
**HOUSE COMMITTEE ON LOCAL GOVERNMENT WAYS & MEANS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2006**

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

**FRED HILL
CHAIRMAN**

**COMMITTEE DIRECTOR
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House Committee On
Local Government Ways & Means

September 1, 2006

Fred Hill
Chairman

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

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 Local Government Ways & Means of the Seventy-Ninth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eightieth Legislature.

Respectfully submitted,

Handwritten signature of Fred Hill in black ink.

Fred Hill

Handwritten signature of Mike "Tuffy" Hamilton in black ink.

Mike "Tuffy" Hamilton

Handwritten signature of Robert Puente in black ink.

Robert Puente

Handwritten signature of Carlos Uresti in black ink.

Carlos Uresti

Handwritten signature of Jodie Laubenberg in black ink.

Jodie Laubenberg

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Chente Quintanilla

Gary Elkins

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CARLOS I. URESTI DISTRICT 118

September 25, 2006

The Honorable Tom Craddick
Speaker, Texas House of Representatives
Room CAP 2W.13
P.O. Box 2910
Austin, Texas 78768

Dear Speaker Craddick:

As you know, a committee's interim report is a work of consensus. It is rarely the case, however, that a committee is in complete agreement on all aspects of the final product. While I agree with most of the findings and recommendations of the 2006 House Committee on Local Government Ways & Means interim report, I take issue with others. In particular, I do not share the committee's view of illegal immigration as an unfunded mandate on local communities. I believe that this perspective is a potentially divisive one for Texas to embrace in future policymaking.

While it is true that undocumented immigrants create some additional costs and unique challenges for local communities, most undocumented populations are attracted to Texas because our labor market has unmet needs. In meeting those needs, undocumented workers generate income and economic activity that benefits, by and large, not only the local communities they inhabit, but also the State of Texas and our Nation.

A lack of federal immigration reform has not created the phenomenon of illegal immigration, although thoughtful federal action could certainly improve the current situation for both citizens and undocumented populations alike. Rather, the law of supply and demand and the needs of our changing economy -- as well as the economic conditions in other nations -- have come together to create the forces that draw increasing numbers of human beings to the United States in hope of a better life.

Undocumented populations in the United States purchase goods, pay rent that contributes to local property taxes, and engage in other taxed and fee-for-service transactions that contribute millions to local, state and federal revenue streams. They build our homes and

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work in them; they grow and harvest our food; they even care for our infants and children. Simply put: undocumented residents are not a net financial drain or an unfunded federal mandate on local communities. They provide a necessary labor force in the economies of many communities in Texas. Indeed, many of those communities would suffer severe financial losses exceeding any costs that illegal immigration imposes on them if their undocumented workforces were to disappear.

It is true that the United States must embrace comprehensive immigration reforms that keep our borders safe while continuing to extend opportunities for a better life in this country. That respects both our heritage and our future.

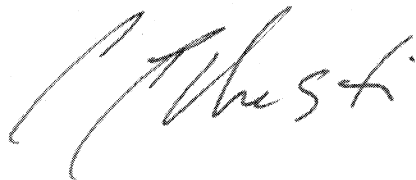
It is true that the United States must modernize its immigration code to reflect the fact that immigrants come to this country to take jobs that would otherwise go unfilled. That is the nature of our current economy.

And it is also true that local communities need assistance to deal with the strains created by a rapidly globalizing labor market. But those strains are brought on by the needs of American citizens, as well as the needs of legal and illegal immigrants.

I believe that portraying illegal immigration in Texas as an unfunded mandate fails to properly present the complex role that immigration -- both documented and undocumented -- plays in our State. And it is a portrayal that unnecessarily sours the conversation regarding the future of immigration in Texas.

The starting point for any discussion on immigration, and all the benefits and costs it provides, should be a clear framing of the issue. Therefore, I object to language in the interim report that represents illegal immigration as a type of unfunded mandate. This language unhelpfully expands the meaning of the term, and improperly conflates it with a complicated national phenomenon -- immigration -- that rests at the heart of our identity as Americans and Texans. It further muddies the debate on an emotional, sensitive, and potentially divisive issue that affects millions of citizens -- and those who want to join them.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Uresti', written in a cursive style.

CARLOS I. URESTI

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House Committee on Local Government Ways & Means:
Interim Charges

1. Study the impact of unfunded mandates by state and federal governments on cities.

 2. Compare and evaluate how counties and school districts impose (levy) property taxes, including a study and evaluation on the effective tax rate, the rollback tax rate, and rollback elections.

 3. Research and make recommendations regarding the Central Appraisal Districts in Texas; evaluate the makeup of the board of directors; examine whether consolidation of certain appraisal districts would save money; review appraisal districts' methodology in arriving at appraisal values; determine the impact of the Comptroller's Office audit on the operation of the appraisal district and its derivation of appraisal values.

 4. Review the current system of appraising property located in more than one appraisal district as created in House Bill 703, 78th Legislature. Determine if one fair and equal value per property for ad valorem taxes is preferable to the current system, and whether it is more efficient to appraise property on a county line basis or on a jurisdictional basis.
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Interim Charge #1

Study the impact of unfunded mandates by state and federal governments on cities.

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HISTORICAL PERSPECTIVE

In 2004, a resolution was adopted by 253 Texas counties to bring the issue of unfunded mandates before the Texas Legislature. Unfunded mandates are considered an obligation imposed on local entities by either the state or the federal government. These mandates are handed down by the Legislature with little or no funding to implement the newly created programs or expansion of existing programs. Therefore, cities and counties have to either raise local taxes or make cuts in other services to comply with the new mandate. The resolution directly addressed this dilemma by proposing a constitutional amendment which would prohibit the Legislature from enacting any further mandates without providing the necessary funding for those new programs. Needless to say, the resolution met with opposition from the Legislature.

However, recognizing the financial burden that local governments were faced with, Representative Cuellar introduced House Bill 66.¹ The purpose of HB 66 was to establish an interagency workgroup to compile “a list of all *unfunded* [emphasis added] state mandates enacted during each regular and special session.”² HB 66 also required the workgroup to review as well as evaluate the costs and benefits associated with each unfunded mandate after it was enacted for three years. Any findings by the workgroup would be brought forward at the next legislative session. With the passage of HB 66, a state mandate was defined as:

“[A] requirement made by a statute enacted by the legislature on or after January 1, 1997, that requires a political subdivision to establish, expand, or modify an activity in a way that requires the expenditure of revenue by the political subdivision that would not have been required in the absence of the statutory provision”³

However, any mandates that complied with the “Texas Constitution, federal law, a court order, a voter-approved motion or to maximize receipt of federal funds in the areas of education, health and human services and criminal justice”⁴ were automatically excluded from the workgroup’s list. In August 1998, the workgroup prepared a list of six unfunded mandates in bills which were later enacted during the 75th Legislature. Along with the six unfunded mandates, the workgroup also set forth several criteria to identify what is considered an unfunded mandate:

- have had a major impact on local government;

¹ 75th Regular Legislative Session, 1997.

² House Research Organization, “Someone Must Pay: Proposals for Dealing with Unfunded Mandates” *Interim News* 78-7 (July 22, 2004): 1.

³ Tex. Gov’t Code, §321.001.

⁴ House Research Organization, 2.

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- have not been incidental to a major, broad-based policy bill with statewide impact;
 - have constituted a cost to local government, not a loss of funds to them;
 - have not been a clarification of a previous statute; and
 - have not been requested by a unit of local government.

The workgroup's list of six unfunded mandates included bills that contained requirements for

- school districts to test natural gas piping systems;
- cities to pay for a public record mapping of extraterritorial jurisdiction;
- safety equipment for buses;
- criminal background checks for bus drivers;
- appraisal districts to pay for notice of a property owner's right to protest tax matters; and
- County Clerks to pay for administrative costs due to funds tendered into registry of the court.⁵

Then in 2003, during the 78th Legislature, Regular Session, Senator Ratliff introduced Senate Bill 19 which, in essence repealed the Unfunded Mandates Interagency Workgroup. Even though part of the statute remains intact, it is simply inactive without the section pertaining to the interagency workgroup.

LIMITS IN OTHER STATES⁶

In addition to Texas, about 30 states have some sort of limit on state mandates on local governments, although many are in statute alone. Most states also have some method for ascertaining the fiscal impact of legislation on local governments, usually through fiscal notes attached to proposed legislation that estimate the cost or gain to local governments if a bill were enacted. Fiscal notes in Texas are required by House and Senate rules and prepared by the Legislative Budget Board.

Require local approval. In the 1980s, Alabama voters approved constitutional amendments that prohibit the enforcement of a state law increasing local expenditures or decreasing revenues unless the law is approved by a local governing body. Louisiana voters in 1991 amended the state constitution to permit mandates with local approval and funding. Other states that permit mandates with local approval are Alaska, Massachusetts, New Hampshire, and Oregon.

⁵ Id.

⁶ The entire "Limits in Other States" section of this document is taken from House Research Organization, "Someone Must Pay: Proposals for Dealing with Unfunded Mandates" *Interim News* 78-7 (July 22, 2004): 2-4.

Require reimbursement. California voters in 1979 approved a referendum requiring the state to reimburse local governments for all costs attributable to state mandates. Hawaii's constitution, amended in 1978, requires that the state share the cost of any new state mandate, as does Tennessee's constitution. The Maine Constitution requires that the legislature fund at least 90 percent of the cost of state mandates. Other states that constitutionally require reimbursement include Florida, Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, New Jersey, and Oregon.

Permit opting out. The Colorado Constitution, amended in 1992, allows local governments not to fund, or to fund at a lower level, programs mandated by the state legislature, except for public education through grade 12.

"California voters in 1979 approved a referendum requiring the state to reimburse local governments for all costs attributable to state mandates."

Offer new funding sources. Among other provisions, Florida's Constitution permits unfunded mandates when the state legislature authorizes a local government to create a new funding source not previously available to it. Other states that permit mandates with a new source of revenue include Louisiana and New Mexico.

Prohibit reducing funding. Among other provisions, Florida's Constitution forbids the state legislature, except by two-thirds vote of the membership of each house, to reduce local governments' ability to raise revenue or to reduce the percentage of state tax shared with local governments. Maine's Constitution requires the state to reimburse at least 50 percent of any property tax revenue loss resulting from statutory property tax exemptions. The Pennsylvania Constitution requires the commonwealth to reimburse any lost revenue due to tax exemptions, but excludes certain exemptions, such as those for cemeteries, churches, and veteran's posts.

Other provisions. Some states exclude certain mandates from constitutional prohibition. Common exclusions include mandates required to comply with federal law, expenditures required to comply with a law that applies to all people similarly situated, and certain classes of laws, such as election and criminal laws. Oregon also has an arbitration panel to resolve disputes between local governments and the state relating to unfunded mandates. Many states, including Florida, Louisiana, Maine, Massachusetts, New Jersey, and Oregon,

permit mandates that are enacted by a two-thirds, three-quarters, or other higher-standard vote of each house.

OVERVIEW OF CURRENT MANDATES

"Cities and counties find themselves falling further and further behind in their capital funding so as to keep up with the immediate demands of funding mandates. "

Cities and counties define unfunded mandates as financial burdens placed upon them by federal and state actions, often creating a need for increased property tax revenue at the local level. Such actions could include:

- a directive to cities and counties without the necessary funding to carry out the directive;
- withdrawal of or cuts in state or federal funding to carry out existing directives;
- changes in state operations which inadvertently result in local government expenses and inefficiencies; and
- a directive that may have some funding associated with it but not nearly enough to fully fund the implementation of the directive.

Texas cities and counties both face numerous mandates, many of which are shared in common. Cities and counties also differ to some degree in the scope and impact of mandates. Cities tend to see more costly federal mandates, but less costly state mandates. Counties tend to be the opposite, with more explicit and costly state mandates.

How do cities and counties in Texas respond to unfunded and partially funded mandates? They comply and, if necessary, look to increased taxes and fees to pay for the mandates. They typically do not look to the state, because Texas does not routinely fund the general operating expenses of local governments.

Unfortunately, increased taxes and fees often provide insufficient funds to fully comply with new mandates. This necessitates increased taxes or gradual but systematic cuts in funding to other services. In order to avoid increasing taxes, local officials often attempt to put off current expenditures as these are the ones least likely to anger the public. Thus, unfunded mandates tend to result in

decreased capital expenditures such as for roads, bridges, streets, sewer, and water.

Cities and counties find themselves falling further and further behind in their capital funding so as to keep up with the immediate demands of funding mandates. The reality is that unfunded and partially funded mandates either have to be funded through additional revenues or they may damage other programs as cities and counties shift resources.

Federal Mandates on Cities

Air and Water Quality

Water Quality

The Safe Drinking Water Act (SDWA), 42 U.S.C. §300(f), *et seq.* (1974), was originally passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply. The law was amended in 1986 and 1996 and requires many actions to protect drinking water and its sources. SDWA authorizes the United States Environmental Protection Agency (EPA) to set national health-based standards for drinking water to protect against both naturally-occurring and man-made contaminants that may be found in drinking water. If a water system is not meeting these standards, it is the water supplier's responsibility to notify its customers. Many water suppliers now are also required to prepare annual reports for their customers.⁷

Essential components of safe drinking water include protection and prevention. States and water suppliers, including cities, must conduct assessments of water sources to see where they may be vulnerable to contamination.⁸

New crypto sporidium and disinfection by-product standards will require additional testing in the City of Houston over the next two years at a cost of \$2 million. This could lead to required treatment plant modifications that could cost as much as \$50 million depending on the test results.⁹

The City of Nacogdoches will be required to comply with the Enhanced Surface Water Treatment Rule (LT2) within the next 18 months at a cost of approximately \$60,000 to improve drinking water quality and provide additional protection from disease-causing microorganisms and contaminants.¹⁰

⁷ United States Environmental Protection Agency, "Safe Drinking Water Act 30th Anniversary Understanding the Safe Drinking Water Act" (Washington, DC: EPA, 2004 accessed 22 May 2006) Available from <http://www.epa.gov/safewater/sdwa/30th/factsheets/understand.html>

⁸ Id.

⁹ Judy Gray Johnson, 2.

¹⁰ Jeff Jeffers, written testimony to the Texas House of Representatives Committee on Local Government Ways and Means April 18, 2006.

The Clean Water Act (CWA) is the cornerstone of surface water quality protection in the United States so that the surface waters can support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water."¹¹ The National Pollutant Discharge Elimination System (NPDES) Stormwater Program was created in October 1990. These regulations define certain stormwater discharges as point sources subject to the NPDES permit program. The two broad areas of stormwater point sources are storm water discharges associated with industrial activity and municipal separate stormwater sewer systems (MS4s). Yearly permitting cost to the City of Beaumont is \$250,000 to \$400,000.¹² Counties are also affected by the NPDES permit program.

Air Quality

The 1990 Clean Air Act, 42 U.S.C. §7401, *et seq.* (1970), is the comprehensive federal law that regulates air emissions from area, stationary, and mobile sources, acid rain, ground-level ozone, stratospheric ozone depletion, and air toxics. It authorizes the EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment. Under this law, EPA sets limits on how much of a pollutant can be in the air at any location in the United States to ensure that all Americans have the same basic health and environmental protections. The law allows individual states to have stronger pollution controls, but weaker pollution controls are not allowed.¹³

The Clean Air Act mandates put costly requirements on cities and counties in larger metropolitan areas to reduce ozone. The major cost is associated with the increase in construction costs of added capacity street projects.¹⁴

First Responders

The Occupational Safety & Health Administration (OSHA) mandates Hepatitis B shots to be given to all first responders. For the City of Denton this is equal to approximately \$400 per employee or \$32,000 total cost. In the 78th legislative session the State mandated that certain public safety personnel be tested for Hepatitis B and C each year.¹⁵

Federal Mandates on Counties

¹¹ United States Environmental Protection Agency, "Introduction to the Clean Water Act" (Washington, DC: EPA) Available from <http://www.epa.gov/watertrain/cwa/>.

¹² City of Beaumont, "Federal/State Unfunded Mandates" (submitted to the House Committee on Local Government Ways & Means, Beaumont, TX: Beaumont, 2006), 1.

¹³ United States Environmental Protection Agency, "Clean Air Act" (Washington, DC: EPA) Available from <http://www.epa.gov/region5/defs/html/caa.htm>.

¹⁴ City of Beaumont, "Federal/State Unfunded Mandates", 1.

¹⁵ Ryan Brown, "Unfunded Mandates" (letter submitted to the House Committee on Local Government Ways & Means, Dallas, TX: Dallas County Budget Office, January 4, 2006), 1 and Tex. Health & Safety Code, §81.095.

Juvenile Services

In fiscal year 2003, state funds accounted for about 25% of total funding for juvenile probation services. Local commissioners courts provide approximately 66% of the total funding from county budgets. The remaining expenditures were funded through the federal government or other local entities¹⁶. According to *'Maintenance of Local Financial Support,'*¹⁷ in order to obtain the 25% of funding from the state, counties must maintain expenditures at least equal to the amount spent in fiscal year 1994. Counties do not have the option to cut expenditures for these juvenile services to redirect funding in another area of need thus limiting the commissioners courts' financial management flexibility. However, the federal government (as well as the state) has recently decreased funding of grants to assist in juvenile residential placement services. Dallas County alone has lost in excess of \$1.2 million for fiscal year 2006 due to reduced state and federal grants.¹⁸

County governments are required to provide education services to students expelled from school for misconduct at the school district's discretion. Juvenile Justice Alternative Education Programs (JJAEPs) supply the education for these students which is mandated for counties with populations of more than 125,000.¹⁹

State Mandates on Cities

Municipal Courts

State law requires that municipal courts collect large amounts of state fees on city offenses. The City of Nacogdoches estimates that 50% of Class C violations go into warrant status. After 60 days they are considered uncollectible and are sent to a collection agency which retains 30% of the amount collected. Increasing the fine amounts would only increase the amount of uncollectible revenue and do little to increase city revenue.²⁰

Utilities

In 1995, the Texas Legislature required all electric utilities in Texas to reduce their base rate charges for electric service provided "to a facility of a four-year state university, upper-level institution, Texas State Technical College or college"

¹⁶ Texas Juvenile Probation Commission, "The State of Juvenile Probation Activity in Texas : Statistical and Other Data on the Juvenile Justice System in Texas for Calendar Year 2003" (Austin, TX: TJPC, August 2005), 3. Available from: <http://www.tjpc.state.tx.us/publications/reports/RPTSTAT2003.pdf>.

¹⁷ Tex. Hum. Res. Code, §141.082.

¹⁸ Ryan Brown, 1.

¹⁹ Tex. Educ. Code, §37.011.

²⁰ City of Nacogdoches, 7-8.

by 20%. As of 2006, the total impact of this mandate on the City of Denton is that the two universities combined pay approximately \$839,866 per year less for their electric service than it costs to serve them.²¹

In 2003 the Legislature exempted state colleges and universities from paying municipal storm water utility fees. The exemption for state properties and state universities reduced the revenues from Denton's municipal drainage fee by \$252,000.²²

Environmental

Construction Permits

Under Construction General Permit, TXR 150000,²³ construction activities from which runoff goes into or adjacent to any surface water in the state are regulated according to the area of land disturbed.

- Large construction activities, which disturb 5 or more acres or are part of a larger common plan of development that will disturb 5 or more acres, are regulated under this general permit.
- Small construction activities which disturb at least 1 but less than 5 acres, or are part of a larger common plan of development that will disturb at least 1 but less than 5 acres, are also regulated under this general permit.
- Construction activities that disturb less than 1 acre, and are not part of a larger common plan of development that would disturb 1 or more acres, are not required to obtain coverage under this general permit.²⁴

Permitting costs can range from \$1,000 to \$5,000 per acre and are not limited to cities and counties.

Testing

The City of Nacogdoches currently operates a 320-acre Type I landfill with an operating budget of \$1,364,725. Over \$100,000 of that budget is for environmental testing. Current requirements are for methane testing four times a year, groundwater testing two times a year and storm water testing four times a year. These are the minimum testing requirements; if found to be outside the limits established by the Texas Commission on Environmental Quality (TCEQ), additional testing is required.²⁵

²¹ City of Denton, written testimony to the Texas House of Representatives Committee on Local Government Ways and Means April 18, 2006, 1.

²² City of Denton, 1.

²³ Tex. Water Code, §26.040 and Section 402 of the Federal Water Pollution Control Act.

²⁴ Texas Commission on Environmental Quality, *Storm Water Discharges from Construction Activities: Am I Regulated?* (Austin, TX accessed 22 May 2006); available from http://www.tceq.state.tx.us/permitting/water_quality/stormwater/TXR15_AIR.html.

²⁵ Written testimony provided by the City of Nacogdoches.

Public Safety

In 2001, SB 1074 was signed into law as the Texas Racial Profiling Act. As part of the racial profiling regulations, effort must be made to install video cameras into patrol cars at a cost of approximately \$6,000 each. If the cameras are not installed, large amounts of statistical data on all traffic and pedestrian stops must be kept limiting the time the officer is able to patrol the streets.²⁶

State Mandates on Counties

Indigent Health Care

The Indigent Health Care and Treatment Act of 1984 required counties and hospital districts to pay for the provision of health care to certain indigent residents as the payor of last resort. Counties are required to spend an amount of up to 8% of their general tax levy. Once this threshold is reached, the state provides assistance up to 90% of actual expenditures. This amount is further limited by actual state appropriations. State funding has decreased from around \$9 million in 2000 to about \$5 million in 2005.²⁷

In January of 2006 President Bush signed the Deficit Reduction Act of 2005 which included several provisions that “will cost American states and counties billions of dollars.”²⁸ These include reductions in child support payments, new requirements and penalties in the Temporary Assistance for Needy Families Block Grant (TANF), reductions in allowable expenditures under foster care administrative costs and broad discretion the Secretary of Health and Human Services (HHS) in determining TANF eligible activities and participation. “The child support changes were declared an unfunded mandate by the Congressional Budget Office.”²⁹

States can impose nominal cost sharing requirements on certain population groups for most services, including prescription drugs. Certain groups, including children and pregnant women, cannot be charged cost sharing. Cost sharing is prohibited for some services such as emergency room visits, family planning services, and hospice care. Providers generally cannot deny services or drugs to beneficiaries based on unpaid co-payments, although beneficiaries remain liable for the amounts.³⁰

²⁶ Tex. Code Crim. Proc, art. 2.132(7)(d).

²⁷ Don Lee, written testimony to the Texas House of Representatives Committee on Local Government Ways and Means April 18, 2006, 3.

²⁸ National Association of Counties, “House Narrowly Approves Budget Reconciliation Bill,” *Legislative Bulletin*, 3 February 2006.

²⁹ *Id.*

³⁰ Kaiser Commission on Medicaid and the Uninsured, *Deficit Reduction Act of 2005: Implications for Medicaid* (Menlo Park, CA: The Henry J. Kaiser Family Foundation, February 2006), 1.

According to the National Association of Counties, The Deficit Reduction Act will cut over \$4 billion in Medicaid spending and over \$5 billion in Medicare spending over a five year period. Nearly a third of the Medicaid savings will come from changes in prescription drug payment policies changing the way in which state Medicaid programs pay pharmacists for prescriptions. Premiums and cost sharing provisions will account for nearly \$2 billion in reduced federal spending allowing higher co-payments for non-emergency services provided in an emergency room and increased cost sharing for non-preferred drugs.³¹

In addition, the new federal requirement “compels anyone seeking Medicaid coverage to provide a birth certificate, a passport, or another form of identification in order to sign up for benefits or renew them.”³² No such proof was previously required.

Indigent Defense

In the legislative session completed in June of 2003, the Texas Legislature approved modest increases in state funding for indigent defense. These increases reflect a commendable commitment to improving indigent defense, but will still leave approximately 90% of the indigent defense cost burden on Texas counties.³³

Even with current spending, Texas spends less per capita on indigent defense than most comparable Southern states³⁴ as seen in the following table.

³¹ National Association of Counties.

³² Scott Helman, “US Rule Demands Proof of Citizenship for Healthcare,” *The Boston Globe*, 11 April 2006.

³³ The Equal Justice Center, *Texas Indigent Defense Spending* (Austin, TX: The Center, 2003 accessed 23 May 2006); available from http://www.equaljusticecenter.org/new_page_39.htm.

³⁴ Id.

State and County 2002 Indigent Defense Expenditure and Cost-Per-Capita in Selected States[1]						
State	Population	State Expenditure	County Expenditure	Total Expenditure	Total Expenditure-per-Capita	Percentage of State Funds
Texas	20,851,820	\$7,540,649[2]	\$106,296,379	\$113,837,028	\$5.46	6.60%
Florida	15,982,378	\$144,800,000	\$35,875,000[3]	\$180,675,000	\$11.31	80.20%
Georgia	8,186,453	\$9,423,078[4]	\$44,632,008[5]	\$54,055,086	\$6.60	17.40%
N. Carolina	8,049,313	\$73,859,355	\$0	\$73,859,355	\$9.17	100%
Missouri	5,595,211	\$31,601,168	\$0	\$31,601,168	\$5.65	100%
Louisiana[7]	4,468,976	\$7,800,000	\$23,930,000[6]	\$31,730,000	\$7.10	24.60%
Alabama	4,447,100	\$37,698,403	\$0	\$37,698,403	\$8.48	100%
Kentucky	4,041,769	\$26,739,314	\$1,464,776	\$28,204,090	\$6.98	83.40%
S. Carolina[8]	4,012,012	\$14,836,835	\$7,172,276	\$22,009,111	\$5.48	67.40%
Oklahoma	3,450,654	\$16,102,393	\$8,215,748	\$24,318,141	\$7.05	66.20%
Arkansas	2,673,400	\$13,165,489	\$0	\$13,165,489	\$4.92	100%

Table © 2003 American Bar Association, used here with permission.³⁵

1. The figures reported in this table do not include any funds that may have been spent by municipalities in these states. Additionally, in many states, such as Arkansas and North Carolina, counties make in kind contributions or provide funding for public defender's office space. Expenditure figures for these county contributions are not available.
2. State funding in Texas only commenced in the last 7 months of FY 2002. With implementation of the Texas Fair Defense Act for the full 12 months in FY 2003, state funding will rise to approximately \$12.8 million.
3. Estimate
4. Includes Grants to Counties and Multi-County Public Defender funds.
5. This figure represents the total expenditure of the 152 counties that applied for Georgia Indigent Defense Commission (GIDC) funding in 2001, plus Clerks and Sheriffs Fund contributions to these counties. The figure does not include indigent defense expenditure information for the seven counties that did not apply for GIDC funding.
6. This figure does not include the indigent defense expenditure of the five rural judicial districts that did not apply to Louisiana Indigent Defense Assistance Board. There are 41 judicial districts in Louisiana.
7. 2002 expenditure data is not yet available.
8. 2002 expenditure data is not yet available.

The Fair Defense Act was passed in 2001 requiring counties to provide increased indigent criminal defense services on a very aggressive time line and with specific new requirements.³⁶ Counties have always been required under the Texas Constitution to provide for indigent defense, and the Act ratchets up that duty even further. The Act requires the appointment of counsel for an indigent defendant within 24 hours in counties with a population of more than 250,000, and within 72 hours in smaller counties. In the larger counties, this dramatically

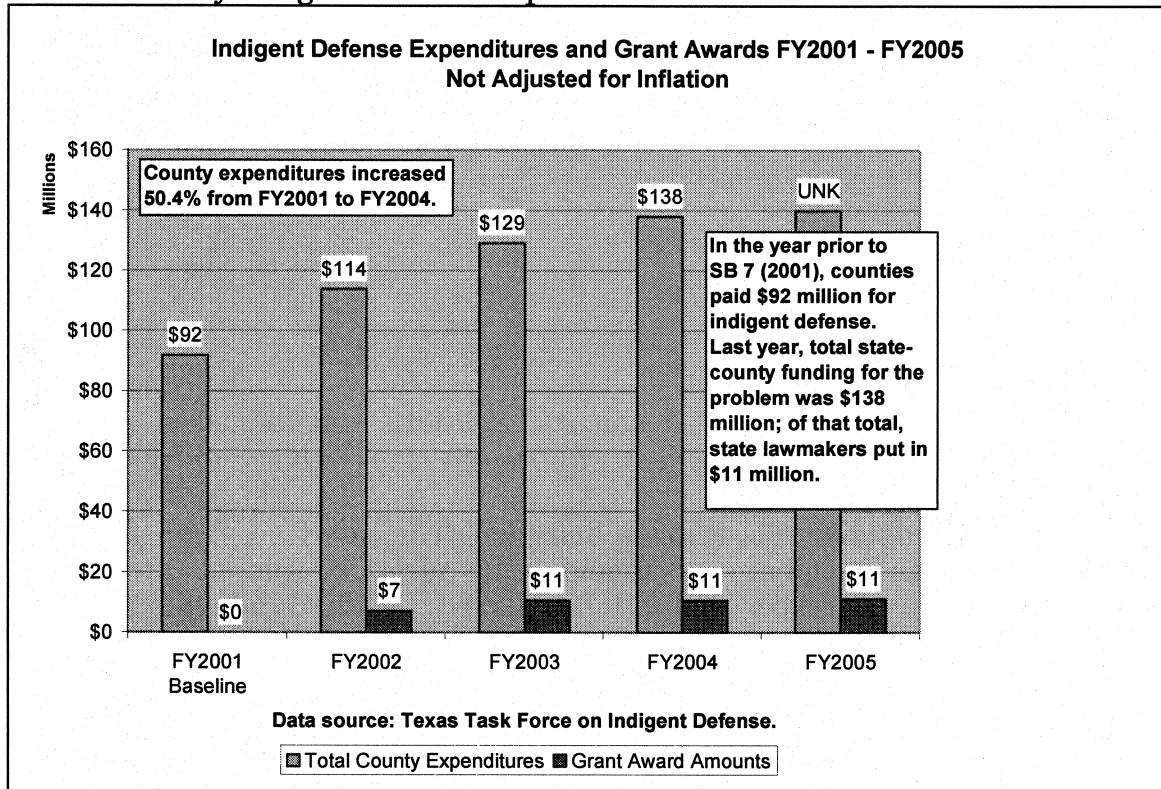
³⁵ Prepared for the Bar Information Program of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants by The Spangenberg Group (1001 Watertown Street, West Newton, MA 02465 (617) 969-3820).

³⁶ Tex. Code Crim. Proc., art. 1.051(c).

increases costs because attorneys are now appointed before defendants are released on bond and have the opportunity to hire their own attorney.

The Task Force on Indigent Defense administers approximately \$11 million in state grant money; however, the majority of indigent defense costs are shouldered by the counties. Overall, counties have experienced a more than 50-percent increase in indigent defense costs from 2001 to 2005 as seen below.³⁷

Chart 1: County Indigent Defense Expenditures



Source: Texas Association of Counties.

Prior to 2001, Dallas County spent approximately \$21 million in indigent defense. For 2006, Dallas County will expend \$22.3 million for indigent defense or \$1.3 million more than in 2001. The State provides Dallas County slightly less than \$1 million each year to offset the increase.³⁸

County Jails and State Inmates

State Convicts

State convicts can be held in a county jail for up to 45 days without reimbursement by the state. Although the average length of time these convicts

³⁷ Texas Association of Counties, "Uncontrollables – Why it's not always so easy to keep property taxes down," *County Magazine* 17, no. 6 (November/December 2005): 37.

³⁸ Ryan Brown, 1.

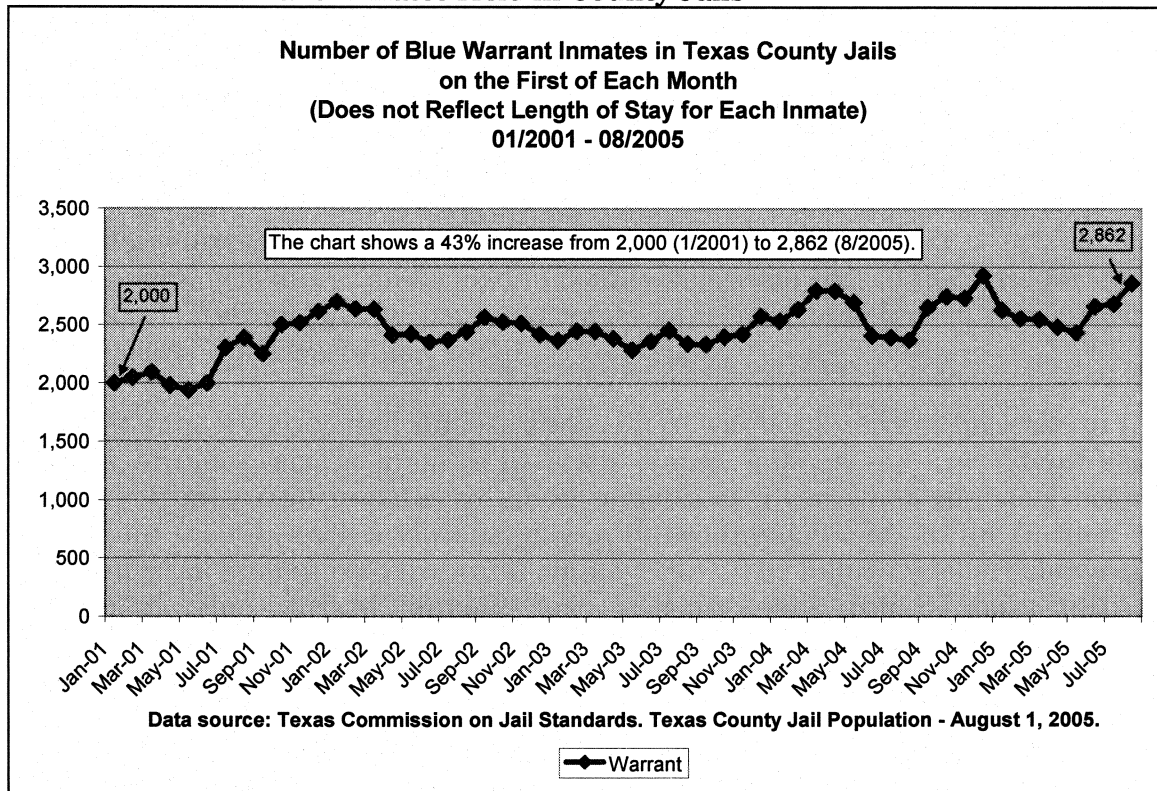
are held in county jails varies, it tends to increase when state facilities become more crowded. While incarcerated in county jails, the county is obligated to provide medical services which can include extraordinary medical costs such as emergency room visits.

Blue Warrants

Alleged parole violators can be held in county jails at no cost to the state for up to 41 days. Traditionally, the paper warrants were in a blue jacket – that’s why they’re called “blue warrants.”

Between January 2001 and August 2005, there was a 43 percent increase in the number of blue warrant inmates in Texas county jails on the first day of each month – from 2,000 inmates to 2,862 inmates.³⁹ Even when the state begins picking up the tab, each additional day in the county jail adds to the burden on the county jail system resources and employees.⁴⁰ The following chart shows the number of “blue warrant” inmates held in county jails from January 2001 to August 2005.⁴¹

Chart 2: Blue Warrant Inmates Held in County Jails



Source: Texas Association of Counties.

³⁹ Texas Association of Counties, “Uncontrollables – Why it’s not always so easy to keep property taxes down,” 37.

⁴⁰ Don Lee, 3.

⁴¹ Texas Association of Counties, “Uncontrollables – Why it’s not always so easy to keep property taxes down,” 37.

Blue warrant inmates are parolees from state prison who are charged with technical violations of the terms of their parole by their parole officers. They may or may not have broken any new criminal laws; failure to show up for an appointment with the parole officer or associating with others who have broken the law can result in parole revocations landing them back in jail. Sometimes, parole officers will put a parolee in the county jail for a few days of “jail therapy.”⁴²

Inmates with new charges only become blue warrant inmates after all the new charges have been resolved. Resolution can be achieved by having the charges dropped, or in the case of a conviction, by payment of the fine or serving out the time in the county jail, for example.

Jails

The Texas Commission on Jail Standards requires counties to perform a variety of services for inmates and specifies staffing levels. Standards promulgated by the Commission help counties avoid inmate lawsuits but they can be costly. For example, Dallas County is required to put in a two way intercom system (inmate cell to control center) in their West Tower jail that has a capacity of over 1,400 inmates. This jail was built over 15 years ago and had passed every state jail inspection until two years ago when the requirement to have a two way intercom system was brought up. The cost to install the jail intercom system is in excess of \$1.5 million.⁴³

“The duty of a county to provide a safe and suitable jail has been on the books in Texas since its inception, so costs involving the operation of jails may be the original unfunded mandate. And as you well know from the state’s experience of operating prisons, there are more and more legal requirements – and the costs that go with the requirements.”⁴⁴

Mentally Ill in County Jails

Demand for competency restoration services for mentally ill prisoners, which have always been provided by the state, has been growing. Forensic commitments are now about 30% of the total state hospital population compared to 16% in 2001. Recently, however, the state has limited the number of admissions to state facilities to less than what is needed to meet this growing demand.

⁴² Id.

⁴³ Ryan Brown, 2.

⁴⁴ Marc Hamlin, "Testimony by Marc Hamlin, Brazos County District Clerk Before the Committee on Local Government Ways & Means Texas House of Representatives April 18, 2006" (letter submitted to the House Committee on Local Government Ways & Means, Brazos County, TX: Brazos County, April 18, 2006), 2.

If the defendant cannot get into a mental health facility to work on restoring competency to stand trial, due process applies and they must be released. A jail does not qualify as a court ordered mental health facility and there may be constitutional issues involved if an offender is detained in an inappropriate facility in violation of a court order. This has left counties in the position of either funding competency restoration services or housing the inmates who cannot be restored to competency until they must be released since they cannot stand trial.⁴⁵

In an article dated January 29th, the *Fort Worth Star Telegram* reports “Mental Health Mental Retardation of Tarrant County could lose as much as \$4 million this year because the county has already exceeded the \$10.5 million set aside by the state for treatment of inmates at state hospitals. And developing a local program to handle a backlog of criminal commitments could cost local taxpayers millions of dollars more.”⁴⁶ Tarrant County has also expressed concern about the possibility of constitutional violations arising from this issue.⁴⁷

Visiting Judges

The 78th Legislature decreased the funding for visiting judges causing counties to pick up the difference.⁴⁸ As a result, Dallas County picked up the cost to provide a drug court operated by a visiting judge at a direct cost to the county of \$75,000.⁴⁹

Comal County Judge Danny Scheel said, “Our visiting judges are one example. We got in a tight spot. We needed visiting judges. They cut the appropriation for that program by two-thirds — from \$8 million to around \$3 million. That’s another reason we had to go for the magistrate’s position at the county jail and create a second county court-at-law.”⁵⁰

Child Protective Services

State law mandates numerous child protective services requirements on counties, including appointed counsel, caseworkers, and counseling. Prior to 2005, counties only had to appoint (and pay) indigent counsel if termination of parental rights was sought. Now, the county is responsible for appointing counsel in many more cases.

⁴⁵ Don Lee, 2.

⁴⁶ Anthony Spangler, "Plan Limits Criminal Mental Commitments To State Hospitals," *Fort Worth Star-Telegram*, 29 January 2006, quoted in Texas Association of Counties, "Counties Encouraged to Participate in Mental Health Services Hearings" *County Issues* 16, no. 1 (February 2006): 1.

⁴⁷ Texas Association of Counties, "Counties Encouraged to Participate in Mental Health Services Hearings" *County Issues* 16, no. 1 (February 2006): 1.

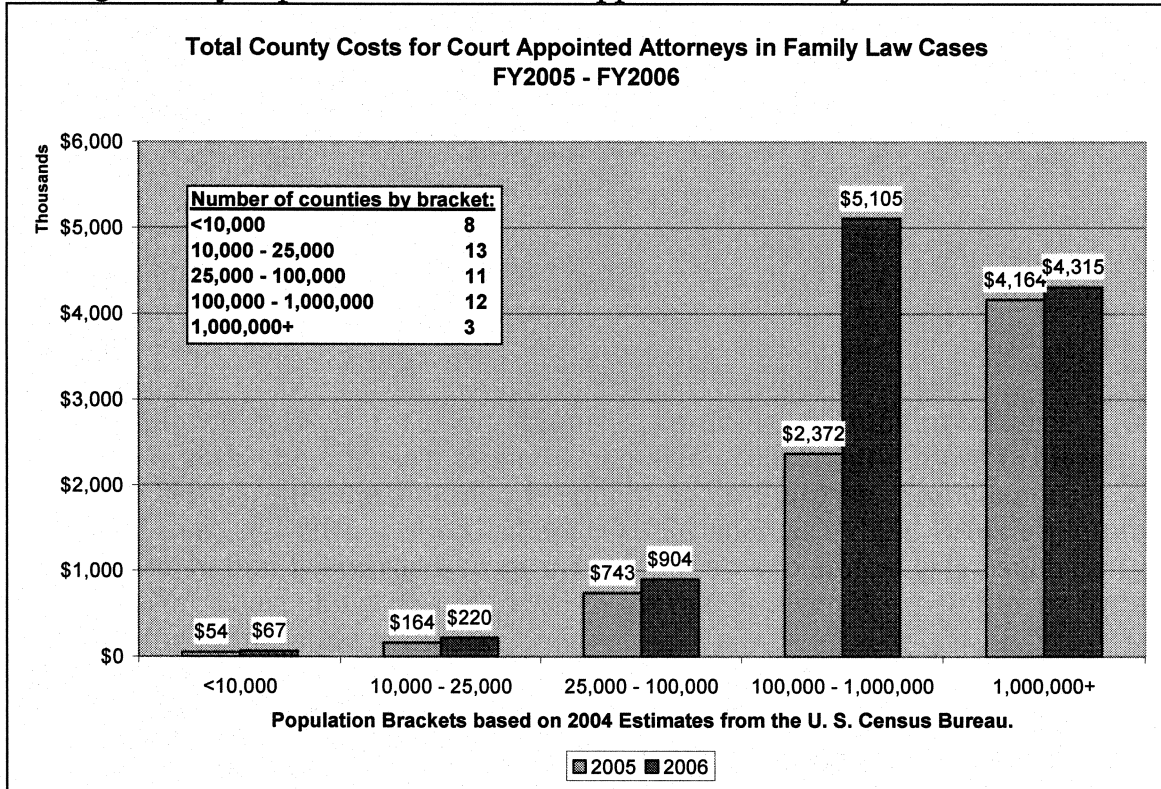
⁴⁸ 78th Leg. R. S. (2003), HB 3306, section 17.

⁴⁹ Ryan Brown, 1.

⁵⁰ Ron Maloney, "County learns effects of new laws," *The Herald-Zeitung*, 14 August 2003.

Senate Bill 6,⁵¹ passed in 2005, requires counties to appoint attorneys for indigent parents who oppose temporary managing conservatorships of children – not just when parental termination is sought, as in the past. Some counties are reporting that this little-noticed change could increase their court-appointed lawyer costs in family law cases from 15% of the cases to almost every such case.⁵² The following chart shows the increase in average budgeted expenditures for 47 counties due to this state mandate.

Chart 3: County Expenditures for Court Appointed Attorneys.



Source: Texas Association of Counties.

The next chart shows the budgeted increase in county expenditures for three selected counties.

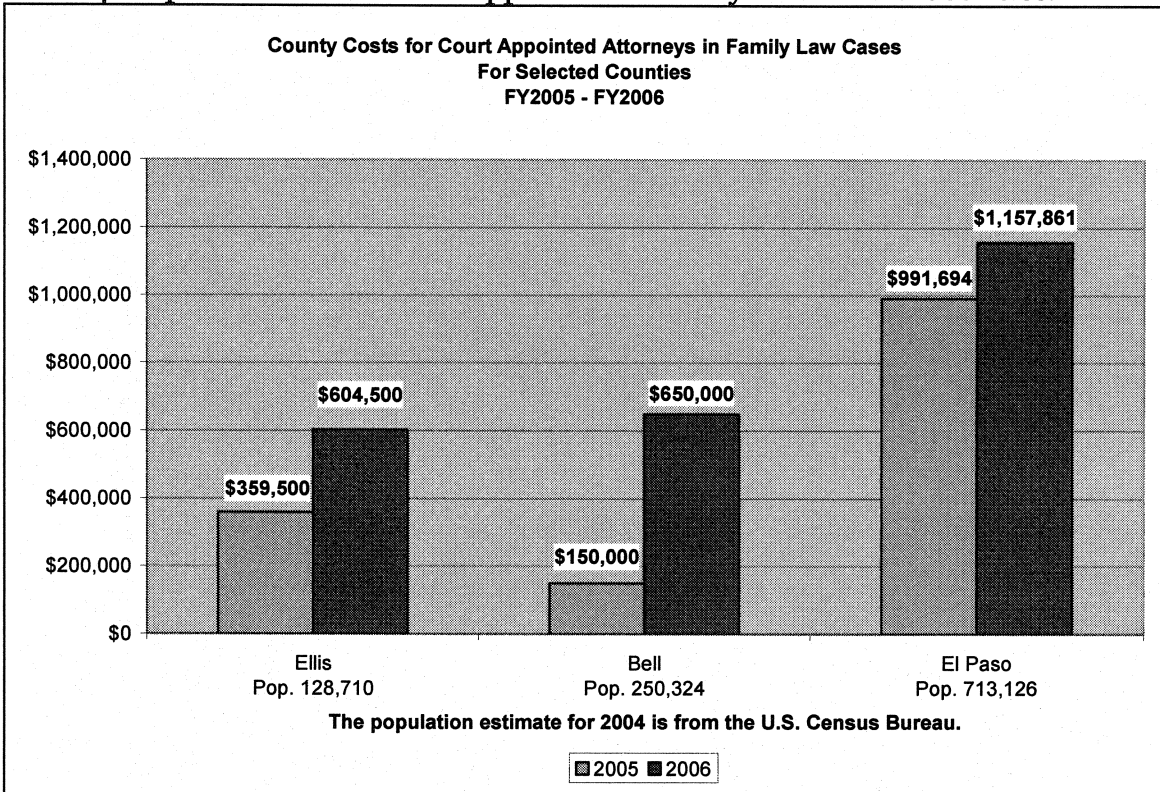
The averages are shown for five different population brackets along with the number of counties in each bracket. By requiring the appointment of attorneys even in cases where permanent removal of a child is not sought, the state has mandated a substantial increase in attorney appointments.⁵³

⁵¹ Tex. Fam. Code, §107.013.

⁵² Texas Association of Counties, "Uncontrollables – Why it's not always so easy to keep property taxes down," 39.

⁵³ Don Lee, 2.

Chart 4: Expenditures for Court Appointed Attorneys – Selected Counties.



Source: Texas Association of Counties.

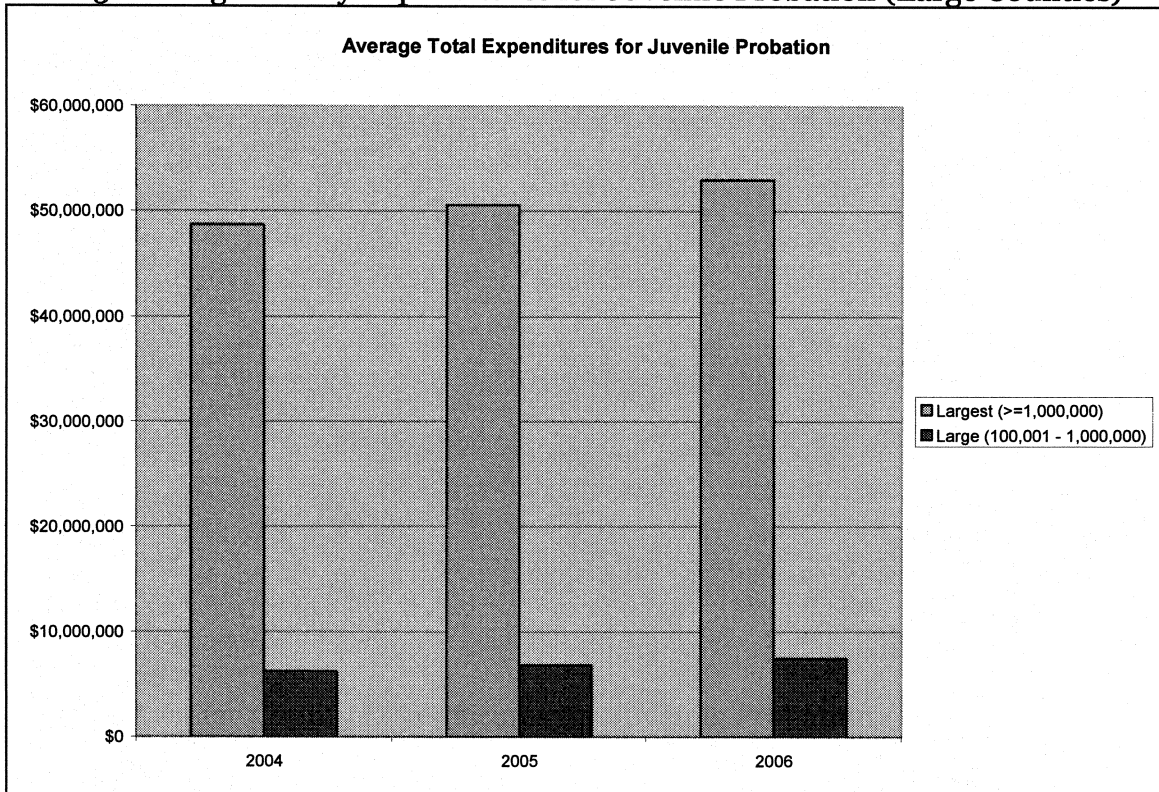
Juvenile Probation

State law strictly regulates the handling of juveniles, although Juvenile Probation is administered locally at the county level. Intake of all cases is handled by the counties, with probation being ordered by Juvenile Courts and also through deferred prosecution programs whereby the child does not appear in Juvenile Court, but is placed on probation by the probation staff.

The juvenile court has three basic options for juvenile offenders: 1) probation while remaining at home; 2) placement on probation outside of the home; or 3) commitment to the Texas Youth Commission. Probation may include counseling, community service restitution, financial restitution, group programs, intensive supervision programs, as well as other programs based on the individual needs of the child. Additional services can include prevention and intervention services, family workshops, drug education, victim’s assistance, and team building activities.

The following two charts show the change in county expenditures for juvenile probation over a three year period from 2004 to 2006. The charts show averages based on population brackets. The first chart shows the averages for the largest counties, those with a population over 100,000 and those over 1,000,000.

Chart 5: Average County Expenditures for Juvenile Probation (Large Counties)



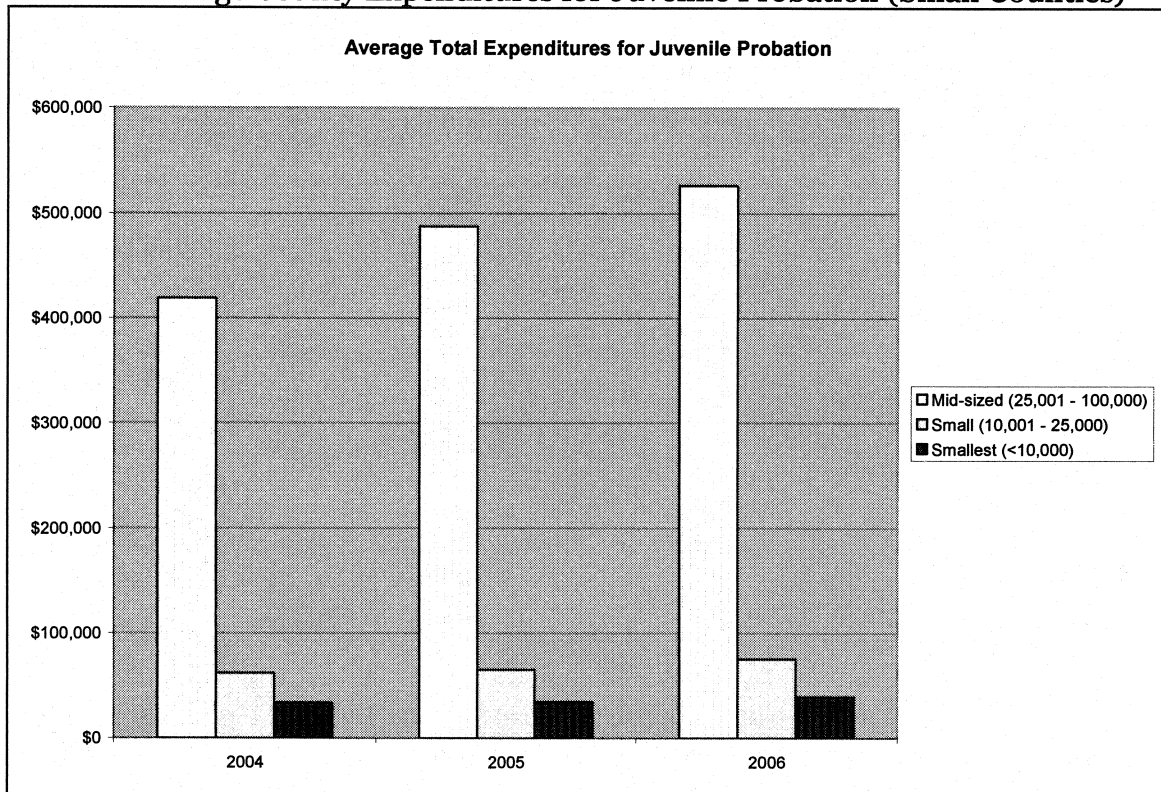
Source: Texas Association of Counties.

Juvenile Probation costs remained fairly consistent over the three year period, 2004 - 2006. The largest counties had the greatest total expenditures in this category and the smallest percentage increase, 8.8%. Counties between 100,000 and a million increased their expenditures by 19.3%.⁵⁴

The greatest percentage increase in average expenditures, 25.7%, was in the Mid-sized counties, those with populations between 25,001 and 100,000 (Chart 7). Small counties, populations between 10,001 and 25,000, had a 22.0% increase while the Smallest counties, population under 10,000, had a 16.8% increase (Chart 6).

⁵⁴ Texas Association of Counties, *County Expenditures and Tax Rates Survey 2006* (Austin, TX: 21 April 2006), 22.

Chart 6: Average County Expenditures for Juvenile Probation (Small Counties)



Source: Texas Association of Counties.

Adult Probation

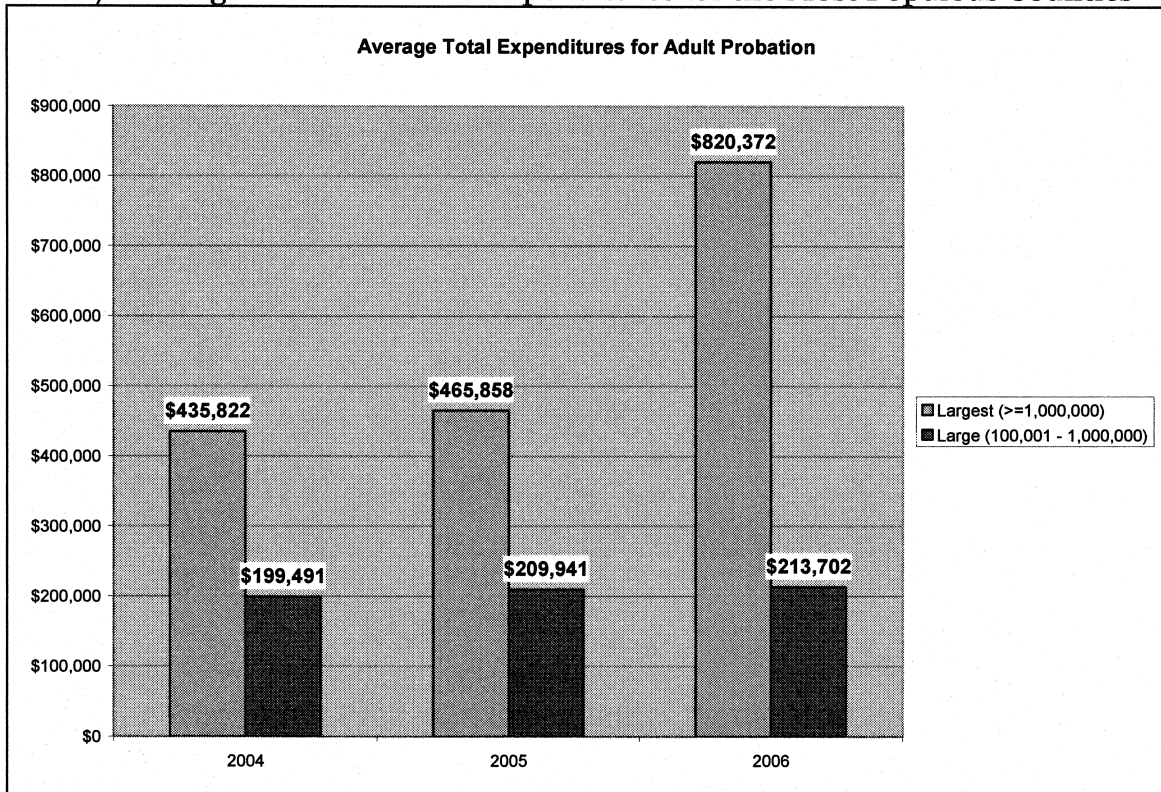
An Adult Probation Department, also known as Community Supervision and Corrections Departments (CSCD), is an alternative to incarceration for adults who have been charged with committing felony and misdemeanor offenses. It is designed to give the defendant an opportunity to correct his/her mistakes while being allowed to remain in the community under certain court-ordered, and probation officer supervised, terms and conditions.⁵⁵

Counties are legally responsible for the cost of office space and similar support services to house probation officers. When the Legislature decides to increase its number of probation staff, counties must provide additional office support.

A survey by the Texas Association of Counties showed that the most populous counties, those with a population over 1 million, increased their Adult Probation spending by more than 88% from 2004 to 2006. Increases for less populous counties were significantly lower, between 4.4% and 7.8% for the various population brackets as seen in the following chart.

⁵⁵ Texas Association of Counties, *County Expenditures and Tax Rates Survey 2006*, 24.

Chart 7: Average Adult Probation Expenditures for the Most Populous Counties



Source: Texas Association of Counties.

Dallas County alone will spend approximately \$500,000 in 2006 for building rentals and general office equipment for CSCD. That amount does not include the value of office space provided to CSCD in buildings owned by the county.⁵⁶

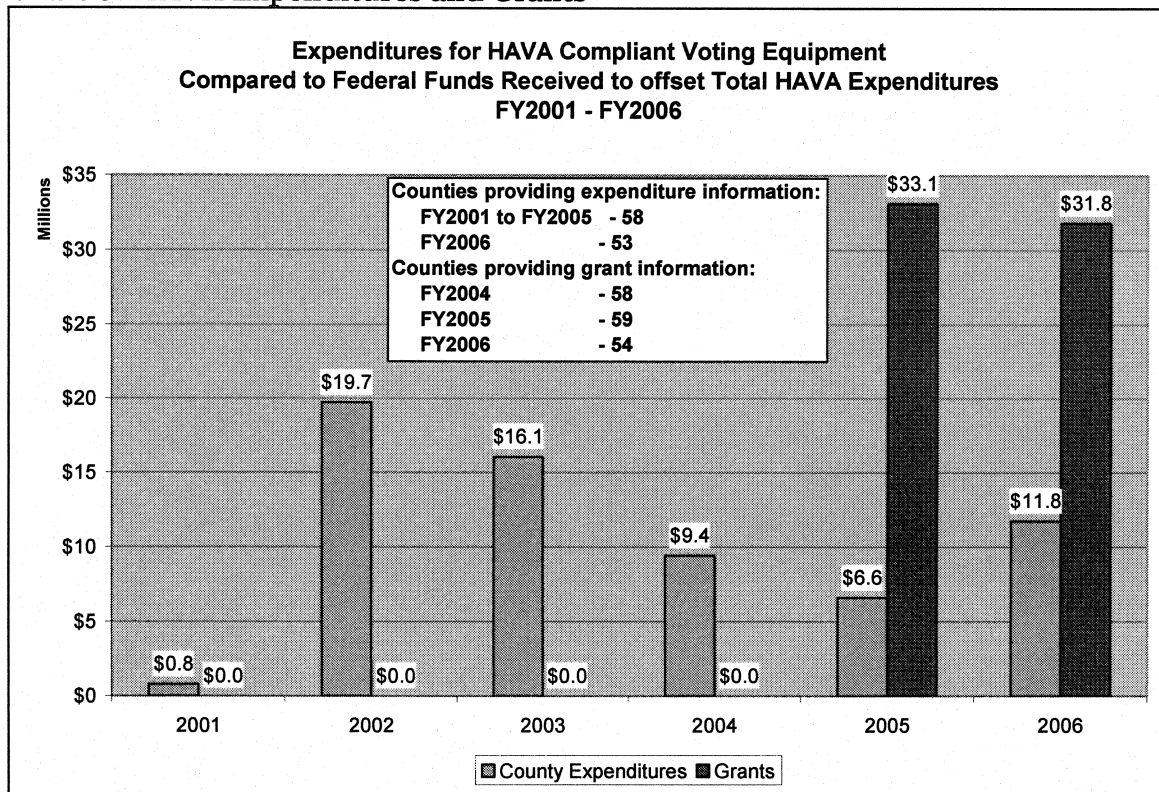
State and Federal Mandates Affecting Cities and Counties

Help America Vote Act

Federal law, such as the Help America Vote Act (HAVA), places significant requirements on counties who conduct elections for themselves and for others. Chart 9 shows both the expenditures and offsetting federal funds received by counties for HAVA.

⁵⁶ Ryan Brown, 1.

Chart 8: HAVA Expenditures and Grants



Source: Texas Association of Counties.

More than 50 counties reported that they spent a total of \$64.4 million to buy the direct recording electronic (DRE) voting system machines mandated by HAVA.⁵⁷ Reimbursements since then have totaled \$64.9 million to those counties and have evened out the costs of purchase and training on the machines.⁵⁸ However, while Congress sent the funding, it was sometimes two or three years after the county purchased the equipment. Thus counties basically provided a loan to the federal government, interest-free. In the long-term, the reimbursements were primarily for buying the equipment, but no money was provided for storage and maintenance; nor was funding provided for the costly software programming that must be performed for each election.⁵⁹

Furthermore, counties have to fund additional set up costs, annual software licensing fees, and additional training for election workers.⁶⁰ As these machines have a shorter lifespan compared to older voting machines, they will need to be replaced more often. Lastly, the use of DRE machines may require the purchase of additional machines. Current law requires the election records to be

⁵⁷ Tex. Elect. Code, §122.001(d).

⁵⁸ Texas Association of Counties, "Uncontrollables – Why it's not always so easy to keep property taxes down," 39.

⁵⁹ Id.

⁶⁰ Don Lee, 4.

maintained for 22 months.⁶¹ As not all brands currently have the additional capacity for multiple elections, a DRE machine used for early voting may not be ready for use on election day.⁶²

"New emergency management and homeland security programs require cities to comply with new rules, but do not provide necessary funding."

The requirements of the Federal Help America Vote Act were expanded by the state of Texas to cover all elections.⁶³ Rental and training on these machines can cost a small city of only three hundred people as much as \$5,000 per year, resulting in a \$16 per capita tax increase.⁶⁴ Larger cities can incur significantly higher costs; however cities and schools received no federal funding for HAVA as the use of DRE machines by these entities is mandated by the state not the Federal government.

The City of Plainview was originally told that it would be charged only 2% of the cost of the machines for their use. State law allows for charges of up to 10% of the cost of the voting machines.⁶⁵ However, this amounted to around \$8,000 approximately doubling their normal election costs. Upon renegotiation, the Hale County waived the statutory fee it was entitled to charge for leasing its equipment to Plainview. However, the associated supply, support, programming, delivery, and training costs were nearly \$3,500 (a 44% increase).⁶⁶

Side Note: It is believed that Article 11 of House Bill 1, Texas Legislature, 3rd Called Session, could also increase the costs of county and city elections by requiring joint elections of school district trustees; however, no estimate of costs is available at this time.

Emergency Management and Homeland Security

National Incident Management System

New emergency management and homeland security programs require cities to comply with new rules, but do not provide necessary funding. Cities must update

⁶¹ Tex. Elec. Code, §66.058.

⁶² Don Lee, 4.

⁶³ Tex. Elect. Code, §61.012.

⁶⁴ Texas Municipal League, written testimony to the Texas House of Representatives Committee on Local Government Ways and Means April, 2006.

⁶⁵ Tex. Elect. Code, §123.032(d).

⁶⁶ Greg Ingham, "Impact of Unfunded Mandates by State and Federal Governments on Cities" (letter submitted to the House Committee on Local Government Ways & Means, Plainview, TX: City of Plainview, April 16, 2006), 2.

their emergency plans more often, train more people, and conduct more frequent and larger preparation exercises. One West Texas city, Plainview, recently had 100 employees tied up for a full day of training, 8 hours, on the National Incident Management System (NIMS); the employees received training in duties not in their original job description, with no reimbursement for lost productivity or salaries. The City of Denton estimates that its employees will spend approximately 1,000 hours in required NIMS training.⁶⁷ The City of Houston is projecting costs to comply with requirements, including significant training for personnel in response organizations citywide, at \$1,739,100 for Fiscal Year 2006.⁶⁸

“NIMS provide a consistent nationwide template to enable all government, private-sector, and nongovernmental organizations to work together during domestic incidents.”⁶⁹ It developed from a February 28, 2003 Homeland Security Presidential Directive (HSPD-5) directing the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS).

Training costs are allowable expenses for homeland security and related grant programs. However, directing these funds to training costs would minimize a city’s ability to implement its homeland security plan. In FY2006, training costs alone would require more than 20% of the City of Houston’s homeland security grants. As federal funding for homeland security has decreased each year, the City of Houston and contiguous jurisdictions have prioritized the purchase of equipment for first responders and the protection of critical infrastructure, and been forced to cover training costs with local funds.⁷⁰

Infrastructure Security

New guidelines related to water production security post-911 relate to source water protection, ground water well head protection, cross connection control, and water production security in general. These include additional operations & maintenance expenses to the city to protect critical infrastructure, and include a police presence at a cost of approximately \$2 to \$3 million annually.⁷¹

Firefighters

State law and rules⁷² require that city fire departments comply with an OSHA rule⁷³ requiring at least two firefighters outside a burning structure before a

⁶⁷ City of Denton, written testimony to the Texas House of Representatives Committee on Local Government Ways and Means April 18, 2006.

⁶⁸ Judy Gray Johnson, “Texas House of Representative, Local Government Ways and Means Committee April 18, 2006 Hearing” (Houston, TX: 2006), 4.

⁶⁹ Emergency Management Institute, “FEMA Independent Study Program: IS-700 National Incident Management System (NIMS), An Introduction” (Washington, DC: DHS, 2005 accessed 22 May 2006) Available from <http://www.training.fema.gov/EMIWEB/IS/is700.asp>.

⁷⁰ Judy Gray Johnson, 4.

⁷¹ Judy Gray Johnson, 2.

⁷² 37 Tex. Administrative Code §435.17.

⁷³ Final rule, 29 Code of Federal Regulations, Section 1910.134(g)(4).

minimum of two other firefighters operating as a team in direct voice or visual contact may enter, thus increasing staffing in some cities.

Disaster Relief

The state does not fund municipal disaster relief; hence, cities are essentially mandated to fund disaster relief themselves. Small cities can be particularly hard hit by natural disasters as City of Cross Plains experienced on December 27, 2005 when a wildfire swept through destroying 116 homes (83 within the city) and damaging another 35. This town with a population of 1,063 and an annual budget of \$550,000 has already spent \$160,000 to dig landfills and clean up debris from the wildfire.

When the Shuttle Columbia broke up over Texas, the City of Nacogdoches spent \$101,660 over four months assisting with the incident.⁷⁴ The city was reimbursed 100%, however, the reimbursement did not cover the lost productivity and revenue resulting from the time city workers spent away from their jobs.⁷⁵

The state has also passed some homeland security duties on to cities. For example, the City of Nacogdoches is designated as a "shelter hub" required by the Texas Division of Emergency Management to shelter evacuees from the Golden Triangle area.⁷⁶ While 100% reimbursements are expected for most incidents, reimbursement is available only if there is a disaster declaration. When Hurricane Lilli hit in 2002 there was no declaration and the city spent \$13,000 to shelter evacuees with no reimbursement.

Hurricane Rita

Cities

Hurricane Rita made landfall on September 24, 2005 as a Category 3 storm. In the aftermath of the hurricane, the City of Beaumont was closed to its citizens because there was no food, electricity, water, sewer, or gasoline. Most buildings, homes, and apartments were damaged; some were demolished by the storm. Virtually the entire city was without power for more than six days and some areas of the city for many weeks.

A week after the storm, Beaumont's sewer system was working and the water was back on, although there was a "boil notice." Crews had cleared enough debris to make 75 to 80 percent of the roads in the city passable for emergency vehicles and utility crews. Tarps were secured on homes as piles of trash and debris were

⁷⁴ Funds spent on employee overtime, equipment usage, runway lighting, etc.

⁷⁵ City of Nacogdoches, p 10.

⁷⁶ The Golden Triangle is an area of extreme Southeast Texas near the Louisiana border. The "triangle" is formed by Beaumont, Port Arthur, and Orange, which are the largest cities in the area. The "golden" refers to the wealth that came from the Spindletop oil strike near Beaumont in 1901.

forming at curbside. Post offices had reopened although door to door delivery was not possible. Some businesses were open with limited hours.

As for the city itself, recovery is continuing. Repairs and damage assessments continue on the water and sewer systems. Property damage assessments of facilities have been made and minor repairs are underway. Permanent repairs to facilities have begun as the city receives insurance proceeds for the damage.⁷⁷

So far the city has calculated total hurricane-related expenses in the amount of \$6,652,510. Of that, 70% is related to overtime costs during and after the hurricane.⁷⁸

Estimates of the damages to city-owned facilities are \$10,480,000 for facilities, \$419,750 for infrastructure, and \$3,128,856 for the water and sewer systems, for a total of \$14,028,606. The city has hired a public adjuster who is assisting in determining the actual amount of damages for insurance claim purposes.⁷⁹

As of April 2006, Beaumont had received \$238,538 from FEMA. That includes \$71,908 for repairs to uninsured facilities and \$166,630 for reimbursement of out-of-pocket expenditures incurred in preparation of the storm.⁸⁰

Counties

Counties are also essentially mandated to fund disaster relief themselves. Hurricane Rita, which struck the Texas coast in 2005, and the spring wildfires of 2006 were particularly devastating for a number of counties. The effects were not limited to those counties directly in the path of the Hurricane or fires.

Comments, collected from several counties in December 2005 to January 2006, indicated that some hurricane related expenditures, as well as data collection, were ongoing within the counties limiting their ability to determine total costs.⁸¹ In particular, not one of the responding counties was able to determine the loss of revenue from non-payment of taxes on destroyed/demolished structures although comments indicated the data might be forthcoming at a later date. Obviously the counties needed to wait to see the effect on property appraisals in order to determine the impact of Hurricane Rita. Jefferson County's Chief Appraiser expected a large increase in the number of appraisal protests due to the number of hurricane-damaged properties.⁸²

⁷⁷ City of Beaumont, "Response to Hurricane Rita" (submitted to the House Committee on Local Government Ways & Means, Beaumont, TX: Beaumont, 2006), 2.

⁷⁸ City of Beaumont, "Response to Hurricane Rita", 2.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Texas Association of Counties, *Report on TAC's 2005 Hurricane Expenditures Survey* (Austin, TX: TAC, 22 February 2006), 2.

⁸² Beth Gallaspy, "Rita Will Throw off Appraisals" (Beaumont, TX: Beaumont Enterprise, 5 January 2006); Available from http://www.southeasttexaslive.com/site/news.cfm?newsid=15874138&BRD=2287&PAG=461&dept_id=512588&rfti=6.

Additional comments noted that Chambers County was still housing inmates outside the county as a result of the hurricanes and their adjusters were still compiling data on other costs/losses. For other expenses, Fort Bend County stated, "Claim reports are being finalized for submission for labor, equipment and materials used." And Travis County reported that they were working with FEMA to determine exactly both how to file for reimbursement and what can be reimbursed which could change their reported costs. Travis's response also stated that total expenditures for all categories were not available at that time.⁸³

"Without the ability to maintain a healthy reserve fund, cities and counties will not be able to adequately take action when faced with urgent situations."

Cities and Counties

The financial impact of Hurricane Rita is an example of why cities and counties need to have the capacity to respond to emergencies when they arise; this includes the need to plan ahead for possible occurrences. This may seem like a luxury if no instances occur, however, citizens expect government help at all levels when needs arise in emergency situations.

"When Hurricane Katrina engulfed New Orleans in the summer of 2005, the deaths, injuries, and damage to property that resulted were stark reminders of the cost to all of us when government at any level – federal, state, or local – does not perform as well as it should. The year before, the 9/11 Commission found that government's failures to anticipate and respond to the terrorist attacks on that date were "symptoms of the government's broader inability to adapt how it manages problems to the new challenges of the twenty-first century."⁸⁴

Responding to emergencies requires not only proper planning but it also calls for advanced funding. Funding for emergencies is generally not a foreseeable, budgeted expense and necessitates the need for reserves. When money is required during any disaster, cities and counties use their reserve funds to fulfill the immediate needs of the public. Without the ability to maintain a healthy reserve fund, cities and counties will not be able to adequately take action when faced with urgent situations.

⁸³ Texas Association of Counties, *Report on TAC's 2005 Hurricane Expenditures Survey*, 2.

⁸⁴ Frank Ostroff, "Change Management in Government" *Harvard Business Review* 84, issue 5 (May 2006): p 141-147.

Funding of Central Appraisal Districts

Recently enacted school finance legislation will reduce school district property taxes and will have the effect of increasing city funding of central appraisal districts (CADs). CAD funding is based on the proportional share of each taxing unit's levy; thus, as school taxes decrease, other local governments, primarily cities and counties, must increase their funding of appraisal districts.

Since the school reform package will reduce local school property tax revenue by roughly 11% in the upcoming year, it is expected that the amount paid by any city to fund its CAD will increase by roughly 6.7%. In the following year, local school property taxes will be reduced by another 25%. At that time, the amount paid by a city to fund its CAD will increase by another 16.5%. Thus, over a two-year period, the city share of CAD support will grow by roughly 24%.⁸⁵ The City of Plainview, for example, expects its share of funding for the CAD to increase from \$86,879 to \$104,964 – equivalent to about a 1/3 cent (\$0.0033) increase in the local property tax rate.⁸⁶

Statewide, counties collected almost exactly the same amount of property taxes in 2004 as cities did (14.4% of the total collected by counties versus 14.6% of the total by cities).⁸⁷ Thus, statewide, the increase in the counties' share of the CAD budgets will be close to, but just slightly less than, the dollar increase for cities. However, the percentage increase in the counties' share of the CAD budgets will be the same as for cities.

ILLEGAL IMMIGRATION

Although not an unfunded mandate per se, the presence of illegal immigrants is a de facto federal unfunded mandate on cities and counties as well as on the state. Dr. James Hollifield, Director of the Tower Center for Political Studies at Southern Methodist University, noted that illegal immigration is not a touchy subject in Texas in part because the state is less generous with welfare dollars than other states such as California.⁸⁸ In addition, as Dr. Jose Limon, Director of the Center for Mexican-American Studies at the University of Texas at Austin, noted, Texans have learned to get along with their neighbors to the south.⁸⁹

However, no matter how well we get along, the presence of illegal immigrants costs local governments. A recent study noted the fiscal impact on local

⁸⁵ Texas Municipal League, "School Finance Reform Measures Go to Governor: Limited Effect on Cities" [on-line] (Austin, TX: TML, 2006, accessed 22 May 2006); available from http://www.tml.org/leg_updates/legis_update051706a_reform.html). These estimates are based on statewide figures and will vary from city to city.

⁸⁶ Greg Ingham, 2.

⁸⁷ Texas Comptroller of Public Accounts, *Annual Property Tax Report: Tax Year 2004* (Austin, TX: Comptroller, December 2005), 1.

⁸⁸ Diane Jennings, "States Taking Stand on Immigration," *Dallas Morning News*, 29 May 2006.

⁸⁹ Id.

governments, “Undocumented immigrants impose a fiscal burden on the United States where taxpayers pay the bill for education, healthcare, and incarceration costs.”⁹⁰ Congress has also noted the effect on local governments, “There is a tremendous strain on local and State communities because of unrestricted illegal immigration throughout Texas and the entire United States.”⁹¹

In Harris County Hospital District alone, un-reimbursed costs of caring for illegal immigrants approached \$100 million in 2005, a 77 percent increase in three years.⁹² Grayson County Health Department spokesman Steve DeVoure recently stated that about 80 percent of the people receiving services under their maternity program are undocumented aliens.⁹³ He further stated that about 50 percent of those using the county’s family planning programs are also undocumented aliens.⁹⁴

**“There is a tremendous strain
on local and State communities because
of unrestricted illegal immigration
throughout Texas and the entire
United States.” -- U.S. Congress**

Some costs are offset by local taxes. However, there are other costs which are often overlooked when determining the effects of illegal immigration. “The total costs of illegal immigration to the state’s taxpayers would be considerably higher if other cost areas, such as special English instruction, welfare programs used by the U.S.-born children of undocumented immigrants, or welfare benefits for American workers displaced by undocumented immigrant workers, also were calculated.”⁹⁵

One study concluded that households headed by undocumented immigrants impose a fiscal burden on the federal budget. The study further concluded that when costs imposed by households headed by undocumented aliens are

⁹⁰ Institute for Policy and Economic Development at the University of El Paso. *At the Cross Roads: US / Mexico Border Counties in Transition* (El Paso, TX: US / Mexico Border Counties Coalition, March, 2006), 11-1.

⁹¹ Ted Pope, *The Cost of Illegal Immigration on the People of the United States*, available on-line at: <http://www.house.gov/poe/remarks/immigration71205.htm>

⁹² Bill Murphy, “County’s Cost for Illegal Immigrants’ Care Soars,” *Houston Chronicle*, 17 June 2006.

⁹³ Jerry Whiteley, “Maternity clinic cost topic of county budget debate,” *Herald Democrat*, 21 June 2006.

⁹⁴ Id.

⁹⁵ Institute for Policy and Economic Development at the University of El Paso, 11-2.

subtracted from the taxes they pay, they fall short by \$2,736.⁹⁶ Households headed by legal immigrants and U.S. citizens fall short by an estimated \$1.⁹⁷

Whether taking up space in crowded jails or using scarce governmental health care resources, the failure of Federal authorities to provide an adequate immigration policy, or alternately to provide resources for dealing with costs attributable to illegal immigrants, forces local governments to foot a large bill. "The federal government allows people to come here illegally," Harris County Commissioner Steve Radack said. "Because of that the cost shouldn't fall on the local taxpayer."⁹⁸

INFLATION AND CAPS

Inflation

Two different measures of inflation have been mentioned at the Capitol during the interim. They are the Consumer Price Index (CPI) and the Municipal Cost Index (MCI). CPI is "a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services."⁹⁹ It is published by the U. S. Bureau of Labor Statistics (BLS) in many different forms. Generally, when talking about CPI in the context of general inflation, it is CPI-U (Consumer Price Index-All Urban Consumers) that is being discussed.¹⁰⁰

While the CPI is the most widely used measure of inflation according to the BLS, it is based on consumer goods and services. As has been noted, local governments such as cities and counties do not purchase the same basket of goods and services. Thus, there is some debate as to the appropriateness of using this index to determine the effects of inflation on local government expenditures.

An alternative that has been mentioned is the MCI. "The Municipal Cost Index developed by American City & County is designed to show the effects of inflation on the cost of providing municipal services."¹⁰¹ The MCI is based on the CPI, the Producer Price Index (PPI), and an internally developed Construction Cost Index. Each of these three components is multiplied by a weighting factor and then added together to form the MCI. Thus, it includes the entire basket of goods

⁹⁶ S. A. Camarota, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget* (Washington, DC: Center for Immigration Studies, August 2004) in Institute for Policy and Economic Development at the University of El Paso, 11-8.

⁹⁷ Institute for Policy and Economic Development at the University of El Paso, 11-8.

⁹⁸ Bill Murphy.

⁹⁹ Bureau of Labor Statistics, "What is the CPI?" *Frequently Asked Questions*, http://www.bls.gov/cpi/cpifaq.htm#Question_1

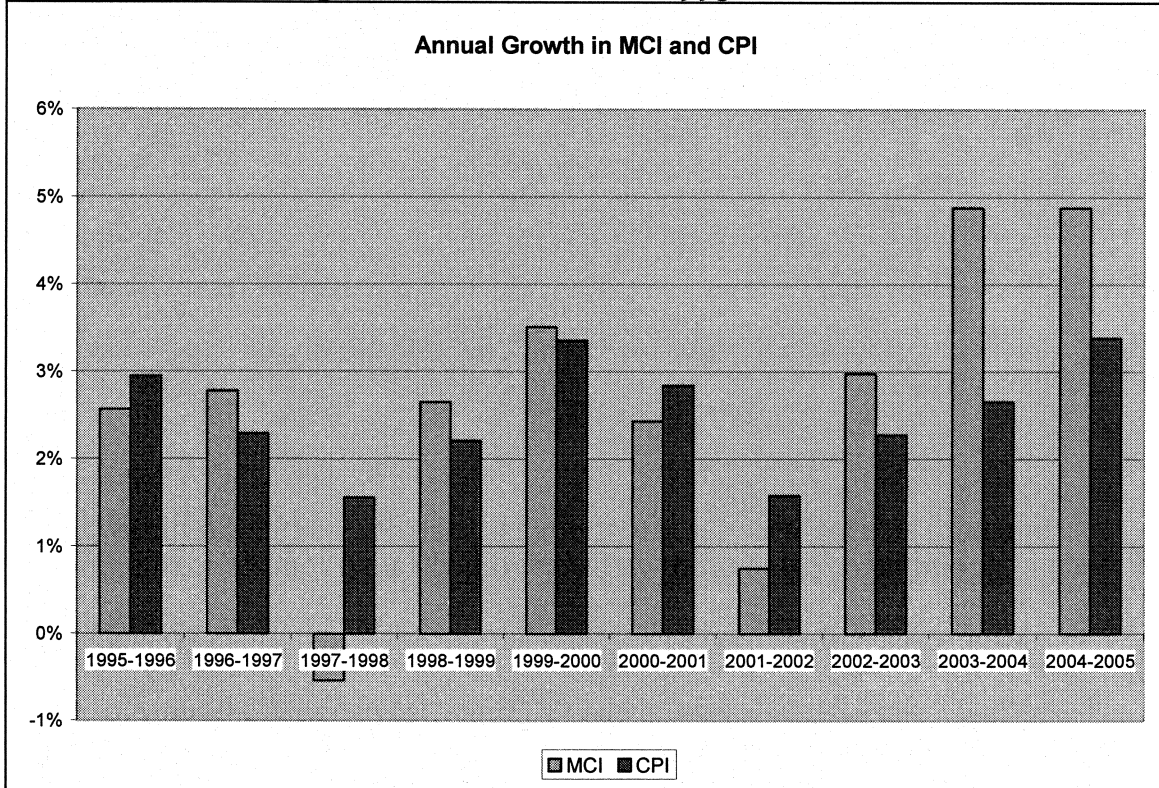
¹⁰⁰ Unless specifically stated otherwise, all references to CPI in this document refer to CPI-U.

¹⁰¹ American City & County, *About the Municipal Cost Index*, <http://images.industryclick.com/files/115/aboutmci.html>

found within the CPI as well as other goods and services, such as road and building materials, not typically purchased by the average consumer.

The following chart shows the annual changes in both indices since 1995.

Chart 9: Annual Change in MCI and CPI since 1995.



Source: Texas Association of Counties.

Since 2002, the MCI has grown much more rapidly than CPI reversing a previous trend. The following table shows how each index has changed over various periods since 1994.

Period	MCI	CPI
Jan 1995 - Dec 2001	15.16%	17.56%
Jan 2002 - Dec 2005	18.83%	11.12%
Jan 1995 - May 2006	36.46%	34.73%

Source: Texas Association of Counties.

Cap on State Spending

The State of Texas currently caps some of its appropriations from state tax revenues using the estimated rate of growth of the state's economy (Economic

Growth).¹⁰² Economic Growth is defined by statute¹⁰³ as shown in the following formula.

$$\text{Economic Growth} = \frac{\text{Estimated Texas total personal income for the next biennium.}}{\text{Estimated Texas total personal income for the current biennium.}}$$

Various organizations use their own methods to estimate personal income¹⁰⁴ for each biennium in order to determine the projected Economic Growth; and then one of the projections is chosen by December 1 of each even numbered year¹⁰⁵ as the cap. For the current 2006-07 biennium the cap is set at 11.34%.¹⁰⁶

Article VIII, §22(a) of the Texas Constitution states, “In no biennium shall the rate of growth of appropriations from state tax revenues **not dedicated by this constitution** [emphasis added] exceed the estimated rate of growth of the state’s economy.” Thus the cap does not apply to all appropriations, but only to certain state tax revenues. In addition, because the cap is set from one biennium to the next rather than annually, it provides for greater budgetary flexibility. For example, take a look at the following hypothetical situation.

Hypothetical Budget	2004	2005	2006	2007
Annual Budget	\$1,000	\$1,050	\$1,200	\$1,082
Annual Increase	N/A	5.00%	14.29%	-9.79%
Two year increase	N/A	N/A	20.00%	3.09%
Biennium total	\$2,050		\$2,282	
Biennium increase	11.34%			

Source: Texas Association of Counties

The table shows a hypothetical annual budget with the percentage increase from the prior year as well as the increase from two years prior. In 2006, the budget increased 14.29%, significantly more than the 11.34% cap. However, by decreasing the budget in the following year, although it is still 3.09% more than in 2005, the total budget for the biennium is kept at \$2,282 which just happens to be 11.34% more than the 2004-05 total budget. Thus the ability to adjust annual expenditures to meet biennial requirements allows the state to meet emergency or one-time requirements which could be far more difficult if an annual cap were in place.

¹⁰² TEX. CONST. art. VIII, §22(a).

¹⁰³ TEX. GOV'T CODE ANN., §316.002.

¹⁰⁴ On June 14, 2006 Edd Hendee and Citizens Lowering Our Unfair Taxes PAC (CLOUT) filed a lawsuit in Travis County district court seeking in part to force the use of a different standard for determining economic growth. Suggested substitute standards include growth in the Gross State Product (GSP) or the growth of inflation and population (Colorado’s TABOR amendment uses growth in inflation and population to determine that state’s cap).

¹⁰⁵ TEX. GOV'T CODE ANN., §316.004.

¹⁰⁶ Legislative Budget Board, *Meeting of the Legislative Budget Board – 10:00 am, Wednesday, November 17, 2004 – Agenda Item 3* (Austin, TX: LBB, 2004), 1.

POSSIBLE IMPROVEMENTS

Prohibit Unfunded State Mandates

Perhaps the simplest solution to unfunded state mandates would be to make them illegal as a matter of state law based upon a constitutional amendment since statutory provisions are subject to being changed at will by the Legislature. Previous legislatures have considered such legislation, but never passed it. Such legislation can take two forms: (1) a simple prohibition against legislation that imposes an unfunded mandate on local governments; or (2) legislation that requires the state to pay for the cost of any mandate imposed on local governments by a statute or rule.¹⁰⁷ During times of economic stress for state government, the first option could be easily overridden by a subsequent legislative change to nullify the unfunded mandate law. To protect local property taxpayers, the better alternative would be to pass a constitutional amendment that guarantees local governments protection from unfunded mandates. Such an amendment should be enforceable through the district courts.

"To protect local property taxpayers, the better alternative would be to pass a constitutional amendment that guarantees local governments protection from unfunded mandates."

Such legislation would require a careful delegation of decision-making authority when it comes to determining which legislation imposes an unfunded or partially funded mandate, and the cost of the mandate. It is critical that both state and local officials be included in the decision making process because of the politically charged nature of such bills. Often the parties supporting a bill in the Legislature do not consider the bill to be an unfunded mandate, while the local government affected feels differently.

The best solution is likely to be to delegate the decision to a "neutral" arbiter – such as the court system.

¹⁰⁷ Texas Municipal League, "Unfunded Mandates" (submitted to the House Committee on Local Government Ways & Means, Austin, TX: Dallas County Budget Office, 2006), 1.

Recommendation: The Legislature should submit to the voters a constitutional amendment preventing future unfunded state mandates.

Monitoring Federal Enactment of Unfunded Mandates

Texas' Office of State-Federal Relations (OSFR) traditionally has been responsible for monitoring federal legislation and regulatory decisions that would have an impact on state government operations. In consideration of the state's concern for property tax increases, the OSFR should be assigned the specific responsibility of looking out for local property taxpayers' interests. That is, the office should be tasked with paying particular attention to federal actions that will result in additional city, county, and school district responsibilities, with no accompanying funding. When such federal action does result in additional unfunded mandates, the OSFR should report that additional burden to an appropriate state agency.

When the state is unsuccessful in preventing unfunded federal mandates on local governments, it could participate in funding the services required by such mandates. The State of Texas and all its citizens benefit from the services local governments provide, and there is nothing to prevent the state from sharing the burden of new, federally mandated expenses.

Recommendation: New federal mandates should be reviewed by the Legislature. Where the federal mandate fails to provide the necessary funding, the State should provide funding at the minimum level required for the local governments to meet the new requirements. Additional funding for services beyond the mandated minimum would be provided by the local governments if required by the local populace.

Rollback Relief for Unfunded Mandates

Another solution is to give cities and counties "relief" from mandates in their property tax rollback tax rate calculations. The property tax rollback rate is a percentage (8%) by which a local government may exceed last year's property tax levy without incurring the cost of a potential rollback election. If the state or federal government imposes a new mandate on a local government, then the public should know exactly how much the mandate is increasing their tax rate. For more information on the rollback tax and a glossary of other commonly-used property tax terms, please refer to the Comptroller's web site:

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

Current law gives rollback protection against the following mandates: certain mandatory pollution control devices,¹⁰⁸ state criminal justice mandates,¹⁰⁹ and certain indigent health care requirements.¹¹⁰

A state board or agency could be tasked with identifying the mandate and setting cost criteria for the rate adjustment. While such relief does nothing to actually pay for the mandates, it provides the funds the local government needs to pay for the mandate and has the added benefit of increasing transparency. Truth in taxation should require this disclosure.

Recommendation: The Legislature should allow adjustments to the local property tax rollback rate when sending mandates to local governments. These adjustments will allow the local governments to provide the mandated services without incurring the penalties associated with increasing the tax rate beyond the rollback rate. The adjustment should be for the first full year during which either the new services are required or increased by mandate.

Recommendation: The Truth-in-Taxation laws should be modified so that public notices of the local property tax rate include the adjustments to the rollback rate required by all new mandates.

"Such a system – where the State provides little funding but requires local funding of services – can only work without artificially imposed restraints on local tax revenue."

Avoid More Restrictive Tax Revenue Caps

Most important of all, the State should realize that mandates are yet one more important reason not to further restrict local government revenue. The State of Texas provides little direct funding to its local governments, instead relying on those governments to provide needed services and absorb the financial impact of new mandates as best they can with local funds, primarily local taxes. Such a system – where the State provides little funding but requires local funding of services – can only work without artificially imposed restraints on local tax revenue.¹¹¹

¹⁰⁸ Tex. Tax Code, §26.045.

¹⁰⁹ Tex. Tax Code, §26.044.

¹¹⁰ Tex. Tax Code, §26.0441.

¹¹¹ Texas Municipal League, "Unfunded Mandates", 6.

Unless unfunded mandates are made unconstitutional, cities and counties will have to continue to fund them locally. As the Travis County Auditor stated, “[T]here are no unfunded mandates; mandates are paid for by the property tax.”¹¹² All citizens of the State benefit when local governments absorb mandates as judiciously as they can. Restrictive caps, when combined with growing demand for services, can damage public services in two ways.

First, caps can restrict the ability of the local government to continue providing current services when additional mandated services are required by the State. “Local governments have a limited ability to cut operating expenditures, particularly in the face of growing service delivery needs such as ballooning health care and personnel costs.”¹¹³ For example, when law enforcement officers show up at the county jail with prisoners they cannot be turned away.

Second, caps can increase the cost of services by increasing the cost of borrowing to fund long-term projects.

“From a credit rating perspective, the existence of sound financial management policies, including efficient government spending, is an important defining element of overall credit quality. Equally important, however, is a government’s ability to generate the necessary revenues to meet its operational and service demands.”¹¹⁴

“[T]ax caps will have an impact on the ability of state and local governments to finance capital programs and infrastructure needs and meet their day-to-day operations. Regarding capital improvement plans, municipalities could become more reactive rather than proactive in planning infrastructure and facility needs based on funding availability. Municipalities currently develop their capital improvement plans based on projected growth in their property appraisals, which is used to determine funding available for specific capital projects. However, if municipalities are limited by appraisal caps, some of their flexibility to adequately plan and develop infrastructure improvements on a timely basis will be constrained. Local officials could be forced to address capital needs as they arise rather than as planned maintenance.”¹¹⁵

Cities, and counties to a significantly lesser extent, have other potential revenue sources. These include a city sales tax and a county sales tax, although not all

¹¹² Susan Spataro, Testimony to the Texas House of Representatives Committee on County Affairs May 1, 2006.

¹¹³ Sarah Smaardyk and Horatio Aldrete-Sanchez, *Potential Credit Implications of Property Tax Reform in Texas* (Dallas: Standard & Poor’s, March 15, 2006), 2.

¹¹⁴ Sarah Smaardyk and Horatio Aldrete-Sanchez, *Are Property Tax Caps In Texas An Unnecessary Fix?* (Dallas: Standard & Poor’s, May 4, 2006), 2.

¹¹⁵ Smaardyk and Aldrete-Sanchez, *Potential Credit Implications of Property Tax Reform in Texas*, 2.

counties are allowed by state law to have a sales tax, as well as fees and fines. Cities also have access to revenue from utilities. “However, the revenue generating potential of these sources is very limited and does not always track economic growth.”¹¹⁶

“Local governments have a limited ability to cut operating expenditures since they must provide basic services and infrastructure. If local governments want to meet their infrastructure and basic operational needs, their ability to reap the benefits of economic growth through taxation is perhaps the most important tool in their arsenal.”¹¹⁷

The State should not add insult to injury by imposing risky appraisal or revenue caps. Hurricanes Katrina and Rita have shown Houston and many other cities and counties and that emergencies are mandates; the costs are unpredictable and long-term. Persons dislocated by last year’s Gulf Coast hurricanes will be living in our communities for months and years to come. Often, their needs exceed those of the average citizen because they arrived with little or nothing. Housing, health care, and education are just a few of the costs that will be borne by host communities for longer than the initial disaster response.

Recommendation: Rather than provide even more restrictions on local government property tax revenues, the State should find alternative ways for local governments to fund mandated local services, particularly those mandated by the State of Texas.

¹¹⁶ Id, 3.

¹¹⁷ Smaardyk and Aldrete-Sanchez, *Are Property Tax Caps In Texas An Unnecessary Fix?*, p 7.

Interim Charge #2

Compare and evaluate how counties and school districts impose (levy) property taxes, including a study and evaluation on the effective tax rate, the rollback tax rate, and rollback elections.

The County Budget Process

Each year, county commissioners courts across the State are challenged to provide both mandatory and discretionary services for their county residents. To meet their responsibilities, county governments must generally first adopt a budget and then set a tax rate.¹¹⁸ For each of these core duties, State law prescribes the procedures and sets the deadlines. Once a commissioners court adopts its annual budget, it is required to follow it. Similarly, limits are imposed on the tax dollars the court may rely upon to support the budget. The Texas constitution and State law set maximum tax rates, grant various exemptions from property taxes, and place conditions on a county's ability to increase the tax rate from year to year.

The taxpayers perform a central role in deciding the range of services they will receive and the level of funding under which their county government will operate. There are multiple opportunities for citizen participation during mandatory public hearings conducted before adoption of the budget and the tax rate. If the public disagrees with a proposed rate increase that exceeds a calculated amount, they may force an election to override the increase and reduce the tax rate to the rollback rate.

The first step¹¹⁹ in the budget process is preparation of a draft budget. A proposed budget is developed and filed with the county clerk for inspection by the public. The public is then given notice through newspaper publication of the date set for a public hearing on the budget.¹²⁰ The notice must be published no sooner than 30 days and no later than 10 days before the hearing. The county must also post a public notice of the upcoming meeting at least 72 hours before the hearing.

At the hearing, the members of the commissioners court consider the draft budget and make any changes that the court majority deems appropriate. The public may attend the budget hearing and must be allowed to offer comments and direction to the court. The court may adopt the budget at the close of the hearing or schedule another public meeting for additional consideration and final action on the budget. Once the court adopts the budget, it is filed with the county clerk where it is available for public scrutiny.

Appraisal Districts

Before 1979, State law made each local taxing entity responsible for determining the value of each property within its jurisdiction. This led to many inequities

¹¹⁸ Unless otherwise indicated, all references to tax rates are per \$100 of value.

¹¹⁹ County budget cycles vary based on population and whether a county operates on a calendar or fiscal year, but each commissioners court follows a similar process.

¹²⁰ Public hearings for the budget are not the same as tax rate hearings described later.

where a single property would have multiple values from the city, county, and school district. It also fostered inequities from one jurisdiction to another where similar properties would be valued at vastly different amounts based solely on the political will of each taxing entity.

In 1979, legislation¹²¹ was enacted making numerous changes to the Property Tax Code. Among these changes, it provided for the following.

- Established a central appraisal district which values each property for all the taxing entities within the district.
- Eliminated fractional assessments requiring the Chief Appraiser to appraise each property at full market value.
- Required that each property be reappraised at least once every three years.
- Provided for an Appraisal Review Board to hear taxpayer appeals on matters of property values and on other matters.

To ensure that properties are being appraised at full market value, the State Comptroller of Public Accounts (Comptroller) performs an annual study of the appraisals and estimates the true taxable wealth of each school district. If a school district's appraisals, as determined by the appraisal district, fall outside the study's margin of error of +/- 5% in two consecutive years, then the school district is penalized by having its State funding cut. Additional penalties may apply to the appraisal district which can be placed in conservatorship for failure to comply with the Comptroller's recommendations.

More recent changes to the Tax Code¹²² established a requirement for the directors of each appraisal district to biennially prepare a written plan for the periodic reappraisal of all property within the boundaries of the district and require the directors to hold a public hearing to consider the proposed language.¹²³

Each year the Chief Appraiser sends notices to the county taxpayers of their property appraisals for the coming year. The notices are mailed in mid-May of each year. By mid-July, the appraisal review board reviews and approves the appraisal records. By July 25th, the Chief Appraiser then certifies the approved appraisal role to the county tax assessor collector.¹²⁴ By the first of August or as soon after as practicable, the Tax Assessor Collector provides the certified appraisal rolls, the collection rate, and other related information to the commissioners court.

¹²¹ SB 621, 66th Legislature.

¹²² SB 1652, 79th Regular Session

¹²³ §6.05(i), Tax Code.

¹²⁴ §26.01, Tax Code.

Determining the Property Tax Rate

To alert the public to the proposed property tax rate for the upcoming year, the local government must calculate and publish in the newspaper an effective tax rate and a rollback rate.¹²⁵ The notice must also include other related information such as unencumbered fund balances and outstanding debt. This notice is intended to provide the citizens with a comparison of the current year's financial picture and proposed changes for the new year.

The *effective tax rate* is the rate that would generate the same amount of property tax revenue for the local taxing entity that it received during the prior year, based on property taxed in both years. If property values rise, the effective tax rate will go down and vice versa. Excluded from this calculation are lost properties and new properties (new homes, for example). Lost properties are property values that were taxable in the preceding year but are not taxable in the current year.

The entity gets an automatic increase in revenue when new properties are added to the roll; similarly, lost properties lead to an automatic decrease in revenue.

The *rollback rate* is the rate that would provide a city, county or special district the same amount of tax revenue that it spent during the previous year for daily operations, plus an 8% increase for those operations plus additional funds to pay their debts in the coming year. The Texas Legislature wanted to avoid injuring a taxing unit's ability to pay its debt service.¹²⁶ Therefore, the rollback rate calculation splits the rate into two separate components—a maintenance and operations (M&O) rate and a debt service¹²⁷ rate also called “interest and sinking” (I&S).

For counties, the effective tax rate is the sum of the effective tax rates calculated for each type of tax the county levies. Similarly the rollback tax rate is the sum of the rollback tax rates calculated for each type of tax the county levies.¹²⁸

Usually if an entity¹²⁹ has collected sales taxes, it must use a slightly different formula to determine the effective and rollback tax rates. Cities, counties and hospital districts may levy a sales tax specifically to reduce property taxes.¹³⁰ Some hospital districts, created after September 1, 2001, in counties with a population of 75,000 or less, may levy the sales tax without reducing their property taxes. In each case, the taxing unit reduces its effective and rollback tax

¹²⁵ For more information on setting rates, see the Comptroller's “Truth in Taxation” publication.

¹²⁶ Texas Comptroller of Public Accounts, *2005 Truth-in-Taxation* (Austin: Comptroller, 2005).

¹²⁷ Debt service covers the interest and principal on bonds and other debt secured by property tax revenues.

¹²⁸ §26.04(d), Tax Code.

¹²⁹ School districts do not collect sales tax.

¹³⁰ §26.041, Tax Code.

rates to offset the expected sales tax revenue. The Tax Code refers to the tax as the *additional sales tax for the reduction of property taxes*.

Additional adjustments are made to the rollback tax rate for the following expenses

- Pollution control - “[T]o pay for a facility, device, or method for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the Texas Natural Resource Conservation Commission.”¹³¹
- Tax increment financing (TIF) - a taxing unit, other than a school district, excludes the taxes paid into a TIF and also excludes the captured appraised value for the TIF payment in calculating the rollback rate.
- Transferred function - If a taxing unit discontinues all of a department, function or activity and transfers it to another unit by written contract, the two units must adjust their M&O rates for the transfer, however the publication of a special notice is required.¹³²
- Indigent health care expenditures - A taxing unit may increase its rollback rate to generate funds the unit will spend for enhanced indigent health care expenses, however the publication of a special notice is required.¹³³

Counties may make adjustments to the effective maintenance and operations tax rate due to increases in county spending on the State criminal justice mandate. This mandate is the amount spent by the county in the previous 12 months providing for the maintenance and operation cost of keeping inmates in county-paid facilities after they have been sentenced to the institutional division of the Texas Department of Criminal Justice as certified by the county auditor based on information provided by the county sheriff, minus the amount received from State revenue for reimbursement of such costs.¹³⁴

School districts determine their rollback rate by adding six cents to the rate that would bring them the same operating tax levy as in the prior year. In addition, no petition is required to have a rollback election, discussed below, as the election is automatic whenever the rollback rate is reached in a school district. School districts also use different steps in the rollback tax rate calculation as do water districts.¹³⁵

Before adopting a tax rate increase that exceeds the rollback rate or the effective rate (whichever is lower) the local government, other than a school district, water district or small taxing unit, must publish notices and conduct at least two public hearings on the tax increase. As with the budget hearing, the taxpayers are allowed to voice their support or opposition to the proposed increase.

¹³¹ §26.045, Tax Code.

¹³² §26.04(i-j), Tax Code.

¹³³ §26.0441, Tax Code.

¹³⁴ §26.044, Tax Code.

¹³⁵ See §49.236(d), Water Code for the calculations used by water districts.

The local government may not take action on the tax rate at this first hearing. Rather, it must announce the date and time for another meeting at which the rate will be adopted. Again, the meeting is preceded by published notice and an open meetings posting. The statutes sets strict time deadlines for conducting the meeting and adopting the tax rate. If the governing body fails to adopt the rate on schedule, it must republish the notice for a new meeting date. If a court fails to adopt the tax rate before September 30, it must operate under a statutorily-imposed rate equal to its effective rate or the last year's rate, whichever is lower. Furthermore, the 79th Regular Session Legislature modified the statutes (SB 18) to require that a motion to adopt a tax rate that exceeds the effective tax rate must be made in the following form: 'I move that property taxes be increased by the adoption of a tax rate of (specify tax rate).'¹³⁶

***"...the 79th Regular Session Legislature modified the statutes (SB 18) to require that a motion to adopt a tax rate that exceeds the effective tax rate must be made in the following form: 'I move that property taxes be increased by the adoption of a tax rate of (specify tax rate).'*"**

Any increase in the amount of maintenance and operation taxes requires the taxing unit to include specific language in the notices.¹³⁷ The language will vary depending on whether the effective maintenance and operation rate is exceeded and whether the notice is posted on the county's web site. Small taxing units must comply with similar, although simplified, rules regarding their tax notices.

Local taxing entities have scheduled hearings at various times during the day and evening in an attempt to ensure that all taxpayers have an opportunity to attend the hearings. However, despite this effort public attendance at county tax rate hearings is generally very low even with the additional notices required by SB 18. The following bullets summarize information collected on voter attendance at tax rate hearings in 88 counties held during 2005. The data comes from articles in a variety of local newspapers and contacts with local county officials.¹³⁸

- 0 attended 107 hearings in 62 counties
- 1 attended 27 hearings in 26 counties (1 person per hearing)
- 2 attended 10 hearings in 9 counties (2 people per hearing)
- 3 attended 6 hearings in 5 counties (3 people per hearing)
- 4 attended 6 hearings in 5 counties (4 people per hearing)
- 5 attended 4 hearings in 4 counties (5 people per hearing)
- Up to 30 attended 6 hearings in 5 counties (6-30 people per hearing)

¹³⁶ §26.05(b), Tax Code.

¹³⁷ §26.05(b), Tax Code. This is also a new change by the 79th Legislature, Regular Session.

¹³⁸ Compiled by the Texas Association of Counties.

Starting in 2006, taxing units, other than school districts, will still have two public hearings if they exceed the notice and hearing limit. The notices for these hearings will have larger headline type and include a comparison of the taxes and values for the current and previous tax years. They will also include a statement of the outstanding and/or unpaid bonded indebtedness.¹³⁹

Additional changes made by the 79th Legislature include a five year history of the percentage change in appraised value added to the appraisal notice and a five year history of taxes added to the tax bill.

The 3rd Called Session of the 79th Legislature recently passed legislation that will “buy down” local property taxes while increasing the State’s share of school funding. This will lower the district’s effective and rollback tax rates, at least temporarily. In addition, HB 1 will change the way in which both effective and rollback tax rates are calculated by including “State funds that will be distributed to the district in a school year under Section 42.2516, Education Code, among the elements used in determining the effective maintenance and operations tax rate, rather than the rollback tax rate, of a school district.”¹⁴⁰

Rollback Elections

If the taxing entity, other than a school district, adopts a property tax rate that exceeds the rollback rate, the qualified voters of the taxing unit by petition may require that an election be held to determine whether or not to reduce the tax rate adopted for the current year to the rollback tax rate. *Senate Bill 18 reduced the number of signatures required to 7% of the registered voters of the taxing unit according to the most recent list of registered voters if the tax rate adopted for the current tax year would impose taxes for maintenance and operations in an amount of at least \$5 million.* For taxing units where the tax rate adopted for the current tax year would impose taxes for maintenance and operations in an amount of less than \$5 million, the petition must include signatures numbering at least 10% of the registered voters.

Table 1 shows the change in the number of signatures required for 12 counties. The estimated M&O property tax levy is included as the levy for the last three counties is under \$5 million indicating that they would still require a number of signatures equal to 10% of the number of registered voters. (For the larger counties, the 10% column shows the number of signatures that would have been required if not for SB 18.)

¹³⁹ SB 567, 79th Regular Session.

¹⁴⁰ Senate Research, *Bill Analysis of C.S.H.B. 1*, By: Pitts et al. (Williams), Finance Committee Report (Substituted) (Austin, TX: Texas Senate, 28 April 2006).

Table 1: Number of Signatures Required on a Rollback Petition

County	Registered Voters, Jan 2006			M&O Levy 2004
	Total	10%	7%	
Harris	1,871,929	187,193	131,036	\$646,683,163
Hidalgo	268,341	26,835	18,784	\$93,395,203
El Paso	365,617	36,562	25,594	\$75,214,297
Jefferson	155,789	15,579	10,906	\$50,417,952
Smith	115,494	11,550	8,085	\$21,221,312
Lubbock	155,088	15,509	10,857	\$19,676,120
Hardin	33,088	3,309	2,317	\$9,780,290
Gaines	6,984	699	489	\$9,210,210
Hood	32,000	3,200	2,240	\$7,970,710
Gonzales	11,862	1,187	*	\$4,302,202
Archer	6,394	640	*	\$2,600,509
Terrell	762	77	*	\$1,827,624

* These three counties are not subject to the 7% requirement in SB 18 based upon the estimated 2004 M&O property tax levy.

"If a school district adopts a tax rate that exceeds the district's rollback tax rate, a rollback election must be held to determine whether to approve the adopted tax rate."

If voting favors the proposition to rollback the tax rate, the tax rate is then reduced to the rollback tax rate, otherwise the tax rate for the current year is the one adopted by the local government. If the tax rate is rolled back, the tax assessor¹⁴¹ prepares and mails corrected tax bills. *If a property owner paid taxes using the higher tax rate, the taxing unit must refund the difference.*

If a school district adopts a tax rate that exceeds the district's rollback tax rate, a rollback election must be held to determine whether to approve the adopted tax rate.

For school districts, if a simple majority of the votes cast in the election favor the adopted tax rate, then the adopted tax rate stands. However, if the voters disapprove the adopted rate, the school district's rollback rate becomes the adopted tax rate. Following the election results, the school district will mail the current year's tax bills. The following table shows the number of rollback elections held in 2004 and their results.

¹⁴¹ The tax assessor-collector performs this duty in counties.

Table 2: 2004 Rollback Election Results

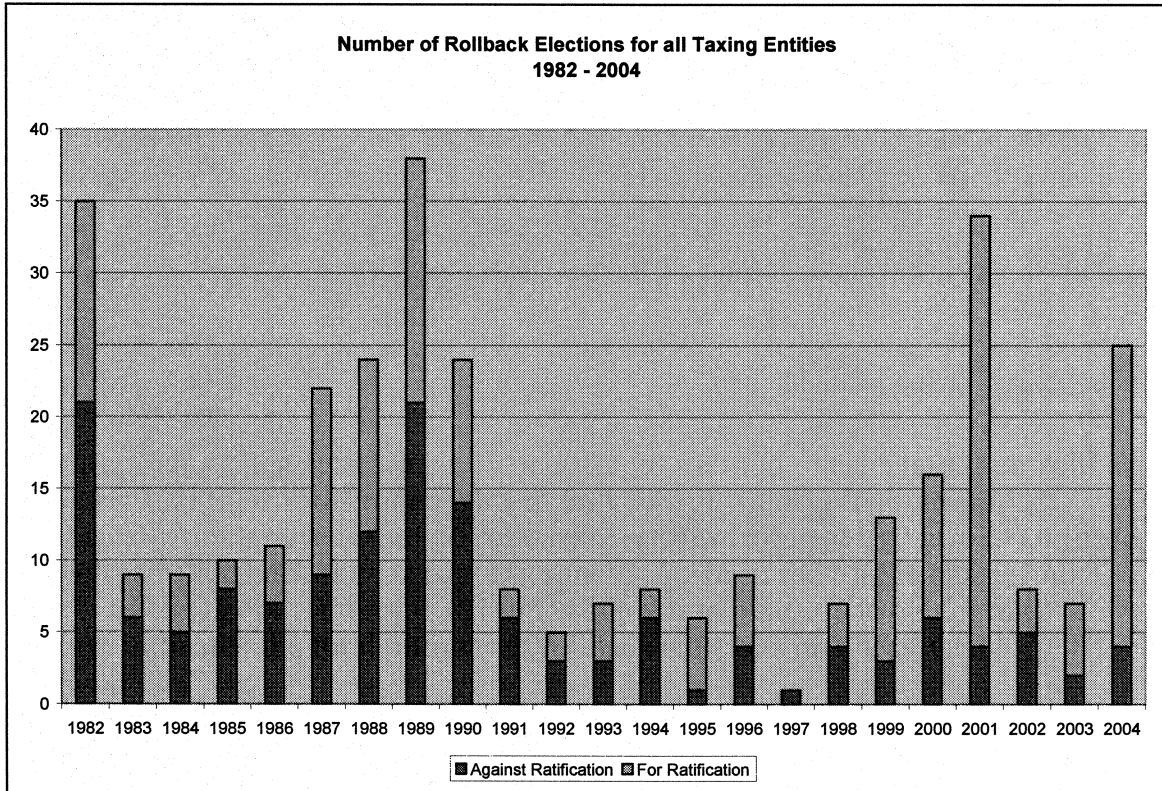
Taxing Unit	Election Results	For	Against	2004 Tax Rate	RBR / % Increase
School District					
Andrews ISD	Against ratification	397	435	1.6486 (old rate 1.68787)	1.6486 / 2%
Borden ISD	Ratified	240	53	1.45	1.35 / 7%
Brooks County ISD	Against ratification	147	359	1.2671 (old rate 1.542)	1.2671 / 22%
Groom ISD	Ratified	178	71	1.6	1.512 / 6%
Highland ISD	Ratified	71	20	1.61	1.40 / 15%
Hull-Daisetta ISD	Ratified	507	196	1.5831	1.1941 / 33%
Jim Hogg ISD	Ratified	1,058	503	1.50245	1.2768 / 18%
Joaquin ISD	Ratified	254	236	1.5148	1.0988 / 38%
Klondike ISD	Ratified	84	16	1.5	1.36 / 10%
Lefors ISD	Ratified	252	43	1.6035	1.36 / 18%
Leon ISD	Ratified	193	58	1.28	1.1019 / 16%
London ISD	Ratified	35	3	1.2494	1.048 / 19%
McCamey ISD	Ratified	213	75	1.5503	1.2783 / 21%
McLean ISD	Ratified	216	209	1.35	1.17 / 15%
Meyersville ISD	Ratified	86	50	1.5	1.26 / 19%
North Zulch ISD	Ratified	165	113	1.45	1.45 / 3%
Pecos Barstow Toyah ISD	Ratified	311	37	1.5	1.3249 / 13%
Plains ISD	Ratified	153	37	1.5	1.457 / 3%
Pringle Morse ISD	Ratified	50	10	1.4	1.12 / 25%
Santa Gertrudis ISD	Ratified	50	10	1.45	1.3089 / 11%
Taft ISD	Ratified	161	107	1.4	1.2001 / 17%
Westbrook ISD	Ratified	83	39	1.45	1.4073 / 3%
Wink-Loving ISD	Ratified	158	45	1.5	1.21 / 24%
Special District					
Tyler Junior College	Election Passed	9,902	1,535	0.1271 (old rate 0.1623)	0.1271 / 28%
City					
Bedford	Election Passed	4,929	4,919	0.4007 (old rate 0.495)	0.4007 / 24%

Source: Texas Comptroller of Public Accounts, Property Tax Division.

As the table shows, only one city and one special district held a rollback election in 2004. In both cases the voters elected to decrease the tax rate to the rollback

tax rate. School districts, which use a different method to calculate their rollback tax rates, had their rates rolled back in only two of twenty-three attempts. Historically there have been 336 rollback elections from 1982 to 2004. Of these, the voters rolled back the tax rate 155 times (shown in red on the chart) and approved the tax rate increase 181 times (shown in blue). The height of each column indicates the total number of rollback elections held that year.

Chart 1: Historic rollback elections



"Historically there have been 336 rollback elections from 1982 to 2004. Of these, the voters rolled back the tax rate 155 times (shown in red on the chart) and approved the tax rate increase 181 times (shown in blue)."

In May 2006, Comal County became the most recent local government in Texas to hold a rollback election. After several years of dipping into reserves to fund budget shortfalls, Comal's Commissioners Court adopted a \$27.5 million general fund budget that required a 12.5 percent tax rate increase, 4.5 percent above the State-mandated rollback rate of 8 percent. With 65,834 registered voters as of January 2006, rollback proponents would have been required to obtain over 6,000 signatures on the rollback petition prior to SB 18. Due to SB 18 only approximately 4,600 signatures were required. As it turned out, fewer than 10%

of the registered voters actually voted in this election and those that did chose to trust their elected officials and accept the new tax rate (3,257 to 3,034). Note that while more than 4,600 were willing to call for an election, after a robust discussion of local priorities only 3,034 voted to roll back taxes.¹⁴²

Tax Rates and SB 18

The most difficult decision that a locally elected official must make is a vote to increase taxes. That vote was made significantly more difficult with the 79th Legislature's passage of SB 18 in 2005. SB 18 made numerous modifications to the local property tax system particularly in how the public is informed about their property tax rates. Prior to SB 18, a local government, other than a public school district, had to publish a notice in a newspaper and hold a public hearing before it could adopt a tax rate exceeding 103 percent of the effective tax rate.

SB 18 added a number of requirements to ensure that all "property taxpayers have adequate notification and an opportunity to hold their elected officials to a higher level of accountability on the total amount of property taxes being assessed."¹⁴³

The following partial list of changes relating to the property tax rate came from SB 18.

- Requires the vote on the ordinance, resolution, or order setting an ad valorem tax rate that exceeds the effective tax rate to be a record vote. The bill requires the motion to adopt an ordinance, resolution, or order that sets a tax rate higher than the effective tax rate to be made with specific language, **"I move that property taxes be increased by the adoption of a tax rate of (specific tax rate)."**
- Calls for certain notice requirements if there is an increase in the amount of taxes to fund maintenance and operation (M&O) expenditures.
- Before a taxing unit, other than a school district, can adopt a tax rate that exceeds the lower of the rollback tax rate or effective tax rate the governing body must hold two public hearings on the proposed rate. The bill includes requirements on the dates of the hearings and how the notice of the public hearing must read as well as requiring the notice to be posted on the website if available.
- Changes the number of signatures required on a rollback petition to be equal to at least 7% instead of 10% of the number of registered voters of the taxing unit if the tax rate adopted for the current tax year would impose taxes for M&O in an amount of at least \$5 million. Smaller taxing units still use 10%.

¹⁴² Ron Maloney, "Rollback effort fails," *The Herald-Zeitung*, 14 May 2006.

¹⁴³ Senate Research, *Bill Analysis of S.B. 18, By: Williams, Ways and Means Committee Report (unamended)* (Austin: Texas Senate, 2005).

SB 18 also made a number of modifications to the tax bill.

- For real property, the tax bill must state for the current tax year and each of the preceding 5 tax years:
 - the appraised value and taxable value of the property;
 - the total tax rate for the unit;
 - the amount of taxes imposed on the property by the unit; and
 - the difference, expressed as a percent increase or decrease, as applicable, in the amount of taxes imposed on the property by the unit compared to the amount imposed for the preceding tax year;
- For real property, the tax bill must state the change, expressed as a percent increase or decrease, in the following from the fifth tax year before the current tax year to the current tax year:
 - the appraised value and taxable value of the property;
 - the total tax rate for the unit; and
 - the amount of taxes imposed on the property by the unit; and
- The tax bill must also include any other information required by the comptroller.

The extensive list of changes due to SB 18 greatly increased the transparency of the property tax rate setting process. However, the low turnout at county tax rate hearings during 2005 indicates that the public is relatively satisfied with the level of services provided by the counties (please refer to page 48 for data on how many attended these hearings). Some individuals expected that the increased public awareness and knowledge brought about by the requirements of SB 18 would create new groundswells of unrest among taxpayers. That this groundswell obviously has not occurred is perhaps best explained by public support for local officials and their efforts to hold the line against budget increases whether those increases be due to economic factors or under-funded mandates.

Appraisal Creep

By 2004 the phrase “appraisal creep” began to be heard around the State. This phrase refers to the step by step increase in property values over time allowing taxing entities an automatic increase in property taxes without raising the property tax rate. In some ways this is similar to increasing sales tax receipts where as prices increase, so do the tax receipts as both are based on a percentage of the value of the item rather than a set amount (like a fee).

However, unlike with “sales tax creep,” taxpayers have an automatic built-in protection based on the effective tax rate. Calculation of the effective tax rate followed by its publication allows the taxing entity to inform the public of changes. This protects taxpayers since setting the tax rate to the effective tax rate generates the same amount of property tax revenue for the local taxing entity that it received during the prior year. The roll-back rate provides further protection against unwanted expansion of the property tax levy. No similar effective rate or

rollback rate is calculated or provided to the public regarding the sales tax. This allows sales tax creep to slip under the radar as the public unwittingly pays more and more sales tax on the same basket of goods.

There are two primary causes of appraisal creep. First, and most importantly, are changes in the real estate market.¹⁴⁴ The low interest rates and creative financing packages available in recent years created a booming real estate market for residential properties across the nation. Texas contributed to that growth but at a substantially reduced pace.

In the United States, the median home price rose nearly 33 percent during the past three years and 13 percent in 2005.¹⁴⁵ The number of homes sold increased from 5.6 million in 2002 to an annualized level of nearly 7.1 million in 2005.¹⁴⁶ The number of new single-family dwellings built increased 6.7 percent over the prior year, from 1.531 million in 2004 to 1.635 in 2005.

"In Texas, home prices have appreciated at rates significantly less than the national rate."

"The median-price-to-median-family-income ratio in Texas is not disproportionate to the historical norm."

--The Texas Real Estate Center

Texas' housing market is experiencing a much slower rate of increase than the rest of the country. From 2002 to 2005, the Texas median-priced home increased from \$124,500 to an estimated \$136,500, a modest 9.6% increase. The average house price grew from \$155,600 in 2002 to \$174,100 in 2005, an 11.9% increase. Multiple Listing Service (MLS) sales during that same period increased from 201,422 to 265,886, a 32 percent increase. It should be noted that the 11.9% increase in the preceding statistics can be misleading since the average house price includes the prices of new homes on the market which may be more expensive than older homes.

The Texas Real Estate Center, in arguing that Texas is not experiencing a housing bubble, made several observations on the housing market relevant to the discussion on appraisal creep. Some of the key observations are listed below:

¹⁴⁴ James P. Gaines, "Texas Housing Bubble: Truth or Scare?" *Tierra Grande* 13 (2). Available online: <http://recenter.tamu.edu/tgrande/vol13-2/1769.html>

¹⁴⁵ Office of Federal Housing Enterprise Oversight (OFHEO) quoted in Gaines, "Texas Housing Bubble: Truth or Scare?"

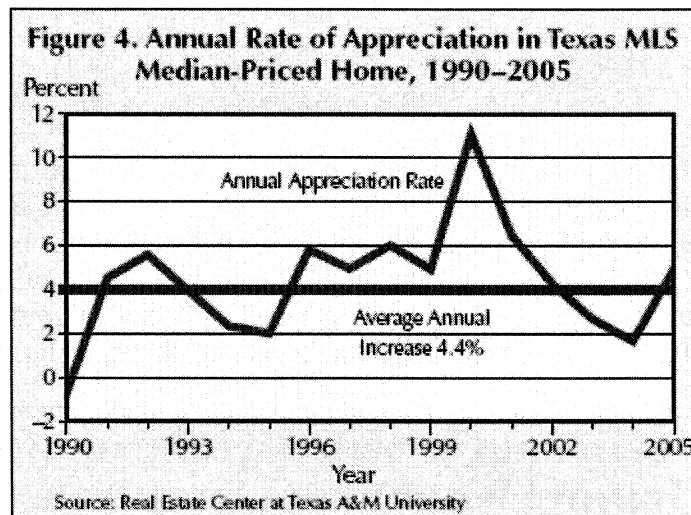
¹⁴⁶ National Association of Realtors (NAR) quoted in Gaines, "Texas Housing Bubble: Truth or Scare?"

- In Texas, home prices have appreciated at rates significantly less than the national rate.
- Texas' current rate of home price increase is about equal to the "normal" rate of the past 15 years.
- The median-price-to-median-family-income ratio in Texas is not disproportionate to the historical norm.

While there are undoubtedly some properties appreciating in value at rates greater than the state average, and likewise some appreciating in value at rates less than the state average, it would appear that overall median prices have been fairly stable relative to median family income. This implies that while statewide home values have been increasing, the increases have not been excessive as indicated by the following chart taken from the Real Estate Center's web site.¹⁴⁷

"The second primary cause of appraisal creep lies with the statutorily mandated annual study of property values performed by the State Comptroller's office."

Chart 2: Annual Rates of Appreciation



The second primary cause of appraisal creep lies with the statutorily mandated annual study of property values performed by the State Comptroller's office. The desire to avoid the penalties associated with failure to appraise properties within 5% of the value placed on them by the Comptroller has created problems within the appraisal system.

¹⁴⁷ Gaines, "Texas Housing Bubble: Truth or Scare?"

Various chief appraisers have noted that appraising a property is more of an art than a science and that two qualified appraisers may place vastly differing value on the same property. This, according to those same chief appraisers, has led not only to high appraisals as they try to keep up with market values but in some cases to appraisals that are knowingly set above market value.

Because the district knows that some of the properties are likely to be appraised too low, particularly those not recently reappraised, there is an incentive for the district to over-appraise properties currently being reappraised. This allows for the district as a whole to fall within the property value study's margin of error. Allowing the Comptroller to increase the margin of error would remove this incentive and decrease the number of knowingly high appraisals. HB 66 by Rep. John Otto was offered in the special session to do this.

However, SB 18 made appraisal creep rhetoric a hollow argument. As mentioned above, State law now requires that a motion to adopt a tax rate that exceeds the effective tax rate must be made in the following form: 'I move that property taxes be increased by the adoption of a tax rate of (specify tax rate).'¹⁴⁸

Furthermore, if there is any increase in the effective maintenance and operation tax rate, then it must clearly state in the printed order or resolution that the new rate is an increase and the local government's minutes must fully document which officials voted for and which officials voted against the increase. SB 18 thereby greatly strengthened the public's ultimate defense against tax increases by ensuring they would be more fully informed about all tax and tax rate increases when they go to the polls.

Rate of Reappraisals

Part of the problem associated with appraisal creep may lie in the rate of reappraisals. While many districts reappraise more often, the State only requires properties to be reappraised at least once every three years. In districts that reappraise annually, the property owners can see increases in their property values every year contributing to the perception of appraisal creep. However, in districts that reappraise less frequently the owner can be hit in a single notice with a sudden increase in valuation showing the effects of multiple years of accumulating appreciation.

The property owner is sometimes confused by this sudden increase and outraged by the additional taxes owed. However, in reality the owner has probably received a financial benefit. If the property appreciated in value during the years in which no reappraisal was completed, the owner was paying property taxes on an appraised value that was less than market value. In effect the owner was paying taxes on less than 100% of the value of the property. If on the other hand, the property's value decreased, the owner may have been paying too much

¹⁴⁸ §26.05(b), Tax Code.

property tax based on a high appraised value. However, decreasing values are far less likely given the housing market in large parts of Texas.

Appraisal districts in high growth areas generally find that they must reappraise annually in order to meet the 5% margin of error for the Comptroller's annual study of property values. Currently the idea of changing the margin of error to a more realistic 10% is gaining traction. Relaxing the standards would not only benefit many property owners for the reason stated in the preceding paragraph, it would also decrease the cost of local government by reducing the workload on appraisal districts which are funded by the local taxing entities in their districts.

Revenue Caps

Local taxing entities currently have a revenue cap in place restricting their ability to raise additional property tax revenue. School districts have a cap of \$0.06 in place such that any attempt to raise the tax rate more than this amount automatically results in a rollback election. Unlike other local taxing entities no petition is required for school district rollback elections.

Other taxing entities have an 8% cap in place. Thus any attempt to increase the tax rate to more than 108% of the effective tax rate¹⁴⁹ may result in a rollback election. However, before the rollback election can take place a petition bearing the signatures of either 7% or 10% of the registered voters of the taxing unit, depending on the amount of taxes levied by the local government. (For taxing units where the tax rate would impose taxes for maintenance and operations in an amount of \$5 million or more, the petition must contain at least 7% of the registered voters according to the most recent list of registered voters. For taxing units where the tax rate adopted for the current tax year would impose taxes for maintenance and operations in an amount of less than \$5 million, then the petition must include signatures numbering at least 10% of the registered voters.)

Prior to the enactment of SB 18 all rollback petitions required a number of signatures equal to 10% of the registered voters. The percentage was reduced in response to the previously discussed criticism that it was too difficult to get the number of signatures required for a rollback election.

Stringent limits on revenue growth can force a local government to delay maintenance, infrastructure, or other costs. **As Horatio Aldrete, a credit analyst with bond rating agency Standard & Poor's, noted, "Limiting a city's property tax rate could have an effect on operations, which could potentially affect credit quality."**¹⁵⁰

¹⁴⁹ Although they share the same name, the effective tax rate used in calculating the rollback rate may differ from the actual published effective tax rate.

¹⁵⁰ Sarah Smaardyk and Horatio Aldrete-Sanchez, *Are Property Tax Caps in Texas an Unnecessary Fix?* (Dallas: Standard & Poor's, 2006), 3.

Even with the current revenue cap, various studies have shown that local governments operate at the mercy of various cost drivers. These cost drivers include both legally mandated services and publicly demanded services such as volunteer fire departments, emergency medical services, juvenile probation, employee health care and inmate medical, dental and mental health costs. Often annual expenditures for one or more of these cost drivers will increase by significantly more than the 8% limit imposed by the current revenue cap.¹⁵¹

These fluctuations in required expenditures, as well as the threat of natural disasters such as Hurricane Rita or wildfires, make it important for local governments to maintain significant financial reserves. The reserves' importance can be seen by their use by bond rating agencies. Low reserves can hurt a taxing unit's bond rating leading to higher interest rates on any bonds issued. The increased costs of borrowing result in either increased property taxes to finance the greater interest payments or cause the local government to postpone issuing the bond.

With the reforms provided by SB 18, concerned taxpayers can now demand a rollback election with 30% fewer signatures in most taxing entities as shown above in Table 1. Thus increases of more than 8% above the effective tax rate can be instituted only with the full consent and cooperation of the voting public as seen previously in Table 2.

Appraisal Caps

Local taxing entities currently operate under a 10% appraisal cap on residential homesteads. The foundation of Texas' property tax system is that, with the exception of the existing 10% appraisal cap on residential homesteads, all properties are to be appraised at 100% of value. In times of economic fluctuation, a lowered appraisal cap would destroy the integrity of the appraisal system in Texas as valuations would be artificially locked in at the bottom of valuation fluctuations. The following two tables demonstrate this feature of appraisal caps.

In both tables, the first row shows the capped value of a property in the year 2000 column. Each succeeding column in that row shows the maximum taxable value based upon the indicated appraisal cap, either 10% or 7%. The following rows show the actual market value. The market value is slightly higher than the capped value on the first row as it is assumed to be already capped in year 2000. The remaining columns show how the market value increases over time given the indicated growth rates of 3.5%, 5.5%, 7.5%, or 9%. The bolded amounts indicate the length of time it would take for the taxable value to catch up to the market value.

¹⁵¹ See for example: Texas Association of Counties, *County Expenditures and Tax Rates Survey 2006* (Austin, TX: TAC, 2006).

Table 3: 10% Appraisal Cap

Growth	2000	2001	2002	2003	2004	2005	2006
Capped Value (10%)	\$95.00	\$104.50	\$114.95	\$126.45	\$139.09	\$153.00	\$168.30
Low Growth (3.5%)	\$100.00	\$103.50	\$107.12	\$110.87	\$114.75	\$118.77	\$122.93
Moderate Growth (5.5%)	\$100.00	\$105.50	\$111.30	\$117.42	\$123.88	\$130.70	\$137.88
High Growth (7.5%)	\$100.00	\$107.50	\$115.56	\$124.23	\$133.55	\$143.56	\$154.33
Very High Growth (9%)	\$100.00	\$109.00	\$118.81	\$129.50	\$141.16	\$153.86	\$167.71

As can be seen in Table 3, a 10% cap allows the capped value to catch up to market value within a few years. Even in a high growth area where property values are increasing by 7.5% a year, the 10% cap allows for equalization in four years.

Table 4: 7% Appraisal Cap

Growth	2000	2001	2002	2003	2004	2005	2006
Capped Value (7%)	\$95.00	\$101.65	\$108.77	\$116.38	\$124.53	\$133.24	\$142.57
Low Growth (3.5%)	\$100.00	\$103.50	\$107.12	\$110.87	\$114.75	\$118.77	\$122.93
Moderate Growth (5.5%)	\$100.00	\$105.50	\$111.30	\$117.42	\$123.88	\$130.70	\$137.88
High Growth (7.5%)	\$100.00	\$107.50	\$115.56	\$124.23	\$133.55	\$143.56	\$154.33
Very High Growth (9%)	\$100.00	\$109.00	\$118.81	\$129.50	\$141.16	\$153.86	\$167.71

Table 4, however, shows that even a slight reduction in the appraisal cap to 7% would make it impossible for the capped value to catch up in a very high or high growth area. Even areas experiencing more moderate growth of 5.5% would require several years for the capped value to catch up to the market value. A discrepancy between the capped, taxable value and the market value can distort the real estate market and impose unintended penalties on property owners.

For example, as a general rule, appraisal caps impose a penalty on a homeowner for moving and drive down the real estate market. Homeowners, particularly low- and middle-income families, become less and less likely to move the greater the difference between market value and taxable value becomes. This creates an incentive for a homeowner to stay in one location rather than purchase another property of similar or greater value with significantly higher taxable value. Alternately this incentive to stay is effectively a disincentive to move. Thus, if the owner does sell, the price will be higher than without the distorting influence of the appraisal cap. Some have argued that the disincentive to move is a benefit as it stabilizes neighborhoods.

"All other things being equal, caps will shift the property tax burden to those whose residential properties are not appreciating or are appreciating more slowly."

However, stabilization can become stagnation as low- and middle-income families find their upward mobility reduced. Likewise those individuals looking to downsize, retirees for example, may find themselves locked in to their current home. Florida is currently experiencing exactly this situation. Newspaper articles describe seniors who find themselves unable to move out of the large homes into smaller, more easily managed homes or condos because of their state's cap on the taxable value of residential properties.

The difference in what a homeowner is paying in taxes in their current location compared to what they face when a new home is purchased can be very large with low appraisal caps in place as shown in Table 4. The size of the tax bill the homeowner would face in a new home is exaggerated by the shift in property tax burden.

"Caps are, in fact, intended to reduce the property tax burden of those whose residential property is appreciating in value."¹⁵² All other things being equal, caps will shift the property tax burden to those whose residential properties are not appreciating or are appreciating more slowly.

"The fact is that any deviation from appraising at market value creates many kinds of unintended consequences and anomalies."

This is one explanation for the distorted real estate market in states like California where low, artificial taxable values drive up the price of residential properties. "The fact is that any deviation from appraising at market value creates many kinds of unintended consequences and anomalies."¹⁵³

The current 10% appraisal cap has had limited unintended side effects for one simple reason: the cap is relatively moderate in that it allows the property's taxable value to catch up with the property's market value. The delay in reaching market value eases the shock by spreading the increase in property taxes out over several years. For

¹⁵² Texas House of Representatives. House Committee on Local Government Ways and Means, *Interim Report 2004: A Report to the House of Representatives, 79th Texas Legislature*, Unpublished draft (2004), 4.

¹⁵³ House Committee on Local Government Ways and Means, 7.

most properties the values soon equalize removing the constraints on the local real estate market.

An appraisal cap of less than 10% would tend to increase the number of years it would take for the market and taxable values to equalize. This would create exactly the undesirable situation described above which is currently found in California and Florida.

“Local Option” Appraisal Caps

A more recent initiative has been to suggest that local officials should have the option of setting the appraisal cap for residential homesteads at some level below 10%. The proponents argue that this would provide property tax relief to many deserving taxpayers.

Unfortunately this argument overlooks several key points. First, as described above, lower property caps have a number of adverse side effects, such as distorting the real estate market and shifting the tax burden onto property owners whose properties are appreciating more slowly.

Second, any request for additional means to lower the property taxes of residential homeowners overlooks existing, often unused methods.

For example, Austin Councilman Brewster McCracken, arguing in favor of local option appraisal caps, noted that his city does not currently provide the local optional percentage homestead exemption. This percentage exemption allows a taxing entity to provide an exemption on each residential homestead of up to 20% of its value.¹⁵⁴ A minimum exemption of \$5,000 applies in taxing units that have the optional percentage exemption.

Councilman McCracken stated that the City of Austin could not afford the local optional percentage exemption, but could easily afford a lower cap on residential homestead appraisals. What the Councilman apparently failed to realize is that the percentage can be set lower than 20%. Of the 182 cities offering this exemption in 2004, 22 set the exemption at 1% and many others used percentages ranging from 3% to 10%. In effect, a 1% percentage exemption would provide a \$5,000 exemption on all residential homesteads below \$500,000 in appraised value and larger exemptions for more expensive homesteads thanks to the statutorily set minimum.

Third, there is no restriction on how far a taxing entity can lower its tax rate as long as it can provide the services mandated by the Legislature and Congress, as well as those services demanded by the public. **Within those constraints,**

¹⁵⁴ §11.13(n), Tax Code.

each taxing entity has a fiduciary responsibility to the taxpayers to keep its tax rate as low as possible.

For these reasons, it can be seen that lowered appraisal caps, whether imposed by the State or locally, are bad public policy. Warren Buffet, the billionaire investor, noted that because of Proposition 13 in California, average families are forced to subsidize him.¹⁵⁵

"Warren Buffet, the billionaire investor, noted that because of Proposition 13 in California, average families are forced to subsidize him."

Effect of Appraisal Caps on the Residential Real Estate Market

By forcing new homeowners to take on a disproportionate share of the property tax burden, appraisal caps provide a disincentive for homeowners to sell thereby distorting the real estate market. This distortion is seen in both the reduced number of homes that appear on the market and in the greater prices sought for those homes. Because the home seller will need to purchase another home, they will have to take on a much larger share of the tax burden. Evidence of this effect is seen in states such as California which currently have a low appraisal cap. "A move to a different property triggers reassessment at full market value, and this moving penalty distorts the behavior of households and firms."¹⁵⁶

In Florida, appraisal caps have "redistributed the tax burden from one residence to another and from residential to non-residential. Like it or not, that's what it's done," according to Mike Wells, the Pasco County property appraiser.¹⁵⁷

"In Florida, appraisal caps have 'redistributed the tax burden from one residence to another and from residential to non-residential. Like it or not, that's what it's done,' according to Mike Wells, the Pasco County property appraiser."

¹⁵⁵ Warren Buffet, Response to the Journal, *Wall Street Journal Online*, 3 November 2003 quoted in *Appraisal Limits: A Wrong Turn on the Road to Property Tax Relief?* (Austin, TX: Moak, Casey & Associates, 2004), 17.

¹⁵⁶ Terri A. Sexton, Steven M. Sheffrin and Arthur O'Sullivan, "Proposition 13: Unintended Effects and Feasible Reforms," *National Tax Journal* 52, 1 (March 1999): 106.

¹⁵⁷ Matthew Waite and Joni James, "Your neighbor's tax bill," *St. Petersburg Times*, 26 March 2006, http://www.sptimes.com/2006/03/26/State/Your_neighbor_s_tax_b.shtml.

For example, Mary Eifert, 71, has owned a three-bedroom home on Clearwater Beach, FL since 1963. Thanks to Florida's appraisal cap, in 2005, she paid taxes on just \$173,000 of taxable value, which is less than 25 percent of her house's estimated value. That means an annual bill of about \$4,000 in property taxes. She was considering downsizing to a beach condominium. With the sale of her home, the value of which is estimated at \$800,000, she could easily afford something nicer. By moving, though, she would take a huge tax hit. With higher taxes, her new home could end up costing much more than she pays now - to live somewhere smaller, even inland and away from the water.¹⁵⁸

Effects if Commercial Property is also Capped

Since commercial property values tend to be more volatile than residential property values,¹⁵⁹ the ratchet effect tends to shift the property tax burden away from established businesses. Thus new businesses are hit doubly hard as the tax burden shifts from both residential properties and established businesses fall on these properties.

The ratchet effect occurs when values decline. The lower appraised values result in a new baseline for the appraisal cap. For example, if a commercial property's value declines by 8%, then a 5% cap would limit any possible increase in the following year to only 96.6% of the original value. Thus, the tax burden is shifted to other properties. Since the commercial properties tend to have both greater short-term increases and decreases in value, residential property owners will have to shoulder a greater share of the tax burden. While long-term residential property owners will be partially shielded from the increase thanks to the appraisal cap, more recent purchasers will not have that protection and will have to shoulder the lion's share of the shifted tax burden.

Once the cap is in place lowering the taxable value of properties, it creates a disincentive for economic development. The "cap may affect an investor's decision to purchase income producing properties like apartments, hotels, office buildings, and shopping centers."¹⁶⁰ This occurs because income producing properties generally include their expenses, such as property taxes, into their rental rates. Properties that receive a cap on their taxable values will have an artificial competitive advantage over properties recently acquired or improved because, due to the reduced market value and resulting lower tax expense, they will be able to charge less rent for the same amount of profit. Thus, an investor may decide not to develop a property, or develop somewhere else, rather than

¹⁵⁸ Matthew Waite and Joni James, "Your neighbor's tax bill," *St. Petersburg Times*, 26 March 2006, http://www.sptimes.com/2006/03/26/State/Your_neighbor_s_tax_b.shtml.

¹⁵⁹ Moak, Casey & Associates, LLP, *Appraisal Limits: A Wrong Turn on the Road to Property Tax Relief?* (Austin, TX: Moak, Casey & Associates, March 2004), 29.

¹⁶⁰ Mark S. Hutcheson, *Unintended Consequences: The Perils of Appraisal Caps* (Dallas, TX: Texas Association of Property Tax Professionals, 2004), 1. Available online at <http://www.taptp.org/multi/perils.pdf>.

compete directly with those established (“capped”) properties that can charge less rent for the same profit.

“In California, where appraisal caps have been in place for decades, there are drastic differences in appraised values and, thus, tax bills. For residences, it is not uncommon for homeowners who have been in the same house for many years to have dramatically lower tax bills than those making recent purchases of virtually identical properties. *The situation is even more distorted for commercial properties* [emphasis added], where the tax rates per square foot can range from \$0.05 per square foot for properties that were in place when the caps were implemented to up to \$5.00 per square foot for comparable and nearby facilities. Such inequities lead to arbitrary competitive advantages for older businesses and unfair shifting of tax burdens to those recently purchasing homes or commercial properties.”¹⁶¹

Most people are aware of the damage caused by Proposition 13. “California artificially capped appraised values and significantly reduced its reliance on the property tax. As a result, it has one of the highest state income taxes in the nation and its local and state-wide budgets have been in disarray for over a decade.”¹⁶²

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Proposition 13 also undermines local economic development decisions. “Cities and counties have little incentive to approve new housing developments, manufacturing plants, or office parks because the limited amount of property taxes that local agencies receive from these developments don’t pay for the needed services.”¹⁶³

¹⁶¹ The Perryman Group, *The Impact of Potential Restraints on Local Government Activity (Appraisal Caps, Expenditure Limits, and Revenue Limits) on the Economy of Texas* (Waco, TX: The Perryman Group, 2005), 16.

¹⁶² Mark S. Hutcheson, *Unintended Consequences: The Perils of Appraisal Caps* (Dallas, TX: Texas Association of Property Tax Professionals, 2004), 2. Available online at <http://www.tapt.org/multi/perils.pdf>.

¹⁶³ Michael Sweeney, “Making ‘Cents’ of Local Dollars,” [California] *Controller's Quarterly*, August 1997, p. 8. Available online at: <http://www.sco.ca.gov/eo/qrtlyrpt/9707/aug97.pdf>.

Effects if Commercial Property is NOT Capped

When appraisal caps are in place for residential properties only, a situation can occur much like what has happened in Colorado under the 1982 Gallagher Amendment¹⁶⁴ which limits the assessed value of residential property to 45% of the total assessed value of all the property in Colorado. This amendment is intended to maintain a 45:55 ratio (between property taxes paid by residential and business property owners). However, the real value of Colorado's residential property has since grown to over 65% of the total value of state property. That means that the residential assessment ratio, the value of residential property that counties are actually allowed to tax, has fallen steadily, from 21% in 1982 to about 9.7% in 2001. The amendment effectively subsidizes residential property owners at the expense of commercial property owners as the commercial assessment ratio has been forced higher during this period.¹⁶⁵

When an appraisal cap is in place for residential properties only, it effectively drives down the assessment ratio for those residential properties and leaves the assessment ratio for all other properties at 100% of market value. In this manner, businesses begin to shoulder a larger and larger share of the tax burden. Fluctuations in the business cycle can temporarily decrease that share as commercial property values decline, however, without a cap in place those values will not stay down permanently.

Besides forming a larger percentage of the taxable value, commercial properties are also hit by an increase in the effective tax rate. The effective tax rate, simply put, is that tax rate which would bring in the same property tax dollars as the local government levied in the prior year. By removing taxable value from the property tax rolls, the effective tax rate is kept artificially higher than it would otherwise have been. Thus those properties which are not capped must pay property taxes based on an artificially high tax rate.

A further consequence of Colorado's Gallagher Amendment has been to reduce the growth of small businesses in mainly residential counties. "[B]usinesses do not find it as attractive to establish operations in mainly residential counties ... as they have to shoulder a greater portion of the tax burden."¹⁶⁶

In addition, communities that depend on one or two major employers also face significant economic development challenges. "Come to our town and shoulder the majority of the property tax burden!" is not an effective economic development pitch.¹⁶⁷ The failure to reduce commercial property rates, driven

¹⁶⁴ The Gallagher Amendment is not part of TABOR.

¹⁶⁵ Satoru Fujimoto, Andaman Kakanopas, Jonathan Power, and Chin-keong Tan, *The Impact of Tax Policy on Retail and Economic Development* (Denver, CO: Center for Tax Policy, 2001), 4-5.

¹⁶⁶ Satoru Fujimoto, Andaman Kakanopas, Jonathan Power, and Chin-keong Tan, *The Impact of Tax Policy on Retail and Economic Development* (Denver, CO: Center for Tax Policy, 2001), 6.

¹⁶⁷ Satoru Fujimoto, Andaman Kakanopas, Jonathan Power, and Chin-keong Tan, *The Impact of Tax Policy on Retail and Economic Development* (Denver, CO: Center for Tax Policy, 2001), 6.

higher by the increased assessment ratio for commercial properties, has “caused great concern that businesses, especially manufacturing firms, are no longer locating in Colorado due to the high commercial property taxes.”¹⁶⁸

Reducing the Homeowner’s Tax Bill

In some areas of the state, large increases in property value are being seen as residents of California, Florida, and other areas of high real estate costs buy up properties for prices that are relatively high locally, but which are significantly lower than are seen by these buyers in their home states or neighborhoods.¹⁶⁹ This, in part, has led to stories of Texans who are being “taxed out of their homes” by rising property values and taxes.

The following list of homestead exemptions, which are currently available, is provided for the benefit of those individuals who are adversely affected by rising property values.

Cities:

1. The local optional age 65 or older or disabled general homestead exemption is \$3,000.¹⁷⁰
2. The local optional percentage homestead exemption has a minimum of \$5,000; the percentages adopted locally by each city may range up to 20%.¹⁷¹

Counties:

1. State-mandated general exemption on farm-to-market flood control is for \$3,000.¹⁷² Only counties that have the farm-to-market flood control tax can have this exemption.
2. The local optional age 65 or older or disabled homestead exemption has a \$3,000 minimum.¹⁷³ The amount may be increased locally.
3. The local optional percentage homestead exemption has a minimum set at \$5,000; the percentage adopted locally by each county may range up to 20%.¹⁷⁴

School Districts:

1. The state-mandated general homestead exemption is \$15,000.¹⁷⁵

¹⁶⁸ Moak, Casey & Associates, LLP, *Appraisal Limits: A Wrong Turn on the Road to Property Tax Relief?* (Austin, TX: Moak, Casey & Associates, March 2004), 21.

¹⁶⁹ For example, see Senée Seale, “Residents sound off on tax appraisals,” *The Galveston County Daily News*, 18 August 2006. Available online at:

<http://news.galvestondailynews.com/story.lasso?ewcd=20a9571dbf16bfde4be3c83c4b7f75e0>

¹⁷⁰ Tex. Tax Code, §11.13(d).

¹⁷¹ Tex. Tax Code, §11.13(n).

¹⁷² Tex. Tax Code, §11.13(a) or §11.13(g). A homeowner who is eligible for both exemptions must choose one; they can not receive both for the same property.

¹⁷³ Tex. Tax Code, §11.13(d).

¹⁷⁴ Tex. Tax Code, §11.13(n).

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2. The state-mandated age 65 or older or disabled homestead exemption is \$10,000.¹⁷⁶ If the homeowner is both 65 or older and disabled, they may receive one \$10,000 exemption under this statute. They are not eligible to receive an exemption for both conditions.
 3. The local optional age 65 or older or disabled homestead exemption has a minimum of \$3,000.¹⁷⁷ The amount may be increased locally.
 4. The local optional percentage homestead exemption has a minimum of \$5,000; the percentage adopted locally by each district may range up to 20%.¹⁷⁸

Special Districts

1. The local optional percentage homestead exemption has a minimum of \$5,000; the percentage adopted locally by each district may range up to 20%.¹⁷⁹
2. The local optional age 65 or older or disabled homestead exemption has a \$3,000 minimum.¹⁸⁰ The amount may be increased locally.

In addition to homestead exemptions, there are other means available to homeowners to reduce the financial burden of property taxes, particularly in areas with strong growth in property values.

Tax Ceilings

When a taxpayer receives an over-65 homestead exemption, they also receive a “tax ceiling” for their total school taxes. The school taxes on their home cannot increase as long as they own and live in that home. The tax ceiling is set at the amount they paid in the year that they qualified for the over-65 homeowner exemption. The school taxes on their home may fall below the ceiling at some point, but may not rise above it.¹⁸¹

The tax ceiling can be a significant savings for qualified homeowners as school district property taxes accounted for 59.8% of all property taxes collected statewide in 2004.¹⁸² Even if the total school district property taxes collected that year had been reduced by a third, as is envisioned with the passage of HB 1,¹⁸³ they would have collected 49.8% of the property taxes.

¹⁷⁵ Tex. Tax Code, §11.13(b).

¹⁷⁶ Tex. Tax Code, §11.13(c).

¹⁷⁷ Tex. Tax Code, §11.13(d).

¹⁷⁸ Tex. Tax Code, §11.13(n).

¹⁷⁹ Tex. Tax Code, §11.13(n).

¹⁸⁰ Tex. Tax Code, §11.13(d).

¹⁸¹ Tex. Tax Code, §11.26.

¹⁸² Texas Comptroller of Public Accounts, Annual Property Tax Report for Tax Year 2004 (Austin, TX: Comptroller, December 2005), 1.

¹⁸³ House Bill 1, 79th Legislature, 3rd Called Session.

A county, city or a junior college district also may freeze or limit property taxes by adopting a tax ceiling for 65 and older homeowners.¹⁸⁴ The ceiling goes into effect after the taxing unit adopts the limitation and the homeowner qualifies their home for the over-65 homestead exemption.

Tax ceilings can change. They can go up if the owner modifies the home (other than by normal repairs and maintenance). For example, if the owner adds a garage or a room to their home, the tax ceiling can rise. It will also change if the owner moves to a new home.¹⁸⁵ A tax ceiling does not expire when the owner conveys the interest in the home to a trust, if the owner-trustor continues to occupy the home.

Installment Payments

If the homeowner is aged 65 or older, they may choose to pay their tax bill in installments.¹⁸⁶ The homeowner must pay one-fourth of the tax bill by February 1 and indicate that they will be paying in installments. The remaining payments of one-fourth of the tax bill are due before April 1, June 1, and August 1. If a payment is late, penalties and interest begin to accrue.

Tax Payment Deferrals

The owner may also “defer” or postpone paying any property taxes on their home for as long as they own and live in it.¹⁸⁷ However, a tax deferral only postpones the tax liability, it does not cancel it. Interest on the amount due accrues at the rate of 8 percent a year. Once the owner and any surviving spouse no longer own the home or live in it, past taxes and interest become due 181 days later. Any penalty and interest that was due on the tax bill for the home before the tax deferral will remain on the property and become due when it ends.¹⁸⁸

Appraisal Protests

The above applies only to homeowners, however all property owners have the option of protesting their appraisal. The protest is filed with the appraisal review board (ARB) and a hearing is scheduled; the property owner is notified of the

¹⁸⁴ Tex. Tax Code, §11.261.

¹⁸⁵ However, the new home may benefit in part from the old home’s tax ceiling if it is in the same county, city or junior college district that granted the original tax ceiling. See Tex. Tax Code, §11.261(g).

¹⁸⁶ Tex. Tax Code, §33.031.

¹⁸⁷ Tex. Tax Code, §33.06 and §33.065.

¹⁸⁸ Texas Comptroller of Public Accounts, Taxpayer's Rights, Remedies and Responsibilities (Austin, TX: Comptroller, 2006), 2-3. Available online at: <http://www.window.state.tx.us/taxinfo/proptax/remedy06/96-295-06.pdf>

schedule at least 15 days prior to the hearing. If the ARB's decision is not satisfactory, the property owner has the right to appeal the decision to district court.

As an alternative to filing an appeal to district court, the property owner has the right to appeal through binding arbitration. If the arbitrator's value decision is closer to the value the property owner claims to be correct, then \$450 of the \$500 deposit is returned to them. Otherwise, the arbitrator's fee is paid from the deposit and any balance is refunded to the property owner.¹⁸⁹

Evaluations

Sales Price Disclosure

In many cases, particularly businesses and high end housing, the appraiser has very little information on which to base the appraisal. With low- and mid-range homes the appraisers can often rely on confidential information from MLS or commercial vendors on home sales prices. Although these prices may not be for the specific property being appraised, they are often available for other similar properties in the same neighborhood.

Having the sales price for similar properties located nearby gives the appraiser a chance to assign a more accurate appraised value to the home. This data has historically not been available for businesses and higher priced homes. For businesses the districts must often simply place a high valuation on the property. If the owner complains, a compromise can be reached through informal negotiation or through a formal appeal to the Appraisal Review Board. If the owner fails to complain, they know the valuation is either just about right or still too low.

Unfortunately, in the near future appraisal districts may be forced to use this same tactic on low- and mid-range home owners. A recent Attorney General's opinion¹⁹⁰ stated that MLS data received by the districts is subject to the Open Records Act regardless of any confidentiality agreement in place. This may lead to the end of data sharing between MLS and the districts. While not all appraisal districts use MLS data (Travis Central Appraisal District does not for example) many consider the data irreplaceable at this time.

One avenue to replace the loss of MLS data is to require full sales price disclosure. Some believe disclosure could potentially harm the high-end housing market; however, since the majority of the harm seems to fall under the category

¹⁸⁹ Texas Comptroller of Public Accounts, *Property Protests and Appeals*, available online at: <http://www.window.state.tx.us/taxinfo/proptax/protests.html>

¹⁹⁰ OR2006-03509, dated April 7, 2006.

of finally being forced to pay their property taxes based on full market value like everyone else, the protestations ring hollow.

Recommendation: The committee should prepare legislation to require sales price disclosure to the appraisal districts to ensure the most accurate appraisals possible so that no individual pays more or less than their fair share of the property tax levy.

Evaluation of the Effective Tax Rate

The 2005 Effective Tax Rate Worksheet available from the Comptroller had 25 lines. Counties, unlike other taxing entities, had to complete one worksheet for each type of property tax which they levied (general fund, special road & bridge fund, and/or lateral/farm-to-market fund). The current number of steps can be intimidating at first glance.

In previous years, there were far fewer steps making the process appear simpler; however the process has been improved since that time to more accurately determine an entity's effective tax rate. While this has added to the number of steps required to determine the effective tax rate, it is important to note that each of the newer calculations or adjustments have been added by the Legislature to promote state policies.

Thus the effective tax rate calculation is as simple as it probably can be while protecting the public's interest regarding pollution control, indigent health care, etc. Any attempt to modify the calculations must begin with a review of the public policy to determine the desirability of the policy itself.

Recommendation: The committee should continue to monitor the effective tax rate for any attempt at modification. Additional complexities should be avoided; however, this must be a policy decision that is made on a case by case basis by the Legislature after careful consideration.

Evaluation of the Rollback Tax Rate

Determination of the rollback tax rate requires 57 steps for cities, counties, and some special districts. Water districts use 14 steps. School districts use the same basic worksheets as cities and counties.

However, line 29 of the Comptroller's Rollback Tax Rate Worksheet States that school districts must "[c]omplete the Texas Education Agency's worksheet entitled *Worksheet to Assist Districts in Calculating Rollback Rate.*" This worksheet alone has more than 40 lines.

The number of steps may seem large and the worksheets complex. But the level of complexity is necessary to account for all of the factors required, particularly with school districts. David Thompson, co-counsel for the West Orange Cove plaintiffs, had the following comments about the rollback tax rate calculations.

“The calculation needs to be complex in order to produce accurate information. Pursing a simple calculation at the expense of accounting for the factors that have to be accounted for probably isn't in the best interest of the State. But how we report the information to the public so that it's meaningful information I think could be improved upon.”¹⁹¹

Thus, it is important that the rollback rate be reported to the public in a simplified form which allows for ease of understanding while at the same time presenting all relevant data.

SB 18 recently added the requirement for local taxing entities to include in the printed order or resolution a statement on the increased dollar amount that will apply to a \$100,000 home when there is an increase in the effective M&O tax rate.

Recommendation: SB 18 modified the reporting requirements of most taxing entities with respect to the rollback tax rate. This committee should monitor the number and outcome of rollback petition drives to fully understand the effects of SB 18 which appear to be working to keep the public more informed of both tax levy and tax rate increases. Further attempts to modify the reporting of rollback tax rates should focus on simplifying the notices so that the public can easily understand any changes in their local rollback tax rates.

Evaluation of Rollback Elections

It is clear from Table 2 and Chart 1 above that rollbacks have been very infrequent and voter turnout in general has been low in recent years. Some have taken these low numbers to indicate that taxpayers have been generally content with the level of property taxes.

Others have focused on the low number of elections in recent years and concluded that either the tax rate setting process is too opaque, thereby keeping the taxpayers in the dark or that the rollback petition process is too burdensome, thereby preventing rollback elections. In 2005, Senate Bill 18, the Property Tax Accountability Act,¹⁹² brought increased transparency to local government by addressing both of these concerns. The act requires local governments to notify

¹⁹¹ Texas House of Representatives. House Committee on Local Ways and Means, Interim Charge Hearing on Local Property Taxes (19 April 2006). Available online at: www.house.state.tx.us

¹⁹² SB 18, 79th Legislature, Regular Session.

the public about any proposed rate increase above the effective tax rate. Following the notification, it requires two hearings to be held for public testimony. Additionally, it decreases the number of signatures necessary on a petition to force a tax rollback election.¹⁹³

It is of course too soon to see the full effects of SB 18 on local property tax rates and levies. Curiously, the additional notices required by SB 18 failed to bring out a large number of individuals either for or against the proposed tax rates in most of the counties. In 2005, only six hearings had more than five citizens attend in the 88 counties for which such data is available.

The lack of attendance plus the small number of rollback elections suggests that in general voters are satisfied with the level of services provided by their local property taxes. As these rollback elections took place prior to 2005, it is likely that the decrease in the number of signatures required for a rollback election will result in more rollback elections in the near term.

There is concern that other taxing entities may be lured into increasing their tax rates above the rollback rate so as to hide the increase within the overall property tax levy decrease as the State buys down school district property taxes. However, the increased transparency due to SB 18 will make it very difficult for any local taxing entity to hide a tax increase. The improved reporting requirements and lowered barriers to rollback elections should prove sufficient to derail any unnecessary tax increases.

Recommendation: The Committee should continue to monitor rollback petition drives and elections to determine if any unreasonable barriers to rollback elections arise in the future.

¹⁹³ Other than in school districts where a rollback election is automatic if the proposed tax rate is greater than the rollback rate.

Interim Charge #3

Research and make recommendations regarding the Central Appraisal Districts in Texas; evaluate the makeup of the board of directors; examine whether consolidation of certain appraisal districts would save money; review appraisal districts' methodology in arriving at appraisal values; determine the impact of the Comptroller's Office audit on the operation of the appraisal district and its derivation of appraisal values.

Make-up of the Board of Directors

A board of directors that is selected by the taxing units within the appraisal district governs each appraisal district. The directors, who serve without pay, can be elected officials (but not employees or contractors) for a taxing unit.

Most appraisal districts have a five-member board of directors, chosen by the taxing unit governing bodies using a weighted levy formula to determine the number of votes cast by each taxing unit. In a number of counties, the board selection process has been modified by three-quarters of the voting taxing units to change the method of board selection, increase the size of the board, or both. In Harris County, for example, there is a six-member board with one member appointed by the county commissioners' court, one by Houston city council, one by the HISD school board, one by the school boards for districts other than Houston, one by the city councils for cities other than Houston, and one by the nearly 400 conservation and reclamation district boards. Alternate methods for selecting the board of directors are more common in urban areas.

Statewide, most board members are citizen appointees of the taxing units within the appraisal district, but almost 40 percent are taxing unit officials. At one time, Texas law required all appraisal district directors in Galveston County to be elected officials of a taxing unit within the district, but this requirement was repealed in favor of the current system of director selection.

Some people have advocated that at least some of the appraisal district directors be popularly elected. The principal argument against such a change is politicization of the appraisal process, which would signal a return to the highly political and unfair system of appraisal that predated the 1979 legislation establishing appraisal districts in Texas.

There is no single good "fix" for the claims that boards of directors are biased. Considering that a city councilperson, school board member or county commissioner are elected, how would electing someone else be more representative?

If a taxing unit does not appoint the county tax assessor-collector to the appraisal district board, then the county assessor serves as a non-voting appraisal district director. County assessors are ineligible to serve, however, if they are chief appraisers or if the county commissioners court contracted for county taxes to be collected by another taxing unit or by the appraisal district.

The board of directors has an important but distinct role in the governance of the appraisal district. As the governing body, similar to a school board or city council, they approve the appraisal district's annual budget, set general policies for its operations, and employ its chief administrative officer, the chief appraiser.

The board must adopt the district's reappraisal plan, which governs the frequency and conduct of reappraisals in the appraisal district. However, the board cannot exert any direct influence over appraisals or the staffing of the appraisal district. The board appoints the chief appraiser, who serves at their pleasure. The chief appraiser and the appraisal staff employed by the chief appraiser perform the appraisals. An additional, and very significant role of the board of directors is to appoint members of the appraisal review board. The appraisal review board is by law independent of the chief appraiser, and sits to determine protests filed by taxpayers.

"...the board cannot exert any direct influence over appraisals or the staffing of the appraisal district. The board appoints the chief appraiser, who serves at their pleasure."

The directors also make the determination as to whether the appraisal district operates as an independent entity or contracts with a tax office of one of the jurisdictions within the district or with the appraisal office of another appraisal district.

Sixteen appraisal district boards contract with a taxing unit for this service and maintain a board of directors but no employees. Randall and Potter counties operate a joint appraisal office.

Contrary to popular opinion, there is no evidence that appraisal district boards of directors push the chief appraiser to raise values to benefit one or more taxing units. However, this perception is probably enhanced by situations where the appraisal office is operated by a taxing unit tax office—particularly if the chief appraiser is also a school district tax assessor/collector. This needs to be changed.

Numerous provisions in Chapter 6 of the Property Tax Code serve to ensure the independence of the appraisal district board of directors, including prohibitions against service by taxing unit employees, persons who contract with a taxing unit, or individuals who are related to the chief appraiser, appraisal district employees, or persons who represent taxpayers before the appraisal district for compensation. A director is also ineligible to serve if he or she owes delinquent taxes for more than 60 days.

Appraisal District's Methodology in Arriving at Appraised Values

The purpose of the appraisal process is to allocate the burden of taxation equally to all property owners.

With limited exceptions, the Texas Constitution and Property Tax Code require the appraisal district to appraise all taxable property at its January 1 market value. Special provisions provide for appraisal of open-space agricultural and timber land at its productivity value, and for special below-market appraisal of public access airport property, and certain deed restricted recreational, park and scenic land. There are also provisions that the appraised value of a residence homestead may not increase by more than 10% for each year since the last year in which the property was appraised. The inventories of motor vehicle, recreational vehicle, boat, and heavy equipment dealers are appraised using statutory formulas that consider retail sales of these inventories in the prior year.

The chief appraiser, who is appointed by the appraisal district board of directors, is responsible for valuation of all taxable property, equalization of values, and the administration of exemptions and the business personal property rendition process. The chief appraiser and all appraisal district employees must meet training and certification requirements imposed by the Board of Tax Professional Examiners.

The chief appraiser must prepare all appraisal records and present them to the appraisal review board. He or she must notify owners of increases in value, and must defend these actions against challenges by taxing units and taxpayers before the appraisal review board.

The Property Tax Code requires an appraisal district to reappraise real property at least once every three years. Many districts reappraise every year, and there are two reasons for this. First, in a changing market, frequent reappraisal is necessary to keep values equalized at the constitutionally required January 1 market value standard. Secondly, failure to reappraise regularly is likely to result in the appraisal district failing the comptroller's annual study of appraisal district and school district values.

In determining value, the chief appraiser is required to comply with the Uniform Standards of Professional Appraisal Practice (USPAP), and to follow statutory provisions adopted by the legislature. Appraisal districts utilize generally accepted methods of value determination including the market comparison, cost, and income approaches to value. These various approaches are used to build and calibrate mass appraisal models, from which individual property appraisals are generated.

To ensure adherence with generally accepted appraisal practices, the 79th Legislature enacted Senate Bill 1652 requiring the directors of an appraisal district to annually develop a written plan for the periodic reappraisal of all property within the boundaries of the district, and to hold a public hearing to consider the proposed language. The plan must be adopted no later than September 15 of each even-numbered year.

The adopted plan must comply with the requirements of Sec. 25.18 of the Tax Code. These include:

- 1) identifying properties to be appraised through physical inspection or by other reliable means of identification;
- 2) identifying and updating relevant characteristics of each property in the appraisal records;
- 3) defining market areas in the appraisal district;
- 4) identifying property characteristics that affect property value in each market area;
- 5) developing an appraisal model that reflects the relationship among the property characteristics affecting value in each market area and determines the contribution of individual property characteristics;
- 6) applying the conclusions reflected in the model to the characteristics of the properties being appraised; and
- 7) reviewing the appraisal results to determine value.

The committee heard from a number of witnesses who testified that Texas has one of the fairest and most effective systems of property tax appraisal in the United States. It was suggested to the committee that the system could be improved, however, by establishing a procedure wherein an outside authority, such as the Comptroller, could investigate and order a chief appraiser who was failing to do so to follow pertinent Tax Code requirements.

“The committee heard from a number of witnesses who testified that Texas has one of the fairest and most effective systems of property tax appraisal in the United States.”

Impact of the Comptroller’s Study of Appraisal Districts

To ensure that appraisal districts correctly perform their duties and that state funding to school districts is distributed in accordance with taxable wealth in each school district, Texas law for many years has required the state to independently study and report on appraisal district performance and school district values.

Originally, during Governor Briscoe’s administration, the Governor’s Office of Education Resources conducted the school district value study. In 1977 the Legislature created the School Tax Assessment Practices Board that, the State Property Tax Board (SPTB) replaced effective January 1, 1980. The new STPB also took on property tax-related functions previously performed by the comptroller’s Ad Valorem Tax Division.

In addition to conducting the annual study of appraisal district and school district values, the State Property Tax Board was responsible for adopting rules establishing minimum standards for administration and operation of appraisal districts and county assessor-collector offices; offering curricula and instruction on property appraisal and tax administration; preparing and issuing appraisal manuals and other technical and legal materials for use by local tax officials, and issuing news and reference bulletins on the subject of property taxation; publishing pamphlets explaining the remedies available to a dissatisfied taxpayer, and advising taxpayers on how to prepare and present appeals on values; prescribing property tax forms and a uniform records system; providing professional and technical assistance to local tax officials at local expense, upon request; and publishing an annual report of its operations and of the operations of appraisal districts and county assessor-collectors.

"According to the Comptroller's 2004 Final Property Value Study, appraisal districts achieved a study result of 99% of market value."

In 1991, the State Property Tax Board was abolished and many of its duties transferred to the Comptroller.

Today, the Comptroller conducts an annual study in each appraisal district to determine the degree of uniformity of and the median level of appraisals by the appraisal district within each major category of property. The Comptroller also estimates the true taxable wealth of each school district. An appraisal district or school district has the right to appeal an adverse finding in the comptroller's study.

Generally, the Comptroller has found that appraisal districts in Texas continue to appraise property with uniform results and close to market value. According to the Comptroller's *2004 Final Property Value Study*, appraisal districts achieved a study result of 99% of market value. There are, however, instances, where locally generated values in a school district may fall outside the study's statistical margin of error.

A school district whose appraisal district determined values are found to be outside the study's margin of error in two consecutive years is penalized by having its state funding reduced.

In cases of study failure, the Comptroller is required to review the appraisal standards, procedures, and methodology used by each appraisal district that appraises property for an eligible school district to determine compliances with generally accepted appraisal standards and practices.

If an appraisal district fails to comply with the recommendations in the report and the Comptroller finds that the board of directors of the appraisal district failed to take remedial action before the first anniversary of the date the report was issued, the Comptroller is required to notify the judge of each district court in the county for which the appraisal district is established, and the court must appoint a board of conservators to exercise supervision and control over operations of the appraisal district until the Comptroller determines that the taxable value of each school district for which the appraisal district appraises property is the local value for the school district.

The dual threat of a school district having its state funding reduced and the possibility of the appraisal district being placed in conservatorship are powerful forces that combine to ensure that property appraisals are maintained at their January 1 market value.

It was suggested to the committee that the system might be better served by changing the present sales ratio study utilized by the Comptroller to an audit that reviews both a self-reported ratio study generated by the chief appraiser and the methodology used by each appraisal district in arriving at the value of each class of taxable property.

Recommendations:

1. Regarding appraisal district governance:

a. Amend Tax Code Sec. 6.05(b) authorizing the board of directors to contract with a taxing unit to operate the appraisal office to read that the only options are for the appraisal office to operate independently or for the board of directors to contract with the county assessor for the assessor to serve as chief appraiser. Both of these options are currently permissible, but the recommended change would cure the public perception problems associated with the appraisal office being operated by a school district tax office. The amendment should also provide that an assessor cannot serve as chief appraiser except where the board of directors has contracted for the county assessor to serve as chief appraiser.

b. The current method of appraisal district director selection operates well, but it should be a requirement for persons selected as a director to attend a one-day orientation to be conducted by the Comptroller or an educational entity approved by the Comptroller. A similar requirement currently exists for appraisal review board members, and extending this requirement to appraisal district directors is not unlike the present training requirement for individuals who serve as school district trustees.

c. The committee takes no position on the frequent recommendation that one or more members of the Central Appraisal District Board of Directors be elected by the public. The most valid criticism for such an election is the

possible campaign position, "I will lower your appraisals". There is great concern of the consequences of a politicized board.

2. Valuation processes used by Texas appraisal districts appear to meet the standards imposed in the Property Tax Code and the Uniform Standards of Professional Appraisal Practice. Confidence in the system could be improved, however, by establishing a procedure where an outside authority, such as the Comptroller or Board of Tax Professional Examiners, could investigate and order a chief appraiser who was failing to do so to follow pertinent Tax Code requirements.

3. Change the present sales ratio study conducted by the Comptroller to the annual audit of a self-reported sales ratio study generated by the chief appraiser and a review and audit of the appraisal methodology utilized by the appraisal district in determining the value of each category of taxable property. This approach would be cost effective, and is more likely than the present study to determine shortcomings in the work done by the various appraisal districts as the audit would be mandatory rather than a review triggered by failure of the existing sales ratio study procedure.

4. Pass legislation to require sales price disclosure to the appraisal districts to ensure the most accurate appraisals possible so that no individual pays more or less than their fair share of the property tax levy. *Please refer to pages 70-71 for more information on sales price disclosure.*

Consolidation of Appraisal Districts

It has been proposed that the consolidation of certain central appraisal districts would achieve beneficial goals of reducing operational cost and improving appraisal accuracy. The following chart reviews the current status of central appraisal districts.

**Table A: STATE SUMMARY
2004/2005 APPRAISAL DISTRICT**

NUMBER OF DISTRICTS REPORTING TO DATE: 253 100.0%
 NUMBER OF DISTRICTS YET TO REPORT: 0 .0%

1. NUMBER OF TAXING UNITS IN APPRAISAL DISTRICT: 3,871
 NUMBER OF TAXING UNITS NEW TO CAD: 74
 NUMBER OF TAXING UNITS DISSOLVED: 1
 NUMBER OF TAXING UNITS JOINED THE CAD: 2
 NUMBER OF TAXING UNITS THAT LEFT CAD: 2
 NUMBER OF TAXING UNITS THAT CONSOLIDATED CAD: 2
 NUMBER OF TAXING UNITS THAT NO LONGER EXISTS: 4

DISTRICT SIZE	NUMBER OF DISTRICTS	NUMBER OF UNITS
BELOW 5,000 PARCELS	3	1.2%
5,000-9,999 PARCELS	26	10.3%
10,000-14,999 PARCELS	29	11.5%
15,000-19,999 PARCELS	24	9.5%
20,000-24,999 PARCELS	16	6.3%
25,000-34,999 PARCELS	45	17.8%
35,000-49,999 PARCELS	33	13.0%
50,000-74,999 PARCELS	31	12.3%
75,000-149,999 PARCELS	25	9.9%
150,000-300,000 PARCELS	13	5.1%
OVER 300,000 PARCELS	8	3.2%
STATE TOTALS	253	3,871

2. NUMBER OF TAXABLE PARCELS STATEWIDE: 16,470,682
 NUMBER OF TAXABLE REAL PARCELS: 11,770,656
 NUMBER OF MINERAL PARCELS: 3,341,011
 NUMBER OF TAXABLE BUSINESS PERSONAL PROPERTY ACCOUNTS: 1,194,442
 NUMBER OF TAXABLE INDIVIDUAL PERSONAL PROPERTY ACCOUNTS: 164,573

The Comptroller reports that in 2004-05 the consolidated budgets of all 253 appraisal districts was \$279 million dollars. For this cost local authorities collected \$30.97 billion dollars in property taxes. This indicates that it cost local governments only nine-tenths (.009) of one cent to appraise over 16,470,000 taxable items located in 254 counties. Most businesses would agree that this is an extremely low cost of operation.

Nevertheless, common sense would indicate that there must be some benefits to be gained from economies of scale if consolidation were mandated for certain appraisal districts. Before proceeding with that conclusion, we examine a report from the Comptroller's Office that provides an understanding of the varying sizes of appraisal districts in Texas.

District Size	Number of Districts	Average Total Parcels	Average Real Parcels	Average Pers. Prop Parcels
BELOW 5,000 PARCELS	3 1.2%	3,957	2,871	1,086
5,000-9,999 PARCELS	26 10.3%	7,934	6,142	1,792
10,000-14,999 PARCELS	29 11.5%	12,310	8,651	3,659
15,000-19,999 PARCELS	24 9.5%	17,630	11,352	6,278
20,000-24,999 PARCELS	16 6.3%	22,297	13,138	9,159
25,000-34,999 PARCELS	45 17.8%	30,959	21,226	9,733
35,000-49,999 PARCELS	33 13.0%	42,392	28,144	14,248
50,000-74,999 PARCELS	31 12.3%	60,542	37,088	23,454
75,000-149,999 PARCELS	25 9.9%	110,735	72,955	37,780
150,000-300,000 PARCELS	13 5.1%	205,598	139,413	66,185
OVER 300,000 PARCELS	8 3.2%	625,699	524,869	100,830

From the above table it is clear that almost half of the total taxable parcels of property in the State are accounted for in just 21 of the 253 appraisal districts (approximately 7,678,366 of 16,470,000 taxable parcels). What is even more telling is to review from the annual appraisal district reports the value represented by these 21 appraisal districts. The total taxable value within these 21 districts is \$1.089 trillion out of a total for the State of \$1.219 trillion. In other words, 89.3% of the total value of the State is represented in these 21 counties! Perhaps even more telling is the fact that the budgets of the 21 largest CAD's account for \$166,806,920 of the total CAD budget cost of \$279 million, or 59.7%.

It would be instructive to review the average cost of CADs as reported by the Comptroller's Office. The following table provides a summary by CAD size.

Table C: Average Cost of Districts

DISTRICT SIZE	COST AS % OF LEVY LOW/AVG/HIGH	COST PER PARCEL LOW/AVG/HIGH
BELOW 5,000 PARCELS	.01/.00/ 2.64	8.14/12.47/23.25
5,000-9,999 PARCELS	.99/2.30/ 5.07	7.11/15.60/50.58
10,000-14,999 PARCELS	.03/.40/ 8.58	4.96/13.82/27.57
15,000-19,999 PARCELS	1.21/2.90/ 5.11	4.46/13.90/31.75
20,000-24,999 PARCELS	1.07/2.60/ 4.86	4.07/13.81/27.29
25,000-34,999 PARCELS	.77/1.90/68.57	5.08/16.46/32.26
35,000-49,999 PARCELS	.64/1.80/29.43	3.52/12.68/25.28
50,000-74,999 PARCELS	.70/1.40/ 2.85	2.14/11.99/22.25
75,000-149,999 PARCELS	.55/1.20/80.02	3.85/14.32/25.19
150,000-300,000 PARCELS	.45/.80/ 1.81	2.36/15.31/26.23
OVER 300,000 PARCELS	.51/.60/ 1.68	13.02/23.26/26.63

From a review of the above Table C two things can be observed. The larger CADs operational cost per parcel are higher than smaller CADs as an average. However, when one looks at the cost as a percent of levy, the economies of scale manifest themselves clearly. The conclusion is that the larger a CAD is, the more efficient it is as a percent of the levy. Stated another way, the entities get more for their money in larger CADs.

However, is cost of operation the only factor that drives those who urge consolidation? We cannot conclude that appraisal district cost is a legitimate issue among most citizens of Texas. This is based on data drawn from other Comptroller reports. From the *2004-05 CAD Operations Report* one can find that only five CADs had their budgets rejected in 2004-05. This is not indicative of general unrest with appraisal district cost.

Further, who is it that seeks consolidation? Is legislation required to authorize consolidation? At this time two appraisal districts have chosen to consolidate pursuant to existing state law. They are the Randall and Potter Counties. Section 6.05 provides for consolidation of appraisal districts upon agreement of local governments.

It is our understanding that most complaints about CADs center around either value or exemptions issues. Again, to appreciate where most of the opportunity for such complaints would exist, we refer to reports issued by the Comptroller's Office. We examine Table D, below.

Table D: TOTAL 2004 TAXPAYER PROTESTS HEARD BY ARB

District Size	Number of Protest Hearings Scheduled	Number of Informal ARB Hearings Scheduled	Number of Taxpayer Scheduled for ARB Hearings	Number of Taxpayers Failing to Appear at Hearings
BELOW 5,000 PARCELS	3	1	2	2
5,000-9,999 PARCELS	804	461	380	148
10,000-14,999 PARCELS	1,693	1,049	797	260
15,000-19,999 PARCELS	2,697	1,351	1,441	598
20,000-24,999 PARCELS	2,499	980	1,201	238
25,000-34,999 PARCELS	39,155	27,704	12,893	4,669
35,000-49,999 PARCELS	22,391	9,891	10,704	3,230
50,000-74,999 PARCELS	29,342	18,468	14,926	5,022
75,000-149,999 PARCELS	75,264	37,814	49,821	17,457
150,000-300,000 PARCELS	125,212	81,205	85,939	24,548
OVER 300,000 PARCELS	485,667	244,071	243,438	59,191
STATE TOTALS	784,727	422,995	421,542	115,363
		53.9% of Total Protest	53.7% of Total Protest	27.3% of Total Scheduled ARB Hearings

The above Table D indicates that 610,879 (77.8%) of the total 784,727 protests by taxpayers in 2004-05 came from the 21 largest appraisal districts. Would consolidating the 232 smaller districts significantly reduce the number of protest and subsequent complaints about CAD cost?

We conclude based on these facts that CAD cost is not an issue of significant consequence. The existing Tax Code contains more than ample assurances that CAD budgets are properly monitored. For a CAD budget to be approved the following steps must be taken per the Property Tax Code, Section 6.06.

Step 1. Before June 15th the chief appraiser must prepare and submit to the Board of Directors and tax entities a proposed budget. The proposed budget is very detailed and explanatory.

Step 2. The Board of Directors must hold at least one public hearing, the announcement of is governed by state law. This includes publication in the local newspaper and a specific notice to each entity participating in the CAD's budget.

Step 3. The Board of Directors must adopt a budget by September 15th.

Step 4. The entities have thirty days after adoption of the budget to reject the budget by simple majority.

We believe the current process of budget introduction to the entities and public, review and approval is sufficient to ensure that responsible budgeting is assured

for every CAD. We do not believe that the cost of CADs and possible consolidation of some appraisal agencies is an issue of significance nor is it one that should receive legislative consideration at this time.

However, we do believe that there are a number of smaller appraisal districts whose resources and available personnel are so limited as to warrant further review with possible state assistance as an outcome. For example, in sparsely settled areas of the State there are often few available personnel possessing necessary education and training that meets current state law for appraisal and assessment personnel. As a result these agencies are often unable to find and employ such personnel, given their limited agency resources and the extremely limited availability of such personnel.

In these instances, consolidation may be a solution. Even then, often the obstacle of huge distances covered by some large counties may negate this opportunity.

Interim Charge #4

Review the current system of appraising property located in more than one appraisal district as created in House Bill 703, 78th Legislature. Determine if one fair and equal value per property for ad valorem taxes is preferable to the current system, and whether it is more efficient to appraise property on a county line basis or on a jurisdictional basis.

Background

Sec. 6.02 of the Property Tax Code, enacted in 1979 in Senate Bill 621, provides that the appraisal district's boundaries are the same as the county's boundaries except when a taxing unit that has boundaries extending into two or more counties has chosen to participate in only one of the appraisal districts. In that event, the boundaries of the appraisal district chosen by the taxing unit extend outside the county to the extent of the unit's boundaries.

This provision was intended primarily to accommodate school districts that extended across county lines. Arguments in favor of this arrangement were (1) equity would be promoted within a given school district by having all taxable property in that district reappraised by the same appraisal district and in the same year; and (2) since taxing unit voting entitlement for selection of the appraisal district board of directors is determined by the amount of tax levy a taxing unit has in relation to the total amount of tax levied by all units in the appraisal district, a multi-county taxing unit could concentrate all its voting entitlement in a single appraisal district.

Another advantage of this arrangement to taxing units was that a multi-county unit could receive its entire appraisal roll from one appraisal district, rather than getting separate roll certifications from each county into which the unit's boundaries extend.

Initially, a multi-county taxing unit could choose to participate in each appraisal district into which its boundaries extended, or could choose to join a single appraisal district. Throughout Texas one finds a variety of these combinations and, over the years, some taxing units have elected to change appraisal districts.

According to the Comptroller's *2004/2005 Appraisal District Operations Report*, only six appraisal districts reported that they did not have taxing units with property overlapping into an adjoining appraisal district.

In 2004, the last year for which statewide data was available, 83 taxing units were involved in appraisal district changes. The majority of these, 72 in number, were newly created taxing units. One taxing unit dissolved, two involved taxing unit consolidations, four units ceased levying a property tax, and four left or joined a particular appraisal district.

Sec. 6.02 of the Tax Code permits a multi-county taxing unit to make a one-time choice to change the appraisal district in which it participates. However, the board of directors of the appraisal district the taxing unit wants to join must approve the change.

If a multi-county taxing unit ceases to have territory in a particular appraisal district but still has territory in two or more counties, the unit may choose to participate in only one appraisal district.

All costs of operating an appraisal district in territory outside the county for which the appraisal district is established are allocated to the taxing unit for which the appraisal district appraises property in that territory.

From the inception, multi-county appraisal districts have been confusing to taxpayers who happen to own property in the overlapping territory. Not unlike the situation that existed before appraisal districts were created, a property owner in overlapping territory must file exemption and agricultural productivity valuation applications with both appraisal districts. A business owner in overlapping territory must file renditions with both appraisal districts.

Over the years, the Legislature enacted and subsequently repealed various schemes for addressing these various issues. The most recent action was HB 703, enacted by the 78th Legislature and effective January 1, 2004. That bill requires chief appraisers to agree to one appraised value for any property located in overlapping appraisal district boundaries. If the chief appraisers do not agree by May 1, then each chief appraiser sets the value at the lowest appraised value determined.

While this seems simple, the fact is that overlapping appraisal districts create substantial and expensive administrative problems. Some of these include:

1. Difficulty in maintaining property and ownership records in a different county. The appraisal district in county A may not have ready access to ownership changes in county B. Additionally, it is likely that the appraisal districts in counties A and B have different computer systems, different records structures, and different mapping systems.
2. Noticing of values may be delayed, sometimes for a substantial period, while overlapping appraisal districts work to correlate values.
3. Sales data from an adjoining county may be difficult or impossible to obtain.
4. Open-space land values and degree of intensity standards can be markedly different if the overlapping counties have different patterns of agricultural or timber use.
5. Some taxpayers in overlapping appraisal district tend to “value shop”, filing protests in both counties and hoping that the final ARB decision will be lower in one of them.
6. Final value correlation between the overlapping districts sometimes delays certification of the appraisal roll.

Recommendations

Property owners in a given county typically associate their interaction with local government with that particular county. Accordingly, it seems more logical for their dealings with the appraisal district on property tax ownership, exemption, agricultural appraisal and valuation issues to be limited to the district created for that particular county.

Reconfiguration of appraisal district boundaries on the county line would be more convenient and less confusing to taxpayers, and would eliminate the time consuming and costly steps that appraisal districts must currently take to conform the appraisal records and values in overlapping territory.

While this change would require multi-county taxing units to receive separate appraisal roll certifications from each county appraisal district into which their boundaries extended, modern computer systems make the merging of appraisal roll data into a single tax roll a relatively simple problem to solve.

In cases where one large multi-county taxing unit dominates the board of directors selection process in a single appraisal district, a redrawing of appraisal district boundaries on county lines would provide an opportunity for smaller taxing units to have greater participation in selecting the board members. The multi-county taxing unit would simply begin participating in director selection in all of the counties in which that unit had territory, but its voting entitlement in a particular county would be based on the taxes it levied on property within that county.