

# **Appendices**

# Appendix A-1

## PROPERTY OWNER ASSOCIATION ISSUES

(This unofficial document has been drafted by staff to organize ideas only. Subcommittee member views are not represented.)

### A. Foreclosure, Mediation and Other Legal Issues SOLUTIONS SUGGESTED BY OWNERS & ASSOCIATIONS

#### PROBLEMS

A1. Bidders for properties at foreclosure should be qualified to ensure they do not owe back taxes.

A2. Mortgagees do not transfer purchase money liens to purchasers of foreclosed property. The former owners are therefore still liable for the mortgage.

A3. Persons redeeming a foreclosed property could be held to pay debts owed to the association incurred after the foreclosure.

A4. Homestead rights are not adequately protected.

A5. Liens are an inadequate substitute for foreclosure because the statute of limitations is only 4 years.

A6. Owners have no avenue other than filing suit in district court to compel a POA board to abide by its covenants or to prevent selective enforcement.

A7. Owners and POAs may need the help of an unbiased 3rd party to work out their differences.

Require bidders to obtain a statement from all taxing entities in the county of auction that certifies they have paid the previous year's taxes before they may bid on auction properties.

Require purchasers of foreclosed properties to secure financing to extinguish purchase money lien held by former owner.

The redeeming owner should be held harmless from any debts incurred following foreclosure sale.

- a. Remove foreclosure powers from POAs
- b. Remove at least non judicial foreclosure powers from POAs
- c. Prohibit foreclosures on any matters other than dues arrearages or violations deemed a threat to safety of a neighborhood.
- d. Remove the power of POAs to form incorrect liens that preclude foreclosure.

Extend liens so that they would not be extinguished until the sale or refinancing of the property.

- a. Allow owners to file suit in JP court to compel boards to follow their own covenants.
- b. Require cities and counties to investigate complaints against POA boards and provide them power to fine.

- a. Require mandatory mediation before a POA may file a lien or suit to foreclose against an owner.

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b. Require each POA to have an independent committee or subscribe to a countywide committee to hear and attempt to resolve complaints. The committee could be comprised of board members from area POAs, homeowners, management company rep., homeowner advocate, representative of the county attorneys office and a certified mediator.

A8. Use of the legal system is time intensive and costly to both POAs and owners.

Provide for expedited foreclosure proceedings specifically for POAs.

A9. No personal communication by the board prior to foreclosure and eviction.

a. Mandate a personal visit with the owner by a board member to explain the situation and urge compliance.

b. Mandate a phone call to an owner by a board member to explain the situation and urge compliance.

### **B. Attorneys and Attorney Fees (This issue is under review by a task force)**

B1. Different rules apply for POAs and owners in awarding attorney fees.

B2. POA boards may have conflicts of interest with hired attorneys.

B3. Attorneys may charge owners directly for the services they provide to the POA. The POA may not be aware of those charges.

B4. Attorney contracts with POAs may require an assignment of powers and security interests to the attorney and/or management company.

B5. POA attorneys may charge fees that are greater than the amounts they were hired to collect. (i.e. \$500 fees to collect \$150 arrearage by owner)

B6. Owners have no idea how much in attorney fees they could be charged if the POA hires an attorney for their dispute.

**April 2002**

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### C. Property Owner Associations and Management Companies

- C1. The right to vote in POA board elections can be taken away if Prohibit a POA board from barring an owner from voting for any reason. an owner is found in violation of rules and restrictions.
- C2. POA board elections are not monitored. Require city or county oversight of POA board elections.
- C3. Election records are not open to owners. Open election records to owners.
- C4. Prolonged POA board member terms may hinder voter participation in elections. Limit each term to no more than 2 years, but no limits on the number of terms they may serve.
- C5. The right to vote by proxy can lead to fraudulent POA board elections. Prohibit proxy votes for elections and board meetings.
- C6. Purchasers unaware of deed restrictions and don't understand their rights and responsibilities as members of a POA. a. A purchaser presently must signify their desire or refusal of "subdivision information" on an addendum (TREC 36-1) to the state promulgated sales contract. Mandate that purchasers must receive this information for contract to be valid. (See Section 207.003 Property Code - deed restrictions, bylaws, rules and other documents listed on a "Resale Certificate").
  - b. Mandate that sellers must provide only a copy of the deed restrictions.
  - c. Require POAs to provide a copy of current deed restrictions to the title company for dispersal to purchaser at closing. Limit cost to reasonable copy and delivery fees that may be charged by POA and/or title company.
  - d. Require board members to contact new owners as soon as practical after a sale is recorded to provide information about restrictions, responsibilities, etc.
  - e. Add an "Owner's Bill of Rights" to the TREC 36-1 addendum that explains a purchaser's rights and general responsibilities.
- C7. Some deed restrictions contain items in direct violation of state and federal laws. Prohibit enforcement of restrictions that are contrary to local, federal and state laws.

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- C8. Developers draft the original declarations so that they retain power over the association long after a large number of owners occupy homes in the neighborhood. Require developers to draft declarations that turn control of the association over to residents sooner.
- C9. Owners do not have a method by which to dissolve a POA they no longer desire or need. Provide for an election to determine the continuation of a POA.
- C10. Section 209.002 (4) Property Code provides a definition for "dedicatory instrument" that is open for interpretation. Remove definition of instrument so that all rules and regulations must be authorized by original deed restrictions. Revert to definition in Section 203.
- C11. Section 209.006 and 209.007 Property Code allows an owner a hearing before the POA board to resolve disputes only if it is initiated by the owner. Mandate that POA boards schedule a hearing in front of the full board or a dispute committee before enforcement action is taken.
- C12. Each POA notifies its owners of violations and fines in differing ways. Promulgate forms for all POAs to use for repetitive activities such as violation notification, follow-ups, etc., and all actions prior to filing suit.
- C13. POA funds are spent according to wishes only of board. Establish rules and regulations for the kinds of items and services that can be paid for with POA funds.
- C14. Increases in mandatory dues are not limited unlike property tax appraisals. a. Tie the maximum allowable increase for association dues to the cost of living index.  
b. Limit dues increases to a maximum percentage.
- C15. Special assessments and fees should not be mandatory. a. Prohibit mandatory charges to owners for items unrelated to regular dues.  
b. Limit special assessments and fees that are approved by election of owners to a certain time period. At the end of such period, an election could be held to re-ratify such assessments
- C16. POA records and files are open to an owner, but an attorney's records and files, except invoices, relating to the POA are not open per Section 209.008(d) Property Code. Open the attorney files in the same manner as the POA files are open to owners. Extend file requirement to management companies as well.
- C17. Owners paying off dues arrearages have had their payments applied to legal fees and fines. Require all payments by owners to first be applied to the debts owed directly to POA. All additional monies could then be applied to legal fees.

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- C18. POAs must have a way to enforce restrictions if foreclosure City and county enforcement powers could be increased. is not an option.
- C19. Section 202.004 (c) Property Code provides that a court may award damages up to \$200 a day for deed restriction violations.
- a. Lower the fine amount to \$25 a day.
  - b. Limit the fine to only violations posing an imminent and serious danger to public safety.
- C20. Management companies are not held responsible for their actions in conjunction with or on behalf of POAs.
- a. Require management companies to show a minimum level of understanding of the law and competence in managing POAs.
  - b. Provide for the fining of management companies found in violation of law.
  - c. Require management companies to purchase liability coverage separate from the POA's coverage.
- C21. It can be difficult to force homeowners to stay current on their dues.
- a. Require maintenance fees to be escrowed for mortgages in mandatory POAs.
  - b. Allow POAs to garnish wages to pay for dues.
  - c. Provide for an endorsement to the homeowners insurance policy to pay maintenance fees if the owner is incapable. Similar to credit insurance.
  - d. Require lenders to pay delinquent maintenance fees and add the amount to the owner's loan.
- C22. Deed restriction violations can be initiated by board members intent on selective enforcement.
- Require that a deed restriction enforcement action not be taken unless a non-board member owner has sent a written complaint to the board.
- C23. The courts will recognize a POA attempt to halt architectural control violations only if an injunction is filed while the violation is occurring.
- Allow owners to be notified by registered mail or other method that they are in violation.
- C24. No government oversight exists at the state level.
- Establish a state agency funded by POA owner fees to resolve disputes and fine and penalize owners and POAs in violation of state law.
- C25. Associations and management companies will sometimes refuse payments that are less than the full amount owed for arrears and attorney fees.
- Require associations to offer payment plans to owners with terms at least X months in length and no longer than X months.

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- C26. An owner's attempt to pay full amount owed prior to suit being filed should be recognized. Create an affirmative defense for owners in a lawsuit if, prior to filing of suit by POA, the owner offered full payment. Allow owner to recover reasonable attorney fees for having made good faith effort to settle prior to suit.
- C27. Conflicts of interest can exist between POA boards and management companies they hire. Establish conflict of interest statute for management companies.
- C28. No specific remedies exist for POA board violations of state law. Provide for the removal and replacement of boards found in violation of law.
- C29. POA books and records are open by law, but standard methods by which they are made available to owners are lacking. Formulate standard procedures for making books and records open to owners.
- C30. POAs may want to pursue self-help remedies for owners with violations, but can't because of liability issues. Allow POAs to send contractors to a property to correct problem (up to certain dollar limits) and charging the fee back to the owners assessment account.
- C31. POA boards are typically not trained to handle some of the important responsibilities they are charged with completing.
- a. Require board members to attend a minimum amount of training from the Community Associations Institute, Texas Neighborhoods Together, or other reliable sources.
- b. Require board members to show a minimum knowledge of applicable laws, regulations and other relevant information.

## D. Harris County Issues

- D1. Section 204.010 (a) Property Code allows POA boards in Harris County to assess or raise fees and change or modify restrictions without a vote of property owners. Remove the right of Harris County POA boards to assess or raise fees and change or modify restrictions without first getting a vote of approval from a certain percentage of owners.
- D2. POA boards aren't required to publicize resolutions for changes to deed restrictions and fees.
- a. Require the board to file proposed changes with the county clerk's office.
- b. Require the board to first hold a hearing to discuss possible changes that would require a vote of owners. Require the board to uniformly notify owners via letter or postcard of the hearing along with an explanation of the proposed resolutions.



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c. Require the board to notify owners via letter or postcard of the date, time and place, for an election to ratify or defeat proposed resolutions

D3. POAs without mandatory dues can mandate dues easily. Prohibit POAs without mandatory dues from mandating dues unless they receive 100% approval in an owner election.

D4. New POAs with mandatory dues have been formed in established neighborhoods. Prohibit mandatory dues for neighborhoods within municipal boundaries that have no common areas such as pools, playscapes, etc.

# **Appendix A-2**

**Special points of interest:**

- Currently homeowners have an homestead protection from homeowner association foreclosures
- Epidemic foreclosure filings due to loss of homestead protection
- Homestead protection was lost in 1987 when lawwood Homeowner Assn. was granted their judgment against several homeowners including Pomilar and Harris
- Contractual liens created and placed on land by the developer were sanctioned and superseded subsequent buyer homestead designation and given foreclosure power by three Texas Supreme Court Justices in 1987
- Homestead law was never amended to allow homeowner association foreclosures prior to the court creating foreclosable contractual liens which superseded future buyers' homestead designations and the default judgment confirmed and granted by three Texas Supreme Court Justices in 1987 has not changed the Texas Constitution either.

Volume 1, Issue 2

May 28, 2002

## Correction requested to Homestead Law

We are not asking for a constitutional change. This is a request for a correction to the Homestead Law, which is also a solution to the epidemic foreclosure filings in Texas. We are asking that *Inwood vs. Harris*, the caselaw that allows HOA foreclosures since 1987 be repealed as it was erroneously granted by the Texas Supreme Court based on the premise of contractual lien formation which were given foreclosure power. However, the contract and the lien were not formed in compliance with Texas law.

The contractual liens placed on the land by the developer is a one-party contract, which in and of itself is in violation to Texas Contract law which requires two parties to have privity of the contract at the same time. In addition lien law require there be a set amount fixed against property as opposed to an "empty" lien being placed on property in anticipation of a future violation. In 1987, the Texas Supreme Court three judges overstepped their jurisdiction when they granted *Inwood North Homeowner's Association* a judgment against *Pamilar, Harris, et al*, which in essence created pre-homestead foreclosable "contractual liens", which can never be superseded by any buyer's homestead designation at closing.

I am asking on behalf of my family (Johnnie, Paula, Karen and I), the members of The Texas Homeowner's Advocate Group (some support emails are attached and some have been sent separately) and the people across the State of Texas, that this committee recommend and write a bill to repeal *Inwood vs. Harris*, which will bring to a halt homeowner association foreclosure filings leading to actual loss of homestead property, such as what happened to my family on December 5, 1995 (to date we still do not have our house back, although Winona Blevins got hers back). This repeal will also bring back the homeowners' homestead rights.

CAI attorneys such as the ones allowed to write laws in this State for the homeowner convinced the 1987 Texas Supreme Court that they could not interfere with "the obligation of contracts" as found in Article 1—Bill of Rights—The Texas Constitution and the United States Constitution. However, the justices failed to consider the timing of the formation of contracts, who formed the contracts and the timing and amount of the liens placed on the property—all done and conceived without regard to the existing Homestead Law in place.

### Homestead Hoax

I am asking for media assistance in getting this message out to the people of Texas about the lack of homestead protection. Many people think they are protected by the Homestead Act until they have the misfortune of being sued by their homeowner association.

The Texas Supreme Court justices were not empowered by the Texas Constitution to change or create the exception to the Homestead Act allowing homeowner association foreclosures. The justices' function is to interpret the law; not make laws. What I am asking the legislators of this State to do, they have the power to do for the people of this Great State of Texas.

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The Texas Homeowner's  
Advocate Group

To join the group....email  
TheDoubles@aol.com  
Subject: SUBSCRIBE

**REPEAL Inwood vs. Harris**

## ABOUT US

Our group formed in 1996 after a devastating loss of our homestead December 5, 1995 prior to the Winona Blevins' foreclosure due to the 1987 Inwood vs. Harris ruling.

Johannie and I (Harvella) formed The Texas Homeowner's Advocate Group in 1996 and went on-line with the group in the year 2000. The group has a three-prong purpose: 1. To monitor the laws pertaining to the homeowner's homestead; 2. To help make the laws pertaining to the homeowner's homestead; 3. To repeal foreclosure case law Inwood vs. Harris, which is violating our Homestead Act.

### ROY HAILEY AND/OR HIS FIRM MEMBERS WORKING WITH LEGISLATORS

The Texas Homeowner's Advocate Group is asking legislators to stop asking HOA foreclosure lawyers such as Roy Hailey and/or his firm members to be a part of creating legislation involving homeowner associations and homeowners. These lawyers are members of the CAI (Community Association Institute) and helped usher in Inwood vs. Harris by writing amicus curiae to the Texas Supreme Court in 1986 to assist The Inwood North Homeowner's Association in their litigation against the homeowners. Messrs. Burder and Hailey are now benefiting from Inwood vs. Harris and should not be permitted to submit legal remedies for the homeowner associations and/or the homeowner. Of course, they and others are fighting the abolishment of foreclosures because it is their cottage industry and they have benefited greatly from the laws surrounding this cottage industry and, needless to say, don't want to see it end.

As citizens of this State, we expect compliance with this request to end this cancerous foreclosure tyranny. We are sick and tired of band aids (wimpy laws) and want this cancer cured and the only way is to correct the mistake made in 1987 when the three judges created a law not in compliance with contract or lien law. I suggest all legislators familiarize themselves with Inwood vs. Harris, the Homestead Act and the Texas Constitution in regard to foreclosure exceptions and to note contractual liens are not excep-

Go and check your facts and stats at Beanie Adolph's website: [www.hoadata.org](http://www.hoadata.org)

### FACT

**Inwood vs. Harris was not granted for deed restriction violators. It was granted for nonpayment of maintenance fees only.**

### IN SUMMARY

The emails supplied with this flyer are but a small sampling of the emails that have been transmitted to us supporting, requesting and demanding the foreclosures stop. While my family and I received media coverage when we lost our homestead in 1995, the sight of Winona Blevins sitting on her boxes outside her "paid for" home was more than the nation could stomach and now, here we are, possibly now ready to do the right thing—to permanently stop the HOA foreclosures.

We are not asking for a favor when we say repeal Inwood vs. Harris. We are bringing to your attention, once again, an error that needs to be corrected at long last. I have already filed other solutions with the legislative body pertaining to other egregious homeowner association/homeowner issues that need to be fixed via Mr. Rob Edwards from Senator John Lindsay's office ("The Magnificent Eight").

The taxpayers and homeowners are becoming more aware of the violation of their Homestead Act due to Inwood vs. Harris and want to see their Homestead Rights reinstated. Only, you, the legislative body can accomplish the task of repealing Inwood vs. Harris. HOA's do not need a "hammer" to bang the rights of homeowners. Repealing Inwood vs. Harris will not affect the deed restrictions. Injunctive remedies are available thru District Court to process deed restriction violators. Contract liens can be formed at closing when the buyer has privity to the contract on a voluntary basis. If the buyer declines the contract, maintenance fees can be paid on a voluntary basis—which most homebuyers will pay. Enough money will still be collected to take care of pools and greenbelts. Most planned communities are under the jurisdiction of Harris County anyway and HOA's are duplicate quasi-governments who have more money than they need to maintain community property and services. Go look at our former house at 2026 Oak Shores Drive, Kingwood, Texas if you think foreclosing on homesteads is a good thing. **GIVE US BACK OUR HOMESTEAD ACT!!!**

# Appendix A-3

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**COMMENTS (OUTLINE)**

- Date:** January 16, 2002
- Speaker:** Michael T. Gainer
- Occupation:** Attorney at Law
- Affiliation:** Member, Cypress Creek United Civic Associations  
(A Texas Non-Profit Corporation)
- Event:** Public hearing held by the Senate Intergovernmental Relations Subcommittee  
on Property Owners' Associations

**Speaker's Background:** I am a Fellow of the Texas Bar Foundation, a professional member of the Community Associations Institute ("CAI"), a member of the Advisory Council for Cypress Creek United Civic Associations ("CCUCA"), past Chairman of the CCUCA Legislative Action Committee and a member of the Texas State Bar Real Estate Section's Committee on Property Owners' Associations.

My practice is concentrated in the representation of Property Owners' Associations, most of which are Texas non-profit corporations. I have represented the plaintiff Associations in numerous District Court collection and/or deed restriction enforcement litigation matters in various Texas counties.

Over the past nineteen (19) plus years, I have authored numerous informal articles relative to the legal concerns of Property Owners' Associations in the State of Texas, have spoken at numerous seminars, and have represented Association plaintiffs in deed restriction enforcement cases in State District Court and in the Court of Appeals resulting in published Appellate Court opinions favoring those Associations. I am the principal author of *House Bill 2152* which became *Chapter 204 of Title 11 of the Texas Property Code* and which relates to the powers of Property Owners' Associations in Harris County, Texas. Additionally, I represented a Property Owners' Association in an appellate court case resulting in a favorable decision, being the first such decision regarding *Chapter 204 of Title 11 of the Texas Property Code*.

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Mr. Chairman and Senators. Thank you for inviting me to appear and testify today before your Committee. It is an honor to be here. I am in my twentieth (20<sup>th</sup>) year of representing Property Owners' Associations as legal counsel. Further, I have been affiliated with the Cypress Creek United Civic Associations ("CCUCA") for approximately twenty (20) years, as a member, author and/or

speaker. My practice is concentrated in the representation of Property Owners' Associations, most of which are Texas non-profit corporations. I have represented the plaintiff Associations in numerous District Court collection and/or deed restriction enforcement litigation matters in various Texas counties.

It appears that political and/or media attention has centered on Association's foreclosure rights, deed restriction enforcement methods (including the charge back and collection of attorney's fees, expenses and costs) and due process considerations. In this regard, I am a native Texan and strongly support individual rights, as well as civil rights. However, I also recognize that, as a citizen, I have the option to buy real property in a "restricted" Subdivision or, alternatively, to buy unrestricted property. Most prospective buyers (particularly in urban areas) buy in restricted areas because they are impressed by the aesthetics and perceived safety of such communities, as well as by the plethora of amenities provided. Absent a viable Association, such communities would be more difficult to preserve. Accordingly, by buying a home in a "restricted" community, a person is giving up certain rights (he or she may have in an unrestricted area) in return for the benefits such a community affords.

The Texas Legislature and Texas Appellate Courts have previously addressed a number of these matters, including, but not limited to, the following:

- 1) The Texas Supreme Court's decision allowing the foreclosure of an Association's assessment lien upon a homestead (*Inwood North v. Harris and Palimar* - 1987);
- 2) The Texas Legislature's enactment of *Chapter 202 of Title 11 of the Texas Property Code* (1987) recognizing that restrictive covenants should be liberally construed, and providing for a presumption of enforceability regarding the discretionary authority of an Association (e.g., the Association's Architectural Control Committee), unless it is proven that the Association has acted in an arbitrary, capricious or discriminatory manner. This Act also provides that a Court may award civil damages for the violation of a restrictive covenant not to exceed \$200.00 for each day of the violation.
- 3) The Texas Legislature's enactment of *Chapter 343 of the Texas Health and Safety Code* (otherwise referred to as the "*Texas Neighborhood Nuisance Abatement Act*" - 1989) creating a statutory list of nuisance violations, and recognizing that an Association may enforce this Act and recover its reasonable attorney's fees and costs of Court in doing so.
- 4) The Texas Legislature's enactment of *Chapter 204 of Title 11 of the Texas Property Code* (bracketed for Harris County only - 1995) recognizing the need for creation of new Property Owners' Associations and extension of existing deed restrictions which would otherwise terminate. This Act recognized that viable Associations are essential to a safe and aesthetic neighborhood, and codified a "charge back" method better enabling the Association to recoup attorney's fees, expenses and costs incurred in

deed restriction enforcement litigation (after notice and an opportunity to be heard has been given). Further, this *Act* codified Association's rights, similar to those rights of a Condominium Regime under the *Texas Uniform Condominium Act - Title 7 of the Texas Property Code*.

- 5) The Texas Legislature's enactment of *Chapter 207 of Title 11 of the Texas Property Code* (1999) providing for the issuance by Association's of "Resale Certificates" providing pertinent information to prospective purchasers of property within the Subdivision, and requiring that such information be provided in a timely manner.
- 6) The Texas Legislature's enactment of *Chapter 209 of Title 11 of the Texas Property Code* (otherwise referred to as the "*Texas Residential Property Owners Protection Act*" - 2002) recognizing the statewide need for reasonable notice and an opportunity to be heard, and establishing a 180 day right of redemption for a property owner after any foreclosure by an Association.
- 7) Further, Associations (being Texas Non-Profit Corporations) are also governed by the *Texas Non-Profit Corporation Act, Article 1396 of the Texas Revised Civil Statutes* (1959 - as amended numerous times since that date).

As a result of the foregoing, it is clear that the State of Texas has, for some years, recognized that Associations are important to the well-being of communities, and has placed certain criteria, requirements and/or conditions upon Associations in regard to their operations.

Concerning the issue of foreclosure, please note that there are currently five (5) types of liens (in Texas) which may be foreclosed upon a person's homestead. These liens are as follows:

- i) Purchase Money Lien (or "mortgage");
- ii) Home Improvement Lien (i.e., "Mechanic's Lien");
- iii) Tax Lien;
- iv) Association's Assessment Lien; and
- v) Home Equity Lien.

In regard to all five (5) types of liens referenced above, the lienholder may foreclose regardless of the current amount of the delinquent obligation. For example, a tax lien for several hundred dollars may be foreclosed upon by the various taxing authorities and/or a mechanic's lien for several hundred dollars may be foreclosed upon by the service or material provider. Therefore, it is somewhat surprising that an Association's foreclosure of an assessment lien (which funds are needed for, and utilized to, provide needed services to a community, such as street lights, security, amenities and maintenance) is construed by some persons to be more onerous or offensive than (e.g.) foreclosure of a tax lien in the same or similar amount. It has long been recognized that lien indebtedness must be timely paid, or the owner may lose the collateral for the obligation. This is also true in non-real estate obligations (e.g., a car note or a furniture note). However, seldomly are



such other types of lien foreclosures or repossessions the subject of newspaper articles, television shows or public outcry.

Why should Associations be held to a higher standard than other lienholders, especially since the lien is created prior to the home becoming a homestead? In 1998, an interim Texas Senate Committee determined that Associations are "quasi-governmental" in nature, because such Associations have a geographical jurisdiction and because needed community services are provided by such Associations. However, Associations are not afforded certain protections or powers of governmental entities, such as sovereign immunity or eminent domain (i.e., condemnation authority).

Associations are, and should be, afforded certain protection under Texas Law. Due process considerations are required and must be adhered to. Nevertheless, some homeowners refuse to respond to Association notices or attorney demands. Further, some of these property owners, although invited, refuse to attend an Association Board meeting or possibly a mediation. Such avoidance techniques on the part of some homeowners lead to litigation addressing delinquent assessment accounts and/or deed restriction violations.

The Association serves as a "buffer" between neighboring homeowners. A homeowner may call the Association concerning a complaint, and the Association will follow-up and address the matter (after a violation of the Restrictions is confirmed). This methodology has lessened the stress on individual homeowners who would otherwise face possible altercations with neighbors or the financial expenses of enforcing the Restrictions themselves. Thus, it is clear that real estate developers have recognized the advantage of Associations for many years. The developers create the Restrictions, establish mandatory membership, establish mandatory assessment obligations and a forecloseable assessment lien so that the community may be somewhat assured of longstanding deed restriction enforcement and aesthetics maintenance. In this regard, the U. S. Department of Housing and Urban Development (HUD) has long since recognized the need for planned unit developments and for Associations to provide the needed services and/or amenities. The HUD Form 1400 guidelines (including recommended terminology for Restrictions, Articles of Incorporation and By-Laws) were implemented in 1972. To this day, HUD continues to require a certification process before a Subdivision may be listed on HUD's approved list of insurable Subdivisions.

Relative to the list of suggestions I have been asked to review, I will testify against most of such suggestions. However, certain suggestions are recommended. My comments are as follows:

- a) "Property Owner Bill of Rights" - Opposed (such protections are already afforded property owners).
- b) Title company to provide copy of Restrictions and By-Laws at time of closing - Support (however, such copies should be provided a reasonable period of time in advance of closing - NOTE: There may also be an expense factor to consider here).

- c) Association oversight by Texas AG's Office - Opposed - Why should the Associations be subject to such requirements when other lienholders and/or other persons/entities who may enforce Restrictions are not?
- d) Provide for penalties against Board Members violating Texas laws or By-Laws - Opposed - Why should voluntary and uncompensated Board members be penalized, sanctioned or threatened with punitive action, particularly since others lienholders (in the business) are not? Voluntary Board members should not be charged with such a high standard, and this may result in an inability to find members to serve on the Board. Further, due to increased litigation against Associations, insurance premiums are already escalating.
- e) Mandatory Mediation - Opposed - Associations are already required to provide notice and an opportunity to be heard. Accordingly, the property owner may simply request to be placed on the agenda at an upcoming Board meeting. Further, although the Association would appear (and incur the expenses of mediation), it has been my observation that many individual property owners would not.
- f) Binding Arbitration - Opposed - This procedure denies Associations certain access to the Courts, it is cost prohibitive, and the decision rests in the hands of an Arbitrator, who may or may not be aware of the Laws of the State of Texas or how Associations work.
- g) Allow for Expansion of Small Claims/Justice Court Jurisdiction - Opposed - Although this suggestion has some merit, Small Claims Courts/Justice Courts do not currently have jurisdiction to grant injunctions or forecloseable judgments. Further, the Justice Courts (particularly in Harris County) already have significantly crowded dockets. A Justice Court is not a Court of record. Currently, Justice Court decisions may be appealed to County Court for a *trial de novo*. Also, Justice Courts currently have jurisdiction to grant monetary judgments (non-foreclosable) and impose civil damages pursuant to *Chapter 202*.
- h) Standardized training of Board Members - Opposed - Why should Associations be held to a higher standard than most for profit corporations, governmental employees and/or other non-profit corporations. Further, numerous organizations already provide seminars and training sessions for Association Board members.
- i) Statewide registry of Mandatory Associations - Opposed - The new Management Certificate requirement contained in *Chapter 209* already addresses this concern on a county-by-county basis.
- k) Extension of Right of Redemption - Opposed - One hundred eighty (180) days (under *Chapter 209*) is already sufficient. The Association community supported the right of redemption (for a reasonable period of time, such as 90-180 days). However,

extension of the period for redemption may serve to further erode an Association's ability to timely collect its assessments, because the property owner may determine that it is not necessary to timely pay because of the extensive period of time within which to redeem absent further recourse. Why not subject a mortgage company, home equity lender or mechanic's lien holder to the same requirement?

During my years of practice, I have not pursued non-judicial foreclosure, nor have I been involved with alternative client billing programs (such as deferred billing or modified contingency arrangements). It is my opinion that such procedures do not afford property owners sufficient due process, nor are they fair to the property owners. Relative to due process considerations, perhaps streamlined or simplified methods (more easily understood by all participants in the system) would be preferable over convoluted and/or complicated and costly alternatives. For example, it may be prudent to allow expedited foreclosure proceedings for Associations, allowing the property owners access to the judicial system and continuing to allow the post-foreclosure right of redemption. Also, it may be prudent to make Resale Certificates (pursuant to *Chapter 207*) mandatory for all residential real estate transactions, rather than discretionary at the request of the prospective purchaser. Another possibility is to statutorily increase an Association's power to pursue self-help remedies (without liability or exposure to the Board members or the Association) for deed restriction violations which may be corrected inexpensively (e.g., allowing an Association to send contractors to a property and correct the problem (up to a certain dollar amount), charging the reasonable fee back to the owner's assessment account. Such self-help remedies would negate the necessity of filing expensive deed restriction enforcement litigation in certain instances.

Perhaps the system is not broken. Let us put the foreclosure and deed restriction enforcement issues in perspective. Are not the problems affiliated with complaints from a very small percentage of property owners? It is my understanding that many of such complaints have been made by persons who have already had their day in Court, and lost. The vast majority of property owners are silent on the issue, because they have few, if any, complaints with their Association or their community.

In conclusion, we should note that Associations are involved in "grass roots politics." Association Board members have a constituency, being the homeowners of the Subdivision. Further, Board members have a significant fiduciary responsibility (under current Texas Law) to act in the best interest of the Association, which corporation is created and operated to benefit the property owners and residents of the Subdivision. Any property owner in good standing may elect to run for a Board position. The Association is required to have an annual membership meeting, and Board position(s) are generally filled annually by vote of the membership at the annual meeting, with staggered terms. Association Boards act by majority vote, with one (1) equal vote per Board member in accordance with notions of fair play and majority rule. Therefore, place more onerous legal requirements on Associations may result in little more than additional delays and significant cost increases, which costs may ultimately be borne by the community.

# **Appendix A-4**

HOA  
data

## Houston Area HOA Foreclosure-related Filings

Updated  
03-Aug-02

Can you help us obtain information? Many people have asked if we could identify the management companies that work in each Houston area subdivision. Click here if you can name the management company for your HOA. Thank you.

Welcome to the [HOAdata.org](http://HOAdata.org) website.

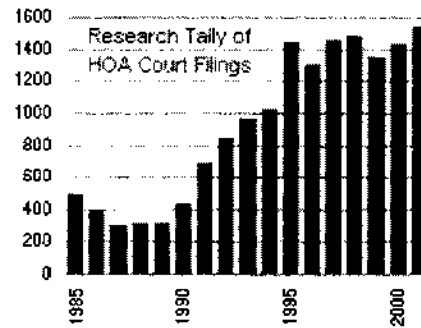
Since the 1987 Texas Supreme Court decision in *Inwood North vs. Harris* and the 1995 passage of Texas Property Code Chapter 204, Homeowners Associations (HOAs) have filed thousands of legal actions against homeowners in the Houston area, generally with threat of foreclosure, causing many to lose their homes and causing others financial hardship.

This website summarizes a research database of over **15,000** court filings by HOAs in the Houston area (mainly Harris County) from 1985 through 2001.

**THE DATABASE LISTS COURT FILINGS THAT COULD LEAD TO FORECLOSURE. IT DOES NOT LIST ACTUAL FORECLOSURE SALES.**

The database is limited by the research techniques (see below), so the actual number of filings may be understated. For example, approximately 4,000 additional filings of type "injunction" are not included in the database. Because of the difficulty involved in tracking certain cases, the database contains few foreclosure cases from the Justice of the Peace courts and no nonjudicial foreclosure cases. There are indications from a fee-based database that Harris County nonjudicial cases outnumber judicial foreclosure cases.

Data is gathered from the Daily Court Review (a newspaper that prints legal notices and events), from Harris County databases available on the Internet, from Harris County District Court records, and occasional cases from neighboring Fort Bend and Montgomery Counties.



### Examples from the database:

*7 out of 8 filings occur where median home value is less than \$100,000.*

*Do HOAs that file against homeowners have better price trends?*

*Some HOAs filed against 10% or more of their homeowners in one year.*

*One attorney's name appears on over 1500 filings.*

### HOAdata Research Database:

- HOAs:           By name  
                  Most active  
                  Yearly detail BIG!
- Filing rate:    By name  
                  Most active
- Attorneys:     By name  
                  Most active  
                  Yearly detail BIG!
- Management:  By name  
                  By HOA
- Analysis:       Totals

# Appendix A-5

**To: SENATE INTERGOVERNMENTAL RELATIONS  
SUBCOMMITTEE ON PROPERTY OWNERS' ASSOCIATIONS**

**From: Cathy Sisk  
Chair, Legislative Committee, Harris County Attorney's Office**

**Re: Attorney Task Force – Report Regarding Agreed Items**

**Date: May 24, 2002**

After the public hearing held by the Senate Intergovernmental Relations Subcommittee on Property Owners' Associations, an Attorney Task Force was invited by the Subcommittee to consider options for legislation. Participating lawyers included four who have represented individual homeowners (David Kahne, Wendy Laubach, Marian Rosen, and David Furlow), and four who have represented property owners' associations (Robert Alexander, Michael Gainer, Roy Hailey, and Suzie Rice). At the behest of Chairman Lindsay, I served as a neutral observer and resource for the task force.

Three meetings were held, during which the participants constructively aired their disagreements and advanced their different perspectives. Little common ground was found regarding proposed legislation, but the following three changes were agreed upon. The first two changes are process-oriented and would confirm the availability of hearings prior to an association taking legal action. The last proposal addresses deferred billing.

1) Regarding an owner's right to a hearing under *Sec. 209.006* and *Sec. 209.007 of Title 11 of the Texas Property Code*, the parties agree to confirm that the right to a hearing includes assessment/fee issues, as well as deed restriction enforcement and architectural control issues.

2) Regarding an owner's right to a hearing under *Sec. 209.006* and *Sec. 209.007 of Title 11 of the Texas Property Code*, the second sentence of *Sec. 209.007(c)* should be changed to provide as follows:

....The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days, or as otherwise agreed in writing by the association and the owner....

3) Regarding "charge backs" of fees, amend the Texas Property Code to include a properly worded prohibition against "deferred billing" practices. Therefore, a fee charged by an

attorney or a managing agent for providing services to an association may not be charged by an association to an owner's assessment account or collected from an owner, unless such fee is actually invoiced to the association and is paid or is to be paid by the association in the regular course of business. The practice of charging any such fee to an owner's assessment account to be collected solely from the owner, without being invoiced to the association for payment in the regular course of business, would then be prohibited.

The law should also be amended to allow attorneys to deposit monies collected from owners in the attorney's trust account or escrow account for disbursement, subject to applicable State Bar Rules.



# **Appendix A-6**

**SENATE INTERGOVERNMENTAL RELATIONS  
SUBCOMMITTEE ON PROPERTY OWNERS' ASSOCIATIONS**

**SEPARATE POA ATTORNEY TASK FORCE REPORT**

The POA attorney members of the Attorney Task Force propose the following changes which they believe are substantive in nature:

1) Relative to an owner's right to a hearing under *Sec. 209.006* and *Sec. 209.007 of Title 11 of the Texas Property Code*, such right to a hearing shall be expanded to specifically include assessment/fee issues, as well as deed restriction enforcement and architectural control issues.

2) Relative to an owner's right to a hearing under *Sec. 209.006* and *Sec. 209.007 of Title 11 of the Texas Property Code*, the second sentence of *Sec. 209.007(c)* will be changed to provide as follows:

...The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days, or as otherwise agreed in writing by the association and the owner....

3) Add the following to *Sec. 209.008(c) of Title 11 of the Texas Property Code*:

....;provided, however that an attorney may deposit monies collected from owners in the attorney's trust account or escrow account for disbursement to the property owners' association, subject to applicable State Bar Rules.

4) Relative to "charge backs" of fees, a properly worded prohibition against "deferred billing" practices should be added to *Chapter 209*. Therefore, a fee charged by an attorney or a managing agent for providing services to an association may not be charged by an association to an owner's assessment account or collected from an owner, unless such fee is actually invoiced to the association and paid or to be paid by the association in the regular course of business. The practice of charging any such fee to an owner's assessment account to be collected solely from the owner, without being invoiced to the association for payment in the regular course of business, would then be prohibited.

5) Relative to an association's imposition of a "community service fee" or "user fee" under *Section 204.010(a)(9) of Title 11 of the Texas Property Code*, amend that provision to provide for the advance affirmative vote of a majority of those members present, in person or by proxy, at a duly called meeting of the association, at which meeting a quorum, as specified in the association's by-laws, is present. Such membership vote must be conducted prior to the implementation of any such "community service fee" or "user fee."

6) Amend *Chapter 204 of Title 11 of the Texas Property Code* to specifically provide that, unless such fees or charges are otherwise authorized in the association's governing documents: 1) attorney's fees not related to the collection of assessments, and applied to an assessment account under *Sec. 204.010(a)(11)*, constitute a charge or fee upon the land; however, such fees do not constitute a foreclosable lien upon the subject homestead property; and 2) "late fees" or "returned check fees" charged under *Sec. 204.010(a)(10)*, as well as "community service fees" or "user fees" charged under *Sec. 204.010(a)(9)*, constitute a charge or fee upon the land; however, such fees do not constitute a foreclosable lien upon the subject homestead property.

**Appendix A-7**

REPORT to the PROPERTY OWNER ASSOCIATION SUBCOMMITTEE  
of the  
INTERGOVERNMENTAL RELATIONS COMMITTEE, TEXAS SENATE  
by  
LAWYERS FOR HOMEOWNERS on the ATTORNEY TASK FORCE

May 26, 2002

David Kahne  
Wendy Laubach  
Marian Rosen  
David A. Furlow

## SUMMARY

After its public hearing in Houston on January 16, 2002, the Property Owner Association Subcommittee invited an Attorney Task Force to consider options for legislation. We - the Attorney Task Force - held three meetings, moderated by Cathy J. Sisk, Chair of the Legislative Committee for Harris County Attorney Mike Stafford, and a conference call with Senate Staff. Participating lawyers who have represented homeowners included: David Kahne, Wendy Laubach, Marian Rosen, and David Furlow. Participating lawyers ("POA Lawyers") who have represented property owner associations ("POAs") included Robert Alexander, Michael Gainer, Roy Hailey, and Suzie Rice.

At the first meeting, Task Force lawyers agreed that Harris County has experienced abuses relating to legal fees and foreclosure powers, but differed as to the extent and causes of the abuse. In discussing proposed solutions, we focused on general principles rather than details.

Lawyers for homeowners made multiple proposals for legislation, including proposals noted in this report. Of the proposals, POA lawyers have agreed to almost none. As to most proposals, POA lawyers raised various objections. The two groups remain far apart with respect to basic issues that they discussed, and many important issues were not even discussed by the Task Force, much less resolved.

This Report sets forth the views of the lawyers for homeowners. It reflects what we proposed during negotiations of the Task Force. After the last conference, we sent a draft of this Report to the POA lawyers. The POA lawyers did not agree with this draft Report, and sent us a draft one-page report with which we do not agree.

In sum, areas of Task Force agreement do not constitute a suitable compromise of interests - indeed counsel strongly disagree on how to address the principle areas of dispute or concern, some of which were not even discussed. While counsel continue to disagree, we all appreciate your attention to our differing perspectives, as well as the attention and assistance of Harris County Legislative Committee Chair Sisk.

## INTRODUCTION

The Task Force considered proposals intended to promote resolution of community disputes without the need for litigation, proposals to address complaints regarding attorney fees in litigation against homeowners, and proposals to reduce the number of foreclosure lawsuits. In addition, the Task Force debated whether to allow non-judicial foreclosures, that is, foreclosure and sale without any judicial determination of wrongdoing or oversight, and considered the need for recorded rules governing POAs, the desirability of Chapter 204, and impact of *Brooks v. Northglen Association*, \_\_\_ S.W.3d \_\_\_ (Tex. App. - Texarkana 2002).

## NON-JUDICIAL FORECLOSURES

Lawyers for homeowners categorically oppose non-judicial foreclosures. These drastic actions: (1) have been abused in the past and present; (2) avoid both judicial and public oversight; (3) avoid the few existing statutory limits on judicially-supervised foreclosures, and (4) would avoid additional regulations discussed below.

## **PRE-LITIGATION LIMITATIONS**

In an effort to reduce the number of POA lawsuits, lawyers for homeowners proposed pre-litigation limitations and procedures reflecting practices of successful homeowner associations. These include rules to assure that homeowners receive fair notice and opportunity to be heard in a neutral forum, fair treatment of homeowners facing hardship, and community oversight of litigation.

### **Notice**

Lawyers for homeowners proposed that, as a condition to and before any lawsuit (not including rare lawsuits to stop substantial risks to public health and safety), POAs be required:

- 1 to send an initial series of notice letters to the homeowner a month or more apart, not from lawyers, to avoid intimidation and to give homeowners a reasonable time to resolve any dispute;
- 2 to give homeowners non-litigation opportunities to resolve disputes, to assure that the complex judicial process (expensive for the public, as well as families) is not abused for minor disputes;
- 3 to extend the time before attorney fees can be billed, to eliminate financial incentives for law firms to impose charges wholly unwarranted in otherwise small disputes;
- 4 to assure actual notice, at least send the last two notices by certified mail, as well as regular mail; and,
- 5 if certified mail notice is not collected, to contact of the homeowner by phone, in person, and/or by attaching notice to the front door (with Constables authorized to assist).

No POA could charge a homeowner, or obtain an award for attorney fees incurred before completion of this process.

### **Opportunity to be Heard in a Neutral Forum**

Lawyers for homeowners proposed that the notice given to homeowners state two rights: (1) the right to appear in person before the POA Board to discuss any claimed violation, including disputes concerning annual assessments - on this we had partial agreement; and (2) the right to require the POA to participate in free mediation, where

such mediation exists. The notice should provide specific instructions to the homeowners, as to how to exercise one or both of these rights, the homeowner would be given a reasonable time to do so, and no attorney fees should accumulate (by POA charge or judicial award) before the POA Board holds any requested hearing, or the time to request a hearing is past.

Free mediation is available in Harris County. If free mediation is requested by the homeowner, no attorney fees should accumulate before completion of the mediation.

In any event, lawyers for homeowners stressed that neither mediation, nor a hearing before the Board, is a full solution so long as issues concerning attorney fees go unreformed, and so long as POAs retain the current powers to foreclose. Lawyers for homeowners also have concerns to assure full disclosure and neutrality in mediation, because (for example) in some instances mediators themselves have represented POAs.

### **Fair Treatment for Homeowners Facing Hardship**

Lawyers for homeowners proposed that POAs should be required in good faith to allow a reasonable extension of time to pay assessments for persons who suffer financial hardship, such as persons who lose their job or suffer serious illness or disability.

### **Community Oversight**

Lawyers for homeowners proposed that no lawsuit be allowed without affirmative vote by the POA Board - authority should not be delegated to lawyers. Lawyers for homeowners also proposed that, in addition to a separate POA Board vote, independent community oversight (an additional membership vote) be required before any foreclosure lawsuit could be filed.

## **ATTORNEY FEES**

Our Task Force agrees Texas law should be amended to ban "deferred billing", an issue that was of great import to POA lawyers but seen as less significant by lawyers for homeowners.

### **Agreement to End Deferred Billing**

POA lawyers volunteered that deferred billing by attorneys can cause problems. In a deferred billing system, a POA does not pay attorney fees when the work is done. Instead, the attorney accrues the charges, and seeks to collect directly from the homeowner. In some approaches, the POA never faces a risk of having to pay the attorney, who keeps only what the homeowner pays. In some approaches, the POA assigns an interest in the cause of action, or at least the attorney fees, to the attorney.

Task Force lawyers agree that deferred billing, being neither necessary nor desirable, should be prohibited by law. POAs should be required to pay for work done by their attorneys, whether or not the homeowner pays attorney fees, and should not be

allowed to assign their interests in the case to their attorneys. This means that all payment of attorney fees by a homeowner would belong to the POA, not the attorney. POA lawyers proposed legislation to clarify their authority to accept such payments, so long as they put the money in their trust fund, and lawyers for homeowners agreed, so long as all funds were paid to the POA.

#### **Disputes re Statutory Creation of Duty to Pay Attorney Fees**

Lawyers for homeowners proposed to eliminate those statutes that give rights for POAs to collect attorney fees from homeowners, where no deed restrictions authorize such charges. For example, homeowners' lawyers oppose use of Property Code 5.006 to create a one-sided duty for homeowners to pay POA attorney fees, oppose use of Chapter 204 (applicable only in Harris County) to impose attorney fees where not authorized by deed restrictions, and oppose use of Chapter 209 to the extent it may create duties to pay attorney fees not specified in deed restrictions.

#### **Disputes re Unequal Ability to Recover Attorney Fees**

Current law allows POAs the right to recover attorney fees where they sue homeowners (Property Code 5.006), but arguably does not give homeowners the same rights, not even when the homeowner prevails. See *Meyerland Community Improvement Ass'n v. Belilove*, 624 S.W.2d 620, 621 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1981, writ ref'd n.r.e.). The statute can reward POAs with attorney fees even if the homeowner had a strong defense on the law, or if the law was unclear.

Lawyers for homeowners believe this one-sided law unfairly enables POAs to employ lawyers, but makes it extremely difficult for homeowners to find counsel even when they have a strong case. Lawyers for homeowners believe that homeowners, more than POAs, have legitimate claims to recover attorney fees if they prevail when sued by a POA.

As a compromise, lawyers for homeowners proposed two changes, using the Declaratory Judgment Act as a model. See Texas Civil Practice & Remedies Code 37.009. First, to assure parity, whatever rights a POA may have to attorney fees if they prevail, homeowners should have the same rights to attorney fees if they prevail. Second, to assure fairness, Court should retain discretion not to award attorney fees in cases where homeowners reasonably pursued claims, even though they lost, for example, where homeowners pursued a claim based on a close legal question. Our preference would be to give homeowners a stronger right to recover attorney fees, because homeowners typically have resources much more limited than POAs.

#### **Disputes re Amount of Attorney Fees**

Lawyers for homeowners also proposed to set statutory limits to prevent POA lawyers from charging excessive amounts for form letters, to prevent POA lawyers from sending bills to perform non-essential tasks, and to prevent POAs from billing homeowners for attorney fees that the homeowner has not had any chance to contest.



### **Disputes re Premature Billing for Attorney Fees**

Lawyers for homeowners proposed that POAs not be able to collect disputed bills for attorney fees. This would mean that, if there is a dispute as to an attorney fee bill, the POA could not take the payment out of money that the homeowner pays for other purposes, such as annual assessments.

### **REQUIREMENTS FOR FORECLOSURES**

Lawyers for homeowners oppose foreclosures against homesteads. At a minimum, lawyers for homeowners proposed limits to stem abuses associated with foreclosures over minor debts and vague or subjective standards.

The Attorney Task Force considered foreclosure cases brought to recover unpaid annual assessments separately from foreclosure cases brought to recover fines or attorney fees charged based on other covenant violations. Task Force members generally agreed that the basis for foreclosure is weakest where owners pay annual assessments required by their deed restrictions. Before 1995, relatively few POAs claimed foreclosure power against homeowners who paid annual assessments. This changed after Property Code Chapter 204 passed, when some POAs increasingly began to seek foreclosure based on attorney fees or fines.

Seeking compromise on this issue, lawyers for homeowners proposed that POA foreclosures should be prohibited, except for substantial failures to pay annual assessments mandated by deed restrictions. The exception would allow a foreclosure lawsuit after the POA obtained judgment for more than a specified amount, for example, \$3,000, or three times the POA's annual assessment (not counting attorney fees). For smaller debts, lawyers for homeowners believe POAs should follow collection practices available to every other small business, organization, or person (and, if deed restrictions permit, POAs could maintain a passive lien and recover debts when the home is sold).

### **GOVERNING RULES, CHAPTER 204, AND *BROOKS V. NORTHGLEN ASSOCIATION***

Lawyers for homeowners believe all rules governing homeowners should be recorded. We proposed to require written notice of any changes in such rules.

We believe homeowners should be subject to the rules set forth in, or expressly authorized by, their deed restrictions, articles of incorporation, and bylaws. Homeowners should vote on any amendments to deed restrictions, articles of incorporation or bylaws. We oppose use of Property Code Chapter 204 (or any other statute) to give POA Boards of Directors additional power (without a homeowner vote) to change deed restrictions, articles of incorporation, or bylaws. We particularly oppose Boards of Directors using Chapter 204 to increase annual assessments and other charges to homeowners without homeowner vote.

Where deed restrictions pre-date passage of Chapter 204, homeowners' lawyers

dispute the constitutionality of Chapter 204, and thus disagree with the resolution of “Issue 1” in the decision of *Brooks v. Northglen Association, supra*. While we appreciate that Court’s ruling that POAs cannot seek foreclosure based on violations of duties or debts created under Chapter 204 (“Issue #4” in that decision), we note that POA foreclosure cases continued even after the Attorney General issued a similar ruling 5 years ago. Op. Atty Gen. 97-019.

## **NO ENFORCEMENT OF UNCONSTITUTIONAL RESTRICTIONS**

Lawyers for homeowners also proposed to change Property Code 203.003 to prohibit POAs, as well as any other agency, from enforcing unconstitutional deed restrictions. This would include protection of the constitutional rights of homeowners to display political campaign signs. Display of such signs would remain subject to reasonable time, place, and manner restrictions, the same rules followed by municipalities.

## **OTHER ISSUES**

Lawyers for homeowners also raised other issues of concern, including: conflicts of interest; homeowners’ rights to vote in POA elections, to obtain POA records, to be safe from retaliation, and for penalties when POAs violate the law; as well as a requirement for POAs to report to the State and homeowners, the number of foreclosure and other lawsuits filed annually.

## **CONCLUSION**

The views expressed in this report reflect the perspective of lawyers for homeowners on the Task Force as individuals, not the position of any of our clients, and does not set forth the view of the County Attorney, Legislative Committee Chair Sisk, or any Legislator. This report does not attempt to address all issues of concern to participants, and we all appreciate the opportunity to elaborate at the forthcoming hearing of the Subcommittee.

# Appendix A-8

SPRING SHADOWS  
CIVIC ASSOCIATION

Sample of Foreclosure Risk to HO & Association

Pre-Foreclosure Phase Year	Month	Event	HO Amount	HO Interst	Legal Assn	Legal HO	Tot to Dte Comment
1998	Nov	Billed \$174 MF for '99	174.00				174.00 No payment in 1998
1999	Jun	Bill stamped Ovr/due 120 d					Jun thru Aug
	Sep	Bill stamped Ovr/due 240 d					Sept, Oct
2000	Nov	Billed \$191 MF for 2001	191.00	14.50			379.50 Added "looking a legal remedies"
	Feb	Filed Affd of Lien	40.00	9.06			428.56 Also stamped "Lien Filed"
	Jul	30 d notice to Attorney		14.28			442.84 Also stamped "Lien Filed"
	Sep	Sent to Attorney for Action		7.38			450.22 Warning to HO; Sent to Attorney
	Nov	Billed \$191 MF for 2002	191.00	3.75			644.97
		<u>Total to date. (After two years)</u>	<u>596.00</u>	<u>48.97</u>			<u>644.97</u> (Only \$40 in legal type fees to this time)
Demand Letter & Foreclosure Phase							
2001	Mar	Demand Letter 1		21.50	80.00		746.47
	Jul	Demand Letter 2 & 3		24.88	160.00		931.35
	Sep	Title Search		15.52	30.00		976.86
	Nov	Foreclosure Motion		16.27	120.00		1113.14
		Billed 2002 MF	191.00				1304.14
		Sub total (after three years)	787.00	129.86	390.00		1304.14
By about July 2002							
		HO Prospective Legal Fees				2620.00	3924.14 \$2620 are contingency fees.
		Assn Payment Attorney OOP			250.00		250.00
		MF	747.00				Four years of unpaid Maintenance Fees
		Lien	40.00				Assn cost & County Fees
		Interest		76.04			76.04
		Near end of fourth year	787.00	205.91	640.00	2620.00	4250.18 Assn's portion is \$1633 of \$4250
Cost to HO to Clear Debt							
Cost If Bankruptcy Taken: Homeowner Association							
							\$4,250.18
							\$1,500.00 approximate attorney fee for BR
							\$2,942.91 (Assn pays half of \$2620 + its costs)

If Bankruptcy is taken, Assn loses \$2943 to collect \$787 in unpaid fees. Not an attractive risk!

# **Appendix B-1**

December, 2000  
Carole Keeton Rylander

Texas Comptroller of Public Accounts



## Recommendations of the Texas Comptroller

### Chapter 1: Electronic Government

# Provide Centralized Public Information Concerning Special Districts

## Summary

Special districts are special-purpose units of local government created to provide a service or services to a specific group of constituents. In 1999, 1,241 special districts in Texas assessed property taxes, and 515 assessed sales taxes for various purposes. Texas should centralize all information relating to special districts and, when possible, make this information available on the Internet.

## Background

Special districts are enacted primarily to raise money for the provision of certain services. In Texas, the Legislature, the Texas Natural Resource Conservation Commission, county commissioners courts, and municipal governments can authorize the creation of special districts.

Generally, groups of residents or property owners seeking local autonomy create special districts. Usually, these citizens desire a particular service that traditional authorities either cannot or will not provide. In addition, groups may form special districts because their local governments do not anticipate the need for a service or are not receptive to additional debt burden.

Traditionally, most special districts in Texas have been water districts, municipal utility districts that provide water and wastewater services to neighborhood developments by levying taxes on personal and commercial property, sales taxes, or user fees. The first water districts were established in 1904 to provide irrigation services. The Legislature authorized the creation of drainage districts in 1905, and levee improvement districts and navigation districts in 1909.[1] Despite their ability to fund their own operations, 21 water districts filed for bankruptcy in the last decade.[2]

In 1999, 1,241 Texas special districts assessed property taxes, and 515 districts assessed sales taxes for various purposes (Exhibit 1).[3] The growth of special districts has created fragmented service provision and eroded local governments' tax bases.[4] In addition, the general lack of coordination between local entities and the state may inadvertently lead to duplicative services or overlapping jurisdictions.

Although special districts create programs and services that affect nearly every Texas resident, the public has little knowledge or understanding of them. Special districts provide useful and often necessary services; however, their existence may create the appearance of “hidden government” and raise questions of accountability to local taxpayers. Currently, tax data and other information about special districts are not available in a central location.

#### Exhibit 1

#### Special Districts in Texas, 1999

Type of Special District	Type of Tax Assessed	
	Sales [5]	Property [6]
City Transit Departments	2	0
Crime Control Districts	20	0
County Development Districts	8	0
County Improvement District	1	0
Economic Development Corporations	446	0
Emergency Services Districts	2	59
Fire Prevention and Rural Fire Districts	0	123
Health Services	9	0
Hospital Districts	9	134
Junior and Community College Districts	0	50
Library Districts	9	1
Metropolitan Rapid Transit Authorities	6	0
Municipal Development Districts	1	0
Municipal Utility Districts[7]	0	827
Noxious Weed Districts	0	1
Others	1	12
Port Authorities	0	6
Road Districts	0	28
Town Improvement Districts	1	0
<b>Total</b>	<b>515</b>	<b>1,241</b>

## Recommendations

### A. To increase public access to information on special districts, the TexasOnline State Portal

**should be used to provide the public with centralized information relating to special districts assessing property and sales taxes in Texas.**

The Comptroller's Property Tax and Revenue Accounting Divisions collect data on property and sales tax rates for Texas' special districts. The Local Government Section of the Comptroller's office should develop an Excel spreadsheet to centralize special district information, including district name, manager, board of directors, service or services provided, location, and property or sales taxes assessed. Local Government analysts should update the spreadsheet annually using data received by the Property Tax and Revenue Accounting Divisions. Special districts should cooperate with any Comptroller's office information requests to assemble this information.

**B. The Comptroller's office should post information relating to special districts on its agency Web site and the state Web portal for public access.**

The Comptroller's office should convert the Excel spreadsheet into a useable format available on its agency Web site and the state portal, TexasOnline. The Comptroller's office may choose to make additional information available in the future, such as an electronic map detailing the exact location of special districts.

This recommendation would increase special districts' accountability to taxpayers and provide elected officials and local government administrators with enough information to make informed decisions concerning local tax bases and revenue sources. In addition, it may decrease the duplication of services between local governments and special districts.

## Fiscal Impact

The Comptroller's office could implement these recommendations with existing resources.

## Endnotes

[1] Texas Comptroller of Public Accounts, *Forces of Change, Shaping the Future of Texas, Volume II, Part I* (Austin, Texas, November 1993), p. 650.

[2] Texas Natural Resource Conservation Commission, Water Permits and Resource Management Division, *Bankruptcy and Orders from the Commission, Years 1990-1999* (Austin, Texas, November 1, 2000), p. 1.

[3] Texas Comptroller of Public Accounts, Property Tax Division, "1999 Special District Information, Reported by Statewide County Tax Assessor/Collectors" (Austin, Texas, May 2000), pp.1-24; "Local Sales and Use Tax, SPD Sales and Use Tax," July 2000 (<http://www.window.state.tx.us/>

[taxinfo/local/spd.html](http://www.window.state.tx.us/taxinfo/local/spd.html)). (Internet document.); and *Economic Development Corporation Report Fiscal Years 1998 and 1999* (Austin, Texas, October 13, 2000), p. 1.

[4] US Department of Treasury, Office of State and Local Finance, *Federal-State-Local Fiscal Relations: Report to the President and the Congress* (Washington, DC, September 1985), p. ix and pp. 75-80.

[5] Texas Comptroller of Public Accounts, "Local Sales and Use Tax, SPD Sales and Use Tax," July 2000 (<http://www.window.state.tx.us/taxinfo/local/spd.html>). (Internet document.)

[6] Texas Comptroller of Public Accounts, Property Tax Division, "1999 Special District Information Reported by



*Statewide County Tax Assessor/Collectors*" (Austin, Texas, May 2000), pp. 1-24.

[7] Interview with Diego Abrego, team leader, Utilities and District Section, Water Permits and Resource Management Division, Texas Natural Resource Conservation Commission, Austin, Texas, July 17, 2000.

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## **Appendix B-2**



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS  
JOHN CORNYN

October 10, 2000

The Honorable Louis W. Conradt, Jr.  
Criminal District Attorney  
Kaufman County Courthouse  
Kaufman, Texas 75142

Opinion No. JC-0291

Re: Whether a county development district created under chapter 383 of the Local Government Code is authorized to levy ad valorem taxes and whether, under chapter 383, a county development district may construct infrastructure for a residential subdivision (RQ-0230)

Dear Mr. Conradt:

You ask whether a county development district created under chapter 383 of the Local Government Code is authorized to levy ad valorem taxes and whether, under chapter 383, a county development district may construct infrastructure for a residential subdivision.<sup>1</sup> We conclude that a county development district is not authorized to levy ad valorem taxes. We also conclude that a county development district may undertake only those projects that are consistent with the purpose of chapter 383 – “providing incentives for the location and development of projects in certain counties to attract visitors and tourists.” TEX. LOC. GOV'T CODE ANN. § 383.002 (Vernon 1999) (statement of legislative intent).

We begin with a brief review of Local Government Code, chapter 383, the County Development District Act, (“chapter 383” or the “Act”), which permits the commissioners court of a county with a population of 400,000 or less, on the petition of landowners in a proposed district, to create a county development district. *See id.* §§ 383.001 (title); .021 (creation of district); .022 (landowner petition).

The Act includes both a statement of legislative intent and legislative findings that indicate that the purpose of a county development district is to develop public improvements to attract visitors and tourists to the county. The statement of legislative intent provides that the chapter “furthers the public purpose of developing and diversifying the economy of this state by providing incentives for the location and development of projects in certain counties to attract visitors and tourists.” *Id.* § 383.002. Section 383.003 consists of the following legislative findings:

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<sup>1</sup>See Letter from Honorable Louis W. Conradt, Jr., Kaufman County Criminal District Attorney, to Honorable John Cornyn, Texas Attorney General (May 3, 2000) (on file with Opinion Committee) [hereinafter Request Letter].

(a) Small and medium-sized counties in this state need incentives for the development of public improvements to attract visitors and tourists to those counties, and those counties are at a disadvantage in competing with counties in other states for the location and development of projects that attract visitors by virtue of the availability and prevalent use of financial incentives in other states.

(b) The means and measures authorized by this chapter are in the public interest and serve a public purpose of this state in promoting the economic welfare of the residents of this state by providing incentives for the location and development in certain counties of this state of projects that attract visitors and tourists and that result in employment and economic activity.

(c) The creation of development districts is essential to the accomplishment of Section 52-a, Article III, Texas Constitution, and to the accomplishment of the other public purposes stated in this chapter and further serves the purpose of Section 59, Article XVI, and Section 52, Article III, Texas Constitution.

*Id.* § 383.003.

Section 383.061 provides that a county development district has the following general powers:

(a) A district may acquire and dispose of projects and has all of the other powers, authority, rights, and duties that will permit accomplishment of the purposes for which the district was created.

(b) The district has the powers of a municipal management district created under Chapter 375 to the extent not inconsistent with this chapter.

(c) The district has the power to provide for general promotion and tourist advertising of the district and its vicinity and to conduct a marketing program to attract visitors, any of which may be conducted by the district pursuant to contracts for professional services with persons or organizations selected by the district.

*Id.* § 383.061. The term "project" is defined by reference to section 4B(a)(2) of the Development Corporation Act of 1979, *see id.* § 383.004(8), which provides as follows:

“Project” means land, buildings, equipment, facilities, and improvements included in the definition of that term under Section 2 of this Act, and includes job training as provided by Section 38 of this Act. For purposes of this section, the term includes recycling facilities, and land, buildings, equipment, facilities, and improvements found by the board of directors to:

(A) be required or suitable for use for professional and amateur (including children’s) sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, learning centers, parks and park facilities, open space improvements, municipal buildings, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of those items;

(B) promote or develop new or expanded business enterprises, including a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, as well as any improvements or facilities that are related to any of those projects and any other project that the board in its discretion determines promotes or develops new or expanded business enterprises; or

(C) be required or suitable for the promotion of development and expansion of affordable housing, as defined by 42 U.S.C. Section 12745.

TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2) (Vernon Supp. 2000).

Subchapter E authorizes a county development district to issue bonds to defray the costs of a project. *See* TEX. LOC. GOV’T CODE ANN. §§ 383.081-.084 (Vernon 1999). Subchapter F expressly authorizes a county development district to impose a sales and use tax if authorized by a majority of the qualified voters of the district voting at an election called for that purpose. *See id.* § 383.101. The sales and use tax must be approved by the voters in the election to confirm the creation of the district, *see id.* §§ 383.030-.034, and the district’s board may subsequently increase or decrease the tax rate only with the approval of the electorate, *see id.* § 383.104. Taxes collected under subchapter F “may be used only for the purposes for which the district was created.” *Id.*

§ 383.105. In addition, section 352.107 of the Tax Code authorizes a county commissioners court in a county with a population of less than 400,000 to impose a hotel occupancy tax within the boundaries of a county development district and to remit the taxes to the district, which may use the taxes “for the purposes for which sales and use tax proceeds may be used by the district.” TEX. TAX CODE ANN. § 352.107 (Vernon Supp. 2000). A district may pledge the revenue derived from these taxes to the payment of bonds issued by the district. See TEX. LOC. GOV’T CODE ANN. § 383.105 (Vernon 1999); see also *id.* § 383.082(1) (authorizing board of district to provide for payment on bonds from taxes).

First, we consider whether a county development district is authorized to levy an ad valorem tax. In considering this question, we are guided by the legal principle that “[t]he power to tax belongs to the sovereignty. It can only be exercised by a subordinate corporate body when delegated to it either by the Constitution or by the legislature . . .” *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940). As a result, “such power cannot exist by implication. A political subdivision of a state . . . has no inherent power to levy taxes, and if the power exists at all, it must be expressly granted.” *Ripley v. Trinity River Canal and Conservancy Dist.*, 88 S.W.2d 752, 756 (Tex. Civ. App.—Dallas 1935, writ ref’d) (cited with approval in *Mann*, 142 S.W.2d at 948-49). The power to tax must be “plainly and unmistakably conferred.” *State v. Houston & Tex. Cent. Ry. Co.*, 209 S.W. 820, 822 (Tex. Civ. App.—Galveston 1919, no writ) (citation omitted) (cited with approval in *Mann*, 142 S.W.2d at 948). Finally, a statute conferring the power to tax “is to be strictly construed, and must be closely followed.” *Mann*, 142 S.W.2d at 948 (citation omitted). Accordingly, we review chapter 383 to determine whether the legislature has plainly and unmistakably conferred county development districts with the power to levy an ad valorem tax.

Chapter 383 does not plainly and unmistakably confer county development districts with the power to levy an ad valorem tax. Chapter 383 makes no mention of ad valorem taxes. The only tax that chapter 383 expressly authorizes a county development district to levy is the sales and use tax. Chapter 383 provides for this power and its execution in great detail. See TEX. LOC. GOV’T CODE ANN. §§ 383.030 (requiring temporary board of directors to conduct election in the district to confirm creation of the district and “authorize a sales and use tax”); .031 (requiring order calling an election to state “proposed rate of sales and use tax for the district”); .033 (required ballot language, including language regarding sales and use tax); .101 (authorizing sales and use tax); .102 (rules governing imposition, computation, administration, and governance of sales and use tax); .103 (permissible sales and use tax rates); .104 (procedures to abolish or change sales and use tax rate); .105 (use of sales and use tax); .106 (limitations on sales and use tax rate) (Vernon 1999). The detailed provision in chapter 383 for the sales and use tax suggests that the legislature did not intend county development districts to wield any other taxing authority.

Nor is there an independent constitutional basis for such a tax. The chapter 383 legislative findings state that a county development district “serves the purpose of Section 59, Article XVI, and Section 52, Article III, Texas Constitution,” *id.* § 383.003(c), two constitutional provisions that authorize county, road district, and conservation and reclamation district ad valorem taxes. See TEX.

CONST. art. III, § 52; *id.* art. XVI, § 59. Neither constitutional provision provides express authority for a county development district to levy an ad valorem tax without implementing legislation.

We have received several briefs urging us to conclude that county development districts are authorized to levy ad valorem taxes by reference to other statutory provisions. A brief submitted on behalf of the Kaufman County Development District No. 1, for example, contends that county development districts are authorized to levy ad valorem taxes by section 383.081 of the Local Government Code, which provides that a district may issue bonds “for the purpose of defraying all or part of the cost of any project as provided in this chapter.” TEX. LOC. GOV’T CODE ANN. § 383.081 (Vernon 1999).<sup>2</sup> Section 383.081 also states that sections 375.201 through 375.208 of the Local Government Code apply to a county development district “to the extent not inconsistent with this chapter.” *Id.* Chapter 375 of the Local Government Code establishes municipal management districts. Sections 375.201 through 375.208 comprise subchapter J of chapter 375, which governs the authority of municipal management districts to issue bonds. The brief contends that because section 375.201 permits a municipal management district to issue bonds payable from ad valorem taxes, county development districts must also have the authority to levy ad valorem taxes to pay their bonds. *See* KCDD Brief, note 2, at 9-10.

The brief also relies on section 383.061(b), which provides that a county development district “has the powers of a municipal management district created under Chapter 375 to the extent not inconsistent with this chapter.” TEX. LOC. GOV’T CODE ANN. § 383.061(b) (Vernon 1999); *see also* KCDD Brief, note 2, at 10-12. The brief notes that under section 375.091(a), a municipal management district has the same powers as a conservation and reclamation district created under article XVI, section 59 of the Texas Constitution, “including those conferred by Chapter 54, Water Code,” *see* TEX. LOC. GOV’T CODE ANN. § 375.091(a) (Vernon 1999), and that municipal utility districts created under chapter 54 of the Water Code are expressly authorized to levy ad valorem taxes to pay bonds, *see* TEX. WATER CODE ANN. § 54.601 (Vernon 1972). *See* KCDD Brief, note 2, at 10-12.

We disagree that references in chapter 383 to provisions in chapter 375 establish express statutory authority for county development districts to levy ad valorem taxes. Given the special nature of the power to levy ad valorem taxes and the courts’ insistence that the power to tax be expressly conferred, we believe that had the legislature intended to authorize county development districts to levy ad valorem taxes, it would have made express mention of that power in chapter 383. Indeed, we believe that the comparison between the chapters 375 and 383 is instructive. Unlike chapter 383, which makes no mention of ad valorem taxes, chapter 375 expressly authorizes municipal management districts to levy ad valorem taxes. Section 375.091(c) expressly provides that a municipal management district has all the powers of road districts and road utility districts created under article III, section 52 of the Texas Constitution, “including the power to levy ad valorem taxes for . . . roads and turnpikes” and “mass transit systems.” TEX. LOC. GOV’T CODE ANN.

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<sup>2</sup>Brief from Mr. Tom Leonard, Leonard, Hurt, Frost, Lilly & Levin, P.C., Attorneys at Law, to Honorable John Cornyn at 9-10 (July 23, 2000) (on file with Opinion Committee) [hereinafter KCDD Brief].

§ 375.091(c) (Vernon 1999). In addition, chapter 375 specifically provides for the approval by the voters of any bonds payable from taxes. Under section 375.244, bonds payable from taxes may not be issued “unless approved by a majority or any larger percentage if required by the constitution of the qualified voters in the district voting at an election for that purpose.” *Id.* § 375.244(a). Chapter 383 contains no such provisions and it would not be appropriate for this office to insert them into the statute. *See Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981) (“[E]very word excluded from a statute must also be presumed to have been excluded for a purpose. Only when it is necessary to give effect to the clear legislative intent can we insert additional words or requirements into a statutory provision.”); *see also Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995) (stating that language excluded from a statute “must . . . be presumed to have been excluded for a purpose”).

Our conclusion that the power of a county development district to levy ad valorem taxes is not supported by general references to the statutory authority of other entities, with absolutely no mention of the power to levy ad valorem taxes in chapter 383, is also supported by comparison of chapter 383 to other statutes that expressly provide the authority to levy ad valorem taxes in accordance with chapter 375. Significantly, the legislature has expressly vested a number of entities with the power to levy ad valorem taxes in accordance with chapter 375. Chapter 376 of the Local Government Code establishes ten specific municipal management districts. Eight of these districts are expressly provided “the power to impose ad valorem taxes . . . in accordance with Chapter 375.” *See* TEX. LOC. GOV'T CODE ANN. §§ 376.012(a)(5) (powers of Houston Downtown Management District); .052(a)(4) (powers of Westchase Area Management District); .090(a)(4) (powers of Greater Greenspoint Management District); .122(4) (powers of First Colony Management District); .221(4) (powers of Harris County Improvement District No. 2); .271(4) (powers of Greater East End Management District); .313(c) (powers of Midtown Management District);<sup>3</sup> .311(4) (powers of East Downtown Management District)<sup>4</sup> (Vernon 1999 & Supp. 2000). In addition, one of the special municipal management districts is authorized to levy ad valorem taxes for a purpose specified in chapter 375, but in accordance with chapter 49 of the Water Code, rather than chapter 375. *See id.* § 376.160(6) (Vernon Supp. 2000) (powers of Upper Kirby Management District). Chapter 383 lacks any such express reference to the authority to levy ad valorem taxes in accordance with chapter 375. If the legislature had intended to vest county development districts with the authority to levy ad valorem taxes in accordance with chapter 375, it would have done so expressly, as it did in these statutes in chapter 376. This office cannot insert the power to levy an ad valorem tax into chapter 383. *See Laidlaw Waste Sys. Inc.*, 904 S.W.2d at 659; *Cameron*, 618 S.W.2d at 540.

Finally, where a statute provides for and limits a power in some detail, it is not appropriate to adopt additions to that power by statutory reference to the powers of similar entities, even where the legislature has generally referenced those other entities' powers. *See San Antonio Union Jr. College Dist. v. Daniel*, 206 S.W.2d 995, 997 (Tex. 1947) (refusing to find junior college district

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<sup>3</sup>As added by Act of May 26, 1999, 76th Leg., R.S., ch. 1017, § 1, 1999 Tex. Gen. Laws 3801.

<sup>4</sup>As added by Act of May 29, 1999, 76th Leg., R.S., ch. 1493, § 1, 1999 Tex. Gen. Laws 5141.



authority to issue refunding bonds in referenced statutes governing school districts because legislature spoke specifically on purposes for which junior college district could issue bonds; “we may reasonably suppose that it did so fully. . . . [The statute] is complete within itself and therefore exclusive.”). Because the legislature has spoken specifically with respect to the taxes a county development district is authorized to levy, we may reasonably conclude that it has done so fully and exclusively. Given that chapter 383 speaks fully and exclusively to county development districts’ authority to tax, it is not appropriate to incorporate the power to levy an ad valorem tax by reference to the powers of municipal management districts under chapter 375. *Cf. id.* And, given that chapter 383 fully and exclusively governs the authority of a county development corporation to levy taxes, the power to levy ad valorem taxes granted to municipal management districts by chapter 375 is inconsistent with the authority conferred on county development districts by chapter 383. *See* TEX. LOC. GOV’T CODE ANN. §§ 383.061(b) (stating that “[t]he district has the powers of a municipal management district created under Chapter 375 to the extent not inconsistent with this chapter.”); .081 (“Sections 375.201 through 375.208 [governing the authority of a municipal management district to issue bonds] apply to a district to the extent not inconsistent with this chapter.”) (Vernon 1999) (emphasis added).

Next, we address whether a county development district may construct infrastructure for a new residential subdivision. *See* Request Letter, *supra* note 1, at 3. We understand that the county development district in your county has undertaken a project to finance water, sewer, drainage and road facilities to serve homes over 150 acres, an elementary school, an office building and strip mall, a day care facility, 120 acres of parks and open space, a swim center, a church, 50 acres of right-of-way and streets, and water supply and sewage treatment facilities to serve an additional 400 acres. *See* KCDD Brief, *supra* note 2, at 3. We conclude that a county development district is not authorized to construct infrastructure for a residential subdivision unless the project will promote and develop tourism in the county.

A county development district is authorized to “acquire and dispose of projects and has all of the other powers, authority, rights, and duties that will permit accomplishment of the purposes for which the district was created.” TEX. LOC. GOV’T CODE ANN. § 383.061(a) (Vernon 1999); *see also id.* § 383.105 (county development district may use sales and use taxes collected under chapter 383 only for the “purposes for which the district was created”). Although the term “project” is broadly defined by reference to a definition of that term in the Development Corporation Act of 1979, *see id.* § 383.004(8) (defining “project” by reference to article 5190.6, section 4B(a)(2) of the Revised Civil Statutes), various provisions of chapter 383 make it clear that county development district projects must be limited to the purpose of attracting visitors and tourists. As its statement of legislative intent conveys, the overarching purpose of chapter 383 is to provide “incentives for the location and development of projects in certain counties to attract visitors and tourists.” *Id.* § 383.002. That a county development district is limited to projects consistent with this purpose is also clear from the legislative findings in section 383.003, which states that smaller counties need “incentives for the development of public improvements to attract visitors and tourists to those counties,” *id.* § 383.003(a), and declares that the means and measures authorized by chapter 383 serve the public purpose of promoting economic welfare by providing incentives for “projects that

attract visitors and tourists and that result in employment and economic activity,” *id.* § 383.003(b). Furthermore, a petition proposing a county development corporation must state that the district “will serve the purpose of attracting visitors and tourists to the county,” *id.* § 383.023(5), and, upon receiving a petition, the commissioners court must determine whether a proposed district and project “would serve the public purpose of attracting visitors and tourists to the county,” *id.* § 383.027.

In support of the proposition that a county development district may construct residential development infrastructure, it has been suggested that, under chapter 383, the term “project” includes any improvement that causes people to come and go from an area because, although the term “tourist” means a person who travels to a destination for recreation or pleasure, the word “visitor” should be broadly defined to mean “a person who goes or comes to a particular place” for any other reason. KCDD Brief, *supra* note 2, at 18. The brief submitted by the Kaufman County Development District No. 1 contends, for example, that the term “visitor” should be construed to include people who come to a location to purchase houses, to work in office and retail buildings, to build homes, to perform construction contracts, to operate parks, roads, and utility systems, or to sell goods and services. *See id.* at 18-19. We disagree with this expansive reading of the term for two reasons.

First, we believe that it is clear from the face of chapter 383 that the phrase “visitors and tourists” is intended to refer to people who travel for recreation or pleasure, rather than people who come and go from an area for any reason. The ballot language for an election approving the creation of a county development district and the sales and use tax levy must state that the district is created and the tax is to be used “for the promotion and development of tourism,” TEX. LOC. GOV’T CODE ANN. § 383.033(b) (Vernon 1999). Similarly, the ballot language in an election to decrease or abolish the sales and use tax must indicate that the tax is “used for the promotion and development of tourism.” *Id.* § 383.104(b); *see also Robbins v. Limestone County*, 268 S.W. 915, 919 (Tex. 1925) (taxes levied and collected for particular purpose may not be diverted to purposes other than for which they were voted). The legislature’s selection of this language to inform voters of the purpose of a county development district indicates that the legislature intended county development districts to undertake projects to promote and develop tourism rather than general, everyday comings and goings.

Furthermore, chapter 383’s statement of purpose and legislative findings establish that the Act is intended to foster economic development by authorizing projects that attract tourists rather than general economic development. By contrast, a number of other statutes establish special entities, such as municipal management districts and development corporations, to finance projects to promote general economic development. *See, e.g.,* TEX. LOC. GOV’T CODE § 375.001(b) (Vernon 1999) (“The creation of each [municipal management] district is necessary to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the commercial areas of municipalities and metropolitan areas of this state.”); TEX. REV. CIV. STAT. ANN. art. 5190.6 (Vernon 1987 & Supp. 2000) (authorizing creation of development corporations to promote business development). Chapter 383 does not authorize general economic development projects.

As we have noted, chapter 383 vests county development districts with the powers of municipal management districts created under chapter 375. Although one could argue that chapter 383 vests county development districts with the general authority to promote economic development by reference to chapter 375, this construction is foreclosed by chapter 383's clear statement of purpose and the legislative findings. See TEX. LOC. GOV'T CODE ANN §§ 383.002, .003 (Vernon 1999). The general purpose of municipal management districts to promote general economic development is inconsistent with the more narrow purpose of county development districts to promote the economic welfare of residents of this state by providing for projects that attract visitors and tourists. See *id.* § 383.061(b) (noting that "[t]he district has the powers of a municipal management district created under Chapter 375 to the extent not inconsistent with this chapter.") (emphasis added). Clearly, the purpose of chapter 383 is more limited in scope, and a county development district's authority to undertake projects is so limited.

Second, the Code Construction Act provides that words and phrases are to be read in context and construed according to the rules of grammar and common usage; words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, are to be construed accordingly. See TEX. GOV'T CODE ANN. § 311.011 (Vernon 1998). The phrase "visitors and tourists" is used in several statutes that provide financing mechanisms for public improvements. In each case, the pertinent governmental entity is authorized to finance improvements related to the tourist and travel industry as opposed to general economic development. See, e.g., *id.* § 1371.001(2)(C) (Vernon 2000) (authorizing county to issue securities for "a public improvement . . . that serves the purpose of attracting visitors and tourists to the county, *including a civic center, auditorium, exhibition hall, coliseum, stadium, or parking area*") (emphasis added); *id.* § 1477.302(1) (authorizing certain counties to construct "a public improvement or facility to attract visitors or tourists to the county, *including a civic center, a civic center building, an auditorium, an exhibition hall, a coliseum, stadium, or other sports facility*") (emphasis added); TEX. LOC. GOV'T CODE ANN. § 306.032(b), (c) (Vernon 1999) (authorizing certain municipal park board to construct "*public parks, playgrounds, or other facilities that serve the purpose of attracting visitors and tourists to the municipality*" and to manage and control other facilities that serve that purpose, including "*parks[,] . . . civic centers, civic center buildings, auditoriums, exhibition halls, or coliseums[,] marinas or cruise ship terminal facilities[,] . . . hotels or motels[,] . . . , parking . . . , [and] trolley transportation systems*") (emphasis added).

We note in particular that chapters 351 and 352 of the Tax Code authorize cities and counties to collect hotel occupancy taxes, which may be used only to promote tourism and the convention and hotel industry. See TEX. TAX. CODE ANN. §§ 351.101 (Vernon Supp. 2000) (municipal hotel occupancy tax to be used "only to promote tourism and the convention and hotel industry"); 352.1015(e) (county hotel occupancy tax to be used "in a manner directly enhancing and promoting tourism and the convention and hotel industry"). Chapter 352 authorizes counties of a certain population to use the county hotel occupancy tax for "general promotion and tourist advertising of the county and its vicinity and conducting a solicitation program to attract conventions and visitors, any of which may be conducted by the county or through contracts with persons or organizations

selected by the county.” *Id.* § 352.101(3). Chapter 383 uses almost identical language, authorizing a county development district “to provide for general promotion and tourist advertising of the district and its vicinity and to conduct a marketing program to attract visitors, any of which may be conducted by the district pursuant to contracts for professional services with persons or organizations selected by the district.” TEX. LOC. GOV’T CODE ANN. § 383.061(c) (Vernon 1999). Clearly, these two provisions use the words “tourist” and “visitor” in the same way.

The Kaufman County Development District No. 1 brief relies on chapter 351 of the Tax Code’s definition of the term “tourist” in section 351.001(7) as “an individual who travels from the individual’s residence to a different municipality, county, state, or country for pleasure, recreation, education or culture,” TEX. TAX CODE ANN. § 351.001(7) (Vernon Supp. 2000). The brief suggests that the term “visitor” must necessarily refer to people who travel for any other purposes. *See* KCDD Brief, *supra* note 2, at 18-21. We believe, however, that section 351.001 supports the opposite conclusion. Legislative intent is to be determined from the entire act and not simply from isolated portions of the act. *Jones v. Fowler*, 969 S.W.2d 429, 432 (Tex. 1998). Subsection (9) of section 351.001, which the brief appears to overlook, defines the phrases “[v]isitor information center” or “tourism information center” as “a building or a portion of a building used to distribute or disseminate information to tourists,” TEX. TAX CODE ANN. § 351.001(9) (Vernon Supp. 2000), indicating that the words “visitor” and “tourist” have much the same meaning.

In sum, based on chapter 351 of the Tax Code and the other statutes authorizing public improvements to attract visitors and tourists, we believe that the phrase “visitors and tourists” has acquired a technical meaning in public finance law of this state that denotes people who travel to a destination for recreation or pleasure as opposed to people who come and go from a location in the course of everyday activities. In light of the plain language of chapter 383 and this technical meaning of the phrase “visitors and tourists,” we conclude that a county development district is limited to projects that will promote tourism in the county. Accordingly, we conclude that chapter 383 does not authorize a county development district to undertake a project that will not promote tourism in the county. Although we cannot exclude the possibility as a matter of law, it seems highly unlikely that a residential subdivision would promote tourism in the county. However, whether a particular project will promote tourism in the county is a question of fact for the reasonable determination of the county commissioners court in the first instance, subject to judicial review for abuse of discretion. This office, which does not find facts,<sup>5</sup> cannot resolve whether a particular project will promote tourism in the county or whether a commissioners court has abused its discretion in making that determination. *Cf.* Tex. Att’y Gen. LO-95-072, at 3 (“Although it seems unlikely that the construction of sewer facilities in a residential subdivision would promote or develop new or expanded business enterprises [within the meaning of the Development Corporation Act of 1979], we cannot exclude the possibility as a matter of law. Furthermore, a board’s determination would be reviewed under an abuse of discretion standard. Whether the board abused

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<sup>5</sup>See Tex. Att’y Gen. Op. Nos. JC-0020 (1999) at 2 (“[I]nvestigation and resolution of fact questions . . . cannot be done in the opinion process.”); M-187 (1968) at 3 (“[T]his office is without authority to make . . . factual determinations.”); O-2911 (1940) at 2 (“[T]his . . . presents a fact question which we are unable to answer.”).

its discretion would require the resolution of factual issues and therefore would be beyond the purview of the opinion process.”).

**S U M M A R Y**

A county development district created under chapter 383 of the Local Government Code is not authorized to levy ad valorem taxes. A county development district may undertake a project only if it is consistent with the purpose of chapter 383 – “providing incentives for the location and development of projects in certain counties to attract visitors and tourists.” TEX. LOC. GOV'T CODE ANN. § 383.002 (Vernon 1999) (statement of legislative intent).

Yours very truly,

A handwritten signature in black ink that reads "John Cornyn". The signature is written in a cursive, flowing style.

JOHN CORNYN  
Attorney General of Texas

ANDY TAYLOR  
First Assistant Attorney General

CLARK KENT ERVIN  
Deputy Attorney General - General Counsel

SUSAN D. GUSKY  
Chair, Opinion Committee

Mary R. Crouter  
Assistant Attorney General - Opinion Committee

# **Appendix B-3**

# SPECIAL DISTRICT COMPARISON CHART

**County Assistance Districts, Municipal Management Districts, Municipal Development Districts, County Development Districts, Public Improvement Districts, and County Public Improvement Districts**

	<b>CAD</b>	<b>MMD</b>	<b>MDD</b>	<b>CDD</b>	<b>PID</b>	<b>CPID</b>
<b>AUTONOMY</b>	Political subdivision of the State.	Political subdivision of the State.	Political subdivision of the State.	Political subdivision of the State.	Arm of the City.	Arm of the County.
<b>CREATION</b>	Commissioners Court calls an election by voters within proposed district to authorize creation and imposition of sales tax.	Upon petition of owners of majority in value of property in proposed district presented to TNRCC after hearing, or by special legislation. Confirmation election required.	City calls an election by voters within proposed district to authorize creation and imposition of sales tax.	Upon petition of all land owners in proposed district presented to Commissioners Court, after public hearing. Confirmation election required.	Upon petition presented to city, or upon city's own initiative, after hearing. City may obtain a feasibility report prior to hearing.	Upon petition presented to Commissioners Court, or upon County's own initiative, after hearing. A city may object within 30 days of County's action if district is within its corporate limits or its ETJ.
<b>STATUTORY AUTHORITY</b>	Ch. 384, Local Government Code	Ch. 375, Local Government Code	Ch. 377, Local Government Code	Ch. 383, Local Government Code	Ch. 372, Local Government Code	Ch. 372, Local Government Code
<b>APPLICATION</b>	Only in counties less than 45,000 population that have an area within MTA or regional transportation authority. (Waller and Rockwall Counties)	In metropolitan areas devoted to commercial development. May apply to a city's ETJ if value is at least \$500 million. May not be created in a city of over 1.5 million unless the district is over 3.5 miles from the courthouse or the district is created by special act.	In any municipality located in more than one county.	Only in counties up to 400,000 population.	In cities. The petition must describe the land to be included in the district.	In any county; may include lands within a city if city consents. The petition must describe the land to be included in the district.
<b>APPLICATION</b>	Roads, police service, museums, libraries and parks, and services that benefit public health or welfare.	To supplement and not supplant municipal services of a city. Public works projects, aesthetic improvements, and parks	To plan and pay costs of development projects such as convention centers, civic events, civic center hotels or auditoriums.	Any project authorized in 4B of Development Corporation Act, Art. 5190, to attract visitors and tourists.	Public works projects, aesthetic improvements, parks, libraries, sidewalks and streets, pursuant to a 5 year service plan.	Same as PID.

	<b>CAD</b>	<b>MMD</b>	<b>MDD</b>	<b>CDD</b>	<b>PID</b>	<b>CPID</b>
<b>LOCATION</b>	Sec "application".	Inside city in areas devoted primarily to commercial development with 25,000 or in an area devoted to commercial activity, or created legislatively.	Within the boundaries of a municipality.	Within one or more counties and can be inside city.	Inside or in the extra-territorial jurisdiction of a city.	In a county.
<b>DIRECTORS</b>	Commissioners Court is the governing body.	Appointed by the TNRCC initially; thereafter vacancies filled by remaining Board. If created by special act, the bill will specify.	Appointed by governing body of city.	Appointed by Commissioners Court.	City Council acts as governing body. City may appoint property owners as advisory body.	Commissioners Court is the governing body. County may appoint property owners as advisory body.
<b>FINANCING/ TAXING POWERS</b>	After voter approval, a sales tax may be imposed within CAD boundaries; no ad valorem taxes may be imposed. Counties may issue bonds. CADs are not authorized to issue bonds.	Assessments usually levied on a benefits basis, but can levy ad valorem property tax after election. Impact fees may be imposed. Bonds may be issued.	After voter approval, a sales tax may be imposed within MDD boundaries; ad valorem property taxes may be imposed. Bonds may be issued.	Sales tax and hotel/motel tax only; may issue bonds.	Assessments levied against property in the district on a benefits basis. City may levy a tax to support district. Bonds may be issued.	Assessments levied against property in the district on a benefits basis. County may levy a tax to support district. Bonds may be issued.
<b>COMPETITIVE BIDDING</b>	Not addressed.	Yes, with provisions for waiver under certain circumstances.	Not addressed.	Same as MMD unless under a contract with a government or Art. 5190 Corp.	Not addressed by city is required to bid publicly.	Not addressed but county is required to bid publicly.
<b>EMINENT DOMAIN</b>	Not addressed.	No	Not addressed.	Yes unless in a city. Only land in the district may be condemned, only for water and sewer services.	Not addressed but cities have condemnation powers.	Not addressed by counties have condemnation powers.



	<b>CAD</b>	<b>MMD</b>	<b>MDD</b>	<b>CDD</b>	<b>PID</b>	<b>CPID</b>
<b>ANNEXATION/ EXCLUSION</b>	Commissioners Court may call an election in an area to determine if the area should be included in an existing district. Such area may not be in a transportation authority.	Pursuant to Ch. 49, Water Code and on approval of governing body of municipality (exclusion only if no bonds outstanding).	Not addressed.	Before issuance of bonds, the Board on its own or upon request of a landowner may petition Commissioners Court for addition or exclusion.	Only after notice and hearing.	Only after notice and hearing.
<b>DIVISION</b>	No	No	No	No	No	No
<b>RECREATION AL FACILITIES</b>	Yes	Yes	Convention centers, auditoriums, or other improvements authorized by 4B of Art. 5190 (Development Corporation Act.)	Yes	Yes	Yes
<b>TERMINATION</b>	Commissioners Court may call an election to change or repeal the sales tax.	By board action, by petition of owners of 75% of value in district on 75% of surface acre or by city council vote but not until indebtedness is paid or defeased.	No provision for termination but voters can change or repeal sales tax.	By Commissioners Court upon petition of the Board or by agreement of Board and city if district is in city or annexed.	Upon petition of owners of a majority in value of property in district, after hearing, and after satisfaction of all obligations.	Upon petition of owners of a majority in value of property in district, after hearing, and after satisfaction of all obligations.

- CAD** County Assistance District
- MMD** Municipal Management District
- MDD** Municipal Development District
- CDD** County Development District
- PID** Public Improvement District
- CPID** County Public Improvement District

# SPECIAL DISTRICT COMPARISON CHART

## Water Control & Improvement Districts, Fresh Water Supply Districts, and Municipal Utility Districts

	<b>WCID</b>	<b>FWSO</b>	<b>MUD</b>
<b>AUTONOMY</b>	Political subdivision of the State.	Political subdivision of the State.	Political subdivision of the State.
<b>CREATION</b>	Upon petition of owners of majority in value of property in proposed district presented to Commissioners Court, after hearing. Confirmation election required. Petition must be filed with TNRCC if located in more than one county. City consent required.	Upon petition of owners of majority in value of property in proposed district presented to Commissioners Court, after hearing. Confirmation election required. City consent required.	Upon petition of owners of majority in value of property in proposed district presented to TNRCC after hearing, or by special legislation. Confirmation election required. City consent required.
<b>STATUTORY AUTHORITY</b>	Ch. 51, Water Code	Ch. 53, Water Code	Ch. 49, 50 & 54, Water Code
<b>APPLICATION</b>	In any county; may include lands within a city.	In any county; may include lands within a city.	In any county; may include lands within a city.
<b>PURPOSE</b>	Water supply, drainage, construction of reservoirs, flood prevention, bridge and culvert construction.	Conserve transport and distribute fresh water for domestic and commercial use.	Water, wastewater, drainage, and roads with special approvals.
<b>LOCATION</b>	Within one or more counties and can be within a city.	Within one or more counties and can be within a city.	Within one or more counties and can be within a city.
<b>DIRECTORS</b>	Appointed by Commissioners Court or TNRCC initially; thereafter elected by voters.	Appointed by Commissioners Court or TNRCC initially; thereafter elected by voters.	Appointed by TNRCC or named in special act initially; thereafter elected by voters in the district.
<b>FINANCING/ TAXING POWERS</b>	After voter approval, taxes and maintenance taxes may be levied. Board may call a hearing to decide to tax on ad valorem or benefit basis. Bonds may be issued.	After voter approval ad valorem taxes and maintenance taxes may be levied. Bonds may be issued.	After voter approval, ad valorem property taxes and maintenance taxes may be levied. Impact fees, standby fees and user fees allowed. Bonds may be issued.
<b>COMPETITIVE BIDDING</b>	Yes	Yes	Yes
<b>EMINENT DOMAIN</b>	Yes	Yes	Yes
<b>ANNEXATION/ EXCLUSION</b>	Annexation; exclusion with certain prerequisites allowed.	Pursuant to Ch. 49, Water Code.	Pursuant to Chapter 49, Water Code. No exclusion after tax bonds have been issued, unless bond holders consent.

	<b>WCID</b>	<b>FWSD</b>	<b>MUD</b>
<b>DIVISION</b>	Sec. 51.748- an original district may divide upon petition of any landowner or on boards' own motion, if there is no outstanding debt. A previously divided district in more than two counties and more than one river authority that has no debt may divide upon petition of a landowner or on board's own motion. Election is required of voters in original district.	Sec. 53.029 – a district located in a county of 1.18 million or more may be divided if there is no outstanding debt and the district is not levying taxes. Election is required of voters in original district.	No
<b>RECREATIONAL FACILITIES</b>	No	No	Tax revenues or tax bond proceeds may not be used for recreational facilities but revenues from other sources may.
<b>TERMINATION</b>	By Board action alone or upon section of 20% of voters based upon hearing. Upon voter approval dissolution bonds may be issued. TNRCC may dissolve if inactive.	Not addressed. See Ch. 49 Water Code. TNRCC may dissolve if inactive.	By Board action, by TNRCC action, by annexation by a city. TNRCC may dissolve if inactive.

**WCID Water Control & Improvement District**

**FWSD Fresh Water Supply District**

**MUD Municipal Utility District**

# **Appendix C-1**

# COUNTY POWERS & DUTIES

*As Modified by the 77<sup>th</sup> Texas Legislature, 2001*



OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS  
JOHN CORNYN



OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS  
JOHN CORNYN

Dear County Judge:

Enclosed is a list of counties' powers and duties as they relate to the following subjects:

- regulating land use;
- regulating structures;
- platting and subdividing land; and
- providing and regulating water, sewer, and other utility service to residential property.

This list is compiled after every Legislative Session pursuant to Local Government Code Section 240.903, and amendments or additions are indicated in parenthesis below the citation in the left-hand column.

The next handbook will be distributed after the 2003 Legislative Session, but until that time if you need further information or if my office can be of any help on any other matter, please contact the County Affairs staff.

Sincerely,

JOHN CORNYN  
Attorney General of Texas

**County Powers  
and Duties**

Regulation of land use and structures; platting and subdividing of land; and regulation of water, sewer, and, other utility service to residential property.

**Drinking Water**

*Health and Safety Code*

Sec. 341.048

A county may seek injunctive relief and damages for violations of public drinking water standards.

*Local Government Code*

Sec. 302.002

(amended in 2001)

A county may enter into a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of county facilities.

**Facilities**

*Vernon's Revised*

*Civil Statutes*

Art. 1182n

An eligible county may issue negotiable bonds and certificates of obligation to build or improve permanent facilities for use by an institution of higher learning in the county.

*Family Code*

Section 153.014

(added in 2001)

A county may establish a visitation center or a visitation exchange facility for the purpose of carrying out the terms of a court order providing for the possession of or access to a child.

*Government Code*

Sections 442.081-.083

Applies only to a county with a historic courthouse. Under these sections, counties may apply for and receive funds from the Texas Historical Commission to restore or preserve historical courthouses.

Subtitle F, Title 4,

Chapter 486

A county that qualifies as an adversely affected defense-dependent community may receive assistance from the Texas Department of Commerce.

*Local Government Code*

Sec. 180.004  
(added in 2001)

A county shall make a reasonable effort to accommodate a county employee who is determined by a physician to be partially physically restricted by a pregnancy.

Sec. 261.001 - .003

A county may exercise the right of eminent domain for authorized public purposes.

Sec. 262.0241  
(amended in 2001)

A county that has a population of 20,000 or less and owns not more than one golf course does not need to follow the competitive bidding and proposal procedures for the purchase of management services for the golf course or for a retail facility owned by the county and located on the golf course, or for the purchase of golf course landscape maintenance services.

Sec. 263.051

A county may lease land that was acquired for an airport.

Sec. 263.052

A county may lease land, housing, or facilities acquired from the federal government.

Sec. 263.203

A county judge may convey to the federal government an easement or other interest in land necessary for the construction, operation, and maintenance of a flood control, river or harbor improvement, water conservation, or other civil project to be constructed by the federal government.

Sections 301.001  
and 301.002

The commissioners court of a county and the governing body of a municipality in that county may jointly erect, acquire, equip, maintain, and operate a recreational or cultural facility.

Sec. 302.002  
(amended in 2001)

A county may enter into a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of county facilities.



Sec. 316.022	A commissioners court of a county with a population of 1.2 million or more may enter into a contract with a nonprofit organization authorizing the nonprofit to manage and operate a museum, historical site, historical building, or similar building or site and charge and collect a fee from the general public for admission. The commissioners must set the fee for admission.
Sec. 381.002 (amended in 2001)	A commissioners court may appoint a historical commission to initiate and conduct programs suggested by the court and the Texas Historical Commission for preservation of the county's historical cultural resources.
Sec. 319.002 - .004	<p>A county may establish and maintain a museum, building, or other improvement to house exhibitions.</p> <p>A county may contract for the complete management of such facilities. A county may lease such buildings, improvements, or exhibits; a county may permit the use of such facilities for any public purpose determined to be of benefit to the county or its residents.</p>
Sec. 321.001	A coastal county may establish and operate island parks.
Sec. 323.023 (amended in 2001)	Funds collected in the county law library fund may be used to purchase, lease, or maintain library materials, equipment, furniture, shelving, computers, and software. The funds may also be used to contract for access to electronic research networks for judges in the county.
Sec. 331.001	A county may operate and maintain parks.
Sec. 331.008	A county may cooperate with cities on joint park, playground, and museum projects.
Chapter 334	This chapter applies only to a county with a population of more than 2.2 million and only if the county creates a sports and community venue district.

- Sec. 334.021 A county, by resolution, may provide for the planning, acquisition, establishment, development, construction, or renovation of a venue project.
- Sec. 334.022 A copy of the resolution must be sent to the Comptroller.
- Sec. 334.0235 If the resolution contains a proposed sales and use tax that would result in the reduction of the tax rate of a rapid transit authority, a copy of the resolution must be sent to the authority.
- Sec. 334.024 After the comptroller and the rapid transit authority determine that the implementation of the resolution will not have a negative impact, the county may order an election to approve and implement the resolution.
- Sec. 334.041 A county may acquire, lease, convey, or otherwise dispose of property or an interest in property; contract with a public or private person or contract with or enter into an interlocal agreement with a school district, junior or community college district, or an institution of higher education. A county may not use revenue derived from *ad valorem* taxes to construct, operate, maintain, or renovate a venue that is part of an approved venue project.
- Sec. 334.0415 A county is prohibited from certain methods of financing if the county is contracting with a professional sports team to relocate and the team is under another contract with a different municipality or county, unless that municipality or county consents to the contract.
- Sec. 334.042 A county with an approved venue project shall establish by resolution a venue project fund. All money deposited in the fund is county property.
- Sec. 334.043 A county with an approved venue project may issue bonds or other obligations to pay the costs of the approved venue project.

Subchapter D  
Sec. 334.081 - .089

A county may impose a sales and use tax if the venue project is planned to be located in the county and the tax is approved at an election.

Subchapter E  
Sec. 334.101 - .115

A county may impose a tax on the rental in the county of a motor vehicle if the venue project is planned to be located in the county and the tax is approved at an election.

Subchapter F  
Sec. 334.151 - .157

A county may impose a tax on each ticket sold as admission to an event held at an approved venue project if the project is planned to be located in the county and the tax is approved at an election.

Subchapter G  
Sec. 334.201 - .207

A county may impose a tax on each motor vehicle parking in a parking facility of an approved venue project if the tax is approved at an election.

Subchapter H  
Sec. 334.251 - .258

A county may impose a tax on a person who pays to use or possess a hotel room if the project is planned to be located in the county and the tax is approved at an election.

Subchapter I  
Sec. 334.301 - .308

A county may impose a facility use tax on each member of a major league team that plays a professional sports game in an approved venue project if the project is planned to be located in the county and the tax is approved at an election.

Sec. 351.04155  
(added in 2001)

The sheriff may not make a disbursement from the commissary proceeds without commissioners court approval. The sheriff must provide the court with each contract he/she makes under this section within 10 days after the date of the contract.

*Health and Safety Code*  
Sec. 281.050

The commissioners court must approve the sale or lease of a hospital facility.

Sec. 281.051

The commissioners court must approve a contract entered into by a hospital district board with other governmental entities.

**On-Site Sewage  
(Septic Tanks)**

*Health and Safety Code*  
366.005

Electric utilities are required to compile a weekly list of new electric service connections and forward the list to the county judge, a county officer, or a designated county employee. That person must then forward the list to each authorized agent (which, under Sec. 366.031, may be a county or other local governmental entity) with jurisdiction over an address contained in the list. The authorized agent may use the list to implement and enforce rules relating to on-site sewage disposal systems. Finally, the county judge must forward the list compiled to each appraisal district and each emergency communication district in the county.

Sec. 366.011

Authorized agents have general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems and must administer Chapter 366 and the rules adopted under Chapter 366.

Sec. 366.014  
(amended in 2001)

An authorized agent may designate a person holding a license from the Texas Natural Resource Conservation Commission (TNRCC) to review permit applications, site evaluations, or planning materials or to adjust on-site sewage disposal systems.

Sec. 366.016

A state-designated agent may issue an emergency order concerning an on-site sewage disposal system.

Sec. 366.017

An authorized agent may require a property owner to repair a malfunctioning on-site sewage disposal system and may assess an administrative or civil penalty if not repaired.

Sec. 366.031	To be designated an authorized agent, a local governmental entity must notify the TNRCC that the entity wants to regulate the on-site sewage disposal systems in its jurisdiction; hold a public hearing and adopt an order or resolution; and submit the order or resolution to the commission.
Sec. 366.035	A local governmental entity that applies to the Texas Water Development Board for financial assistance under a program for economically distressed areas must take all actions necessary to receive and maintain a designation as an authorized agent.
Sec. 366.036	If a local governmental entity that has been designated as an authorized agent intends to apply to the Texas Water Development Board for financial assistance under a program for economically distressed areas, the commissioners court must prepare a map of the county area outside the limits of municipalities, showing where different types of on-site sewage facilities may and may not be appropriately located.
Sec. 366.051	Authorized agents issue the permits required to construct, alter, repair, extend, or operate an on-site sewage disposal system.
Sec. 366.0515	Authorized agents by order or resolution may condition approval of permit on the system's owner contracting for maintenance of the system.
Sec. 366.055	An authorized agent must review the proposal and inspect the disposal system to ensure compliance.
Sec. 366.056	An authorized agent may approve or disapprove an on-site sewage disposal system based on the inspection.
<b>Parks and Wildlife</b> <i>Local Government Code</i> Sec. 240.001	A county may identify non-domestic animals that are dangerous and in need of control.

Sec. 240.002  
(amended in 2001)

A county may regulate or prohibit the keeping of a wild animal at a residence.

*Parks & Wildlife Code*  
Sec. 13.304

A county may construct and maintain public recreational facilities and may enter into agreements with local, state, and federal agencies to do so.

Sec. 31.092

A county may issue water safety regulations for public water that is within the county but outside city authority.

Sec. 83.005

Counties may participate in the study of, preparation for, and creation of a habitat conservation plan.

**Platting**

*Local Government Code*

Chapter 232, Subchapter A, Sections 232.001- .010, apply statewide to subdivisions, except subdivisions falling under Chapter 232, Subchapter B (see below).

Sec. 232.001

When subdividing land located outside the limits of a municipality, the owner must generally have a plat prepared and have the plat filed and recorded with the county clerk.

232.0015

A county may classify divisions of land and determine whether specific divisions must be platted. Platting is not required for certain types of divisions of land.

Sec. 232.002

A county must approve subdivision plats meeting state and county requirements.

Sec. 232.0025

A county must prepare a written list of the documentation and other information that must be submitted with a plat application. A county must also notify applicants when an application is missing required documentation. Once a plat application is complete, a county must usually take final action on it within 60 days.

Sec. 232.003

A county may set specifications for subdivisions regarding road construction and drainage systems. A county may require a subdivider to include in all contracts with purchasers of subdivided land a statement describing the availability of water in the subdivision. A county may also require a subdivider to execute a bond in an amount adequate to ensure proper construction of roads, streets, and drainage. A county may adopt specifications that provide for efficient stormwater runoff in the subdivision and coordinate subdivision drainage with area drainage; a county may require lot and block monumentation to be set by a registered professional surveyor before recordation of the plat.

Sec. 232.0031

A county may not impose stricter standards for streets or roads in a subdivision than it imposes on itself for streets or roads with similar traffic.

Sec. 232.0032

When a person submits a plat for the subdivision of land for which the source of the water supply intended for that subdivision is groundwater under the land, the commissioners court may require the plat application to have attached a statement prepared by an engineer certifying that adequate groundwater is available for the subdivision.

Sec. 232.004

If the commissioners court requires the owner of a tract to execute a bond before subdividing the tract, the bond must be adequate to insure proper and timely construction of the roads, streets, and drainage requirements.

Sec. 232.0048

If a member of a commissioners court or a member's spouse, parent, or child has a substantial interest in a subdivided tract, the member shall, before any vote or decision on plat approval, file an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. A violation is a Class A misdemeanor.

Sec. 232.005

At the request of the commissioners court, the county attorney or other prosecuting attorney for the county may file an action to enjoin a violation of the requirements established or adopted by the commissioners court or to recover damages resulting from a violation.

- Sec. 232.006 A county with a population of more than 2.2 million or a county that is contiguous to a county with a population of more than 2.2 million may elect to operate under this section. If the county makes the election, Sec. 232.005 does not apply.
- Sec. 232.007 A commissioners court may adopt minimum infrastructure requirements for a manufactured home rental community located outside a municipality.
- Sec. 232.008, .0085, .009 After providing public notice, a county may permit revisions or cancellations of a subdivision plat that has been filed for record with the county clerk if the revision or cancellation will not interfere with established rights of any owner of the subdivided land or if all owners agree to the revision or cancellation. The county must give notice to the owners by mail unless the plat revisions merely combine existing tracts.
- Sec. 232.010 The county may allow conveyance of portions of lots previously platted by metes and bounds description without revising the plat.
- Chapter 232,  
Subchapter B Chapter 232, Subchapter B, Sections 232.021-232.043 (summarized below), apply only to certain counties, any part of which is within 50 miles of an international border, and only to subdivisions of two or more lots intended primarily for residential use and located outside the corporate limits of municipalities.
- Sec. 232.024 The commissioners court in a county near an international border shall refuse to approve a residential subdivision plat unless it complies with requirements specified in Chapter 232, Subchapter B. The commissioners court may not approve a plat if any part of the plat applies to land intended for residential housing and lies in a flood plain, unless the housing qualifies for insurance under the National Flood Insurance Act of 1968 (42 U.S.C. §§ 4001-4127). The commissioners court may establish a planning commission with its findings and decisions subject to the same provisions applicable to the commissioners court under this chapter.
- Sec. 232.025 A county near an international border shall establish regulations for roads and drainage in subdivisions and require statements in purchase contracts.



- Sec. 232.026 A county near an international border may extend the date by which water and sewer service facilities must be fully operable but must notify the attorney general of the reason for any extension.
- Sec. 232.027 A county near an international border shall require subdividers of land on which water and sewer facilities have not yet been installed to execute and maintain in effect a bond or cash deposit in an amount the commissioners court determines will ensure compliance with this subchapter.
- Sec. 232.028 After approving a plat, a county near an international border shall issue to the subdivider a certificate of approval of the plat. Certain persons may request that the county make determinations regarding a subdivision's water, sewer, electrical, and gas facilities. A county may adopt rules necessary to administer the duties of this section. It may also impose a fee for a certificate issued for a subdivision, part of which is located in the extraterritorial jurisdiction of a municipality and part of which is outside the ETJ.
- Sec. 232.029 A utility provider must generally obtain a certificate from a county before the provider can serve or connect any subdivided land with utility services. Different certificates may be available under different circumstances.
- Sec. 232.030 The commissioners court must adopt and enforce the model rules developed under Sec. 16.343 of the Water Code and other regulations.
- Sec. 232.0305 A commissioners court may impose a fee on a subdivider of property under this subchapter for an inspection of the property to insure compliance with the subdivision regulations.
- Sec. 232.034 A member of a commissioners court with an interest in a subdivided tract must, before a vote or decision regarding the approval of a plat for the tract, file an affidavit with the county clerk stating the nature and extent of the interest and shall abstain from further participation in the matter. Violation of this requirement is a Class A misdemeanor, conviction of which constitutes official misconduct and is grounds for removal.

Sec. 232.037	A county may pursue civil and criminal enforcement for violations of Subchapter B or the model rules adopted under Section 16.352, 16.353, 16.354, and 16.355, Water Code.
Sec. 232.039	A county near an international border may cancel a subdivision only after interested persons are allowed to be heard at a public hearing.
Sec. 232.041	A county near an international border shall publish notice of an application to revise a subdivision plat and shall adopt an order to permit the revision if certain conditions are met.
Sec. 232.042	A county near an international border may grant a delay or variance from compliance with the replatting provision in Sec. 232.040 and must notify the attorney general within 30 days of granting the variance or delay.
Sec. 232.043	A county may grant a delay or variance from compliance with the subdivision requirements on the request of a subdivider who created an unplatted subdivision or a resident lot purchaser when certain conditions apply.
Chapter 232, Subchapter C	Chapter 232, Subchapter C, Sections 232.071 - .080, apply only to counties (1) eligible for certain financial assistance under the Water Code, and (2) not subject to Subchapter B, and only to subdivisions with lots of 5 acres or less intended for residential purposes and located outside a municipality.
Sec. 232.071 - .073	The commissioners court approves subdivision plats and ensures that the plats are appropriately filed. The plats must have certain information related to water and sewer service facilities. The commissioners court may establish a planning commission that is subject to the same provisions applicable to the commissioners court under this subchapter.
Sec. 232.074	The commissioners court must require a subdivider to execute and maintain a bond or cash deposit, unless installation of all water and sewer service facilities is complete when an application for plat is finally approved.

Sec. 232.075

The commissioners court may extend the date by which water and sewer facilities must be fully operable if an extension would be reasonable and not contrary to the public interest.

Sec. 232.077

A county providing water, sewer, gas, electric, or other utility service may not serve or connect land unless it has been presented with a certificate under Section 232.076.

Sec. 232.0775

A commissioners court may impose a fee on a subdivider of property under this subchapter for an inspection of the property to insure compliance with subdivision regulations.

Sec. 232.076

Upon approval of a plat, the commissioners court must issue the person applying for the approval a certificate stating that the plat was approved. To certain persons, the county must issue certificates regarding whether a plat is needed for land.

Sec. 232.078

If a member of a commissioners court or a member's spouse, child, or parent has an interest in a subdivided tract, the member shall, before any vote or decision on plat approval, file an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. A violation is a Class A misdemeanor, and conviction constitutes official misconduct and is grounds for removal from office.

Sec. 232.080

The county may bring a suit for injunctive relief or civil or criminal penalties against any person or entity that violates the provisions of this subchapter or rules adopted under this subchapter. This subchapter is subject to the applicable enforcement provisions prescribed by Sections 16.352, 16.353, 16.354, and 16.3545, Water Code.

Chapter 232,  
Subchapter D

Chapter 232, Subchapter D, Sections 232.091-.097, apply to a county authorized to establish a planning commission under Subchapter B or C, and in which the commissioners court by order elects to operate under this subchapter. These sections deal with the creation and administration of the planning commission.

Sec. 242.001  
(amended in 2001)

Except for certain urban, border-area, or economically distressed counties, for areas within the extraterritorial jurisdiction (ETJ) of a municipality, the municipality and the county must enter into an agreement by April 1, 2002, to identify one governmental entity to regulate subdivision plats and approve related permits. Under such agreements, the county and the municipality may (1) let one entity take over regulation in the ETJ, (2) split up the ETJ so that each entity regulates within one portion only, or (3) set up one office to administer a "consolidated and consistent set of regulations" for the ETJ. Until such agreements are reached, and in the counties not required to enter into such agreements, a subdivision plat of land in an ETJ may not be filed for record without approval of both the county and the municipality. If municipal and county regulations conflict, the more stringent prevails.

**Public Roads and  
Bridges**  
*Health and Safety Code*  
Sec. 361.116

A county may dispose of the carcasses of animals killed on county roadways by burying the carcasses on property owned by the entity that is responsible for road maintenance. No permit is required to dispose of animal carcasses on county property.

*Local Government Code*  
Sec. 81.028

A county may establish public ferries, change or close public roads, build and maintain bridges, appoint road overseers, and exercise general control over all public roads.

Sec. 233.002

A county may establish building or set back lines on public roads in a county.

Sec. 411.007

A county with a population of 190,000 or more, or that is adjacent to a county with a population of 2.4 million or more and borders the Gulf of Mexico, and operates a road department system under Subchapter D, Chapter 252, Transportation Code, may require the county road engineer to prepare and coordinate a county master drainage plan and may adopt regulations to implement the plan.

*Transportation Code*  
Sec. 201.804

Within 31 days from the completion of construction or rehabilitation on a bridge built or rehabilitated by the county, the county must submit to the Texas Department of Transportation a copy of the final structural design plans for the bridge.

Sec. 251.005

Each county commissioner serving as a road supervisor must make a sworn report during the ninth month of the county fiscal year on a form approved by the commissioners court regarding the status of the roads within the county.

Sections 251.003, .006,  
.051, .058, & .059

A county may make and enforce all reasonable and necessary rules and orders for the construction and maintenance of public roads.

Sec. 251.017  
(added in 2001)

The commissioners court may set a reasonable fee for the county's issuance of a permit authorized by the Transportation Code.

Sections 251.081

A county may build and maintain necessary bridges in the county.

Sec. 251.082

Adjoining counties may agree to jointly erect a bridge over a stream that forms the boundary between the counties.

Sec. 251.083

A county may erect bridges within city limits and cooperate with a city in erecting bridges; the county must maintain such bridges.

Sec. 251.101

A county may condemn land that is located within a municipality in order to improve the county road or to link the county road system to a state highway.

Sec. 251.103

A county is authorized to pay for relocation of water lines owned by a water control and improvement district when needed to complete farm-to-market roads in the county.

Sec. 251.156  
(amended in 2001)

The commissioners court, by order, may have signs installed to prohibit or restrict the stopping, standing, or parking of a vehicle in a restricted traffic zone on a county road or on real property owned by the county that is under the court's jurisdiction.

Sec. 251.159

A county with a population of more than 200,000 may delegate its authority to regulate traffic on a county road or on real property owned by the county to the engineer or other county employee.

Sec. 256.009

The county auditor or, if the county does not have an auditor, the official having the duties of the county auditor shall file a report with the comptroller stating the total amount the county spent on construction and maintenance of county roads, bridges, and right-of-ways that was required by the constitution or other law.

Sec. 286.002  
(amended in 2001)

The commissioners court may improve a county road by: filling, grading, raising, paving, or repairing the road in a permanent manner; constructing, repairing, or realigning a curb, gutter, or sidewalk; constructing a drain or culvert; or installing a street light. The court, by order, may assess against property abutting the portion of county road to be improved and against the owner of that property any of the following: (1) all or part of the cost of building, repairing, or realigning a curb, gutter, or sidewalk; or (2) installing a street light.

Sec. 363.002 - .005

A county may contract for the construction of a toll bridge, set the toll to be paid, and arrange for maintenance of the bridge.

Sec. 621.301  
(amended in 2001)

The commissioners court may establish load limits for any county road or bridge only with the concurrence of the Texas Department of Transportation.

Sec. 644.102  
(amended in 2001)

A county may enforce load limit requirements and retain fines from this enforcement in an amount not to exceed 110 percent of the county's actual expenses for the enforcement of this chapter.

*Vernon's Revised  
Civil Statutes*  
Art. 6795b-1,  
Sec. 8e & 8f

In certain circumstances, a county with a population of more than 2.2 million may adopt an order prohibiting the operation of a motor vehicle on a county project and may adopt an administrative adjudication hearing procedure for violations of such an order.

**Real Property  
Transactions**  
*Education Code*  
Sec. 11.1541  
(added in 2001)

The board of trustees of an independent school district may, by resolution, authorize the donation of real property and improvements formerly used as a school campus to a county if certain conditions are met.

*Government Code*  
Sections 2252.091-.094

Before a county may purchase real property held in trust, the trustee must submit to the commissioners court a copy of the trust agreement identifying the true owner. A county may not sell real property to a trustee until it receives from the trustee a copy of the trust agreement identifying the person who will be the true owner of the property.

*Local Government Code*  
Chapter 263,  
Subchapter A

A county may sell or lease its real property.

Sec. 263.007(e)

A county may, without using the competitive process, lease real property formerly owned by the Texas Department of Mental Health and Mental Retardation to a federal, state, or local government entity for any purpose or to a nonprofit organization to conduct health and human service activities. A commissioners court of a county with a population of one million or more, or with two or more municipalities with a population of 250,000 or more, may lease real property to a for-profit entity to conduct health and human service activities.

Sec. 263.102

A county with a population of more than 700,000 may lease real property owned by the county and air rights above that property for the construction and maintenance of a privately owned hotel that is operated in conjunction with an existing convention center owned by the county.

Sec. 263.201 *et. seq.*

A county may convey land to the United States Government for certain purposes.

Sec. 272.001  
(amended in 2001)

A county may acquire or assemble land or real property interest, except by condemnation, and may sell, exchange, or otherwise convey the land or interests to an entity for the development of low-income or moderate-income housing. The county shall determine the conditions of the transactions so as to effectuate and maintain the public purpose. If conveyance of the land under this section serves a public purpose, the land may be conveyed for less than its fair market value.

Sec. 280.001

A county, separately or jointly with a city, may acquire land for use by the United States Government.

Sec. 280.002

A county may accept ownership of property located in the county's jurisdiction conveyed by gift. The notice of intent to convey the property must be considered at a meeting of the commissioners court.

*Tax Code*  
Sec. 34.06

A county is entitled to recover from the proceeds of a resale of property any cost incurred by the county in inspecting the property for release or threatened release of solid waste from the property or a discharge or threatened discharge of waste or a pollutant into or adjacent to water and in taking action to remove or remediate the release or threatened release or discharge of threatened discharge.

**Sewage Regulation**  
*Health and Safety Code*  
Chapter 366

If designated as an agent, a county may enforce rules governing on-site sewage disposal systems. (See discussion above under "On-site Sewage (Septic Tanks).")

*Local Government Code*  
Sec. 232.026

A county near an international border may extend the date by which water and sewer service facilities must be fully operable in a subdivision, but must notify the attorney general of the reason for any extension.



Sec. 411.007

A county with a population of 190,000 or more, or that is adjacent to a county with a population of 2.4 million or more and borders the Gulf of Mexico, and operates a road department system under Subchapter D, Chapter 252, Transportation Code, may require the county road engineer to prepare and coordinate a county master drainage plan and may adopt regulations to implement the plan.

Sec. 412.015

Certain counties may own, operate, or maintain a water or sewer utility in the same manner as a municipality under Chapter 402.

Sec. 412.016

A county may acquire, own, operate, or contract for the operation of a water or sewer utility system to serve an unincorporated area of the county in the same manner as a municipality under Chapter 402. A county with a population of 2.8 million or more and any adjoining county may serve an area within a municipality. A county may issue bonds to finance the water or sewer utility system and may acquire interest in property necessary to operate a system authorized in this section.

*Water Code*

Sec. 26.032

A county may hold a public hearing and adopt an order or rule to abate or prevent pollution from a private sewage facility.

Sec. 26.0405

In a county with a population of 2.8 million or more, for single-family residences on property subdivided and developed before January 1, 1979, the Texas Natural Resource Conservation Commission shall issue general permits for on-site disposal of wastewater under certain conditions, including that the county agrees to monitor compliance with the permit.

**Solid Waste**

*Health and Safety Code*

Sec. 361.0961

A county may not prohibit the use of a container for solid waste management purposes, restrict the processing of solid waste, or assess a fee for the use of a container.

Sec. 361.151 *et. seq.*

A county has authority to operate solid waste facilities.

Sec. 361.154	A county may require and issue licenses governing the operation and maintenance of facilities used to store, process, and dispose of solid waste in areas outside municipalities.
Sec. 361.163	A county may enter into cooperative agreements with other governmental entities to jointly operate solid waste management activities and to charge reasonable fees for services.
Sec. 363.003	The Legislature encourages counties to contract with waste management firms.
Sec. 364.011(d)	A county may enforce its rules regarding solid waste management through legal proceedings.
Sections 364.012-.013	A county may prohibit disposal of municipal or industrial solid waste in the county if the disposal of solid waste is a threat to public health, safety, and welfare. A county may not prohibit the processing or disposal of solid waste in an area of the county for which a permit or application for permit or other authorization under Chapter 361 has been filed and is pending before the commission. A county may acquire, construct, operate, and maintain all or part of one or more solid waste disposal systems. A county may also contract out the collection, transportation, and handling of solid waste.
Sec. 364.014	A county may acquire land for solid waste management programs.
Sec. 364.034 (amended in 2001)	A county may charge for solid waste management programs. A fee for this service may be collected by the county, by a private or public entity that contracts with the county to provide the service, or by another private or public entity that contracts with the county to collect the fees.
Sec. 365.012	Disposal of litter or other solid waste at a place that is not an approved solid waste site is an offense, punishable by counties and other entities with criminal jurisdiction.

Sec. 365.012(k)	A county may offer a \$50 reward for reports of illegal dumping that result in prosecution.
Sec. 365.015	A district or county attorney may file civil suit to restrain violations of the Litter Abatement Act and recover attorney fees and costs.
Sec. 365.017	A county may adopt regulations to control disposal of litter from private property in unincorporated areas of the county.
Sec. 368.012	A county with a population of less than 100,000 may regulate waste haulers.
<b>Subdivision Regulation</b> <i>Vernon's Revised Civil Statutes</i> Art. 1524c	A county has authority to certify applications for creation of housing corporations.
<i>Local Government Code</i> (See also references under <b>Platting to Chapter 232,</b> Subchapters B, C, and D)	
Sec. 212.046	A county may not issue a permit for the development of lots subject to Subchapter B, Chapter 212, until a development plat has been filed and approved in accordance with Sec. 212.047.
Sec. 232.001 <i>et seq.</i>	A county may adopt and enforce subdivision regulations, including road and drainage specifications.
Sec. 232.007 (amended in 1999)	The commissioners court may adopt minimum infrastructure standards for manufactured home rental communities that are no more stringent than the requirements for subdivisions.

Sec. 232.008

A county may permit the cancellation of all or part of a subdivision and re-establish the property as acreage tracts as it existed prior to subdivision. A county may deny the cancellation of all or part of a subdivision if the commissioners court determines that the cancellation will prevent the proposed interconnection of infrastructure to pending or existing development.

Sec. 232.025

A county near an international border shall establish regulations for subdivisions in economically disadvantaged areas, as defined by Chapter 232, Subchapter B, Local Government Code.

Sec. 232.030

A county near an international border in an economically distressed area, as defined by Chapter 232, Subchapter B, Local Government Code, shall adopt and enforce the model rules developed under Sec. 16.343 of the Water Code and shall adopt appropriate subdivision regulations.

Chapter 232,  
Subchapter E  
(added in 2001)

Certain urban counties may adopt subdivision rules to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county. Such counties may require wide rights-of-way, minimum lot frontages, and permanent setbacks. These counties may enter into developer participation contracts without competitive bidding. They may also regulate utility service to residential subdivision lots, as set out in Local Government Code Sec. 232.029.

Sec. 234.001 *et seq.*

Upon the request of the director of the McDonald Observatory, a county near a major astronomical observation site may regulate outdoor lighting in any unincorporated territory of the county.

Sec. 352,  
Subchapter E  
(added in 2001)

A county may regulate vehicular or pedestrian gates to multi-unit housing projects in unincorporated areas of the county to assure reasonable access for fire-fighting vehicles and equipment, emergency medical services vehicles, and law enforcement officers.

*Property Code*  
Sec. 81.003

A county planning or zoning commission may adopt rules and regulations governing condominiums that supplement the Condominium Act.

Sec. 203.003  
Note: Chapter 203 applies only to a county with a population of more than 200,000.

A county attorney may bring a suit to enjoin or abate a violation of a restriction contained or incorporated by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county.

*Transportation Code*  
Sec. 253.003

A county may improve subdivision roads and assess the costs of such improvements to the property owners of the subdivision.

**Utilities**

*Local Government Code*  
Sec. 232.029

The commissioners court of an affected county generally must issue a certificate to a utility provider before the provider can serve or connect any subdivided land with utility services. On request, the commissioners court must provide the attorney general or other law enforcement agency a copy of any document on which the commissioners relied in approving the issuance of a certificate.

Sec. 232.106  
(added in 2001)

Certain urban counties may regulate utility service to residential subdivision lots, as set out in Local Government Code Sec. 232.029.

Sec. 412.015

Certain counties may own, operate, or maintain a water or sewer utility in the same manner as a municipality under Chapter 402.

*Transportation Code*  
Sec. 251.103

A county may pay for relocating water lines owned by a water control and improvement district when needed to complete farm-to-market roads.

*Vernon's Revised  
Civil Statutes*  
Art. 717v

A county with a population of less than 10,000 may establish a county utility board to operate and manage utilities in the county.

Art. 2372q

A county with a population over 5,000 may acquire a natural gas system, by means other than eminent domain, and sell any natural gas not needed.

*Utilities Code*

Sec. 164.001

Two or more political subdivisions may jointly finance, construct, and operate electric utility facilities.

Sec. 164.003

The agreement between the political subdivisions must be submitted to the attorney general for approval.

Sec. 164.005

A political subdivision may pledge revenue from a utility system to pay the contract payments to acquire an ownership interest in an electric utility facility.

Sec. 181.024

A county may designate where gas lines should be placed in a right-of-way of a county road.

Sec. 181.025

A county may require a gas utility to relocate the gas utility facility, at the utility's expense, to allow the widening or other changing of a traffic lane. The county must give the utility 30 days written notice.

*Water Code*

Sec. 13.043(k)

An affected county shall provide written notice to each ratepayer eligible to appeal a change in water, drainage, or sewer rates not later than the 30<sup>th</sup> day after the date of a final decision on a rate change.

Sec. 13.084

An affected county shall have the right to select and engage experts to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility ratemaking proceedings.

Sec. 13.139(a)

A county that furnishes retail water or sewer utility service shall furnish the service, instrumentalities, and facilities safely, adequately, efficiently, and reasonably.

Sec. 13.141

A utility owned by an affected county may not bill the state or a state agency or institution before the service is rendered.

Sec. 13.242(a)

Before rendering retail water or sewer utility service to the public, a county-operated utility in an affected county must obtain from the Texas Water Commission (now the Texas Natural Resource Conservation Commission) a certificate that acknowledges that present or future public convenience and necessity will require the installation, operation, or extension of such retail water or sewer utility service.

Sec. 13.256

A county with a population of more than 2.8 million may not charge a water and sewer utility a fee for the privilege of installing or replacing a water or sewer line in the county's right-of-way.

Sec. 16.343(g)

An affected county must enforce and adopt model rules, as promulgated by the Texas Natural Resource Conservation Commission and the Texas Department of Health, before it can receive funds under either Section 15.407 or Subchapter K, Chapter 17, of the Water Code.

### **Water Regulation**

*Vernon's Revised*

*Civil Statutes*

Art. 818

A county is authorized to own and build reservoirs, dams, levees, wells, and canals. A county may acquire by purchase or condemnation rights-of-way and other lands necessary to construct such improvements.

Art. 820

A county shall exercise control and management of affairs concerning the operation of an irrigation system. A county shall also operate an irrigation system under the provisions applicable to Water Improvement Districts.

*Local Government Code*

Sec. 142.014

A county may acquire by purchase, gift, lease, or any other method except condemnation, property necessary to obtain a surface water supply.

Sec. 240.901

Coastal counties may regulate land, structures, and other development in flood-prone areas and authorize the filing of a notice of a violation of the regulations in the real property records.

Sec. 263.201	A county that shares a boundary with Mexico may contract for the acquisition of water rights in Mexico if approved and monitored by the Texas Water Commission (now the Texas Natural Resource Conservation Commission) and the International Boundary and Water Commission.
Sec. 411.002	A county may contract with a political subdivision to jointly acquire a right-of-way and to jointly construct or maintain a canal, drain, levee, or other improvement for flood control.
Sec. 411.007	A county with a population of 190,000 or more, or that is adjacent to a county with a population of 2.4 million or more and borders the Gulf of Mexico, and operates a road department system under Subchapter D, Chapter 252, Transportation Code, may require the county road engineer to prepare and coordinate a county master drainage plan and may adopt regulations to implement the plan.
Sec. 411.009 (added in 2001)	The commissioners court may order a referendum on the question of whether flood control taxes should be increased or decreased or whether an existing or proposed project should receive funding.
Sec. 412.001 <i>et seq.</i>	A county may sell and deliver surplus county water; the funds generated shall then be added to the general fund of the county.
Chap. 422	Certain counties may take any necessary or proper action to comply with the requirements of the stormwater permitting program under the national pollutant discharge elimination system. A civil penalty of \$1,000 per violation may be assessed by the county to any person who violates a rule or order adopted by the county in this section.
<i>Water Code</i> Sec. 7.351 <i>et seq.</i>	A county may bring civil suit for violation or threat of violation of Water Code, Chapters 16, 26, 28, or 34 or of Health and Safety Code Chapters 361, 371, 372, 382, etc.
Sec. 16.053	A county may contract with a regional water planning group to assist the group in developing or revising a regional water plan.



Sec. 16.055

Immediately upon the declaration of a state of disaster in a county due to drought conditions, the county must comply with the conditions set forth in this chapter.

Sec. 16.311 *et seq.*

In order to minimize losses from flood damage, counties may restrict development of land and set standards regarding construction in flood plains. The county may bring a civil suit for an injunction, civil penalties, or both against anyone violating or threatening to violate Subchapter I, Chapter 16, Water Code, or a rule adopted or order issued by the county.

Sec. 16.3145

By January 1, 2001, the county shall adopt ordinances or orders, as appropriate or necessary, for the county to be eligible to participate in the National Flood Insurance Program.

Sec. 16.315(16)  
(added in 2001)

A county may collect reasonable fees to cover the cost of administering its local floodplain management program.

Sec. 16.324  
(added in 2001)

The commissioners court may set a reasonable fee for issuing a permit authorized by the Flood Control and Insurance Act

Sec. 26.0135

A county may enter into a contract or cooperative agreement with the Texas Natural Resource Conservation Commission to conduct monitoring and assessments of watersheds where a river authority is unable to perform those duties. Counties are encouraged to manage solid waste and to facilitate and promote programs for the collection and disposal of household consumer and agriculture products containing hazardous substances that could pose a risk to the state's water resources.

Sec. 26.171 *et seq.*

A county may inspect public waters to determine whether the water quality meets state standards and whether persons who are making discharges into the water have a permit and are in compliance with the permit.

Sec. 26.175

A county may enter into a cooperative agreement with other local governments for water quality management.

Sec. 26.179

A county that has a designated water quality protection zone shall approve a subdivision plat located within that zone if the plat complies with subdivision regulations and if a registered professional engineer acknowledges that the plat is in compliance with the water quality plan of the protected zone.

**Miscellaneous**  
*Code of Criminal  
Procedure*

Article 102.173  
(added in 2001)

The commissioners court may create a justice court technology fund and may require a defendant convicted of a misdemeanor offense in a justice court to pay a technology fee not to exceed \$4 as a cost of the court. The fund created under this article may be used only to purchase technological enhancements for a justice court, including the following: computer systems, networks, hardware and software, imaging systems, electronic kiosks, electronic ticket writers, and docket management systems.

*Health & Safety Code*  
Sec. 341.012

A county health authority may order a person to abate a public nuisance. If the public nuisance is not abated within the time specified in the order, the local prosecutor shall bring court proceedings or may ask the attorney general to institute the proceedings or to assist him or her in the proceedings.

Sec. 341.092

A county may bring civil suit (for injunctive relief and civil penalty) for a violation of Chapter 341 or a rule adopted under Chapter 341.

Sec. 343.022(b) & (c)

A county's nuisance abatement procedures, under Chapter 343, must include a provision stating that, under certain conditions, failure to abate a public nuisance may result in assessment of costs and the imposition of a lien against the property on which the nuisance exists.

Sec. 343.023(a), (c), & (d)

A county may assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 on the person receiving notice under Sec. 343.022. To obtain a lien against the property, the commissioners court must file a notice containing a statement of costs, a legal description of the property, and the name of the property owner, if known.

Sec. 437.0076 (added in 2001)	A county may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public and that holds a permit issued by the county to employ a certified food manager.
Sec. 713.027	A county with a population of 8,200 or less may own, operate, and maintain a cemetery and may sell the right of burial in the cemetery.
Sec. 713.028 (amended in 2001)	For purposes of historical preservation or public health, safety, or welfare, a commissioners court may use public funds, county employees, and county equipment to maintain a cemetery that has a grave marker more than 50 years old. For counties under 40,000 population, maintenance of a cemetery includes any activity necessary for the continued operation of the cemetery, including the opening and closing of graves.
<i>Local Government Code</i> Sec. 81.032	The commissioners court may accept a gift, grant, donation, bequest, or devise of money or other property on behalf of the county for the purpose of performing a function conferred by law on the county or a county officer.
Sec. 118.011 (amended in 2001)	The commissioners court of a county adjacent to an international boundary, as part of the county's annual budget, may adopt a Records Archive Fee.
Sec. 204.905	A Trinity River Basin county may regulate the future construction of residences and the laying out of residential lots and subdivisions in the 100-year flood plain of the Trinity River Basin.
Sec. 233.061 (formerly 235.001; renumbered in 2001)	A county that has a population of more than 250,000 or that is adjacent to a county with a population of more than 250,000 may adopt a fire code and rules necessary to administer and enforce the fire code.

Sec. 234.002  
(amended in 2001)

At the request of the director of the George Observatory or the Stephen F. Austin State University Observatory, the commissioners court of a county any part of which is located within five miles of a major astronomical observatory may adopt orders regulating the installation and use of outdoor lighting in any unincorporated territory of the county.

Sec. 239.001

A county that borders the Gulf of Mexico and is adjacent to a county with a population exceeding 2.5 million may regulate a bulkhead or other method of shoreline protection in an unincorporated area of the county if persons or property are endangered.

Sec. 240.902

A Gulf Coast county may close part of a public beach for events sponsored by nonprofit organizations.

Sec. 240.904

A commissioners court may prohibit or restrict the use of aerial fireworks in an unincorporated portion of the county where "drought conditions" exist, as determined by the Texas Forest Service.

Sec. 240.906  
(amended in 2001)

The commissioners court of a county may request the Texas Forest Service to determine whether drought conditions exist in all or part of the county. The commissioners court may prohibit outdoor burning if drought conditions have been determined by the Forest Service or if a finding is made that circumstances present in all or part of the unincorporated area create a public safety hazard that would be exacerbated by outdoor burning. A county may not prohibit outdoor burning related to public health and safety, as authorized by the Texas Natural Resource Conservation Commission, or burning that is conducted by a prescribed burn manager under Sec. 153.048, Natural Resources Code.

Sec. 250.002

A county may not enact or enforce an ordinance or order that does not comply with the ruling of the Federal Communications Commission in "Amateur Radio Preemption, 10 F.C.C. 2<sup>nd</sup> 952 (1985)" or a regulation related to amateur radio service adopted under 47 C.F.R. Part 97.

Sec. 291.007	A county with a population of less than 40,000 may order a nonbinding referendum on any matter affecting county property.
Sec. 302.002	A county may enter into a contract for energy conservation measures to reduce energy consumption or operating costs of governmental facilities.
Sec. 302.003	A county can require the provider of the energy conservation measures to file a payment and performance bond.
Sec. 302.004	A contract for existing buildings or facilities can be a lease-purchase contract with a term not to exceed 10 years and must contain guarantees of the amount of savings to be realized.
Sec. 302.005	Competitive proposal procedures may be used.
Sec. 412.001 <i>et seq.</i>	A county may sell and deliver county surplus water; the funds generated shall then be added to the general fund of the county.
<i>Natural Resources Code</i> Sec. 61.122(a) (amended in 2001)	The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits may regulate motor vehicle traffic on any beach within the county and may prohibit motor vehicle traffic on any natural or man-made sand dune or other form of shoreline protection.
Sec. 61.122(d) (amended in 2001)	The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits may prohibit the use and possession of all glass containers and products on a beach in the unincorporated area of the county. The county may not prohibit any one or several glass products to the exclusion of any others.

Subchapter G,  
Sections 61.251 *et seq.*  
(Added in 2001)

To protect the public health, safety, and welfare, the commissioners court of a county bordering the Gulf of Mexico or its tidewater limits, by order, may regulate mass gatherings of individuals on any beach in the unincorporated area of the county by requiring a person to obtain a permit and pay a permit fee before the person may hold a mass gathering.

Sec. 71.002 *et seq.*

A county may lease its land for mineral development.

*Property Code*  
Sec. 21.0111

A county that wants to acquire real property for public use shall disclose to the property owner, at the time an offer to purchase is made, all existing appraisal reports produced or acquired by the county in determining the final valuation offer.

*Transportation Code*  
Sec. 396.041

A county may require a junkyard or automotive wrecking and salvage yard to be licensed by the county.

Sec. 396.042

The commissioners court must hold a public hearing before adopting a resolution requiring licensing of junkyards or automotive wrecking and salvage yards.

Sec. 643.201  
(amended in 2001)

A county may require the registration of a tow truck that performs a non-consent tow in the county, regardless of whether the truck's owner has a place of business within the county. A fee charged under this section for a license or permit may not exceed \$15.

Sec. 644.001 *et seq.*

A political subdivision may designate a route for the transportation of non-radioactive hazardous materials over a public road or highway, but only if the Texas Department of Transportation approves the route. The political subdivision that maintains the route must pay for installation and maintenance of the signs.

# **Appendix D-1**

**Chart 4.1-Texas EMS Personnel Certification/Licensure Requirements**

	<b>Initial Training Requirements</b>	<b>Initial Certification Requirements</b>	<b>Re-Certification Requirements</b>
Emergency Care Attendant (Basic) 5,293 personnel	Didactic - 40 hours Skills Proficiency Exam	Application/Fee - \$50** Course Completion Certificate Pass State Didactic Exam	Application and Fee - \$50*** Choice of one of the following options: 1. Pass State written exam 2. Continuing Education - 9/year 3. NREMT certification 4. Recertification course
Emergency Medical Technician (EMT) (Basic) 24,015 personnel	Classroom, laboratory, clinical and field internship - 140 total minimum hours. Skills Proficiency Exam	Application/Fee- \$50 Course Completion Certificate Pass State Didactic Exam	Application and Fee - \$50 Choice of one of the following options: 1. Pass State written exam 2. Continuing Education - 18/year 3. NREMT certification 4. Recertification course
EMT - Intermediate (Advanced) 3,883 personnel	EMT certification plus: Classroom, laboratory, clinical and field internship - 160 total minimum hours. Skills Proficiency Exam	Application/Fee- \$75 Course Completion Certificate Pass State Didactic Exam	Application and Fee - \$75 Choice of one of the following options: 1. Pass State written exam 2. Continuing Education - 27/year 3. NREMT certification 4. Recertification course
EMT - Paramedic (Advanced) 9,804 personnel	EMT certification plus: Classroom, laboratory, clinical and field internship - 624 total minimum hours. Skills Proficiency Exam	Application/Fee - \$75 Course Completion Certificate Pass State Didactic Exam	Application and Fee - \$75 Choice of one of the following options: 1. Pass State written exam 2. Continuing Education - 38/year 3. NREMT certification 4. Recertification course
Licensed Paramedic (Advanced) 4,623 personnel	EMT - P requirements plus: 60 hours college credit*	Application/Fee- \$100 Course Completion Certificate Pass State Didactic Exam	Application and Fee - \$100 Continuing Education - 28/year Pass State Didactic Exam

Source: Texas Department of Health

\* Associate Degree in EMS or any higher degree required after 8/31/2002

\*\* Fees are set by legislature; are waived for volunteers

\*\*\* May be waived by Medical Director, with additional 40 hours of CE



## **Appendix D-2**

**Chart 4.2- Current Texas EMS Provider Licensure Requirements (October 2001)**

<b>Level</b>	<b>General Licence Requirements</b>	<b>Personnel</b>	<b>Equipment</b>	<b>Responsibilities</b>
Basic Life Support (62 providers)	Application Fee - \$150*/vehicle** Type I, II, or III vehicles Proper storage of equipment/meds Two-way communication capability Medical Director protocols Emergency warning devices	Two ECAs***	Stretcher Splints Airways Suction Masks Oxygen Bandages Automatic External Defibrillator Cervical Immobilization Spinal Immobilization Monitoring Devices Appropriate Medications Protective equipment Sharps container Biohazard bags Fire extinguisher No smoking signs	Vehicle maintenance Appropriate staffing/equipment Monitoring of patient care Assurance of proper personnel credentials Appropriate continuing education Identification of personnel/ vehicles Maintenance of patient confidentiality Run reports for hospital/ medical director Appropriate protocols/ equipment Safety policies for personnel Compliance with 1 <sup>st</sup> responder agreements Accurate documentation to TDH Compliance with all applicable laws Submission of run data to TDH Notification of changes to TDH
Advanced Life Support (3 providers) or BLS with ALS Capability (76 providers)	Same as above	EMT-I EMT	BLS, plus:  Advanced airway equipment IV supplies	Same as above
Mobile Intensive Care Unit (160 providers) or BLS with MICU Capability (361 providers) or ALS with MICU Capability (29 providers)	Same as above	EMT-P or LP EMT	BLS plus ALS plus:  Cardiac monitor/defibrillator Emergency medications	Same as above

Source: Texas Department of Health

\*Fee is set by Legislature; waived for volunteer firms

\*\*Vehicles are designated at one of eight levels: BLS, BLS with ALS Capability; BLS with MICU Capability; ALS; ALS with MICU capability; MICU, MICU Air; Specialized

\*\*\*An EMS Provider may be given a personnel variance which allows them to staff an ambulance with one certified ECA.

# Appendix D-3



## Texas Department of Health

Eduardo J. Sanchez, M.D., M.P.H.  
Commissioner of Health

1100 West 49th Street  
Austin, Texas 78756-3199  
1-888-963-7111

Gary R. Bego  
Chief Operating Officer

Charles E. Bell, M.D.  
Executive Deputy Commissioner

### Out-of-State Mutual Aid Policy Provider Policy 02-2

#### Background:

In many areas of the state there are rural communities located near the state line which are underserved by local Texas ambulance services because of limited resources or because the area's provider is physically located in a distant area. Therefore, when residents of these communities are in need of emergency health care there is typically a delay in access by the responsible Texas provider. If there is a physically closer, or more available EMS provider located in, and licensed by, an adjoining state who can more rapidly respond to the emergency request, the department would be remiss in denying that person access to expedient emergency care by prohibiting that out-of-state provider from responding without a Texas EMS Provider License. Additionally, incidents involving multiple casualties frequently can exceed the capacity and capability of the local service provider(s) and assistance from other nearby out-of-state providers should not be restricted.

#### Statutory Requirement:

Texas Health and Safety Code Chapter 773, Subchapter C, Section 773.041 (a), *A person may not operate, conduct or maintain an emergency medical service, advertise that the person is an emergency medical service provider or otherwise engage in or profess to be engaged in the provision of emergency medical service unless the person holds a license as an emergency medical services provider issued by the department in accordance with this chapter;* and, HSSC Chapter 773, Subchapter A, Section 773.004 (a) *This chapter does not apply to: (2) ground or air transfer that does not advertise as an ambulance service and that is not licensed by the department; (and), (3) the use of ground or air transfer vehicles to transport sick or injured persons in a casualty situation that exceeds the basic vehicular capacity or capability of emergency medical services providers in the area.*

#### Policy:

- a. An EMS provider from any state adjoining the state of Texas shall be exempt from holding a Texas EMS provider license if that provider:
  1. responds into Texas to assist in a disaster and/or casualty situation that exceeds the basic vehicular capacity or capability of Texas EMS providers in the affected area; or,
  2. responds into Texas for emergency mutual aid assistance when requested to do so by the licensed Texas EMS provider whose service area includes areas along the mutual state line. The out of state provider shall:
    - a. hold a valid license or authorization issued by its own state's EMS regulatory authority; and,
    - b. have in place, with the licensed Texas EMS Provider, a written mutual aid agreement which contains mutually acceptable language concerning:

- (1) liability indemnification;

<http://www.tdh.state.tx.us>

An Equal Employment Opportunity Employer

- (2) treatment and transport protocols and procedures; and,
- (3) delegations of orders by each party's medical directors.

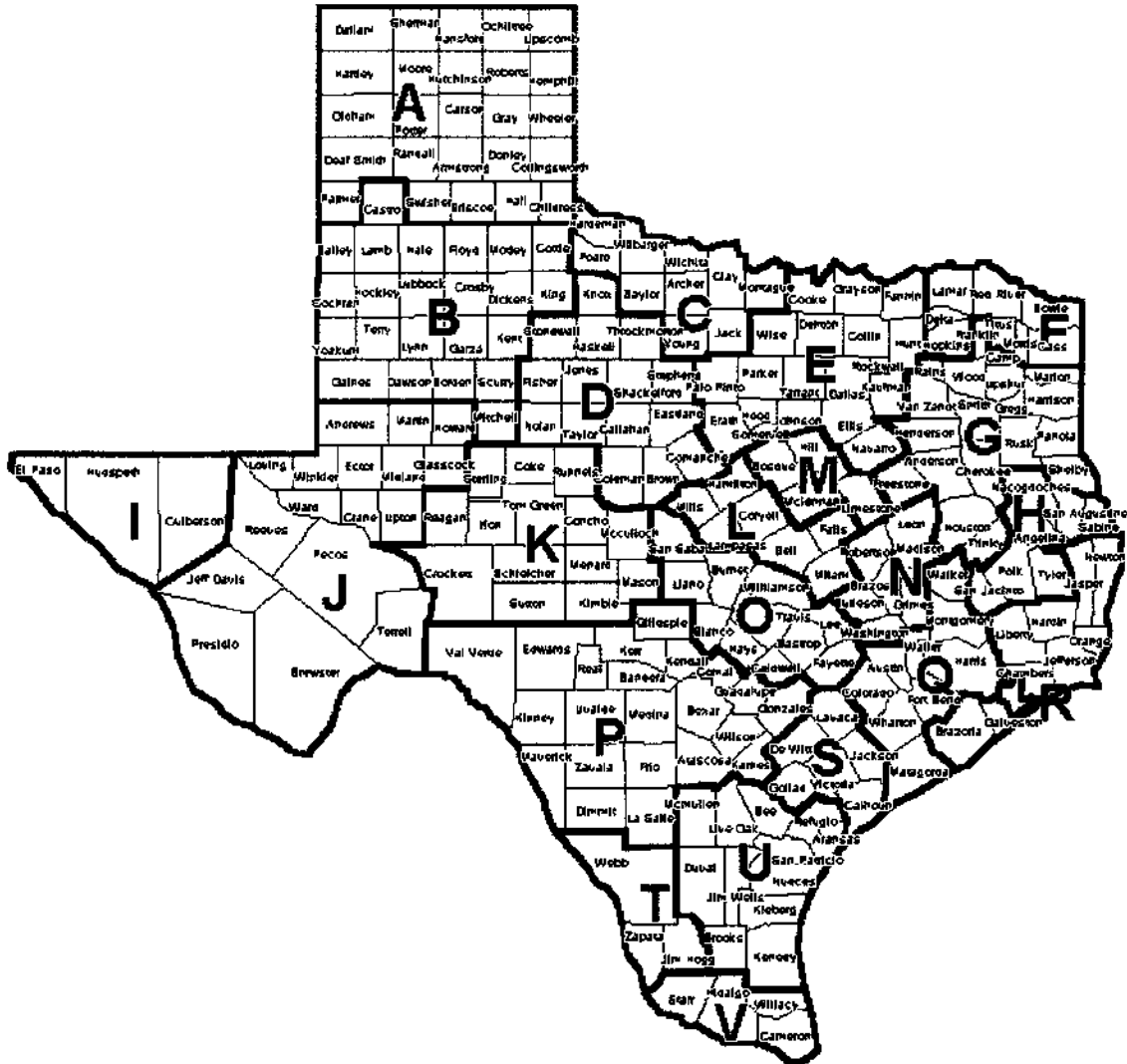
b. An EMS provider from another state shall not advertise in Texas; routinely conduct business in Texas; nor, operate emergency vehicles in Texas, except in accordance with this policy, without holding a valid Texas EMS Provider License.

**Signed:** \_\_\_\_\_  
**Kathryn C. Perkins, RN, MBA, Chief**  
**Bureau of Emergency Management**

**Effective Date:** July 14, 2002

# **Appendix D-4**

# TEXAS TRAUMA SERVICE AREAS



# Appendix D-5



**TEXAS DEPARTMENT OF HEALTH**  
**Bureau of Emergency Management**  
**Texas EMS/Trauma System Regional Advisory Councils**

**OCTOBER 2001**

<b>Regional Advisory Council (RAC)</b>
Panhandle RAC (TSA-A) 4101 Mockingbird Amarillo, Texas 79109  RAC Website: <a href="http://www.panhandlerac.org">www.panhandlerac.org</a>
South Plains EMS RAC (TSA-B) P.O. Box 53597 Lubbock, Texas 79453  RAC Website: <a href="http://www.spems.org">www.spems.org</a>
North Texas RAC (TSA-C) P.O. Box 3706 Wichita Falls, Texas 76301-0706  RAC Website: <a href="http://www.ntrac.org">www.ntrac.org</a>
Big Country RAC (TSA-D) P.O. Box 2342 Abilene, Texas 79604
North Central Texas Trauma RAC (TSA-E) 250 Decker Court Irving, Texas 75062  RAC Website: <a href="http://www.dfwhc.org/ncttrac/rac1.htm">www.dfwhc.org/ncttrac/rac1.htm</a>
Northeast Texas RAC (TSA-F) c/o Titus County Memorial Hospital 2001 North Jefferson Mt. Pleasant, Texas 75455  RAC Website: <a href="http://www.netrac.org">www.netrac.org</a>
Piney Woods RAC (TSA-G) 700 Olympic Plaza Suite 415 Tyler, Texas 75701  RAC Website: <a href="http://www.texastrauma.com">www.texastrauma.com</a>
Deep East Texas RAC (TSA-H) Angelina College Community Services Division PO Box 1768 Lufkin, Texas 75902
Far West Texas & Southern New Mexico RAC (TSA-I) c/o Trauma Services R. E. Thomason Hospital 4815 Alameda Avenue El Paso, Texas 79905
Texas "J" RAC (TSA-J) P.O. Box 116 Ft. Stockton, Texas 79735  RAC Website: <a href="http://www.racj.org">www.racj.org</a>

<p><b>Regional Advisory Council (RAC)</b></p> <p>Concho Valley RAC (TSA-K)  P.O. Box 60125  San Angelo, Texas 76906</p> <p>RAC Website: <a href="http://conchvalleytsakrac.homestead.com/TSA.html">http://conchvalleytsakrac.homestead.com/TSA.html</a></p>
<p>Central Texas Trauma Council (TSA-L)  602 North I-35  Belton, Texas 76513</p> <p>RAC Website: <a href="http://www.ctextrauma.org">www.ctextrauma.org</a></p>
<p>Heart of Texas RAC (TSA-M)  P.O. Box 8600  Waco, Texas 76714</p> <p>RAC Website: <a href="http://www.ruralmetrowaco.com/hotracc">www.ruralmetrowaco.com/hotracc</a></p>
<p>Brazos Valley RAC (TSA-N)  P.O. Box 2861  Bryan, Texas 77805</p>
<p>Capital Area Trauma RAC (TSA-O)  c/o Trauma Services  Brackenridge Hospital  601 East 15th Street  Austin, Texas 78701</p>
<p>Southwest Texas RAC (TSA-P)  8620 North New Braunfels, Suite 420  San Antonio, Texas 78217</p> <p>RAC Website: <a href="http://www.stracc.org">www.stracc.org</a></p>
<p>South East Texas Trauma RAC (TSA-Q)  2260 West Holcombe Blvd.  Box 221  Houston, Texas 77030-2008</p> <p>RAC Website: <a href="http://www.settracc.org">www.settracc.org</a></p>
<p>East TX Gulf Coast RAC (TSA-R)  c/o Trauma Services  University of Texas Medical Branch  301 University Blvd.  Galveston, Texas 77555-1172</p> <p>RAC Website: <a href="http://www.texasracc.utmb.edu">www.texasracc.utmb.edu</a></p>
<p>Golden Crescent RAC (TSA-S)  c/o Citizens Medical Center  2701 Hospital Drive  Victoria, Texas 77901</p>
<p>Seven Flags RAC (TSA-T)  P.O. Box 440113  Laredo, Texas 78044-0113</p>
<p>Coastal Bend RAC (TSA-U)  P.O. Box 5169  Corpus Christi, Texas 78465-5169</p> <p>RAC Website: <a href="http://www.cbracc.org">www.cbracc.org</a></p>
<p>Lower Rio Grande Valley RAC (TSA-V)  1409 Stuart Place Road, Suite B  Harlingen, Texas 78552</p>

# **Appendix D-6**

**Chart 4.3 - EMS Unit Costs**

	BLS	ALS	MICU
Capital* (vehicle, medical equipment, emergency equipment, and communications equipment)	\$25,000	\$26,700	\$28,333
Operating (fuel, medical supplies, routine maintenance, and insurance)	\$40,000	\$55,000	\$60,000
Personnel- 2 BLS staff @ \$5.45/hr., 2 ALS staff @ \$6.00/hr., 2 MICU staff @ \$10.00/hr.	\$91,342	\$100,560	\$167,600
<b>Total Annual per Unit Costs</b>	<b>\$156,342</b>	<b>\$182,260</b>	<b>\$255,933</b>
<b>Total Daily per Unit Costs</b>	<b>\$428.33</b>	<b>\$499.34</b>	<b>\$701.18</b>
<b>Volunteer Production Cost per Day</b>	<b>\$178.08</b>	<b>\$223.84</b>	<b>\$242.00</b>

Source: Texas Department of Health

\*Pricing for capital items are amortized over three years, minimum industry salary costs for five personnel required to staff twenty four hours per day (computed at 56 hour average work week with one and one-half overtime for per day costs), and operating expenses only for a single unit operation.

**Chart 4.4 - Costs per Response- Paid Staff versus Volunteer Staff**

	BLS Staff Paid/Volunteer	ALS Staff Paid/Volunteer	MICU Staff Paid/Volunteer
10 responses per day	\$43 / \$18	\$50 / \$22	\$70 / \$24
½ a response per day	\$850 / \$350	\$1,000 / \$450	\$1,400 / \$500

Source: Texas Department of Health

# **Appendix E-1**

# Senate Committee On Intergovernmental Relations

## AGENDA

Thursday, November 1, 2001, 1:00 p.m.  
Capitol Extension, Room E1.028

- I. Call to Order
- II. Roll Call
- III. Committee Business
  - A. Introduction of Staff
  - B. Adoption of Rules
  - C. Committee Hearing Time Line
  - D. Committee Charge
- IV. Invited Testimony

**Charge 1:** Study the appropriateness of foreclosure and other powers granted to property owners' associations to enforce covenants.

Bill Stinson  
*Texas Association of Relators*

**Charge 2:** Examine current state law regarding the purposes, authority and duties of all special districts, including county development districts and fresh water supply districts. The Committee shall examine procedures by which districts are created and board members are selected, the authority to tax and issue

bonds, and annexation and condemnation powers. The Committee shall assess the need for safeguards and accountability measures.

Susan Alexander  
*Texas Legislative Council*

Jeff Thorne  
*Texas Legislative Council*

**Charge 3:** Study the power of county officials to regulate growth and development in unincorporated areas, including housing development, subdivision regulation, water, and general health, welfare, and safety. The Committee shall study county ordinance authority and shall assess the effects of HB 1445, HB 3172, and SB 873, 77th Legislature.

Donald Lee  
*Conference of Urban Counties*

Shanna Igo  
*Texas Municipal League*

**Charge 4:** Study the availability and delivery of fire prevention and emergency medical services across the state. The Committee shall assess variances in service delivery and make recommendations to improve services.

Ken Bailey  
*Texas State Association of Fire Fighters*

Ken Campbell  
*SAFE-D (State Association of Fire and Emergency Districts)*  
*Commissioner, Travis County ESD 10*

Kathy Perkins  
*Bureau of Emergency Management, Texas Department of Health*

V. Recess

## MINUTES

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS  
Thursday, November 1, 2001  
1:00 p.m.  
Capitol Extension, Room E1.028

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Intergovernmental Relations was held on Thursday, November 1, 2001, in the Capitol Extension, Room E1.028, at Austin, Texas.

\*\*\*\*\*

MEMBERS PRESENT:	MEMBERS ABSENT:
Senator Frank Madla	Senator Todd Staples
Senator Jon Lindsay	
Senator David Cain	
Senator Florence Shapiro	
Senator Royce West	
Senator John Whitmire	

\*\*\*\*\*

The chair called the meeting to order at 1:00 p.m. There being a quorum present, the following business was transacted:

The chair laid out the Committee Rules. Senator Lindsay moved adoption of the rules; without objection, it was so ordered.

The chair laid out Charge One: Study the appropriateness of foreclosure and other powers granted to property owners' associations to enforce covenants. Bill Stinson, representing Texas Association of Realtors, testified on the charge.

The chair laid out Charge Two: Examine current state law regarding the purposes, authority and duties of all special districts, including county development districts and fresh water supply districts. The Committee shall examine procedures by which districts are created and board members are selected, the authority to tax and issue bonds, and annexation and condemnation powers. The Committee shall assess the need for safeguards and accountability measures. Susan Alexander, representing Texas Legislative Council, testified on the charge. Jeffrey Thorne, representing Texas Legislative Council, testified on the charge.

The chair laid out Charge Three: Study the power of county officials to regulate growth and development in unincorporated areas, including housing development, subdivision regulation, water, and general health, welfare, and safety. The Committee

shall study county ordinance authority and shall assess the effects of HB 1445, HB 3172, and SB 873, 77th Legislature. Donald Lee, representing Texas Conference of Urban Counties, testified on the charge. Shanna Igo, representing Texas Municipal League, testified on the charge.



The chair laid out Charge Four: Study the availability and delivery of fire prevention and emergency medical services across the state. The Committee shall assess variances in service delivery and make recommendations to improve services. Kathryn Perkins, representing Texas Department of Health, testified on the charge. Ken Bailey, representing Texas State Association of Firefighters, testified on the charge. Ken Campbell, representing State Association of Fire and Emergency Districts, testified on the charge.

There being no further business, at 3:00 p.m. Senator Madla moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

---

Senator Frank Madla, Chair

---

Hillery Stephens, Clerk

# Senate Committee On Intergovernmental Relations

## AGENDA

Tuesday, January 15, 2002, 9:00 a.m.  
University of Houston  
Athletics/Alumni Center, Melcher Board Room

- I. **Call to Order**
- II. **Roll Call**
- III. **Discussion of Committee Charges**

**Charge 2:** Examine current state law regarding the purposes, authority and duties of all special districts, including county development districts and fresh water supply districts. The Committee shall examine procedures by which districts are created and board members are selected, the authority to tax and issue bonds, and annexation and condemnation powers. The Committee shall assess the need for safeguards and accountability measures.

**Charge 3:** Study the power of county officials to regulate growth and development in unincorporated areas, including housing development, subdivision regulation, water, and general health, welfare, and safety. The Committee shall study county ordinance authority and shall assess the effects of HB 1445, HB 3172, and SB 873, 77th Legislature.

**Charge 4:** Study the availability and delivery of fire prevention and emergency medical services across the state. The Committee shall assess variances in service delivery and make recommendations to improve services.

#### **IV. Invited and Public Testimony**

##### **Charge 2:**

**Joe B. Allen**

**Dean Robbins**, Texas Water Conservation Association

**Ken Petersen**, Texas Rural Water Association

**Sam Jones**

**Mary Margaret Hansen**, Greater East End Management District

**Jack Drake**, Greater Greenspoint Management District

**John Michael Gonzales**, Midtown Management District

**Bob Eury**, Downtown Management District

**Robert Randolph**

##### **Charge 3:**

no invited testimony

##### **Charge 4:**

**Kathy Perkins**, Bureau of Emergency Management  
Texas Department of Health

**Howard L. Katz**, Counsel for Association of Rural Fire Districts and  
Emergency Service Districts

#### **V. Recess**

MINUTES

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS  
Tuesday, January 15, 2002  
9:00 a.m.  
U of H Athletics/Alumni Center

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Intergovernmental Relations was held on Tuesday, January 15, 2002, in the U of H Athletics/Alumni Center

\*\*\*\*\*

MEMBERS PRESENT:	MEMBERS ABSENT:
Senator Frank Madla	Senator Jon Lindsay
Senator David Cain	
Senator Craig Estes	
Senator Florence Shapiro	
Senator Royce West	
Senator John Whitmire	

\*\*\*\*\*

The chair called the meeting to order at 9:10 a.m. There being a quorum present, the following business was transacted:

The chair laid out charge two: Examine current state law regarding the purposes, authority and duties of all special districts, including county development districts and fresh water supply districts. The Committee shall examine procedures by which districts are created and board members are selected, the authority to tax and issue bonds, and annexation and condemnation powers. The Committee shall assess the need for safeguards and accountability measures.

Witnesses testifying and registering on the bill are shown on the attached list.

The chair laid out charge three: Study the power of county officials to regulate growth and development in unincorporated areas, including housing development, subdivision regulation, water, and general health, welfare, and safety. The Committee shall study county ordinance authority and shall assess the effects of HB 1445, HB 3172, and SB 873, 77th Legislature.

Witnesses testifying and registering on the bill are shown on the attached list.

The chair laid out charge four: Study the availability and delivery of fire prevention and emergency medical services across the state. The Committee shall assess variances in service delivery and make recommendations to improve services.

Witnesses testifying and registering on the bill are shown on the attached list.

There being no further business, at 1:50 p.m. Senator Madla moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

---

Senator Frank Madla, Chair

---

Hillery Stephens, Clerk

## WITNESS LIST

Intergovernmental Relations Committee  
January 15, 2002 - 9:00A

## Charge 2

ON: Allen, Joe B. Attorney (Vinson and Elkins / AWBD),  
Houston, TX  
Breeding, John President HCID #1 (Harris County  
Improvement District #1), Houston, TX  
Drake, Jack President (Greater Greenspoint  
Management District), Houston, TX  
Eury, Robert Executive Director (Houston Downtown  
Management District), Houston, TX  
Gonzalez, John Chair (Midtown Management District),  
Houston, TX  
Hansen, Mary Margaret President (Greater East End  
District), Houston, TX  
Jones, Sam (Pate Engineers), Austin, TX  
Leonard, Ken Kaufman County Commissioner Pct 2  
(Self), Forney, TX  
Petersen, Ken General Counsel (Texas Rural Water  
Association), Austin, TX  
Randolph, Robert Attorney (Several Management  
Districts), Houston, TX  
Robbins, Dean Asst. General Manager (Texas Water  
Conservation Association), Austin, TX

## Registering, but not testifying:

On: Curry, James Chairman (Greater Greenspoint  
Management District), Houston, TX  
Holcomb, Doug Manager-Utilities and Districts  
Section (Texas Natural Resource Conservation  
Commission), Austin, TX  
Lary, Trey (Vinson and Elkins LLP), Houston, TX  
McDonald, Jeanne (GEEMD/GGMD), Sugarland, TX  
Mizwa, Delia Director of Communications (Uptown  
Houston District), Houston, TX  
Peak, Julie Senior Vice President (First Southwest  
County Development Community), Houston, TX  
Stephens, Carl (Self), Houston, TX  
Whitfield, Terri Assistant Attorney General  
(Attorney General State of Texas), Austin, TX  
Wood, Stephen Staff Counsel (HCID #1), Houston, TX

## Charge 3

ON: Leonard, Ken Kaufman County Commissioner (Self),  
Forney, TX  
Searcy Jr., Jack (ANHOC and Houston NW Chamber),  
Spring, TX  
Windisch, Fred CEO/Fire Marshal (Harris County),  
Houston, TX  
Wozny, Joseph (Cy-Fair Houston Chamber of Commerce),  
Houston, TX

## Registering, but not testifying:

On: Crossley, David (Self), Houston, TX

## Charge 4

ON: Brian, John (Eastex EMS & Texas Ambulance Association), Kirbyville, TX  
Duncan, Linda RN, EMT-P (Jeff Davis, Brewster and Presido Counties), Alpine, TX  
Flanagan, Tom Administrative Nursing Director (Memorial Hermann Healthcare System), Houston, TX  
George, Donna (Texas Association of Regional Advisory Councils & Hillcrest Baptist medical Center & Heart of Texas), Waco, TX  
Harracksingh, Rachel President (Texas Ambulance Association), Dallas, TX  
Haussecker, Ron (Emergency Medical Services Association Texas), Brenham, TX  
Hebner, Dennis TAAMS President (Texas Association of Air Medical Sources), Harlingen, TX  
Johnson, Helen Executive Director (State Firemen's & Fire Marshals' Association), Austin, TX  
Katz, Howard Counsel (Association of AFD's/ESD's), Houston, TX  
Nethery, R. Gene Sabine County Commissioner (Sabine County), Hemphill, TX  
Parker, Georgie Billing ADM (Cy-Fair Volunteer Fire Department), Houston, TX  
Perkins, Katheryn Chief, Bureau of Emergency Management (Texas Department of Health), Austin, TX  
Windisch, Fred CEO/Fire Marshal (Harris County), Houston, TX

## Registering, but not testifying:

On: Taylor, David Senior Vice President/COO (Genesis EMS/Texas Ambulance Association), Spring, TX

# Senate Committee On Intergovernmental Relations

## Subcommittee On Property Owners' Associations

### AGENDA

Wednesday, January 16, 2002, 9:00 a.m.  
University of Houston  
Athletics/Alumni Center, Melcher Board Room

I. Call to Order

II. Roll Call

III. Committee Business

A. Committee Charge

**Charge 1:** Study the appropriateness of foreclosure and other powers granted to property owners' associations to enforce covenants.

B. Adoption of Rules

IV. Recess



MINUTES

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS  
Subcommittee on Property Owners' Associations  
Wednesday, January 16, 2002  
9:00 a.m.  
U of H Athletic/Alumni Center

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Intergovernmental Relations was held on Wednesday, January 16, 2002, in the U of H Athletic/Alumni Center

\*\*\*\*\*

MEMBERS PRESENT:

Senator Jon Lindsay, chair  
Senator Royce West  
Senator John Whitmire

MEMBERS ABSENT:

\*\*\*\*\*

The chair called the meeting to order at 9:05 a.m. There being a quorum present, the following business was transacted:

Senator West moved to adopt the committee rules, without objection it was so ordered.

The chair laid out charge one: Study the appropriateness of foreclosure and other powers granted to property owners' associations to enforce covenants.

Witnesses testifying and registering on the bill are shown on the attached list.

There being no further business, at 5:57 p.m. Senator Lindsay moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

\_\_\_\_\_  
Senator Jon Lindsay, Chair

\_\_\_\_\_  
Hillary Stephens, Clerk

## WITNESS LIST

Intergovernmental Relations Committee  
(Subcommittee on Property Owners' Associations)  
January 16, 2002 - 9:00A

charge one

ON: Akinyemi, Olcoble (Self), Stafford, TX  
Akinyemi, Veronica (Self), Stafford, TX  
Beer, Stephen (Self), Houston, TX  
Brixy, Charles (Self), Missouri City, TX  
Brooks, Geneva Kirk Director (Metro News & Property Rights Foundation), Houston, TX  
Craig, Richard (Homeowners living in HOAs), San Antonio, TX  
Eastridge, John (Tanglewilde Townhomes Association), Houston, TX  
Epstein, Sondra (Self), Houston, TX  
Ferguson, Franklin (Self), Houston, TX  
Furlow, David Partner-Thompson & Knight, L.L.P. (Self), Houston, TX  
Gainer, Michael Attorney (Cypress Creek United Civic Associations), Houston, TX  
Glaze, Nettie (Self), Houston, TX  
Guetersloh, Craig (Self), Houston, TX  
Hickman, Ron Constable (Pct 4 Harris County), Spring, TX  
Howard, William (Self), Katy, TX  
Jones, Harvella (Texas Homeowners' Advocate Group), Houston, TX  
Kahne, David (ACLU), Houston, TX  
Knight, Michael (Self), Houston, TX  
Lemer, Robert (Self), Houston, TX  
Marcum, Darlene President (SCS Management Services, Inc.), Houston, TX  
McKinney, Osiris (Neighbors of Brandy Creek Townhomes), Houston, TX  
Meyes, Margey President, Prime Site, Inc. AAMG (Community Associations Institute), Houston, TX  
Owens, John Assistant Attorney General (Texas Attorney General), Austin, TX  
Patillo, Dennis (Texas Association of Realtors), Houston, TX  
Porras, Enrique (Self), Houston, TX  
Rice, M. Susan Attorney (Self), Houston, TX  
Rosen, Marian Attorney (Wenonah Blevins), Houston, TX  
Samms, Ronnie Attorney (Self), Houston, TX  
Sayre, Estelle (Self), Houston, TX  
Sigmund, Terri Former Assoc. President, Assoc. Manager (Self), Houston, TX  
Silva, Yvonne (Self), Houston, TX  
Smith, Ken (Self), Dallas, TX  
Smith, Susan Treasurer (Self & WestBranch Community Association), Houston, TX  
Sokol, Matthew (Self), Sugarland, TX  
Solcich, Steve (Self), Hubbard, TX  
Stafford, Amy (Self), Houston, TX

Stafford, Jackie (Self), Houston, TX  
Sumners, Don (Office of Paul Bettencourt, Harris  
County Tax Assessor-Collector), Houston, TX  
Wiggins, Jude President (Cypress Creek United Civic  
Associations), Houston, TX  
Windsor, James President (Lakewood Forest HOA),  
Cypress, TX  
Zingelmann, Card CCE (Self), Houston, TX

## Registering, but not testifying:

On: Bailey, Pamela (Chaparrall Management Company),  
Houston, TX  
Barbier, Brenda Founder (Katyland Community  
(K.H.A.F.)), Katy, TX  
Canales, R.J. (Joe) V.P. (Spring Shadows Civic  
Association), Houston, TX  
Castillo, Marina President (Wild Pine Civic  
Association), Houston, TX  
Dalberg, Richard President (Country Place Master  
Community), Pearland, TX  
Deretchin, Joel Presedent (The Woodlands  
Association), Woodlands, TX  
Ehni, Bruce MD (Self), Houston, TX  
English, Nancy Recording Secretary (Spring Shadows  
Civic Association), Houston, TX  
Ford, Lee CQE (Self), Katy, TX  
Frey, Linda (Planned Community Assocaition),  
Houston, TX  
Hailey, Roy HOA Attorney (Self), Houston, TX  
Hamilton, Gayla (Self), Houston, TX  
Hill, Susan Secretary and Chairman of Education  
(Texas Neighborhoods Together), Houston, TX  
Jacobus, Charles Attorney (Title Insurance Company),  
Bellaire, TX  
Johnson, Johnny (self & members of HUCA), Houston,  
TX  
Kainer, Kristi General Manager (Lakewood Forest  
Fund), Cypress, TX  
Laubach, Wendy (Willowbend Civic Club), Houston, TX  
Lenz, Ralph President (Maplewood Civic Club),  
Houston, TX  
Lindauer, Bob (Spring Shadows Civic Association),  
Houston, TX  
Madha, Abraham (Property Owners), Houston, TX  
Marano, Ralph (Self), Houston, TX  
Marrison Melott, Abby (Self), Houston, TX  
Martin, B.D. (Self), Kingwood, TX  
McCann, Raymond (Self), Houston, TX  
McConnaughey, Catherine (Homeowners Associations),  
Houston, TX  
McElwee, Edward (Self), Seabrook, TX  
McGann, Michael Attorney (Self), Houston, TX  
Mellia, Charles (Self), Houston, TX  
Mulroonsy, Maureen (Spring Shadows Civic  
Association), Houston, TX  
Oswald, Edwin (Self), Houston, TX  
Parsons, Neil (Fonn Villas), Houston, TX  
Regenbaum, David (Association Management Inc.),  
Houston, TX  
Salazar, Wilson (Westlake Village H.A.), Houston, TX

Sikes, Stella (Self), Houston, TX  
Sims, Robert (Self), Houston, TX  
Smith, Lorraine P. President (Woodlands Oaks  
Community Association), Houston, TX  
Thomas, Linda (Self), Houston, TX  
Tindall, Jack President (Parkway Villages  
Residentail Association Inc), Houston, TX  
Toppin, Roberta (Self), Houston, TX  
Tough, Bruce President (Woodlands Community  
Assocaition Inc), Woodlands, TX  
Walleck, Stella (Self), Houston, TX

Charge one

ON: Adolph, Irene (Self), Houston, TX

# Senate Committee On Intergovernmental Relations

## AGENDA

Tuesday, February 26, 2002, 9:00 a.m.  
University of North Texas  
System Center at Dallas, Room 225

### I. Roll Call

### II. Committee Business

#### Discussion of Committee Charges:

##### Charge 2:

Examine current state law regarding the purposes, authority and duties of all special districts, including county development districts and fresh water supply districts. The Committee shall examine procedures by which districts are created and board members are selected, the authority to tax and issue bonds, and annexation and condemnation powers. The Committee shall assess the need for safeguards and accountability measures.

##### Charge 3:

Study the power of county officials to regulate growth and development in unincorporated areas, including housing development, subdivision regulation, water, and general health, welfare, and safety. The Committee shall study county ordinance authority and shall assess the effects of HB 1445, HB 3172, and SB 873, 77th Legislature.

##### Charge 4:

Study the availability and delivery of fire prevention and emergency medical services across the state. The Committee shall assess variances in service delivery and make recommendations to improve services.

### III. Invited and Public Testimony

#### Charge 4:

**Kathy Perkins**, Bureau of Emergency Management  
Texas Department of Health

**Dr. Donna George, RN, EMT-P, Ph D**  
Texas Association of Trauma Regional Advisory Councils

**Mike Click, RN, CEO, Brownfield Regional Medical Center**  
Board for the Texas Organization for Rural and Community Hospitals  
(TORCH)

#### **IV. Recess**

MINUTES

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS  
Tuesday, February 26, 2002  
9:00 a.m.  
University of Texas at Dallas System Center

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Intergovernmental Relations was held on Tuesday, February 26, 2002, in the U of H Athletics/Alumni Center

MEMBERS PRESENT:  
Senator Frank Madla  
Senator Jon Lindsay  
Senator David Cain  
Senator Craig Estes  
Senator Royce West

MEMBERS ABSENT:  
Senator Florence Shapiro  
Senator John Whitmire

\*\*\*\*\*

The chair called the meeting to order at 9:00 a.m. There being a quorum present, the following business was transacted:

The chair laid out charge four: Study the availability and delivery of fire prevention and emergency medical services across the state. The Committee shall assess variances in service delivery and make recommendations to improve services.

Witnesses testifying and registering on the charge are shown on the attached list.

The chair laid out charge two: Examine current state law regarding the purposes, authority and duties of all special districts, including county development districts and fresh water supply districts. The Committee shall examine procedures by which districts are created and board members are selected, the authority to tax and issue bonds, and annexation and condemnation powers. The Committee shall assess the need for safeguards and accountability measures.

Witnesses testifying and registering on the charge are shown on the attached list.

There being no further business, at 2:45 p.m. Senator West moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

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Senator Frank Madla, Chair

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Hillery Stephens, Clerk

## WITNESS LIST

Intergovernmental Relations Committee  
February 26, 2002 - 9:00A

## Charge four

ON: Click, Mike RN-CEO (TORCH, RACs, our hospital district), Brownfield, TX  
Garcia, Alejandro (TSA-C), Wichita Falls, TX  
George, Donna Ph.D, RN (Regional Advisory Councils (HOTRAC) & Hillcrest Baptist Medical Center), Waco, TX  
Perkins, Kathryn Chief (Bureau of Emergency Management, Tx Dept of Health), Austin, TX  
Simonson, Robert Chair of NCTTRAC (NCTTRAC), Duncanville, TX

## Charge two

ON: Anderson, Art (six developed properties in litigation against Dallas Co Flood Control District), Dallas, TX  
Barker, Stephanie homeowner in Castle Hills (Self), Lewisville, TX  
Clayton, Mariam homeowner in Castle Hills (Self), Lewisville, TX  
Copeland, Sharon (Self), Sanger, TX  
Crawford, Clay Attorney (Denton County FWSD #6, 7, 9 & 10), Houston, TX  
Davis, Connie homeowner in Castle Hills (Self), Lewisville, TX  
Faulkenstein, William President Frisco MUD #1 (Self), Frisco, TX  
Goodman, Kay (Chain 7 Ranch), Sanger, TX  
Harberson, Laurie (Self), Bartonville, TX  
Hawes, Julian (Association of Rural Community Housing), Dallas, TX  
Henville-Shannon, Bernetta Mayor (The Colony), The Colony, TX  
Horn, Mary Tax Assessor Collector for Denton County (Self), Denton, TX  
Leonard, Ken Kaufman County Commissioner (Self), Forney, TX  
Miller, Emlyn (Self), Forney, TX  
Morris, James (CAUT), Dallas, TX  
Parsons, Steve (Self), Dallas, TX  
Pierce, Jason Manager Contract Services (Upper Trinity Regional Water District), Lewisville, TX  
Roberts, Carol CPA (Town of Cross Roads), Aubrey, TX  
Spencer, Thomas (Self), Shady Shores, TX  
Strauss, Richard Chairman/CEO (Lantana), Dallas, TX  
Tedrow, Dick (Self), Denton, TX  
Wilkinson, Bill Mayor of Double Oak (Self), Double Oak, TX

## Registering, but not testifying:

On: Goodmasn, Bob (Chain 7 Ranch), Sanger, TX  
Holcomb, Doug Engineer (TNRCC), Austin, TX  
Stepherson, Angela Senior Attorney (TNRCC), Austin,



TX

# Senate Committee On Intergovernmental Relations

## Subcommittee On Property Owners' Associations

### AGENDA

Tuesday, May 28, 2002, 9:30 a.m.  
Capitol Extension E1.028

- I. Call to Order
- II. Roll Call
- III. Committee Business

**Charge 1:** Study the appropriateness of foreclosure and other powers granted to property owners' associations to enforce covenants.

A. Report from Attorney Fee Task Force

B. Brief by attorneys involved in Geneva Kirk Brooks vs. Northglen Association (6th Court of Appeal Opinion) case

C. Public Testimony: Limited to discussion of solutions only. The subcommittee has heard from numerous citizens about the problems that exist with property owner associations and the laws that govern them. This hearing will focus on solutions to those problems.

- IV. Recess

MINUTES

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS  
Subcommittee on Property Owners' Association  
Tuesday, May 28, 2002  
9:30 a.m.  
Capitol Extension, Room E1.028

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Intergovernmental Relations was held on Tuesday, May 28, 2002, in the Capitol Extension, Room E1.028, at Austin, Texas.

\*\*\*\*\*

MEMBERS PRESENT:  
Senator Jon Lindsay  
Senator John Whitmire

MEMBERS ABSENT:  
  
Senator Royce West

\*\*\*\*\*

Senator Jon Lindsay, the chair, called the meeting to order at 9:35 a.m. The following business was transacted:

The chair laid out charge one: Study the appropriateness of foreclosure and other powers granted to property owners' associations to enforce covenants.

Witnesses testifying and registering on the charge are shown on the attached list.

There being no further business, at 1:40 p.m. Senator Lindsay moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

\_\_\_\_\_  
Senator Jon Lindsay, Chair

\_\_\_\_\_  
Hillary Stephens, Clerk

## WITNESS LIST

Intergovernmental Relations Committee  
(Subcommittee on Property Owners' Associations)  
May 28, 2002 - 9:30A

## Property Owners' Associations

ON: Adolph, Tom (Self), Houston, TX  
Alexander, George President (Spring Shadows Civic Association), Houston, TX  
Alexander, Robert Attorney (Senator Linday's Task Force), Houston, TX  
Bailey, Pamela (Wimbledon Estates HOA), Houston, TX  
Brown, William President (Woodland Oaks Homeowners' Association), Schertz, TX  
Craig, Richard Homeowner (Coalition of Homeowners for Rights and Education), San Antonio, TX  
Deretchin, Joel President (Woodlands Association), The Woodlands, TX  
Gainer, Michael Attorney (Cypress Creek United Civic Associations), Houston, TX  
Gammon, William Attorney (Self), Houston, TX  
Glassman, Mitchell Lawer and Homeowner (Self), Houston, TX  
Guetersloh, Mike (Self), Houston, TX  
Hailey, Roy Attorney (Senator Linday's Task Force), Houston, TX  
Heyer, Connie (Self), Austin, TX  
Huggler, Rita Rep. Pct. Chair (Harris County Pct. 729), Spring, TX  
Jenkins, Jimmie (Texas Association of Builders), Austin, TX  
Jones, Harvella Co Founder (Tx Homeowners Advocate Group), Houston, TX  
Kahne, David (Senator Linday's Task Force), Houston, TX  
Konen, Jo (Self), Spring, TX  
Lloyd, Roberta Assistant County Attorney (Harris County), Houston, TX  
Marcum, Darlene President of SCS Management Association (SCS Management Association Clients), Houston, TX  
Meyer, Marjorie (BBE/CAI HOA ADR Program), Houston, TX  
Nelson, Ken Vice President (Texas Neighborhood Together), Plano, TX  
Reuler, Sharon President (State Bar Committee on Property Owners' Association), Dallas, TX  
Rice, Suzy Attorney (Self), Houston, TX  
Sales, Palma (Self), Houston, TX  
Sigmund, Teri (SCS Management), Houston, TX  
Sisk, Cathy Assistant County Attorney (Harris County), Houston, TX  
Smith, David Director (Plano Homeowners Council), Plano, TX  
Solcich, Steve (Self), Hubbard, TX  
Strong, James (Point Venture Property Owners Association), Point Venture, TX  
Talley, Claude (Self), Austin, TX

Thomas, Cecilia (State Bar Committee on Property Owners' Association), Fort Worth, TX  
Thompson, Clark (Windermere Homeowners Association), Pflugerville, TX  
Trevino, Gloria Petitioner (Victims in Petition for Justice), Houston, TX  
Windsor, Jim (Lakewood Forest HOA), Cypress, TX

## Registering, but not testifying:

On: Alvarez, Leslie Managing Agent (Several Associations), Houston, TX  
Austin, Judd Attorney (POA's in Dallas, Denton, Collin & Tarrant Counties), Dallas, TX  
Bailey, Pamela Managing Agent (Several Associations), Houston, TX  
Canales, Raymond Vice President (Spring Shadows Civic Association), Houston, TX  
Cogburn, Karla Homeowner Board Member (Timarron HOA, South Lake), Dallas, TX  
Couen, Norris President (River Place Homeowner Association), Austin, TX  
Denton, Sandra Executive Director (First Colony Community Association), Sugarland, TX  
Gainer, Gayle (Self), Houston, TX  
Gorden, Judith Managing Agent (Several Associations), Houston, TX  
Hoct, Russel (Hoct & Young, P.C), Houston, TX  
Jenkins, Jack (Self), Austin, TX  
Jenkins, Taily (Several Organizations), Houston, TX  
Jones, Johnnie Co Founder (Tx Homeowners Advocate Group), Houston, TX  
Kainer, Kristi General Manager (Lakewood Forest Fund, Inc.), Cypress, TX  
Keller, Christi General Manager (Sienna Plantation Residential Association Inc.), Missouri City, TX  
Kirby, Van President (Steeds Crossing), Pflugerville, TX  
Lowry, Jeanette (Homeowners in Oakwell Farms), San Antonio, TX  
Miller, James Chairman (Villa Serena Inc.), Austin, TX  
Money, Ronald Treasurer (Villa Serena Inc.), Austin, TX  
O'Neal, Michael (Wyndham Village Association, Inc., Cypress Creek VCA), Houston, TX  
Schultz, Ernest (Villa Serena Inc.), Austin, TX  
Starr, Phyllis President of PS Property Management (Community Association Institute), Pflugerville, TX  
Talley, Geraldine PhD. (Villa Serena), Austin, TX  
Wiggins, Jude President (Cypress Creek United Civic Association), Houston, TX  
Wyka, Tom President (Cypresswood H.I.A), Houston, TX

# Senate Committee On Intergovernmental Relations

## AGENDA

Tuesday, May 28, 2002, upon adjournment of subcommittee  
Capitol Extension, E1.028

### I. Roll Call

### II. Committee Business

#### Discussion of Committee Charges:

#### **Charge 2:**

Examine current state law regarding the purposes, authority and duties of all special districts, including county development districts and fresh water supply districts. The Committee shall examine procedures by which districts are created and board members are selected, the authority to tax and issue bonds, and annexation and condemnation powers. The Committee shall assess the need for safeguards and accountability measures.

#### **Charge 3:**

Study the power of county officials to regulate growth and development in unincorporated areas, including housing development, subdivision regulation, water, and general health, welfare, and safety. The Committee shall study county ordinance authority and shall assess the effects of HB 1445, HB 3172, and SB 873, 77th Legislature.

#### **Charge 4:**

Study the availability and delivery of fire prevention and emergency medical services across the state. The Committee shall assess variances in service delivery and make recommendations to improve services.

### III. Invited and Public Testimony

#### **Charge 3:**

**Shanna Igo**  
Texas Municipal League

**Don Lee**

Conference of Urban Counties

**Paul Sugg**

Texas Association of Counties

**Commissioner James Oakley**

Burnet County

**Commissioner Bill Neve**

Burnet County

**Commissioner Jay Millikan**

Comal County

**Portia Bosse**

County Judges and Commissioners Association of Texas

**Andy Erben**

KB Homes

**J. Robert Long**

Taylor Woodrow Communities

**R. Alan Haywood**

Graves, Dougherty, Hearon & Moody

**Terry Weaver**

Sterling Developments

**Steve Rogers**

Texas Manufactured Housing Association

**Billy Howe**

Texas Farm Bureau

**Charge 4:**

**Dr. Edward Racht**

GETAC

**IV. Recess**

MINUTES

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

Tuesday, May 28, 2002

11:00 a.m. or upon adjournment of Property Owners' Association  
Subcommittee  
Capitol Extension, Room E1.028

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Intergovernmental Relations was held on Tuesday, May 28, 2002, in the Capitol Extension, Room E1.028, at Austin, Texas.

\*\*\*\*\*

MEMBERS PRESENT:  
Senator Frank Madla  
Senator Jon Lindsay  
Senator David Cain  
Senator Craig Estes  
Senator Florence Shapiro  
Senator John Whitmire

MEMBERS ABSENT:  
Senator Royce West

\*\*\*\*\*

The chair called the meeting to order at 2:20 p.m. There being a quorum present, the following business was transacted:

The chair laid out charge two: Examine current state law regarding the purposes, authority and duties of all special districts, including county development districts and fresh water supply districts. The Committee shall examine procedures by which districts are created and board members are selected, the authority to tax and issue bonds, and annexation and condemnation powers. The Committee shall assess the need for safeguards and accountability measures.

There were no witnesses testifying or registering on the charge.

The chair laid out charge four: Study the availability and delivery of fire prevention and emergency medical services across the state. The Committee shall assess variances in service delivery and make recommendations to improve services.

Witnesses testifying and registering on the charge are shown on the attached list.

The chair laid out charge three: Study the power of county officials to regulate growth and development in unincorporated areas, including housing development, subdivision regulation, water, and general health, welfare, and safety. The Committee

shall study county ordinance authority and shall assess the effects of HB 1445, HB 3172, and SB 873, 77th Legislature.

Witnesses testifying and registering on the charge are shown on the attached list.



There being no further business, at 4:15 p.m. Senator Madla moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

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Senator Frank Madla, Chair

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Hillery Stephens, Clerk

## WITNESS LIST

Intergovernmental Relations Committee  
May 28, 2002 -12:00A

## Charge Four

ON: Cooke, Jason Director (TX HHSC), Austin, TX  
George, Donna President (TX Association Trauma  
RACs), Waco, TX  
Racht, Ed Dr. (GETAC), Austin, TX

## Charge Three

ON: Bosse, Portia (Jim Allison, Association County  
Judges), Austin, TX  
Erban, Andrew Director of Governmental Affairs (KB  
Home/Texas Association of Builders), Austin,  
TX  
Gieselman, Joe Executive Manager (Travis County),  
Austin, TX  
Gordan, Lisa Assistant City Manager (City of  
Austin), Austin, TX  
Howe, Billy State Legislative Director (Texas Farm  
Bureau), Austin, TX  
Igo, Shanna Director of Legislative Services (Texas  
Municipal League), Austin, TX  
Lee, Donald Executive Director (Texas Conference of  
Urban Counties), Austin, TX  
Long, J. Robert (Texas Association of Builders/  
Greater Austin HBA), Austin, TX  
Millikin, Jay Commissioner (Comal County), New  
Braunfels, TX  
Oakley, James Commissioner (Pct. 4 Burnet County),  
Burnet, TX  
Pardue, Craig Governmental Affairs (Dallas County),  
Dallas, TX  
Rogers, Steven President (Texas Manufactured Housing  
Association), Austin, TX  
Savio, Harry (Texas Capitol Area Builders  
Association & TAB), Austin, TX  
Sugg, Paul Legislative Liaison (Texas Association of  
Counties), Austin, TX  
Weaver, Terry (Texas Association of Builders),  
Austin, TX

## Registering, but not testifying:

On: Perez, Gabriel Exe Dir of Infrastructure Services  
(Bexar County), San Antonio, TX  
Sanchez, Roderick Assistant Director (City of San  
Antonio/Development Services), San Antonio,  
TX  
Warndorf, Donna Consultant (Bexar County), Austin, TX