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**HOUSE COMMITTEE ON COUNTY AFFAIRS  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2006**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
80TH TEXAS LEGISLATURE**

**WAYNE SMITH  
CHAIRMAN**

**COMMITTEE CLERK  
TRAVIS SAMPLEY**

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Committee On  
County Affairs

November 21, 2006

Wayne Smith  
Chairman

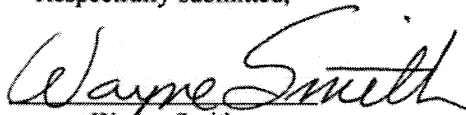
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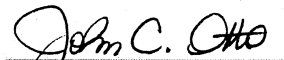
The Honorable Tom Craddick  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701


Dear Mr. Speaker and Fellow Members:

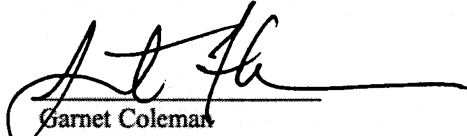
The Committee on County Affairs of the Seventy-Ninth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eightieth Legislature.

Respectfully submitted,

  
Wayne Smith


  
John Otto

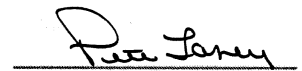
  
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Members: David Farabee, Dora Olivo, Carter Casteel, Garnet Coleman, James "Pete" Laney, Elliott Naishtat, Kirk England





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## TABLE OF CONTENTS

INTRODUCTION.....	1
INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS .....	2
CHARGE 1 .....	3
Scope of Charge .....	4
Background .....	4
Current Authority Granted to Counties .....	5
County Platting Requirements.....	6
Land-use Authority.....	7
Impact Fees.....	7
Construction Codes .....	8
Testimony.....	8
Recommendation.....	9
CHARGE 2 .....	10
Background .....	11
County Constables.....	11
County Surveyor.....	12
County Treasurer.....	12
The Office of Inspector of Hides and Animals .....	13
Testimony.....	13
Recommendation.....	14
CHARGE 3 .....	15
Background .....	16
Statutory Authority Given to Counties to Regulate Fireworks During a Drought.....	16
Keetch-Byram Drought Index .....	20
Regulation of Fireworks and Fireworks Displays .....	22
Testimony.....	24
Recommendation.....	25
CHARGE 4 .....	26
Background .....	27
Government Functions That Affect County Budgets.....	27
Required and Optional Services.....	33
Recommendation.....	38
CHARGE 5 .....	39
Background .....	40
Current Activity.....	40
Testimony.....	41
Recommendation.....	42
APPENDIX .....	43
ENDNOTES.....	65



## **INTRODUCTION**

At the beginning of the 79th Legislature, the Honorable Tom Craddick, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on County Affairs: Ray Allen, Chair; Wayne Smith, Vice-Chair; John Otto; David Farabee, Dora Olivo; Carter Casteel; Garnet Coleman; James "Pete" Laney; and Elliott Naishtat.

On January 18, 2006, Representative Ray Allen resigned from the Legislature. Representative Allen did a great service to this committee and all Texas counties. In a special election, Kirk England was elected to represent the Texas House of Representatives District 106 and was later appointed by the Speaker of the House to serve on the House Committee on County Affairs as well as the House Committee on Corrections.

On February 1, 2006, Speaker Tom Craddick appointed Representative Wayne Smith to Chair the House Committee on County Affairs. Representative John Otto was appointed to Vice Chair of the committee, as Representative Smith previously held that post.

During the interim, the Speaker assigned charges to the committee. The Committee on County Affairs has completed its hearings and investigations, and has adopted the following report.



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## **HOUSE COMMITTEE ON COUNTY AFFAIRS**

### **INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS**

1. Examine the advisability and probable impacts of creating a system of graduated ordinance-making authorities for counties with populations over one million based on population densities and unique geographic and environmental needs.
2. Consider whether clarification or revision is needed to state statutes related to dormancy of office provisions and the abolition of local Constitutional offices.
3. Review the penalties and enforcement challenges related to public safety and the sale of fireworks.
4. Study cost drivers of county government functions.
5. Monitor the agencies and programs under the committee's jurisdiction.



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**CHARGE 1**

**Examine the advisability and probable impacts of creating a system of graduated ordinance-making authorities for counties with populations over one million based on population densities and unique geographic and environmental needs.**

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On October 19, 2005, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Examine the advisability and probable impacts of creating a system of graduated ordinance-making authorities for counties with populations over one million based on population densities and unique geographic and environmental needs.

**Scope of Charge**

As directed by the first charge, the Committee on County Affairs examined granting ordinance-making authority to counties with populations over one million. Only four counties in Texas fall into that category. They are Bexar County (population 1,518,370); Dallas County (population 2,305,454); Harris County (population 3,693,050) and Tarrant County (population 1,620,479).<sup>1</sup>

**Background**

According to the 2000 census, Texas' population increased by 23 percent, making it the eighth fastest growing state. A great deal of Texas' recent population boom has taken place in unincorporated areas that are outside of municipal jurisdiction. Most of this growth occurred in suburban counties. Nine of Texas' ten fastest growing counties contain large unincorporated areas adjacent to a major city: Bastrop and Williamson counties near Austin; Collin, Denton, and Rockwall counties near Dallas and Fort Worth; Bandera and Kendall counties near San Antonio; and Fort Bend and Montgomery counties near Houston.

Unincorporated areas of Texas' counties traditionally have been dominated by ranching and farming. The rural setting of these areas is an important part of their appeal to former city residents. Individuals can purchase and build homes with more flexibility than they could in a city because these areas do not have municipal development restrictions. However, new county residents may have preconceived expectations regarding the level of service that county governments provide.

Counties face diverse challenges due to their location, population, economy and type of county, whether it be urban or rural. With approximately 3.7 million people, Harris County is the nation's third most populous county. It is home to some of the world's largest corporations and features a major shipping port. Loving County, in far west Texas, and its population of 67 residents face different challenges, such as a dwindling population and the scarcity of water and economic investment. Many counties in the Panhandle or West Texas do not face the same issues as do their counterparts around Austin, Dallas, Fort Worth, Houston, or San Antonio, or the special needs of fast-growing counties along the Texas-Mexico border.

The counties that are in high-growth regions are experiencing profound change. For example, the population of Comal County in Central Texas grew by 50 percent, according to the 2000 census, to a total of 78,000 residents. The rapid development underway in areas formerly dominated by ranch and farm land has brought issues such as land-use authority, impact fees, and building codes to the forefront of local concerns in these areas.



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As local officials in high-growth counties attempt to meet the demands of their changing constituency, conflicts have taken place, particularly regarding land uses. Many county governments are struggling to cope with the challenges arising from urban sprawl. However, the Texas Constitution and state law limits a county's authority to deal with such issues.

### **Current Authority Granted to Counties**

Counties in Texas do not have general ordinance-making authority. In select cases, the Legislature has given a county or counties the authority to enact rules or ordinances with regard to specific issues.

All counties in Texas have regulatory authority over residential subdivision plats, wild animals and junkyards. Local Government Code, chapter 232 grants counties specific powers to approve plats and regulate subdivision development. Counties also may regulate or prohibit the keeping of a wild animal outside of city limits (Local Government Code, sec. 240.002). Under Transportation Code, sec. 396.041, counties can pass ordinances requiring certain automotive wrecking and salvage yards be licensed by the county. A county may condition approval of the license upon operation of the junkyard at a location approved by the commissioners court.

Many counties have unique powers to regulate specific activities or to enact ordinances. For example, although counties generally do not have zoning authority, certain counties may adopt zoning ordinances in limited areas around special features, such as Padre Island beachfront, Amistad Recreation Area, El Paso Mission Trail Historical Area, or specific lakes (Local Government Code, chapter 231). Also, counties near the McDonald Observatory, George Observatory, or Stephen F. Austin State University Observatory may adopt, upon request of an observatory director, ordinances regulating the installation and use of outdoor lighting (Local Government Code, sec. 240.032).

To reduce the proliferation of colonias along the Texas-Mexico border, the Legislature has given border counties broad regulatory and enforcement authority over subdivision development. Local Government Code, chapter 232, subchapter B gives specific powers to counties within 50 miles of the border, including the authority to set subdivision regulations requiring that water and wastewater facilities meet minimum state standards and that solid waste disposal service meet state and county standards. Additionally, the commissioners court must establish flood management standards and requirements for the provision of natural gas and electric service in subdivisions. Subchapter B grants the commissioners court authority to establish a planning commission to carry out the county's duties relating to subdivision regulation, health and safety, land use, and planning and development.

Under Health and Safety Code, chapter 366, a county or other local government entity serves as an agent of the Texas Commission on Environmental Quality (TCEQ) to regulate septic tanks or on-site sewage disposal systems. 160 counties have been authorized by the TCEQ to conduct on-site sewage programs. Concerns about sewage backing up into residents' yards have also led the commissioners courts and the local school districts to secure funding to immunize children in the subdivisions for hepatitis.

Many special districts authorized by the Texas Constitution provide water, wastewater, or other

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services in unincorporated areas. A widely used form of district, a municipal utility district (MUD), provides services such as water supply, wastewater treatment, solid waste collection and disposal services, and the acquisition and maintenance of parks and recreational facilities. Due to the fact that MUDs have the authority to levy taxes and issue bonds, they are a popular financing tool for developers seeking to build infrastructure and provide services for new developments in unincorporated areas. Water control and freshwater supply districts also provide water and wastewater services in some unincorporated areas.

### **County Platting Requirements**

Approval of plats is the primary tool by which Texas counties can regulate subdivision development in unincorporated areas. A plat is a legal document that includes a map of the subdivided property and public improvements, such as streets or drainage infrastructure.

A plat must be approved by the county commissioners court and filed with the county clerk as a permanent real property record. The plat may be used for land title research, land sales, or property tax purposes.

Local Government Code, sec. 232.003 specifies the steps a commissioners court may order before approving a plat, such as requiring rights-of-way on subdivision roads, adopting reasonable specifications on street and road construction and drainage infrastructure, and requiring purchase contracts to specify the availability of water.

The Third Court of Appeals' 1995 decision in *Elgin Bank of Texas v. Travis County* (906 S.W.2d 120 (Tex.App - Austin, writ denied)) had narrowly limited the circumstances under which a subdivision plat had to be filed.

Elgin Bank owned about 150 acres of land in an unincorporated portion of Travis County. The bank sought to subdivide and sell the property as multiple tracts without filing a plat. Because the property was served by existing roads, Travis County did not intend to lay out streets or roads on the subdivided property.

The county argued that Elgin Bank was required to file a subdivision plat under Local Government Code, sec. 232.001(a). The bank argued that the statute required a subdivision plat only if the tract owner subdivided the property into two or more parts and laid out features, such as streets, alleys, parks, squares, or other areas dedicated to public use. Because the subdivision included no such features, the Elgin Bank argued that it was not required to file a plat. The trial court ruled in favor of the county, but the bank appealed. The appellate court reversed the decision and found that Elgin Bank was not required to file a plat with Travis County.

Before the Elgin Bank decision, many counties required plats for all new subdivisions. However, the decision carved out an exception to county platting requirements. A county could not require a plat if the subdivided property did not include streets or other areas dedicated to public use. This ruling led to the creation of subdivision lots connected to an existing road by a long strip of land resembling a flagpole from above, therefore they were known as "flag lots". This allowed developers to create subdivisions in unincorporated areas without the approval of the county.

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Flag lot subdivisions, many having similar conditions to colonias along the Texas-Mexico border, began to appear in unincorporated areas across the state. Many of these subdivisions were plagued with drainage problems, leading to flooding, stagnant pools of water or road damage. Emergency vehicles experienced problems finding the correct home in a maze of manufactured homes and rutted tracks. Additionally, preexisting county roads serving the new developments sometimes lacked adequate turnaround areas for school buses or other large vehicles.

In 1999, the 76th Legislature enacted Senate Bill (SB) 710 by Wentworth to close the loophole created by the Elgin Bank decision. This law amended Local Government Code, sec. 232.001(a) to require a plat if an owner divided the property into two or more parts to lay out a subdivision of the tract, lots, or streets; or other areas dedicated to public use.

At the same time, SB 710 specifically exempted from platting requirements: property to be used for agriculture, ranching, wildlife management, or timber production; property subdivided into four or fewer parts and transferred to close relatives; property subdivided into lots larger than 10 acres; and property sold as lots through the Veteran's Land Board program.

### **Land-use Authority**

Generally, counties have no zoning authority and have limited authority to regulate land use. Many cities use zoning ordinances to plan anticipated growth by regulating the types of activities or development that can take place in a given area. City zoning authority includes uniform regulations on permissible land uses, building height and lot-size requirements, or other development restrictions. Not all cities in Texas impose zoning requirements; the largest and most notable is the City of Houston. Private deed restrictions and contractual obligations such as homeowner associations also are used to regulate or restrict land use in both cities and the unincorporated areas of counties.

In 2001, the 77th Legislature enacted SB 873 by Lindsay, increasing certain counties' authority to conduct infrastructure planning. The law applies to 30 counties: those with a population of at least 700,000 and neighboring counties in the same Metropolitan Statistical Area. SB 873 also includes counties along the Texas-Mexico border with a population of at least 150,000.

Counties affected can adopt rules governing right-of-ways on a major thoroughfare, establish minimum lot frontages on county roads, require certification of plat approval before utility hookup, and enact other regulations relevant to responsible development. These counties, however, may not regulate the purposes, such as business, industrial, or residential, for which a building or property may be used. This includes the size, number, or density of buildings on a tract of land.

### **Impact Fees**

An impact fee is a charge levied on a new development to cover the anticipated costs of capital improvements or public infrastructures that are necessary due to the new development. Although there are a few exceptions, counties lack the authority to charge impact fees.

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Local Government Code, Sec. 395 authorizes cities and certain districts or authorities to impose impact fees. Section 395.014 requires a city or district to develop a capital improvement plan to calculate impact fees. This plan must be prepared by qualified professionals and must meet statutory requirements, such as including a description of existing capital improvements, an analysis of total capacity and current usage, and a description of costs necessitated by the new development. Under Local Government Code, Sec. 395.079, a county with a population of at least 3.3 million and adjacent counties are allowed to charge an impact fee to provide stormwater, drainage, and flood-control facilities needed to accommodate new development.

### **Construction Codes**

A construction code is a set of laws, regulations, or ordinances governing new construction or renovation to current structures. Codes usually are enacted by adopting a set of model rules that cover building, plumbing, mechanical, and electrical work. The codes establish standards for construction and related work that are intended to reduce the risk of fire and to ensure that new buildings are sanitary and structurally sound.

The 77th Legislature in 2001 enacted SB 365 by Armbrister, which designates the International Residential Code as the municipal residential building code for the state and the National Electrical Code as the state's municipal residential electrical construction code, although cities may adopt local amendments to the codes. Counties do not have the authority to adopt construction codes.<sup>2</sup>

### **Testimony**

The House Committee on County Affairs held a public hearing on April 19, 2006, regarding Interim Charge 1. Ten individuals testified. Of the ten, seven were from counties or county associations that were in favor of giving counties some type of ordinance authority. However, only one individual who testified, representing Bexar County, was from a county whose population was greater than one million. Only one individual came out against this interim charge testifying that giving counties greater ordinance authority would increase the cost of building the structure, and therefore, the sale value of the building. This organization stated that by making the structure more expensive, a greater number of families would not be able to afford owning a home. Two individuals testified neutrally on the charge and gave opinions on what they thought would be possible advantages and consequences of granting counties ordinance-making authority.

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**Recommendation**

**The Committee recommends that at this time that no additional authority be given to counties with a population greater than one million. However, it is the Committee's opinion that the issue should continue to be studied in order to determine what effect graduated ordinance-making authority would have on counties adjacent to counties with large populations.**



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**CHARGE 2**

**Consider whether clarification or revision is needed to state statutes related to dormancy of office provisions and the abolition of local Constitutional offices.**

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On October 19, 2005, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Consider whether clarification or revision is needed to state statutes related to dormancy of office provisions and the abolition of local Constitutional offices.

### **Background**

The Texas Constitution organizes the makeup of county government by stipulating that certain offices require an election. These offices include County Judge; County Commissioner; County Clerk; County Treasurer; County Surveyor; County and District Attorney; Justice of the Peace; Constable; and Sheriff. While the offices are created by the Constitution, their duties are outlined in state statutes. With the exception of County Treasurer and County Surveyor, which is found in Article XVI (General Provisions), all other county offices mentioned are created in Article V (Judicial Department) of the Texas Constitution.

Many officers at the county level have duties that overlap with other local positions. Since the 71st Texas Legislature, there has been a push to abolish certain offices in local government. Supporters of abolishing county offices believe that the offices are redundant and that the county would save money by streamlining its operations. Opponents contend that the overlap in officers was intentional to act as a checks and balance. In the Texas Constitution, some county offices allow for abolishment and reinstatement, while others do not.

### **County Constables**

The Constitution of 1876 reduced the power of many state officials and mandated that constables would be elected at the precinct level. Before 1876, the county constable was appointed. The Constitution was amended in 1954 to extend the term of service from two years to four. Their law-enforcement roles vary widely, but in general their police powers are not different from those of other peace officers in the state.<sup>3</sup>

In the 77th Regular Session of the Texas Legislature, House Joint Resolution (HJR) 2 proposed a constitutional amendment authorizing a commissioners court of a county to declare the office of constable in certain precincts dormant, and provided for reinstatement of the office of constable. HJR 2 passed in both the Texas House and Senate and was filed with the Secretary of State and submitted to voters at an election on November 5, 2002. This joint resolution was approved by the voters of Texas. Before HJR 2 became law, a commissioners court of a county was not required to fill a vacancy in the office constable. However, according to Attorney General Opinion JC-0140, it may have been possible for a county to be held liable for not filling the office.

HJR 2 amended the Texas Constitution to authorize the commissioners court of a county to declare the office of constable in a precinct dormant if at least seven consecutive years have passed since the end of the term of the person who was last elected or appointed to the office and meet the qualifications to assume the duties of that office. The bill prohibits a constable office declared dormant from being filled by election or appointment. The records of a constable office declared



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dormant are transferred to the county clerk. HJR 2 authorizes the commissioners court to reinstate a dormant constable office by vote of the commissioners court or by calling an election in the precinct to reinstate the office. A commissioners court is required to call an election to reinstate the office if the commissioners court receives a petition signed by at least 10 percent of the qualified voters of the precinct.

Before HJR 2 was approved by voters, 54 bills had been filed since the 71st Legislative Session regarding abolishing the office of constable in various counties. Since this addition to the Texas Constitution, only two bills have been filed relating to this issue.<sup>4</sup>

### **County Surveyor**

The county surveyor was appointed by Congress under the Republic of Texas, but the Constitution of 1845 made the office elective for a two-year term, and each succeeding constitution has had a similar provision. In 1954, the term of office was increased to four years by constitutional amendment. Duties included surveying land for the county and recording and examining field notes of surveys made in the county. With the disappearance of open land, the importance of the office has decreased. In many counties the office has remained vacant or has been abolished. An independent surveyor is often contracted to fulfill the functions of the office.<sup>5</sup>

In the 73rd Regular Session of the Texas Legislature, HJR 37 amended the Texas Constitution to provide for the abolition of the office of county surveyor. This amendment to the constitution was submitted to voters in an election on November 2, 1993. It allows for a commissioners court of a county to call an election to abolish the office of county surveyor. If a majority of the voters in the county approve the abolishment of the office, the records, maps, field notes, and other records in the custody of the county surveyor are transferred to the county officer or employee designated by the commissioners court of the county in which the office was abolished. This amendment allows the commissioners court to change the designation from time to time as it considers appropriate.

### **County Treasurer**

The Constitution of 1876 provides for the biennial election of county treasurers. When Texas was a republic, the duties of the county treasurer were performed by the county clerk. During this time, the constitution provided for a separate officer to be appointed by the county board. In 1850, the office became an elected one with a two year term. This provision has been maintained in each succeeding constitution. In 1954, a constitutional amendment increased the term from two years to four. The chief functions of the county treasurer are to receive county funds and disburse them as directed by the county commissioners court. The office also examines the books of all county officers who receive any money.<sup>6</sup>

Since the 71st Regular Session of the Texas Legislature, 21 bills have been filed regarding abolishing the office of county treasurer in various counties.<sup>7</sup> Unlike the office of constable or county surveyor, there is no subsection in the Texas Constitution that authorizes the commissioners court of a county to declare the office dormant, nor is there a subsection that allows the commissioners court to call an election to abolish the office.

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## **The Office of Inspector of Hides and Animals**

The Office of Inspector of Hides and Animals was established in 1871 and filled by appointment by the governor for a four-year term. The inspector was intended to aid in the prevention of cattle theft by a thorough inspection of all hides and animals shipped out of the county for sale. After the adoption of the Constitution of 1876, the office became elective and the term was shortened to two years. In 1954, the term of office was increased from two to four years. By action of the legislature, many counties were exempt from election of an inspector; about one-third of Texas counties had the office in 1945.<sup>8</sup>

During the 78th Regular Session of the Texas Legislature, Senate Bill (SB) 1389, relating to livestock branding and identification, was passed in both the Texas House and Senate and became law on September 1, 2003. This law amended provisions in the Texas Agriculture Code regarding this issue. SB 1389 repealed section 146.054, which allowed qualified voters of a county to petition the commissioners court to conduct an election to determine if the county should elect an Inspector of Hides and Animals.

In the Texas Constitution, the Office of Inspector of Hides and Animals is only mentioned in Article 16, Sections 64 and 65. Section 64 increased the term of service from two years to four. Section 65 stipulates that the holder of this office automatically resigns if he becomes a candidate for an office other than the Inspector of Hides and Animals. The Texas Attorney General ruled in Opinion No. H-995 that the office was not established by the Texas Constitution or the Texas Election Code. The Legislature lawfully abolished the office with SB 1389; however, mention of it is still in the constitution. If this office appeared on the primary ballot in any county in 2006, any nominees elected in the primary will not appear on the November general election ballot.<sup>9</sup>

Although, the duties and powers relating to the Office of Inspector of Hides and Animals was removed in SB 1389, there is still four places in Texas statute that mention this office. Election Code, section 52.092 relates to how state and county officers are to appear on the ballot for a general election. Section 172.024 of the Election Code sets the filing fee for the office.

The Office of Inspector of Hides and Animals is also mentioned in Local Government Code. Section 87.012 relates to local officers that can be subject to removal and section 87.041 deals with county offices that fill vacancies through appointment by the commissioners court.

### **Testimony**

The Committee on County Affairs held a public hearing regarding Interim Charge 2 on April 19, 2006. Only one person testified regarding this charge. This individual, who spoke on behalf of the Justices of the Peace and Constables Association of Texas, testified that he believed that no changes were necessary to the dormancy of office clause for constables.

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**Recommendation**

**The Committee recommends that the Legislature consider making no changes to the Texas Constitution, Article V, Section 18(h), which authorizes the commissioners court of a county to declare the office of constable in a precinct dormant.**

**The Committee recommends that the Legislature consider amending the Texas Constitution and Texas Statues so that all mention of the Office of Inspector of Hides and Animals is removed.**



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**CHARGE 3**

**Review the penalties and enforcement challenges related to public safety and the sale of fireworks.**

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On October 19, 2005, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Review the penalties and enforcement challenges related to public safety and the sale of fireworks.

### **Background**

Drought conditions in Texas pose numerous challenges for local county governments tasked with protecting the safety and welfare of their citizens. Wildfires are always a concern during droughts, and recent occurrences of these fires in Texas exemplify just how much of a danger they pose. In March of 2006, wildfires in the Panhandle, while not caused by fireworks, burned nearly one million acres of land, killed eleven people and thousands of livestock, and destroyed many homes.

While there are many potential sources for these fires, the dangers posed by individuals using fireworks are a cause for concern. There are presently a select group of statutes that counties rely upon when regulating fireworks.

### **Statutory Authority Given to Counties to Regulate Fireworks During a Drought**

#### Local Government Code, Section 352.051 - Regulation of Restricted Fireworks

This section of the Local Government Code authorizes a commissioners court to prohibit or restrict the sale or use of restricted fireworks in all or in a portion of the unincorporated areas of the county where drought conditions have been determined to exist. Under the statute, counties may only adopt such an order once the Texas Forest Service determines drought conditions have been met. Only certain types of fireworks defined as "skyrockets with sticks" and "missiles with fins" under Title 49, Section 1730100(r)(2) of the Code of Federal Regulations may be prohibited or restricted. The order must be adopted before June 15 of each year for the Fourth of July fireworks season and December 15 of each year for the December fireworks season, and expires once the Texas Forest Service determines that drought conditions no longer exist. Counties may designate safe areas where the use of restricted fireworks is allowed. The statute also prescribes a penalty for a person who violates the adopted order, establishing an offense as a Class C misdemeanor.

While many counties have adopted orders under Section 352.051 of the Local Government Code during the Fourth of July and December fireworks seasons, their regulatory authority is limited to types of fireworks they can prohibit or restrict. Only certain fireworks that qualify as "skyrockets with sticks" or as "missiles with fins" can be prohibited or restricted.

#### Local Government Code, Section 352.081 - Regulation of Outdoor Burning

This section of the Local Government Code authorizes a commissioners court to prohibit or restrict outdoor burning, in general or of a particular substance, in all or in part of the unincorporated areas of the county where drought conditions have been determined to exist. Unlike, Section 352.051, which limits drought determinations to the Texas Forest Service, this statute allows the county to adopt a burn ban order when either the Texas Forest Service has determined the existence of drought conditions or the commissioners court makes a finding that circumstances in all or part of the

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unincorporated area create a public safety hazard that would be intensified by outdoor burning.

The duration of the order may not exceed ninety days, although another order may be adopted upon the previous order's expiration. An order will expire upon a determination by the Texas Forest Service that drought conditions no longer exist or upon a determination by the commissioners court that the circumstances creating a public hazard no longer exist. The statute also creates outdoor burning exceptions for certain activities related to public health and safety or activities that are conducted by a prescribed burn manager. A violation of an order adopted under this section is a Class C misdemeanor.

While this statute makes no specific allowance for the prohibition of fireworks as part of the order, it does not specifically exclude them, and some counties have adopted orders banning the use of fireworks under this authority.

"Outdoor burning" is not defined in Texas statutes, thereby allowing a broad interpretation of the type of "burning" that can be prohibited. For example, an order could arguably prohibit the igniting or burning of combustible material, including the "igniting" and "burning" of fireworks. Some have argued that counties are precluded from prohibiting fireworks through a burn ban because their ability to regulate fireworks is already specifically addressed in Section 352.051 of the Local Government Code. However, counties believe it is necessary to address the potential hazards created by many types of fireworks during drought conditions, and not just those that can be prohibited through Section 352.051.

#### Government Code, Section 418 - Emergency Management

This section of the Government Code, also known as the Texas Disaster Act of 1975, outlines several purposes, which include reducing the vulnerability of the people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes. It also clarifies and strengthens the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from disasters.

Among the provisions is Section 418.108, which allows for the declaration of a local disaster. Specifically, it authorizes the presiding officer of the governing body of a political subdivision to declare a local state of disaster and stipulates that such a declaration activates the recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration.

While the authority to issue a fireworks ban as part of a local disaster declaration is not specifically provided to counties in Section 418.018, it is not excluded, and counties have made a wide array of arguments in support of their authority under this provision.

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Attorney General Opinion No. MW-140

Attorney General Opinion No. MW-140, issued on February 7, 1980, addresses the authority granted to county officials by the Texas Disaster Act of 1975 and refers to Executive Order No. WPC-11, which was an order by the Governor in August of 1979 implementing the Disaster Act. Specifically the opinion provides:

In recognition of the fact that the Act authorizes a county commissioners court to declare a local disaster emergency but fails to expressly confer upon any local officer the extraordinary powers it confers upon the governor when he, rather than the local body, declares a disaster emergency, the current executive order follows precedents, established by prior governors and designates the county judge of each county as the Disaster Director/Coordinator for the county.

We think it is the intent of Executive Order WPC-11 to delegate to the county judge in locally declared disaster emergencies the same powers, on an appropriate local scale, that it delegates and assigns to the Director of the Division of Disaster Emergency Service on a statewide basis. It intends that the county judge serve as the governor's designated agent in the administration and supervision of the Texas Disaster Act of 1975, and that he may exercise the powers granted the governor therein.

...

Under the Act and executive order, the county judge, by employing the delegated power in a disaster emergency that has been locally declared by the commissioners court, may commandeer or utilize any private property if he finds it necessary to do so in order to cope with the disaster emergency as long as his order is consistent with the applicable disaster emergency plan.<sup>10</sup>

While the opinion specifically addresses a question regarding the ability of county officials to use county equipment on private land in case of natural disaster or other emergency, it has been interpreted to apply to the broader question of the exact extent of authority of a commissioners court once a local state of disaster is declared. Because of this opinion, some counties have determined that once a local state of disaster is declared, the county judge, serving as the governor's designated agent in the administration of the Texas Disaster Act, may exercise their same powers granted the governor and take those actions that are consistent with the local disaster plan. If a county declares a local disaster due to drought conditions, the county judge may choose to prohibit or restrict the sale and/or use of fireworks so long as that action is consistent with their local emergency management plan. Section 418.173 of the Government Code also allows a county to prescribe a punishment in their emergency management plan for failure to comply with an order adopted under the plan. The punishment may not exceed a \$1,000 fine or a jail sentence of 180 days.



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## Executive Order RP32

Some counties have relied on an executive order issued by Governor Rick Perry on January 28, 2004, Executive Order RP32. The executive order, which relates to emergency management and homeland security, and creates an Emergency Management Council, also states that:

The mayor of each municipal corporation and the county judge of each county in the state shall be designated as the Emergency Management Director for each such political subdivision in the accordance with Sections 418.102, 418.103, 418.105 of the Texas Disaster Act, and published rules of the Division of Emergency Management. These mayors and county judges shall serve as the Governor's designated agents in the administration and supervision of the Act, and may exercise the powers, on an appropriate local scale, granted the Governor therein.<sup>11</sup>

Section 418.012 of the Government Code, which provides the governor the authority to issue executive orders, proclamations, and regulations, also stipulates that such executive orders, proclamations, and regulations have the force and effect of law.

## Letter by Governor Perry's General Counsel

Section 418.019 of the Government Code allows the governor to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and combustibles. Some counties have relied on Executive Order RP32 as providing them with the authority to prohibit or restrict fireworks upon declaring a local state of disaster. A county can reason that since the executive order designates the county judge as the governor's agent in the administration of the Texas Disaster Act, when county declares a local disaster due to drought conditions, that county has the same authority granted to the govern in Section 418.019 regarding the ability to suspend and/or limit the sale of explosives and combustibles, which counties contend fireworks fall under this provision. However, in a letter dated June 15, 2005, Governor Perry's General Counsel, Brian Newby, addressed Representative Warren Chisum's concern with counties regulating fireworks under Section 418 of the Government Code and the Governor's executive orders. In that letter, Mr. Newby states:

As of today's date, there is no executive order or proclamation that will allow a county to be exempt from complying with Texas statues. Unless a disaster proclamation is in effect, Governor Perry is required to comply with all state statues. Therefore, counties should be abiding by the provisions of Local Government code, section 352.051 in the regulation of fireworks.<sup>12</sup>

This letter from the Governor's office implies that counties cannot regulate fireworks under Section 418 unless the governor issues a statewide declaration of disaster. When Governor Perry did declare a statewide disaster due to drought conditions on December 27, 2005, many counties chose to ban fireworks in accordance with that Proclamation.<sup>13</sup>

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## Summary of Statutory Authority

Counties have pursued the regulation of fireworks under a varying array of statutory authorities due to the need to protect the safety and welfare of their citizens during times of drought. According to the Texas Forest Service, since January 1, 2006, approximately 244 counties have passed burn bans, 102 counties have adopted orders restricting fireworks under Section 352.051 of the Local Government Code, and 80 counties have declared local disasters due to drought conditions.<sup>14</sup> While the exact scope of counties' authority is not entirely clear, there remains an urgent need for counties to have the ability to regulate fireworks in a manner that allows them to safeguard counties citizens and property from danger, but at the same time, procedures need to be clarified so that the firework industry can have ample time to make adjustments during a time of drought.

### **Keetch-Byram Drought Index**

Local Government Code, Section 352.051 states that a commissioners court can prohibit or restrict the sale or use of restricted fireworks in all or a portion of the unincorporated area of the county where drought conditions have been determined to exist. Under this statute, a county may only adopt such an order once the Texas Forest Service determines drought conditions have been met. To establish that drought conditions exist, the Texas Forest Service uses the Keetch-Byram Drought Index (KBDI).

John L. Keetch and George Byram designed a drought index specifically for fire potential assessment. It is a continuous index, relating to the flammability of organic material in the ground. The index attempts to measure the amount of precipitation necessary to return the soil to full field capacity. It is a closed system ranging from 0 to 800 units and represents a moisture regime from 0 to 8 inches of water through the soil layer. At 8 inches of water, the KBDI assumes saturation. Zero is the point of no moisture deficiency and 800 is the maximum drought that is possible. At any point along the scale, the index number indicates the amount of net rainfall that is required to reduce the index to zero, or saturation. These numbers correlate with potential fire behavior as follows:

**0 - 200** Soil and fuel moisture are high. Most fuels will not readily ignite or burn. However, with sufficient sunlight and wind, cured grasses and some light surface fuels will burn in spots and patches.

**200 - 400** Fires more readily burn and will carry across an area with no gaps. Heavier fuels will still not readily ignite and burn. Also, expect smoldering and the resulting smoke to carry into and possibly through the night.

**400 - 600** Fire intensity begins to significantly increase. Fires will readily burn in all directions exposing mineral soils in some locations. Larger fuels may burn or smolder for several days creating possible smoke and control problems.

**600 - 800** Fires will burn to mineral soil. Stumps will burn to the end of underground roots and spotting will be a major problem. Fires will burn thorough the night and heavier fuels will actively burn and contribute to fire intensity.<sup>15</sup>

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## Texas Fire Incident Report System

For 23 years, the State Fire Marshal's Office, which is part of the Texas Department of Insurance, has published annual fire data reports reflecting information provided by the Texas fire departments. In December of each year, the report for the following year is released. For example, the 2005 edition of *Fires in Texas* reports on all fire incidents that took place in 2004.

In 2004, 925 fire departments reported 73,491 fire incidents to the Texas Fire Incident Reporting System. Of these fires, there were 401 fire service injuries and 4 fire service deaths. Civilian deaths and injuries, however, are much higher. They are 731 and 120, respectively. The following table shows fires caused by fireworks by month, with associated casualties and dollar loss.

Month	Total Fires	FS Injuries	FS Deaths	Civilian Injuries	Civilian Deaths	Dollar Loss
January	85	0	0	1	0	\$23,570
February	10	0	0	0	0	\$600
March	9	0	0	0	0	\$0
April	6	0	0	0	0	\$0
May	5	0	0	0	0	\$25
June	18	0	0	0	0	\$8,300
July	221	0	0	1	0	\$94,470
August	17	0	0	0	0	\$400
September	12	0	0	0	0	\$1,175
October	4	0	0	0	0	\$0
November	1	0	0	0	0	\$0
December	112	0	0	0	0	\$15,472
<b>Totals</b>	<b>500</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>\$144,012</b>

Although the 2006 *Fires in Texas* has not been released, the Committee on County Affairs was able to obtain preliminary figures. In 2005, 984 fire departments reported 93,914 fire incidents. Of these fires, there were 147 civilian deaths and 731 civilian injuries.

As mentioned previously, the figures acquired from the State Fire Marshal's Office are preliminary. The following table shows the number of reported fires caused by fireworks in 2006 sorted by month along with the associated casualties and dollar loss.

Month	Total Fires	FS Injuries	FS Deaths	Civilian Injuries	Civilian Deaths	Dollar Loss
January	99	1	0	0	0	\$1,262,508
February	10	0	0	0	0	\$1,000
March	7	0	0	0	0	\$1,000
April	10	0	0	0	0	\$1,100
May	9	0	0	0	0	\$2,500
June	87	0	0	0	0	\$17,062
July	834	5	0	1	0	\$249,049
August	20	0	0	0	0	\$2,700
September	24	1	0	0	0	\$227
October	16	0	0	0	0	\$2,050
November	21	0	0	0	0	\$0
December	206	0	0	1	0	\$19,587
<b>Totals</b>	<b>1,343</b>	<b>7</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>\$1,558,783</b>

While the number of fires caused by fireworks increased in the 2005 calendar year, so did the overall number of fires, regardless of cause. In 2005, fires caused by fireworks rose to 1.4% of all fires.

### Regulation of Fireworks and Fireworks Displays

Chapter 2154 of the Texas Occupations Code sets forth standards for the regulation of fireworks. This section encompasses firework manufacturers, distributors and retailers. Chapter 2154 stipulates what devices are considered "fireworks" and of those, which are permissible or prohibited. Fireworks that are permissible are classified in two categories. Fireworks 1.3G is a large fireworks device which are primarily designed to produce visible or audible effects by combustion, deflagration or detonation. These are classified by the Department of Insurance (TDI) using the classification that can be found in 49 C.F.R. (Code of Federal Regulations) Part 173 (1996). Fireworks 1.4G are small fireworks devices that are primarily designed to produce visible or audible effects by combustion, deflagration or detonation. These fireworks comply with the construction, labeling and chemical composition requirements of the United States Consumer Product Safety Commission in 16 C.F.R. Part 1507 (1996) or the most recently adopted version of that rule. Fireworks 1.4G are also classified by TDI in 49 C.F.R. Part 173 (1996).

The Commissioner of TDI (the Commissioner) determines criteria and sets fees for licenses and permits, establishes qualifications and examinations requirements for pyrotechnics operators, and creates a procedure for reporting and processing complaints.

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The Commissioner establishes an advisory council to assist them in administering Section 2154 of the Occupations Code. This council is composed of five members who are representatives of the fireworks industry. While the council is appointed by the Commissioner and serves at their will, the Texas Pyrotechnic Association, on the request of the Commissioner, may recommend individuals for appointment to the council. The council periodically reviews rules relating to this chapter and recommends changes in the rules to the Commissioner. Under Chapter 2154.055 of the Texas Occupations Code, a fireworks safety and education program is created. The Commissioner establishes this program, which provides information relating to proper and safe use of fireworks and the dangers of improper use. The program is administered by the advisory council once the content has been approved by the Commissioner.

Chapter 2154.251 of the Occupations Code sets forth rules for prohibited use of fireworks. A person cannot explode or ignite fireworks within 600 feet of any church, hospital (other than a veterinary hospital), an asylum, a licensed child care center or a public or private primary or secondary school or institution of higher education unless the person receives authorization in writing from that organization.

A person cannot explode or ignite fireworks within 100 feet of a place where fireworks are stored or sold, and cannot sell, explode or ignite within 100 feet of a place where flammable liquids or flammable compressed gasses are stored or dispensed. Fireworks cannot be ignited or thrown ignited in or from a motor vehicle or cannot be thrown at a motor vehicle.

Chapter 2154.252 of the Occupation Code stipulates that unless the fireworks conform to the standards of the United States Consumer Product Safety Commission, a person may not sell the fireworks at retail; offer the fireworks for retail sale; possess the fireworks for retail sale; or transport, use, or explode the fireworks. A person can only offer fireworks 1.4G at authorized retail location and mail order of this category of fireworks is prohibited.

This chapter also specifies that fireworks may not sold to children under the age of 12 or to an intoxicated or incompetent person. The person selling the fireworks must make a reasonable effort to determine the minimum age required by part of the code.

In Chapter 2154.301 of the Occupations Code, the Commissioner may, through the State Fire Marshal, suspend, revoke or refuse to issue or renew a license or permit if the commissioner finds that any provision in Chapter 2154 has been violated. If a person has their license or permit revoked, that person may not reapply for it unless one year from the date of revocation has passed. This person, at that point, must request a public hearing on the reissuance of the license or permit.

Chapter 2154.303 outlines penalties for a person who violates provisions in the Occupation Code relating to fireworks. Depending on which section or subsection was violated, two types of penalties can be accessed. For certain offenses, it is a Class B misdemeanor. Other offenses are considered a Class C misdemeanor. If the Commissioner determines that a violation of this chapter creates a threat to public safety, the Commissioner may bring suit in the district court of the county in which the person who committed the offense resides or has an office to enjoin the person from engaging in the prohibited activity.

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**Testimony**

Invited testimony was heard on September 13, 2006, in a public hearing of the Committee on County Affairs. Six individuals spoke to the committee on a variety of issues. The most common issue addressed was the need to make changes to the Texas Occupation Code. These changes range from outlawing certain fireworks, requiring the minimum age of sale to be increased, and changing the structure of the advisory council that assists the Commissioner in administering the Occupation Code. Another topic of interest was Section 352.051 of the Local Government Code, which regulates restricted fireworks during a drought.

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## **Recommendation**

**The Committee recommends that the Legislature consider that the following changes be made to the Texas Occupation Code:**

- **Prohibit the sale of fireworks classified as "sky rockets with sticks" and "missiles with fins".**
- **The membership of the Advisory Council to the Commissioner of TDI includes a representative of a county fire marshal's office.**
- **Prohibit the sale of fireworks by a person who has previously engaged in the conduct of discharging fireworks in a manner likely to harm another person or intent to harm other individual's property.**
- **Prohibit a person from employing a person younger than 16 years of age to manufacture, distribute, sell or purchase fireworks in the course of a person's business, however, a person may employ a person between 16 and 18 years of age to sell fireworks at a retail sales location only if the person selling fireworks at that location is accompanied by a person at least 18 year of age.**
- **Prohibit municipalities from regulating the transportation of fireworks, in their unopened original packaging, in a motor vehicle within municipal limits.**
- **Specify that once a retail location is authorized to sell fireworks, the location shall not be restricted except by the newly created subsection and by Chapter 2154 of the Occupation Code. This would not restrict municipalities from continuing to regulate fireworks with their corporate boundaries and the areas specified under subchapter 217.042 of the Local Government Code if this area was regulated prior to January 1, 2007.**
- **Prohibit the sale or offer for sale of fireworks to children less than 16 years of age. The violation of this section would be classified as a Class C Misdemeanor.**

**The Committee recommends that the Legislature consider not increasing the dates of sale for fireworks.**

**The Committee recommends that the Legislature consider not increasing or decreasing the amount of distance that fireworks are ignited or exploded in regards to certain building mentioned in the Texas Occupation Code, Section 2154.251.**

**The Committee recommends that the Legislature consider revising Local Government Code, Section 352.051 and Section 352.081, so that counties have a clear set of protocol regarding the regulation of fireworks during a drought.**





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**CHARGE 4**

Study cost drivers of county government functions

On October 19, 2005, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Study cost drivers of county government functions.

### Background

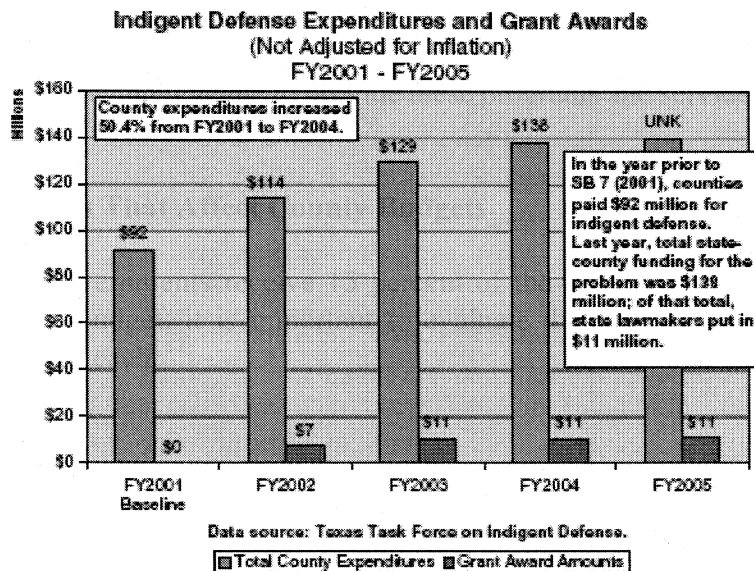
The State of Texas is divided into 254 counties that serve the needs of more than 18 million Texans. The counties range in size from just under 100 to more than 3.5 million. The major responsibilities of county government include building and maintaining roads; operating the judicial system; constructing and operating jails; collecting property taxes; maintaining public records; registering voters; and in some cases, operating county airports. Texas' counties also provide law enforcement; conduct elections; and provide health and social services to many underprivileged county residents. County governments generate revenue to provide these programs and services from taxes levied on the property valuations in the county.

### Government Functions That Affect County Budgets

On average, county governments receive 15 percent of the total property tax bill.<sup>16</sup> In order to understand a county's budget, it is important to evaluate the various programs and services it provides and the cost of each.<sup>17</sup>

### Indigent Defense

The Texas Fair Defense Act, passed in 2001, required all criminal courts in Texas to adopt formal indigent defense procedures to help provide competent legal representation to those individuals who qualify for a court appointed lawyer. Before these reforms were implemented and counties received state funding for indigent defense, counties spent \$92 million to provide indigent defense. In 2004, the state appropriated \$11 million to supplement the \$138 million spent on indigent defense.



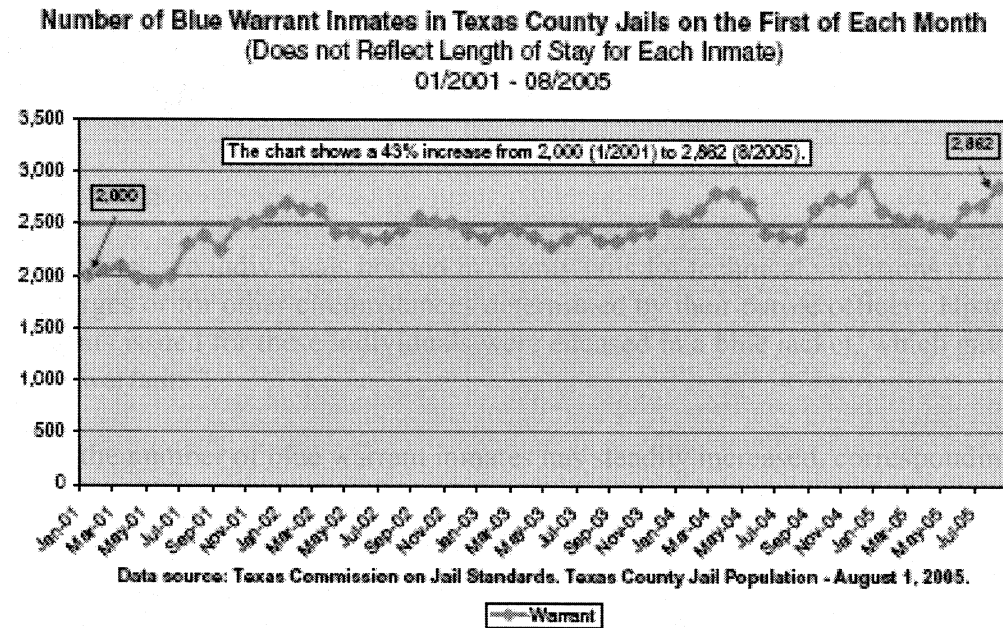
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## Blue Warrant Inmates

Blue warrant inmates are individuals housed in county jails for technical violations of their parole, new charges or for other circumstances determined by their parole officer. Historically, the paper warrants issued for these individuals were encased in a blue jacket, which gave them the name "blue warrants."

Over the years, the number of blue warrant inmates has steadily increased, corresponding with the increased number of individuals on parole. Between January 2001 and July 2005, the number of blue warrants inmates housed in Texas county jails increased 43 percent.

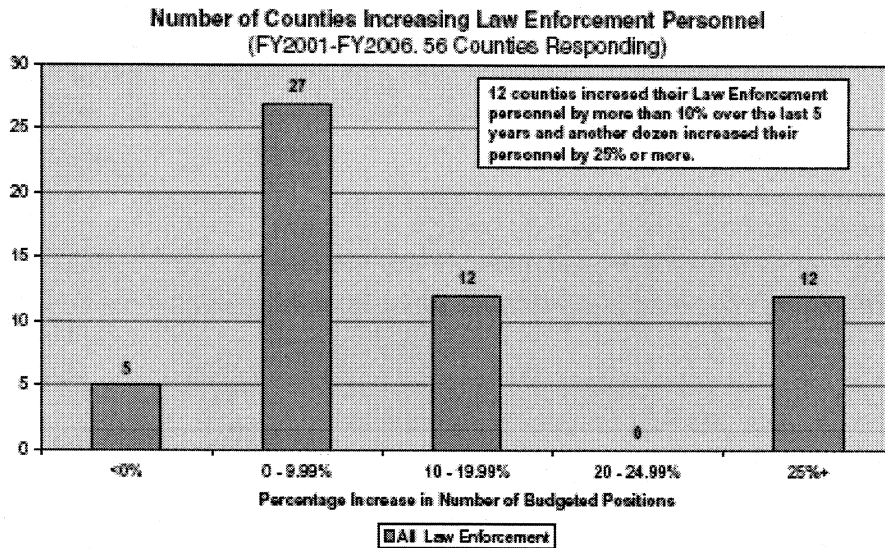
The Texas Commission on Jail Standards reports the cost to house one inmate in county jail is an estimated \$36.00 a day.



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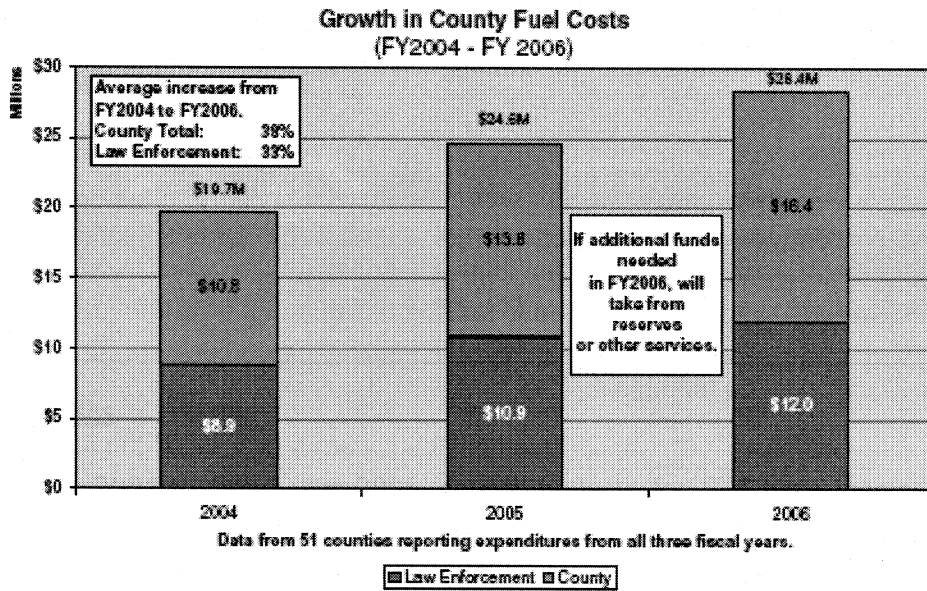
## Employee Health Insurance

Between 1999 and 2005, the average cost of health plans have doubled. For every \$100 spent in 1999, organizations, including counties, spent \$202.44 in 2005. During the counties' budget considerations in 2006, many counties have opted to increase their employees' co-pay obligation or have chosen to reduce the certain types of treatment options covered by their insurance policies.



**Fuel Cost Increases**

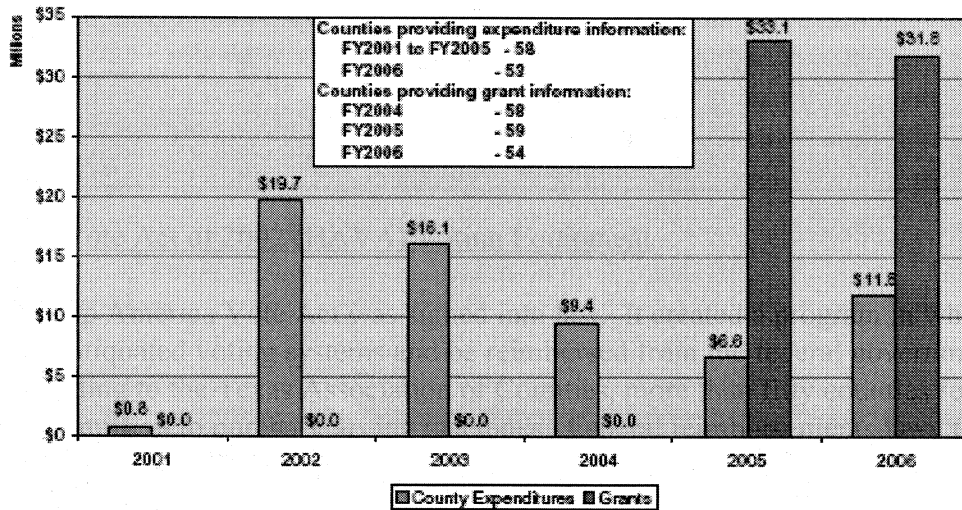
From fiscal year 2004 to fiscal year 2006, county budgets for fuel have increased 38 percent, including 33 percent for law enforcement. Although efforts to conserve fuel have reduced costs, most fuel expenses counties incur are unavoidable. For example, peace officers are required to monitor their designated county areas in their patrol cars and county road crews are required to travel throughout the county to maintain and repair roads. Other required travel involving fuel expenses include, transporting inmates to and from court and transporting mental patients to state facilities.



Help America Vote Act of 2002 (HAVA) Voting Equipment

In 2002, the Help America Vote Act was signed into law. It created a program in which counties could replace antiquated voting systems and be reimbursed from the federal government for the expense. According to the Texas Association of Counties, more than fifty counties reported spending \$64.4 million to purchase voting machines. Federal reimbursements have totaled \$64.9 million to those counties; however, some reimbursements were issued more than two years after the county initially purchased the equipment. While these reimbursements have leveled the costs of purchase and training on the machines, no funding was provided for storage and maintenance or the software re-programming for each election cycle.

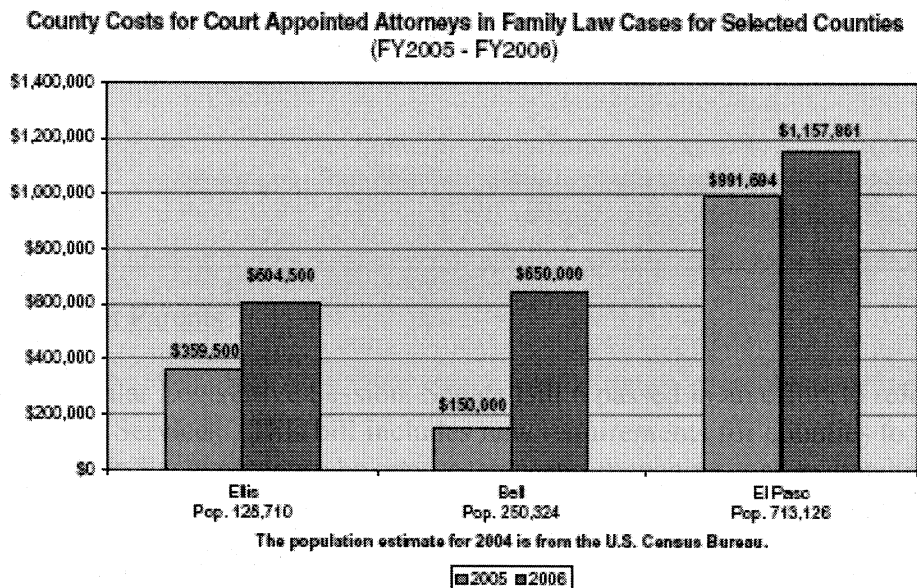
**Expenditures for HAVA Compliant Voting Equipment  
Compared to Federal Funds Received to offset Total HAVA Expenditures  
(FY2001 - FY2006)**



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## Attorneys for Indigent Parents

During the 79th Regular Legislative Session, Senate Bill 6 passed in an effort to reform the Child and Adult Protective Services. This bill includes new requirements for counties to automatically appoint attorneys for indigent parents who oppose temporary managing conservatorships of children. In the past, this occurred only when parental termination was sought. Various counties are reporting that this requirement could potentially increase their court-appointed attorney costs in family law cases. In some counties, cases requiring court-appointed attorneys made up 15 percent of the family law case load. Now some counties expect close to 100 percent of family law cases will require court appointed attorneys.



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## Required and Optional Services

While counties are required to provide certain services, there are some services that they have the authority to provide if funding is available. Below is a comparison of required and optional services of counties.<sup>18</sup>

### Jails

Required	Optional
<ul style="list-style-type: none"><li>▪ <i>Meals</i></li><li>▪ <i>Medical Treatment</i></li><li>▪ <i>Staff</i></li><li>▪ <i>Facilities</i></li><li>▪ <i>Access to Legal</i></li></ul>	<ul style="list-style-type: none"><li>▪ <i>Quality and Quantity of Meals</i></li><li>▪ <i>Level of Medical and Dental Care</i></li><li>▪ <i>Rehabilitation Programs</i></li><li>▪ <i>Work Programs</i></li><li>▪ <i>Victim/Witness Secure Telecommunication</i></li></ul>
<ul style="list-style-type: none"><li>▪ <i>Transportation</i></li><li>▪ <i>Equipment</i></li><li>▪ <i>Commissary</i></li><li>▪ <i>Training</i></li></ul>	

### Judicial System

Required	Optional
<ul style="list-style-type: none"><li>▪ <i>CSCD* - Facilities and Communication Infrastructure</i></li><li>▪ <i>Juvenile Probation - Staff, Expenses</i></li></ul>	<ul style="list-style-type: none"><li>▪ <i>CSCD* - Level of Rehabilitative Programs</i></li><li>▪ <i>Juvenile Probation - Level of Rehabilitative Programs</i></li><li>▪ <i>Juvenile Board - Quality of Educational Program</i></li></ul>
<ul style="list-style-type: none"><li>▪ <i>Juvenile Board - Alternative Education</i></li><li>▪ <i>Courts - Indigent Legal Services</i></li><li>▪ <i>Court Administration</i></li><li>▪ <i>Courts - Support of Certain Appellate Districts</i></li><li>▪ <i>Clerks - Official Record Keeping</i></li><li>▪ <i>Constables - Service of Process</i></li><li>▪ <i>Sheriff - Service of Process</i></li><li>▪ <i>Sheriff - Juror Duties</i></li><li>▪ <i>Sheriff - Bailiff Duties</i></li><li>▪ <i>Courts - Staff (interpreters, court reports, bailiffs)</i></li><li>▪ <i>Courts - Equipment</i></li><li>▪ <i>Program Courts - Facilities</i></li><li>▪ <i>Title IV D - Various Offices</i></li></ul>	

\* Community Supervision and Corrections Department



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Prosecution/Legal

**Required**

- *District Attorney - Prosecution*
- *District Attorney - Legal Opinions*
- *District Attorney - Tax Collection*
- *District Attorney - Officials/Removal*
- *District Attorney - Protective Orders*
  
- *District Attorney - DPRS\*  
Representation in Child Protection  
Proceedings (if not by CA)*
- *County Attorney - Prosecution*
- *County Attorney - Legal Opinions*
- *County Attorney - Tax Collection*
- *County Attorney - Officials/Removals*
- *County Attorney - Protective Orders*
- *County Attorney - DPRS\*  
Representation in Child Protection  
Proceedings (if not by DA)*

**Optional**

(some may be mandatory according to specific county statutes)

- *District Attorney - Representation of  
County Officials and Employees*
- *District Attorney - General Civil  
Services (contracts, etc.)*
- *District Attorney - Victims Programs*
- *District Attorney - Collections*
- *County Attorney - Representation of  
County Officials and Employees*
- *County Attorney - General Civil  
Representation (contracts, etc.)*
  
- *County Attorney - Victims Programs*
- *County Attorney - Collections*

\* Department of Protective and Regulatory Services

Public Health

**Required**

- *Indigent Medical*
- *Indigent Burials*
- *Medical Examiner - Certain Counties*
- *Mental Health - Jail*
  
- *Hospital (certain circumstances)*

**Optional**

- *Level of Medical Service*
- *Poverty Level of Citizens Served*
- *Environmental/Sanitation Services*
- *Health or Human Services Outreach  
Or Safety Net Services*
- *Emergency Medical Services*

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## Financial Management

Required	Optional
<ul style="list-style-type: none"><li>▪ <i>Auditor - Revenue Estimation (certain counties)</i></li><li>▪ <i>Auditor - Funding Verification (certain counties)</i></li><li>▪ <i>Auditor - Expenditure Approval</i></li><li>▪ <i>Auditor - Financial Reporting</i></li><li>▪ <i>Treasurer - Debt Collection</i></li><li>▪ <i>Treasurer - Depository Account Management</i></li><li>▪ <i>Treasurer - Reporting</i></li><li>▪ <i>Treasurer - Receipt and Disbursement of County Funds</i></li><li>▪ <i>Commissioners - Debt Service</i></li><li>▪ <i>Commissioners - Current Tax Abatement</i></li><li>▪ <i>Commissioners - Budget</i></li><li>▪ <i>Commissioners - Tax Levy</i></li><li>▪ <i>Commissioners - External Audit</i></li><li>▪ <i>Tax Assessor - Assess and Collect Taxes</i></li><li>▪ <i>Elected Officials - Financial Reporting</i></li><li>▪ <i>Purchasing - Complete Bidding</i></li></ul>	<ul style="list-style-type: none"><li>▪ <i>Bond Issuance</i></li><li>▪ <i>Financial Analysis</i></li><li>▪ <i>Strategic Planning</i></li><li>▪ <i>Investments</i></li><li>▪ <i>Future Tax Abatements</i></li><li>▪ <i>Economic Development</i></li></ul>

## Public Safety

Required	Optional
<ul style="list-style-type: none"><li>▪ <i>Sheriff - Suppress Crime and Arrest</i></li><li>▪ <i>Homeland Security - Various Offices</i></li><li>▪ <i>Victim Notification</i></li></ul>	<ul style="list-style-type: none"><li>▪ <i>Level of Enforcement</i></li><li>▪ <i>Level of Preparedness</i></li><li>▪ <i>Fire Marshal</i></li></ul>

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Public Welfare

Required

- *Roads (current)*
- *Sheriff - Estray*

Optional

- *Roads (new)*
- *Parks*
- *Event Arenas*
- *Nuisance Abatement*
- *Family Services*
- *Elder Services*
- *Community Development*

Personnel and Support Services

Required

- *Retirement (existing programs)*
- *Salary (minimum wage)*
- *Personnel/Payroll Recordkeeping*
- *Worker's Compensation*

Optional

- *Retirement (new employees)*
- *Salary (position appropriate - market)*
- *Medical Benefits*

Records Management

Required

- *County Clerk - Property, Birth, Death, Marriage and Other Records*
- *All Officials - County Records*
- *All Officials - Public Information Act Compliance*

Optional

- *Level of Accessibility*

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**Testimony**

The Committee held a public hearing on May 1, 2006, regarding Charge 4. Five individuals testified on the issue of cost drivers of county government functions. Three individuals were from associations that represent counties. The remaining two represented specific counties in Texas. All individuals spoke to the fact that counties are continually required to provide programs and services with little or no federal or state funding assistance. These required programs, along with unforeseen budgetary expenses, such as the increasing cost of fuel, present challenges for counties to budget properly and efficiently.

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**Recommendation**

**The Committee recommends that the 80th Legislature further quantify and qualify the cost drivers of county government functions**



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**CHARGE 5**

**Monitor the agencies and programs under the committee's jurisdiction.**

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On October 19, 2005, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Monitor the agencies and programs under the committee's jurisdiction.

### **Background**

In 1975, the Texas Legislature created the Commission on Jail Standards (the Commission) to implement a state policy that all county jail facilities meet the minimum standards of construction, maintenance and operation. The jurisdiction of the Commission has been expanded since its inception to include county and municipal jails operated by vendors. The Texas Legislature has also expanded the role of the Commission to include consultation and technical assistance to individual facilities throughout the state and the State Jail program.

The policy-making body consists of nine Commission members appointed by the governor to staggered six-year terms expiring on January 31 of odd-numbered years. The Commission consists of a sheriff from a county with a population of more than 35,000, a sheriff from a county with a population of 35,000 or less, a county judge, a county commissioner, a practitioner of medicine, and four private citizens, at least one of whom is from a county with a population of 35,000 or less. The chairperson is designated by the governor, with the vice-chairperson elected by the membership. The Commission holds regular meetings each calendar quarter as required. Special meetings are held as needed.

The duty of the Commission is best described in Title 37 of the Texas Administration Code, Part 9, Chapter 521, Rule §251.1:

It is the duty of the Commission to promulgate reasonable written rules and procedures establishing minimum standards, inspection procedures, enforcement policies and technical assistance for

- (1) the construction, equipment, maintenance and operation of jail facilities under its jurisdiction;
- (2) the custody, care and treatment of inmates;
- (3) programs of rehabilitation, education and recreation for inmates confined in county and municipal jail facilities under its jurisdiction.

### **Current Activity**

At the start of the fiscal year 2006, county jails were collectively operating at 89.73% capacity. Twenty jails were above 100% capacity. 74,267 inmates are housed in county facilities. 1,778 Texas Department of Criminal Justice (TDCJ) inmates were housed in county facilities. In addition, local facilities were housing 1,532 out-of-state inmates. The total number of contract inmates (federal, TDCJ, and out-of-state) was 12,376.<sup>19</sup>



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**Testimony**

On May 1, 2006, the House Committee on County Affairs held a public hearing regarding Interim Charge 5. Texas Government Code, section 511.016 directs county auditors to present the Commission with quarterly audits of the jail commissary, while the Local Government Code, section 351.0415(d) instructs the auditor to "fully examine the jail commissary accounts" at least once a year.

The difference in the frequency in how often the jail commissary accounts are to be audited has been the cause of confusion for some counties. At this hearing, the Executive Director requested that this issue be considered in the 80th Legislative Session to address this conflict.

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**Recommendation**

**The Committee recommends that the Legislature consider clarifying, through legislation, the issue relating to the audits of jail commissary funds.**

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**APPENDIX**

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## APPENDIX

- I. Secretary of State Election Advisory No. 2006-14**
- II. Attorney General Opinion No. MW-140**
- III. Executive Order RP32**
- IV. Letter from the Governor's General Council**
- V. Governor's Proclamation on December 27, 2005**
- VI. Counties That Have Adopted Burn Bans, Orders Restricting Fireworks under Local Government Code 352.051 and Local Disaster Declarations Due to Drought Conditions as of January 1, 2006**

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**Appendix I. Secretary of State Election Advisory No. 2006-14**

The State of Texas



Elections Division  
P.O. Box 12060  
Austin, Texas 78711-2060  
www.sos.state.tx.us

Phone: 512-463-5650  
Fax: 512-475-2811  
Dial 7-1-1 For Relay Services  
(800) 252-VOTE (8683)

Roger Williams  
Secretary of State

**ELECTION ADVISORY**  
**NO. 2006-14**

**TO:** County Clerks/Elections Administrators and County Chairs

**FROM:** Ann McGeehan, Director of Elections

A handwritten signature in black ink, appearing to read "Ann McGeehan".

**DATE:** August 9, 2006

**RE:** Abolition of Office of Inspector of Hides and Animals

The Office of Inspector of Hides and Animals was abolished by Senate Bill 1389, 78th Legislature, 2003. Former Section 146.054 of the Texas Agriculture Code allowed qualified voters of a county to petition the commissioners court to conduct an election to determine if the county should elect an inspector of hides and animals. This Section and others relating to the office were repealed by SB 1389, effective September 1, 2003.

We realize that the office of inspector of hides and animals is still listed in the Texas Constitution and the Texas Election Code; however, the Texas Attorney General ruled in Opinion No. H-995 (1977) in a letter addressed to the chair of the Committee on Intergovernmental Relations that the offices of inspector of hides and animals and of public weigher are not established by the Texas Constitution or the Texas Election Code. Therefore, the Legislature lawfully abolished the office.

If this office appeared on the primary ballot in your county this year, any nominees elected in the primary will not appear on the November general election ballot. If you have any questions about this matter please do not hesitate to contact the Elections Division at 1-800-252-2216.

AM:AEM:sf

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**Appendix II. Attorney General Opinion No. MW-140**



## The Attorney General of Texas

February 7, 1980

MARK WHITE  
Attorney General

Supreme Court Building  
P.O. Box 12548  
Austin, TX 78711  
512/475-2501

701 Commerce, Suite 200  
Dallas, TX 75202  
214/742-8944

4824 Alberta Ave., Suite 180  
El Paso, TX 79905  
915/533-3484

773 Main, Suite 610  
Houston, TX 77002  
713/228-0701

806 Broadway, Suite 312  
Lubbock, TX 79401  
806/747-5236

4313 N. Tenth, Suite F  
McAllen, TX 78501  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX 78205  
512/225-1121

An Equal Opportunity  
Affirmative Action Employer

Honorable Henry Wade  
District Attorney  
Sixth Floor, Records Building  
Dallas, Texas 75202

Opinion No. MW-140

Re: Authority of county officials  
to act in an emergency, and related  
questions.

Dear Mr. Wade:

You pose several questions regarding the power of county officials to act in cases of natural disaster or other emergency, particularly with respect to the use of county equipment on private land. Our opinion is directed to the authority granted by the Disaster Act of 1975, article 6889-7, V.T.C.S., and we do not address any broad constitutional questions affecting the Act generally.

The Disaster Act of 1975, article 6889-7, V.T.C.S., is designed to enable the State of Texas and its political subdivisions to plan for, respond to, and recover from natural or man-made disasters and the emergencies such calamities create. To that end section 5 of the Act confers upon the governor of the state extremely broad powers to declare disaster emergencies and to deal with them. Among other things, it gives executive orders, proclamations, and regulations "the force and effect of law" and directs the governor to delegate or assign command authority embodied in appropriate executive orders or plans "to the greatest extent practicable." In addition to other powers conferred by law upon the governor, section 5(g) of the Act empowers him to suspend the provisions of any regulatory statute that would hinder necessary action in coping with the emergency. See also V.T.C.S. arts. 689a-4c (emergency funds); 5890e (use of militia during state of emergency). It also authorizes him to commandeer or utilize any private property if he finds it necessary to cope with the disaster emergency, subject to any applicable requirements for compensation.

Executive Order No. WPC-11, issued August 15, 1979, superseded prior executive orders of the governor implementing the Disaster Act of 1975. In recognition of the fact that the Act authorizes a county commissioners court to declare a local disaster emergency but fails to expressly confer upon any local officer the extraordinary powers it confers upon the governor when he, rather than the local body, declares a disaster emergency, the current executive order follows precedents, established by prior governors

p. 450



and designates the county judge of each county as the Disaster Director/Coordinator for the county.

We think it is the intent of Executive Order WPC-11 to delegate to the county judge in locally declared disaster emergencies the same powers, on an appropriate local scale, that it delegates and assigns to the Director of the Division of Disaster Emergency Service on a statewide basis. It intends that the county judge serve as the governor's designated agent in the administration and supervision of the Texas Disaster Act of 1975, and that he may exercise the powers granted the governor therein. The executive order expressly gives comparable authority to the statewide Director.

Under the Act and executive order, the county judge, by employing the delegated power in a disaster emergency that has been locally declared by the commissioners court, may commandeer or utilize any private property if he finds it necessary to do so in order to cope with the disaster emergency as long as his order is consistent with the applicable disaster emergency plan. When he acts reasonably and justly in response to an impending disaster or its spread, i.e., to meet an impending peril that threatens the public health and safety when the public need greatly outweighs the private loss, the constitutional requirement that property shall not be "taken, damaged or destroyed for or applied to public use without adequate compensation" is not applicable, though compensation may be paid later if other law permits. Tex. Const. art. I, § 17; Keller v. City of Corpus Christi, 50 Tex. 614 (1879); Petty v. City of San Antonio, 181 S.W. 224 (Tex. Civ. App. — San Antonio 1915, writ ref'd). See City of Austin v. Teague, 570 S.W.2d 389 (Tex. 1978); Crossman v. City of Galveston, 247 S.W. 810 (Tex. 1923); Davenport v. East Texas Refining Co., 127 S.W.2d 312 (Tex. Civ. App. — Texarkana 1939, writ ref'd). The Disaster Act of 1975, section 13, recognizes the obligation of every person to manage his affairs and property in ways that will not unreasonably detract from the ability of the public successfully to meet disaster emergencies, and specifies that compensation for the taking or use of property shall be made only to the extent such obligations "are exceeded."

There are specific references in the Disaster Act of 1975 regarding the clearing of debris or wreckage from private property as well as from public property, but they are cumulative of the provision allowing the commandeering or utilization of any private property necessary to cope with the emergency. Section 5(g)(13) allows the use of state departments, agencies and instrumentalities to clear debris and wreckage in certain instances, while section 5(j) requires certain authorizations or indemnifications before debris can be removed. The latter, section 5(j), is applicable only in the recovery stage of a disaster emergency when the immediate danger has passed. See 42 U.S.C. § 5173. It does not inhibit necessary action in the response stage, when immediate action to avert disaster is necessary. See Keller v. City of Corpus Christi, supra.

When precipitate action is necessary in the response stage, neither article I, section 17 of the Constitution, nor article III, section 51, prevents the utilization of county equipment on private property — the first for the reasons already discussed, and the second because the action is taken to directly accomplish a legitimate public purpose, not to benefit the property owner. See Barrington v. Cokinos, 338 S.W.2d 133 (Tex. 1960).

Article III, section 51 is no bar to a use, otherwise authorized, of county equipment on the property of individuals, associations or corporations to aid in recovery from public calamities, because the section itself declares that it "shall not be construed to prevent the grant of aid in public calamities." Attorney General Opinion WW-1248 (1962). See Tex. Const. art. VIII, § 10; art. XI, § 8. Cf. Brazos River Conservation and Reclamation Dist. v. McCraw, 91 S.W.2d 665 (Tex. 1936). Cf. Attorney General Letter Advisory No. 92 (1975) (non-emergency situation).

Absent authority similar to that delegated under the 1975 Act, county officials would be greatly hampered in responding to many emergencies, for counties do not possess the general police power available to home rule cities. Nevertheless, they have implied authority to exercise a broad discretion in accomplishing the particular objectives entrusted to them. Anderson v. Wood, 152 S.W.2d 1084 (Tex. 1941); Commissioners Court of Harris County v. Kaiser, 23 S.W.2d 840 (Tex. Civ. App. - Galveston 1929, writ ref'd). See, e.g., V.T.C.S. arts. 190 - 192b (destruction of animals); 695c, § 39 (relief services); 1581b (additional law enforcement officers); 1659, 1659a, 1659b (emergency purchases); 2351 (specified powers); 2351a - 2351a-5 (fire fighting); 2372m (rabies epidemic); 4434 (public health cooperation); 4459; 4460 (quarantine); 4477-7 (waste disposal); 4478 (medical facilities); 6687-9 (abandoned vehicles); 6699 (traffic officers); 6701g (traffic regulations); Code Crim. Proc. arts. 8.01 - 8.09 (riots). And the county judge, of course, is individually a magistrate and a conservator of the peace possessing all the powers of a peace officer. Tex. Const. art. V, §§ 12, 15; Code Crim. Proc. arts. 2.09, 2.10; Jones v. State, 62 S.W. 756 (Tex. Crim. 1901).

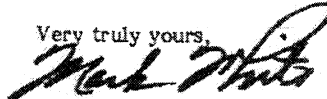
Under the 1975 Act as implemented by Executive Order No. WPC-11, the county judge may use county equipment on private land if he reasonably deems it necessary to meet or prevent a locally declared disaster emergency, assuming his action is consistent with the local disaster plan so activated. We have examined the Emergency Operations Plan of Dallas County approved by the commissioners court November 8, 1976, and find that its 9th section provides:

During the emergency only, all resources within the limits of Dallas County and its municipalities, both publicly and privately owned, will be used when deemed necessary by local government officials and upon orders of the County Judge/Mayor. Accurate records will be kept concerning the use of privately owned resources for purpose of possible reimbursement.

#### SUMMARY

Under the Disaster Act of 1975 as implemented by Executive Order No. WPC-11 and the Emergency Operations Plan of Dallas County, the county judge of Dallas County may use county equipment on private land if he reasonably deems it necessary to meet or prevent a locally declared disaster emergency.

Very truly yours,



MARK WHITE  
Attorney General of Texas

---

Honorable Henry Wade - Page Four (MW-140)

JOHN W. FAINTER, JR.  
First Assistant Attorney General

TED L. HARTLEY  
Executive Assistant Attorney General

Prepared by Bruce Youngblood  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

C. Robert Heath, Chairman  
David B. Brooks  
Walter Davis  
Bob Gammage  
Susan Garrison  
Bruce Youngblood



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## **II. Executive Order RP32**

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# Executive Order RP32 - January 28, 2004

## Relating to Emergency Management and Homeland Security

**BY THE  
GOVERNOR OF THE STATE OF TEXAS  
Executive Department  
Austin, Texas  
January 28, 2004**

**WHEREAS**, the State of Texas recognizes the responsibility of the state to pursue a coordinated and integrated approach to safeguard its citizens and subsequently the infrastructure upon which they rely; and

**WHEREAS**, the attacks of September 11, 2001, and subsequent terrorist acts constitute a continuing threat to our homeland security and infrastructure; and

**WHEREAS**, there is a need for a coordinated effort to protect the people and the infrastructure of Texas and to respond to man-made or natural disasters that may occur in this state; and

**WHEREAS**, the Legislature of the State of Texas has enacted the Texas Disaster Act (the "Act") of 1975, Chapter 418 of the Texas Government Code to:

- Reduce the vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary actions;
- Prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;
- Provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;
- Clarify and strengthen the roles of the Governor, state agencies, and local governments in the mitigation of, preparation for, response to, and recovery from disasters;
- Authorize and provide for cooperation and coordination of activities relating to mitigation, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;
- Provide a comprehensive emergency management system for Texas that is coordinated to make the best possible use of existing organizations and resources within government and industry, and which includes provisions for actions to be taken at all levels of government before, during, and after the onset of an emergency situation;
- Assist in the mitigation of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use; and
- Provide the authority and mechanism to respond to an energy emergency; and;

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**WHEREAS**, the Governor is expressly authorized under Section 418.013 of the Act to establish by executive order an Emergency Management Council consisting of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups to advise and assist the Governor in all matters relating to mitigation, preparedness, response, and recovery; and,

**WHEREAS**, a Division of Emergency Management is established in the Office of the Governor under Section 418.041 of the Act, and the Director of the Governor's Division of Emergency Management is to be appointed by and serve at the pleasure of the Governor; and,

**WHEREAS**, with the aid and assistance of the Emergency Management Council and Division of Emergency Management, the Governor may recommend that cities, counties, and other political subdivisions of the state undertake appropriate emergency management programs and assist and cooperate with those developed at the state level;

**NOW, THEREFORE**, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

The Emergency Management Council (the "Council") shall be created and maintained.

The Council shall consist of the heads of the following state agencies, boards, and commissions, or their successors and the heads of the following volunteer groups:

- Adjutant General's Department
- American Red Cross
- Department of Information Resources
- General Land Office \*
- Governor's Division of Emergency Management \*
- Office of Rural Community Affairs
- Public Utility Commission of Texas
- Railroad Commission of Texas \*
- Salvation Army
- State Auditor's Office
- State Comptroller of Public Accounts
- Texas Animal Health Commission
- Texas Attorney General's Office
- Texas Building and Procurement Commission
- Texas Commission on Environmental Quality \*
- Texas Commission on Fire Protection \*
- Texas Department of Aging and Disability Services
- Texas Department of Agriculture \*
- Texas Department of Assisted and Rehabilitative Services
- Texas Department of Criminal Justice
- Texas Department of Health \*
- Texas Department of Housing and Community Affairs
- Texas Department of Human Services
- Texas Department of Insurance
- Texas Department of Mental Health and Mental Retardation

- 
- Texas Department of Protective and Family Services
  - Texas Department of Public Safety \*
  - Texas Department of State Health Services
  - Texas Department of Transportation \*
  - Texas Education Agency
  - Texas Engineering Extension Service \*
  - Texas Forest Service
  - Texas Parks and Wildlife Department \*
  - Texas Rehabilitation Commission
  - Texas Workforce Commission

\* (indicates member of the State Emergency Response Commission)

The specific duties and responsibilities of each member of this group shall be as designated in the State Emergency Management Plan and Annexes thereto. Each member of the group may designate a staff member representative to the Council.

The Director of the Governor's Office of Homeland Security shall be designated to serve as Chair of the Council and as Director of the Governor's Division of Emergency Management (the "Director").

The director shall advise the governor, lieutenant governor, and the speaker of the house of representatives on critical matters relating to homeland security and man-made or natural disasters that may occur in this state.

The Governor's Division of Emergency Management shall be designated as the agency to exercise the powers granted to me under the Act in the administration and supervision of the Act, including, but not limited to, the power to accept from the federal government, or any public or private agency or individual, any offer of services, equipment, supplies, materials, or funds as gifts, grants, or loans for the purposes of emergency services or disaster recovery, and may dispense such gifts, grants, or loans for the purposes for which they are made without further authorization other than as contained herein.

Personnel of the Governor's Division of Emergency Management have the rights and obligations under Department of Public Safety statutes, rules, and policies.

The Director shall establish emergency operation areas to be known as Disaster Districts which shall correspond to the boundaries of the Texas Highway Patrol Districts and Sub-Districts and shall establish in each a Disaster District Committee consisting of representatives of the state agencies, boards, commissions, and organized volunteer groups having membership on the Council. The Highway Patrol commanding officer of each Highway Patrol District or Sub-District shall serve as chair of the Disaster District Committee and report to the director of the Office of Homeland Security on matters relating to disasters and emergencies. The Disaster District Committee chair shall be assisted by the Council representatives assigned to that district, who shall provide guidance, counsel, and administrative support as required. The Disaster District Committee chair shall keep the Director of the Department of Public Safety apprised on all matters as requested by the Director of the Department of Safety.

The Council is authorized to issue such directives as may be necessary to effectuate the purpose of the Act, and is further authorized and empowered to exercise the specific powers enumerated in the Act.

The State Emergency Response Commission shall be a standing element of the Council in order to carry out certain state emergency planning, community right-to-know, and response functions relating to hazardous materials. The Commission shall consist of representatives named by the heads of the agencies and commissions marked with an asterisk (\*) in the listing of the Council



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above. The State Coordinator, as appointed by the Director under Section 418.041 of the Act, shall chair the State Emergency Response Commission or designate a chair.

The mayor of each municipal corporation and the county judge of each county in the state shall be designated as the Emergency Management Director for each such political subdivision in accordance with Sections 418.102, 418.103, and 418.105 of the Act, and published rules of the Division of Emergency Management. These mayors and county judges shall serve as the Governor's designated agents in the administration and supervision of the Act, and may exercise the powers, on an appropriate local scale, granted the Governor therein. Each mayor and county judge may designate an Emergency Management Coordinator who shall serve as assistant to the presiding officer of the political subdivision for emergency management purposes when so designated.

Each political subdivision of the state, pursuant to Section 418.104, of the Act, is authorized to establish in the county in which they are sited, inter-jurisdictional agencies by intergovernmental agreement, supported as needed by local city ordinance or commissioner's court order, in cooperation and coordination with the Division of Emergency Management of the Governor's Office. In compliance with Section 418.101 of the Act, the presiding officer of each political subdivision shall promptly notify the Governor's Division of Emergency Management of the manner in which it is providing or securing an emergency management program and the person designated to head that program.

This executive order supersedes all previous executive orders on emergency management, including Executive Orders RP-01 and RP-12, and shall remain in effect until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 28th day of January, 2004.

**RICK PERRY**  
Governor

ATTESTED BY:  
**GEOFFREY S. CONNOR**  
Secretary of State



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**Appendix IV: Letter from the Governor's General Council**



OFFICE OF THE GOVERNOR

June 15, 2005

RICK PERRY  
GOVERNOR

The Honorable Warren Chisum  
Texas House of Representatives  
GW.15  
P.O. Box 2910  
Austin, TX 78768-2910

Dear Representative Chisum:

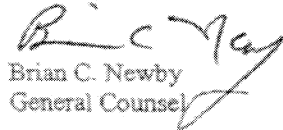
Thank you for your letter of June 13, 2006. I have had the opportunity to review the issues raised, in particular your concern that county officials believe that they have been granted some form of additional authority, under Texas Government Code, Section 418 and executive orders issued by Governor Perry, relating to the regulation of certain fireworks.

As of today's date, there is no executive order or proclamation that will allow a county to be exempt from complying with Texas statutes. Unless a disaster proclamation is in effect, Governor Perry is required to comply with all state statutes. Therefore, counties should be abiding by the provisions of Local Government Code, section 352.051 in the regulation of fireworks.

On May 17, 2006 the Texas Association of Counties sent a letter to county judges setting forth guidance on Local Government Code, section 352.051. The Association also provided to counties a draft order for the regulating of certain fireworks in the unincorporated areas of the county under drought conditions. After review of the Association's May 17<sup>th</sup> letter and proposed order, the Office of the Governor concurs in the content of the draft order and compliance with section 352.051. A copy of the Texas Association of Counties letter and suggested order is enclosed.

If I may be of further assistance please do not hesitate to call.

Sincerely,

  
Brian C. Newby  
General Counsel

Enclosures:

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**Appendix V: Governor's Proclamation on December 27, 2005**

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Proclamation - December 27, 2005



Proclamation  
by the  
Governor of the State of Texas

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

**I, RICK PERRY**, Governor of Texas, do hereby certify that 254 counties in the State of Texas are threatened by high or extreme fire hazard. This threat was caused by drought across the state.

**THEREFORE**, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such disaster and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that disaster.

In accordance with the Statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

**IN TESTIMONY WHEREOF**, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 27th day of December, 2005.

**RICK PERRY**(Signature)  
Governor of Texas

Attested by:  
**ROGER WILLIAMS**(Signature)  
Secretary of State

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**Appendix VI: Counties That Have Adopted Burn Bans, Orders Restricting Fireworks  
under Local Government Code 352.051 and Local Disaster Declarations Due to  
Drought Conditions as of January 1, 2006**

**Counties That Have Adopted Burn Bans as of January 1, 2006\***

**Total: 244**

Anderson	Comanche	Grimes	Lamar	Polk	Upton
Andrews	Concho	Guadalupe	Lamb	Potter	Uvalde
Angelina	Cooke	Hale	Lampasas	Presidio	Val Verde
Archer	Coryell	Hall	Lavaca	Rains	Van Zandt
Armstrong	Cottle	Hamilton	Lee	Randall	Victoria
Atascosa	Crane	Hansford	Leon	Reagan	Walker
Austin	Crockett	Hardeman	Liberty	Real	Waller
Bailey	Crosby	Hardin	Limestone	Red River	Ward
Bandera	Culberson	Harris	Lipscomb	Reeves	Washington
Bastrop	Dallam	Harrison	Live Oak	Refugio	Webb
Baylor	Dallas	Hartley	Llano	Roberts	Wharton
Bee	Dawson	Haskell	Loving	Robertson	Wheeler
Bell	Deaf Smith	Hays	Lubbock	Rockwall	Wichita
Bexar	Delta	Hemphill	Lynn	Runnels	Willacy
Blanco	Denton	Henderson	Madison	Rusk	Wilbarger
Borden	De Witt	Hidalgo	Marion	Sabine	Williamson
Bosque	Dickens	Hill	Martin	San Augustine	Wilson
Bowie	Dimmit	Hockley	Mason	San Jacinto	Winkler
Brazoria	Donley	Hood	Maverick	San Patricio	Wise
Brazos	Duval	Hopkins	McCulloch	San Saba	Wood
Brewster	Eastland	Houston	McLennan	Schleicher	Yoakum
Briscoe	Ector	Howard	Medina	Scurry	Young
Brooks	Edwards	Hunt	Menard	Shackelford	Zapata
Brown	Ellis	Hutchinson	Midland	Sheiby	Zavala
Burleson	El Paso	Irion	Milam	Sherman	
Burnet	Erath	Jack	Mills	Smith	
Caldwell	Falls	Jackson	Mitchell	Somervell	
Calhoun	Fannin	Jasper	Montague	Starr	
Callahan	Fayette	Jeff Davis	Montgomery	Stephens	
Camp	Fisher	Jim Hogg	Moore	Sterling	
Carson	Floyd	Jim Wells	Morris	Stonewall	
Cass	Foard	Johnson	Motley	Sutton	
Castro	Fort Bend	Jones	Nacogdoches	Swisher	
Chambers	Franklin	Kames	Navarro	Tarrant	
Cherokee	Freestone	Kaufman	Nolan	Taylor	
Childress	Frio	Kendall	Nueces	Terrell	
Clay	Gaines	Kent	Ochiltree	Terry	
Cochran	Garza	Kerr	Oldham	Throckmorton	
Coke	Gillespie	Kimble	Orange	Titus	
Coleman	Goliad	King	Palo Pinto	Tom Green	
Collin	Gonzales	Kinney	Panola	Travis	
Collingsworth	Gray	Kleberg	Parker	Trinity	
Colorado	Grayson	Knox	Parmer	Tyler	
Comal	Gregg	La Salle	Pecos	Upshur	

\* Information provided by the Texas Forest Service.



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**Counties That Have Adopted Orders Restricting Fireworks Under Local  
Government Code § 352.051 as of January 1, 2006\***

**Total: 102**

Andrews	Falls	Nolan
Archer	Fannin	Nueces
Austin	Foard	Oldham
Bandera	Franklin	Palo Pinto
Bexar	Gaines	Parker
Blanco	Goliad	Pecos
Borden	Gonzales	Potter
Bosque	Grayson	Rains
Brewster	Guadalupe	Randall
Brown	Hansford	Reagan
Burnet	Hartley	Refugio
Caldwell	Hays	Roberts
Chambers	Hemphill	Rockwall
Childress	Henderson	Runnels
Clay	Hood	San Saba
Coke	Jack	Sherman
Cooke	Jeff Davis	Stephens
Collin	Jim Hogg	Sutton
Collingsworth	Jim Wells	Tarrant
Cornal	Jones	Terrell
Concho	Kaufman	Tom Green
Coryell	Kendall	Travis
Crane	Kerr	Uvalde
Crockett	Lampasas	Van Zandt
Dallam	Lee	Walker
Dawson	Live Oak	Wichita
Deaf Smith	Madison	Wilbarger
Denton	Martin	Willacy
DeWitt	McLennan	Williamson
Dimmit	McCulloch	Wilson
Donley	Medina	Winkler
Duval	Menard	Wise
Ector	Midland	Young
Erath	Navarro	Zapata

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\* Information provided by the Texas Forest Service.

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**Counties That Have Adopted Local Disaster Declarations Due to Drought  
Conditions as of January 1, 2006\***

**Total: 80**

Anderson	Hood
Atascosa	Hunt
Bailey	Jack
Bastrop	Johnson
Bell	Jones
Bexar	Kaufman
Borden	Kendall
Burnet	King
Caldwell	Knox
Callahan	Lamar
Cass	Lavaca
Clay	Llano
Clay	Lubbock
Coke	Midland
Collin	Mitchell
Comal	Montgomery
Comanche	Navarro
Concho	Nolan
Cooke	Palo Pinto
Dallas	Parker
Dawson	Pecos
Delta	Roberts
Denton	Rockwall
Dickens	Runnels
Dimmit	San Saba
Ector	Shackelford
Ellis	Somervell
Erath	Starr
Falls	Stephens
Fannin	Sterling
Fayette	Tarrant
Gaines	Terrell
Grayson	Throckmorton
Guadalupe	Tom Green
Hamilton	Travis
Hardin	Van Zandt
Haskell	Walker
Hays	Williamson
Henderson	Winkler
Hill	Wise

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\* Information provided by the Texas Forest Service.

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## ENDNOTES

<sup>1</sup> County Population Estimates and Estimated Components of Change: All Counties, April 1, 2000 to July 1, 2005. Prepared by the Population Estimates Program, U.S. Bureau of the Census. Released March 16, 2006.

<sup>2</sup> Factual Information contained in Charge 1 can be found in the House Research Organization's Focus Report Number 77-26 entitled "Do Counties Need New Powers to Cope With Urban Sprawl?"

<sup>3</sup> Handbook of Texas Online, <http://www.tsha.utexas.edu/handbook/online/articles/CCmbc5.html> (accessed October 20, 2006)

<sup>4</sup> 71(R) HJR 107, 72(R) HJR 23, 73(R) HJR 124, 74(R) HJR 49, 74(R) HJR 80, 74(R) HJR 100, 74(R) HJR 132, 75(R) HJR 7, 74(R) HJR 17, 74(R) HJR 45, 74(R) HJR 46, 74(R) HJR 48, 74(R) HJR 76, 74(R) HJR 77, 74(R) HJR 79, 74(R) HJR 99, 74(R) HJR 100, 74(R) HJR 110, 74(R) HJR 112, 74(R) SJR 47, 76(R) HJR 6, 76(R) HJR 33, 76(R) HJR 34, 76(R) HJR 35, 76(R) HJR 41, 76(R) HJR 47, 76(R) HJR 50, 76(R) HJR 55, 76(R) HJR 67, 76(R) HJR 68, 76(R) HJR 82, 76(R) HJR 89, 76(R) SJR 2, 77(R) HJR 3, 77(R) HJR 10, 77(R) HJR 29, 77(R) HJR 30, 77(R) HJR 33, 77(R) HJR 34, 77(R) HJR 35, 77(R) HJR 36, 77(R) HJR 37, 77(R) HJR 38, 77(R) HJR 39, 77(R) HJR 40, 77(R) HJR 41, 77(R) HJR 42, 77(R) HJR 50, 77(R) HJR 62, 77(R) HJR 63, 77(R) HJR 68, 77(R) HJR 70, 77(R) HJR 83, 77(R) HJR 84, 79(R) HJR 34, 79(R) SJR 14

<sup>5</sup> Handbook of Texas Online, <http://www.tsha.utexas.edu/handbook/online/articles/CC/muc13.html> (accessed October 20, 2006)

<sup>6</sup> Handbook of Texas Online, <http://www.tsha.utexas.edu/handbook/online/articles/CC/muc14.html> (accessed October 20, 2006)

<sup>7</sup> 71(R) HJR 25, 71(R) HJR 36, 71(R) HJR 91, 72(R) HJR 87, 72(R) SJR 32, 73(R) HJR 72, 74(R) HJR 4, 74(R) HJR 8, 74(R) HJR 40, 74(R) HJR 132, 74(R) SJR 23, 75(R) HJR 17, 75(R) HJR 39, 75(R) HJR 47, 75(R) HJR 48, 75(R) HJR 108, 75(R) HJR 109, 76(R) HJR 80, 79(R) HJR 33, 79(R) HJR 74, 79(R) SJR 12

<sup>8</sup> Handbook of Texas Online, <http://www.tsha.utexas.edu/handbook/online/articles/II/mbil.html> (accessed October 20, 2006)

<sup>9</sup> Secretary of State Election Advisory No. 2006-14

<sup>10</sup> The full text of Opinion No. MW-140 can be found in Appendix.

<sup>11</sup> The full text of Executive Order RP32 can be found in the Appendix.

<sup>12</sup> The full text of this letter can be found in the Appendix.

<sup>13</sup> The full text of this proclamation can be found in the Appendix.

<sup>14</sup> The list of counties that have adopted these particular bans and disaster declarations is provided in the Appendix.

<sup>15</sup> Texas Forest Service Article found at:

<http://txforests.tamu.edu/shared/article.asp?DocumentID=406&mc=fire>

<sup>16</sup> Information gathered from the Texas Comptroller of Public Accounts website at:

<http://www.window.state.tx.us/taxinfo/proptax/annual04/statewide.html>

<sup>17</sup> Information and graphs was prepared by the Texas Association of Counties and can be found in their November/December 2005 issue of County entitled "Uncontrollables"

<sup>18</sup> Prepared for County Officials by the Texas Association of Counties. This handout was presented to the Committee at the Interim Hearing on May 1, 2006.

<sup>19</sup> Texas Commission on Jail Standards, "Jail Population Report: September 1, 2006."