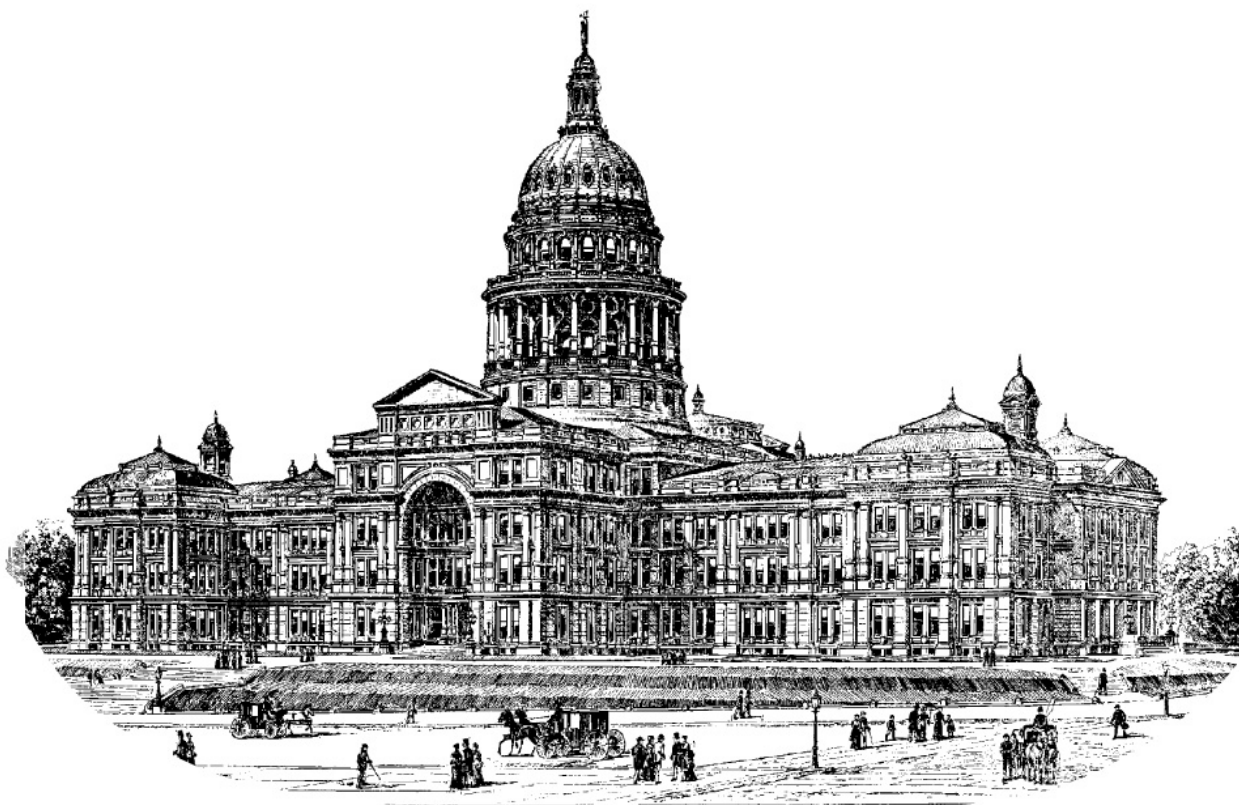




INTERIM REPORT

TO THE 83RD TEXAS LEGISLATURE



HOUSE COMMITTEE ON
COUNTY AFFAIRS
JANUARY 2013

**HOUSE COMMITTEE ON COUNTY AFFAIRS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2012**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
83RD TEXAS LEGISLATURE**

**GARNET F. COLEMAN
CHAIRMAN**

**COMMITTEE DIRECTOR
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**ASSISTANT CLERK
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Committee On
COUNTY AFFAIRS

February 25, 2013

GARNET F. COLEMAN
Chairman

P.O. Box 2910
Austin, Texas 78768-2910


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 COUNTY AFFAIRS of the Eighty-second Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-third Legislature.

Respectfully submitted,


GARNET F. COLEMAN


MARISA MARQUEZ
VICE-CHAIR

LARRY GONZALES


LANCE GOODEN


MIKE HAMILTON


JIM JACKSON

KEN PAXTON

WAYNE SMITH


JAMES WHITE *

*Please refer to the comments section for additional comments from Representative White.

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INTRODUCTION

At the beginning of the 82nd Legislature, the Honorable Joe Straus, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on County Affairs: Garnet F. Coleman, Chair; Marisa Marquez, Vice-Chair; Larry Gonzales; Lance Gooden; Mike Hamilton; Jim Jackson; Ken Paxton; Wayne Smith; and James White.

The House Rules adopted by the 82nd Legislature as House Resolution 4 on January 24, 2011, give the House Committee on County Affairs its jurisdiction. Rule 3, Section 7 reads as follows:

County Affairs — The committee shall have nine members, with jurisdiction over all matters pertaining to:

- (1) counties, including their organization, creation, boundaries, government, finance, and the compensation and duties of their officers and employees;
- (2) establishing districts for the election of governing bodies of counties;
- (3) regional councils of governments;
- (4) multicounty boards or commissions;
- (5) relationships or contracts between counties;
- (6) other units of local government; and
- (7) the following state agency: the Commission on Jail Standards.

During the interim, the Speaker assigned charges to the Committee.

The Committee on County Affairs held the following hearings:

- September 15, 2011, Capitol Room E2.016, Austin
- January 17, 2012, Capitol Room E2.016, Austin
- April 26, 2012, The University of Texas at El Paso, El Paso
- May 1, 2012, Capitol Room E2.016, Austin
- July 17, 2012, Capitol Room E2.030, Austin
- September 18, 2012, Harris County Commissioners Court Courtroom, Houston
- October 24, 2012, Capitol Room E2.016, Austin

The Committee thanks each of the agencies, associations, and individuals who contributed their time, testimony, and information to this report.

The Committee on County Affairs has completed its hearings and has adopted the following report.

EXECUTIVE SUMMARY

County governments have a duty to provide much of the infrastructure that most Texans rely upon day to day. County responsibilities include, but are not limited to, road maintenance, public safety, courts, jails, parks, libraries, economic and community development, elections, and many health and human services. As stewards of taxpayers, counties work hard to ensure that their constituents receive the best services available while achieving cost savings.

Review of the 82nd Legislative Report

The Committee on County Affairs submitted an Interim Report to the 82nd Legislature which provided detailed background on the changing demography of Texas as well as the following charges:

1. Study the current practices and tools available to counties to manage growth and development. Consider incompatible land uses and county rulemaking authority, including rulemaking authority bracketed to counties of a certain population.
2. Study county-level health care delivery models for indigent health care that emphasize community-based care to improve the continuity and quality of care. Compare urban and rural health care delivery models and make necessary legislative recommendations.
3. Study county oversight related to pretrial release on bond in criminal cases.
4. Examine how local governments can better inform the public about local government debts.
5. Survey rural economic development programs. Analyze the economic relationship between rural communities and the agriculture industry and their combined impact on the state's economy. Joint Interim Charge with House Committee on Agriculture and Livestock
6. Monitor the agencies and programs under the committee's jurisdiction (Regional Councils of Government and Texas Commission on Jail Standards).

The full report can be found here:

http://www.house.state.tx.us/_media/pdf/committees/reports/81interim/House-Committee-on-County-Affairs-Interim-Report-2010.pdf

Report to the 83rd Legislature

In this report to the 83rd Legislature, the County Affairs Committee was asked to continue much of the work done in the previous interim and provide information on the following four charges:

CHARGE #1: Study county-related issues arising from population growth in unincorporated areas with regard to existing and new developments and the provision of services, including garbage disposal, fire protection, road maintenance, electricity, and water and wastewater service. Make necessary legislative recommendations for improving problems in these areas of the state.

BACKGROUND:

By law, local governments are responsible for but are not limited to maintaining fire protection, road maintenance, garbage disposal, electricity, and water and wastewater services to its citizens. Currently, counties struggle to provide adequate services and keep up with maintenance in these rapidly expanding areas. Without an increase in revenue, the increased population has amplified the need for additional services in order to keep pace with population growth.

RATIONALE:

As the steady stream of growth continues in Texas, it is extremely important to understand the impact of population increase in unincorporated areas, as it directly impacts the infrastructure of local governments. The increase in population size in the unincorporated areas has created a strain on many resources and services provided by local governments. Commissioner Radack of Harris County suggests a sales tax for unincorporated portions of the county comparable to that of cities. Residents in colonias, which are overwhelmingly in unincorporated areas, are some of the worst living conditions in the state and are in need of basic infrastructure. As has oft been repeated, counties need the ability to monitor and enforce health and safety violations, including waste disposal.

County roads surrounding Eagle Ford Shale are in need of proper funding and maintenance due to the increase in traffic. These counties are not alone. Local government officials are united in their desire for additional funding for infrastructure, specifically roads. Fire protection needs have increased as well without increased funding for fire services. Representatives from fire protection associations made recommendations to enhance public safety as well as increase and restore funding.

Texas has experienced one of the worst droughts in its history and is still in recovery. Scientific studies show that the increasing population has placed a strain on our groundwater reserves. These two factors combined have created the daunting task of finding additional sources of water. Additionally, some areas are finding it difficult to maintain a level of affordability with respect to water as providers are often changing ownership, allowing for dramatic increases in the rates.

RECOMMENDATIONS:

Growth in Unincorporated Areas

1. The Texas Legislature should consider granting counties optional authority to adopt a sales tax in unincorporated areas equal to that which any city within its boundaries receives.

Energy

1. The Texas Legislature and the County Affairs committee should monitor issues pertaining to the generation, delivery and sale of electricity in the state, including ERCOT, the electric distribution system, electric providers, and consumers.

Eagle Ford Shale

1. The Texas Legislature should adopt measures that dedicate oil and gas severance taxes to petroleum producing counties and TxDot districts where drilling is occurring to pay for damages therein.
2. The Texas Legislature should adopt measures that allow counties to negotiate an oil and gas lease on a county-owned right of way in order to compensate for damages to said roads.
3. The Texas Legislature should adopt measures that define new minerals added to the tax roll as an new improvement exemption in the Effective Tax Rate Calculation.

Fire Protection

1. The Texas Legislature should amend the constitutional provision regarding emergency services districts to authorize local voters to establish desired funding levels for emergency services above the current maximum and at a maximum level similar to the level allowed for other special districts that provide services related to public health and safety.
2. The Texas Legislature should adopt measures which require an area needs based study showing adequate services for police, fire and EMS prior to incorporation of any community from those wishing to incorporate an area.
3. The Texas Legislature should adopt measures that require that the Dedicated 9-1-1 Funds be used for its stated purpose.

Road Maintenance

1. The Texas Legislature should support the recommendations of the "Rider 36" study from the Center for Transportation Research (CTR):
 - a. A model fee structure that builds on the state's on-line permitting system; links oversize/overweight (OS/OW) permit fees to the cost of infrastructure consumption; and generates additional revenue to address OS/OW vehicle-related administrative and enforcement costs as well as the cost of maintaining and preserving the state's transportation infrastructure.
 - b. Streamlining the number of permit types and reducing exempt vehicle classes.
 - c. A proposed model alternative fee structure which uses vehicle miles traveled (VMT) and vehicle characteristics that exceed legal limits (i.e., weight,

height, width and length) to determine the permit fees.

2. The Texas Legislature should consider adopting measures which allocate a portion of the additional “2060” permit revenue as recommended by the Center for Transportation Research (CTR) "Rider 36" study to be dedicated towards county roads.

Water

1. The Texas Legislature should adopt measures which grant counties the authority to intervene and participate on behalf of their rural water ratepayers and receive reimbursement for their reasonable rate case expenses.
2. The Texas Legislature should consider adopting measures which eliminate disparities in the statutes between ground and surface water.
3. The Texas Legislature should consider moving oversight of water rates from the Texas Commission on Environmental Quality to the Public Utilities Commission.

Garbage Disposal

1. The Texas Legislature should consider revising Health and Safety Code §364.034 to provide clarification to counties and residents regarding mandates and exemptions for solid waste disposal service.

Colonias

1. The Texas Legislature should adopt measures which strengthen penalties for health and safety violations in and around colonias.
2. The Texas Legislature should adopt measures which provide counties with more regulatory authority with respect to colonias that were constructed prior September 1, 2009.

CHARGE #2: Study opportunities for cost savings through the abolishment of certain elected offices or the consolidation of county services.

BACKGROUND:

This section of the interim report studies potential cost savings to local governments through the consolidation of county services or abolishment of certain elected offices. By law, counties are required to operate and maintain county precincts based on the population size within the county. These numbers have not been adjusted accordingly since 1999. This report discusses consolidation options available, requirements for abolishment of elected offices and details the results of counties that have taken such action.

RATIONALE:

Some speculate that consolidating these services would create a unit of government containing too much centralized power. Although it may not be the most efficient method, maintaining the current system with multiple elected individuals diffuses government power. Also, service disruption has been a problem reported in counties with consolidated services. Often times civil process is not prioritized as important and has proven to fall by the way side. With constable offices having civil process as their priority, they are able to streamline their responsibilities and better serve their community.

RECOMMENDATION: The Committee on County Affairs does not have a recommendation with respect to this interim charge.

CHARGE #3: Conduct a general study of issues facing county jails. The study should include innovative ways to address overcrowding, the impact homelessness has on the county jail population, and recommendations for handling inmates undergoing detoxification and withdrawal from drugs and alcohol.

BACKGROUND:

Homelessness, mental health issues and substance abuse are major contributing factors to overcrowding in county jails. Additionally, county jails are housing nonviolent inmates who truly need treatment outside the jail facility as well as those who are wards of the state correctional facility. The Committee gathered substantive information and reported on these issues in its report to the 82nd Legislature. Background information on this particular section can be found beginning on page 25 here:

<http://www.house.state.tx.us/media/pdf/committees/reports/81interim/House-Committee-on-County-Affairs-Interim-Report-2010.pdf>

RATIONALE:

The implementation of diversion programs has successfully alleviated the stress on the county jail systems by diverting nonviolent inmates away from jail cells and into treatment facilities. In many cases these inmates receive treatment and are able to integrate into society successfully instead of repeatedly entering the county jail system. These treatment facilities vary based on the needs of the individual. In many cases inmates suffer from mental health issues, substance abuse and homelessness. Diversion programs have a great success rate for treating the root cause of the problem and in many cases the offender never returns to the county jail system. This, in return, has reduced the number of inmates and created space to house more violent offenders. Such diversion programs have also saved the taxpayer money. These cost-savings are successful through private and public partnerships.

RECOMMENDATIONS:

1. The Texas Legislature should adopt measures that fund programs addressing mental illness, homelessness and substance abuse and encourage the collection of data to

determine outcomes as they relate to attainment of long-term health, sobriety, employment and permanent housing.

2. The Texas Legislature should adopt measures which support the establishment and utilization of pretrial services divisions.
3. The Texas Legislature should adopt measures which create and expand programs for the homeless and those with mental illnesses, intellectual disabilities and substance abuse challenges using existing exemplary models such as the Bexar County Jail Diversion Program, Haven for Hope and the Center for Health Care Services, the community MHMR center in Bexar County.
4. The Texas Legislature should adopt measures which create and expand programs which divert and provide treatment to those with substance abuse issues using the model set forth by the City of Houston's Sobering Center.
5. The Texas Legislature should adopt measures which allow for and improve the exchange of medical information and collaboration between public and contracted private entities providing social services to the same population.
6. The Texas Legislature should adopt measures which allow counties to request and receive compensation for the housing of state inmates.
7. The Texas Legislature should fund programs that provide coordinated, community based wrap-around services throughout an inmate's detention in a county jail.
8. The Texas Legislature should provide funding for the enhanced training of public safety and health professionals who respond to mental health crises.

CHARGE #4: Monitor the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 82nd Legislature.

BACKGROUND:

This section of the Interim report explores the agencies and programs under the committee's jurisdiction:

- Texas Healthcare Transformation and Quality Improvement Program Medicaid 1115 Waiver
- Regional Councils of Government; and
- Texas Commission on Jail Standards

Texas Healthcare Transformation and Quality Improvement Program Medicaid 1115 Waiver

RATIONALE:

Texas received approval from the Centers for Medicare and Medicaid Services (CMS) for a waiver that allows the state to expand Medicaid managed care while preserving hospital

upper payment limit (UPL) funding as well as provides incentive payments for health care improvements. Under the waiver funding statewide is dispersed into two pools: the uncompensated care (UC) pool to reimburse for uncompensated care costs as well as the Delivery System Reform Incentive Payment (DSRIP) pool to create an incentive for hospitals and providers to improve service delivery, enhance patient experience and improve coordination and cost-effectiveness.

RECOMMENDATIONS:

1. The Texas Legislature should support measures which assists in the full funding and implementation of the 1115 Waiver.
2. The Texas Legislature should adopt measures which would allow counties participating in the County Indigent Health Care Program to leverage federal funds in the 1115 waiver.
3. The Texas Legislature should support measures which ensure that behavioral health services within the 1115 Waiver Delivery System Reform Incentive Payment (DSRIP) menu enhance newly funded programs and do not supplant current General Revenue funding of mental health services.

Regional Councils of Government

RATIONALE:

The twenty-four regional councils of governments (COGs) have worked to guide the development of their respective regions. In order to accomplish this they rely on facilitating cooperation and coordination amongst the cities, counties, school districts, and special districts that make up their regional community. They are a useful, voluntary instrument that enables local governments to determine public policy and provide essential services. Their general purpose is to make studies and plans to guide the unified, far-reaching development of a region, eliminate duplication, and promote economy and efficiency in the coordinated development of a region. Regional councils encourage their local government members to cooperate in order to improve the health, safety, and general welfare of their citizens and to plan for the future development of their communities.

RECOMMENDATIONS:

1. The Texas Legislature should support measures which clarify Chapter 391 of Local Government Code to ensure that the intent and purpose of the chapter is achieved.
2. The Texas Legislature should support measures which encourage collaboration between Councils of Governments and/or agencies that provide social service programs to maximize available funding.

Texas Commission on Jail Standards

RATIONALE:

To further promote an accurate understanding of the inmates in the county jails, it is necessary to identify the demographics of the population. This information, gathered upon entry, can be useful upon discharge when providing resources and referrals.

RECOMMENDATION:

1. The Texas Legislature should adopt measures which would require counties jails to report homelessness upon intake.

The Committee also heard testimony on abandoned property and weeded lots.

BACKGROUND:

Recent rulings in the City of Dallas v. Stewart case left some ambiguity in the law. Some local governments have interpreted the ruling to leave a loop hole. It is believed that the local government, after following its appropriate procedures for demolition, can still be held liable by an owner for the fair market value of the property after the building has been demolished. Because of the financial risk associated with demolition, local governments are extremely cautious in their assessment of structures. The fair market value of the building will often deter the recommendation for demolition.

RATIONALE:

While Dallas v. Stewart did attempt to explain the law around the taking of property, some local governments would like additional clarification and or assurances that they will not be sued afterwards. Differences in how the city of Houston and Harris County handle similar issues exemplifies the issue.

RECOMMENDATION:

1. The Texas Legislature should adopt measures which further clarify the process by which counties and municipalities can consistently address the abatement of a substandard structure.

COMMENTS

From Representative White:

Chairman Garnet Coleman conducted a substantive and transparent analysis of issues confronting counties in the 21st century. Though there is ample room for vigorous debate and constructive disagreement, I commend Chairman Coleman for his thoughtfulness and his desire to give Texans from every part of this state an opportunity to weigh in on issues of importance to county governance.

The ultimate purpose of government is the providing for provision of public services, to enhance individual liberty and county government is not exempted from this fundamental charge. The allocations from various fees, along with disbursements from dedicated funds have left county governments, rural counties, in particular, at a serious disadvantage. In light of this, one may see the desire to encourage the Texas Legislature to allow additional taxing authority to county governments and other local entities. However, the Legislature must first institute a plan to begin using revenue currently in dedicated in funds for their intended purpose. If the purpose of a dedicated funds no longer exists, then the Legislature should stop collecting the revenue from hardworking Texans.

Additionally, the Legislature must reform the manner in which revenue from permit fees are divided between county governments and the state government, to include the application of these fees. For example, over-size/over-weight truck operators are required to purchase a permit for administrative purposes and to attempt to off-set the impact that these trucks are having on our road systems. In rural Texas, these operators utilize county roads, as well as, state highways and especially in the terms of agriculture, the process of delivering the crop to the market begins on a county road. Therefore, the Legislature must develop a more equitable mechanism for permit fees that allows county governments to have the resources they need to provide adequate infrastructure and enforcement. In short, the State of Texas and county governments should first be good stewards of the monies Texas consumers and businesses are paying now, before developing new means for Texans to pay more.

State Representative James White

"An armed man is a citizen. An unarmed man is a subject."