# HOUSE COMMITTEE ON COUNTY AFFAIRS
# TEXAS HOUSE OF REPRESENTATIVES
# INTERIM REPORT 2004

## A REPORT TO THE
## HOUSE OF REPRESENTATIVES
## 79TH TEXAS LEGISLATURE

**WAYNE SMITH**
**CHAIRMAN**

**COMMITTEE CLERK**
**JOHN PAUL URBAN**

Committee On
County Affairs

January 6, 2005

Wayne Smith
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 County Affairs of the Seventy-Eighth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Seventy-ninth Legislature.

Respectfully submitted,

Wayne Smith

Warren Chisum

Glenn Lewis

Carter Casteel

David Farabee

Jessica Farrar

Dan Flynn

Dora Olivo

Inocente "Chente" Quintanilla

Warren Chisum
Vice-Chairman

Members: Glenn Lewis, Carter Casteel, David Farabee, Jessica Farrar, Dan Flynn, Dora Olivo, Inocente "Chente" Quintanilla

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## INTRODUCTION

At the beginning of the 78th Legislature, the Honorable Tom Craddick, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on County Affiars: Wayne Smith, Chair; Warren Chisum, Vice-Chair; Glenn Lewis; Carter Casteel; Jessica Farrar; David Farabee; Dan Flynn; Dora F. Olivo; and Inocente "Chente" Quintanilla.

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

## HOUSE COMMITTEE ON COUNTY AFFAIRS

## INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

1. Study ways to increase efficiency and provide for greater local control through restructuring county government.

2. Consider the increased costs associated with Court Administration and Security as it relates to the implementation of the Fair Defense Act and heightened security requirements.

3. Review the proliferation of sub-standard housing in counties not covered by the Local Government Code, Chapter 232, Subchapters B and C and ways to bring these areas up to minimum standards.

4. Determine whether county fees/fines are at appropriate levels and have maintained their proper function and application.

5. Study the concept of ways to limit unfunded state mandates by reviewing what other jurisdictions have.

6. Review the amount of taxes collected and services delivered in incorporated areas versus unincorporated areas of counties.

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

## CHARGE 1

Study ways to increase efficiency and provide for greater local control through restructuring county government.

On November 4, 2003, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Study ways to increase efficiency and provide for greater local control through restructuring county governments.

**Background**

Counties in the state of Texas were established by the Article 11, Section 1 of the state constitution. It reads: "The several counties of this state are hereby recognized as legal subdivisions of the state."

Counties serve as administrative and judicial subdivisions of the state. They are means by which the powers of the state are exerted at the local level. As required by the state constitution, the commissioners court acts as the governing body in each of the state's 254 counties, regardless of location, geography or land value, Each county is divided into four separate commissioner precincts, and these are divided without regard to location, geography or land value, and are instead based on the equal division of a county's population. One member of the commissioners court is elected from each of the precincts in addition to a county judge elected county wide, who serves as the presiding officer.

Commissioners courts are charged with producing a county budget and tax plan, overseeing all county facilities, allowing and supervising all business and contracts done in the county's name, making appointments where allowable, and administering programs found under the county's jurisdiction in the interest of the public good and those directed by the state to be carried out at the county level. The powers and duties of Texas counties are all governmental and generally fall within these major categories: general government, administration of justice, public safety, public works, and health and welfare. Particular programs include, but are not limited to, libraries, indigent health care, county jails, the courts system, transportation, environmental health, welfare programs and indigent defense.

In addition to the commissioners court, there are other offices that are constitutionally mandated: sheriff, county tax assessor/collector, county clerk, district clerk, county attorney, constable and county treasurer. Counties with a population of 10,200 or more are required to have a county auditor, appointed by the district judge or judges with jurisdiction in the county . For the most part, county governments are identical in structure outside of the few instances where the legislature has allowed for some additional statuary offices in some of the more populated, urban counties, operating under the control of commissioners court. These additional offices are typically limited to county road and bridge or health departments, county purchasing agents, and budget officers.

**Expansion of the Court**

During the May 11th, 2004 House Committee on County Affairs interim meeting, two approaches were primarily discussed as possible ways to increase efficiency in county government and provide for greater local control through restructuring county governments. The first was an expansion of commissioner court from five members to possible six or seven members. This would be achieved by providing the means for courts to expand from four commissioners to possibly five or six commissioners. It was acknowledged that this option would be most likely utilized in high population, urban counties to provide a lower voter/elected official ratio, and in this way increase the responsiveness, and thus the efficiency, of that aspect of county government.

To accommodate such an expansion, a revision of the current state constitution would be needed, requiring action from the legislature in the form of a joint resolution and a state wide vote.

**Recommendation**

At this time, the committee does not recommend an expansion of county commissioners courts. There is no proof that an expansion would provide a more effective form of government. Any gridlock that occurs regarding the commissioners court most likely occurs for political reasons and an additional member would provide no means of alleviating the situation. The committee supports the current constitutional and statutory structure of Texas county government and does not recommend any substantive changes to that structure.

In addition, all recent efforts to revise all or large portions of the state constitution, originally written in 1876, have failed. The most recent (1974) attempt to revise all or large parts of the Texas Constitution was rejected by voters. In a similar effort during the 76th Texas Legislature, HJR 1 & SJR 2 failed to leave their respective chambers and committees.

**Duplicated Services**

The second topic discussed was the issue of duplicated services. Texas county officials recognize that duplication of services produce inefficiencies and add to the cost of government. Counties actively participate in interlocal agreements with municipalities and other local governments in order to promote efficiency and save taxpayer dollars. Examples of this type of interlocal cooperation include some counties entering into contract for space in their jails with local municipalities who have no need of a permanent facility, the consolidation of tax collection for local taxing jurisdictions into the county tax assessor-collector's office, mutual aid agreements for fire and police protection, the administration of environmental health programs such as on-site sewage facilities regulation, public health care programs, subdivision plat review and approval in extra-territorial jurisdictions, and transportation projects.

**Recommendation**

The committee recommends that as long as the required standards and responsibilities of the counties are met, the concept of sharing duplicated services with local municipalities does not present a problem.

## CHARGE 2

Consider the increased costs associated with Court Administration and Security as it relates to the implementation of the Fair Defense Act and heightened security requirements.

On November 4, 2003, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Consider the increased costs associated with Court Administration and Security as it relates to the implantation of the Fair Defense Act and heightened security requirements.

**Background**

The *Texas Fair Defense Act* (FDA) was enacted by the 77th Legislature and now is codified in Chapter 71 of the Government Code. It created the blueprint for interaction between state and local governments in providing legal representation and services for indigent defendants. It contains the following requirements for indigent defense representation: 1) prompt access to appointed counsel; 2) fair and neutral methods for selecting appointed counsel; 3) qualifications for appointed counsel; 4) financial standards and procedures for determining when a person is indigent; and, 5) procedures and fee schedules for appointed counsel, experts, and investigators.

The FDA requires the judges of county and district courts who handle criminal cases in each county and the county juvenile boards to prepare countywide procedures for timely and fairly appointing counsel to indigent defendants in criminal and juvenile cases, and to submit their countywide plans annually by January 1. Each countywide plan is required to meet the statewide standards for indigent defense procedures specified in the Act.

The FDA also created the Task Force on Indigent Defense (Task Force) to assist local governments in improving the delivery of indigent defense services. The Task Force is a standing committee of the Texas Judicial Council and is composed of eight ex officio members and five members appointed by the Governor along with a staff of six.

The Task Force's mission to improve the delivery of indigent defense services statewide is advanced through state funding to counties, training, professional support, and through development of uniform indigent defense policies and standards. In addition, the Task Force monitors county compliance through the collection of state-mandated indigent defense reports concerning county procedures and expenditures. In FY 2004, a fiscal program monitor was added to further ensure state grant funds are spent appropriately in accordance with the provision of the FDA.

**Trends Since the FDA Was Adopted:**

- Texas is providing more defendants with indigent defense;
- Statewide spending up 50%;
- Increased public access to local practices and expenditures.

**More Indigent Defendants Receiving Court Appointed Counsel**

In 2002, 278,479 persons received court appointed counsel. In 2004, 371,167 persons received court appointed counsel. This represents a 33 % increase in court appointed counsel while criminal case filings are up only 8 %. Courts and local government are taking their responsibilities seriously.

**Spending Up Just Over 50% Since 2001**

The State and counties have significantly increased expenditures for indigent defense services statewide to improve the quality of counsel appointed to represent the poor.

In 2001, counties expended approximately $92 million on indigent defense services without any state assistance. In 2002, county and state spending together reached approximately $114 million. In 2003, county and state spending together amounted to approximately $130 million. And, the most recent reports for 2004 reveal county and state spending together totaled approximately $139 million. *All in all since the Fair Defense Act passed the State and counties are expending 52 percent more than they did prior to the Fair Defense Act.* Worth noting, since 2002 approximately 100,000 more persons in 2004 received indigent defense services.

The increased costs spent on indigent defense services not covered by State grant funding since the programs inception (2002) are:

- FY02 $15 million
- FY03 $26.5 million
- FY04 $35.5 million

In sum, although expenses for indigent defense services continue to rise throughout the state, the average rate of increase from year to year is lessening. The following table illustrates State and county spending trends for indigent defense services since 2001.

| | FY01 | FY02 | FY03 | FY04 |
|---|---|---|---|---|
| **Total State Funding** | $0 | $7,187,036 | $11,532,658 | $11,641,743 |
| **Total County Funding** | $91,684,262 | $106,773,183 | $118,497,234 | $127,668,630 |
| **Combined State and County Funding** | $91,684,262 | $113,960,219 | $130,029,892 | $139,310,373 |

**Public Access**

Every indigent defense plan (adult and juvenile) and every county's indigent defense expenditures are posted electronically and available to anyone with access to the Internet. In addition, all model forms, procedures, and rules promulgated by the Task Force are available online at www.courts.state.tx.us/tfid.

In response to Task Force recommendations and grant funding requirements, judges across the state have submitted amendments to bring indigent defense plans into compliance with the law. Also, every indigent defense plan has been reviewed by the Task Force and is in accordance with the law.

**Accountability**

Because of centralized oversight of plan submission, the judiciary is accountable to the Task Force. County officials are accountable to the Task Force through expenditure reporting and because of receipt of state grants. Prior to this act each county and courts in Texas was left to its own means on how to provide these services.

**White Paper:** ***Impact of the Texas Fair Defense Act on Improving Indigent Defense***

In 2004, the Task Force funded a study conducted by Texas A&M's Public Policy Research Institute (PPRI) with assistance from Dr. Tony Fabelo to examine: 1) How FDA requirements have impacted indigent defense service delivery; and, 2) How county implementation strategies may affect effectiveness in meeting FDA requirements. As of the writing of this report, the research component is complete and the written report is in draft form. The Task Force anticipates the white paper to be completed by late December and will publish it and distribute it to all members of this committee immediately upon final completion. **What follows are excerpts taken from the draft report.**

**The study reviewed the overall trends and in-depth analysis of four sites:**

- Cameron County – population 335,000
- Collin County – population 492,000
- Dallas County – population 2.2 million
- Webb County – population 193,000

**The sites were selected to reflect the following criteria:**

- To reflect different population sizes
- To reflect border and non-border areas
- To reflect different appointment of counsel methods

**The approach of the study reviewed:**

- Analysis of trend data, interviews with stakeholders and collection of local case-level defendant data.

**The following are some of the key findings contained in this report:**

- Counties in the PPRI study are all meeting or exceeding the "prompt appointment" requirements of the FDA;
- Public Defender offices may offer counties an opportunity to better manage costs and quality of services;
- FDA requirements have an impact on service delivery in local jurisdictions but how counties operate can diminish or enhance effectiveness;

**Cameron County**

- Population of 335,000
- Border County
- Individuals requesting counsel at the time of arrest receive one, with a possible review of necessity when case is indicted or compliant is filed
- 3.47% reduction in juvenile indigent defense cases from 2002 to 2004 (1,288 to 1,160)

**Collin County**

- Population of 492,000
- Non-Border County
- Counsel is appointed after a review of the defendants income
- 15.5% increase in adult indigent defense cases from 2002 to 2004 (3,704 to 4,893)
- 18.96% reduction in juvenile indigent defense cases from 2002 to 2004 (1,323 to 839)

**Dallas County**

- Population of 2.2 million
- Non-Border County
- Detained defendants are appointed counsel within 72 hours
- 18.84% reduction in adult indigent defense cases from 2002 to 2004 (67,768 to 55,003)
- 67.18% increase in juvenile indigent defense cases from 2002 to 2004 (4,927 to 12,042)

**Webb County**

- Population of193,000
- Border County
- Detained defendants are appointed counsel within 72 hours
- 13.63% reduction in adult indigent defense cases from 2002 to 2004 (3,807 to 2,832)
- 44.79% increase in juvenile indigent defense cases from 2002 to 2004 (875 to 1,637)

*Cameron County adult indigent defense not shown due to reporting inconsistencies with data.

**Attorney Fees Vary by Site**

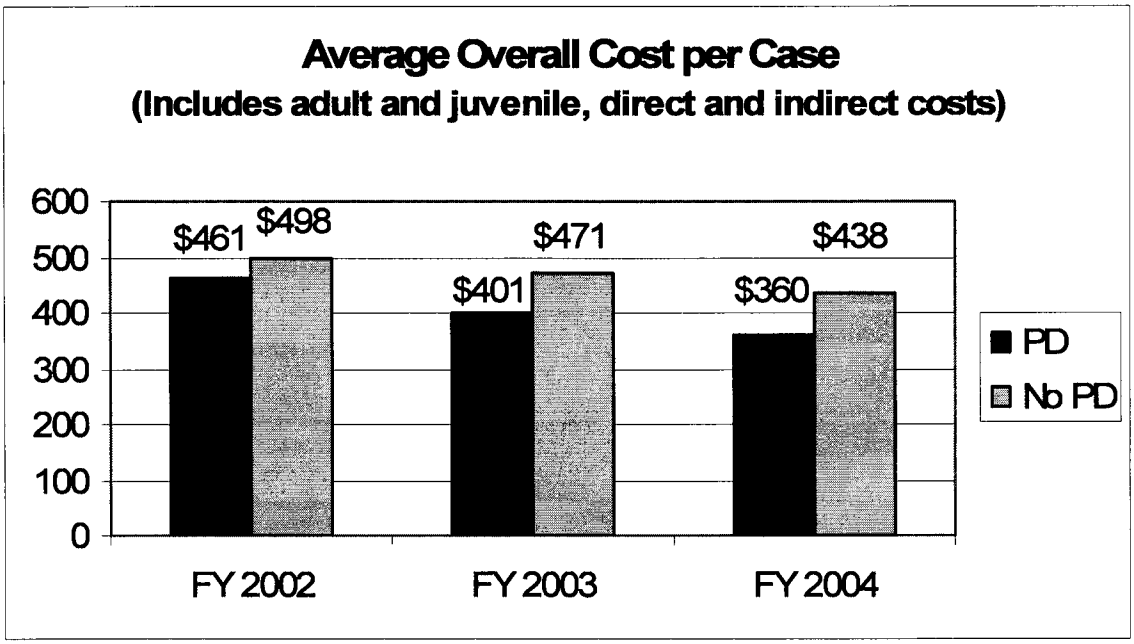
The availability of a public defender office, the schedule of fees adopted and general ability to monitor costs impact each of the sites:

**Public Defenders Provide Services to Adult Defendants in Five Localities**

**Adult Indigent Defense Cases Assigned to Public Defenders**
**2003-2004**

| | FY 2003 | | | FY 2004 | | |
|---|---|---|---|---|---|---|
| | Total Adult Cases | Adult PD Cases | % Assigned to PD | Total Adult Cases | Adult PD Cases | % Assigned to PD |
| Colorado | 155 | 142 | 92% | 203 | 193 | 95% |
| Dallas | 48,813 | 27,693 | 57% | 55,003 | 35,272 | 64% |
| El Paso | 12,858 | 6,827 | 53% | 14,203 | 7,666 | 54% |
| Webb | 3,464 | 2,834 | 82% | 2,832 | 1,907 | 67% |
| Wichita | 1,901 | 1,542 | 81% | 2,108 | 1,207 | 57% |

**Public Defender Cost Per Case Lower**




A public defender's office may:

- Reduce costs and provide more options to judges;
- Reduce some administrative tasks imposed on judges under a rotation system.

A comprehensive report prepared by the Task Force entitled a *Blueprint For Creating a Public Defender Office in Texas* provides a deeper understanding of what a "public defender" is and whether creating one makes sense. This report is available online at the Task Force's website at: www.courts.state.tx.us/tfid .

**FDA requirements have an impact on service delivery in local jurisdictions but how counties operate can diminish or enhance effectiveness.**

The FDA did not evolve incrementally in Texas. The legislation was passed in 2001, and the policy was implemented in a matter of months. Counties faced a short timeline in which to modify existing case processing systems and meet the requirements of the law. The four counties in this study have differed in the priority placed on indigent defense planning as part of the permanent county agenda. Some have treated indigent defense planning largely as a pro-forma task to be revisited by a small cadre of judges when annual Indigent Defense Plan updates are required by the Task Force. Stakeholders at these sites tend to express a sense of powerlessness and frustration in the face of the FDA. Stakeholders other than the judges do not speak of indigent defense as if they are aware of a common plan. Indeed, because channels of communication and problem-solving are not well developed, problems seem more intractable.

**Determination of Indigence**

The effort to standardize eligibility for counsel is one of the notable objectives of the FDA. The law states that counties must specify procedures and standards for determining indigence that apply to all defendants equally. Clear criteria should help counties contain costs by limiting indigent defense expenditures to individuals who truly cannot afford to fund their own legal defense. Each of the four study sites collects financial information through an affidavit of indigence. However, they vary in the extent to which they apply this information to rigorously screen applicants for appointed counsel.

It is worth noting that the private defense bar at every site advocate for more precise methods of determining indigence. It is argued that when ineligible cases are assigned public counsel, the number of clients paying the market price for representation declines. It is also argued that policies appointing public counsel to defendants who can afford to pay will drive defense attorneys into other more lucrative areas of law, ultimately reducing the overall quality of defense representation available.

This study is unable to determine whether the use of systematic screening criteria such as those adopted in Collin County have any impact on the volume of defendants appointed or the costs of indigent defense. It is possible that the proportion of indigent individuals in the criminal justice system is so large that even stringent eligibility standards do not reduce appointment rates substantially. Alternatively, strict screening criteria may be beneficial in affluent communities where a larger proportion of the population can afford retained counsel, but of little use in impoverished areas where virtually every defendant qualifies. Further investigation is needed to answer these questions.

**Speed of Appointment**

Though the study sites vary in the speed with which they assign counsel, most meet or exceed the statutory timeline. Prompt appointment of court appointed counsel is viewed both as an effort to improve case processing efficiency and as a best practice. However, after three years of experience, appointment of counsel immediately after arrest has been more successful in some counties than in others.

The site visits show that counties vary slightly in the speed with which they have appointed counsel both historically and since the implementation of the FDA. Since the FDA was passed, three of the four study sites have opted to provide appointed counsel well in advance of the statutory requirements. This has not been raised as a significant issue in counties that have traditionally assigned indigent representation during the post-arrest phase (i.e., Dallas and Webb Counties). However, the two counties that have traditionally assigned counsel after a lengthy pre-indictment period have been less positive about a high-speed approach to appointment (i.e., Collin and Cameron Counties).

It is also worth noting that where counties choose to combine magistration with appointment of counsel, the time available for parallel aspects of defendant processing are also compressed. If the full time allotted by the FDA is utilized, counties have four to six days (depending on population) to determine indigence and appoint counsel. When magistration, requests for counsel, and appointment of counsel are consolidated into a single event, the time available for complementary functions is reduced by a minimum of two to four days (depending on population).

**In Sum**

The State is providing oversight, fiscal assistance, and technical support to local government and courts to improve the delivery of indigent defense services. Across the State, counties and courts alike are making a concerted effort to comply with the substantive requirements of the FDA. As a result of these efforts, counties are spending significantly more on the delivery of indigent defense services. But State funding is not keeping pace with the increased demands for indigent defense services on county government.

In addition, this report would not have been possible but for the State reporting requirements and county government's willingness to allow the State into its jurisdiction to study the practical implications of the FDA. The counties of Cameron, Collin, Dallas, and Webb are to be commended for their willingness to work along side the State to address these issues. Across the entire State, county government and the judiciary are complying with the FDA's State reporting requirements. All 254 counties have submitted its indigent defense expenditures to the Task Force for review and have been reviewed for compliance by the Task Force. In addition, every county through its courts has submitted its indigent defense plan. These plans have been reviewed by the Task Force to ensure they provide for the requirements of the FDA. As a result of these efforts, the FDA, while allowing for local control, has brought greater uniformity in the application of providing court appointed counsel to poor persons.

An efficient and collaborative infrastructure for continuing implementation of the FDA is in place for future improvements to indigent defense procedures statewide. However, without adequate funding, the pace of change will slow or worse not occur.

**Recommendation**

While indigent defense costs are not increasing as rapidly as in the previous biennium, from FY03 to FY04 these costs are still rising at rate of about 6 % a year. This coupled with the fact that more persons are qualifying for indigent defense services and court appointed attorney fees are increasing, the committee recommends further research into possibly providing incentives for counties to hire public defenders to better manage and contain some of the costs associated with delivering indigent defense services. Also, the committee encourages local government to continue to review its processes to make sure it is providing these services in a cost effective manner without jeopardizing the quality of court appointed counsel. Understanding the recent decrease in state revenues, the committee recommends a possible increase in appropriations for indigent defense to relieve some of the financial burden local government is shouldering to meet State and federal law requirements pertaining to indigent defense services.

## CHARGE 3

Review the proliferation of sub-standard housing in counties not covered by the Local Government Code, Chapter 232, Subchapters B and C and ways to bring these areas up to minimum standards.

On November 4, 2003, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Review the proliferation of sub-standard housing in counties not covered by the Local Government Code, Chapter 232, Subchapters B and C and ways to bring these areas up to minimum standards.

**Background**

Defined as colonias, a number of unincorporated settlements exist along the Texas-Mexico border lacking the basic necessities for residence. These lacking necessities include, but are not limited to, electricity, paved roads, water and sewer systems. Colonia residents for the most part, have low incomes and live in extremely unsanitary dwellings. Border counties are typically ill-equipped with the amount of funds to reduce the public health risk these communities provide.

In 1989, the Texas Legislature passed Senate Bill 2 creating the Economically Distressed Areas Program (EDAP) to provided water and sewage to residents of colonias who could not afford these basic services. The bill authorized the Texas Water Development Board (TWDB) to issue $100 million general-obligation bonds to be invested in local bonds issued by counties, cities and water-supply corporations. Proposal for water and waste water projects would then be submitted by the local entities to be financed by the TWDB's EDAP fund.

The EDAP funding was not meant to be limited to border counties. In addition to being located along the Texas-Mexico border, non-border counties could receive funding if their countywide income levels were 25% less then the state average and their countywide unemployment rate was 25% above the state average.

Local entities who wanted to enter into the EDAP were further required to adopt Model Subdivision Rules created by state agencies under the direction of Senate Bill 2. These rules provide guidelines for safe water and sanitary sewage systems and placed requirement on developers to install water and sewage services in any new rural residential subdivisions before they can seek plat approval or provided a financial guarantee that they can cover the cost of these systems if not approved for funding. The rules are listed in Title 31, Texas Administrative Code, Chapter 364.

Subchapter B of Chapter 232, Local Government Code, contains legislation applicable to the requirements for the platting of subdivisions in EDAP counties within 50 miles of the Texas-Mexico Border. These guidelines include when a plat is required, subdivision requirements, bond requirements, certification of compliance, utility connections, enforcement authority and platting requirement variances. The intent of this section was to curb the spreading of colonia related conditions.

Subchapter C of Chapter 232, Local Government Code, applies to those EDAP counties that are not within the border region but can meet the requirements of income levels 25% less then the state average and an unemployment rate was 25% above the state average.

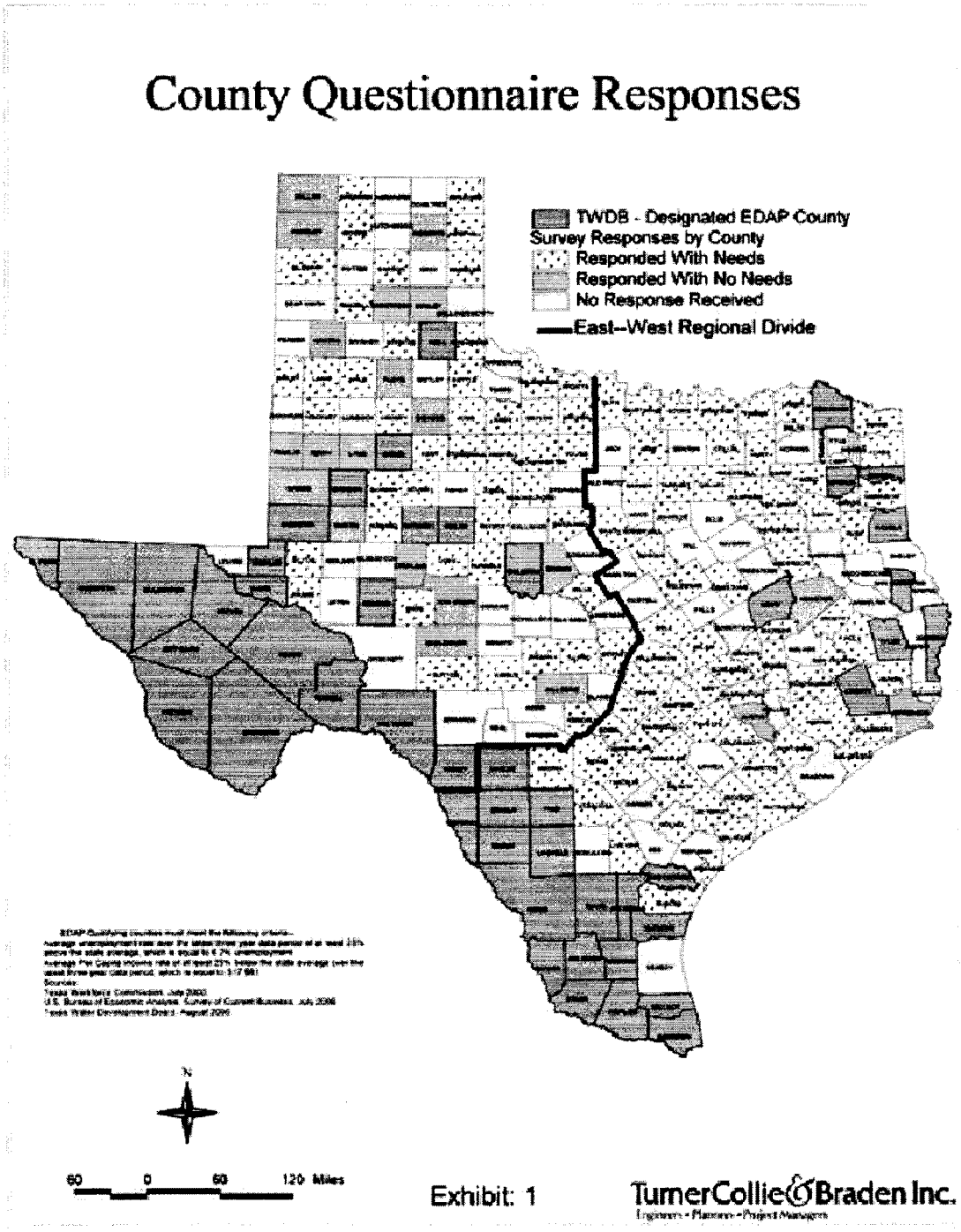
Whether an EDAP county is within 50 miles of the border or not, all participants must adopt the TWDB's Model Subdivision Rules.

**Non-Border Area Colonias**

Currently, the substandard and unhealthy conditions of colonias have been found in non-border areas. Subdivisions lacking water and sewage have been discovered throughout the state, residing in counties shared with larger, higher income communities. The poor living conditions in these more northern areas match that of those found in border or EDAP counties. They lack the proper infrastructure needed to provide adequate water and sewer facilities but cannot receive EDAP funding because of the larger, neighboring communities within their home county offsetting the requirements of countywide income levels of 25% less then the state average and an unemployment rate 25% above the state average, thus blocking any type of EDAP funding. Unfortunately, the EDAP fund has been exhausted and now runs the risk, if not funded in future legislative sessions, of no longer being available to those counties already EDAP eligible and counties who may become EDAP eligible in the future.

In 2001 the Texas Water Development Board (TWDB) did a study of the needs of Non-EDAP eligible areas in Texas. The study sent questionnaires to 650 entities in Non-EDAP counties and received back over 1,152 questionnaires from 158 counties. The data collected is shown in Exhibits 1,2 and 3 below. TWDB estimated from this collection of surveys and through additional research that the total needs statewide estimated at approximately $1.82 billion for water improvements and $1.95 billion for wastewater improvements in these non-border area colonias. TWDB is currently updating these findings from the report in 2001 on the needs of Non-EDAP eligible areas, but they can say with confidence that the number of counties in need and the estimated cost to remedy those needs has continued to increase.

**Texas Water Development Board Report February 2001 "Water and Wastewater Needs of Non-EDAP Eligible Disadvantaged Areas"**



# Status of Community Needs

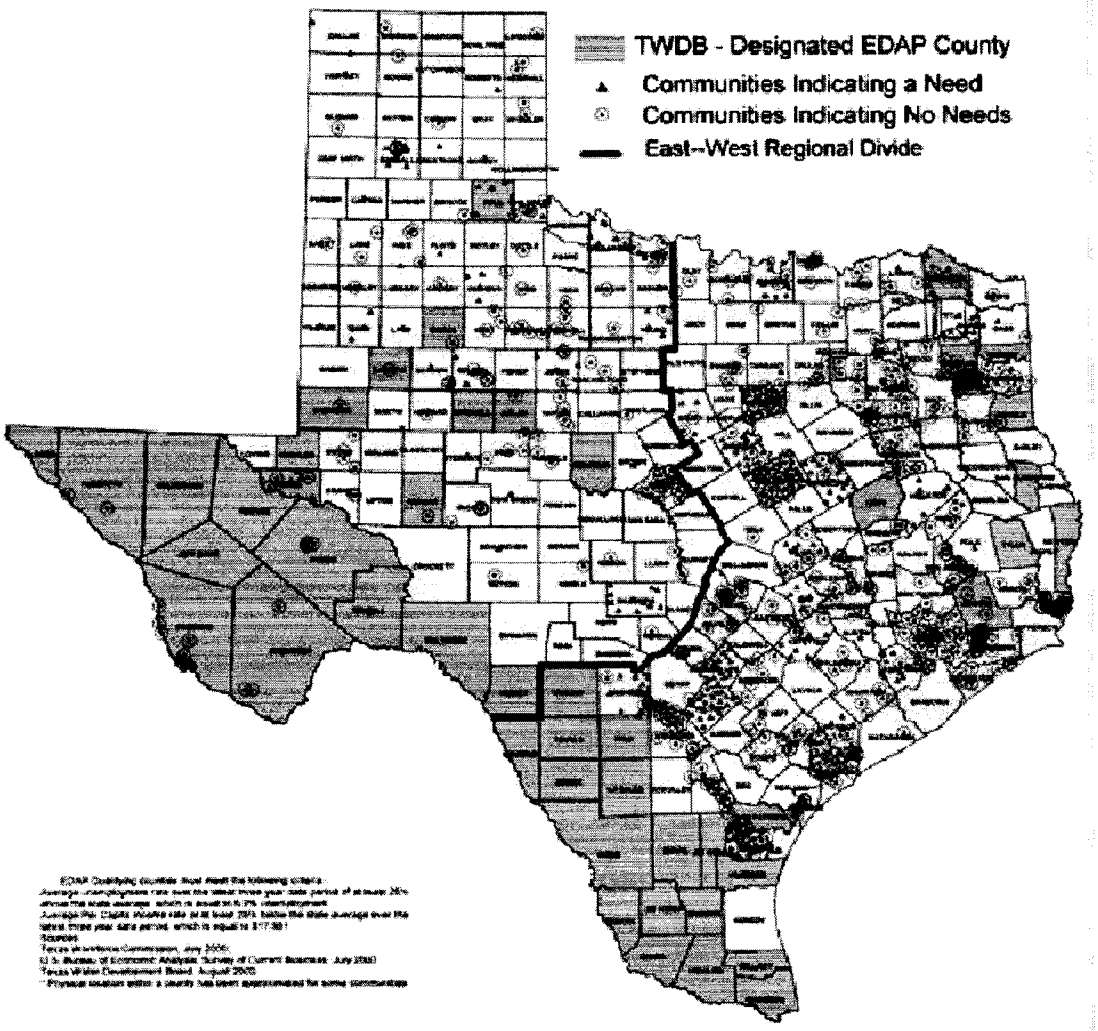



Exhibit: 2

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# Type of Needs

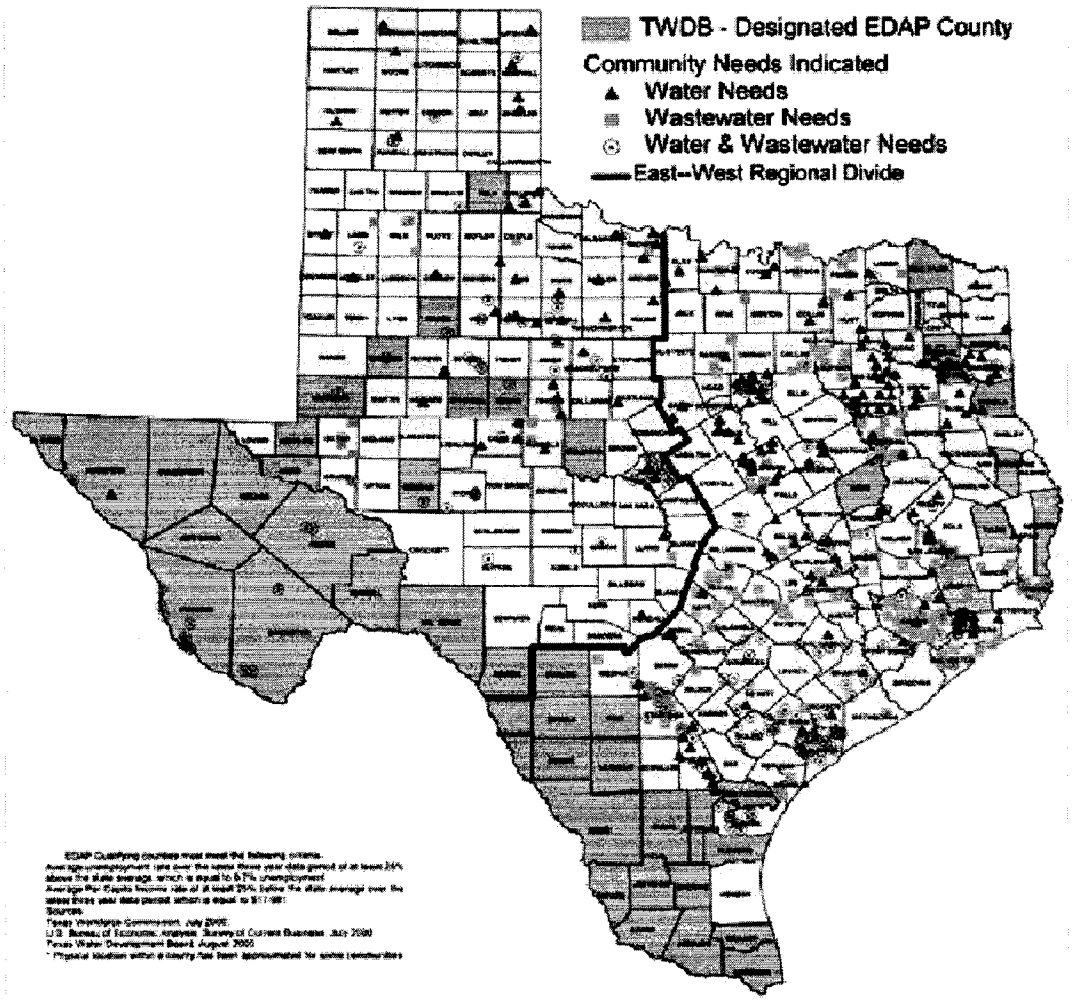


Exhibit: 3

Turner Collie & Braden Inc.

**Recommendations**

Due to budget short falls statewide, Texas cannot provide water and wastewater to every county reporting need but Texas can slow and eventually stop the growth of non-border area colonias communities. The committee would like to see all counties given the option to adopt the Model Subdivision Rules. Like the rules used in the border region, a property owner that divides a tract in any manner that creates lots of five acres or less intended for residential purposes must have a plat of the sub-division prepared. If adopted by the county the modified Model Subdivision Rules would protect the individual, both buyer and seller but slow the growth of communities without water and wastewater. The rules would only apply for residential use so as not to hinder land use for businesses, recreation use or hunting. The Model Subdivision Rules would give counties more authority in unregulated areas helping them to slow and eventually stop the growth of non-border area colonias, areas which are a health hazard for those living in and around these communities.

Recognizing the need for statewide improvements we would like to recommend the continuance of funding for the EDAP program. Eventually the committee would like to see the standards for eligibility for EDAP funds slowly reduced as counties' needs become met and others surface who do not met the present requirements: 25% below the unemployment rate and 25% below average income.

## CHARGE 4

Determine whether county fees/fines are at appropriate levels and have maintained their proper function and application.

On November 4, 2003, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Determine whether county fees/fines are at appropriate levels and have maintained their proper function and application.

**Background**

After property taxes, fees and fines are typically the second largest source of income for Texas Counties. The following are examples of the amount of income some counties collect from fees and fines:

- The FY 2004-2005 budget for Bexar County shows 7% of the county income comes from fees and fines.
- The FY 2004-2005 budget for Harris County shows 22% of the county income comes from fees and fines.
- The FY 2004-2005 budget for Tarrant County shows 8% of the county income comes from fees and fines.

It is estimated that counties statewide collect 8% to 10% of their revenue from fees and fines.

The Texas Legislature sets the amount a county may charge for fees and fines.

**Budget shortfalls**

In a Legislative Policy Statement (Court Order No. 93877) dated October 5, 2004, the Tarrant County Commissioners Court stated:

"Increasing costs of document fillings and records preservation and management have resulted in a significant burden to county budgets. It has been several years, in many cases, since established fees have been raised to offset the costs."

This is just one example of a single division of one county failing to meet the budgetary needs. Other counties have contacted the committee to express concern over the budget shortfalls.

**Solution Examples in Past Legislation**

Authored by Sen. Carona, SB 191 of the 78th Legislature would have to raise the Administration License Revocation (ALR) fee from $125 to $140. Currently, In the processing of ALRs in the case of DWI charges, the county provides a Breath Alcohol Technical Supervisor at the defendants request during the administrative hearing. The county receives no reimbursement for providing the supervisor. The $15 increase would be dedicated to reimbursing counties. SB 191 was not passed.

Authored by Rep. Ritter, HB 1037 of the 78th Legislature would have increased fees associated with the security of county courthouses. The original intent of the fees were to assist in the installation and staffing of courthouse security stations, but have never fully covered the security costs and the demands on public buildings following September 11, 2001. HB 1037 was not passed.

**Recommendations**

Because of the large number of counties in Texas and the fact that some do not at this time have accurate records of the administration of fines and fees, it is difficult to assess the problems counties might be having. The committee recommends that a task force be created to look into the issue of fines and fees and decide if they need to be raised to meet the costs associated with them.

## CHARGE 5

Study the concept of ways to limit unfunded state mandates by reviewing what other jurisdictions have.

On November 4, 2003, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Study the concept of ways to limit unfunded state mandates by reviewing what other jurisdictions have.

**Background**

Texas Government Code, Section 320.001 defines a mandate 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."

Currently, there is no constitutional or statutory requirement limiting the passage of mandates in Texas that carry an unfunded fiscal impact on a political subdivision.

**How Other States Compare in the Handling of Unfunded Mandates**

**Alabama**
Approved in 1999, the state constitution prohibits the legislature from requiring expenditures in the middle of a county's fiscal year. Any unfunded mandates passed require a 2/3 majority vote in both chambers of the legislature unless it is approved by the affected political subdivision or funds are appropriated for the measure. School board expenditure, federal mandates, and legislation with a less then a $50,000/yr cost to the political subdivision are excluded. Please see Appendix A.

**California**
State constitution requires that legislative or agency mandate that creates a new program or increases the cost of a service on a local government be accompanied by state funds or reimbursements. Exceptions include any legislative mandates requests by the political subdivision, new crime defined by the legislature and legislative mandates enacted prior to January 1, 1975. Please see Appendix B.

**Colorado**
Statue requires that any increase in costs to a political subdivision due to action of the legislature be reimbursed by the state. Exceptions include school board expenditures, federal mandates, state and federal court orders, and mandates requested by the political subdivision. Please see Appendix C.

**Florida**
The state constitution limits the legislature from passing any mandates that have a fiscal impact on a political subdivision without funding unless the measure receives a 2/3 majority vote, and the subdivision has the means to cover the acquired costs. Please see Appendix D.

**Michigan**
Language in the state constitution prohibits a reduction in funding provided by the state for active mandates and requires any new mandates to accompanied with state appropriations. Judges salaries are exempted. Please see Appendix E.

**Missouri**
Language in the state constitution prohibits a reduction in funding provided by the state for active mandates and the state must account for any increases in county official salary costs associated. Please see Appendix F.

**Nevada**
Statue requires the state to find any unfunded mandates carrying a cost of over $5000 or more to the county and requires the legislature to provide funding to cover the costs. Please see Appendix G.

**Oregon**
The state constitution requires a 3/5 majority vote in both houses of the legislature for the passage of a mandate for a political subdivision and creates a three member committee for the review of any mandates a political subdivision finds to be unfunded. Please see Appendix H.

**Texas and Unfunded Mandates**

Under Section 320.002, Government, a five member "Interagency Work Group" was created to research the matter. The work group was charged with identifying and list any unfunded mandates that exist. The 78th Legislature's SB 19 repealed section 320.002 and eliminated the work group.

There currently is no requirement, statuary or constitutional, that requires the legislature to take any actions regarding unfunded mandates.

During the 78th Legislature, four measures were filed to address unfunded mandates.

**CSHJR 91 (78th Regular Session)**

Filed by Chairman Lewis, HJR 91 would have added a Section 66 to the state constitution required that any "mandate imposed on a county that requires expenditure of money and " was "adopted after January 1, 2004 by the legislature or by rule of a state agency can only take effect if the legislature provides payment or reimbursement of the costs incurred by that county." Exemptions included mandates imposed by the legislature or state agency requiring compliance with the constitution, federal law, or court order; mandates approved by the voters of the state during a general election; mandates that receive a 2/3 majority vote in both the House and Senate exempting the legislative measure form the proposed Section 66, or of the mandate's aggregated cost is less then $1,000,000 per fiscal year.

CSHJR 91 was not passed.

**HJR 13 (78th Legislature, 4th Called Session)**

Filed by Rep. Casteel, HJR 13 disallowed the legislature to reduce the amount of funding to political subdivisions required by legislative mandates enacted before August 31, 2004. Any legislative mandates passed after August 31, 2004 would have required appropriations from the state.

HJR 13 was not passed.

**HJR 14 (78th Legislature, 4th Called Session)**
**HB 67 (78th Legislature, 4th Called Session)**

HJR 14 and HB 67 (HJR 14's enabling legislation), filed by Rep. Hilderbran, defined an unfunded mandates as "a statutory provision enacted by the legislature that requires a political subdivision to establish, expand, or modify an activity in a way that requires an expenditure of revenue that would not have been required in the absence of the provision." The Legislative Budget Board would have been charged in statue with identifying unfunded mandates on or before the September 1st following a regular session and political subdivisions were then exempted from compliance with any discovered unfunded mandates until funds were appropriated.

HJR 14 and HB 67 did not passed.

**Recommendation**

The committee recommends passage of a HJR to create a constitutional definition of an unfunded mandate requiring that all legislative mandates enacted after September 1, 2005 are required to be accompanied by appropriated state funds. Exemptions should follow the lines of Chairman Lewis' CSHJR 91 and include mandates imposed by the legislature or state agency requiring compliance with the constitution, federal law, or court order; mandates approved by the voters of the state during a general election, mandates that receive a 2/3 majority vote in both the House and Senate exempting the legislative measure from the newly created constitutional section.

## CHARGE 6

Review the amount of taxes collected and services delivered in incorporated areas versus unincorporated areas of counties.

On November 4, 2003, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

Review the amount of taxes collected and services delivered in incorporated areas versus unincorporated areas of counties.

**Background**

It was brought to the attention of the committee that Charge 6 was probably meant for the review of the taxes and services of Harris County. Once contacted, representatives of Harris County provided testimony and the following statistics.

**Population**

As of the 2000 census, the population of Harris County is 3.4 million.
Within Harris County, 2.4 million people live in 34 incorporate areas.
The percentage of Harris County Residents that live within incorporated borders is 69%.
Currently, the City of Houston is approximately 56% of the population of Harris County. The percentage was 58% in 1990, 66% in 1980, 71% in 1970, and 75% in 1960.

**Taxes**

In 2002, taxes collected within the City of Houston by Harris County totaled 52.93% of the county's revenue.

**Services provided by Harris County**

| Service | % of service in the City of Houston |
|---|---|
| Hospital District | 86% |
| Precinct Roads | 27% |
| Precinct Parks | 57% |
| Flood Control | 55% |
| Toll Road Authority | 50% |
| Facilities & Property Management | 64% |
| Healthcare Services | 15% |
| Mosquito Control | 80% |
| Pollution Control | 25% |
| Social Services | 88% |
| County Library | 12% |
| Law Library | 75% |
| Domestic Relations | 75% |

| | |
|---|---|
| Cooperative Extension | 60% |
| Juvenile Probation | 63% |
| Protective Services for Children and Adults | 50% |
| Children's Assessment Center | 59% |
| Adult Mental Health Services | 80% |
| Mental Retardation Services | 87% |
| NeuroPsychiatric Center | 75% |
| Child and Adolescent Services | 76% |
| Constables | 50% |
| Sheriff | 60% |
| Fire & Emergency Services | 5% |
| Medical Examiner | 69% |
| Public Records | 57% |
| District Clerk | 60% |
| District Attorney | 60% |
| Community Supervision & Corrections | 74% |
| Court Services | 56% |
| Justice of the Peace | 60% |
| County Courts | 65% |
| Probate Courts | 55% |
| District Courts | 60% |

**Recommendation**

The Committee has no recommendation for Charge 6.

## CHARGE 7

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

On November 4, 2003, Texas House Speaker Tom Craddick instructed the House Committee on County Affairs to:

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

**Background**

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

The duty of the Commission is best described in Title 37 of the Texas Administration Code, Part 9, Chapter 251, Rule §251.1:

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

(1) the construction, equipment, maintenance, and operation of jail facilities under its jurisdiction;

(2) the custody, care and treatment of inmates;

(3) programs of rehabilitation, education, and recreation for inmates confined in county and municipal jail facilities under its jurisdiction.

The minimum Commission inspection standards for a facility by the can be found in Title 37, Part 9, of the Texas Administrative Code.

**Concerns**

Currently, the cost of an inspector to visit a facility is covered by the Commission for the initial inspection. If failed, the facility may apply for re-inspection in writing. Any costs associated with an inspector's re-inspection visit to the facility are currently covered by the Commission.

The Commission has requested to continue to cover the costs of the initial visit to a facility and the first re-inspection, but that any re-inspections after that be funded by the facility being re-inspected.

Beginning in 2003, correctional facilities that exclusively housed federal inmates were no longer required to be inspected, but the contractual terms of these facilities still usually involve inspections by the Commission. While these facilities have indicated that they are still willing to pay the fee for inspection, current law requires that any such payment go into the State General Revenue Fund, rather than to the Commission. Budget constraints and the unpredictable nature of having to do re-inspections have forced the Commission to restrict their inspection activities to only those facilities directly under its purview.

The annual number of re-inspections varies from year to year, and complicates budgetary planning. The Commission has suggested that changes in the law would be required in order to allow the funds collected from facilities that are re-inspected or housing exclusively federal inmates be returned to the Commission. Such funds might be better suited helping to offset the expenses incurred by the Commission, and to serve as an investment in training and technical support necessary to prevent redundant inspections.

**Recommendation**

The committee recommends that the legislature allow the commission to collect reimbursement for the cost of an inspection past the first re-inspection. The committee also recommends that the legislature allow the funds collected from the inspection of federal facilities be granted to the commission.

# APPENDICES

# APPENDIX A

*Alabama Const., Amendment No. 474*



*** CURRENT THROUGH THE 2004 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2004 ***

CONSTITUTION OF ALABAMA OF 1901 AMENDMENTS--CONTINUED
AMENDMENT NO. 474. COUNTY EXPENDITURES

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

Alabama Const., Amendment No. 474 (2004)

AMENDMENT NO. 474. COUNTY EXPENDITURES

No law, whether general, special or local, whose purpose or effect is to provide for a new or increased expenditure of county funds held or disbursed by the county governing body shall become effective as to any county of this state until the first day of the fiscal year next following the passage of such law. The foregoing notwithstanding, a law, whether general, special or local, whose purpose or effect is to provide for a new or increased expenditure of county funds held or disbursed by the county governing body, shall become effective according to its own terms as any other law if: (1) such law is approved by a resolution duly adopted by and spread upon the minutes of the county governing body of the county affected thereby; or (2) such law (or other law or laws which specifically refer to such law) provides the respective county governing bodies with new or additional revenues sufficient to fund such new or increased expenditures.

**HISTORY:** Proposed by Acts 1987, No. 87-633, submitted at the general election held on March 8, 1988, and proclaimed ratified April 1, 1988 (Proclamation Register No. 6, p. 39.)

*Alabama Const., Amendment No. 621*



*** CURRENT THROUGH THE 2004 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2004 ***

CONSTITUTION OF ALABAMA OF 1901 AMENDMENTS--CONTINUED
AMENDMENT NO. 621. EXPENDITURES BY LOCAL GOVERNMENT

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

Alabama Const., Amendment No. 621 (2004)

AMENDMENT NO. 621. EXPENDITURES BY LOCAL GOVERNMENT

(a) No general law, or state executive order whose purpose or effect is to require a new or increased expenditure of funds held or disbursed by the governing body of a municipality or county, or an instrumentality thereof, shall become effective as to any municipality or county, or an instrumentality thereof, until approved by an ordinance enacted, or a resolution adopted, by the governing authority of the affected municipality, county, or instrumentality or until, and only as long as, the Legislature appropriates funds for the purpose to the affected municipality, county, or instrumentality and only to the extent and amount that the funds are provided, or until a law provides for a local source of revenue within the municipality, county, or instrumentality for the stated purpose and the affected municipality, county, or instrumentality is authorized by ordinance or resolution to levy and collect the revenue and only to the extent and amount of the revenue.

(b) This amendment shall not apply to:

(1) A local law as defined in Article IV, Section 110, Constitution of Alabama 1901.

(2) An act, state executive order requiring expenditures by a school board.

(3) An act defining a new crime or amending the definition of an existing crime.

(4) An act, statute, executive order enacted, promulgated, or adopted and effective prior to the ratification of this amendment which by its provisions requires expenditures by the county or municipality at any time after the effective date of this amendment.

(5) An act enacted, or state executive order promulgated or adopted to comply with a federal mandate, only to the extent of the federal mandate.

(6) An act adopted or enacted by two-thirds of those voting in each house of the Legislature and any rule or regulation adopted to implement that act or adopted pursuant thereto.

(7) An act determined by the Legislative Fiscal Office to have an aggregate insignificant fiscal impact on affected municipalities, counties, or instrumentalities. For purposes of this subsection, the phrase "aggregate insignificant fiscal impact" shall mean any impact less than $ 50,000 annually.

(8) An act of general application prescribing the minimum compensation for public officials.

**HISTORY:** Proposed by Acts 1998, No. 98-171, submitted at the November 3, 1998 election, and proclaimed ratified January 6, 1999 (Proclamation Register No. 9, p. 387).

Source: Legal > States Legal - U.S. > Alabama > Statutes & Regulations > **AL - Alabama Statutes, Constitution, Court Rules & ALS, Combined**
View: Full
Date/Time: Thursday, December 30, 2004 - 4:08 PM EST

# APPENDIX B

*Cal Const, Art XIII B § 6*



CONSTITUTION OF THE STATE OF CALIFORNIA
ARTICLE XIII B. GOVERNMENT SPENDING LIMITATION

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Const, Art XIII B § 6 (2004)

§ 6. Reimbursement for new programs and services

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected;

(b) Legislation defining a new crime or changing an existing definition of a crime; or

(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

**HISTORY:**
Adopted November 6, 1979.

**NOTES:**
NOTE-
Stats 2004 ch 216 provides:
SEC. 34. Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-23, relating to the Standardized Testing and Reporting (STAR) program mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted:
(a) Chapter 975 of the Statutes of 1995.
(b) Chapter 828 of the Statutes of 1997.
(c) Chapter 576 of the Statutes of 2000.
(d) Chapter 722 of the Statutes of 2001.

NOTE-
Stats 2004 ch 316 provides:
SEC. 2. The Legislature hereby finds and declares that, notwithstanding a prior determination by the Board of Control, acting as the predecessor agency for the Commission on State Mandates, and pursuant to subdivision (d) of Section 17556 of the Government Code, the state-mandated local program imposed by Chapter 1131 of the Statutes of 1975 no longer constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because subdivision (e) of Section 2207 of the Public Resources Code, as added by Chapter 1097 of the Statutes of 1990, confers on local agencies subject to that mandate authority to levy fees sufficient to pay for the mandated program.
SEC. 3. Notwithstanding any other provision of law, by January 1, 2006, the Commission on State

Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

(a) Sex offenders: disclosure by law enforcement officers (97-TC-15; and Chapters 908 and 909 of the Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822 of the Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930 of the Statutes of 1998).

(b) Extended commitment, Youth Authority (98-TC-13; and Chapter 267 of the Statutes of 1998).

(c) Brown Act Reforms (CSM-4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

(d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

SEC. 4. The Legislature hereby finds and declares that the following statutes no longer constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because provisions containing the reimbursable mandate have been repealed:

(a) Democratic Party presidential delegates (CSM-4131; and Chapter 1603 of the Statutes of 1982 and Chapter 8 of the Statutes of 1988, which enacted statutes that were repealed by Chapter 920 of the Statutes of 1994).

(b) Short-Doyle case management, Short-Doyle audits, and residential care services (CSM-4238; and Chapter 815 of the Statutes of 1979, Chapter 1327 of the Statutes of 1984, and Chapter 1352 of the Statutes of 1985, which enacted statutes that were repealed by Chapter 89 of the Statutes of 1991).

CROSS REFERENCES:

Appropriation and payment of amount due to cities, counties and special districts for which reimbursement is required under Cal Const Art. XIII B § 6 as of June 30, 1995: Gov C § 17617.

Subvention of funds to reimburse local governments: Gov C §§ 17500 et seq.

COLLATERAL REFERENCES:

LAW REVIEW ARTICLES:

Educational financing mandates in California: reallocating the cost of educating immigrants between state and local governmental entities. 35 Santa Clara LR 367.

ATTORNEY GENERAL'S OPINIONS:

Judicial arbitration is mandated by the Legislature for municipal courts within the meaning of Cal Const., art. XIIIB, § 6 as to arbitration based upon stipulation or plaintiff election. It is also mandated within the meaning of Article XIIIB, § 6 as to "court ordered" arbitration resulting from a local court rule adopted after July 1, 1980, the effective date of Article XIIIB. Cal. Const., Art. XIIIB, § 6 contemplates that the state should provide a subvention of funds to reimburse counties for the costs of the judicial arbitration in municipal courts. Reimbursement, however, is still subject to appropriation of funds by the Legislature. 64 Ops. Cal. Atty. Gen. 261.

Commission on State Mandates does have authority to reconsider prior final decision relating to existence or nonexistence of state mandated costs, where prior decision was contrary to law. 72 Ops. Cal. Atty. Gen. 173.

NOTES OF DECISIONS



∓ 1. In General

# APPENDIX C

*C.R.S. 29-1-304.5*

COLORADO REVISED STATUTES

*** THIS SECTION IS CURRENT THROUGH THE 2004 SUPPLEMENT (2004 SESSIONS) ***

TITLE 29. GOVERNMENT - LOCAL
GENERAL PROVISIONS
ARTICLE 1. BUDGET AND SERVICES
PART 3. ANNUAL LEVY - INCREASE OR REDUCTION - LIMITATION

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

C.R.S. 29-1-304.5 (2004)

29-1-304.5. State mandates - prohibition - exception

(1) No new state mandate or an increase in the level of service for an existing state mandate beyond the existing level of service required by law shall be mandated by the general assembly or any state agency on any local government unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate or such increased level of service. In the event that such additional moneys for reimbursement are not provided, such mandate or increased level of service for an existing state mandate shall be optional on the part of the local government.

(2) The provisions of subsection (1) of this section shall not apply to:

(a) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is the result of any requirement of federal law;

(b) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is the result of any requirement of a final state or federal court order;

(c) Any modification in the share of school districts for financing the state public school system;

(d) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level or service which is the result of any state law enacted prior to the second regular session of the fifty-eighth general assembly or any rule or regulation promulgated thereunder;

(e) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is undertaken at the option of a local government which results in additional requirements or standards; and

(f) Any order from the state board of education pertaining to the establishment, operation, or funding of a charter school or any modification of the statutory or regulatory responsibilities of school districts pertaining to charter schools.

(3) For purposes of this section:

(a) "Increase in the level of service for an existing state mandate" does not include any increase in expenditures necessary to offset an increase in costs to provide such service due to inflation or any increase in the number of recipients of such service unless such increase results from any requirement of law which either enlarges an existing class of recipients or adds a new class of

recipients.

(b) "Local government" means any county, city and county, city, or town, whether home rule or statutory, or any school district, special district, authority, or other political subdivision of the state.

(c) "Requirement of federal law" means any federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which either requires the state to take action or does not directly require the state to take action but will, according to federal law, result in the loss of federal funds if state action is not taken to comply with such federal action.

(d) "State mandate" means any legal requirement established by statutory provision or administrative rule or regulation which requires any local government to undertake a specific activity or to provide a specific service which satisfies minimum state standards, including, but not limited to:

(I) Program mandates which result from orders or conditions specified by the state as to what activity shall be performed, the quality of the program, or the quantity of services to be provided; and

(II) Procedural mandates which regulate and direct the behavior of any local government in providing programs or services, including, but not limited to, reporting, fiscal, personnel, planning and evaluation, record-keeping, and performance requirements.

**HISTORY:** Source: L. 91: Entire section added, p. 912, § 3, effective June 7. L. 2004: (2)(f) added, p. 1591, § 23, effective June 3.

Source: Legal > States Legal - U.S. > Colorado > Statutes & Regulations > **CO - Colorado Revised Statutes**
View: Full
Date/Time: Thursday, December 30, 2004 - 4:14 PM EST

# APPENDIX D

*Fla. Const. Art. VII, § 18*



*** THIS DOCUMENT IS CURRENT THROUGH THE 2004 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH NOVEMBER 30, 2004 ***

CONSTITUTION OF THE STATE OF FLORIDA
AS REVISED IN 1968 AND SUBSEQUENTLY AMENDED
ARTICLE VII. FINANCE AND TAXATION

**GO TO FLORIDA STATUTES ARCHIVE DIRECTORY**

Fla. Const. Art. VII, § 18 (2004)

§ 18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989. The provisions of this subsection shall not apply to enhancements enacted after February 1, 1989, to state tax sources, or during a fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February 1, 1989.

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

(e) The legislature may enact laws to assist in the implementation and enforcement of this section.

**HISTORY:** Added, C.S. for C.S. for C.S. for C.S. for H.J.R.'s 139, 40, 1989; adopted 1990.

# APPENDIX E

*MCLS Const. Art. IX, § 29*



*** THIS DOCUMENT IS CURRENT THROUGH P.A. 406, 11/29/04 ***
*** WITH THE EXCEPTION OF P.A. 364 AND 400 ***

CHAPTER 1 CONSTITUTION OF THE STATE OF MICHIGAN
ARTICLE IX. FINANCE AND TAXATION

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

MCLS Const. Art. IX, § 29 (2004)

§ 29. Reduction of state financed costs of existing activities, prohibition; increase not required; appropriation; inapplicability of section.

Sec. 29. The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the le el [sic] of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.

**NOTES:**

Cross References:
Implementing statute, §§ 21.231 et seq.

Michigan Digest references:
Constitutional Law §§ 30, 77, 86, 356, 368
Courts § 141.05
Drains §§ 55, 87
Environmental Law § 27
Health § 11.50
Judgments §§ 236, 242, 297
Releases § 8
Schools and Education §§ 4, 64, 66, 74, 107.10, 111.1
State of Michigan §§ 17, 22, 25

LEXIS Publishing Michigan analytical references:
Michigan Law and Practice, Constitutional Law § 101
Michigan Law and Practice, Counties § 91
Michigan Law and Practice, Education §§ 24, 27, 96
Michigan Law and Practice, State § 27
Michigan Law and Practice, Taxation § 93

Legal periodicals:
Kennedy, The First Twenty Years of the Headlee Amendment, 76 U Det Mercy L Rev 1031 (1999).
Schneider and Schaffer, Annual Survey of Michigan Law: June 1, 1997-May 31, 1998: Constitutional Law, 45 Wayne L Rev 557 (1999).
Menovcik, Annual Survey of Michigan Law: June 1, 1997-May 31, 1998: Government Law, 45

**APPENDIX F**

*Mo. Const. Art. X, § 21*

LEXISNEXIS (R) MISSOURI ANNOTATED CONSTITUTION

Practitioner's Toolbox

Case Notes

*** THIS SECTION IS CURRENT THROUGH ALL 2003 LEGISLATION ***
*** ANNOTATIONS CURRENT THROUGH JULY 16, 2004 ***

CONSTITUTION OF MISSOURI
ADOPTED 1945
ARTICLE X. TAXATION

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

Mo. Const. Art. X, § 21 (2004)

§ 21. State support to local governments not to be reduced, additional activities and services not be imposed without full state funding

The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

**NOTES:**

Adopted November 4, 1980

(1982) To the extent that a county is mandated to pay a salary increase to a county official, an increase in the level of governmental operation results and therefore the salary increase is "an increase in the level of any activity" within the meaning of the Hancock Amendment and the state must pay for the increased costs. Boone County Court v. State (Mo.), 631 S.W.2d 321.

(1982) St. Louis Board of Police Commissioners is a state agency for purposes of this section and cannot require the City of St. Louis to increase its level of activities beyond that required by law when the Hancock Amendment became effective; therefore, it is unconstitutional for the Board to require the city to appropriate more than budget certified as of effective date of the Hancock Amendment, and the Board has to look to the General Assembly for fund increase. State ex rel. Sayad v. Zych (Mo. banc), 642 S.W.2d 907.

(1985) The Hancock Amendment does not prohibit the Judicial Finance Commission from requiring that a county pay attorney fees incurred by the circuit court and judge in defending a federal civil rights action brought by juvenile court employees. In re 1984 Budget for Circuit Court (Mo. banc), 687 S.W.2d 896.

LexisNexis (R) Notes:

**Case Notes:**

**APPENDIX G**

*NRS § 354.599*



TITLE 31. PUBLIC FINANCIAL ADMINISTRATION
CHAPTER 354. LOCAL FINANCIAL ADMINISTRATION
BUDGETS OF LOCAL GOVERNMENTS

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

NRS § 354.599 (2004)

§ 354.599. Specified source of additional revenue required under certain circumstances when legislature directs local governmental action requiring additional funding

If the legislature directs one or more local governments to:

1. Establish a program or provide a service; or

2. Increase a program or service already established which requires additional funding,

and the expense required to be paid by each local government to establish, provide or increase the program or service is $ 5,000 or more, a specified source for the additional revenue to pay the expense must be authorized by a specific statute. The additional revenue may only be used to pay expenses directly related to the program or service. If a local government has money from any other source available to pay such expenses, that money must be applied to the expenses before any money from the revenue source specified by statute.

**HISTORY:** 1969, p. 800; 1971, p. 236; 1975, p. 1686; 1979, p. 1241; 1981, p. 312; 1987, ch. 693, § 1, p. 1669; 1993, ch. 419, § 1, p. 1349; 1999, ch. 282, § 2, p. 1181; 2001, ch. 374, § 32, p. 1804.

**NOTES:**
EFFECTIVE DATE. --The 1999 amendment is effective May 25, 1999.

EFFECT OF AMENDMENT. --The 1999 amendment divided subsection 1 into subsection 1 introductory language, subdivision 1(a) and 1(b) and concluding language; and, in the concluding language, inserted "and the expense required to be paid by each local government to establish, provide or increase the program or service is $5,000 or more" preceding "a specified source."

The 2001 amendment, effective July 1, 2001, deleted former subsections 2, 3, and 4, concerning the amendment of budget to incorporate additional or reduced revenues or expenditures resulting from legislative action.

**APPENDIX H**

*Ore. Const. Art. XI, § 15*

OREGON REVISED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2003 REGULAR SESSION OF THE 72ND LEGISLATIVE ASSEMBLY ***
*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 30, 2004 ***

CONSTITUTION OF THE STATE OF OREGON
ARTICLE XI CORPORATIONS AND INTERNAL IMPROVEMENTS

**GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY**

Ore. Const. Art. XI, § 15 (2003)

Section 15. Funding of programs imposed upon local governments; exceptions.

(1) Except as provided in any state agency requires any local government to establish a new program or provide an increased level of service for an existing program, the State of Oregon shall appropriate and allocate to the local government moneys sufficient to pay the ongoing, usual and reasonable costs of performing the mandated service or activity. (2) As used in this section: (a) "Enterprise activity" means a program under which a local government sells products or services in competition with a nongovernment entity. (b) "Local government" means a city, county, municipal corporation or municipal utility operated by a board or commission. (c) "Program" means a program or project imposed by enactment of the Legislative Assembly or by rule or order of a state agency under which a local government must provide administrative, financial, social, health or other specified services to persons, government agencies or to the public generally. (d) "Usual and reasonable costs" means those costs incurred by the affected local governments for a specific program using generally accepted methods of service delivery and administrative practice. (3) A local government is not required to comply with any state law or administrative rule or order enacted or adopted after January 1, 1997, that requires the expenditure of money by the local government for a new program or increased level of service for an existing program until the state appropriates and allocates to the local government reimbursement for any costs incurred to carry out the law, rule or order and unless the Legislative Assembly provides, by appropriation, reimbursement in each succeeding year for such costs. However, a local government may refuse to comply with a state law or administrative rule or order under this subsection only if the amount appropriated and allocated to the local government by the Legislative Assembly for a program in a fiscal year: (a) Is less than 95 percent of the usual and reasonable costs incurred by the local government in conducting the program at the same level of service in the preceding fiscal year; or (b) Requires the local government to spend for the program, in addition to the amount appropriated and allocated by the Legislative Assembly, an amount that exceeds one-hundredth of one percent of the annual budget adopted by the governing body of the local government for that fiscal year. (4) When a local government determines that a program is a program for which moneys are required to be appropriated and allocated under subsection (1) of this section, if the local government expended moneys to conduct the program and was not reimbursed under this section for the usual and reasonable costs of the program, the local government may submit the issue of reimbursement to nonbinding arbitration by a panel of three arbitrators. The panel shall consist of one representative from the Oregon Department of Administrative Services, the League of Oregon Cities and the Association of Oregon Counties. The panel are required to be reimbursed under this section and the amount of reimbursement. The decision of the arbitration panel is not binding upon the parties and may not be enforced by any court in this state. (5) In any legal proceeding or arbitration proceeding under this section, the local government shall bear the burden of proving by a preponderance of the evidence that moneys appropriated by the Legislative Assembly are not sufficient to reimburse the local government for the usual and reasonable costs of a program. (6) Except upon approval by three-fifths of the membership of each house of the Legislative Assembly, the Legislative Assembly shall not enact, amend or repeal any law if the anticipated effect of the action is to reduce the amount of state revenues derived from a specific state tax and distributed to local governments as an aggregate during the distribution period for such revenues immediately preceding January 1,

1997. (7) This section shall not apply to: (a) Any law that is approved by three-fifths of the membership of each house of the Legislative Assembly. (b) Any costs resulting from a law creating or changing the definition of a crime or a law establishing sentences for conviction of a crime. (c) An existing program as enacted by legislation prior to January 1, 1997, except for legislation withdrawing state funds for programs required prior to January 1, 1997, unless the program is made optional. (d) A new program or an increased level of program services established pursuant to action of the Federal Government so long as the program or increased level of program services imposes costs on local governments that are no greater than the usual and reasonable costs to local governments resulting from compliance with the minimum program standards required under federal law or regulations. (e) Any requirement imposed by the judicial branch of government. (f) Legislation enacted or approved by electors in this state under the initiative and referendum powers reserved to the people under section 1, Article IV of this Constitution. (g) Programs that are intended to inform citizens about the activities of local governments. (8) When a local government is not required under subsection (3) of this section to comply with a state law or administrative rule or order relating to an enterprise activity, if a nongovernment entity competes with the local government by selling products or services that are similar to the products and services sold under the enterprise activity, the nongovernment entity is not required to comply with the state law or administrative rule or order relating to that enterprise activity. (9) Nothing in this section shall give rise to a claim by a private person against the State of Oregon based on the for an existing program without sufficient appropriation and allocation of funds to pay the ongoing, usual and reasonable costs of performing the mandated service or activity. (10) Subsection (4) of this section does not apply to a local government when the local government is voluntarily providing a program four years after the effective date of the enactment, rule or order that imposed the program. (11) In lieu of appropriating and allocating funds under this section, the Legislative Assembly may identify and direct the imposition of a fee or charge to be used by a local government to recover the actual cost of the program.

**HISTORY:** [Created through H.J.R. 2, 1995, and adopted by the people Nov. 5, 1996]

CURRENT ANNOTATIONS

ATTY. GEN. OPINIONS: Application to public employee retirement benefits, (1999) Vol 49, p 152; state indemnification of local governments for payments based on government regulations restricting use of property, (2001) Vol 49, p 284

## ENDNOTES