

**HOUSE COMMITTEE ON LAND AND RESOURCE MANAGEMENT
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2000**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
77TH TEXAS LEGISLATURE**

**GARY L. WALKER
CHAIRMAN**

**COMMITTEE CLERK
LAURIE MCANALLY**



Committee On
Land and Resource Management

October 1, 2000

Gary L. Walker
Chairman

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

The Honorable James E. "Pete" Laney
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 Land and Resource Management of the Seventy-Sixth Legislature hereby submits its interim report, including recommendations for consideration by the Seventy-Seventh Legislature.

Respectfully submitted,

Gary L. Walker, Chairman

Joe Crabb, Vice Chairman

Fred Bosse

Fred Brown

Rick Hardcastle

Charlie Howard

Mike Krusee

Anna Mowery

Bob Turner

Joe Crabb
Vice-Chairman

Members: Fred Bosse, Fred Brown, Rick Hardcastle, Charlie Howard, Mike Krusee, Anna Mowery, Bob Turner

TABLE OF CONTENTS

INTRODUCTION	6
COUNTY POWERS	8
Background	8
The 76th Session	8
Summary of Testimony from Public Hearings	8
Standard Building Codes	9
Dual Review in the ETJ	9
Inadequate Tax Bases	10
County Land Use Authority	10
Infrastructure Planning	11
Septic Tanks	12
Various Requests	12
City Support	12
Committee Findings	13
MUNICIPAL SURVEY	15
The Survey	17
Eminent Domain	19
Eminent Domain Comments	21
Annexations	22
Annexation Suggestions	32
Adoption of Annexation Plan	35
Internet Addresses	42
Procedures in Lieu of Annexation	43
HB 1704 Comments	46
Committee Findings	49
THE REGULATION OF BILLBOARDS	51
Background	51
SB 1345	51
Non-conforming Signs	52
Summary of Testimony from Public Hearings	52
How Billboards are Regulated	53
Scenic Byways	53
Other Suggestions From Testimony	53
The Property Rights Issue	54
Committee Findings	55
LAND DEVELOPMENT	57
Background	57
The 76th Legislature	57

Comparison to Previous Legislation	58
Summary of Testimony from Public Hearings	58
Definitions	59
Municipal Survey	60
Committee Findings	60
COUNTY PLATTING AUTHORITY	61
Background	61
Summary of Testimony from Public Hearings	61
The Exceptions	61
Confusing and Vague Language	64
Attorney General’s Opinion	64
Committee Findings	65
COASTAL EROSION	66
Background	66
SB 1690	66
Summary of Testimony from Public Hearings	66
Summary of Projects for the 2000-2001 Biennium	67
Aransas County	67
Key Allegro Access Road	67
Cove Harbor	68
Brazoria County	68
Hall’s Lake	68
Surfside Beach	68
Calhoun County	68
Indianola/Magnolia Beach-Reef Project	68
Bayfront Peninsula	68
Cameron County	68
Park Road 100	68
South Padre Island Beach Nourishment	69
Galveston County	69
Gulf Intracoastal Waterway (GIWW) Rollover Bay Reach (Event 2)	69
Moses Lake	69
North Deer Island	69
Delehide Cove	69
Omega Bay	69
West Galveston Island	70
Gilchrist Beach	70
GIWW Rollover Bay Reach (Event 1)	70
Harris County	70
Little Cedar Bayou	70
Jefferson County	70
Rose City Marsh	70
GIWW McFaddin Reach	70
Texas Point	71

McFaddin Dune	71
Pleasure Island	71
Keith Lake Cut	71
Mesquite Point	71
Kleberg County	71
Kaufer-Hubert Memorial Park	71
Nueces County	71
Corpus Christi Beach	71
Nueces Bay Shoreline	72
Corpus Christi Ship Channel, South Shoreline	72
University Beach Park	72
Orange County	72
Bessie Heights	72
Refugio/San Patricio Counties	72
Rural Bay Shoreline	72
Committee Findings	72
 HB 1704	 73
 SB 710	 78
 SB 1690	 85
 ENDNOTES	 97

INTRODUCTION

At the beginning of the 76th Legislature, the Honorable James E. “Pete” Laney, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Land and Resource Management. Pursuant to House Rule 3, Section 21, the Committee has jurisdiction over all matters pertaining to:

- (1) the management of public lands;
- (2) the power of eminent domain;
- (3) annexation, zoning, and other governmental regulation of land use; and
- (4) the following state agencies: the Veterans’ Land Board, the School Land Board, the Board for Lease of University Lands, the Coastal Coordination Council, and the General Land Office.

The committee membership included the following: Chairman Gary L. Walker, Vice-Chairman Joe Crabb, Fred Bosse, Fred Brown, Rick Hardcastle, Charlie Howard, Mike Krusee, Anna Mowery, and Bob Turner.

During the interim, Speaker Laney charged the committee with the following issues:

1. Study the ability of counties to provide for appropriate growth and development in unincorporated areas while balancing private property rights.
2. Conduct a survey of cities and towns sufficient to establish a factual basis for the committee’s consideration of matters such as annexation, condemnation and development.
3. Study the regulation of billboards placed along highways.
4. Conduct active oversight of the agencies under the committee’s jurisdiction. Monitor actions taken under HB 1704 (building permits), SB 710 (platting), and SB 1690 (coastal erosion), 76th Legislature.

Each issue was studied by the committee as a whole. The committee has completed their hearings and investigations and has issued the following findings.

Charge 1

Study the ability of counties to provide for the appropriate growth and development in unincorporated areas while balancing private property rights.

COUNTY POWERS

Background

When the Texas Constitution was adopted in 1876, the organization of county government was given carefully restricted authority, due mainly to the effects of Reconstruction. County authority continues to be limited by the constitution and the legislature today. Most home-rule municipalities, on the other hand, have broad authority to regulate, having been given extensive platting, zoning and other land use authority. This system worked fairly well when Texas was primarily a rural state. Now, however, as populations gravitate towards the unregulated areas, public expectations of county authority have increased.¹ The legislature has responded in past sessions by granting authority to counties to deal with specific common problems, such as certain fireworks regulation, subdivision platting in economically distressed areas, the keeping of wild animals, and visual aesthetics in certain outdoor businesses. The Legislature has also granted general land use authority to counties in specific areas, such as portions of Padre Island, the Amistad Recreation Area in Val Verde County, several lakes, and the McDonald Observatory.

The 76th Session

Additional authority was granted to counties by the 76th Legislative Session. As a result of legislation in 1999, counties are now able to require minimum infrastructure standards for new mobile home rental communities. New subdivisions relying on groundwater can now be required by a county to have certification from a registered engineer that adequate groundwater is available. Counties are now able to adopt an ordinance for local control of solid waste disposal, and have significant additional authority to regulate subdivisions.

Summary of Testimony from Public Hearings

The full Committee heard testimony regarding county powers during the three scheduled hearings. Those who testified and their representation were:

March 3, 2000, in Kingwood, TX

Jim Allison, *County Judges and Commissioners Assn. of Texas*

Jack Harris, *Brazoria County Commissioners Court*

T.J. Higginbotham, *Representing Himself*

Philip Savoy, *Take Back Texas*

Carl Stephens, *Stephens/Tinsley & Associates, Inc.*

May 11, 2000, in Austin, TX

Marcy Holloway, *Representing Herself*

W.B. "Bill" Howell, *Representing Himself*

Daniel Ochoa, *Hill Country Round Table Steering Committee*

Julie Shackelford, *American Farmland Trust*

September 20, 2000, in Vernon, TX

Jim Allison, *County Judges and Commissioners Assn. of Texas*

Ruben Delgado, *Collin County Director of Engineering*

Standard Building Codes

Testimony indicated that the purchasers of residential dwellings in the unincorporated areas remain unprotected from shoddy construction materials and techniques. With the exception of the ability to regulate fire codes in counties with a population of over 250,000, counties have no authority to adopt and enforce minimum construction codes.

The Legislature has worked to address this situation in the past, although legislation has not been passed. Attempted bills stated that counties could adopt the code as adopted by the largest city in the county, or the nearest city in the area. County officials, however, would like to adopt a uniform, minimum code, not something that would have specific provisions, county by county.

Carl Stephens, representing the Greater Houston Homebuilders Association, as well as the Texas Association of Builders, reported the GHBA had already proposed and passed a resolution allowing for a statewide residential code to be implemented. At this time, the state association is researching the issue. Although the developers are opposed to additional regulations that invariably increase their costs, most see the need for a uniform building code.

In September, Jim Allison, General Counsel of the County Judges and Commissioners Association of Texas, reported that discussions towards adoption of uniform construction codes between municipalities and various industry groups are continuing. However, it was unlikely that these discussions would be completed by January. Allison recommended that counties therefore be granted authority to adopt the residential construction code of the largest municipality in the county, stating that this measure would assure that residential construction in the unincorporated areas meets minimum safety standards without creating additional bureaucracy and costs. Under this proposal, the county can contract with the municipality for inspection and enforcement services.

Dual Review in the ETJ

In the ETJ, a developer must submit their plat for approval by both the city and the county unless one of them has voluntarily relinquished authority to the other. Two plat approval processes remains confusing for developers. In most cases, the county has a sixty day deadline for plat approval, a city has not. Interpretations of the law show most developers believe they must comply with the most stringent regulations, even on an individual basis. For instance, if a city has stricter watershed rules than a county, then the city rules apply. If, however, in the same situation, a county has stricter fire codes, then the county code must be followed. Examining each entity's requirements to determine the strictest in each instance takes time and money. In addition, the builders testified that they often feel caught between two entities with separate agendas. Although interlocal agreements work well, many cities and counties are not able to work them out. One suggestion was that cities have authority over ETJ areas that are listed in their three-year annexation plan, and that counties take over the rest. Many counties do not want the authority, however, because of the additional costs incurred.

Cities oppose any weakening of their authority in the ETJ. Cities have the responsibility and are required to plan for the orderly growth of their communities, and to not have the primary authority in the areas that are growing is seen as unworkable by the municipalities.

This issue is also being studied by the Senate Committee on Intergovernmental Relations.

Inadequate Tax Bases

Although counties have reappraisal and tax raising authority at their disposal, this does not provide enough income for many counties. The Conference of Urban Counties testified that the property tax is no longer able to keep up with the needs of many counties. Due to the fact that other entities rely on the property tax, the counties feel they have asked for all the increases that the public can bear. Rapid growth in some counties is not enough to provide for adequate taxation. A recent study of Hays County by the American Farmland Trust showed that farms, ranches and open lands generate three times more dollars than the county spends on these lands for public services, such as roads, schools, fire prevention and law enforcement. On the other hand, revenue from residential lands, including subdivisions, does not cover the cost of public services, leaving a 25% gap between revenue and cost. Commercial and industrial land, like agricultural land and open space, pays more into the county budget than they require in public services.

The study contends that ultimately (at least in the case of Hays County) residential development that is not balanced by business growth and maintenance of agricultural land or open space will cause either higher property taxes or declining levels of public service.²

In other counties, decline, not growth, is the problem. In declining counties, simple road maintenance is a major expenditure. Although the declining oil and gas tax base has caused the financial struggle for many counties, there are other causes.

In Menard County, for example, due to trucking deregulation, Merchants Fast Motor Line went bankrupt. All of their equipment was carried in Menard County. When Merchants went bankrupt, Menard County lost 52 percent of their total tax base, which was already minimal, because of heavy agricultural use and over-65 exemptions.

Due to the fact that every county doesn't fit the same criteria, several members of the committee felt a broad measure wouldn't solve the problem.

One specific suggestion offered during testimony was the collection of impact fees. In cities, impact fees on subdivisions are set to help the city provide infrastructure. Counties do not have that ability. Some counties are feeling the strain as two lane county roads withstand increased traffic from multiple subdivisions. These roads, which typically have no shoulders, are serving fifteen to twenty thousand cars a day, as well as school buses trying to make their way to pick-up points. In addition, as these subdivisions are being built, counties have to provide interconnections between each subdivision, as well as to churches and schools. Counties need some type of monetary source to provide needed infrastructure.

County Land Use Authority

Several of those testifying felt that discussions should continue on the issue of county land use authority. Since 1912, large municipalities have exercised unfettered authority to adopt land-use ordinances. Small towns, too, have extensive platting and zoning authority, but counties have

limited land-use authority. While the differences have been embraced in the past to satisfy those who prefer to live in town with extensive services, or in the country with greater independence, there has been increased population growth in the unincorporated areas, particularly parts of East Texas, and South Texas and Central Texas. As the population shifts, and growth occurs, counties are receiving requests to protect the investment value of the property of the rural residents. Subdivisions have restrictive covenants that are effective, and in the past few years, the enforcement authority of those has been extended to the justice court level for enforcement of those restrictions. Restrictive covenants are recognized as an effective tool for property owners to go together and prevent use that would lower their property value. However, outside of a subdivision, there is currently no protection in the unincorporated areas. Although county governments have the ability to declare a structure or occurrence to be a public nuisance, one of the conditions in the Health and Safety Code must be found to have been violated and a hearing of finding made. By that time, the neighbor's property has already been affected.

Of those commissioners courts who responded to a written survey sent out by the County Judges and Commissioners Association of Texas, 86% support some additional authority for counties to regulate changes in property use on a land option basis. Forty percent supported regulation of all commercial uses. Of the specific uses polled, 65% support regulation of auto wrecking yards, 56% support regulation of manufactured housing developments, 47% supported regulation of flea markets, 41% supported regulation of asphalt/cement plants, 39% supported regulation of radio towers, and 28% supported regulation of airports. Other complaints heard during interim testimony were industrial plants next to residences and schools, cell phone towers, off-site signage, tall business buildings, slaughter houses, and dirt pits.

At least one of those who testified felt that the term "private property rights" is sometimes purposely raised to try to prevent regional regulations to preserve the property rights and values of the people who will suffer the most if a non-conforming structure is built near their property. It was felt that it is time to discuss balancing property rights--the rights of those people who have gone out, paid money for a piece of property, improved that property and brought it up a standard that has value. They deserve protection of their property rights in the same way that a city resident is protected. It is very little comfort to a landowner that someone's property right is being exercised when a flea market goes up next door.

Without subjecting entire rural areas to zoning restrictions, it has been suggested that the Legislature put together a list of non-conforming uses and allow the county government to prevent the imposition of those uses when adjacent property values would be adversely affected. Under this concept, the Legislature could give limited authority on an optional basis to county governments to hold a permit and hearing process on any non-conforming use that would appear on the list. The county could hold a referendum on the issue to allow the residents the option to decide if this is an authority they would like to extend to their commissioners court.

Infrastructure Planning

The Association of Urban Counties mentioned a lack of authority to plan for infrastructure. In some cases, a county can look at a particular area and realize that growth is going to occur in a specific place. Although a major subdivision is going up, counties lack the ability to plan for a major thoroughfare to handle the traffic, as counties are limited to a hundred feet of right of way

in their subdivision standards. That limited right of way is not enough for a major urban thoroughfare. Although that authority has been extended to cities, and applies to areas within the ETJ, there is major growth in the unincorporated areas outside the ETJ, and counties need more authority to plan for various infrastructure needs.

The Association also cited that counties do not currently have clear authority to obtain a conservation easement from a willing landowner.

Septic Tanks

Currently, counties have no regulatory authority over septic tanks. They can choose to be considered an agent of the TNRCC, and the TNRCC adopts regulatory standards. If the county would like to adopt differing standards, commonly called community standards, they have to make that request of the TNRCC, which often chooses to stick to strict, scientific standards.

The problem is that some new septic tanks employ differing technology. Instead of underground pipes, some systems spray greywater aboveground. Although the TNRCC believes that there is nothing harmful about the greywater, the neighbor next door to the septic system prefers not to have greywater spraying over his children's swingset. Cities can adopt community standards through their home rule authority, but the counties have no authority to do so. Counties would like the authority to write community standard rules regarding septic tanks.

An Oklahoma environmental official recently said at a conference in Texas that according to phone calls that his agency receives, the number one environmental problem in Oklahoma is "my neighbor's septic tank."³

Various Requests

It was also suggested that county governments be allowed to develop landscape restrictions, particularly in drought prone areas, and enact impervious cover ordinances. It was also suggested that counties be given the authority to regulate billboards (Charge 3).

City Support

Although not solicited, two cities stated their support for additional county authority in their municipal surveys.

Brownwood: I believe counties should have increased authority in areas around a city limits, such as enhanced code enforcement, building condemnation, and the like.⁴

San Juan: It might be helpful if the county governments had some zoning authority or the cities had that authority inside either their 2 or 5 mile ETJ's. The areas outside the city limits usually have many uses inside a subdivision or in a particular area. These are areas the cities may choose to annex and then the different uses become constant problems for the cities. Some of the uses may even pose health hazards but the counties are very often ill equipped to deal with them.⁵

Committee Findings

The Committee recognizes that private property rights apply to all, and recommends a list of non-conforming land uses be drawn up and debated.

Despite the fact that the Committee has yet to see specific instances of problems, it sees the necessity of one set of standards in the ETJ, and would like to eliminate dual review. Since the municipal standards are the strictest in the majority of cases, the Committee leans towards municipal jurisdiction. All interested parties are urged to prepare recommendations for the 77th Legislature.

Although discussions among interested parties are not expected to resolve the issue of standard building codes by January, the Committee urges recommendations to be prepared as soon as possible. Several Committee members object to adopting the codes of the county's largest municipality, and prefer to devote their efforts to legislated standard building codes, with local amendments.

The Committee recognizes that county funding remains a problem, but defers to the House Committee on County Affairs. County Affairs has been assigned the county funding issue as an interim charge by Speaker Laney.

The Committee would like to look at legislation regarding septic tank systems, allowing counties the ability to write community standard rules.

Charge 2

Conduct a survey of cities and towns sufficient to establish a factual basis for the committee's consideration of matters such as annexation, condemnation, and development.

MUNICIPAL SURVEY

The following letter was sent to 314 municipalities:

March 22, 2000

Dear Mayor, Council and City Manager:

The Texas House Committee on Land and Resource Management has been charged by Speaker Laney to study several issues this summer, and report our findings and recommendations back to the House for consideration during the 77th legislative session beginning in January 2001. We have been charged to conduct a survey of cities and towns sufficient to establish a factual basis for the committee's consideration of matters such as annexation, condemnation and development. You may recall that you were sent a similar survey two years ago, and your answers were helpful to our understanding of the issues.

We would appreciate your input, and have prepared the following questions to help us understand the impact of recent legislation on your city. Your answers are an important part of our report, and we appreciate your efforts to assist us in this way.

If possible, we would like to have all responses in by May 31, 2000, so that we may have time to review them and prepare our report.

- 1. Approximately how many eminent domain proceedings has your city had to file since January 1, 1998?**
- 2. Has your city, or any entity under its control, used its eminent domain powers to acquire property for commercial or retail purposes since January 1, 1998?**
- 3. In connection with how many annexations did your city conduct its first public hearing between January 1, 1998 and May 31, 1999?**
- 4. In connection with how many annexations did your city conduct its first public hearing between June 1, 1999 and August 31, 1999?**
- 5. In connection with how many annexations has your city conducted its first public hearing between September 1, 1999 and the date of this response?**
- 6. Has your city adopted a three-year annexation plan as referenced in Section 43.052, Local Government Code?**
- 7. If your city maintains an Internet web site, what is the address?**
- 8. Has your city utilized any procedure in lieu of annexation, such as a strategic partnership agreement or other type of inter-local agreement or revenue sharing**

arrangement since January 1, 1998? If so, please describe the technique used.

9. In 1999, the legislature enacted H.B. 1704, adding Chapter 245, Local Government Code, having the effect of freezing certain permits and plats approved prior to 1997. Please list any impact(s) that this chapter has on your city's ordinances or development.

In addition, we would be interested in any additional input you would care to offer on annexation, condemnation, coastal erosion or land use permit issues.

Thank you again for assisting us with this phase of our interim report. Please include a contact name and number with your response so that we can reach you if we have any questions. Please feel free to call Laurie McAnally, committee clerk, with your questions.

Sincerely,

**Gary L. Walker
Committee Chair**

The Survey

Out of 314 cities surveyed, 141 had responded as of the date of this report.

The following cities have responded:

Abilene	Dickinson	Laredo	Seguin
Alice	Dumas	Leon Valley	Seminole
Alamo	Duncanville	Lewisville	Sugar Land
Allen	Edna	Littlefield	Sulphur Springs
Amarillo	Elgin	Livingston	Taylor
Athens	El Paso	Lockhart	Temple
Atlanta	Farmers Branch	Longview	The Colony
Austin	Floresville	Lubbock	Tomball
Bastrop	Flower Mound	Mansfield	Trophy Club
Beaumont	Freeport	Marble Falls	Universal City
Bedford	Friendswood	Marshall	University Park
Beeville	Gainesville	McAllen	Vernon
Belton	Galena Park	Mesquite	Waxahachie
Big Spring	Gilmer	Midland	Weatherford
Boerne	Glenn Heights	Mineral Wells	Webster
Bonham	Greenville	Missouri City	Weslaco
Breckenridge	Gun Barrel City	Nacogdoches	West Columbia
Brownfield	Henderson	Nederland	Wharton
Brownwood	Hereford	New Braunfels	Whitehouse
Burkburnett	Hewitt	North Richland Hills	Wichita Falls
Burleson	Highland Park	Hills	Windcrest
Carrizo Springs	Highland Village	Odessa	Woodway
Cedar Park	Hillsboro	Pampa	Yoakum
Cleburne	Houston	Pearland	
Coleman	Huntsville	Plainview	
College Station	Iowa Park	Pleasanton	
Commerce	Jacinto City	Plano	
Conroe	Joshua	Port Arthur	
Converse	Katy	Portland	
Coppell	Kaufman	Port Neches	
Corpus Christi	Keller	Richardson	
Cuero	Kennedale	Richland Hills	
Dallas	Kerrville	Robinson	
Dayton	Killeen	Rockdale	
Decatur	Lake Dallas	Rockport	
Deerpark	Lake Jackson	Round Rock	
Denison	Lakeway	Saginaw	
Denton	Lamesa	Sanger	
Denver City	Lampasas	San Juan	
Diboll	La Porte	Sealy	

The following cities did not respond to the survey:

Addison	Elsa	Leander	Santa Fe
Alamo Heights	Ennis	Levelland	Schertz
Alpine	Euless	Liberty	Seabrook
Alvin	Everman	Live Oak	Seagoville
Andrews	Falfurrias	Lufkin	Sherman
Angleton	Forest Hill	Luling	Silsbee
Aransas pass	Forney	Lumberton	Sinton
Arlington	Fort Stockton	Marlin	Slayton
Azle	Fort Worth	Mathis	Snyder
Balch Springs	Fredericksburg	McKinney	Socorro
Bay City	Frisco	Meadows Place	South Houston
Baytown	Galveston	Mercedes	Southlake
Bellaire	Garland	Mexia	Stafford
Bellmeade	Gatesville	Midlothian	Stephenville
Benbrook	Georgetown	Mission	Sweetwater
Borger	Gladewater	Monahans	Terrell
Bowie	Gonzales	Mount Pleasant	Texarkana
Brady	Graham	Navasota	Texas City
Brenham	Granbury	New Boston	Tyler
Bridge City	Grand Prairie	Orange	Uvalde
Brownsville	Grapevine	Palestine	Victoria
Bryan	Groves	Paris	Vidor
Cameron	Haltom City	Pasadena	Waco
Canyon	Harker Heights	Pearsall	Wake Village
Carrollton	Harlingen	Pecos	Watauga
Carthage	Hearne	Perryton	West University
Cedar Hill	Hidalgo	Pflugerville	Place
Center	Hitchcock	Pharr	White Oak
Childress	Hondo	Port Isabel	White Settlement
Cleveland	Horizon City	Port Lavaca	Wylie
Clute	Humble	Presidio	
Colleyville	Hurst	Raymondville	
Colorado City	Ingleside	Red Oak	
Copperas Cove	Irving	Richmond	
Corinth	Jacksonville	Rio Bravo	
Corsicana	Jasper	Rio Grande City	
Crockett	Jersey Village	Robstown	
Crowley	Keene	Rockwall	
Crystal City	Kermit	Roma	
Dalhart	Kilgore	Rosenberg	
DeSoto	Kingsville	Rowlett	
Del Rio	Kirby	San Angelo	
Devine	La Feria	San Antonio	
Donna	La Marque	San Benito	
Eagle pass	Lacy Lakeview	San Diego	
Edinburg	Lancaster	San Elizario	
El Campo	League City	San Marcos	

Eminent Domain

1. Approximately how many eminent domain proceedings has your city had to file since January 1, 1998?

2. Has your city, or any entity under its control, used its eminent domain powers to acquire property for commercial or retail purposes since January 1, 1998?

The first question two questions on the survey dealt with eminent domain. It has come to the attention of the committee that there have been instances of municipalities using their eminent domain powers to acquire property for economic development. These questions were asked to determine how widespread this practice is. Of the 141 cities responding, forty had exercised their powers of eminent domain, and of those forty, two have used those powers to acquire property for commercial or retail purposes since January of 1998. The City of Dallas did not answer this portion of the survey, and the City of Seguin indicated that eminent domain acquisitions were forthcoming, but not whether or not the acquisitions were for commercial or retail purposes.

The following table details the responses:

City	How many proceedings since 1/1/98?	ED powers used to acquire property for commercial or retail purposes since 1/1/98?
Austin	62	no
Bastrop	1	no
Beaumont	13	no
Cedar Park	3	no
Conroe	6	no
College Station	1	no
Coppell	2 (for public ROW)	no
Corpus Christi	7	no
Dallas	did not answer this portion of survey	
Dayton	1 (road widening)	no
Denton	1 (ROW)	no
El Paso	9	no
Farmers Branch	2	no

Gilmer	1	yes
Greenville	1	no
Houston	36	no
Huntsville	3	no
Katy	1	no
Keller	4	no
Kerrville	2	no
Killeen	1 (ROW)	no
La Porte	1 (resolved amicably)	no
Laredo	3	no
Lewisville	about 20 (primarily for water and sewer)	no
Longview	381 purchases, 31 filings	no
Lubbock	8	no
Mansfield	6	no
Marshall	4	no
McAllen	5	no
Mesquite	2 (ROW & utility easement)	no
Missouri City	2	no
North Richland Hills	2 to 5	no
Pearland	3	no
Plainview	2 (ROW & utility easement)	no
Plano	2	yes
Port Neches	1	no
Richland Hills	8	no
Round Rock	2	no
Seguin	forthcoming	forthcoming
Sugar Land	2 (ROW & drainage)	no
Wichita Falls	4 (easements & ROW's)	no

Eminent Domain Comments

Conroe: The use of eminent domain to advance commercial projects has been controversial during the last several years. As you consider this matter we ask that the Committee carefully distinguish the exercise of eminent domain for this type of purpose from other project types. The City of Conroe's exercise of its eminent domain powers has almost always been for the purposes of a water, sewer or drainage project.

Particularly for drainage and gravity flow sewer projects, it is extremely important to be able to follow the natural contours of drainage ways. In most cases the City cannot arbitrarily omit a parcel because negotiations have failed. The City of Conroe would not object to reasonable limitations upon the use of eminent domain powers to advance commercial projects, but we hope that the Committee will carefully keep in mind the impact of any proposed restrictions on projects of other types.⁶

Denton: Since January 1, 1998, the City of Denton has filed one eminent domain proceeding for the purposes of roadway right-of-way acquisition. In this particular instance, a narrow strip of land was condemned to facilitate the construction of a roadway connection financed by Denton County CIP bonds. The strip of land had been purchased recently by a competing developer to obstruct access to a new master-planned residential community.⁷

Huntsville: Huntsville has acquired numerous easements and rights-of-way during the past two years, most of them by negotiation.⁸

Plainview: Condemnation is very important to the City of Plainview so that it may continue to provide essential city services. The City has used condemnation very sparingly, and only for those projects which have a clearly defined public purpose, such as utility or road rights-of-way.⁹

Wichita Falls: The City has acquired properties through condemnation. Reasons for acquisitions most often relate to property conditions, easement or right-of-way needs. As far as condemnation for commercial or retail purposes, the City acts as trustee for the other two taxing entities when property is condemned based on property conditions or delinquent taxes. This creates excess property for which the City has to maintain. In most cases, we try to dispose of such properties during required sheriff's sales. Use of those properties following such sale is determined by the new owner and land use restrictions.

We do not discount the possibility for acquiring commercial properties. That tool has not been needed at this point. However, it can be seen where smaller communities may want to use this as an approach to economic development to attract a big box retailer or shopping center to address retail "leakage" from their community, therefore boosting sales tax receipts, which in turn could be a determinant of property tax rates.¹⁰

Annexations

3. In connection with how many annexations did your city conduct its first public hearing between January 1, 1998 and May 31, 1999?

4. In connection with how many annexations did your city conduct its first public hearing between June 1, 1999 and August 31, 1999?

5. In connection with how many annexations has your city conducted its first public hearing between September 1, 1999 and the date of this response?

Questions 3, 4, and 5 dealt with annexations and public hearings. The first time period cited was prior to the passage of SB 89, which dealt extensively with the annexation process. Of the 141 cities responding, 56 held first public hearings since January 1, 1998, on approximately 229 annexations. The City of Gilmer responded that they had hearings on annexations during that time period, but not how many pieces of property were involved.

The second time period, between June 1, 1999, and August 31, 1999, was the period of time immediately after the passage of SB 89, but before it took effect in September of 1999. 24 out of the 141 cities responding held their first public hearing on approximately 70 annexations. Once again the City of Gilmer did not indicate how many pieces of property were involved.

The final annexation period surveyed, September 1999 until the date of the survey (roughly the end of May), saw 31 cities holding first public hearings for approximately 88 pieces of property. Missouri City indicated that hearings had been held during the time period, but not how many. La Porte did not answer the question. Two cities, Dayton and Converse, expected to hold a hearing soon.

Many cities had comments on the annexation process and the new legislation:

Abilene: It is critical that land use decisions be left at the local level and not mandated by the State. "Property Rights Protection" or "Takings" legislation should not be considered which would result in loss of reasonable control of land use development in cities. These laws may, have as their goal, protect the individual, but when they are detrimental to the community, everyone suffers.¹¹

Amarillo: The annexation regulations set forth in Section 43 of the Local Government Code are difficult to interpret and are unwieldy to apply, even though all of our annexations are requested by owners/developers. The City of Amarillo submits the following recommendations regarding future legislative action: 1) no reduction of municipal annexation authority of local ETJ authority. 2) no reduction of the authority of cities to regulate subdivisions and platting.¹²

Atlanta: It is important for cities, especially smaller cities, to have the tool of annexation available to prevent stagnation and erosion of the tax base. Please consider the impact of the cities when developing any new annexation (legislation).¹³

Bastrop: The recent annexation laws will prove to be very detrimental to the City of Bastrop in the future. Currently we are a General Law City. As a result, we have very limited involuntary annexation powers. We hope to become a Home Rule City within the next two years. We need the control involuntary annexation powers will provide. That control is essential as long as Central Texas remains a growth region.

The single most damaging provision of the new legislation is from placing the burden of proof on the city for enforcing the annexation service plan. A single individual can effectively stop implementation of a service plan, placing the City in non-compliance, subject to disannexation or damages. One dissatisfied property owner can cause tens of thousands of dollars to be spent in legal fees. This type of risk will cause many communities to stop annexing. When a community in a growth region stops annexing, the revenue stream necessary to meet the growing demand is impacted and the downward spiral starts. The end result of this legislation will be very costly to the cities and the State.¹⁴

Boerne: The City of Boerne continues to use unilateral annexation very seldom and to rely, instead, on voluntary annexation petitions from landowners seeking City utilities and other services.¹⁵

Brownwood: As the legislature continues to address annexation authority of cities, be sure to remember there are cities in rural settings that can be negatively impacted by legislation designed to address urban sprawl and annexation competition between cities in metro areas. There is life west of I-35, and the “one size fits all” legislation does not necessarily produce the same results in all areas of the state.

The stripping away of a city’s annexation powers condemns a city to restricted growth. Services are demanded by the ETJ residents, with no way for a city to get its full compensation for services. Existing residents inside the city limits subsidize those in the ETJ. If more restricted annexation legislation is on the way, then a broader range of legislation is needed to increase a city’s powers in the ETJ and what it can charge for services.¹⁶

College Station: College Station has not annexed any additional territory since 1997. There are no plans for any annexations by College Station at this time. However, we do feel that the current annexation provisions of the Statute hinder the ability of Texas cities to provide for growth and development. This in turn may have adverse impacts on the overall economic development of the State.¹⁷

Commerce: The City of Commerce does have concerns relative to the City’s ability for orderly growth and development and desires to retain its abilities to annex property in an orderly and cost effective manner prior to development in order to assure quality growth. The extension and expansion of transportation projects such as major highways adjacent to (cities) tend to promote development which should be done in accordance with the City’s codes and ordinances and in conformance with its comprehensive plan.

Also, the proliferation of water districts immediately adjacent to cities tend to encourage improper development which promotes sprawl, places demands on city services, and in many cases, creates

environmental problems.¹⁸

Conroe: Since the impact of the last legislative session's annexation reforms will not be fully felt for several more years, we urge the Committee to exercise caution regarding any new annexation legislation. By the time the 78th Legislature convenes we should begin to see the full effects of the annexation reforms from the last Legislature. At that time the Legislature will want to take a harder look at whether or not any further fixes are necessary.¹⁹

Converse: Each year the Texas legislature becomes more dated in their understandings of population increase and growth management and their annexation laws reflect it.²⁰

Coppell: We respect and appreciate the Legislature's continued concern regarding development in and around municipalities in the State of Texas. We also ask that in your deliberations you take into consideration the knowledge that our community's land use planning process and development process incorporates the views of our local citizens, who will be impacted most significantly by the proposed development. We believe the best development review occurs at the local government level. We do not feel that it would be in the best interests of the electorate of Coppell, or any citizen of Texas, to transfer more of that responsibility to government removed by distance and procedure from the local level.²¹

Dumas: Even though the City of Dumas does not plan on involuntarily annexing any property in the foreseeable future, I am concerned about the restraints that are being placed upon cities to control their communities. Annexation is a vital means to address blighted areas on the periphery of the City, as well as areas outside the community that enjoy city services (i.e. parks, streets, sanitation, fire and police protection) without contributing to the cost of providing these services. The City's ability to annex property as a means of controlling outlying areas -- from land use to building code enforcement -- is imperative to ensure that the City residents are not adversely impacted.²²

Elgin: The Legislature has directly impacted cities and their annexation powers in almost every legislative session. Enough is enough and no more changes should be made. We can live with the most recent legislation, even though it is cumbersome. Land usage and permit issues should also remain the same as is currently. We have favored the developers long enough!²³

Flower Mound: Among the most pressing issues facing Texas communities are those related to managing rapid growth, urban sprawl, livable communities and preservation of open space. However, in these most critical of areas, the State Legislature continues to erode municipal home rule and our ability to respond to such issues on a local basis through the use of annexation and land use controls. Please keep in mind that such issues can best be dealt with locally and that cookie-cutter, one-size-fits-all approaches to development imposed by state mandate do not work.²⁴

Hereford: The only comment that I would offer at this time is that cities receive ugly publicity regarding annexation of land, when the people who are being annexed want to enjoy the benefits of the city but do not want to share in the cost. In addition it really seems to me that the legislature vents its frustration with cities such as Austin and Houston in the passage of new

legislation without considering the effect it has on rural communities. These comments are not intended to be critical of the legislature, this is just the observation from the rural communities.²⁵

Kaufman: In regard to the latest changes in the Annexation process and procedures, this one legislative session prepared and passed the single most confusing and difficult piece of annexation legislation that has been passed in thirty-five years. Subchapter C, Section 43.052, 43.053, 43.056, 43.0561, 43.0562, through 43.0565 are the most convoluted and difficult to understand and apply as any previously enacted.²⁶

Lake Jackson: The basic comment the city provided during the last legislature on annexation was not to punish others for the sins, real or perceived, of the State's larger cities. For most smaller cities annexation was not broken. We don't need a cookie-cutter approach, one size fits all imposed on us by Austin.²⁷

Lamesa: As always, we are concerned about the erosion of municipal home rule authority. I am sure you know that Texas is one of the lowest ranked states in terms of funds it provides to municipalities. Most Texas cities are okay with this as long as the State leaves us alone in regard to unfunded mandates and ability to govern ourselves.²⁸

Lubbock: The City of Lubbock, the City Council, and City staff continue to express concern for the increasing complexity of the annexation process. Some communities have abused the ability to annex, and regrettably the balance of the towns, cities and state have been painted with the same brush with regards to recent statutory regulations of the process. The new procedures have placed annexation outside the technical or fiscal reach of many prudent municipal organizations. Without any zoning, other land use oversight, or regulation in unincorporated areas, the ability to develop, without any thought given to land use relationships or the development codes in areas immediately adjacent to cities, the potential for blight that may never be overcome by many cities is created.

As the Texas Legislature continues to fine tune legislation with regard to annexation and development of Texas cities, please keep in mind, that in the long-term, restrictive annexation legislation can be counterproductive to the health and stability of our communities.²⁹

Mansfield: We strongly oppose the latest annexation statute and HB 1704 as they both severely restrict the City's ability to regulate land uses and growth within the city limit and its ETJ.³⁰

Missouri City: Annexation law has severely hampered the ability of the city to annex commensurate with increased burden from these areas. Don't start messing with eminent domain powers except to clarify why/how its appropriate to use for economic development purposes.

The legislature needs to more fully understand cities' roles in local government prior to enacting laws which severely impede cities' ability to annex, condemnation, etc. With a more conservative legislature, I would have expected less state interference, more local control by locally elected officials. However, the opposite has occurred. If the current trend continues, I would anticipate Austin paying more of the cities' share of costs as in other states where the legislatures micro-manage city affairs. Simply put, there is too much of an anti-city attitude in the Texas

Legislature.³¹

New Braunfels: Although New Braunfels has never had an aggressive annexation policy, the ability to involuntarily annex property within a city's extraterritorial jurisdiction has been one of the strengths of New Braunfels and other cities in Texas. The fact is that the ability to unilaterally annex is a necessary tool for orderly social and economic development. Annexation can be used to address blight as well as to spread the tax base to higher income areas located on a city fringe. The argument I hear most from those who are opposed to annexation is that there is no reason for them to pay for services that they do not want. Some genuinely feel they are satisfied with volunteer fire departments and EMS; satisfied with lengthy responses from generally understaffed sheriff's departments and constables; satisfied with deed restrictions instead of city ordinances; and satisfied with septic systems and wells instead of city water and sewer. However, when they have a fire, a heart attack, a burglary, an onerous use next door, or a contaminated water well-- the city suddenly looks appealing.

For those who would be involuntarily annexed, substantial safeguards already exist. State statutes currently provide for immediate provision of city services and for extension of utilities with four and one-half years. Sometimes, in smaller cities like ours, one of the stronger safeguards is the power of the ballot.

Texas cities should not go the way of states to the north and east where municipalities are crippled because of urban decay due, in part, to weak annexation laws that make it almost impossible for cities to control their destinies. If we draw a circle around cities today and effectively prohibit expansion tomorrow, cities could become pockets of poverty and urban decline.³²

Plainview: The exemptions the State Legislature provided for smaller rural cities have meant that the annexation statutes have had little adverse impact on cities like Plainview. We would hope the legislature will maintain those exemptions.³³

Plano: The city has no remaining land in ETJ that requires an annexation plan. The passage of SB 89 promoted the City to annex remaining land in our extraterritorial jurisdiction. Our major concern was loss of the ability to regulate as non-conforming any existing use on a newly annexed property.³⁴

Round Rock: We believe the changes to the annexation provisions are workable and represent reasonable compromises to the issues. For our part it is time to leave annexation alone and move on to more pressing matters.³⁵

Wichita Falls: It is safe to say that anytime a City pursues an annexation without the property owner's consent, they will be opposed. However, the many challenges that face communities are what should be addressed first and foremost. Under the new legislation, if a person does not want to be annexed, they merely have to dispute the service plan and put the taxpayers through the additional cost of arbitration.³⁶

Annexations First Public Hearings

City 1/1/98 - 5/31/99 6/1/99 - 8/31/99 9/1/99 - date of
response

Abilene	0	0	0
Alamo	1	0	0
Alice	0	0	0
Allen	3	0	1
Amarillo	3	0	0
Athens	4	0	4
Atlanta	0	0	0
Austin	13 full purpose, 8 limited purpose, 1 disannexation	0	2 full purpose, 3 limited purpose
Bastrop	6	1	4
Beaumont	1	0	0
Bedford	0	0	0
Beeville	0	0	0
Belton	1	0	1
Big Spring	0	0	0
Boerne	2	2	0
Bonham	0	0	0
Breckenridge	0	0	0
Brownfield	0	0	0
Brownwood	0	0	0
Burkburnett	0	0	1
Burleson	9	0	3
Carrizo Springs	0	0	0

Cedar Park	2	0	2
Cleburne	3	8	0
Coleman	0	0	0
College Station	0	0	0
Commerce	0	0	0
Conroe	0	0	3
Converse	0	0	0 (to hold 1 on 4/4)
Coppell	0	0	0
Corpus Christi	0	0	1
Cuero	0	0	0
Dallas	0	0	0
Dayton	2	0	0 (expect one soon)
Decatur	0	0	0
Deer Park	0	0	0
Denison	0	0	1
Denton	12	4	5
Denver City	0	0	0
Diboll	0	0	0
Dickinson	0	0	0
Dumas	0	1	0
Duncanville	0	0	0
Edna	1	0	0
Elgin	5	0	0
El Paso	0	7	0
Farmers Branch	0	0	0
Floresville	0	0	0
Flower Mound	0	1	0

Freeport	0	2	0
Friendswood	0	0	0
Gainesville	0	0	6
Galena Park	0	0	0
Gilmer	?	?	1
Glenn Heights	0	0	0
Greenville	2	0	0
Gun Barrel City	2	2	0
Henderson	3	0	0
Hereford	0	0	0
Hewitt	0	0	0
Highland Park	0	0	0
Highland Village	0	0	0
Hillsboro	2	0	0
Houston	2	0	0
Huntsville	0	0	0
Iowa Park	4	0	0
Jacinto City	0	0	0
Joshua	0	0	0
Katy	0	0	0
Kaufman	4	2	0
Keller	0	0	0
Kennedale	9	2	0
Kerrville	0	0	0
Killeen	1	1	0
Lake Dallas	3	0	0

Lake Jackson	0	0	0
Lakeway	5	0	10
Lamesa	4	0	1
Lampasas	0	0	0
La Porte	0	0	?
Laredo	26	0	10
Leon Valley	0	0	0
Lewisville	0	2	0
Littlefield	0	0	0
Livingston	1	0	0
Lockhart	3	3	0
Longview	1	0	0
Lubbock	1	0	0
Mansfield	0	0	0
Marble Falls	0	0	1
Marshall	0	0	0
McAllen	8	0	1
Mesquite	0	1	0
Midland	1	0	0
Mineral Wells	0	1	0
Missouri City	1	0	?
Nacogdoches	3	1	2
Nederland	0	0	0
New Braunfels	10	0	0
North Richland Hills	0	0	0
Odessa	0	0	0
Pampa	0	0	0

Pearland	6	3	2
Plainview	2	0	0
Plano	8	19	0
Pleasanton	1	0	0
Port Arthur	1	0	0
Portland	0	0	0
Port Neches	1	0	0
Richardson	0	0	1
Richland Hills	0	0	0
Robinson	0	0	0
Rockdale	0	0	0
Rockport	0	0	0
Round Rock	19	3	11
Saginaw	0	0	0
Sanger	1	0	1
San Juan	1	1	0
Sealy	0	1	0
Seguin	1	0	2
Seminole	0	0	0
Sugar Land	0	1	1
Sulphur Springs	0	0	0
Taylor	0	0	0
Temple	1	0	0
The Colony	0	0	0
Tomball	0	0	0
Trophy Club	4	0	0
Universal City	0	0	0

University Park	0	0	0
Vernon	1	0	0
Waxahachie	3	1	3
Weatherford	4	0	1
Webster	0	0	0
Weslaco	0	0	0
West Columbia	0	0	0
Wharton	0	0	1
Whitehouse	2	0	2
Wichita Falls	0	0	0
Windcrest	0	0	0
Woodway	0	0	0
Yoakum	1	0	0

Annexation Suggestions

Corpus Christi: Eliminate pre-clearance requirements until after the effective date of annexation. Eliminate mandatory full annexation after three years for areas that are annexed for limited purposes.³⁷

Dayton: I would like to see clarification of Section 43.028, Local Government Code. My City Attorney insists that public hearings be held and service plans be developed for annexations initiated by landowners petition. He holds that opinion because the Section does not specifically state that the hearing and service plans are not required. I of course disagree and feel that holding public hearings in these cases are redundant, time consuming and an unnecessary expense. Service plans or agreements are usually proposed by the landowner in these cases.³⁸

Houston: The City is actively pursuing the possibility of Strategic Partnership Agreements (SPAs) with two Municipal Utility Districts (MUDs) in our ETJ. These initiatives are entirely voluntary, since the City has not identified any MUD for annexation in our three year plan. So far the MUDs regard the opportunity to voluntarily enter into SPAs as a great improvement over the previous situation. In these two cases the MUDs see the opportunity to extend municipal services to their territory, lower their tax rates, accelerate needed infrastructure development, and guarantee that the City of Houston will not annex them until their infrastructure is complete. The City, meanwhile, is able to act to arrest the erosion of our revenue base without assuming the

MUD's long term debt or damaging our relations with our neighbors in our ETJ.

Our discussions with MUDs have revealed a number of modifications which would improve the process of developing mutually beneficial SPAs. The limited purpose annexation provisions which Houston and other cities of over 225,000 may now use as part of an SPA should be altered to reflect the current use of the statute. For instance, Section 43.127 requires a municipality to annex for full purposes any area annexed for limited purposes on or before three years after the completion of the limited purpose annexation. This is referred to as an obligation of the municipality, and the requirement can only be waived with the agreement of a majority of the land owners in the area to be annexed for limited purposes. Since the MUDs with which we are negotiating do not seem to regard this provision as advantageous to them, and acquiring the necessary waivers can be onerous, a change in the statute to allow the MUD board to waive the three year full purpose annexation would provide flexibility for both parties in these voluntary arrangements.

Further, Houston and most other cities empowered to annex for limited purposes by Senate Bill 89 may only do so as part of an SPA with a MUD. We have no authority to annex a street right of way which bisects a MUD and is not part of the MUD. An alteration to authorize cities to annex for limited purposes territory adjacent to a MUD as a part of an SPA would also improve our ability to pursue voluntary Strategic Partnership Agreements.³⁹

Lakeway: The City receives numerous requests for voluntary annexation. The Legislature has encumbered this previously straightforward and easy process by now requiring numerous public hearings. In our case, this requires a special Council meeting for each voluntary annexation request and extends the proceedings up to 30 days. The procedure for non-protested annexations should be made less onerous to the applicant and the City.⁴⁰

La Porte: Section (3), (a), (iv) Per current legislation, one of the exemptions from a required annexation plan is: "Area is or was the subject of an industrial district contract..." We feel better language would be "Area is within a declared Industrial District..."

Section (5), (c), (iv) Likewise, one of the exceptions to annexations of areas adjacent to strips reads: "the area is the subject of an industrial district contract..." Again, we feel better language would be: "the area is within a declared Industrial District..."⁴¹

Sealy: Please clarify Chapter 43.052 Municipal Annexation Plan Required (h)(1)

There appears to be some confusion over the intent of this section. If you are planning to annex an area with fewer than 100 separate tracts of land, does each and every track involved have to include a residential dwelling? Example: An area of proposed annexation has 80 separate tracts of land. 50 of the tracts have a residential home while the other 30 are vacant lots. Does Section 43.052(h)(1) apply to this scenario?⁴²

Wichita Falls: One major fault with 43.052 is that if a city identified an area in such a plan, and the three-year "moratorium" lapsed, according to 43.052(g) you in effect had to annex, because there may be a remote possibility that you may need to annex with the-now five-year moratorium

period should a city not annex. This is essentially a penalty for not annexing during the first three years.

Due to the actions of one or two cities, the Legislature passed a “dragnet” bill that is causing cities to take a defensive posture. In addition, terminology used under the “exceptions” in section 43.052(h) does not reflect reality. For instance, an exception exists to protect an area from imminent destruction or injury. Under common usage of the term imminent, destruction or injury would have already occurred due to the length of time it takes to complete an annexation.⁴³

Adoption of Annexation Plan

6. Has your city adopted a three-year annexation plan as referenced in Section 43.052, Local Government Code?

City	plan adopted?	Comments
Abilene	yes	
Alamo	no	
Alice	no	
Allen	yes	
Amarillo	yes	Plan was adopted which states that the City will not initiate the annexation of property required to be included in municipal annexation plan without having amended the municipal annexation plan to include such property
Athens	yes	
Atlanta	yes	
Austin	yes	plan includes one proposed annexation area
Bastrop	yes	
Beaumont	yes	
Bedford	yes	
Beeville	no	no plans as of today
Belton	yes	resolution stating that any territory to be annexed in near future not required to be in plan, and that plan will be amended should circumstances change
Big Spring	no	

Boerne	yes	adopted by ordinance a plan not to annex property that was not already exempt from the requirement of a three-year annexation plan
Bonham	no	not yet
Breckenridge	yes	no property will be annexed from any area without meeting one of the exemptions set out in Chapter 42
Brownfield	yes	
Brownwood	no	any eminent domain annexations considered for future would be well below the 110 lot or tract size exemption
Burkburnett	yes	
Burleson	yes	
Carrizo Springs	no	
Cedar Park	yes	City does not intend to annex any territory involuntarily. City reserves right to amend plan in accordance with state law
Cleburne	yes	
Coleman	no	
College Station	yes	no plans for annexation at this time
Commerce	no	City adopted resolution determining that City did not intend to annex any territory that would be required to be included in three-year plan
Conroe	yes	
Converse	no	
Coppell	yes	
Corpus Christi	yes	Does not plan to annex any property within next three years except property exempt from Chapter 43
Cuero	no	

Dallas	no	no territory planned for annexation has been identified
Dayton	no	not yet
Decatur	yes	There is no plan to annex (Resolution #99-11)
Deer Park	no	
Denison	no	
Denton	no	no property was listed as an annexation candidate on the plan
Denver City	no	not yet
Diboll	no	
Dickinson	no	
Dumas	no	we do not plan to involuntarily annex property in the next three years
Duncanville	no	
Edna	no	
Elgin	yes	
El Paso	yes	
Farmers Branch	no	
Floresville	no	
Flower Mound	yes	
Freeport	yes	
Friendswood	yes	Ordinance #303
Gainesville	yes	
Galena Park	no	
Gilmer	yes	
Glenn Heights	no	
Greenville	yes	
Gun Barrel City	yes	
Henderson	yes	

Hereford	yes	
Hewitt	no	
Highland Park	no	
Highland Village	yes	
Hillsboro	no	
Houston	yes	
Huntsville	yes	Plan adopted, but has not adopted any properties for annexation pursuant to adopted plan. Huntsville plans to annex some property prior to December 31, 2002.
Iowa Park	no	
Jacinto City	no	
Joshua	no	
Katy	no	
Kaufman	no	
Keller	yes	
Kennedale	yes	
Kerrville	no	
Killeen	yes	
Lake Dallas	yes	
Lake Jackson	yes	
Lakeway	no	
Lamesa	yes	
Lampasas	yes	
La Porte	no	
Laredo	yes	
Leon Valley	no	anticipates none, but passed resolution stating that any petitions will be addressed with consideration given to municipal services provisions

Lewisville	yes	
Littlefield	no	
Livingston	no	
Lockhart	yes	resolution adopted stating that due to qualifying for one or more exceptions in Chapter 43, City does not intend to annex any territory required to be in an annexation plan. However, a general 20-year annexation was included as part of Lockhart's Comprehensive Plan
Longview	yes	
Lubbock	yes	resolution adopted by City Council stated that no annexations were contemplated and there is no "rolling plan" at present
Mansfield	yes	states that there are no immediate plans to annex any property
Marble Falls	yes	
Marshall	yes	
McAllen	yes	
Mesquite	yes	Resolution 56-99
Midland	yes	
Mineral Wells	yes	
Missouri City	yes	adopted plan stating no plan to annex
Nacogdoches	yes	
Nederland	yes	
New Braunfels	yes	
North Richland Hills	no	
Odessa	no	
Pampa	no	
Pearland	yes	
Plainview	yes	

Plano	no	the City has no remaining land in the ETJ that requires an annexation plan
Pleasanton	yes	
Port Arthur	yes	
Portland	no	
Port Neches	no	
Richardson	yes	
Richland Hills	no	
Robinson	yes	merely recited the fact that Robinson has no extra-territorial jurisdiction and is completely surrounded by other cities and/or other cities' ETJ. Court order relieved Robinson of any ETJ.
Rockdale	yes	
Rockport	yes	
Round Rock	yes	
Saginaw	yes	
Sanger	yes	
San Juan	yes	
Sealy	no	
Seguin	yes	states no annexations requiring an annexation plan are anticipated in the next three years
Seminole	yes	
Sugar Land	yes	
Sulphur Springs	no	
Taylor	yes	
Temple	yes	
The Colony	yes	
Tomball	no	
Trophy Club	yes	

Universal City	no	
University Park	no	
Vernon	no	
Waxahachie	no	
Weatherford	yes	states that no annexation is planned. However, the city is currently preparing a comprehensive (master) land use plan
Webster	yes	
Weslaco	yes	Voluntary annexation plan was adopted by the city commission
West Columbia	yes	
Wharton	no	
Whitehouse	yes	
Wichita Falls	no	resolution stating that lands requiring an annexation plan would not be annexed
Windcrest	no	
Woodway	no	The City had already previously annexed virtually to the extent of its ETJ
Yoakum	no	

Internet Addresses

7. If your city maintains an Internet web site, what is the address?

If a city adopts a three-year annexation plan, state law requires it to be published on the city's web site.

All cities with three-year plans have a web site, with the exception of Athens, Hereford, Lamesa, Mineral Wells, Nederland, Pleasanton, Rockport, San Juan, Seminole, and Whitehouse. The cities of Breckenridge, Mansfield, and Robinson do not maintain a web site, but their annexation plan states that they have no plans to annex. The City of Henderson does not maintain a city web site, but two of their employees can be reached through the web. Lake Jackson, Longview, Rockdale, and The Colony plan to have websites, but they are not yet operational.

Procedures in Lieu of Annexation

8. Has your city utilized any procedure in lieu of annexation, such as a strategic partnership agreement or other type of inter-local agreement or revenue sharing arrangement since January 1, 1998? If so, please describe the technique used.

City	Procedure
Allen	<p>City of Allen and City of Plano have adjusted certain boundaries common to the two cities through a mutual boundary adjustment agreement signed March 17, 2000.</p> <p>A court-ordered boundary adjustment took place between the City of Allen and the City of Parker on March 5, 1999.</p>
Austin	No procedures in lieu of annexation, however, city has entered into a Strategic Partnership Agreement with Anderson Mill MUD on November 19, 1998. The SPA provides for the continuation of Anderson Mill MUD as a Limited District following the full purpose annexation of the MUD.
Beaumont	The City of Beaumont uses industrial agreements with several area industries. In lieu of annexation, these industries pay the City an agreed upon amount of money.
Big Spring	Industrial agreement
Brownwood	No new agreements have been made since January 1, 1998. However, there are existing non-annexation agreements in place that utilize a payment in lieu of taxes.
Cedar Park	City Council is considering implementing several strategic partnership alternatives
Commerce	City does not utilize any agreements or arrangements in lieu of annexation. However, City does provide public safety services such as fire, police, and emergency management outside its City limits.

Conroe	Industrial district agreements. Property owners have received assurances against annexation in exchange for payments in lieu of annexation. Typical “in lieu of” agreement calls for forty percent of what would have been paid in property taxes. The City typically agrees to provide fire protection in these areas.
Corpus Christi	The City has entered into Industrial District Agreements in which the owners have agreed to pay the City an amount equal to the ad valorem taxes (100% of market value, excluding improvements.) The City currently has 81 industrial district agreements in effect.
Denton	<p>The City used an inter-local agreement to reach agreement with the Town of Northlake to accept a portion of Northlake’s ETJ for annexation.</p> <p>City is also considering request of a property owner who would like to develop in the city’s ETJ. Developer wishes to establish a Community Development District and be allowed to forestall annexation for five years.</p>
Freeport	Industrial district contract.
Houston	The City of Houston is currently negotiating their first Strategic Partnership Agreement with a municipal utility district.
Killeen	In March 1999, the City completed an annexation that was intended to address two major purposes. One was to protect and control land use in the immediate vicinity of their 48,000,00 project to develop a jet-capable regional airport. The other was to acquire the area necessary to improve the ground transportation access to the project area. The annexation of approximately 1073 acres provided the transportation access, and land use agreements covering eleven parcels totaling 652.4 acres provided the land use protection.

Missouri City	City is in the process of negotiating a strategic partnership agreement with the developers of the 12,000-acre Sienna Plantation development, which will permit annexation of MUDs developed in the City's ETJ and under the existing Sienna Plantation Development Agreement between the developers and the City.
Odessa	Creation of industrial district outside of city limits in which businesses agree to make payments in lieu of taxes.
Plainview	The City has discussed procedures in lieu of annexation with major employers, but no agreements have been entered into.
Port Arthur	Creation of industrial district for tank farm owned by Mobil Pipe Line Company. Payments to be made in lieu of taxes.

Lake Dallas indicated that they only have one parcel left to annex as they are landlocked. They have not annexed that parcel at this time due to an agreement between the property owner and council.

HB 1704 Comments

9. In 1999, the legislature enacted H.B. 1704, adding Chapter 245, Local Government Code, having the impact of freezing certain permits and plats approved prior to 1997. Please list any impacts that this chapter has on your city's ordinances or development.

COMMENTS

Austin: Since the effective date of Chapter 245, more than 230 requests to proceed under old rules and regulations have been filed with the City of Austin. Analyzing these types of requests requires gathering, organizing, and reviewing documentary material, that at times is difficult to find and is often voluminous.

To deal with this workload, the City of Austin has assigned several senior staff members from various departments, including Development Review and Inspection, Watershed Protection, and the Law Department, to process the requests. Additionally, from time to time representatives from other departments will participate as needed.

Almost all of the requests made have been acted upon, with relatively few pending. In approximately 70% of the cases the request was approved, meaning that the development in question was allowed to proceed under old rules and regulations. In some cases, even where the request was not simply "approved," an agreement was reached with the landowner or the developer that permitted development to proceed without full adherence to current regulations.

The effect of this is that a large number of development projects, which incorporate a very large amount of land, are proceeding at greater development intensities than are permitted, and without compliance with certain environmental safeguards required, under current rules and regulations.⁴⁴

Beaumont: City subdivision regulations have not changed since 1997, so there is little, if any, impact on the city's ordinances or development. In addition, the subdivision regulations state that failure to prepare a final plat and have it recorded in accordance with the provisions of this ordinance within twenty-four (24) months from the date of preliminary plat approval shall result in the expiration of the previous approval.⁴⁵

Burleson: The City in May of 1999 adopted Subdivision and Development Ordinance B-622. This ordinance replaced Burleson's previous subdivision and development ordinance.

Section II of Ordinance B-622 acknowledges and incorporates requirements of the State's vesting statute. Eight subdivisions in the City are affected by the vesting requirements. These are multi-phase subdivisions with preliminary plats that were submitted or approved prior to the adoption of B-622. All future phases of the subdivisions will be subject to review and approval under the terms of the City's previous development ordinance.

The greatest area of impact will be felt with subdivisions that were in the City's ETJ at the time of their platting. Prior to the adoption of B-622, the City allowed ETJ subdivisions to be developed

in accordance with the standards of the county in which they were located. This policy resulted in construction of some subdivisions with inadequate roads, potable water and fire protection. The City, with adoption of B-622, has upgraded construction standards for ETJ subdivisions. These standards will not however, be applicable to future phases of subdivisions that had preliminary plats formally submitted prior to the adoption of the City's current ordinance.⁴⁶

Cedar Park: The City has received a number of inquiries from property owners and developers concerning rights under Chapter 245 of the Local Government Code. Several inquiries have been decided in favor of the property owner/developer. Several inquiries have been decided against the property owner/developer.

In several instances involving one property owner/developer, claims have been made that a "project" was in existence on a particular date, when in fact no evidence existed to support such a claim. In these instances, the property owner/developer argued that rights under Chapter 245 were tract specific, rather than project specific.⁴⁷

Converse: Construction in progress is an eye sore, necessary but still an eye sore. Construction that goes on forever is not necessary. HB 1704 made Texas uglier, longer - not better.⁴⁸

Coppell: Although H.B. 1704 can have devastating effects on communities that are slower growing than Coppell, we have been fortunate that development projects here generally take place shortly after they go through our review process. We are unaware of any other potential development that would fall under the provisions of 1704, and be damaging to the overall planning and development of our community.⁴⁹

Corpus Christi: The vesting of permits and/or plats approved prior to 1997 for projects that have not been constructed or initiated puts the municipality at a serious disadvantage in carrying out its responsibility to protect the public's health, safety and welfare. Projects permitted or platted prior to 1997 and protected under the vesting statute (reinstated by the Legislature in 1999) prohibits the municipality from re-evaluating permitted but dormant projects in light of changing rules/regulations issued by federal, state and local agencies. An area of constant change includes federal mandates for regulating stormwater runoff, federal and state regulations regarding annexation, central management, air quality and building codes (windstorm). The City must be able to review previously approved projects that remain inactive to ascertain compliance with the most current legislation. The majority of the city permits and all plats have expiration dates.⁵⁰

El Paso: At issue for our Building Services Department is: what constitutes a permit? We regularly and routinely pass ordinance changes to the Building Code, for example, with language that makes new requirements applicable to "...applications for permits received on or after the date of adoption." This would have serious implications (and make enforcement nearly impossible) if this wording is interpreted to mean that whatever building code edition was in effect at the time a subdivider first makes application to the City for a subdivision is the code we would have to apply to subsequent building permits. This could be carried to absurdity for a subdivision that may not be fully built out for 20 years or more. It would mean that every building inspector would need to carry, and be knowledgeable of, dozens of code books. Therefore, the wording needs to be interpreted (or modified) to mean, "pertaining to that applicant." This would mean

that a subsequent builder who purchases a lot would be subject to codes current at the time he starts the building process, that is when he obtains a grading permit - not when the original subdivider started the entire subdivision process.⁵¹

Highland Village: H.B. 1704 did have a negative effect on the City's ability to change regulations to achieve its desired intent.⁵²

Houston: Chapter 245 has had no discernable effect on our ordinances or development.⁵³

Kaufman: With regard to record-keeping and the new Section 245, on the surface it might appear simple and straightforward. In fact, the provisions of this Section provide a new and unforeseen set of problems for those staff members who must keep copious records and all legislative amendments which might possibly relate to each original application associated with an "original permit." It places a strain on the budgets of smaller communities as well as requiring much more storage of paper than is warranted by the project fees. In short, where will all that extra paperwork be housed?

As if this wasn't sufficient discouragement, 245.002(d) goes further to allow a permit holder to take advantage of *any and all subsequent changes that enhance or protect the project, including changes that lengthen the effective life of the permit after the date for the permit was made, without forfeiting any rights under this chapter.* This makes data management even more miserable for a municipality with limited funds and personnel. Applying this chapter only to projects in progress on or after September 1, 1997 may have been intended to simplify matters but such is not the case.⁵⁴

Lake Jackson: The City generally grandfathers previous plats and permits anyway. However, any effort to require cities to maintain previous codes for development or permitting is an administrative nightmare. Allow cities to run their own affairs.⁵⁵

Lamesa: Although concerned about the implications, we do not have any situations that have been impacted by H.B. 1704.⁵⁶

Lewisville: It is our belief that over time this statute has the potential for creating significant difficulties for enforcement of reasonable development regulations. As conditions change and City standards are adjusted to better deal with those changes, the statutes should not prohibit municipalities from enforcing those updated standards after allowing a reasonable period of time for a development to proceed.⁵⁷

Longview: Minimal, most development ordinances had a "clock" which spoke to the life of the application.⁵⁸

Mesquite: Requirement to keep track of ordinances/regulations in effect at the onset of a multi year project, even though revisions may have been adopted, complicates administration and record keeping, especially in a rapidly growing city with numerous projects, and where projects may be underway for 15-20 years before total completion.⁵⁹

Missouri City: In response to HB 1704 and Chapter 245, on April 3, 2000, the City adopted Zoning and Subdivision Ordinance text amendments providing expiration dates where none previously existed. In the next several months, the City will draft and adopt expiration dates for dormant projects as permitted by Chapter 245 to be done after May 10, 2000.⁶⁰

Robinson: There exist in the city certain subdivisions, platted prior to 1997, that have remained undeveloped with infrastructure (primarily water and sewer lines) and lot sizes that do not meet current standards. We are particularly concerned about having these lines, which were not installed with the same engineering oversight used today and subjected to years of disuse in the unstable soils of central Texas, tied into our water and sewer systems and assuming the responsibility of continuing maintenance.⁶¹

Round Rock: The impact of this legislation has not been fully studied due to the short time since the effective date. However, it should be noted that our development community has never had to complain about rules changing in Round Rock.⁶²

Temple: The City adopted its own vesting statute, in the absence of the State's that contained the same level of protection for on-going development.⁶³

Wichita Falls: Since we have expiration periods for most processes within the development process, the effects of the Bill have thus far been negligible. However, we did not have an expiration period on final plats. We have final plats that go as far back as 1927, in areas receiving economic development pressures. Due to HB 1704, we anticipate adopting a very short expiration period on final plats to assist in countering the negative effects of the bill. The legislation is felt by most to be ripe for litigation since it would or does interfere with a city's police powers.

The Bill completely ignores, with very minor exceptions, the dynamics of a city. Under the guise of promoting economic development, the Legislature has in effect said that it has the best understanding of what a community wants and needs. For instance, being in the plains of north central Texas, the community decided that it wanted increased landscaping, or possibly the parking or sign regulations needed to be amended to lessen or increase standards, or maybe right-of-way dedications would be needed in the future to address the economic dynamics within certain areas of a city. Chapter 245 does not recognize these community needs or desires.⁶⁴

Committee Findings

SB 89 is a new, major piece of legislation. The Committee recommends continued study and monitoring of the annexation process.

The process of eminent domain should continue to be studied for possible abuses in the process.

Municipal surveys should be continued as a monitoring tool.

Charge 3

Study the regulation of billboards placed along highways.

Background

Billboard's proponents are generally the landowners who lease their property to billboard companies to erect signs, and of course, the billboard companies themselves. Many see it as a property rights issue, and that landowners have the right to lease their private land for this purpose. Several landowners have said they would not be able to keep their land without the billboard revenue to pay their taxes.

Opponents call billboards "litter on a stick," and say that landowners have no right to lease the "public view." They further contend that without the roads passing by the billboard property, landowners would not be able to lease their property for this purpose. Opponents reason that since roads are paid for with tax dollars, the public has the right to demand an unobstructed view as they travel.

SB 1345

The billboard issue came to the attention of the Committee on Land and Resource Management during the 76th Legislative Session. The billboard legislation that came before the committee, SB 1345, stemmed from a disagreement between billboard companies and the City of Austin.

Although billboards are regulated by the state of Texas, certain municipalities are allowed to regulate their own billboards, through their own ordinances. In 1983, the City of Austin passed an ordinance to prohibit any new billboards to be built in its jurisdiction. In 1990, the city changed its ordinance to allow for the replacement of billboards, if the replacement was 20% smaller than the original billboard, and the replacement was approved by the landowner. Austin is allowed to regulate its own billboards as long as the billboards are not on a road that is regulated by the Texas Department of Transportation. For instance, signs on Lamar Boulevard are regulated by the city of Austin. Signs on I-35 are regulated by TxDOT.

Replacement of billboards is rare, because it makes no sense for a company to voluntarily reduce the size of its billboards. However, in 1998, seven replacement permits were issued by the city. These seven sites were high visibility, prime locations, and had been leased by a large billboard company. A smaller billboard company approached the landowners, and offered a substantially larger land lease for a smaller sign.

The larger billboard company sued the city of Austin over its interpretation of their ordinance, and lost their case. The larger company then tried to change the ordinance through the Austin city council, and when that was not successful, the disagreement wound up in the hands of the House Committee on Land and Resource Management.

The basic language of SB 1345 bill said: a non-conforming sign cannot be replaced unless it has blown down or is damaged more than sixty percent. This type of damage is generally caused by a tornado or a lightning strike, and testimony indicated this does not happen often. Further, a non-conforming sign cannot be replaced with another (although smaller) non-conforming sign. This means that the landowner has the choice between the original billboard (and the larger company's continuing non-competitive rent) or no billboard (and thus, no rent). SB 1345 would also have

taken away some of a municipality's ability to regulate their own billboards.

Non-conforming Signs

A non-conforming sign is one that was grandfathered when the original beautification laws were first adopted over 28 years ago. As laws change under the federal Highway Beautification Act, more signs become non-conforming. But, there are many other ways a sign can become non-conforming. Most interstate billboards are non-conforming because the laws were changed in 1985 to space them 1500 feet apart rather than 500 feet. Highway 183 in Austin used to be Research Boulevard. When it became a freeway, most of the signs became non-conforming. A sign can also become non-conforming through zoning changes. A non-conforming sign can generally not be replaced, but only maintained. The idea is that these signs would eventually go away, but billboard companies are really good at maintenance. There are those who believe that Austin is violating the spirit of the law by allowing new non-conforming (although smaller) billboards to totally replace the large non-conforming billboards. Austin, however, appears to have that right on signs that they regulate.

Other proponents of Austin's billboard ordinances are the landowners in the Austin area. As their property taxes rise, they can negotiate with billboard companies and raise the land lease.

Summary of Testimony from Public Hearings

The Committee was charged during the interim with the larger issue of the regulation of billboards placed along highways. The Committee heard testimony regarding the billboard issue during the interim hearings. Those who testified and their representation were:

March 3, 2000, in Kingwood, TX

John Campbell, *TxDOT, Right of Way Division*

Curtis Ford, *Representing Himself*

Sam Lane, Jr., *Representing Himself*

Philip Savoy, *Take Back Texas*

May 11, 2000, in Austin, TX

Girard Kinney, *Scenic Austin and Scenic Texas*

Same Lane, Jr., *Representing Himself*

Jim Tabor, *Blanco County Citizens Assembly Land Use Subcommittee*

Joe Weikerth, *Scenic Texas and Scenic Houston*

September 20, 2000, in Vernon, TX

Cece Fowler, *Scenic Texas*

Joe Weikerth, *Scenic Texas*

How Billboards are Regulated

The Texas Department of Transportation is responsible for administering and enforcing the Texas Highway Beautification Act and the Rural Road Act. The Texas Highway Beautification Act, was passed in 1972 as a direct result and in order to comply with the federal Highway Beautification Act of 1965. The federal act requires that states effectively control and regulate billboards along interstates and the federal primary system. During the same year, TxDOT entered into a federal-state agreement to maintain billboard regulation. Failure to enforce could result in a lost of up to ten percent of Federal-aid highway funds.

Regulation along interstate and primary highways applies to any billboard located within 660 feet of the highway right-of-way, inside urban areas. Outside of urban areas, regulation extends to include any billboard that is visible from the main traveled way of highway. Billboards within these distances are prohibited unless the location is in a defined commercial or industrial area. Likewise, within municipalities, billboards along the interstate and primary highways are only permitted in areas zoned for commercial or industrial activities.

In addition to regulation along interstate and primary highways, the Rural Road Act ensures the regulation of billboards erected along all highways and roads outside of the extraterritorial jurisdiction (ETJ) of a municipality. A municipality may allow state regulation of billboards in its ETJ by filing a written notice with TxDOT.

If a municipality has been certified by the State to regulate billboards, a state permit is not required for billboards within the city limits, but the applicant must hold a Texas Outdoor Advertising License. The city's own zoning ordinances and local regulations control where signs can be located.

Before erecting or maintaining a billboard, a state outdoor advertising license must be obtained, and licenses must be renewed each year. After a license has been issued, the billboard owner may apply for a permit. A permit issued or renewed is only valid for the location indicated on the original permit application and only for the billboard described on that application. A permit is valid for one year. In addition, a permit is required for each sign.⁶⁵

Scenic Byways

Scenic Texas, Inc., recommended the adoption of a Scenic Byways Program. Testimony indicated that 44 states currently have a scenic byways program in place. Such a designation offers communities the opportunity to protect the outstanding qualities along their roadways while encouraging economic development through tourism. States can participate in the National Scenic Byways Program by applying for funding through the Transportation Equity Act for the 21st Century, and/or by applying for national designation. Federal regulations prohibit new billboards on state scenic byways.

Other Suggestions From Testimony

Smaller billboard companies would like to see the law amended to allow replacement of non-conforming signs with smaller signs statewide. They reason that because state and federal law allow for maintenance, these large billboards are never going to disappear. These companies

further state that allowing smaller billboards would be making some headway towards less clutter, and also allow landowners to have more say-so in what structures are allowed on their property. However, according to the Texas Department of Transportation, federal law does not allow the state to replace large billboards with smaller ones, unless a municipality has an ordinance in place to allow replacement.

Others would like to see counties given the authority to regulate billboards. One testifier from a rural area expressed frustration at having to look at billboards for services offered in a major municipal area some miles distant. He also stated that many landowners didn't particularly want the billboards, but took them rather than see them in their neighbors' yards, with the lease money going into their neighbors' pocketbooks. Frustration with billboards has recently been expressed in Blanco County, Kendall County, and most counties north of San Antonio along US 281.

Other testifiers said they would like to see the maintenance of billboards studied. The Texas Department of Transportation recently tightened and clarified the rules concerning billboard maintenance. Prior to promulgation, there was input from the sign industry, various scenic groups, local governments and TxDOT district offices. Disallowing maintenance altogether, according to TxDOT, might result in regulatory takings claims.

A representative from Scenic Texas, Inc., testified that another problem stems from the appraised value of billboards. TxDOT values the signs at approximately \$300,000 each, although they are generally on the tax rolls for about \$15,000 each. Scenic Texas would like to see a decision made, and the billboards taxed on whatever value is decided. That way, Texans could buy the billboard out the same way that a piece of property is bought out when it is condemned. The testifier, Joe Weikerth, also mentioned a concern with the expansion of I-10 in Houston, where approximately 22 sign faces will have to be taken down and relocated. The City of Houston must relocate the signs, because the federal government forces them to do so along federal primary highways.

One testifier suggested limits based on population, such as a certain number of billboards per thousand residents. Spacing requirements were also suggested. Over one hundred Texas cities currently prohibit the construction of new billboards.

Frustration was expressed by the committee and others that the federal government often forces states to adopt laws to ensure the return of funds that belonged to the state in the first place.

The Property Rights Issue

Representative Turner read part of a letter received from one of his constituents into the committee record that succinctly expresses the property rights issue surrounding billboards. The constituent, Wade Richardson of Ozona, was recently notified by the Texas Department of Transportation that a sign on his property was illegal. The sign, abandoned by the chamber of commerce, had been repainted ten years ago to advertise Mr. Richardson's business. Mr. Richardson's letter reads: "...(TxDOT) stated that we didn't have the right to advertise our own business on our own land. Not only is this a property right that the State says we have lost, without compensation; but also, it is an issue of allowing the travelers along IH-10 to know that

our store exists...Those business owners in small towns need every chance to advertise to their prospective customers, just like the businesses of thriving urban areas...It follows that if the right to put a sign on our ranch can be taken away then, just as easily, the right to graze our livestock can be taken. With the stroke of the governmental pen, any right that is determined to compromise the beauty of the land through which our highways pass can be taken.”

Committee Findings

SB 1345 appears to be a disagreement between the City of Austin and a large billboard company. While the company may not agree with Austin’s interpretation of its own ordinances, Austin does have jurisdiction of the billboards in question.

Most statewide changes that the Committee would like to recommend, such as allowing replacement of billboards with smaller billboards, are prohibited by federal law.

Although the Committee continues to consider the issue of allowing counties the authority to regulate billboards, such regulation would not apply to the federal and state highway system, only to roads controlled exclusively by the county. Thus, many communities, such as those along the 281 corridor, would not find relief with county regulations.

Although the proliferation of billboards is admittedly ugly, the Committee strongly feels that to disallow billboards on private property is an invasion of property rights.

Charge 4

**Conduct active oversight of the agencies
under the committee's jurisdiction.**

**Monitor actions taken under HB 1704, SB 710, and SB 1690,
76th Legislature.**

Background

In most Texas cities prior to 1987, land development occurred under stable rules. A landowner would file a preliminary plat that would comply with existing regulations. The landowner would then proceed to develop his project in compliance with the rules in effect at the time of the filing of the permit application. Some cities, however, would repeatedly change development rules and apply them to projects in progress. Changes made to a project's specifications in mid-stream resulted in expensive changes that were often passed on to the ultimate purchasers of a project, mainly homeowners.

Developers and landowners responded by pursuing the passage of "vested rights," legislation that would ensure their rights to develop and use their land regardless of changes made by regulatory entities in the midst of a project's completion. "Vesting" occurs when property owners have made significant steps in the development of a project prior to the enactment of ordinances that prohibit or limit what formerly was permitted. In 1987, the Legislature passed the "vested rights" statute, under HB 4, which required cities to allow development projects to proceed to completion under the rules in effect when the first permit application for the project was filed. The 73rd Legislature clarified their intent with further legislation, SB 1704, in 1995, which amended HB 4 to require that each subdivision project be treated as a single project, and to prohibit the application of rule changes to projects in process.

In 1997, Subchapter I, Chapter 481, Government Code, the codified vested rights legislation, was inadvertently repealed by the 75th Legislature. The repealer was contained in SB 932, which reorganized the state's economic development functions, and mistakenly repealed the provisions contained in SB 1704. As a result, a political subdivision was now allowed to apply changes in its regulations and permit requirements retroactively. Although many local governing authorities did not respond to the repeal, several municipalities made direct changes to their permit process that violated the principle of "vested rights."

The 76th Legislature

HB 1704, carried in the House by Representatives Edmund Kuempel and Fred Bosse, reenacted Chapter 481, which provided for the review and approval of project permits issued by a municipality or other local governmental entity. The bill's purpose is to ensure that residential subdivisions and other projects can be completed under the local developmental regulations that are in effect at the time the project is initiated. HB 1704 also sets forth provisions regarding the approval of certain permit applications by local governments. The provisions of the bill became applicable on September 1, 1997, the same day that the original vested rights legislation was inadvertently repealed.

Comparison to Previous Legislation

The original law that was repealed covered state agencies. State agencies were left out of the

new bill because none were passing retroactive regulations.

In addition, the 1995 law established a general prohibition against retroactive regulations, and applied them across the board to all cities and counties.

The new bill was more targeted, applying to specific abuses. If a city or a county does not pass retroactive regulations, then the city or county is not affected by the new law. But if a city or county does pass retroactive regulations, then those regulations are preempted, and the affected landowners will be put back where they were before the retroactive ordinance was passed.

Third, the bill included language regarding legislative findings and intent. This language was not in the law that was repealed. It was put in to let the courts know the purpose of the bill.

Lastly, the new bill included a “dormant projects” provision, requested by one of the major municipalities. This provision allows cities to apply new regulations and an expiration date to any dormant project if no progress has been made towards completing that project.

Summary of Testimony from Public Hearings

The Committee was charged to monitor actions taken under HB 1704, as passed by the 76th Legislature. Those who testified specifically on HB 1704 and their representation were:

May 11, 2000, in Austin, TX

Tommy Cain, *Representing Himself*
Toby Hammett Futrell, *City of Austin*
James Gaines, *Texas Landowners Council, Inc*
W.B. “Bill” Howell, *Representing Himself*
Don Miller, *Representing Himself and Clients*
Glenn Weichert, *Representing Eli Garza*

September 20, 2000, in Vernon, TX

Gary Brown, *Representing Himself*
Steve Seese, *City of Wichita Falls*

During testimony on May 11, 2000, one speaker said that the City of Austin appears to be attempting to forestall implementation of HB 1704 as long as possible, and appears to want those who are waiting to litigate, perhaps to try the validity of HB 1704 in court. Another developer was told that since he was building in the city’s ETJ, he needed to obtain a county permit, as the city did not have jurisdiction over residential subdivisions. The City of Austin showed up once the development was 70% complete however, and shut him down for not having the proper city permit to comply with their watershed development regulations, which severely restricts impervious cover. The developer feels he should be protected under HB 1704, and the city refuses to let him complete his project until the issue is resolved. He has been asked to fill out a “1704 determination form,” which he feels is signing away his rights, forcing him to accept the city’s impervious cover specifications. At 70% complete, the project is deteriorating.

One specific concern voiced about HB 1704 was that the legislation lacks the ability for a citizen to take his complaint to the attorney general without spending money on a lawsuit.

Austin officials responded with an overview of their situation, stating that Austin is one of the fastest growing cities in the country. Development activity is off the charts, and commercial development is at a record level. Forty-six thousand multi-family units are being constructed, or are in the process right now. Single family housing construction is up 36%, and the city has been overwhelmed with the infrastructure needs to keep up with this development.

The procedure that the City of Austin has put in place to process 1704 claims has been very specifically tailored. Austin officials testified that they have dedicated their most experienced development reviewers to be part of the review team on 1704, because many of the claims involve going back and looking at development regulations from the 1960's and the 1970's. Austin has also created an appeals process, so there is a second level of review if a denial occurs. In many cases, on appeal, decisions are overturned.

At the time of the hearing in May, Austin had received 236 claims filed under 1704 with the City of Austin. Seventy percent, or 165 claims, had been approved, Twenty eight percent, or 66 claims had been denied, and two percent, or five cases, were currently pending decision by Austin's review team. Of the seventy percent approved claims, thirty-five percent of those were approved within seven calendar days. The average claim, and this includes some outliers, where there was a long period of time for a variety of reasons, is 62 days. For denied claims, 55 percent of all the denied claims or 28 percent of the total claims were given a decision within 31 days. The average for denied claims has been 43 days.

The 1704 determination sheet is a questionnaire that asks a potential developer what they think their 1704 rights are, and to submit the project for a review. The City of Austin denied that signing the paper waived the rights of the developers.

Austin officials readily admitted that their city, unlike most cities in Texas, has a very complex set of development regulations. It is more difficult to follow Austin's land development code, with its extensive landscaping regulations, extensive environmental/water quality regulations, and detailed flood and drainage regulations. It makes it more expensive and it makes it more time-consuming. These regulations are the way the Austin community prefers to operate.

Definitions

Municipal surveys and one or two situations indicate that some city officials feel there may be a problem with Section 245.002(b) of the Local Government Code. Steve Seese, City Planning Administrator for the City of Wichita Falls, testified that this section states that all permits are considered to be a single series of permits. Further elaboration in the section states that preliminary and related plats, site plans and other development permits are considered collectively to be one series of permits for a project.

Seese testified that the difficulty with this paragraph stems from the idea of a change in any permit within this series of permits. An argument could be made that a change in any permit could void

all other permits within the series of permits, thereby essentially creating a new project. Creating this new project could thereafter impose rules, regulations and ordinances that were in effect at the time of the creation of this new permit. The developer could have inspired a change in any of the permits within the one series of permits. However, if a city has an expiration period on any of the permits within the one series of permits, then again a new permit and a new series of permits would be created.

Another testifier would like to see the term “project” clarified by the Legislature.

Municipal Survey

Several cities took the time to detail their problems with HB 1704 as passed by the 76th Legislature. A few of the cities felt that the dormant projects provision hampered their ability to apply current development regulations, particularly environmental regulations.

However, effective on May 10, 2000, a city can apply new regulations to any dormant project if no progress has been made toward completing the project. In addition, HB 1704 puts forth a laundry list of exemptions to regulations related to such items as annexation and stormwater flooding.

A city also has the authority to update their building regulations, and apply them to projects that are more than two years old.

Committee Findings

With regard to the complaint by developers that the City of Austin is taking too long to resolve HB 1704 claims, the Committee declined consideration of setting a time limit for cities to act on those claims. By the time the 77th Legislature convenes, most of the claims will be resolved.

The Committee finds that the dormant projects provision does not hamper a city’s ability to enforce current regulations, but would consider amending the legislation if a city can conclusively prove that health and welfare is threatened by the existing situation. The Committee recommends continued monitoring.

The Committee encourages those who feel that the definitions in HB 1704 need clarification to submit their recommendations to the Committee before the onset of the 77th legislative session.

Background

From 1931 to 1995, counties used authority given to them in Chapter 232 of the Local Government Code to require all subdivisions in the unincorporated to submit their plats for county approval. However, in 1995, the decision in the *Elgin Bank v. Travis County* limited county authority to only subdivisions which included streets, alleys, or other parts intended for public use. That decision led to the development of “flag lot” subdivisions with individual private driveways from each lot leading to a public road. By avoiding the plat review process, these subdivisions were able to avoid providing adequate drainage, emergency vehicle access, school bus access, and other appropriate protections.

The 76th legislature responded to the “flag lot” problem by passing SB 710, carried by Representative Bob Turner on the House side. SB 710 closed the “flag lot” loophole, but created several new exceptions to the plat approval process. In addition, SB 710 established a sixty-day time limit on the consideration of plats by the county. It also prohibits counties from imposing stricter road construction standards on a developer than it imposes on itself for the same type of road based on traffic and usage.

Summary of Testimony from Public Hearings

The Committee on Land and Resource Management was charged to monitor actions taken by SB 710 as passed by the 76th Legislature, and solicited testimony on SB 710 in hearings in Austin and Vernon. Those who testified and their representation were:

May 11, 2000, in Austin, TX

Jim Hannah, *Representing Himself*

Dan Kossl, *Greater San Antonio Builders Association*

Donald Lee, *Texas Conference of Urban Counties*

Michael D. Moore, *Greater San Antonio Builders Association*

September 20, 2000, in Vernon, TX

Jim Allison, *County Judges and Commissioners Assn. of Texas*

John Bullock, *Texas Farm Bureau*

Bob Dedman, *General Land Office/Veterans Land Board*

Chuck Dennis, *Texas Association of Builders*

Karl Matlage, *General Land Office/Veterans Land Board*

Jean Ryall, *Lower Colorado River Authority*

Steve Seese, *City of Wichita Falls*

The Exceptions

Although SB 710 allows the county to require platting for new subdivisions, the legislation provided several exceptions.

Primary land use is agricultural, farming, or ranching, and the owner does not build any streets, alleys, parks, or other public use areas. If, in the future, however, the land is no

longer used for agricultural purposes, then the exception ceases to exist and a plat is required.⁶⁶

Testimony indicated that in one county, a developer wanted to subdivide a tract of approximately 47 acres into over ten tracts, with some of the tracts as small as three acres, and tried to claim the agricultural exemption. The appraisal district definition, which has been in use for many years, is that an ag use exemption can be used if the tract is at least six acres under fence or in production. The county turned down the 47 acre exemption, and now faces litigation.

In addition, these questions have arisen:

It is unlikely that the entire tract will cease to be used primarily for agricultural use, but rather a few lots at a time over several years. As the developer will most likely have left town by that time, the land will no longer be his to plat. Will the purchasers of the land be required to satisfy the platting requirement? Will the various owners of the land have to work together to hire a surveyor and pay for a plat?

The owner divides the tract into four or fewer parts, does not build any streets, alleys, parks, or other public use areas, and sells the lots to a close relative.⁶⁷

These questions have been asked of committee members: If relatives then turn around and sell the property to a non-relative, the commissioners court has no way of knowing, and do not know they have authority over a subdivision that is building on that land. Must the appraisal office require an affidavit of relationship with each new deed?

How do trusts and family ranch corporations, limited partnerships, etc., fit within the concept of an “individual related within the third degree by consanguinity of affinity”?

The owner divides the land into large lots that each exceed ten acres in area and does not build any streets, alleys, parks, or other public use areas.⁶⁸

The ten acre figure was a compromise and provides questions of its own. Subdivisions averaging thirty, forty or sixty acres create the same problems and impose the same burdens on county tax, appraisal, EMS, law enforcement offices, etc.

The owner sells all the lots through the Veterans’ Land Board program, and does not build any streets, alleys, parks, or other public use areas.⁶⁹

Since county standards can be no more stringent than VA standards, there are those who question this exemption, pointing out that veterans need the same protections as the rest of us. In addition, subdivisions that are exempt can affect those subdivisions that are not, raising a question of fairness.

There is also a right-of-way concern: As plats do not have to be filed, sometimes the utilities and improvements are going in very close to the existing road (the future right-of-way). Eventually, the county has to come back and expand that two lane dirt road into something that is more

appropriate for a more densely populated area that can handle the traffic. At that time, the counties have to move structures and utilities as part of that right-of-way. It would be of benefit to have some sort of ability to plan for that and try for a setback into that property so that a county does not have to take on that more expensive right-of-way acquisition. A platting requirement would take care of that problem.

Jack Harris, Brazoria County Commissioner, brought up another problem that this exemption has caused: in Brazoria County, drainage is a serious problem. If a subdivision is brought in that has not been platted property, and it is not drained properly, the neighbors down the road who have been there for years suffer tremendously.

Veterans Land Board officials contend that SB 710, as filed, had the potential to make it impossible for some veterans to build homes on their VLB-financed land. Since the VLB takes legal title to tracts it finances, the only way for a contract holder to finance the construction of the home on the tract is to sever the homesite from the tract. This severance is viewed in many counties as a “resubdivision” of the property. Since the homesite could be located in the interior portion of the property, a roadway across the tract would be necessary to provide both access and meet the requirements of the mortgage company financing the home construction. The laying out of a road and resulting tract of less than ten acres could be considered a violation of SB 710.

In addition, the exemption is only available if 100% of the resulting tracts are financed by the VLB. It is difficult, if not impossible, to verify that every tract in a new subdivision will be sold to veterans until the last tract is sold. So, the first few sales pose a problem for the VLB and the county since there is no consistent way to “approve” these claimed exemptions.

The land is state-owned and there are no streets, alleys, parks, or other public use areas laid out.⁷⁰

The state does not traditionally lay out streets, alleys, parks, or other public use areas on the parcels of land they hold. However, the state subdivides land to make the parcels more marketable, such as the land they hold in the now-defunct Supercollider Project. Land is bought and sold by the state and invested for income for the Permanent School Fund.

The land is located in a flood plain, the owner is a political subdivision of the state, and the lots are sold to adjoining landowners.⁷¹

This exception was requested by the Lower Colorado River Authority, specifically in instances where the LCRA is seeking to sell land in the flood plain to an adjoining landowner. Without the exception, significant cost increases would ensue, which would adversely affect the adjoining landowner who is seeking to purchase the land.

The owner subdivides the tract into two or more parts, transferring a portion to another person who will further subdivide the tract. The subdivider does not build any streets, alleys, parks, or other public use areas.⁷²

The owner divides the tract into two or more parts, and all parts are transferred to persons

who owned an undivided interest in the original tract, and a plat is filed before any further development of any part of the tract. The subdivider does not build any streets, alleys, parks, or other public use areas.⁷³

Confusing and Vague Language

At least some county officials have had a difficult time trying to understand and apply the exceptions section (232.0015 of the Local Government Code). The hardest problems seem to stem from the use in the same section of “need not” (subsection a), seven instances of “may not” (subsections c,d,e,f,g,i,j, and k) and one use of “shall not” (subsection h). Some confusion has arisen in determining the meaning of the second sentence of 232.0015(a): “A county need not require platting for every division of land otherwise within the scope of this subchapter,” especially in the wake of the significant recent additions by SB 710.⁷⁴ Attorney General John Cornyn recently attempted to clarify the confusion in Opinion No. JC-0260, stating: “Because the phrase ‘may not’ in section 232.0015 means ‘shall not’...” “Shall not” is obviously the legislative intent.

Once a plat has been submitted to the commissioners court for review, the commissioners have sixty days to act on the application. This sixty day time period can be “extended for a reasonable period” if agreed to in writing by the applicant and the commissioners court. One testifier would like to see a more solid definition of “reasonable.” However, if the time period is agreed upon by both parties, it seems “reasonable” that the parties could come up with a “reasonable” time period.

Attorney General’s Opinion

The Honorable Glen Wilson, Parker County Attorney, asked the Attorney General’s office to issue an opinion on whether or not a county could “define and classify” subdivisions in such a way as to except a specific division from section 232.001's platting requirement even if the division is not excepted under the list of exemptions. In other words, could counties exempt subdivisions from specific regulations, even if those exemptions were not listed?

The Attorney General responded, that yes, counties did have that exempting ability. Section 232.0015(a) of the Local Government Code authorizes a county to “define and classify divisions” to except from the platting requirement particular subdivisions that would otherwise be subject to the requirement, even though the exception is not one listed in section 232.0015(b) through (k).

The question was also asked as to whether or not an owner or developer of “a piece of real property that is part of a previously approved subdivision, [which] was platted as part of that subdivision as a ‘phase,’” seeks to divide the property into two or more lots, a commissioners court must notify by certified or registered mail, return receipt requested, all existing property owners who own a lot within the platted subdivision even though their lots are within a “different phase” of the subdivision.

Attorney General’s Response: Section 232.009 of the Local Government Code, “Revision of Plat,” applies to real property located outside the corporate limits of any municipality, but not

within the extraterritorial jurisdiction of a municipality with a population of 1.5 million or more. With respect to a proposed revision of a plat of a subdivision that is subject to section 232.009, a commissioners court must notify, by certified or registered mail, return receipt requested, each owner of “all or part” of the subdivided tract.⁷⁵

Committee Findings

Most confusing language in SB 710 can be easily corrected, and the committee recommends that those corrections be drafted as legislation and passed by the 77th Legislature.

Most of the problems regarding platting exceptions stem from the fact that county commissioners’ courts have no way of knowing when a parcel of land changes its status from an exempted piece of property to a plat-required piece of property. County commissioners are urged to let the Committee know the easiest way to accomplish notification of the court.

Background

The attempt by the state to manage coastal erosion problems spans ten years. In 1989, the Texas General Land Office (GLO) was directed by the 71st Texas Legislature to coordinate development of a comprehensive, long-range plan for the management of state-owned coastal lands. The Coastal Management Program was developed two years later, when the 72nd Texas Legislature created the Coastal Coordination Act. The Act was more finely defined four years later by the 74th Texas Legislature.

Texas remained at a huge disadvantage, however, because the state had no coastal erosion response fund from which to act as a local match for federally-approved erosion projects. States with matching funds and well-developed erosion programs, such as Florida, were able to access federal funds. Texas often found itself at the end of the line as it attempted to secure matching funds from various sources to implement its erosion program.

In 1997, funding for the program would have been generated by the passage of Senate Bill 1339. However, SB 1339 was killed on May 26, 1997, during a point of order raised against the entire House of Representatives calendar. In 1999, the Legislature successfully passed Senate Bill 1690, sponsored in the House by Representative Patricia Gray and five House co-sponsors.

SB 1690

SB 1690 sets up an erosion fund out of which the land commissioner of the GLO may initiate erosion plans in cooperation with local communities, state and federal agencies, and other interested groups to help fight erosion. Fifteen million dollars was appropriated by the 76th Legislature for this purpose.

Summary of Testimony from Public Hearings

The committee heard testimony regarding the status of the implementation of SB 1690 during the following hearing. Those who testified and their representation were:

May 11, 2000, in Austin, TX

Bill Worsham, *Texas General Land Office*

At the time of the hearing on May 11, SB 1690 had been in effect for approximately nine months. The GLO held a series of thirteen public meetings during the summer of 1999, and three hearings on the proposed rules in the fall of 1999. In addition, GLO staff visited numerous coastal areas, such as Galveston, Corpus Christi, Surfside, Port Lavaca and South Padre Island to speak with local officials about the coastal erosion program and other coastal related issues.

Early in 2000, the first phase of 27 projects was unveiled by the GLO. The projects included both beaches and bays, and are spread throughout twelve coastal counties. These projects, or a portion thereof, are expected to be analyzed, developed and implemented within eighteen months.

Some of the 27 projects have federal funds committed to them, but for those that do not, the GLO is searching for additional leveraging opportunities. To update and map the shoreline erosion rates along the Gulf Coast, the GLO is leveraging erosion response funds with coastal management program funds. The Bureau of Economic Geology at the University of Texas in Austin is assisting with this phase of the process, and the University of Texas at Austin is performing baseline economic studies to help demonstrate the net benefits of erosion response activities in shoreline stabilization. In addition, Texas A&M in College Station is assisting with the identification of potential sand sources for beach nourishment projects. Combined, these three data collection activities will account for less than five percent of the state, federal, and local funds expended through this program.

Relations between the GLO and Washington, D.C., are reported much improved, and the U.S. Army Corps of Engineers has pledged an additional use of dredge material. The Corps of Engineers recently assisted with a beach nourishment project in Rollover Pass in Galveston County.

The GLO has contracted with eleven engineering firms that responded to a request for qualifications to perform a variety of tasks on an as-needed basis. The GLO has begun issuing work orders to these companies to perform the analysis and design work that will lead to project construction.

The GLO is currently working with qualified project partners to secure project cooperation agreements that outline the activities that will be performed by both the GLO and the project partner.

The actual commitment of CEPRA funds for construction is contingent upon the outcome of the alternatives analyses, the refined cost estimates, and the land commissioner's final decision to fund based on several statutory considerations.

Summary of Projects for the 2000-2001 Biennium

While the GLO initially proposed 27 projects for construction during the biennium, some projects were added, revised, or eliminated for various reasons. The following is a list of the projects either completed, currently under construction or anticipated to begin by August 31, 2001.

Aransas County

Key Allegro Access Road

Partner: Key Allegro Canal Owners Association

Project: Stabilize one-half mile of bay shoreline protecting the sole access road to the community. Phase One will build 200 feet of bulkhead to protect Bayshore Drive. Phase Two will develop alternatives analysis for protecting 2,100-feet of shoreline. Final design of Phase One completed in late September 2000. Bid packages are expected to go out in early October 2000.

Cove Harbor

Partner: Aransas County Navigation District
Project: Build up to 360-feet of bulkhead to stabilize eroding shoreline. Will be an extension of existing bulkhead project undertaken by Navigation District. Project Cooperation Agreement (PCA) signed late September 2000. Design completed by partner. Bids for construction will be out by end of September. Bulkhead fabrication will start in November with placement of sections taken place in December 2000.

Brazoria County

Hall's Lake

Partner: Brazoria County
Project: Protect a narrow strip of land to prevent barge wakes and Galveston Bay waves using articulated blockmatting. Final design complete and Corps of Engineers (USACE) permit finalized. Construction estimated to begin in mid-November.

Surfside Beach

Partner: Village of Surfside
Project: Nourish one mile of Gulf beach. Engineering firm selected late September 2000 with design due by early October 2000. Construction estimated to begin early 2001 or sooner.

Calhoun County

Indianola/Magnolia Beach-Reef Project

Partner: Calhoun County Navigation District
Project: Complete alternatives analysis for future project to restore approximately three miles of public beach, nearby wetlands and adjacent county road. Professional Service Provider (PSP) expected to complete alternatives analysis by February 2001.

Bayfront Peninsula

Partner: Port Lavaca Port Commission
Project: Construct cement bulkhead on western peninsula to complement project to repair of existing bulkhead on eastern peninsula, which was funded by Coastal Management Program. Plans completed by partner. Construction bids will be out by end of September 2000. Construction start expected to begin in mid-October 2000.

Cameron County

Park Road 100

Partner: Texas Department of Transportation
Project: Phase One will remove sand blocking state highway and transport to Andy Bowie Park, Atwood Park and additional areas in the county to build dunes.

Phase Two will remove sand from highway and transport to public beach within city limits. Will increase access to the beach at its northern terminus. Construction began mid-September. Phase Two will commence when USACE permit is approved.

South Padre Island Beach Nourishment

Partner: Town of South Padre Island

Project: Beneficially use dredge material from the Brazos-Santiago Pass by USACE to maintain the public beach, the town's most important economic asset. Construction estimated to begin November 2000.

Galveston County

Gulf Intracoastal Waterway (GIWW) Rollover Bay Reach (Event 2)

Partner: Galveston County

Project: Beneficially use dredge material from Rollover Pass by USACE to maintain two miles of public beach. Advertising for bids for next dredging/sand placement will occur November 2000.

Moses Lake

Partner: Galveston Bay Foundation/Texas Nature Conservancy

Project: Construct a 4,000-foot breakwater on the west shoreline of Galveston Bay to protect existing marsh and restore 15 acres of eroded marshland. PSP final design work completed in mid-September. Construction expected to begin in early October after the School Land Board gives approval.

North Deer Island

Partner: Galveston Bay Foundation

Project: Perform alternatives analysis on best way to stabilize eroding island shoreline subject to vessel wakes and wind-driven waves. Construction cannot be started this fiscal year because of nesting birds on site between April and August.

Delehide Cove

Partner: Galveston Bay Foundation

Project: Create 50 acres of estuarine intertidal marsh and one acre of seagrasses on north side of Galveston Island. Construct 3,000-foot long geotube to protect marshes and seagrasses and 9,500 linear feet of geotube to protect existing 571 acres of marsh and tidal flats. PCA with partner expected to be signed by October 2000. Engineering firm expected to be selected in early November 2000. Design expected to be completed by January 2001 with an anticipated construction start date of March 2001.

Omega Bay

Partner: Galveston Bay Foundation, U.S. Fish and Wildlife Service

Project: Restore 20 acres of marshes on the southeast shore of Omega Bay lost due to erosion and subsidence. Construction started August 28, but temporarily

postponed until early 2001 at request of Omega Bay residents. Partners will seek to address residents' concerns.

West Galveston Island

Partner: Galveston County

Project: Nourish 19 miles of Gulf beach in four communities. Project will likely be broken up into individual projects: Bermuda Beach, Point San Louis, Terramar Beach and Sea Isle. Engineering firm selected in mid-September with report and design due by October 20.

Gilchrist Beach

Partner: Galveston County

Project: Beneficially use 200,000 to 300,000 cubic yards of dredge material from Rollover Pass and renourish one mile of public beach on the Bolivar Peninsula. Construction began mid-September and completion expected in 60 days.

GIWW Rollover Bay Reach (Event 1)

Partner: Galveston County

Project: Beneficially use dredge material from the GIWW and place on Gulf beach west of Rollover Pass. Project completed February 2000.

Harris County

Little Cedar Bayou

Partner: City of LaPorte

Project: Stabilize natural channel shoreline at its bay entrance by using a near-shore shoreline protection dike with vegetative plantings (marsh creation) along a 900-foot shoreline of the Little Cedar Bayou Public Park. Partner is completing final design. Construction should begin upon receipt of USACE permit.

Jefferson County

Rose City Marsh

Partner: Property owner

Project: Restore approximately 650 acres of forested wetlands that were subjected to subsidence and heavy timbering. Project cannot be completed this fiscal year, but alternatives analysis may be undertaken.

GIWW McFaddin Reach

Partner: U.S. Fish and Wildlife Service

Project: Shoreline protection along the GIWW in the McFaddin National Wildlife Refuge. USFWS will fund 80% of project cost. PCA completed by end of September 2000.

Texas Point

Partner: U.S. Army Corps of Engineers
Project: Beneficially use one million cubic yards of dredged material from the Sabine-Neches Waterway Channel to be placed in subsided marshes in the Texas Point National Wildlife Refuge. Construction estimated to begin October 2000.

McFaddin Dune

Partner: U.S. Fish and Wildlife Service
Project: Restore disturbed dune system on the McFaddin National Wildlife Refuge. Preferred alternative is to add sand and re-vegetate dunes. Final plans undertaken by engineering firm. Federal environmental assessment is required prior to construction.

Pleasure Island

Partner: Jefferson County
Project: Stabilize shoreline on west side of Pleasure Island along the Sabine-Neches Channel to be completed in stages to protect the sole access road to the community. PCA is being developed. Alternatives analysis and some phase of construction are expected to be completed this fiscal year.

Keith Lake Cut

Partner: Jefferson County
Project: Modify the Cut to control saltwater intrusion and protect the bridge foundation for State Highway 87 North while protecting the productive fishery in Keith Lake. GLO currently preparing work plan and budget for PCA. Likely use of vinyl sheet piling.

Mesquite Point

Partner: Jefferson County
Project: Stabilize 1,200-feet of shoreline at Walter Umphrey State Park. PCA will be signed by end of September, 2000, and county will perform alternatives analysis on vinyl sheet piling.

Kleberg County

Kaufer-Hubert Memorial Park

Partner: Kleberg County
Project: Stabilize one-half mile of bay shoreline using galvanized steel sheet piling at county park along Baffin Bay. Construction began September 15. Should be complete by late October.

Nueces County

Corpus Christi Beach

Partner: City of Corpus Christi
Project: Nourish one-mile of public beach and protect with submerged geotube and groin structure. Final design expected to be completed by end of September

2000. Construction estimated to begin November 2000.

Nueces Bay Shoreline

Partner: Coastal Bend Bays and Estuaries Program

Project: Re-establish bird rookery islands which eroded due to wind waves and vessel wakes. PCA issued and PSP should complete alternatives analysis by early November 2000. Construction should take place this fiscal year.

Corpus Christi Ship Channel, South Shoreline

Partner: City of Port Aransas

Project: Phase One will protect a 20-inch waterline that has been undermined by vessel wakes. Final design of Phase One underway. Phase Two will protect additional ship channel shoreline currently unprotected from wind waves and vessel wakes.

University Beach Park

Partner: Texas Engineering Extension Service

Project: Re-introduce 1,200 foot long by 150-foot wide beach habitat along Ward Island by placing sandy fill material and protecting it with two terminal groins and three detached breakwaters. PCA signed in mid-September. Engineering, design and permits completed August 2000 as part of Coastal Management Program grant. Phase One will construct beach, groins and breakwaters by end of fiscal year. Phase Two proposes to make beach handicap-accessible, add bathrooms and other amenities.

Orange County

Bessie Heights

Partner: U.S. Fish and Wildlife Service and Texas Parks and Wildlife Department
Project: Restoration of open water area back to marsh environments. Phase One will create 220 acres of open-grid terraces to restore and protect marsh vegetation. PCA expected to be completed by October 2000. No PSP selected yet.

Refugio/San Patricio Counties

Rural Bay Shoreline

Partner: Coastal Bend Bays and Estuaries Program

Project: Stabilize four miles of bay shoreline through vegetative planting. PCA signed with partner in late September 2000. Planting will take place in early Spring 2001.

Committee Findings

The committee commends the General Land Office for its aggressive start-up of the coastal management program, especially their continued efforts to locate leveraging funds.

HB 1704

AN ACT

1-2 relating to the approval of certain permit applications by local
1-3 governments.

1-4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-5 SECTION 1. FINDINGS; INTENT. (a) The legislature finds
1-6 that the former Subchapter I, Chapter 481, Government Code,
1-7 relating to state and local permits, originally enacted by Section
1-8 1, Chapter 374, Acts of the 70th Legislature, Regular Session,
1-9 1987, and subsequently amended by Section 3.01, Chapter 4, Acts of
1-10 the 71st Legislature, Regular Session, 1989, Section 2, Chapter
1-11 118, Acts of the 71st Legislature, Regular Session, 1989, and
1-12 Section 1, Chapter 794, Acts of the 74th Legislature, Regular
1-13 Session, 1995, was inadvertently repealed by Section 51(b), Chapter
1-14 1041, Acts of the 75th Legislature, Regular Session, 1997.

1-15 (b) The legislature finds that the repeal of former
1-16 Subchapter I, Chapter 481, Government Code, which became effective
1-17 September 1, 1997, resulted in the reestablishment of
1-18 administrative and legislative practices that often result in
1-19 unnecessary governmental regulatory uncertainty that inhibits the
1-20 economic development of the state and increases the cost of housing
1-21 and other forms of land development and often resulted in the
1-22 repeal of previously approved permits causing decreased property
1-23 and related values, bankruptcies, and failed projects.

1-24 (c) The legislature finds that the restoration of
2-1 requirements relating to the processing and issuance of permits and
2-2 approvals by local governmental regulatory agencies is necessary to
2-3 minimize to the extent possible the effect of the inadvertent
2-4 repeal of the former Subchapter I, Chapter 481, Government Code,
2-5 and to safeguard the general economy and welfare of the state and
2-6 to protect property rights.

2-7 (d) It is the intent of the legislature that no project,
2-8 permit, or series of permits that was protected by former
2-9 Subchapter I, Chapter 481, Government Code, be prejudiced by or
2-10 required or allowed to expire because of the repeal of former
2-11 Subchapter I or an action taken by a regulatory agency After the
2-12 repeal.

2-13 SECTION 2. AMENDMENT. Subtitle C, Title 7, Local Government
2-14 Code, is amended by adding Chapter 245 to read as follows:

2-15 CHAPTER 245. ISSUANCE OF LOCAL PERMITS

2-16 Sec. 245.001. DEFINITIONS. In this chapter:

2-17 (1) "Permit" means a license, certificate, approval,
2-18 registration, consent, permit, or other form of authorization
2-19 required by law, rule, regulation, order, or ordinance that a
2-20 person must obtain to perform an action or initiate, continue, or

2-21 complete a project for which the permit is sought.
2-22 (2) "Political subdivision" means a political
2-23 subdivision of the state, including a county, a school district, or
2-24 a municipality.
2-25 (3) "Project" means an endeavor over which a
2-26 regulatory agency exerts its jurisdiction and for which one or more
2-27 permits are required to initiate, continue, or complete the
3-1 endeavor.
3-2 (4) "Regulatory agency" means the governing body of,
3-3 or a bureau, department, division, board, commission, or other
3-4 agency of, a political subdivision acting in its capacity of
3-5 processing, approving, or issuing a permit.
3-6 Sec. 245.002. UNIFORMITY OF REQUIREMENTS. (a) Each
3-7 regulatory agency shall consider the approval, disapproval, or
3-8 conditional approval of an application for a permit solely on the
3-9 basis of any orders, regulations, ordinances, rules, expiration
3-10 dates, or other properly adopted requirements in effect at the time
3-11 the original application for the permit is filed.
3-12 (b) If a series of permits is required for a project, the
3-13 orders, regulations, ordinances, rules, expiration dates, or other
3-14 properly adopted requirements in effect at the time the original
3-15 application for the first permit in that series is filed shall be
3-16 the sole basis for consideration of all subsequent permits required
3-17 for the completion of the project. All permits required for the
3-18 project are considered to be a single series of permits.
3-19 Preliminary plans and related subdivision plats, site plans, and
3-20 all other development permits for land covered by the preliminary
3-21 plans or subdivision plats are considered collectively to be one
3-22 series of permits for a project.
3-23 (c) After an application for a project is filed, a
3-24 regulatory agency may not shorten the duration of any permit
3-25 required for the project.
3-26 (d) Notwithstanding any provision of this chapter to the
3-27 contrary, a permit holder may take advantage of recorded
4-1 subdivision plat notes, recorded restrictive covenants required by
4-2 a regulatory agency, or a change to the laws, rules, regulations,
4-3 or ordinances of a regulatory agency that enhance or protect the
4-4 project, including changes that lengthen the effective life of the
4-5 permit After the date the application for the permit was made,
4-6 without forfeiting any rights under this chapter.
4-7 Sec. 245.003. APPLICABILITY OF CHAPTER. This chapter
4-8 applies only to a project in progress on or commenced After
4-9 September 1, 1997. For purposes of this chapter a project was in
4-10 progress on September 1, 1997, if:
4-11 (1) before September 1, 1997:
4-12 (A) a regulatory agency approved or issued one

4-13 or more permits for the project; or
4-14 (B) an application for a permit for the project
4-15 was filed with a regulatory agency; and
4-16 (2) on or After September 1, 1997, a regulatory agency
4-17 enacts, enforces, or otherwise imposes:
4-18 (A) an order, regulation, ordinance, or rule
4-19 that in effect retroactively changes the duration of a permit for
4-20 the project;
4-21 (B) a deadline for obtaining a permit required
4-22 to continue or complete the project that was not enforced or did
4-23 not apply to the project before September 1, 1997; or
4-24 (C) any requirement for the project that was not
4-25 applicable to or enforced on the project before September 1, 1997.

4-26 Sec. 245.004. EXEMPTIONS. This chapter does not apply to:
4-27 (1) a permit that is at least two years old, is issued
5-1 for the construction of a building or structure intended for human
5-2 occupancy or habitation, and is issued under laws, ordinances,
5-3 procedures, rules, or regulations adopting only:
5-4 (A) uniform building, fire, electrical,
5-5 plumbing, or mechanical codes adopted by a recognized national code
5-6 organization; or
5-7 (B) local amendments to those codes enacted
5-8 solely to address imminent threats of destruction of property or
5-9 injury to persons;
5-10 (2) municipal zoning regulations that do not affect
5-11 lot size, lot dimensions, lot coverage, or building size or that do
5-12 not change development permitted by a restrictive covenant required
5-13 by a municipality;
5-14 (3) regulations that specifically control only the use
5-15 of land in a municipality that does not have zoning and that do not
5-16 affect lot size, lot dimensions, lot coverage, or building size;
5-17 (4) regulations for sexually oriented businesses;
5-18 (5) municipal or county ordinances, rules,
5-19 regulations, or other requirements affecting colonias;
5-20 (6) fees imposed in conjunction with development
5-21 permits;
5-22 (7) regulations for annexation;
5-23 (8) regulations for utility connections;
5-24 (9) regulations to prevent imminent destruction of
5-25 property or injury to persons, including regulations effective only
5-26 within a flood plain established by a federal flood control program
5-27 and enacted to prevent the flooding of buildings intended for
6-1 public occupancy; or
6-2 (10) construction standards for public works located
6-3 on public lands or easements.

6-4 Sec. 245.005. DORMANT PROJECTS. Notwithstanding any other

6-5 provision of this chapter, After the first anniversary of the
6-6 effective date of this chapter, a regulatory agency may enact an
6-7 ordinance, rule, or regulation that places an expiration date on a
6-8 permit if as of the first anniversary of the effective date of this
6-9 chapter: (i) the permit does not have an expiration date; and (ii)
6-10 no progress has been made towards completion of the project. Any
6-11 ordinance, rule, or regulation enacted pursuant to this section
6-12 shall place an expiration date of no earlier than the fifth
6-13 anniversary of the effective date of this chapter. Progress
6-14 towards completion of the project shall include any one or more of
6-15 the following:

6-16 (1) an application for a final plat or plan is
6-17 submitted to a regulatory agency;

6-18 (2) a good-faith attempt is made to file with a
6-19 regulatory agency an application for a permit necessary to begin or
6-20 continue towards completion of the project;

6-21 (3) costs have been incurred for developing the
6-22 project including, without limitation, costs associated with
6-23 roadway, utility, and other infrastructure facilities designed to
6-24 serve, in whole or in part, the project (but exclusive of land
6-25 acquisition) in the aggregate amount of five percent of the most
6-26 recent appraised market value of the real property on which the
6-27 project is located;

7-1 (4) fiscal security is posted with a regulatory agency
7-2 to ensure performance of an obligation required by the regulatory
7-3 agency; or

7-4 (5) utility connection fees or impact fees for the
7-5 project have been paid to a regulatory agency.

7-6 Sec. 245.006. ENFORCEMENT OF CHAPTER. This chapter may be
7-7 enforced only through mandamus or declaratory or injunctive relief.

7-8 SECTION 3. EFFECT OF PRIOR LAW. (a) The repeal of
7-9 Subchapter I, Chapter 481, Government Code, by Section 51(b),
7-10 Chapter 1041, Acts of the 75th Legislature, Regular Session, 1997,
7-11 and any actions taken by a regulatory agency for the issuance of a
7-12 permit, as those terms are defined by Section 245.001, Local
7-13 Government Code, as added by Section 2 of this Act, After that
7-14 repeal and before the effective date of this Act, shall not cause
7-15 or require the expiration or termination of a project, permit, or
7-16 series of permits to which Section 2 of this Act applies. An
7-17 action by a regulatory agency that violates this section is void to
7-18 the extent necessary to give effect to this section.

7-19 (b) This Act does not affect the rights or remedies of any
7-20 person or entity under a final judgment rendered by a court before
7-21 the effective date of this Act, or in any litigation pending in a
7-22 court on the effective date of this Act, involving an
7-23 interpretation of Subchapter I, Chapter 481, Government Code, as it

7-24 existed before its repeal by the 75th Legislature.

7-25 SECTION 4. CONSTRUCTION OF ACT. Nothing in this Act shall
7-26 be construed to apply to a condition or provision of an ordinance,
7-27 rule, or regulation that is enacted by a regulatory agency, as that
8-1 term is defined by Section 245.001, Local Government Code, as added
8-2 by Section 2 of this Act, which is specifically required by
8-3 uniformly applicable regulations adopted by a state agency After
8-4 the effective date of this Act.

8-5 SECTION 5. EFFECT ON COASTAL ZONE MANAGEMENT ACT. Nothing
8-6 in this Act shall be construed to:

8-7 (1) limit or otherwise affect the authority of a
8-8 municipality, a county, another political subdivision, the state,
8-9 or an agency of the state, with respect to the implementation or
8-10 enforcement of an ordinance, a rule, or a statutory standard of a
8-11 program, plan, or ordinance that was adopted under the federal
8-12 Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et
8-13 seq.) or its subsequent amendments or Subtitle E, Title 2, Natural
8-14 Resources Code; or

8-15 (2) apply to a permit, order, rule, regulation, or
8-16 other action issued, adopted, or undertaken by a municipality, a
8-17 county, another political subdivision, the state, or an agency of
8-18 the state in connection with the federal Coastal Zone Management
8-19 Act of 1972 (16 U.S.C. Section 1451 et seq.) or its subsequent
8-20 amendments or Subtitle E, Title 2, Natural Resources Code.

8-21 SECTION 6. EMERGENCY. The importance of this legislation
8-22 and the crowded condition of the calendars in both houses create an
8-23 emergency and an imperative public necessity that the
8-24 constitutional rule requiring bills to be read on three several
8-25 days in each house be suspended, and this rule is hereby suspended,
8-26 and that this Act take effect and be in force from and After its
8-27 passage, and it is so enacted.

President of the Senate

Speaker of the House

I certify that H.B. No. 1704 was passed by the House on April 21, 1999, by the following vote: Yeas 140, Nays 5, 3 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1704 was passed by the Senate on April 29, 1999, by the following vote: Yeas 26, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor

SB 710

AN ACT

1-1 relating to the subdivision of land outside a municipality.

1-2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-3 SECTION 1. Section 232.001, Local Government Code, is
1-4 amended by amending Subsection (a) and adding Subsection (a-1) to
1-5 read as follows:

1-6 (a) The owner of a tract of land located outside the limits
1-7 of a municipality must have a plat of the subdivision prepared if

1-8 the owner [who] divides the tract into two or more parts to lay
1-9 out:

1-10 (1) a subdivision of the tract, including an addition;

1-11 (2)[, or to lay out suburban lots or building] lots;

1-12 or

1-13 (3)[, and to lay out] streets, alleys, squares, parks,
1-14 or other parts of the tract intended to be dedicated to public use
1-15 or for the use of purchasers or owners of lots fronting on or
1-16 adjacent to the streets, alleys, squares, parks, or other parts
1-17 [must have a plat of the subdivision prepared].

1-18 (a-1) A division of a tract under Subsection (a) [this
1-19 subsection] includes a division regardless of whether it is made by
1-20 using a metes and bounds description in a deed of conveyance or in
1-21 a contract for a deed, by using a contract of sale or other
1-22 executory contract to convey, or by using any other method.

1-23 SECTION 2. Section 232.0015, Local Government Code, is
1-24 amended by adding Subsections (c) through (k) to read as follows:

2-1 (c) A county may not require the owner of a tract of land
2-2 located outside the limits of a municipality who divides the tract
2-3 into two or more parts to have a plat of the subdivision prepared
2-4 if:

2-5 (1) the owner does not lay out a part of the tract
2-6 described by Section 232.001(a)(3); and

2-7 (2) the land is to be used primarily for agricultural
2-8 use, as defined by Section 1-d, Article VIII, Texas Constitution,
2-9 or for farm, ranch, wildlife management, or timber production use
2-10 within the meaning of Section 1-d-1, Article VIII, Texas
2-11 Constitution.

2-12 (d) If a tract described by Subsection (c) ceases to be used
2-13 primarily for agricultural use or for farm, ranch, wildlife
2-14 management, or timber production use, the platting requirements of
2-15 this subchapter apply.

2-16 (e) A county may not require the owner of a tract of land
2-17 located outside the limits of a municipality who divides the tract
2-18 into four or fewer parts and does not lay out a part of the tract

2-19 described by Section 232.001(a)(3) to have a plat of the
2-20 subdivision prepared if each of the lots is to be sold, given, or
2-21 otherwise transferred to an individual who is related to the owner
2-22 within the third degree by consanguinity or affinity, as determined
2-23 under Chapter 573, Government Code. If any lot is sold, given, or
2-24 otherwise transferred to an individual who is not related to the
2-25 owner within the third degree by consanguinity or affinity, the
2-26 platting requirements of this subchapter apply.

3-1 (f) A county may not require the owner of a tract of land
3-2 located outside the limits of a municipality who divides the tract
3-3 into two or more parts to have a plat of the subdivision prepared
3-4 if:

3-5 (1) all of the lots of the subdivision are more than
3-6 10 acres in area; and

3-7 (2) the owner does not lay out a part of the tract
3-8 described by Section 232.001(a)(3).

3-9 (g) A county may not require the owner of a tract of land
3-10 located outside the limits of a municipality who divides the tract
3-11 into two or more parts and does not lay out a part of the tract
3-12 described by Section 232.001(a)(3) to have a plat of the
3-13 subdivision prepared if all the lots are sold to veterans through
3-14 the Veterans' Land Board program.

3-15 (h) The provisions of this subchapter shall not apply to a
3-16 subdivision of any tract of land belonging to the state or any
3-17 state agency, board, or commission or owned by the permanent school
3-18 fund or any other dedicated funds of the state unless the
3-19 subdivision lays out a part of the tract described by Section
3-20 232.001(a)(3).

3-21 (i) A county may not require the owner of a tract of land
3-22 located outside the limits of a municipality who divides the tract
3-23 into two or more parts to have a plat of the subdivision prepared
3-24 if:

3-25 (1) the owner of the land is a political subdivision
3-26 of the state;

4-1 (2) the land is situated in a floodplain; and

4-2 (3) the lots are sold to adjoining landowners.

4-3 (j) A county may not require the owner of a tract of land
4-4 located outside the limits of a municipality who divides the tract
4-5 into two parts to have a plat of the subdivision prepared if:

4-6 (1) the owner does not lay out a part of the tract
4-7 described by Section 232.001(a)(3); and

4-8 (2) one new part is to be retained by the owner, and
4-9 the other new part is to be transferred to another person who will
4-10 further subdivide the tract subject to the plat approval
4-11 requirements of this chapter.

4-12 (k) A county may not require the owner of a tract of land

4-13 located outside the limits of a municipality who divides the tract
4-14 into two or more parts to have a plat of the subdivision prepared
4-15 if:

4-16 (1) the owner does not lay out a part of the tract
4-17 described by Section 232.001(a)(3); and

4-18 (2) all parts are transferred to persons who owned an
4-19 undivided interest in the original tract and a plat is filed before
4-20 any further development of any part of the tract.

4-21 SECTION 3. Subchapter A, Chapter 232, Local Government Code,
4-22 is amended by adding Section 232.0025 to read as follows:

4-23 Sec. 232.0025. TIMELY APPROVAL OF PLATS. (a) The
4-24 commissioners court of a county or a person designated by the
4-25 commissioners court shall issue a written list of the documentation
4-26 and other information that must be submitted with a plat
5-1 application. The documentation or other information must relate to
5-2 a requirement authorized under this section or other applicable
5-3 law. An application submitted to the commissioners court or the
5-4 person designated by the commissioners court that contains the
5-5 documents and other information on the list is considered complete.

5-6 (b) If a person submits a plat application to the
5-7 commissioners court that does not include all of the documentation
5-8 or other information required by Subsection (a), the commissioners
5-9 court or the court's designee shall, not later than the 10th
5-10 business day After the date the commissioners court receives the
5-11 application, notify the applicant of the missing documents or other
5-12 information. The commissioners court shall allow an applicant to
5-13 timely submit the missing documents or other information.

5-14 (c) An application is considered complete when all
5-15 documentation or other information required by Subsection (a) is
5-16 received. Acceptance by the commissioners court or the court's
5-17 designee of a completed plat application with the documentation or
5-18 other information required by Subsection (a) shall not be construed
5-19 as approval of the documentation or other information.

5-20 (d) Except as provided by Subsection (f), the commissioners
5-21 court or the court's designee shall take final action on a plat
5-22 application, including the resolution of all appeals, not later
5-23 than the 60th day After the date a completed plat application is
5-24 received by the commissioners court or the court's designee.

5-25 (e) If the commissioners court or the court's designee
5-26 disapproves a plat application, the applicant shall be given a
6-1 complete list of the reasons for the disapproval.

6-2 (f) The 60-day period under Subsection (d):

6-3 (1) may be extended for a reasonable period, if agreed
6-4 to in writing by the applicant and approved by the commissioners
6-5 court or the court's designee;

6-6 (2) may be extended 60 additional days if Chapter

6-7 2007, Government Code, requires the county to perform a takings
6-8 impact assessment in connection with a plat application; and

6-9 (3) applies only to a decision wholly within the
6-10 control of the commissioners court or the court's designee.

6-11 (g) The commissioners court or the court's designee shall
6-12 make the determination under Subsection (f)(2) of whether the
6-13 60-day period will be extended not later than the 20th day After
6-14 the date a completed plat application is received by the
6-15 commissioners court or the court's designee.

6-16 (h) The commissioners court or the court's designee may not
6-17 compel an applicant to waive the time limits contained in this
6-18 section.

6-19 (i) If the commissioners court or the court's designee fails
6-20 to take final action on the plat as required by Subsection (d):

6-21 (1) the commissioners court shall refund the greater
6-22 of the unexpended portion of any plat application fee or deposit or
6-23 50 percent of a plat application fee or deposit that has been paid;

6-24 (2) the plat application is granted by operation of
6-25 law; and

6-26 (3) the applicant may apply to a district court in the
7-1 county where the tract of land is located for a writ of mandamus to
7-2 compel the commissioners court to issue documents recognizing the
7-3 plat's approval.

7-4 SECTION 4. Section 232.003, Local Government Code, is
7-5 amended to read as follows:

7-6 Sec. 232.003. SUBDIVISION REQUIREMENTS. By an order adopted
7-7 and entered in the minutes of the commissioners court, and After a
7-8 notice is published in a newspaper of general circulation in the
7-9 county, the commissioners court may:

7-10 (1) require a right-of-way on a street or road that
7-11 functions as a main artery in a subdivision, of a width of not less
7-12 than 50 feet or more than 100 feet;

7-13 (2) require a right-of-way on any other street or road
7-14 in a subdivision of not less than 40 feet or more than 70 feet;

7-15 (3) require that the shoulder-to-shoulder width on
7-16 collectors or main arteries within the right-of-way be not less
7-17 than 32 feet or more than 56 feet, and that the
7-18 shoulder-to-shoulder width on any other street or road be not less
7-19 than 25 feet or more than 35 feet;

7-20 (4) adopt, based on the amount and kind of travel over
7-21 each street or road in a subdivision, reasonable specifications
7-22 relating to the construction of each street or road;

7-23 (5) adopt reasonable specifications to provide
7-24 adequate drainage for each street or road in a subdivision in
7-25 accordance with standard engineering practices;

7-26 (6) require that each purchase contract made between a

8-1 subdivider and a purchaser of land in the subdivision contain a
8-2 statement describing the extent to which water will be made
8-3 available to the subdivision and, if it will be made available, how
8-4 and when; [and]

8-5 (7) require that the owner of the tract to be
8-6 subdivided execute a good and sufficient bond in the manner
8-7 provided by Section 232.004;

8-8 (8) adopt reasonable specifications that provide for
8-9 drainage in the subdivision to:

8-10 (A) efficiently manage the flow of stormwater
8-11 runoff in the subdivision; and

8-12 (B) coordinate subdivision drainage with the
8-13 general storm drainage pattern for the area; and

8-14 (9) require lot and block monumentation to be set by a
8-15 registered professional surveyor before recordation of the plat.

8-16 SECTION 5. Subchapter A, Chapter 232, Local Government Code,
8-17 is amended by adding Section 232.0031 to read as follows:

8-18 Sec. 232.0031. STANDARD FOR ROADS IN SUBDIVISION. A county
8-19 may not impose under Section 232.003 a higher standard for streets
8-20 or roads in a subdivision than the county imposes on itself for the
8-21 construction of streets or roads with a similar type and amount of
8-22 traffic.

8-23 SECTION 6. Section 232.004, Local Government Code, is
8-24 amended to read as follows:

8-25 Sec. 232.004. BOND REQUIREMENTS. If the commissioners court
8-26 requires the owner of the tract to execute a bond, the owner must
9-1 do so before subdividing the tract unless an alternative financial
9-2 guarantee is provided under Section 232.0045. The bond must:

9-3 (1) be payable to the county judge of the county in
9-4 which the subdivision will be located or to the judge's successors
9-5 in office;

9-6 (2) be in an amount determined by the commissioners
9-7 court to be adequate to ensure proper construction of the roads and
9-8 streets in and drainage requirements for the subdivision, but not
9-9 to exceed the estimated cost of construction of the roads, [and]
9-10 streets, and drainage requirements;

9-11 (3) be executed with sureties as may be approved by
9-12 the court;

9-13 (4) be executed by a company authorized to do business
9-14 as a surety in this state if the court requires a surety bond
9-15 executed by a corporate surety; and

9-16 (5) be conditioned that the roads and streets and the
9-17 drainage requirements for the subdivision will be constructed:

9-18 (A) in accordance with the specifications
9-19 adopted by the court; and

9-20 (B) within a reasonable time set by the court.

9-21 SECTION 7. Section 232.008, Local Government Code, is
9-22 amended by adding Subsection (h) to read as follows:

9-23 (h) The commissioners court may deny a cancellation under
9-24 this section if the commissioners court determines the cancellation
9-25 will prevent the proposed interconnection of infrastructure to
9-26 pending or existing development.

10-1 SECTION 8. Section 232.009, Local Government Code, is
10-2 amended by amending Subsection (c) and adding Subsection (f) to
10-3 read as follows:

10-4 (c) After the application is filed with the commissioners
10-5 court, the court shall publish a notice of the application in a
10-6 newspaper of general circulation in the county. The notice must
10-7 include a statement of the time and place at which the court will
10-8 meet to consider the application and to hear protests to the
10-9 revision of the plat. The notice must be published at least three
10-10 times during the period that begins on the 30th day and ends on the
10-11 seventh day before the date of the meeting. Except as provided by
10-12 Subsection (f), if [If] all or part of the subdivided tract has
10-13 been sold to nondeveloper owners, the court shall also give notice
10-14 to each of those owners by certified or registered mail, return
10-15 receipt requested, at the owner's address in the subdivided tract.

10-16 (f) The commissioners court is not required to give notice
10-17 by mail under Subsection (c) if the plat revision only combines
10-18 existing tracts.

10-19 SECTION 9. Section 232.028, Local Government Code, is
10-20 amended by adding Subsection (g) to read as follows:

10-21 (g) The commissioners court may impose a fee for a
10-22 certificate issued under this section for a subdivision part of
10-23 which is located in the extraterritorial jurisdiction of a
10-24 municipality and part of which is not located in the
10-25 extraterritorial jurisdiction of the municipality. The amount of
10-26 the fee may not be greater than the amount of the fee imposed by
11-1 the municipality for a subdivision that is located entirely in the
11-2 extraterritorial jurisdiction of the municipality for a certificate
11-3 issued under Section 212.0115. A person who obtains a certificate
11-4 under this section is not required to obtain a certificate under
11-5 Section 212.0115.

11-6 SECTION 10. (a) This Act takes effect September 1, 1999,
11-7 and applies only to land subdivided or a plat filed on or After
11-8 that date.

11-9 (b) Section 232.0025, Local Government Code, as added by
11-10 this Act, applies only to a plat application submitted to a county
11-11 on or After October 1, 1999. A plat application submitted to a
11-12 county before October 1, 1999, is governed by the law as it existed
11-13 immediately before the effective date of this Act, and that law is
11-14 continued in effect for that purpose.

11-15 SECTION 11. The importance of this legislation and the
11-16 crowded condition of the calendars in both houses create an
11-17 emergency and an imperative public necessity that the
11-18 constitutional rule requiring bills to be read on three several
11-19 days in each house be suspended, and this rule is hereby suspended.

President of the Senate Speaker of the House

I hereby certify that S.B. No. 710 passed the Senate on April 19, 1999, by a viva-voce vote; and that the Senate concurred in House amendments on May 5, 1999, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 710 passed the House, with amendments, on April 27, 1999, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

SB 1690

AN ACT

1-1 relating to coastal erosion.

1-2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-3 SECTION 1. This Act may be cited as the Joe Faggard Coastal
1-4 Erosion Planning and Response Act.

1-5 SECTION 2. Public beaches and bays are the economic backbone
1-6 of the cities and counties on the Texas Gulf Coast. Natural and
1-7 man-made forces are eroding those beaches and bay shores,
1-8 threatening the coastal tourism industry, parks and other public
1-9 lands and facilities, hotels, restaurants, businesses and other
1-10 commercial property, highways and other transportation
1-11 infrastructure, and fish and wildlife habitat, and destroying the
1-12 public's right to enjoy free public beaches guaranteed under the
1-13 Texas open beaches law, Chapter 61, Natural Resources Code. A
1-14 coastal erosion response program, partially funded by the hotel
1-15 occupancy tax, will preserve all of these vital assets and natural
1-16 resources and protect the economic future of the Texas Gulf Coast.

1-17 SECTION 3. Subsections (a) through (e), Section 33.136,
1-18 Natural Resources Code, are amended to read as follows:

1-19 (a) Notwithstanding any law to the contrary, a person may
1-20 not undertake[, on the public beach, as defined in Section
1-21 61.001(8), Texas Natural Resources Code,] an action on or
1-22 immediately landward of a public beach or submerged land, including
1-23 state mineral lands, relating to erosion response that will cause
1-24 or contribute to shoreline alteration before the person has
2-1 conducted and filed a coastal boundary survey in the same manner as
2-2 the survey of public land required by Chapter 21 and any applicable
2-3 rule of the commissioner and has obtained any required lease or
2-4 other instrument from the commissioner or board, as applicable. A
2-5 person is not required to obtain a lease or other instrument from
2-6 the commissioner or board if the action is confined to land owned
2-7 by a navigation district or municipality. On filing of the survey,
2-8 the shoreline depicted on the survey is a fixed line for the
2-9 purpose of locating a shoreline boundary, subject to movement
2-10 [erosion] landward of that line. A coastal boundary survey
2-11 conducted under this section may not be filed until the
2-12 commissioner gives notice of approval under Subsection (c).

2-13 (b) The survey must contain the following statement:
2-14 "NOTICE: This survey was performed in accordance with Section
2-15 33.136, Natural Resources Code, for the purpose of evidencing the
2-16 location of the shoreline in the area depicted in this survey as
2-17 that shoreline existed before commencement of erosion response
2-18 activity [on the public beach], as required by Chapter 33, Natural
2-19 Resources Code. The line depicted on this survey fixes the

2-20 shoreline for the purpose of locating a shoreline boundary, subject
2-21 to movement [erosion] landward as provided by Section 33.136,
2-22 Natural Resources Code."
2-23 (c) Within 30 days After the date the commissioner approves
2-24 a coastal boundary survey [fixing the location of the shoreline]
2-25 under this section, the commissioner shall provide notice of that
2-26 approval [the commissioner's action] by:
3-1 (1) publication in the Texas Register;
3-2 (2) publication for two consecutive weeks in a
3-3 newspaper of general circulation in the county or counties in which
3-4 the land depicted in the survey is located; and
3-5 (3) filing a copy of the approval [commissioner's
3-6 decision] in the archives and records division of the land office.
3-7 (d) A person who claims title to permanent school fund land
3-8 as a result of accretion, reliction, or avulsion in the coastal
3-9 zone on or After September 1, 1999, [on the public beach in an area
3-10 where the shoreline was or may have been changed by an action
3-11 relating to erosion response] must, in order to prevail in the
3-12 claim, prove that:
3-13 (1) a change in the shoreline has occurred;
3-14 (2) the change did not occur as a result of the
3-15 claimant's actions, the action of any predecessor in title, the
3-16 action of any grantee, assignee, licensee, or person authorized by
3-17 the claimant to use the claimant's land, or an erosion response
3-18 activity; and
3-19 (3) the claimant is entitled to benefit from the
3-20 change.
3-21 (e) An upland owner who, because of erosion response
3-22 activity undertaken by the commissioner, ceases to hold title to
3-23 land that extends to the shoreline as altered by the erosion
3-24 response activity is entitled to continue to exercise all littoral
3-25 rights possessed by that owner before the date the erosion response
3-26 activity commenced, including rights of ingress, egress, boating,
4-1 bathing, and fishing.
4-2 SECTION 4. Subdivision (10), Section 33.203, Natural
4-3 Resources Code, is amended to read as follows:
4-4 (10) "Critical erosion area" has the meaning assigned
4-5 to the term "critical coastal erosion area" [means an area
4-6 designated] by [the land commissioner under] Section 33.601(4)
4-7 [33.601(b)].
4-8 SECTION 5. Subchapter H, Chapter 33, Natural Resources Code,
4-9 is amended to read as follows:
4-10 SUBCHAPTER H. COASTAL EROSION
4-11 Sec. 33.601. DEFINITIONS. In this subchapter:
4-12 (1) "Account" means the coastal erosion response
4-13 account established under Section 33.604.

- 4-14 (2) "Beach nourishment" means the placement of
4-15 beach-quality sediment on an eroded beach to restore it as a
4-16 recreational beach, provide storm protection for upland property,
4-17 maintain a restored beach by the replacement of sand, or serve
4-18 other similar beneficial purposes.
- 4-19 (3) "Coastal erosion" means the loss of land, marshes,
4-20 wetlands, beaches, or other coastal features within the coastal
4-21 zone because of the actions of wind, waves, tides, storm surges,
4-22 subsidence, or other forces.
- 4-23 (4) "Critical coastal erosion area" means a coastal
4-24 area that is experiencing historical erosion, according to the most
4-25 recently published data of the Bureau of Economic Geology of The
4-26 University of Texas at Austin, that the commissioner finds to be a
5-1 threat to:
- 5-2 (A) public health, safety, or welfare;
5-3 (B) public beach use or access;
5-4 (C) general recreation;
5-5 (D) traffic safety;
5-6 (E) public property or infrastructure;
5-7 (F) private commercial or residential property;
5-8 (G) fish or wildlife habitat; or
5-9 (H) an area of regional or national importance.
- 5-10 (5) "Erosion response project" means an action
5-11 intended to address or mitigate coastal erosion, including beach
5-12 nourishment, sediment management, beneficial use of dredged
5-13 material, creation or enhancement of a dune, wetland, or marsh, and
5-14 construction of a breakwater, bulkhead, groin, jetty, or other
5-15 structure.
- 5-16 (6) "Hard structure" means an erosion response
5-17 structure such as a bulkhead, seawall, revetment, jetty, groin, or
5-18 similar structure that is the functional equivalent of one of those
5-19 structures.
- 5-20 (7) "Institution of higher education" has the meaning
5-21 assigned by Section 61.003, Education Code.
- 5-22 (8) "Local government" means a political subdivision
5-23 of this state.
- 5-24 (9) "Project cooperation agreement" means a contract
5-25 executed by the land office and a qualified project partner that
5-26 explicitly defines the terms under which a study or project will be
6-1 conducted.
- 6-2 (10) "Public beach" has the meaning assigned by
6-3 Section 61.013.
- 6-4 (11) "Qualified project partner" means a local
6-5 government, state or federal agency, institution of higher
6-6 education, homeowners' association, or other public or private
6-7 entity that enters into an agreement with the land office to

6-8 finance, study, design, install, or maintain an erosion response
6-9 project.

6-10 (12) "Shared project cost" means a project cost
6-11 identified by the commissioner and established in a project
6-12 cooperation agreement that will be shared with a qualified project
6-13 partner.

6-14 Sec. 33.602. COASTAL EROSION DUTIES AND AUTHORITY. (a) The
6-15 land office shall implement a program [act as the lead agency for
6-16 the coordination] of coastal erosion avoidance, remediation, and
6-17 planning. The commissioner shall ensure that erosion avoidance,
6-18 remediation, and planning protect the common law rights of the
6-19 public in public beaches as affirmed by Subchapter B, Chapter 61
6-20 [of this code].

6-21 (b) The commissioner shall publish and periodically update a
6-22 coastal erosion response plan. The commissioner shall develop the
6-23 plan[,] in coordination with state and federal agencies and local
6-24 governments and provide for public input on the plan. The plan
6-25 must[, promulgate rules, recommendations, standards, and guidelines
6-26 for erosion avoidance and remediation and for prioritizing critical
7-1 coastal erosion areas. The commissioner shall] identify critical
7-2 coastal erosion areas and prioritize coastal erosion response
7-3 studies and projects so that:

7-4 (1) benefits are balanced throughout the coast;

7-5 (2) federal and local financial participation is
7-6 maximized;

7-7 (3) studies and projects are scheduled to achieve
7-8 efficiencies and economies of scale; and

7-9 (4) the severity of erosion effects in each area is
7-10 taken into account [establish recommendations, standards, and
7-11 guidelines for coastal erosion avoidance and remediation in those
7-12 areas].

7-13 (c) The commissioner may adopt rules necessary to implement
7-14 this subchapter.

7-15 Sec. 33.603 [33.602]. COASTAL EROSION STUDIES AND PROJECTS.

7-16 (a) The land office shall undertake coastal [engage in] erosion
7-17 studies, demonstration projects, and response projects if the land
7-18 office receives legislative appropriations or other funding for
7-19 that purpose. If reasonable and appropriate, the land office shall
7-20 work [studies] in conjunction with other state agencies, local
7-21 governments, [and] federal agencies, including the United States
7-22 Army Corps of Engineers, or other qualified project partners in
7-23 undertaking those studies and projects.

7-24 (b) The studies and [Such] projects [and studies] shall
7-25 address:

7-26 (1) assessment of the feasibility, cost, and financing
8-1 of different methods of avoiding, slowing, or remedying coastal

8-2 erosion;

8-3 (2) beneficial[, including but not limited to the

8-4 following:]

8-5 [(1) selective] placement [and stockpiling] of

8-6 [beach-quality] dredged material where appropriate to replenish

8-7 eroded public beach, bay shore, marsh [bay], and dune areas;

8-8 (3) public beach, bay shore, and marsh nourishment or

8-9 restoration projects using sediments other than material from

8-10 navigational or other dredging projects;

8-11 (4) [(2)] guidelines on grain size and toxicity level;

8-12 (5) the economic, natural resource, and other benefits

8-13 of coastal erosion projects;

8-14 (6) [(3)] establishment of beach nourishment projects

8-15 as a method of flood control;]

8-16 [(4) promoting] the protection, revegetation, and

8-17 restoration of dunes;

8-18 (7) [(5)] the planting of vegetation as a means of

8-19 inhibiting bay shore [bayshore] erosion and projects developing and

8-20 cultivating disease-resistant vegetation adapted to local

8-21 conditions;

8-22 (8) [(6)] decreasing the current deficiency in the sand

8-23 budget;]

8-24 [(7)] the construction or retrofitting [feasibility]

8-25 of [constructing new] dams, jetties, groins, and other impoundment

8-26 structures with sediment bypassing systems;

9-1 [(8) the feasibility of retrofitting existing

9-2 impoundment structures to allow sediment bypassing;]

9-3 (9) estimating the quantity and quality of sediment

9-4 trapped by reservoirs, navigation channels, and placement areas and

9-5 identification of other [the] sediment sources;

9-6 (10) hard structures on bay shorelines, [decreasing

9-7 and eliminating human-induced subsidence by means including, but

9-8 not limited to, evaluating the consequences of limiting groundwater

9-9 withdrawals and maintaining adequate pressure in hydrocarbon

9-10 reservoirs, consistent with proper petroleum reservoir engineering

9-11 principles and applicable regulatory requirements; and]

9-12 [(11)] giving preference to [and encouraging] "soft"

9-13 methods of avoiding, slowing, or remedying erosion in lieu of

9-14 erecting hard or rigid shorefront structures;

9-15 (11) storm damage mitigation, post-storm damage

9-16 assessment, and debris removal from public beaches; and

9-17 (12) other studies or projects the commissioner

9-18 considers necessary or appropriate to implement this subchapter.

9-19 (c) An agreement between the commissioner and a qualified

9-20 project partner to undertake a coastal erosion response study or

9-21 project:

9-22 (1) must require the qualified project partner to pay
9-23 at least 25 percent of the shared project cost:
9-24 (A) before completion of the project; or
9-25 (B) following completion of the project, in
9-26 accordance with a schedule provided by the agreement; and
10-1 (2) may contain other terms governing the study or
10-2 project.
10-3 (d) This chapter does not authorize the construction or
10-4 funding of a hard structure on or landward of a public beach.

10-5 Sec. 33.604. COASTAL EROSION RESPONSE ACCOUNT. (a) The
10-6 coastal erosion response account is an account in the general
10-7 revenue fund that may be appropriated only to the commissioner and
10-8 used only for the purpose of implementing this subchapter.
10-9 (b) The account consists of:
10-10 (1) all money appropriated for the purposes of this
10-11 subchapter;
10-12 (2) grants to this state from the United States for
10-13 the purposes of this subchapter; and
10-14 (3) all money received by this state from the sale of
10-15 dredged material.

10-16 Sec. 33.605. USES OF ACCOUNT. (a) Money in the account may
10-17 be used for any action authorized by this subchapter.
10-18 (b) The commissioner must approve an expenditure from the
10-19 account. In determining whether to approve an expenditure for a
10-20 study or project, the commissioner shall consider:
10-21 (1) the amount of money in the account;
10-22 (2) the feasibility and cost-effectiveness of the
10-23 study or project;
10-24 (3) the locations of other existing or proposed
10-25 erosion response projects;
10-26 (4) the needs in other critical coastal erosion areas;
11-1 (5) the effect of the study or project on public or
11-2 private property; and
11-3 (6) if the site to be studied or project to be
11-4 conducted will be located within the jurisdiction of a local
11-5 government subject to Chapter 61 or 63, whether the local
11-6 government is adequately administering those chapters.

11-7 Sec. 33.606 [33.603]. GRANTS AND GIFTS. The commissioner
11-8 may apply for, request, solicit, contract for, receive, and accept
11-9 gifts, grants, donations, and other assistance from any source to
11-10 carry out the powers and duties provided by this subchapter.

11-11 Sec. 33.607 [33.604]. COASTAL EROSION PUBLIC AWARENESS AND
11-12 EDUCATION. (a) The land office shall be responsible for and shall
11-13 coordinate with other agencies to increase public awareness through
11-14 public education concerning:
11-15 (1) the causes of erosion;

11-16 (2) the consequences of erosion;
11-17 (3) the importance of barrier islands, dunes, and bays
11-18 as a natural defense against storms and hurricanes; and
11-19 (4) erosion avoidance techniques.
11-20 (b) On an ongoing basis, the [The] commissioner, in
11-21 consultation [cooperation] with the Bureau of Economic Geology of
11-22 The University of Texas at Austin [Bureau of Economic Geology] and
11-23 coastal [local] county and municipal governments [for each coastal
11-24 county], shall monitor historical [jointly quantify the] erosion
11-25 rates at each location along the shore of the Gulf of Mexico.

11-26 (c) The commissioner shall make historical erosion data
12-1 accessible, through the Internet and otherwise, to the public and
12-2 persons receiving the notice required under Section 61.025.

12-3 (d) The Bureau of Economic Geology of The University of
12-4 Texas at Austin shall make historical erosion data relating to a
12-5 critical coastal erosion area available to each state agency, local
12-6 government, or other person responsible for, or with jurisdiction
12-7 over, the area.

12-8 (e) A local government subject to Chapter 61 or 63 is
12-9 encouraged to use historical erosion data to[,] prepare a plan for
12-10 reducing public expenditures for erosion and storm damage losses to
12-11 public and private property, including public beaches, by
12-12 establishing and implementing a building set-back line that will
12-13 accommodate a [50-year] shoreline retreat. The local government
12-14 shall hold a public educational meeting on the plan before
12-15 proposing to implement it through the plans, orders, or ordinances
12-16 provided by Chapters 61 and 63[, and report back to the legislature
12-17 with recommendations].

12-18 Sec. 33.608. REPORT TO LEGISLATURE. Each biennium, the
12-19 commissioner shall submit to the legislature a report listing:

- 12-20 (1) each critical erosion area;
12-21 (2) each proposed erosion response study or project;
12-22 (3) an estimate of the cost of each proposed study or
12-23 project described by Subdivision (2);
12-24 (4) each coastal erosion response study or project
12-25 funded under this subchapter during the preceding biennium;
12-26 (5) the economic and natural resource benefits from
13-1 each coastal erosion response study or project described by
13-2 Subdivision (4);
13-3 (6) the financial status of the account; and
13-4 (7) an estimate of the cost of implementing this
13-5 subchapter during the succeeding biennium.

13-6 Sec. 33.609. LANDOWNER CONSENT. (a) The commissioner may
13-7 not undertake a coastal erosion response project on:

- 13-8 (1) permanent school fund land without first obtaining
13-9 the written consent of the school land board; or

13-10 (2) private property, other than that encumbered by
13-11 the common law rights of the public affirmed by Chapter 61, without
13-12 first obtaining the written consent of the property owner.

13-13 (b) If the commissioner cannot determine the identity of or
13-14 locate a property owner, consent is considered to have been given
13-15 if:

13-16 (1) the commissioner publishes a notice of the project
13-17 at least once a week for two consecutive weeks in the newspaper
13-18 having the largest circulation in the county in which the project
13-19 is located; and

13-20 (2) the property owner does not object on or before
13-21 the 20th day After the last date notice is published under
13-22 Subdivision (1).

13-23 Sec. 33.610. REMOVAL OF SUBMERGED LAND FROM APPRAISAL AND

13-24 TAX ROLLS. (a) If the commissioner determines that land has
13-25 become submerged by erosion or subsidence and as a result is
13-26 dedicated to the permanent school fund, the commissioner may notify
14-1 in writing the appraisal district that appraises the land for ad
14-2 valorem tax purposes and each taxing unit that imposes taxes on the
14-3 land. The notice must include a legal description of the land.

14-4 (b) On receipt of notice under Subsection (a):

14-5 (1) the appraisal district shall remove the land from
14-6 the appraisal roll; and

14-7 (2) each taxing unit shall remove the land from its
14-8 tax roll.

14-9 Sec. 33.611. IMMUNITY. (a) This state, the commissioner,
14-10 and land office staff are immune from suit for damages and from
14-11 liability for an act or omission related to:

14-12 (1) the approval, disapproval, funding, or performance
14-13 of a coastal erosion response activity, including an erosion
14-14 response study or project or a survey; or

14-15 (2) the failure of an erosion response project
14-16 undertaken by the commissioner under this subchapter to fulfill its
14-17 intended purpose.

14-18 (b) The immunity granted by this section does not apply to
14-19 an act or omission that is intentional, wilfully or wantonly
14-20 negligent, or committed with conscious indifference or reckless
14-21 disregard for the safety of others.

14-22 Sec. 33.612. JUDICIAL REVIEW. (a) Judicial review of
14-23 rights affected by an action of this state, the commissioner, or
14-24 land office staff under this subchapter is under the substantial
14-25 evidence rule. In order to prevail, a person seeking review must
14-26 prove that the action complained of was arbitrary, capricious, or
15-1 otherwise not in accordance with law.

15-2 (b) Venue for an action relating to this subchapter is in
15-3 Travis County.

15-4 SECTION 6. Subsections (a) and (b), Section 40.151, Natural
15-5 Resources Code, are amended to read as follows:

15-6 (a) The purpose of this subchapter is to provide immediately
15-7 available funds for response to all unauthorized discharges, for
15-8 cleanup of pollution from unauthorized discharges of oil, [and] for
15-9 payment of damages from unauthorized discharges of oil, and for
15-10 erosion response projects.

15-11 (b) The coastal protection fund is established in the state
15-12 treasury to be used by the commissioner as a nonlapsing revolving
15-13 fund only for carrying out the purposes of this chapter and of
15-14 Subchapter H, Chapter 33. To this fund shall be credited all fees,
15-15 penalties, judgments, reimbursements, and charges provided for in
15-16 this chapter and the fee revenues levied, collected, and credited
15-17 pursuant to this chapter. The fund shall not exceed \$50 million.

15-18 SECTION 7. Subsection (a), Section 40.152, Natural Resources
15-19 Code, is amended to read as follows:

15-20 (a) Money in the fund may be disbursed for the following
15-21 purposes and no others:

15-22 (1) administrative expenses, personnel and training
15-23 expenses, and equipment maintenance and operating costs related to
15-24 implementation and enforcement of this chapter;

15-25 (2) response costs related to abatement and
15-26 containment of actual or threatened unauthorized discharges of oil
16-1 incidental to unauthorized discharges of hazardous substances;

16-2 (3) response costs and damages related to actual or
16-3 threatened unauthorized discharges of oil;

16-4 (4) assessment, restoration, rehabilitation, or
16-5 replacement of or mitigation of damage to natural resources damaged
16-6 by an unauthorized discharge of oil;

16-7 (5) in an amount not to exceed \$50,000 annually, the
16-8 small spill education program;

16-9 (6) in an amount not to exceed \$1,250,000 annually,
16-10 interagency contracts under Section 40.302 [of this code];

16-11 (7) the purchase of response equipment under Section
16-12 40.105 [of this code] within two years of the effective date of
16-13 this chapter, in an amount not to exceed \$4 million; thereafter,
16-14 for the purchase of equipment to replace equipment that is worn or
16-15 obsolete;

16-16 (8) an inventory under Section 40.107 [of this code],
16-17 to be completed by September 1, 1995, in an amount not to exceed \$6
16-18 million; [and]

16-19 (9) other costs and damages authorized by this
16-20 chapter; and

16-21 (10) in an amount not to exceed the interest accruing
16-22 to the fund annually, erosion response projects under Subchapter H,
16-23 Chapter 33.

16-24 SECTION 8. Section 40.153, Natural Resources Code, is
16-25 amended to read as follows:
16-26 Sec. 40.153. REIMBURSEMENT OF FUND. The commissioner shall
17-1 recover to the use of the fund, either from persons responsible for
17-2 the unauthorized discharge or otherwise liable or from the federal
17-3 fund, jointly and severally, all sums owed to or expended from the
17-4 fund. This section does not apply to sums expended under Section
17-5 40.152(a)(10).

17-6 SECTION 9. Section 40.161, Natural Resources Code, is
17-7 amended by adding Subsection (c) to read as follows:
17-8 (c) This section does not apply to a sum expended under
17-9 Section 40.152(a)(10).

17-10 SECTION 10. Subsection (a), Section 61.025, Natural
17-11 Resources Code, is amended to read as follows:
17-12 (a) A person who sells or conveys an interest, other than a
17-13 mineral, leasehold, or security interest, in real property located
17-14 seaward of the Gulf Intracoastal Waterway to its southernmost point
17-15 and then seaward of the longitudinal line also known as 97 degrees,
17-16 12', 19" which runs southerly to the international boundary from
17-17 the intersection of the centerline of the Gulf Intracoastal
17-18 Waterway and the Brownsville Ship Channel must include in any
17-19 executory contract for conveyance the following statement:
17-20 The real property described in this contract is located
17-21 seaward of the Gulf Intracoastal Waterway to its southernmost point
17-22 and then seaward of the longitudinal line also known as 97 degrees,
17-23 12', 19" which runs southerly to the international boundary from
17-24 the intersection of the centerline of the Gulf Intracoastal
17-25 Waterway and the Brownsville Ship Channel. If the property is in
17-26 close proximity to a beach fronting the Gulf of Mexico, the
18-1 purchaser is hereby advised that the public has acquired a right of
18-2 use or easement to or over the area of any public beach by
18-3 prescription, dedication, or presumption, or has retained a right
18-4 by virtue of continuous right in the public since time immemorial,
18-5 as recognized in law and custom.

18-6 The extreme seaward boundary of natural vegetation that
18-7 spreads continuously inland customarily marks the landward boundary
18-8 of the public easement. If there is no clearly marked natural
18-9 vegetation line, the landward boundary of the easement is as
18-10 provided by Sections 61.016 and 61.017, Natural Resources Code.

18-11 State law prohibits any obstruction, barrier, restraint, or
18-12 interference with the use of the public easement, including the
18-13 placement of structures seaward of the landward boundary of the
18-14 easement. STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE
(OR
18-15 OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD
OF THE

18-16 VEGETATION LINE AS A RESULT OF NATURAL PROCESSES SUCH AS
SHORELINE

18-17 EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO
REMOVE

18-18 THE STRUCTURES.

18-19 The purchaser is hereby notified that the purchaser should:

18-20 (1) determine the rate of shoreline erosion in the

18-21 vicinity of the real property; and

18-22 (2) seek the advice of an attorney or other qualified

18-23 person before executing this contract or instrument of conveyance

18-24 as to the relevance of these statutes and facts to the value of the

18-25 property the purchaser is hereby purchasing or contracting to

18-26 purchase.

19-1 SECTION 11. (a) Except as provided by Section 12 of this

19-2 Act, this Act takes effect September 1, 1999.

19-3 (b) Subsection (d), Section 33.136, Natural Resources Code,

19-4 as amended by this Act, applies only to a cause of action that

19-5 accrues on or After September 1, 1999. A cause of action that

19-6 accrued before the effective date of this Act is covered by the law

19-7 as it existed immediately before that date, and that law is

19-8 continued in effect for that purpose.

19-9 (c) Section 33.609, Natural Resources Code, as added by this

19-10 Act, applies only to erosion response activity undertaken on or

19-11 After September 1, 1999.

19-12 (d) Section 33.611, Natural Resources Code, as added by this

19-13 Act, applies only to a cause of action that accrues on or After

19-14 September 1, 1999. A cause of action that accrued before the

19-15 effective date of this Act is covered by the law as it existed

19-16 immediately before that date, and that law is continued in effect

19-17 for that purpose.

19-18 SECTION 12. This Act takes effect only if a specific

19-19 appropriation for the implementation of this Act is provided in

19-20 H.B. No. 1 (General Appropriations Act), Acts of the 76th

19-21 Legislature, Regular Session, 1999. If no specific appropriation

19-22 is provided in H.B. No. 1, the General Appropriations Act, this Act

19-23 has no effect.

19-24 SECTION 13. The importance of this legislation and the

19-25 crowded condition of the calendars in both houses create an

19-26 emergency and an imperative public necessity that the

20-1 constitutional rule requiring bills to be read on three several

20-2 days in each house be suspended, and this rule is hereby suspended.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1690 passed the Senate on
April 28, 1999, by a viva-voce vote; and that the Senate concurred
in House amendments on May 18, 1999, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1690 passed the House, with amendments, on May 12, 1999, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

ENDNOTES

1. Penny Redington, "County Planning: An Overview of the Tools Currently Available," presented at the University of Texas School of Law 4th Annual Conference on Land Use Planning Law, February 24 and 25, 2000, Austin, Texas
2. Texas Association of Counties Newsletter, Friday, July 21, 2000, Volume 8, Issue 29, by Paul Sugg
3. Mark S. Coleman, Executive Director of the Oklahoma Department of Environmental Quality, at seminar entitled "Democratizing Environmental Policy: Setting the Agenda," August 31, 2000, Texas State Capitol Building.
4. Letter dated March 28, 2000 from Brownwood City Manager Gary Butts
5. Letter dated April 6, 2000 from San Juan Planning Director Jeff Underwood
6. Letter dated March 27, 2000 from Conroe City Attorney Marcus L. Winberry
7. Letter dated May 30, 2000 from Denton Mayor Euline Brock
8. Letter dated April 3, 2000 from Huntsville City Attorney Paul C. Isham
9. Letter dated April 4, 2000 from Plainview City Manager Jim Jeffers
10. Letter dated April 11, 2000 from Wichita Falls City Planning Administrator Steve Seese
11. Letter dated April 24, 2000 from Abilene City Attorney Sharon E. Hicks
12. Letter dated June 6, 2000 from Amarillo Mayor Kel Seliger
13. Letter dated March 29, 2000 from Atlanta City Manager Mike Ahrens
14. Letter dated April 17, 2000 from Bastrop City Manager Randall E. Holly
15. Letter dated April 18, 2000 from Boerne City Manager Ronald C. Bowman
16. Letter dated March 28, 2000 from Brownwood City Manager Gary Butts
17. Letter postmarked May 1, 2000 from College Station Mayor Lynn McIllhane
18. Letter dated March 24, 2000 from Commerce Mayor John R. Sands
19. Letter dated March 27, 2000 from Conroe City Attorney Marcus L. Winberry
20. Letter dated March 23, 2000 from Converse City Manager Sam Hughes
21. Letter dated March 27, 2000 from Coppell Mayor Candy Sheehan

22. Letter dated March 30, 2000 from Dumas City Manager Ron Bottoms
23. Letter dated March 24, 2000 from Elgin City Manager Jim D. Dunaway
24. Letter dated April 14, 2000 from Flower Mound Mayor Lori DeLuca
25. Letter dated March 24, 2000 from Hereford City Manager Chester Nolen
26. Letter dated April 17, 2000 from Kaufman city representative P.D.Creer, Jr.
27. Letter dated April 5, 2000 from Lake Jackson City Manager William P. Yenne
28. Letter dated April 11, 2000 from Lamesa City Manager Paul Feazelle
29. Letter dated April 11, 2000 from Lubbock Mayor Windy Sitton
30. Letter dated March 29, 2000 from Mansfield Director of Planning Felix Wong
31. Letter dated May 2 from Missouri City City Manager James Thurmond
32. Letter dated April 3, 2000 from New Braunfels City Manager Mike Shands
33. Letter dated April 4, 2000 from Plainview City Manager Jim Jeffers
34. Letter dated March 22, 2000 from Plano Assistant City Attorney John Gilliam and Director of Planning Phyllis Jarrell
35. Letter dated May 25, 2000 from Round Rock Mayor Robert A. Stluka, Jr.
36. Letter dated April 11, 2000 from Wichita Falls City Planning Administrator Steve Seese
37. Letter dated May 31, 2000 from Corpus Christi City Manager David R. Garcia
38. Letter dated March 28, 2000 from Dayton City Manager Robert Ewart
39. Letter dated April 5, 2000 from Houston Director of State and Federal Relations Cary Grace
40. Letter dated May 31, 2000 from Lakeway Mayor Charles A. Edwards
41. Letter dated May 16, 2000 from La Porte City Manager Robert T. Herrera
42. Letter postmarked April 4, 2000 from City of Sealy
43. Letter dated April 11, 2000 from Wichita Falls City Planning Administrator Steve Seese
44. Letter dated May 31, 2000 from Austin Assistant City Manager Toby Hammett Futrell
45. Letter dated April 5, 2000 from Beaumont City Manager Stephen J. Bonczek

46. Memorandum dated May 8, 2000 from Mark Lewis, Burleson Director of Community Development
47. Letter dated May 24, 2000 from Cedar Park City Attorney Leonard B. Smith
48. Letter dated March 23, 2000 from Converse City Manager Sam Hughes
49. Letter dated March 27, 2000 from Coppell Mayor Candy Sheehan
50. Letter dated May 31, 2000 from Corpus Christi City Manager David R. Garcia
51. Letter dated May 15, 2000 from El Paso Interim Director of planning Patricia D. Aduato
52. Letter dated April 6, 2000 from Highland Village Community Services Coordinator Sue Thompson
53. Letter dated April 5, 2000 from Houston Director of State and Federal Relations Cary Grace
54. Letter dated April 17, 2000 from Kaufman city official P.D. Creer, Jr.
55. Letter dated April 5, 2000 from Lake Jackson City Manager William P. Yenne
56. Letter dated April 11, 2000 from Lamesa City Manager Paul Feazelle
57. Letter dated May 31, 2000 from Lewisville City Manager Claude King
58. Letter dated April 12, 2000 from Longview City Planner Scott Sopchak
59. Letter dated March 31, 2000 from Mesquite City Manager Ted Barron
60. Letter dated May 2, 2000 from Missouri City City Manager James Thurmond
61. Letter dated March 24, 2000 from Robinson City Manager R.C. "Dick" Fletcher
62. Letter dated May 25, 2000 from Round Rock Mayor Robert A. Stluka, Jr.
63. Memorandum dated April 3, 2000 from Temple Planning Director B.A. Bailey
64. Letter dated April 11, 2000 from Wichita Falls City Planning Administrator Steve Seese
65. John P. Campbell, P.E., Director, Right of Way Division, Texas Department of Transportation, "Billboard Regulation" March 3, 2000
66. Texas Local Government Code, Section 232.0015(c)(d)
67. Texas Local Government Code, Section 232.0015(e)
68. Texas Local Government Code, Section 232.0015(f)

69. Texas Local Government Code, Section 232.0015(g)
70. Texas Local Government Code, Section 232.0015(h)
71. Texas Local Government Code, Section 232.0015(i)
72. Texas Local Government Code, Section 232.0015(j)
73. Texas Local Government Code, Section 232.0015(k)
74. Jon Needle & Paul Sugg, “Overview of Local Government Code Chapter 232, Subchapter A, and County Subdivision Regulation Authority,” County Subdivision Regulation Sourcebook, Texas Association of Counties, 2000
75. Attorney General’s Opinion JC-0260, issued July 26, 2000, Office of Attorney General John Cornyn