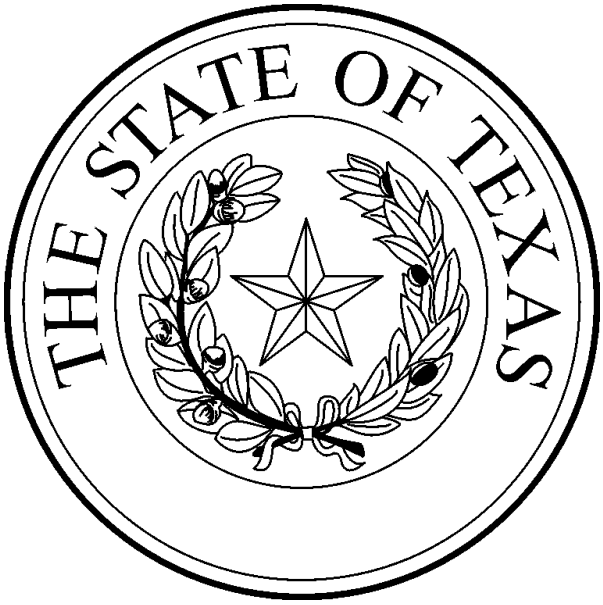
Senate Committee on Intergovernmental Relations



Interim Report

78th Legislature

October 2002

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

Interim Charges

The Committee shall:

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

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.

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.

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

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Charge One

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

Executive Summary

In the Spring of 2001, every major newspaper in the state carried the story of the 82-year-old widow in Harris County who lost her home to foreclosure. On April 10, Wenonah Blevins, who owed $814.50 to the Champions Community Improvement Association for past dues along with more than $3,700 in legal fees and penalties to collect the dues, was served with an eviction order. The association had foreclosed the home, which Ms. Blevins owned free and clear of mortgage and was appraised at $150,000, and auctioned it for $5,000 to pay for the dues arrearage and attorney fees.

Meanwhile, the Legislature was already considering amendments to the Property Owner Association (POA) laws in the Property Code with Senate Bill 507. The bill passed the Senate in early April; however, in the wake of the Blevins case, the House passed the bill with an additional sixteen amendments to address some of the concerns raised in light of Ms. Blevins' situation. The bill was then sent to a conference committee of the House and Senate to work out the differences. The final bill mostly resembled the Senate version that included provisions allowing owners a hearing before the board prior to certain enforcement actions and a redemption period in which a foreclosed owner could redeem their property. It went into effect on January 1, 2002.

On September 13, 2001, Lt. Governor Bill Ratliff announced the interim charges for the Senate Committee on Intergovernmental Relations. Subsequently, on November 1, 2001, the Committee held its first interim meeting, at which time a subcommittee was appointed to study the appropriateness of foreclosure and others powers granted to property owners' associations to enforce covenants.

Consisting of Senator Jon Lindsay, Chairman, Senator John Whitmire and Senator Royce West, the subcommittee held its first hearing in Houston on January 16, 2002. With oral testimony from 40 witnesses that lasted more than nine hours, the subcommittee received a great deal of information from all sides of the issue. Subsequent to the hearing, an informal nine member Attorney Task Force was appointed to discuss problems and solutions relating to unreasonably high attorney fees associated with POA dues collection and enforcement work. The task force was instructed to report their recommendations to the subcommittee at the second public hearing.

The subcommittee held its second hearing in Austin on May 28, 2002. Public testimony was received on proposed solutions from more than 36 witnesses testifying that day. In addition, the Attorney Task Force presented its report of agreed upon recommendations.

Recommendations

The recommendations that follow are a result of the problems and solutions communicated to the subcommittee through constituent letters, emails, phone calls, and testimony in public hearings as well as an examination of related legislation both failed and enacted.

Recommendation 1.1 - ***Enact statutory language prohibiting single family residence POAs from enforcing liens through non-judicial foreclosure.***

While non-judicial foreclosure is less costly and time consuming than judicial foreclosure, the benefits of due process far outweigh other considerations. Most condominium associations believe the day-to-day reliance on individual dues is critical to maintaining the infrastructure and services that one associates with condominiums. Therefore, the subcommittee does not recommend extending this prohibition to condominium associations.

Recommendation 1.2 - ***Recommend the 78th Legislature consider other alternatives to foreclosure as a method to enforce mandatory assessments.***

Although the subcommittee does not endorse any specific alternative to foreclosure at this time, the issue should continue to be debated.

Recommendation 1.3 - ***Amend §209.009, Property Code, to ensure that foreclosure is prohibited except for matters relating only to collection of mandatory assessments.***

The intended purpose for §209.009, Property Code, was to prohibit foreclosure for matters unrelated to assessments. Explicit language should make the intent clearer.

Recommendation 1.4 - ***Amend §209.011(b), Property Code, to allow two years for an owner to redeem a property sold at foreclosure sale.***

This would mirror the two years allowed for tax foreclosure redemptions of homesteads in §34.21(a), Tax Code.

Recommendation 1.5 - ***Enact statutory language mandating a waiting period before a POA may employ an attorney to collect from a homeowner any dues in arrears. Thereafter, the POA could employ legal assistance and take any actions available to it under the law. POAs could be allowed to charge limited interest on the arrears up to the date of final payment.***

This recommendation follows a schedule established by Spring Shadows Civic Association in Harris County to collect dues in arrears (See Appendix A-8). By following this schedule, they are still able to aggressively pursue collection efforts while also allowing ample time for owners to settle their debt. As a result, the POA and owners avoid unnecessary attorney fees.

Recommendation 1.6 - ***Enact statutory language permitting a homeowner, in a case brought against the homeowner, to recover reasonable legal fees (as determined by the judge) from the POA if the POA is found to have no reasonable basis to sue the homeowner.***

No provision exists for owners to recoup their legal defense fees in cases where POAs unreasonably bring suit. This recommendation would discourage boards from pursuing ill advised enforcement suits.

Recommendation 1.7 - ***Enact statutory language prohibiting "deferred billing" arrangements with attorneys and management companies.***

The subcommittee received reports of attorneys billing owners directly without POA board

knowledge. In addition, some management companies are said to automatically add penalties in the form of administrative fees when owners are cited for restriction violations. This recommendation is intended to limit extraneous fees charged to owners and to ensure that the client POAs are invoiced directly for the services provided.

Recommendation 1.8 - ***Amend §§209.006-007, Property Code, by expanding an owner's right to a hearing before a POA board to include all issues of disagreement, including assessment and fee issues as well as deed restriction and architectural control issues.***

Under present law, a number of conditions must exist before a POA must extend a hearing opportunity to an owner. This recommendation is meant to give owners all possible opportunities to be heard by the board to settle issues and avoid unnecessary attorney fees.

Recommendation 1.9 - ***Amend §§209.006-007, Property Code, to require that when notifying an owner of their hearing rights a POA should state a range of any potential legal and management fees that could be charged to their account if the matter is pursued further and/or ultimately sent to the POA attorney.***

If owners are made aware of the potential costly consequences of delaying compliance, they may be more likely to settle the issue and avoid further charges.

Recommendation 1.10 - ***Enact statutory language prohibiting conflicting legal and management representation by persons serving on a POA board or who are related to persons serving on a POA board.***

While this does not appear to be a widespread problem, prohibiting such impropriety is a simple provident measure to ensure owner protections.

Recommendation 1.11 - ***Enact statutory language prohibiting POAs from barring homeowners from voting in POA elections unless the homeowner is more than 60 days in arrears on their maintenance dues or has not corrected a deed restriction violation that has already been either mediated or adjudicated.***

Most POAs considering the general proposal to prohibit all suspensions of voting privileges protested only that it should not extend to dues arrearages. They argue that maintaining voting privileges should be an incentive for owners to stay current on their dues, to which the subcommittee agrees within reason - hence the 60 day requirement.

Recommendation 1.12 - ***Repeal §202.004, Property Code, which provides that a court may assess civil damages up to $200 a day for deed restriction violations.***

Although most POAs do not ultimately seek such damages, some associations cite this statute when they notify owners of violations which leads to unnecessary adversarial posturing.

Recommendation 1.13 - ***Enact statutory language requiring POAs to offer payment plans with interest, when requested by owners, in certain circumstances.***

Owners temporarily unable to remedy dues arrearages should be given an opportunity to make necessary arrangements to meet their dues obligations before attorneys are hired to urge collection.

Recommendation 1.14 - ***Enact statutory language authorizing the Office of the County Attorney and/or the Office of the Attorney General to investigate complaints and bring suit against POAs in certain instances.***

It is unreasonable to expect an individual owner to bring suit against a POA board to compel them to act appropriately. Enforcement of statutes should not be left to citizens.

Recommendation 1.15 - ***Amend Chapter 204, Property Code, which applies only to Harris County POAs, to require a vote of the owners before a board may impose or increase assessments, fines, and fees as well as impose new rules and regulations.***

Older POAs in Harris County often have poorly worded declarations and restrictions that hinder their ability to adequately meet the demands of their owners. Chapter 204, Property Code, was meant to help such POAs, but giving unilateral powers to boards without a vote of owners was inappropriate.

Recommendation 1.16 - ***Amend Chapters 551 and 552, Government Code, to subject POAs with mandatory dues to the Open Meetings and Public Information Acts.***

As most POAs argue, associations carry out many of the duties and responsibilities of small governments and should be recognized as quasi-governments. As such, it is not unreasonable to mandate comparable public disclosures.

Recommendation 1.17 - ***Recodify association laws or adopt relevant portions of the Uniform Planned Community Act.***

Association laws in the Property Code are confusing, redundant, and occasionally conflicting. In addition, association provisions are scattered throughout the Civil Statutes, Tax Code, Government Code, and others, making it difficult for owners and associations to follow. The 1998 Senate Interim Committee on State Affairs similarly recommended the Uniform Planned Community Act be adopted.

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.

Executive Summary

Special districts are financing tools utilized by developers, cities, and counties for the purpose of providing certain services. These districts are authorized by statute to issue tax-exempt bonds to raise funds for utility construction. Special districts are a level of government that is growing.

The Census Bureau figures show that in 1952, there were 491 special districts in Texas. By 1997 (the last official Census of Governments), that number had grown to 2,182.

Due to the increasing concerns regarding the creation and use of special districts, the Lieutenant Governor charged the Senate Committee on Intergovernmental Relations (the Committee) to examine current state law regarding the purposes, authority, and duties of all special districts. The Committee was also charged to examine the procedures by which districts are created and board members are selected, the authority to tax and issue bonds, and annexation and condemnation powers. It became apparent almost immediately that, because of the breadth of the charge and the extensive number of special districts, the Committee would have to narrow the focus of the study to a much smaller category of districts. In keeping, the Committee narrowed the study under Charge 2 to include the following districts: Water Control and Improvement Districts (WCID), Fresh Water Supply Districts (FWSD), Municipal Utility Districts (MUD), Public Improvement Districts (PID), Municipal Management Districts (MMD), Municipal Development Districts (MDD), County Development Districts (CDD), and County Assistance Districts (CAD). The Committee studied the purpose, statutory authority, duties, creation, appointment/election of board members, tax and bond authority, and annexation and condemnation powers of selected special districts.

The Committee held hearings in Austin, Houston, and Dallas and heard testimony from residents, developers, and elected officials. In addition to the public hearings, Committee staff conducted workgroup meetings comprised of representatives from the Attorney General's office, Legislative Council, the Texas Commission on Environmental Quality, the Texas Municipal League, the Texas Conference of Urban Counties, the Texas Association of Counties, the Texas Association of Realtors, the Texas Association of Builders, the Texas Water Conservation Association, the Texas Rural Water Association, the Committee staff, and other interested parties. The primary topics of discussion were brought forward from public testimony provided during the Committee hearings, newspaper articles, and public comment. They include: the operation of special districts; accessibility of information regarding district boundaries and

meetings; taxing powers; oversight; annexation powers; voting procedures; and conversion abilities.

While the Committee found several areas in special district law that needed change, it should be noted that the existence and use of these types of districts are important and vital to the development of many areas of the State. They often provide affordable housing, amenities, and services that are otherwise unavailable to an area that might not be served by a municipality or other entity. Furthermore, districts can provide incentives for economic development and tourism, as well as promote growth in underdeveloped areas, supplement basic government services provided by a municipality or county, and address the specific needs of the communities they serve.

Recommendations

Based on the Committee hearings, workgroups, and general correspondence, the Committee has formulated the following recommendations to further enhance the operations and general accountability of special districts.

Recommendation 2.1 - ***Amend Chapter 42, Local Government Code, to require a municipality to give its written consent for the annexation of land to a special district if the land being annexed is located within the municipality's extraterritorial jurisdiction (ETJ) or provide the services proposed by the water district.***

Currently, consent of a municipality is required if a water district is created within the ETJ of a municipality. However, if a water district annexes land within the ETJ of a municipality, no consent from the municipality is required. The recommended solution would require that a municipality give its written consent for the annexation of land located within the ETJ of a municipality.

Recommendation 2.2 - ***Amend Chapter 49, Water Code, to require a certified copy of the order creating a water district be filed with the county clerk to be recorded in the county deed records.***

Currently, potential property buyers have limited resources to determine whether land is included in a special district. Notice of the existence of a district is not required to be given until after the confirmation election of the district, which can sometimes be many months after the order creating it. Consequently, purchasers may buy land not knowing it is part of a special district. By requiring a certified copy of order creating a water district to be recorded in the county deed records, potential land buyers will be able to determine whether their land is located within the boundaries of a special district.

Recommendation 2.3 - ***Amend §49.452, Water Code, "Notice to Purchasers," to include specifics about the governing body of a special district along with contact information.***

Per §49.452, Water Code, a "Notice to Purchasers" is to be given to a purchaser of real property within a special district prior to the execution of a binding contract for the purchase of the real property or at closing of purchase of the real property. Among other things, the "Notice to Purchasers" affirms that the property is located in a district, the rate of taxes levied by the district, and the purpose of the district. The amendment would require additional information be included in the "Notice to Purchasers" clearly stating that the district is a local governmental unit governed by a separate board of directors and supplying specific contact information for the district.

Recommendation 2.4 - ***Amend Chapters 51 and 53, Water Code, to require that a WCID or FWSD obtain the consent of the district's creating entity in order to divide. If the WCID or the FWSD was created by an act of the Legislature, the district must seek consent from the Texas Commission on Environmental Quality (TCEQ).***

Currently, WCIDs and FWSDs are allowed to divide upon approval by the qualified voters in the district. These divided districts are governed by a separate board and retain all powers of the original district. In order to divide, it is not necessary for a district to obtain approval from its

creating entity. This allows districts to subvert the intent of the creating entity. The proposed change would still require a vote by the qualified voters in the district, but would also require consent from the creating entity.

Recommendation 2.5 - ***Amend Chapters 51 and 53, Water Code, to require that a special district, prior to converting to a WCID or FWSD, obtain approval from the entity that would normally approve the creation of the WCID or FWSD.***

Currently, a special district that is permitted to convert into another type of district is able to do so solely upon the order of the district's governing body, unless the district is seeking to convert into a MUD. This lack of local input or oversight can be problematic because the conversion often expands the authority of the governing board that elected to convert the district. The proposed change requires the necessary and appropriate approval.

Recommendation 2.6 - ***Amend Chapter 53, Water Code, to authorize a commissioners court to consider the feasibility, necessity, and benefit of a proposed FWSD when making a decision to grant or refuse the district's creation.***

Chapter 51, Water Code, outlines the process by which a commissioners court shall conduct a hearing on a proposed WCID, including specifically allowing the commissioners court to grant or refuse the petition based on the feasibility of the district, the necessity of the district, and whether the district would be beneficial to the residents of the proposed district. Chapter 53, Water Code, does not contain similar language, and therefore, does not clearly state the role of the county in the process to create a FWSD. The proposed change would put provisions similar to those in Chapter 51, Water Code, into Chapter 53, Water Code.

Recommendation 2.7 - ***Recommend the Office of Attorney General (OAG) modify the existing affidavit signed by voters in a special district confirmation election to include the statements:***

a. "I was not promised anything of value in return for voting for any proposition on the ballot," and

b. "It is a criminal offense to falsely swear to a statement known to be untrue."

Prior to 1995, the OAG conducted "on the ground inspections" of elections confirming the creation of a special district if 10 or fewer votes were cast in the election. In 1995, the OAG concluded that the inspections were an "unproductive use of resources," and chose to stop conducting the inspections. The OAG now requires that an affidavit be submitted by each voter in those elections that previously would have been inspected. The proposed change recommends the OAG update the affidavit with the suggested changes.

Recommendation 2.8 - ***Amend §383.084, Local Government Code, to require:***

a. the consent of a landowner prior to the annexation of that landowner's property or removal of it from a CCD;

b. the provision of written notice to a municipality, and evidence of that notice to the appropriate commissioners court, when land within the municipality's ETJ is added to or excluded from a CCD; and

c. filing of the commissioners court order adding or excluding land from a CCD with the County Clerk for inclusion in the county deed records.

a. Currently, the board of a county development district, on its own motion or on request of a landowner in the district, may petition the commissioners court for the addition of land to or exclusion of land from the district.

b. This would ensure that the municipality has been notified if land added or excluded from a district lies within the municipality's ETJ.

c. Currently, potential land buyers have limited resources to determine if land is included in a special district.

Recommendation 2.9 - ***Amend Chapter 383, Local Government Code, to prohibit the creation of a county development district:***

a. within the corporate limits of a municipality without the written consent of the municipality; and

b. within the ETJ of a municipality without providing written notice to the municipality that the district is to be created.

Currently, a county development district can be created without municipal consent, upon petition of all landowners in the proposed district to commissioners court, a public hearing, and a successful confirmation election. The amendment would track the process used for the creation of municipal utility districts found in §54.0161, Water Code, to ensure appropriate involvement of the municipality to be impacted.

Recommendation 2.10 - ***Amend Chapters 372, 377, 383, and 384, Local Government Code, to require:***

- ***a. sellers of a property located in a CDD, CAD, MDD, or PID to disclose the district's tax rate and outstanding indebtedness to potential buyers.***
- ***b. a CDD, CAD, MDD, or PID to file, with the county clerk of each county within its boundaries, an information sheet showing current taxes, debt, and other information relative to the district.***

Currently, potential buyers of property in a CDD, CAD, MDD, or PID are not routinely provided with complete information regarding the existence, indebtedness, and potential tax burden of these districts on the property they are seeking to purchase. The proposed change would ensure that this information is disclosed to those buyers in a timely manner.

Recommendation 2.11 - ***Amend Chapters 372, 377, 383, and 384, Local Government Code, to require a CDD, CAD, MDD, or PID to indicate its existence by posting signs at the principle entrances of the district.***

Currently, no public notice of the boundaries of an existing CDD, CAD, MDD, or PID is available to area residents.

Recommendation 2.12 - ***Amend Chapters 377, 383, and 384, Local Government Code, to require a CDD, CAD, or MDD to have an annual audit performed. Copies of the audit for a district should be filed with the district's governing body and the Office of Comptroller of Public Accounts.***

Currently, CDDs, CADs and MDDs are not required to perform and file audits.

Recommendation 2.13 - ***Recommend the Office of Comptroller of Public Accounts assess the feasibility of maintaining a database in which special districts in Texas would be required to register certain information.***

According to the State Comptroller's office, "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." (See Appendix B-1) This recommendation would help to centralize pertinent information relating to special districts.

Recommendation 2.14 - ***Codify AG Opinion JC-0291 which concludes that a CDD is not authorized to levy ad valorem taxes and may undertake only those projects that are consistent with the purpose of Chapter 383, Local Government Code.***

Codification of AG Opinion JC-0291, would clarify the question of whether a county development district is authorized to levy ad valorem taxes and construct infrastructure for a residential subdivision as an element of its statutory purpose of providing "incentives for the location and development of projects in certain counties to attract visitors and tourists." (See Appendix B-2) Additionally, codification of the opinion would make it more accessible by being in statute.

Recommendation 2.15 - ***Amend Chapters 377, 383, and 384, Local Government Code, to require that the order canvassing the results of the confirmation election contain a description of the district's boundaries and be filed with the executive director and in the deed records of the county or counties in which the district is located.***

By requiring a certified copy of order creating a district to be filed with the county clerk to record in the county deed records, potential land buyers will be able to determine whether or not their land is located within the boundaries of a special district. The amendment would track the language found in §49.102(f), Water Code.

Recommendation 2.16 - ***Amend Chapters 377 and 383, Local Government Code, to require:***

a. a CDD or MDD, which establishes an office or meeting place outside its district boundaries, to give notice to the governing body and publish notice of the location in a newspaper of general circulation in the district;

b. a CDD or MDD board to designate a meeting place and meet in the district upon written request of at least 25 qualified electors residing in the district; and

c. a CDD or MDD to give notice of the time, place, and purpose of a meeting of the board by posting the notice at a place convenient to the public in the district.

Currently, CDDs and MDDs are subject to Chapter 551, Government Code, "The Open Meetings Act." However, the provisions of that Act have not proved sufficient to provide adequate notice and opportunity for participation to interested parties. These amendments would help to inform a greater number of residents in the district of the district's board meetings and encourage the district to have a regular meeting place.

Recommendation 2.17 - ***Amend §383.043, Local Government Code, Persons Disqualified to Serve, as follows to correct an erroneous statutory reference: (§49.052 ~~50.026~~, Water Code, applies to a director of a district.)***

This amendment corrects an inaccurate section number. §50.026, Water Code, is a superceded section.

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.

Executive Summary

Texas has traditionally classified land into two categories for the purpose of exercising development regulation and land use controls. Cities, usually considered urban areas, generally have authorization for comprehensive land use, zoning, and other development controls. While unincorporated areas of counties, usually considered rural, have minimal development regulation and no land use regulation. This system continues to work well in most of Texas' less populated counties and those not experiencing high amounts of growth. However, other counties face difficult challenges as an increasing number of citizens continue to move into the unincorporated area of the county.

For a number of years, counties have been requesting additional powers to address growth inside their unincorporated. Over the years, the legislature has authorized certain counties additional authority to handle the increasing number of inhabitants. The 77th Legislature expanded the authority of county officials in fast growing areas.

In order to assess the new legislation and the issue of county ordinance authority, the Lieutenant Governor charged the Senate Committee on Intergovernmental Relations (the Committee) to 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. While the Committee initially reviewed county authority as it applies to all counties, it determined that, at this time, any further expansion of authority should be limited to those areas experiencing high amounts of development and growth.

Recommendations

The Committee conducted hearings in Austin, Houston, and Dallas and heard testimony from various stakeholders. Correspondence received in response to the letter sent to County Judges and Mayors also provided the Committee with information regarding the charge. The Committee formulated findings and recommendations based on testimony, correspondence, and research.

Recommendation 3.1 - ***Recommend the 78th Legislature continue to monitor the use of the authority granted under Subchapter E, Chapter 232, Local Government Code, by SB 873 and to consider inclusion of additional counties experiencing substantial growth.***

The 77th Legislature granted urban counties the authority to: adopt subdivision regulations, including lot size and setback limitations; enforce a major thoroughfare plan and establish right of way; require possession of a plat compliance certificate before utility hookups; and enact other regulations relevant to responsible development. While the authorities granted have proven to be helpful to the affected counties, the 78th Legislature should monitor the benefits of the legislation, review the current bracket, and consider adding additional counties if appropriate.

Recommendation 3.2 - ***Amend the Local Government Code to authorize counties to adopt provisions similar to those of Subchapter G, Chapter 214, Local Government Code, relating to the International Residential Code.***

Subchapter G, Chapter 214, Local Government Code, adopts the International Residential Code as the residential building code for municipalities in the state. While there continues to be growth outside of municipalities, counties do not have the authority to enforce any type of building code. Although many builders build houses to the same standards, regardless of location, the authority for counties to adopt and enforce the International Residential Code (without local amendments) within platted subdivisions would ensure houses are built to code.

Charge Four

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

Executive Summary

According to the Bureau of Emergency Management (BEM) at the Texas Department of Health (TDH), almost 30 Texans die every day from injuries, almost 10,000 each year. To prevent death or disability, trauma victims must reach definitive care within a short period of time. To insure this care, appropriate resources must be in place and immediately accessible. Studies have shown that coordination of emergency medical resources available in an area, also known as emergency medical services (EMS)/trauma care systems, can result in a significant decrease in trauma related deaths. Pre-hospital care, more commonly known as EMS, is often the first critical link in the process of providing medical treatment to victims of trauma.

Because trauma care is critically important to the health of Texans, the Lieutenant Governor charged the Senate Committee on Intergovernmental Relations (the Committee) with studying the availability and delivery of EMS across the state. The Committee conducted public hearings throughout the interim to discuss issues surrounding the provision of EMS. Additionally, stakeholder meetings were held to further explore recommendations relating to EMS.

In 1973, the Texas Legislature created the EMS division at the TDH, in order to coordinate EMS. The EMS division was given the responsibility of recommending statewide guidelines for staffing, training, equipment, and vehicles to the Department. TDH has two main sources of funding for EMS regulation, general revenue funds and dedicated fees. TDH uses these funds to regulate EMS personnel, services, and education programs through the BEM.

The 77th Legislature appropriated up to $7.5 million per year for emergency care: 911 funds - $2 million; EMS and Trauma Care tobacco endowment interest proceeds - up to $4.5 million (depending on interest rates); and at least $1 million for tertiary care.

State funds are not the only financial sources for EMS operators. Other sources may include: taxes generated by local governments; special district taxes; subscription fees; private donations; money raised through fund raisers such as raffles, barbeques, fish fries, and bake sales; and

second and third party reimbursements. However, reimbursements have been a problematic issue. Low reimbursement rates, cumbersome billing processes, and non-reimbursable services are just a few of the challenges.

While many Texans are able to call 911 to summon EMS, contrary to popular belief, state law does not require municipalities or counties to provide or otherwise ensure the delivery of EMS. Over the last decade, there has been a growing interest across the state in mandating EMS. Although this would move forward the quality and availability of emergency health care services, further study to determine the feasibility of instituting EMS as an essential service is needed.

Although EMS is not a required service, many entities provide EMS services across the state of Texas. These entities include: municipalities, counties, private ambulance service, hospitals, Emergency Service Districts (ESDs), Rural Fire Prevention Districts (RFPDs), and volunteer entities.

EMS firms employee certified personnel who may hold one of five levels of certification granted by TDH. Those who perform EMS in the field may include: emergency care attendants, emergency medical technicians, emergency medical technician-intermediate , emergency medical technician-paramedic, and licensed paramedics.

One way local communities may ensure the delivery of EMS is by creating a taxing district to fund the provided services in their area. ESDs and RFPDs may be created to meet this need, as both may provide EMS and/or fire prevention services. Additionally, RFPDs were given the ability to convert into an ESD in 1993. Many ESDs already tax at the highest limit and do not have local economies that allow for improvement of services without additional revenues. ESDs have found it nearly impossible to provide both fire protection services and emergency medical response services under the cap. The State has provided communities with yet another locally-controlled tool for ensuring EMS, which is the development of Regional Advisory Councils (RACs).

The state is divided into 22 Trauma Service Areas (TSAs), serviced by area RACs. It is the responsibility of RACs to assist providers in their area with injury prevention programs, technical assistance, training, and education. The goal of RACs is to: decrease deaths and disability due to preventable causes, lower the numbers of individuals on state assistance programs due to sustained traumas, decrease the incidence of trauma, and decrease the severity of injuries to Texans. Additionally, RACs are 501(c)(3) organizations and can distribute both the EMS and RAC allotments of the 911 funds.

Rural areas of the state face multiple challenges making the provision of EMS difficult. Such challenges include: unavailable or inadequate funding; low population base, longer travel times; recruiting and retaining qualified personnel; acquiring continuing education requirements for personnel; and reciprocity of services with bordering states.

Texans' expectations of EMS have risen to a new level over the past year. Local EMS providers have been asked to become experts in various scenarios that may pose a potential threat to public safety. Additionally, providers have been responding to an increasing number of alarms generated by concerned citizens.

Recommendations

Based on the Committee hearings, workgroups, and general correspondence, the Committee has formulated the following recommendations to further enhance the operations and general accountability of special districts.

Recommendation 4.1 - Amend Subchapter C, Chapter 773, Health and Safety Code, to require EMS firms to submit EMS run data to the Texas Department of Health as a requirement of licensure.

There is no statewide data available on the number of runs EMS providers go on or how many of those runs require services. Basic information is needed to determine if current cost

reimbursements and service allocation is appropriate. Because the information sought will be minimal, collection should not be a burden to EMS providers.

Recommendation 4.2 - Amend the Health and Safety Code, to allow the Texas Department of Health to grant, on a case by case basis, administrative exceptions for rural EMS personnel.

Currently, TDH standards for training EMS personnel through a local entity, such as a hospital, are often cost prohibitive. Thus, in rural areas personnel are required to travel to urban centers to access educational opportunities for EMS response and equipment. In many cases, personnel are qualified to perform certain services, but are not certified to perform those services because of the lack of the available education. TDH should have the ability to review, using appropriate guidelines, each individual's qualifications to perform services or use equipment and grant exemptions for those personnel that demonstrate the ability to perform those services appropriately. TDH should develop the guidelines used in determining the competency of those applicants for time certain exemptions.

Recommendation 4.3 - Amend the Health and Safety Code, to require the Texas Department of Health and the Texas Higher Education Coordinating Board, in conjunction with the Texas Telecommunications Infrastructure Fund, to study ways to increase the accessibility of education to EMS shift workers in rural areas.

For a variety of reasons, it has been difficult for rural EMS firms to maintain qualified personnel to perform emergency medical services. There appears to be a correlation between a firm's inability to provide continuing education and retaining personnel. Training in rural areas has been difficult to obtain due to the long distances personnel must travel to receive training for higher levels of certification. Many of the personnel in these rural areas are typically volunteers, therefore, cost is also a factor in obtaining adequate training. This study should attempt to find solutions that address these issues.

Recommendation 4.4 - Repeal Chapter 794, Health and Safety Code, and convert all existing Rural Fire Prevention Districts (RFPDs) to Emergency Service Districts (ESDs).

RFPDs and ESDs provide similar services; both can provide emergency medical services and/or fire services, depending on the services required by the community. The Committee has found that many RFPDs are already converting to ESDs, primarily to take advantage of their ability to increase the tax rate.

Recommendation 4.5 - Amend the Texas Constitution to allow the tax cap for Rural Fire Prevention Districts (RFPDs) and Emergency Service Districts (ESDs) to be raised to 20 cents.

Currently, the cap for RFPDs is three cents and for ESDs is ten cents. Depending on community needs, RFPDs and ESDs provide various types of service ranging from EMS to fire prevention. It is difficult to continue to provide an adequate level of service without an increase in funding to offset the rising costs of providing these services. Over the years, many districts have maintained the same tax rate without an increase. Recent events have increased public awareness of various risks to public safety. This has lead to a significant increase in the demands on RFPDs and ESDs.

Recommendation 4.6 - Amend Chapter 775, Health and Safety Code, to require Rural Fire Prevention Districts (RFPDs) and Emergency Service District (ESDs) to register with the Comptroller of Public Accounts.

Currently, RFPDs and ESDs are required to file an annual report with the Secretary of State's Office. However, the Secretary's Office does not provide a comprehensive database of RFPDs or ESDs from which information can be extracted. In an effort to assess the needs and collect basic information on the existence of these districts, the Committee recommends that RFPDs and ESDs be required to register basic information with the Comptroller of Public Accounts for use by agencies seeking data pertaining to the information collected.

Recommendation 4.7 - Amend Subchapter E, Chapter 773, Health and Safety Code, to allow the Texas Department of Health to have formal control over the organization of the Regional

Advisory Councils (RACs). The Texas Department of Health shall develop performance measure for RACs to ensure a minimum level of service to local areas.

RACs are formal organizations charted by TDH's Bureau of Emergency Management to develop and implement trauma services in a given region. TDH should exert formal control over the organization of the RACs and the policies to be put into place by the RAC, and there should be statewide rules governing the structure and organization of the RACs. RACs are currently in the process of adopting performance measures which TDH may adopt.

Recommendation 4.8 - Amend §773.122(c) and (d), Health and Safety Code, to allow Regional Advisory Councils (RACs) the ability to carry over funds from the previous fiscal year.

Currently, TDH often receives allocated tobacco funding late in the budget cycle. This causes TDH to either pay grants late to the RACs or wait until the money is actually transferred, which results in RACs not being able to spend it within the fiscal year. When TDH is late paying RACs, then the provider is late paying for purchases. If TDH cannot allocate the money within the fiscal year, they lose those funds.

Recommendation 4.9 - Amend the Health and Safety Code, to require the Health and Human Services Commission and the Texas Department of Health to study the current Medicaid reimbursement rates to determine the accuracy of costs of services, and whether reimbursements are sufficient to support EMS infrastructure. A report should be made to the 79th Legislature.

With increased public awareness of available services, demands on EMS have increased significantly, therefore, it is important to know whether Texas' reimbursement system is keeping pace with these demands and whether providers are being reimbursed at appropriate levels.

Charges and Recommendations

Charge One

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

Background

An adequate history and explanation of the powers and duties of Property Owner Associations (POAs) is available by referencing a previous report published by the Senate in 1998[1], as well as a 2002 article by the House Research Organization.[2] This subcommittee report does not delve into the same prefacing details, and instead focuses on specific problems brought to its attention.

To organize the study, staff compiled a list of the specific problems and solutions discussed in testimony received in the first public hearing entitled Property Owner Association Issues (See Appendix A-1). The list was divided into four topics that were cited most often: Foreclosure, Mediation and other Legal Issues; Attorney Fees; POAs and Management Companies; and, Harris County Issues. The list was then sent to knowledgeable advocates for both POAs and owners to get their input prior to the second hearing.

The majority of problems communicated to the subcommittee pertained to planned communities of single family residences and town homes with mandatory assessments. Therefore, this report concentrates the examination and recommendations predominantly on those associations. The references hereafter to associations or POAs reflect this focus.

Foreclosure

Foreclosure is at the forefront of the committee charge, so specific attention was paid to this issue. Two types of foreclosure actions are available to POAs: **Judicial** and **Non-Judicial. Non-Judicial** foreclosures require that a 21-day notice be given to the owner that a lien has been filed with the county clerk and that the property is being posted for auction and will be sold to the highest bidder to satisfy the debt owed the association. Typically the cost for non-judicial foreclosures includes only a county filing fee and minor attorney fees. Since no court of law is involved, the time frame to complete a non-judicial foreclosure is condensed and the cost is

[1] Texas Senate Interim Committee on State Affairs Report, November 2, 1998. Charge 2.

[2] House Research Organization, Interim News, "Foreclosure by Homeowner Associations: Striking a Balance", July 23, 2002.

usually less than $1,000. A **Judicial** foreclosure is more costly and time consuming with court fees and docket schedules to consider. A POA must bring suit in district court and win a judgement against the owner to foreclose the lien based on factual evidence. The property is then posted for auction and sold. The time period to complete such a foreclosure could be many months and the cost could reach well into five figures.

Although the Texas Constitution specifically prohibits foreclosure in all but a few instances, the power of POAs to foreclose is recognized by the 1987 Texas Supreme Court opinion on *Inwood North Homeowners' Association v. Charlie Harris*.[3] Basically, the court said where a contractual lien was created by the initial neighborhood covenants, the constitutional homestead protections do not apply and, therefore, foreclosure is allowed to enforce the lien. In effect, this means that the developer establishes a contractual lien, that runs with the land, on the properties before they are sold.

In a word, owners believe the court was simply "wrong" in its ruling. Harvella Jones with the Texas Homeowner's Advocate Group, argued that the "contractual liens placed on the land by the developer is a one-party contract, which in and of itself is in violation of Texas Contract law which requires two parties to have privity of the contract at the same time. In addition, lien law require(s) there be a set amount fixed against property as opposed to an empty lien being placed on property in anticipation of a future violation."[4]

In other arguments, the point was made that associations are no different than other creditors prohibited from foreclosing to enforce a lien under the state constitution. Tom Adolph, attorney and owner advocate, states "HOAs should not have any power to foreclose. HOAs should not

[3] *Inwood North Homeowners' Association v. Harris* 736 S. W. 2d 632 (Tex. 1987).

[4] Harvella Jones, Texas Homeowner's Advocate Group, written testimony presented to the subcommittee on May 28, 2002. (See Appendix A-2)

be in a better position (to collect debt) than a doctor who saves a person's life or a credit card company or a lawyer or any other creditor."[5]

Meanwhile, POA representatives are just as adamant in their opposition to removing foreclosure powers. They argue that a POA, while made up of neighbors, is a business and should be run like one. Michael Gainer, a lead association attorney in Harris County, states "... 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."[6]

Similarly, Jim Windsor, President of Lakewood Forest Fund, stated "Removal of foreclosure powers from HOAs puts us out of business. When foreclosure powers are removed from HOAs, collection of maintenance fees becomes voluntary. No business (and the Lakewood Forest HOA for example is a $1.3 million a year business) can exist when payment for services rendered is voluntary."[7]

While they could not agree on the need for foreclosure, neither could the two sides agree on the severity of the issue. Beanie Adolph, an owner advocate who owns a website dedicated to tracking foreclosure filings in Harris County, testified that more than 12,000 foreclosure-related filings by POAs in Harris County have been filed since January 3, 1985.[8] However, POA advocates point out that those numbers represent only filings that could lead to a foreclosure sale, not the actual number of sales that resulted from these filings. In fact, according to Harris

[5] Tom Adolph, attorney, written testimony presented to the subcommittee on May 28, 2002.

[6] Michael Gainer, attorney, written testimony presented to the subcommittee on January 16, 2002. (See Appendix A-3)

[7] Jim Windsor, President, Lakewood Forest Fund (POA), response to Property Owner Association Issues list.

[8] Beanie Adolph, testimony presented to the subcommittee on January 16, 2002. (See Appendix A-4)

County Constable Ron Hickman, only a total of 18 POA related judicial foreclosure sales were conducted in the 18 month period prior to January 2002.[9]

Legal Fees

POA boards must work within the context of a number of state laws as well as their own legally written declarations and dedicatory instruments, and therefore hire legal professionals to advise them. In addition, they often rely on attorneys to urge deed restriction compliance and to collect unpaid dues. However, ranking just behind foreclosure in the number of complaints received by the subcommittee, attorney involvement in POA disputes and unreasonably high attorney fees were common complaints conveyed by owners. Generally, owners opposed attorney involvement in neighborhood affairs in all but essential situations.

Of greatest concern was that some attorneys charged unreasonable fees for writing simple letters. Typically, POA boards or their management companies will send a succession of letters to an owner urging compliance and offering the opportunity to appear before the board before sending the matter to their attorney. The attorney then also sends a succession of letters similar to those sent by the board and that is when the cost can escalate. The fees for generating these letters are reportedly anywhere from $50 to $500 per letter. Most distressing to owners is that such letters are usually pre-formatted "form" letters that could have just as easily have been sent by the board. And, the fees are often disproportionate to the amount of arrearage to be collected or to the importance of the restriction violation at issue. They argue that the board does not care what the cost is because the owner ultimately pays the bill. POA advocates argue that the board typically only sends a matter to an attorney when all other avenues have failed. They assert that high fees often follow the best legal representation and that their access to such representation should not be hindered.

Another major concern was of contractual agreements between POAs and law firms that allow a firm to directly bill the owner for legal fees. Sometimes referred to as "Deferred Billing

[9] Ron Hickman, testimony presented to the subcommittee on January 16, 2002.

Programs", these agreements allow a law firm to collect money directly from the owner on behalf of the POA. In effect, the POA client is not actually paying for services and may not be aware of the fees being generated. The firm collects the monies owed, including attorney fees, directly from the owner.

The Attorney Task Force appointed by the subcommittee considered these and other concerns.[10] To elaborate on issues not agreed upon, each side presented separate recommendations for the subcommittee to consider. Although unable to agree on most issues, they did find common ground in proposing to prohibit deferred billing practices.[11] Association attorneys on the panel assert that eliminating such practices will force associations to be more conscious of attorney billings because they would receive regular invoice statements and pay accordingly.[12] The owner attorneys agree, but were concerned that associations could still approve of costly billings knowing that ultimately they would collect the payments from owners.[13]

Of additional concern was the imbalance in the awarding of attorney fees in POA suits. Present law provides that reasonable POA attorney fees may be recovered from an owner when the POA prevails in a suit against an owner. However, no such provision exists allowing owners to recover attorney fees in suits where the owner prevails, even when the case against the owner was found to be lacking in merit. POA attorneys understand this concern and agreed that some parity is warranted. However, they caution that allowing owners to recover attorney fees in all cases could be problematic. Unlike POA attorneys that are held in check by their board clients when going through costly procedures such as discovery, they say defense attorneys have no such

[10] Attorneys David Kahne, Wendy Laubach, Marian Rosen and David Furlow for owners and Michael Gainer, Suzy Rice, Roy Hailey and Bob Alexander for associations. Attorney Cathy Sisk facilitated.

[11] Attorney Task Force Report submitted by Cathy Sisk to the subcommittee on May 28, 2002. (See Appendix A-5)

[12] Separate Association Attorney Report submitted by Michael Gainer to the subcommittee on May 28, 2002. (See Appendix A-6)

[13] Separate Owner Attorney Report submitted by David Kahne to the subcommittee on May 28, 2002. (See Appendix A-7)

restraint. They believe it would be prudent to limit the recovery to unreasonable suits brought against owners.

POA Administration

The individual board member is most equipped to understand the needs and desires of their neighbors because they, too, are owners. Yet, the responsibility and power associated with running the association, which typically is a non-profit corporation, are sometimes overwhelming. They must objectively enforce rules and restrictions without prejudice; define or redefine standards for the community; hire management companies, service contractors and attorneys; conduct meetings; and, maintain financial matters for the corporation. Unfortunately, some boards are comprised of persons without the skills to handle these duties and as a result, they occasionally may take actions contrary to prescribed practices.

When boards act inappropriately, the individual owner is the only defense - which was a concern in 1998 when POAs were last studied by the Senate. As stated in the Senate State Affairs Committee Interim Report of 1998, "There is no state agency that monitors or regulates violations of this Act (Texas Non-profit Corporations Act)."[14] It continues further: "The remedy provided under the Act requires the homeowner to pursue legal recourse against the board."[15] Owners argue that it is not reasonable to require an individual to bring suit in court to compel a POA board to follow its bylaws or statutory requirements.

One suggestion to the subcommittee to prevent board improprieties was to mandate relevant education for board members. POA representatives' main concern in opposing such a proposal was that it is already difficult to find and encourage owners who are willing to volunteer to serve on a POA board. They point out that many umbrella organizations such as the Community Associations Institute, a national organization comprised of associations and professionals

[14] Texas Senate Interim Committee on State Affairs Report, November 1998, Charge Two, page 9.

[15] Ibid.

involved in the industry, already provide many opportunities for boards members to receive information and education to help them to become better members.

The other common suggestion was to authorize an agency to oversee POAs, receive and investigate complaints, and take appropriate corrective actions against an offending board. Some suggested the Attorney General's Consumer Protection Division would be equipped to handle such responsibility statewide, while others thought local county attorney offices could best handle such local issues. Most opposition to the proposal suggested that it would take much more industry knowledge and time than government could provide. However, owners suggest that most complaints are egregious enough that industry knowledge required to investigate such matters would be insignificant.

Another significant administrative concern expressed to the subcommittee related to practices of management companies. POAs often hire management companies to handle day-to-day administrative duties for which boards are responsible. For the average board, a good management company can relieve the headaches associated with maintaining common areas, collecting dues, paying bills and enforcing restrictions. However, a poor management company can cause just as many problems.

Most complaints regarded boards giving too much control to management companies to enforce deed restrictions and collect dues. Specifically, owners were concerned that some POAs provide an incentive to management companies by allowing them contingency fees for each restriction violation or dues collection letter they send to an owner. Management companies argue that they should be allowed additional fees if the work they perform is greater than their base contract projected for such work.

Ultimately, boards must rely on their best judgement in hiring management companies because they are not required to hold certificates or licenses signifying their expertise in the industry. Reputable industry representatives assert that they would welcome an opportunity to prove that

they have a minimum understanding of the law and competence in managing POAs to set them apart from unscrupulous or ill equipped companies giving the industry a bad name.

Harris County

A whole host of factors affect Harris County POAs differently than those in other counties. First, it is one of the largest counties in America and home to a tremendous number of associations. More importantly, it is home to the City of Houston, which has no zoning ordinances. Therefore, Houston associations take on a disproportionate responsibility to maintain the aesthetics of neighborhoods. Finally, a chapter of the Property Code is specifically targeted only to POAs in Harris County, which affects the practices of associations differently than any other county in the state.

Chapter 204, Property Code, is devoted solely to associations located in whole or in part of Harris County. Enacted in 1995 through House Bill 2152, the purpose of the act was to "provide a less burdensome procedure for ... modifying residential real estate restrictions by approval and circulation of a petition by a property owners' association ... and codify certain powers of property owners' associations".[16] The goal was to provide relief to associations with very old and poorly written dedicatory instruments that did not take into account the future roles and responsibilities of associations. Restrictions with specific limits on assessments that reflected the 1960s economy and 100 percent voter approval requirements to make changes to restrictions are two of the most commonly cited problems with associations in Harris County. A number of associations in Harris County have dedicatory instruments that do not address specific powers that are to be granted an association board. Simple authority for hiring management companies; settling litigation; entering contracts relating to operating the subdivision; making improvements to common areas; purchasing liability insurance; and other basic authority most associations take for granted are often non-existent.

[16] House Bill 2152, 74th Session of the Texas Legislature.

In light of these omissions, Chapter 204.010(a), Property Code, provides boards with authority to make necessary changes without a vote of owners. However, this subsection also allows boards the power to impose payment for "services" provided to owners; charge unrelated costs to an owners assessment account; and, to accumulate an assessment increase one year, then begin billing owners for it a number of years later.

On April 18, 2002, Texas 6th Court of Appeals addressed many of the issues on which owner advocates have expressed concerns about Chapter 204, Property Code, in *Geneva Kirk Brooks v. Northglen Association*.[17] The case considered the authority of Northglen to levy assessments without a vote of the owners and their authority to foreclose liens to enforce those assessments. Generally, the court held that associations could impose new or additional fees by the authority vested in Chapter 204, Property Code, but that they could not foreclose to enforce such fees. Both sides claimed partial victory, but the issue remains unresolved. The case may eventually be settled by the Supreme Court.

Proponents argue that to completely remove all of Chapter 204, Property Code, would severely limit the effectiveness of those POAs. Generally, owners in Harris County want the right to vote on POA matters, especially those relating to assessments, like the rest of the state. However, some believe the dedicatory instruments governing the associations should supercede any statutory additions.

General Problems

Although not addressed specifically in the body of this report, some of the problems and solutions listed in the Property Owner Association Issues list previously cited warrant action (See Appendix A-1). Board members with conflicts of interest with attorneys and management

[17] *Geneva Kirk Brooks v. Northglen Association*, 76 S. W. 3rd 162 (Tex. 2002)

companies; harassment by selective enforcement of deed restrictions; unreasonable constraints on access to public records; mediation availability; election improprieties; and developer involvement are but a few of the concerns examined by the subcommittee. Where warranted, the subcommittee has addressed many of these issues in its recommendations.

Findings

The two committee hearings and an ongoing dialogue with POA board members, attorneys, management company representatives and owner advocates provided the subcommittee with an enormous amount of information on this issue. However, the matters of concern today are basically the same as those discussed in the 1998 report.[18]

The subcommittee finds that for the most part, owners living in associations are happy and content to live in such communities. Most willingly pay their assessments, get along with their boards, and enjoy the convenience of an association handling neighborhood business for them. They are wary of legislative involvement and protective of the powers they believe their associations need to continue as effective organizations.

The subcommittee finds that many of the problems examined by the subcommittee, while not indicative of a majority of associations, are worthy of solutions. The Legislature originally intervened in association matters in 1985 to extend restrictions set to expire in certain neighborhoods. The statutes subsequently evolved to generally recognize and confer greater powers for associations until 1999 when owner considerations were passed into law. The focus since then has been on evening the playing field, so to speak. This endeavor should continue as long as such laws don't go so far as to prevent associations from carrying out the duties for which they were created.

[18] Texas Senate Interim Committee on State Affairs Report, November 2, 1998, Charge 2.

The subcommittee finds that the previous study was correct in stating that POAs are "de facto political subdivisions," which is increasingly evident as developers are encouraged by cities and counties to provide services that were the responsibility of local governments in the past.[19] However, some owners serving on boards are not adequately educated or equipped to handle this responsibility while also maintaining the delicate balance between the basic rights of the owner vs. the good of the neighborhood.

The subcommittee finds that while unique opportunities exist for the Legislature to provide relief for many of the problems encountered by older Harris County associations with poorly written declarations and dedicatory instruments, the solution provided in Chapter 204, Property Code, allowing boards to take certain actions without consent of owners is inappropriate and should be remedied.

The subcommittee finds that while actual foreclosure sales do not occur frequently, associations often begin the foreclosure process prematurely. Associations need some enforcement power to be effective; however, foreclosure is a poor solution. As such, foreclosure should only be available as a last resort.

The subcommittee finds that while attorney involvement, and high legal fees in particular, are a concern, it is not reasonable to legislate fee limits. Instead, the circumstances leading to attorney involvement and the contractual relationship entered into by associations should be addressed.

The subcommittee finds that the provisions in the numerous statutes affecting property owner associations are unclear, redundant or confusing. A uniform act or at least reorganized provisions of the present laws would be of benefit to all involved.

[19] Ibid, pg. 16.

Recommendations

The subcommittee finds that many of the state's associations operate openly, fairly and effectively. The recommendations made hereafter prescribing particular practices emulate those associations.

Recommendation 1.1 - ***Enact statutory language prohibiting single family residence POAs from enforcing liens through non-judicial foreclosure.***

While non-judicial foreclosure is less costly and time consuming than judicial foreclosure, the benefits of due process far outweigh other considerations. Most condominium associations believe the day-to-day reliance on individual dues is critical to maintaining the infrastructure and services that one associates with condominiums. Therefore, the subcommittee does not recommend extending this prohibition to condominium associations.

Recommendation 1.2 - ***Recommend the 78th Legislature consider other alternatives to foreclosure as a method to enforce mandatory assessments.***

although the subcommittee does not endorse any specific alternative to foreclosure at this time, the issue should continue to be debated.

Recommendation 1.3 - ***Amend §209.009, Property Code, to ensure that foreclosure is prohibited except for matters relating only to collection of mandatory assessments.***

The intended purpose for §209.009, Property Code, was to prohibit foreclosure for matters unrelated to assessments. Explicit language should make the intent clearer.

Recommendation 1.4 - ***Amend §209.011(b), Property Code, to allow two years for an owner to redeem a property sold at foreclosure sale.***

This would mirror the two years allowed for tax foreclosure redemptions of homesteads in §34.21(a), Tax Code.

Recommendation 1.5 - ***Enact statutory language mandating a waiting period before a POA may employ an attorney to collect from a homeowner any dues in arrears. Thereafter, the POA could employ legal assistance and take any actions available to it under the law. POAs could be allowed to charge limited interest on the arrears up to the date of final payment.***

This recommendation follows a schedule established by Spring Shadows Civic Association in Harris County to collect dues in arrears (See Appendix A-8). By following this schedule, they are still able to aggressively pursue collection efforts while also allowing ample time for owners to settle their debt. As a result, the POA and owners avoid unnecessary attorney fees.

Recommendation 1.6 - ***Enact statutory language permitting a homeowner, in a case brought against the homeowner, to recover reasonable legal fees (as determined by the judge) from the POA if the POA is found to have no reasonable basis to sue the homeowner.***

No provision exists for owners to recoup their legal defense fees in cases where POAs unreasonably bring suit. This recommendation would discourage boards from pursuing ill advised enforcement suits.

Recommendation 1.7 - ***Enact statutory language prohibiting "deferred billing" arrangements with attorneys and management companies.***

The subcommittee received reports of attorneys billing owners directly without POA board knowledge. In addition, some management companies are said to automatically add penalties in the form of administrative fees when owners are cited for restriction violations. This recommendation is intended to limit extraneous fees charged to owners and to ensure that the client POAs are invoiced directly for the services provided.

Recommendation 1.8 - ***Amend §§209.006-007, Property Code, by expanding an owner's right to a hearing before a POA board to include all issues of disagreement, including assessment and fee issues as well as deed restriction and architectural control issues.***

Under present law, a number of conditions must exist before a POA must extend a hearing

opportunity to an owner. This recommendation is meant to give owners all possible opportunities to be heard by the board to settle issues and avoid unnecessary attorney fees.

Recommendation 1.9 - ***Amend §§209.006-007, Property Code, to require that when notifying an owner of their hearing rights a POA should state a range of any potential legal and management fees that could be charged to their account if the matter is pursued further and/or ultimately sent to the POA attorney.***

If owners are made aware of the potential costly consequences of delaying compliance, they may be more likely to settle the issue and avoid further charges.

Recommendation 1.10 - ***Enact statutory language prohibiting conflicting legal and management representation by persons serving on a POA board or who are related to persons serving on a POA board.***

While this does not appear to be a widespread problem, prohibiting such impropriety is a simple provident measure to ensure owner protections.

Recommendation 1.11 - ***Enact statutory language prohibiting POAs from barring homeowners from voting in POA elections unless the homeowner is more than 60 days in arrears on their maintenance dues or has not corrected a deed restriction violation that has already been either mediated or adjudicated.***

Most POAs considering the general proposal to prohibit all suspensions of voting privileges protested only that it should not extend to dues arrearages. They argue that maintaining voting privileges should be an incentive for owners to stay current on their dues, to which the subcommittee agrees within reason - hence the 60 day requirement.

Recommendation 1.12 - ***Repeal §202.004, Property Code, which provides that a court may assess civil damages up to $200 a day for deed restriction violations.***

Although most POAs do not ultimately seek such damages, some associations cite this statute when they notify owners of violations which leads to unnecessary adversarial posturing.

Recommendation 1.13 - ***Enact statutory language requiring POAs to offer payment plans with interest, when requested by owners, in certain circumstances.***

Owners temporarily unable to remedy dues arrearages should be given an opportunity to make necessary arrangements to meet their dues obligations before attorneys are hired to urge collection.

Recommendation 1.14 - ***Enact statutory language authorizing the Office of the County Attorney and/or the Office of the Attorney General to investigate complaints and bring suit against POAs in certain instances.***

It is unreasonable to expect an individual owner to bring suit against a POA board to compel them to act appropriately. Enforcement of statutes should not be left to citizens.

Recommendation 1.15 - ***Amend Chapter 204, Property Code, which applies only to Harris County POAs, to require a vote of the owners before a board may impose or increase assessments, fines, and fees as well as impose new rules and regulations.***

Older POAs in Harris County often have poorly worded declarations and restrictions that hinder their ability to adequately meet the demands of their owners. Chapter 204, Property Code, was meant to help such POAs, but giving unilateral powers to boards without a vote of owners was inappropriate.

Recommendation 1.16 - ***Amend Chapters 551 and 552, Government Code, to subject POAs with mandatory dues to the Open Meetings and Public Information Acts.***

As most POAs argue, associations carry out many of the duties and responsibilities of small governments and should be recognized as quasi-governments. As such, it is not unreasonable to mandate comparable public disclosures.

Recommendation 1.17 - ***Recodify association laws or adopt relevant portions of the Uniform Planned Community Act.***

Association laws in the Property Code are confusing, redundant, and occasionally conflicting. In addition, association provision are scattered throughout the Civil Statutes, Tax Code, Government Code, and others, making it difficult for owners and associations to follow. The 1998 Senate Interim Committee on State Affairs similarly recommended the Uniform Planned Community Act be adopted.

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.

Background

Special districts are governmental bodies that were initially created to provide water and sewer utilities to undeveloped areas. Today, they are used to provide a broad array of services to areas that might otherwise be unable to acquire them because of location, size, financial limitations, or unavailability of government support.

In 1876, the Texas Constitution authorized three types of entities to collect taxes: the state, counties, and cities. However, due to the limitation in the tax rate, few entities were able to take on large scale water supply, drainage, irrigation, and conservation projects.[20] The creation of special districts dates back to 1904 and 1917, when the Texas Constitution was amended to allow special taxing districts to build water, wastewater, drainage, and road improvements and to issue debt to pay for them. In 1987, the Texas Constitution was amended to authorize loans and grants of public money to be used for economic development purposes. A wide variety of special districts are now authorized by state law and range from Library Districts to Mosquito Control Districts.

Traditionally, there are two ways to create a special district. One way is for a petition to be submitted to the appropriate governmental body for review and approval. The other is by a special act passed by the legislature. In the majority of cases, the voters living in the proposed district vote to confirm the creation of the district.

Developers, cities, and counties utilize special districts as financing tools for the purpose of providing certain services. This is accomplished through the district's ability, as a governmental entity, to issue tax-exempt bonds to raise funds for utility construction.[21] Typically, a developer spends its own money to install a utility system and the district reimburses the developer with the proceeds from the bonds. The property owners in the district then pay for the outstanding

[20] Letter from Monte Akers, Texas Municipal League, to Senator Frank Madla, January 29, 2002.

[21] Letter to Senator Jane Nelson from Attorney General John Cornyn, August 13, 2001.

bonds through their property tax payments. This enables the district to spread the cost over a period of time, rather than include the cost of utilities in the up-front sale price of the home.[22]

Due to increasing concerns regarding the creation and use of special districts, the Lieutenant Governor charged the Senate Committee on Intergovernmental Relations (the Committee) to examine current state law regarding the purposes, authority, and duties of all special districts. The Committee was also charged to examine the procedures by which districts are created and board members are selected, the authority to tax and issue bonds, and the districts' annexation and condemnation powers. It became apparent almost immediately that, because of the breadth of the charge and the extensive number of special districts, the Committee would have to narrow the focus of the study to a much smaller category of districts. In keeping with this view, the Committee narrowed the study to include the following districts: Water Control and Improvement Districts, Fresh Water Supply Districts, Municipal Utility Districts, Public Improvement Districts, Municipal Management Districts, Municipal Development Districts, County Development Districts, and County Assistance Districts.

Studied Districts

The following is a summary describing the purpose, statutory authority, duties, creation, appointment/election of board members, tax and bond authority, and annexation and condemnation powers of selected special districts. For a more detailed description of each type of district, a review of each referenced chapter in the appropriate code may be necessary.

Water Control and Improvement District

Water Control and Improvement Districts (WCID) have broad authority to: supply and store water for domestic, commercial, and industrial use; operate sanitary wastewater systems; and provide irrigation, drainage, and water quality services. In addition, a WCID is authorized "to improve rivers, creeks, and streams, prevent overflow, and to permit navigation and irrigation."

[22] Water Districts in Texas, Memorandum from Jody Richardson, Akin Gump Strauss Hauer & Feld LLP, to IGR Committee, September 18, 2001.

Furthermore, they "may construct and maintain pools, lakes, reservoirs, dams, canals, and waterways."[23] Governed by Chapters 49 and 51, Water Code, the creation of a WCID is authorized by Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution.

A petition to create a WCID must be signed by a majority of the landowners in the proposed district. The boundaries of the district determine how the district is created. According to §51.016, Water Code, "if the land to be included in a district is within one county, the creation of the district shall be considered and ordered by the commissioners court, but if the land to be included in a district is in two or more counties, the creation of the district shall be considered and ordered by the..." Texas Commission on Environmental Quality (TCEQ). If the boundaries of a municipality are included in a district, a majority of the voters in the municipality must provide consent to the creation of the district.

Upon approval of a WCID, five board members are appointed by the commissioners court, if they approved the creation. If created by the TCEQ, the commission appoints five board members. Each board member must own land or be a qualified voter in the district at the time of creation. This temporary board calls an election to confirm the creation of the district. Also located on the ballot are the names of the temporary board members. The appointed board members serve until their successors are elected or appointed in accordance with the law. The board members are governed by Chapter 49, Water Code.

After the voters have confirmed the district, a WCID can issue bonds or other obligations. The district is then required to levy a tax to pay the principal and interest on the bonds. The tax is levied based on the appraised value of all property in the district. The TCEQ provides approval and oversight for the issuance of bonds for water, wastewater, and drainage facilities. The

[23] A Handbook for Board Members of Water Districts in Texas, Fourth Edition, Texas Council on Environmental Quality, June 1996.

Attorney General's office must also approve the issuance of bonds, basing their review on compliance with statutes regarding the issuance of bonds.[24]

Subchapter J, Chapter 49, Water Code, provides WCIDs with annexation and condemnation powers for land contiguous and non-contiguous to the district.

Fresh Water Supply District

Fresh Water Supply Districts (FWSD) are created to conserve, transport, and distribute fresh water for commercial and domestic purposes. Governed by Chapters 49 and 53, Water Code, and authorized by Article XVI, Section 59 of the Texas Constitution, FWSDs are created through a process similar to a WCID. However, the statutory language in Chapter 51, Water Code, is slightly different from that in Chapter 53, Water Code.

The TCEQ is not required to approve petitions to create a FWSD. Rather, the petition requesting creation must be signed by a majority of the voters who own land in the proposed district and be presented to the commissioners court of the county in which the land is located. If the court is not in session, the petition must be presented to the county judge. It is the responsibility of the commissioners court (or county judge) to deny or grant the petition and, if the petition is granted, to appoint temporary directors for the district. If a portion of the district lies in the extraterritorial jurisdiction (ETJ) of a municipality, the municipality must give its written consent by ordinance or resolution. Before the district may issue bonds or other obligations, the district must be confirmed by an election in the proposed district.

Like WCIDs, FWSDs must also obtain approval from the TCEQ and the Attorney General to issue bonds for water, wastewater, and drainage facilities. A FWSD may also collect revenues from the operation of water and sewer systems.

[24] Letter from Attorney General John Cornyn, to Senator Jane Nelson, August 13, 2001.

Subchapter J, Chapter 49, Water Code, provides FWSDs with annexation and condemnation powers for land contiguous and non-contiguous to the district.

Municipal Utility District

Municipal Utility Districts (MUD) are governed by Chapters 49 and 54, Water Code, and are authorized by Article XVI, Section 59 of the Texas Constitution. As the most widely used district, MUDs engage in water supply, conservation, irrigation, drainage, fire fighting, solid waste collection and disposal, wastewater treatment, and recreational activities.[25] Subchapter J, Chapter 49, Water Code, provides MUDs with annexation and condemnation powers for land contiguous and non-contiguous to the district.

To create a MUD, a petition, signed by a majority of the landowners in the proposed area, requesting creation must be filed with the TCEQ. No land within the corporate limits or ETJ of a city may be included in a district unless the governing body of the city grants, by resolution or ordinance, its' written consent to the inclusion of the land within the district. If the municipality fails or refuses to give consent, the landowners of the proposed district may petition the governing body of the municipality to make available the water or sanitary sewer services. If all or part of a proposed district is to be located outside the ETJ of a city, the commissioners court of the county in which the district is to be located may review the petition for creation. In the event of a review, the commissioners court submits to the TCEQ a written opinion stating whether the county would recommend the creation of the proposed district. Upon approval by the TCEQ, the commission appoints five temporary directors to serve until permanent directors are elected.

While MUDs are authorized to issue bonds with the same approval mechanisms as WCIDs and FWSDs, they are also authorized to collect impact fees, standby fees, and user fees. The ability to collect these types of fees makes MUDs more attractive to developers, and therefore more

[25] A Handbook for Board Members of Water Districts in Texas, Fourth Edition, Texas Council on Environmental Quality, June 1996

popular. Although MUDs are allowed to develop parks or recreational facilities, they are prohibited from issuing bonds to pay for the facilities.

Public Improvement District

Public Improvement Districts (PID), governed by Chapter 372, Local Government Code, enable a municipality or county to finance, at the request of the property owners of an area, certain improvements and services for that area by levying and collecting special assessments on property. In order for cities and counties to facilitate economic growth, they often need to make improvements to their infrastructure.[26] Some examples of improvement, acquisition, or construction projects that this type of district may engage in include: off-street parking facilities; libraries; art; mass transit improvements; parks, recreation, and cultural improvements; water, wastewater, or drainage facilities; and landscaping.

A PID may be created inside the ETJ of a city or in a county. Creation of a PID begins after the governing body of the municipality or county initiates or receives a petition requesting the establishment of the district. After receiving the petition, the governing body may appoint an advisory board to develop a feasibility study for the district. The advisory board is often made up of property owners in the proposed district. A public hearing is conducted to determine the advisability of the proposed improvements. In a municipality, the city council acts as the governing body. In a county, the commissioners court acts as the governing body. The county and city may also appoint property owners to the advisory body of the district.

Generally, public improvement projects are financed by an assessment that the municipality or county imposes on the property in the PID. The municipality or county may issue general obligation or revenue bonds to fund improvements.[27] There is no provision in Chapter 372, Local Government Code, for annexation, condemnation, or eminent domain; however,

[26] Office of the Attorney General. "Public Improvement Districts." Handbook on Economic Development Laws for Texas Cities Vol. 1 (2000) : 154-158.

[27] Letter from Anne Peters, Texas Legislative Council, to Senator Frank Madla, January 23, 2002.

municipalities and counties have condemnation powers. Just as in creating a PID, a public hearing may be held to dissolve the district.

Municipal Management District

Municipal Management Districts (MMD), governed by Chapter 375, Local Government Code, are formed by a coalition of industrial, office, residential, and retail properties to address specific urban concerns. Typically, property owners in a defined business area want to supplement, not replace, the basic government services provided by the city and county. These districts may be custom tailored to address specific needs of the communities they serve. MMDs focus on: enhancing security and public safety; alleviating traffic congestion and providing greater mobility; beautification programs such as graffiti abatement; street cleaning and garbage pickup; maintaining unique landscaping, street signs, and urban art; enhancing parks, greenbelts, and recreational facilities; and launching economic development programs to recruit and retain businesses in the district.[28] A MMD may be created in an metropolitan area devoted primarily to commercial development or business activity inside the boundaries of a municipality with a population of at least 25,000. A district may also be created by the legislature only when the boundaries of the district are within a municipality with a population of more than 1,500,000.

A MMD can impose ad valorem taxes, assessments, and impact fees and issue bonds. A MMD may also annex land as provided by Chapter 54, Water Code, subject to the approval of the governing body of the municipality.

The creation of a MMD begins upon receipt, by the TCEQ, of a petition from the owners of the real property which comprises a majority of the assessed value in the proposed district, or by special legislation. The TCEQ appoints the initial directors, and vacancies are filled by the remaining board members.

[28] Senate Committee on Intergovernmental Relations Public Hearing on Management Districts, University of Houston, January 15, 2002.

Bonds and the proceedings authorizing their issuance must be submitted to the Attorney General for approval. In order for a district to issues bonds for an improvement project, it must obtain the approval of the governing body of the municipality in which the district is located for the plans and specifications of the improvement project for which the bonds will be issued. Also, a district must obtain approval from the TCEQ to issue bonds to provide water, sewage, or drainage facilities. However, despite being a conservation and reclamation district created under Article XVI, Section 59 of the Texas Constitution, a MMD is not subject to the continuing supervision of the TCEQ pursuant to §375.208, Local Government Code.

Termination of a district is by Board action, by petition of owners of 75 percent of value in district on 75 percent of surface area or by city council vote, but not until all debt is paid. [29]

Municipal Development District

Municipal Development Districts (MDD), governed by Chapter 377, Local Government Code, are established to plan and pay costs for development projects such as convention centers, civic events, civic center hotels or auditoriums, parking areas, and facilities. A district may only be created in a municipality located in more than one county. The creation of a MDD is authorized by a municipality which calls an election by voters within the proposed district. Once a district's creation is authorized, the governing body of the municipality in which the district is located supervises the district by appointing the district's directors. A MDD is governed by a board of at least four directors, which may be removed at any time by the governing body.

As with MMDs, the Attorney General must approve the district's bonds and other obligations. Upon voter approval, a MDD may impose a sales and use tax within its boundaries to finance the operations of the district. A district is prohibited from adopting a sales and use tax if the tax would result in a combined tax rate of all local sales use taxes of more than two percent in any

[29] Letter from Anne Peters, Texas Legislative Council, to Senator Frank Madla, December 20, 2001.

location in the district. The district may not impose an ad valorem tax although it may issue bonds. There is no provision in Chapter 377, Local Government Code, for annexation, condemnation, eminent domain, or termination.[30]

County Development District

County Development Districts (CDD), governed by Chapter 383, Local Government Code, were authorized by the state legislature for small and medium-sized counties to provide incentives for the location and development of projects to attract visitors and tourists which result in employment and economic activity. A CDD may be created in a county with a population of 400,000 or less. The creation of a CDD is authorized by approval of the county commissioners court after the filing of a petition requesting creation. A public notice and hearing is held thereafter. The district is governed by a board of five directors appointed by the commissioners court of the county in which the district is located.

The powers of a CDD include the power to issue bonds and the power to impose a sales and use tax. A CDD may issue bonds for the purpose of defraying all or part of the cost of any project as provided by Chapter 383, Local Government Code. The district must have its bonds approved by the Attorney General. This approval process is limited to a review of the district's compliance with statutes applicable to the issuance of the bonds and the creation of the district. Bonds issued by CDDs are subject to TCEQ approval only if the proceeds of the bonds are to be used to provide water, sewage, or drainage facilities.[31] CDDs have to file the proceedings of their bond elections with the Attorney General's office if there are ten or fewer votes cast in the election.[32] Before the board issues bonds, the board, on its own motion or on request of a landowner in the

[30] Ibid.

[31] Letter from Attorney General John Cornyn, to Senator Jane Nelson, August 13, 2001.

[32] Office of Attorney General, email to Committee staff from Jim Thomassen, November 15, 2001.

district, may petition the commissioners court for the addition of land to or exclusion of land from the district.[33]

A district located outside of a municipality may exercise the power of eminent domain to acquire land or interests in land for water or sewer purposes.[34] A CDD may be dissolved by a petition from the board to the commissioners court or by agreement between the governing body of a municipality and the board if all of the territory in the district is located in or is annexed by the municipality.

County Assistance Districts

County Assistance Districts (CAD), governed by Chapter 384, Local Government Code, provide counties with an additional resource for funding the construction, maintenance, or improvement of roads or highways. In addition, CADs allow for: the provision of law enforcement and detention services; the maintenance or improvement of libraries, museums, parks, or other recreational facilities; and the provision of other services that benefit the public health or welfare.

A CAD may be created in a county that has a population of less than 45,000 and any portion of which is included in an MTA or a regional transportation authority governed by Chapters 451 or 452, Transportation Code. To authorize the creation of a CAD, the commissioners court of a county must call an election by voters within the proposed district. Once a district's creation is authorized, Chapter 384, Local Government Code, does not provide for the supervision of a CAD by a governmental entity other than the commissioners court. The commissioners court is the governing body of the district. A CAD may impose a sales and use tax, upon voter approval, to finance the operations of the district. The district is prohibited from adopting a sales and use tax if the tax would result in a combined tax rate of all local sales and use taxes of more than two percent in any location in the district. The district may not impose an ad valorem tax and may

[33] §383.084, Local Government Code.

[34] Office of the Attorney General. "County Development District Tax." Handbook on Economic Development Laws for Texas Cities Vol. 1 (2000) : 88-97.

not issue bonds. The commissioners court may call an election to change or repeal the sales tax. The commissioners court may call an election in an area of the county that is not located in a district to determine if the area should be included in an existing district. Only upon a majority of votes received at the election which favor inclusion, can an area be included. Chapter 384, Local Government Code, does not address eminent domain nor include provisions for termination.

Committee Findings

The Committee held hearings in Austin, Houston, and Dallas and heard testimony from residents, developers, and elected officials. In addition to the public hearings, Committee staff conducted work group meetings comprised of representatives from the Attorney General's office, Legislative Council, the Texas Commission on Environmental Quality, the Texas Municipal League, the Texas Conference of Urban Counties, the Texas Association of Counties, the Texas Association of Realtors, the Texas Association of Builders, the Texas Water Conservation Association, the Texas Rural Water Association, the Committee staff, and other interested parties. The primary topics of discussion were brought forward from public testimony provided during the Committee hearings, newspaper articles, and public comment. They include: the operation of special districts; accessibility of information regarding district boundaries and meetings; taxing powers; oversight; annexation powers; voting procedures; and conversion abilities.

While the Committee found several areas in special district law that needed change, it should be noted that the existence and use of these types of districts are important and vital to the development of many areas of the State. They often provide affordable housing, amenities, and services that are otherwise unavailable to an area that might not be served by a municipality or other entity. Furthermore, districts can provide incentives for economic development and tourism, as well as promote growth in underdeveloped areas, supplement basic government services provided by a municipality or county, and address the specific needs of the communities they serve.

Based on the Committee hearings, the work group meetings, and public comment, the Committee found there are three main areas regarding special districts that need improving. These areas are: 1) oversight of certain actions by special districts; 2) availability of certain information regarding districts; and 3) lack of notice to a municipality regarding actions by certain special districts in the municipality's ETJ.

Oversight

The Committee found that there was not adequate oversight regarding certain activities by certain special districts. Specifically, the ability to divide or convert to another type of district. Currently, these actions are accomplished solely by a motion of the Board of Directors of the district. The Committee found that the creating entity of the district should approve its division. In order to convert into a WCID or FWSD, the Committee found it would be best to require a special district, prior to converting to a WCID or FWSD, to obtain approval from the entity that would normally approve the creation of the WCID or FWSD.

The Committee heard testimony regarding the ability of certain special districts to annex non-contiguous land. It was suggested to the Committee that annexations of any kind by a special district be prohibited, specifically annexations of non-contiguous land. However, the Committee found that there are instances when the annexation of non-contiguous land is appropriate, such as if the land being annexed is to supply the district with water. In the past, a small number of special districts were being created as a result of the division of an original district that had annexed non-contiguous land. While the Committee does not support this method of creating districts, the Committee found it was not appropriate to prohibit the ability of any special district to annex land, whether contiguous or non-contiguous.

Availability of Certain Information

The Committee heard several concerns at the Dallas hearing regarding the purchase of property located in a special district. Witnesses claimed that they were unaware that they were buying property in a special district. While it was found that proper and adequate notice is given to a

buyer in the majority of cases, the Committee found that a few districts were not required to provide such notice. The Committee determined that a purchaser of property in a special district should be given basic information about that district, specifically the names of the governing body of the district and contact information. In addition, the Committee found, through public testimony, the need for certain districts to provide visual notice of their existence by posting signs at the principal entrance of the district.

Because there is no central database that stores information regarding all special districts in Texas, the Committee found that such a database would be helpful to track taxing information and provide access to this information to the public. The Committee determined that the most logical site for such a database would be within the Office of the Comptroller of Public Accounts. However, in recognition of the fact that the creation of this database may be difficult and costly, and the fact that the state is facing a possible budget deficit, the Committee determined that the Comptroller should study the need and cost-effectiveness feasibility of establishing such a database.

Consent for Creation, Addition, and Exclusion

The creation of a special district within a city's corporate limits or ETJ can have a significant impact on a city's ability to service the needs of its present and future residents because of resulting land developments and additional tax burdens Currently, consent of a city is required for the creation of a WCID, a FWSD, or a MUD within the city's ETJ. However, CDDs can be created within a city's corporate limits or its ETJ without city consent. To ensure that cities are advised of and involved in the district creation process, the Committee agreed that a CDD may not be created within the corporate limits of a city without the written consent of that city, and a CDD may not be created within the ETJ of a city without providing written notice to that city. In addition, affected landowners must consent before their land is added or excluded from a CDD.

Recommendations

Based on the Committee hearings, workgroups, and general correspondence, the Committee has formulated the following recommendations to further enhance the operations and general accountability of special districts.

Recommendation 2.1 - ***Amend Chapter 42, Local Government Code, to require a municipality to give its written consent for the annexation of land to a special district if the land being annexed is located within the municipality's extraterritorial jurisdiction (ETJ) or provide the services proposed by the district.***

Currently, consent of a municipality is required if a water district is created within the ETJ of a municipality. However, if a water district annexes land within the ETJ of a municipality, no consent from the municipality is required. The recommended solution would require that a municipality give its written consent for the annexation of land located within the ETJ of a municipality.

Recommendation 2.2 - ***Amend Chapter 49, Water Code, to require a certified copy of the order creating a water district be filed with the county clerk to be recorded in the county deed records.***

Currently, potential property buyers have limited resources to determine whether land is included in a special district. Notice of the existence of a district is not required to be given until after the confirmation election of the district, which can sometimes be many months after the order creating it. Consequently, purchasers may buy land not knowing it is part of a special district. By requiring a certified copy of the order creating a water district to be recorded in the county deed records, potential land buyers will be able to determine whether their land is located within the boundaries of a special district.

Recommendation 2.3 - ***Amend §49.452, Water Code, "Notice to Purchasers," to include specifics about the governing body of a special district along with contact information.***

Per §49.452, Water Code, a "Notice to Purchasers" is to be given to a purchaser of real property

within a special district prior to the execution of a binding contract for the purchase of the real property or at closing of purchase of the real property. Among other things, the "Notice to Purchasers" affirms that the property is located in a district, the rate of taxes levied by the district, and the purpose of the district. The amendment would require additional information be included in the "Notice to Purchasers" clearly stating that the district is a local governmental unit governed by a separate board of directors and supplying specific contact information for the district.

Recommendation 2.4 - ***Amend Chapters 51 and 53, Water Code, to require that a WCID or FWSD obtain the consent of the district's creating entity in order to divide. If the WCID or the FWSD was created by an act of the Legislature, the district must seek consent from the Texas Council on Environmental Quality (TCEQ).***

Currently, WCIDs and FWSDs are allowed to divide upon approval by the qualified voters in the district. These divided districts are governed by a separate board and retain all powers of the original district. In order to divide, it is not necessary for a district to obtain approval from its creating entity. This allows districts to subvert the intent of the creating entity. The proposed change would still require a vote by the qualified voters in the district, but would also require consent from the creating entity.

Recommendation 2.5 - ***Amend Chapters 51 and 53, Water Code, to require that a special district, prior to converting to a WCID or FWSD, obtain approval from the entity that would normally approve the creation of the WCID or FWSD.***

Currently, a special district that is permitted to convert into another type of district is able to do so solely upon the order of the district's governing body, unless the district is seeking to convert into a MUD. This lack of local input or oversight can be problematic because the conversion often expands the authority of the governing board that elected to convert the district. The proposed change requires the necessary and appropriate approval.

Recommendation 2.6 - ***Amend Chapter 53, Water Code, to authorize a commissioners court to consider the feasibility, necessity, and benefit of a proposed FWSD when making a decision to grant or refuse the district's creation.***

Chapter 51, Water Code, outlines the process by which a commissioners court shall conduct a hearing on a proposed WCID, including specifically allowing the commissioners court to grant or refuse the petition based on the feasibility of the district, the necessity of the district, and whether the district would be beneficial to the residents of the proposed district. Chapter 53, Water Code, does not contain similar language, and therefore, does not clearly state the role of the county in the process to create a FWSD. The proposed change would put provisions similar to those in Chapter 51, Water Code, into Chapter 53, Water Code.

Recommendation 2.7 - ***Recommend the Office of Attorney General (OAG) modify the existing affidavit signed by voters in a special district confirmation election to include the statements:***

- ***a. "I was not promised anything of value in return for voting for any proposition on the ballot," and***
- ***b. "It is a criminal offense to falsely swear to a statement known to be untrue."***

Prior to 1995, the OAG conducted "on the ground inspections" of elections confirming the creation of a special district if 10 or fewer votes were cast in the election. In 1995, the OAG concluded that the inspections were an "unproductive use of resources," and chose to stop conducting the inspections. The OAG now requires that an affidavit be submitted by each voter in those elections that previously would have been inspected. The proposed change recommends the OAG update the affidavit with the suggested changes.

Recommendation 2.8 - ***Amend §383.084, Local Government Code, to require:***

- ***a. the consent of a landowner prior to the annexation of that landowner's property or removal of it from a CCD;***
- ***b. the provision of written notice to a municipality, and evidence of that notice to the appropriate commissioners court, when land within the municipality's ETJ is added to or excluded from a CCD; and***

c. filing of the commissioners court order adding or excluding land from a CCD with the County Clerk for inclusion in the county deed records.

a. Currently, the board of a county development district, on its own motion or on request of a landowner in the district, may petition the commissioners court for the addition of land to or exclusion of land from the district.

b. This would ensure that the municipality has been notified if land added or excluded from a district lies within the municipality's ETJ.

c. Currently, potential land buyers have limited resources to determine if land is included in a special district.

Recommendation 2.9 - ***Amend Chapter 383, Local Government Code, to prohibit the creation of a county development district:***

a. within the corporate limits of a municipality without the written consent of the municipality; and

b. within the ETJ of a municipality without providing written notice to the municipality that the district is to be created.

Currently, a county development district can be created without municipal consent, upon petition of all landowners in the proposed district to commissioners court, a public hearing, and a successful confirmation election. The amendment would track the process used for the creation of municipal utility districts found in §54.0161, Water Code, to ensure appropriate involvement of the municipality to be impacted.

Recommendation 2.10 - ***Amend Chapters 372, 377, 383, and 384, Local Government Code, to require:***

a. sellers of a property located in a CDD, CAD, MDD, or PID to disclose the district's tax rate and outstanding indebtedness to potential buyers.

b. a CDD, CAD, MDD, or PID to file, with the county clerk of each county within its boundaries, an information sheet showing current taxes, debt, and other information relative to the district.

Currently, potential buyers of property in a CDD, CAD, MDD, or PID are not routinely provided with complete information regarding the existence, indebtedness, and potential tax burden of these districts on the property they are seeking to purchase. The proposed change would ensure that this information is disclosed to those buyers in a timely manner.

Recommendation 2.11 -*Amend Chapters 372, 377, 383,and 384, Local Government Code, to require a CDD, CAD, MDD, or PID to indicate its existence by posting signs at the principle entrances of the district.*

Currently, no public notice of the boundaries of an existing CDD, CAD, MDD, or PID is available to area residents.

Recommendation 2.12 - *Amend Chapters 377, 383, and 384, Local Government Code, to require a CDD, CAD, or MDD to have an annual audit performed. Copies of the audit for a district should be filed with the district's governing body and the Office of the Comptroller of Public Accounts.*

Currently, CDDs, CADs and MDDs are not required to perform and file audits.

Recommendation 2.13 - *Recommend the Office of the Comptroller of Public Accounts assess the feasibility of maintaining a database in which special districts in Texas would be required to register certain information.*

According to the State Comptroller's office, "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." (See Appendix B-1) This recommendation would help to centralize pertinent information relating to special districts.

Recommendation 2.14 - *Codify AG Opinion JC-0291 which concludes that a CDD is not authorized to levy ad valorem taxes and may undertake only those projects that are consistent with the purpose of Chapter 383, Local Government Code.*

Codification of AG Opinion JC-0291, would clarify the question of whether a county development district is authorized to levy ad valorem taxes and construct infrastructure for a residential subdivision as an element of its statutory purpose of providing "incentives for the location and development of projects in certain counties to attract visitors and tourists." (See Appendix B-2) Additionally, codification of the opinion would make it more accessible by being in statute.

Recommendation 2.15 - ***Amend Chapters 377, 383, and 384, Local Government Code, to require that the order canvassing the results of the confirmation election contain a description of the district's boundaries and be filed with the executive director and in the deed records of the county or counties in which the district is located.***

By requiring a certified copy of order creating a district to be filed with the county clerk to record in the county deed records, potential land buyers will be able to determine whether or not their land is located within the boundaries of a special district. The amendment would track the language found in §49.102(f), Water Code.

Recommendation 2.16 - ***Amend Chapters 377 and 383, Local Government Code, to require:***

- ***a. a CDD or MDD, which establishes an office or meeting place outside its district boundaries, to give notice to the governing body and publish notice of the location in a newspaper of general circulation in the district;***
- ***b. a CDD or MDD board to designate a meeting place and meet in the district upon written request of at least 25 qualified electors residing in the district; and***
- ***c. a CDD or MDD to give notice of the time, place, and purpose of a meeting of the board by posting the notice at a place convenient to the public in the district.***

Currently, CDDs and MDDs are subject to Chapter 551, Government Code, "The Open Meetings Act." However, the provisions of that Act have not proved sufficient to provide adequate notice and opportunity for participation to interested parties. These amendments would help to inform a greater number of residents in the district of the district's board meetings and encourage the district to have a regular meeting place.

Recommendation 2.17 - ***Amend §383.043, Local Government Code, Persons Disqualified to Serve, as follows to correct an erroneous statutory reference: (§49.052 ~~50.026~~ ,Water Code, applies to a director of a district.)***

This amendment corrects an inaccurate section number. §50.026, Water Code, is a superceded section.

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.

Background

Texas has traditionally classified land into two categories for the purpose of exercising development regulation and land use controls. Cities, usually considered urban areas, generally have authorization for comprehensive land use, zoning, and other development controls. While unincorporated areas of counties, usually considered rural, have minimal development regulation and no land use regulation. This system continues to work well in most of Texas' less populated counties and those not experiencing high amounts of growth. However, other counties such as Bexar, Dallas, Harris, Tarrant, and Travis and the counties that surround them face difficult challenges as an increasing number of citizens continue to move into their unincorporated areas.

According to the latest estimates from the U.S. Census Bureau, Texas' population reached over 20 million in 2001. Ninety-one percent of growth was concentrated in the state's 27 metropolitan areas with the majority of growth occurring in the large metropolitan areas of Austin, Dallas, Houston, and San Antonio.[35] This growth is not occurring just inside the city limits. As the population of the state continues to grow, much, if not most, of that growth is expected to take place outside of cities, mostly within the areas surrounding urban counties.

For a number of years, counties have been requesting additional powers to address growth inside the unincorporated areas of counties. Over the years, the legislature has authorized certain counties additional authority to handle the increasing number of inhabitants. To further assist urban counties in managing development, the 77th Legislature enacted HB 1445, HB 3172, and SB 873 to expand the authority of county officials in fast growing areas.

In order to assess the new legislation and the issue of county ordinance authority, the Lieutenant Governor charged the Senate Committee on Intergovernmental Relations (the Committee) to 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

[35] "The Texas Economy," 23 Sept. 2002, 02 Oct. 2002, <http://www.bidc.state.tx.us/overview/2-2te.htm>.

safety. While the Committee initially reviewed county authority as it applies to all counties, it determined that, at this time, any further expansion of authority should be limited to those areas experiencing high amounts of development and growth.

County Authority

Pursuant to §240.903, Local Government Code, after every legislative session, the Attorney General's office provides each County Judge in the state a list of county powers and duties. (See Appendix C-1, "County Powers & Duties, as Modified by the 77th Legislature, 2001") The document is also available on the Attorney General's website at http://www.oag.state.tx.us/AG_Publications/pdfs/2001co_powers.pdf. It is not the intention of the Committee to duplicate the efforts of the Attorney General's office, and therefore the Committee recommends the review of the Attorney General's publication for specific information regarding the authority of county officials.

77th Legislature

The Committee was asked to assess the effects of HB 1445, HB 3172, and SB 873, passed by the 77th Legislature. To complete this task, a letter was mailed to all County Judges and Mayors that were affected by the three bills. The Judges and Mayors were asked to inform the Committee how the newly enacted laws had been implemented. Based on the responses received, the Committee was able to evaluate the effects of the legislation and determine whether changes were necessary.

House Bill 1445

Relating to the authority of municipalities and counties to regulate subdivisions in the extraterritorial jurisdiction of a municipality.

Before the passage of HB 1445, a plat of land in the extra-territorial jurisdiction (ETJ) of a city could not be filed with the county unless the plat was approved by both the affected city and county. Subsequently, developers were subject to regulation by both cities and counties when

subdividing within the ETJ. HB 1445 eliminates this dual authority and provides a "one-stop shop" for plat applications in the ETJ.

HB 1445 created Chapter 242, Local Government Code, which mandates that cities and counties develop written agreements to provide land developers unified platting review in the ETJ of cities. Cities and counties must enter into agreements that identify the governmental unit authorized to regulate and approve subdivision plats in the ETJ.[36] The agreement must be in the form of an interlocal contract and approved by the commissioners court and the city council. Counties exempt from the provisions of Chapter 242, Local Government Code, are: those that contain the ETJ of a city with a population of 1.9 million or more; those counties within 50 miles of an international border; and economically distressed counties, defined by Subchapter C, Chapter 232, Local Government Code.

The law mandates that cities and counties adopt interlocal agreements that solve the problem by choosing from four options:

(1) City Regulation: The county relinquishes authority, and the city reviews all plats under city standards;

(2) County Regulation: The city relinquishes authority, and the county reviews all plats under county standards;

(3) Divided Regulation: The city and county divide the ETJ geographically, each keeping authority only in one portion; or

(4) Joint Regulation: The city and county jointly review plats under their authority, but provide one office to file plats, one filing fee, and provide one uniform and consistent set of plat regulations.

In response to option 4, a request for an Attorney General's opinion was submitted questioning the authority of a county and city to "agree to a 'hybrid' mix of regulations related to plats and

[36] Jon Needle and Paul Sugg, eds. County Subdivision Regulation Sourcebook (Austin: Texas Association of Counties, 2002) 65-67.

subdivisions of land."[37] The request for opinion stated that the language in Chapter 242, Local Government Code, could be interpreted two ways: either as authorization for a county and city to create a set of regulations by combining their authority; or as authorization for a single entity, the county or the city, to adopt their respective rules, unchanged. In response to the request for opinion, the Attorney General concluded that counties and cities could combine their authorities to regulate development in the ETJ of a city.[38]

Although some cities and counties were initially having difficulties reaching agreements as required, most throughout the state had reached an agreement at the time this report was published. Agreements were made using all four options, and no amendments to the current provisions are anticipated.

House Bill 3172

Relating to the authority of a county to establish public improvement districts.

HB 3172 authorizes counties to establish Public Improvement Districts (PID). Amending Chapter 372, Local Government Code, HB 3172 authorized counties to create PIDs to finance certain improvements and services by levying and collecting special assessments on property in a certain area. Examples of projects that PIDs may initiate are off-street parking facilities, libraries, and parks. (For more information on PIDs, please refer to Section 2 of this report.)

While supported by many counties, the authority established in HB 3172 has not been widely used around the state since its passage. While some counties began discussions regarding the creation of a PID, most counties have not initiated a request or been petitioned to create a PID. The Committee will continue to monitor the usage of this authority and recommend changes if necessary.

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[37] Letter from Honorable Richard J. Miller, Bell County Attorney, to Honorable John Cornyn, Texas Attorney General (Jan. 9, 2002).

[38] Letter from Honorable John Cornyn, Texas Attorney General, to Honorable Richard J. Miller, Bell County Attorney (June 24, 2002).

Senate Bill 873

Relating to infrastructure planning in certain urban counties.

According to the Texas Association of Counties, "SB 873 represents a significant step in providing county officials in and around urban areas with some of the tools necessary to ensure that development proceeds at an orderly pace and does not impose an undue burden on county taxpayers."[39] Passed during the 77th Legislative Session, SB 873 grants counties the authority to: adopt subdivision regulations, including lot size and setback limitations; enforce a major thoroughfare plan and establish right of way; require possession of a plat compliance certificate before utility hookups; and enact other regulations relevant to responsible development. SB 873 gave certain counties the same authority that cities have within their ETJ when reviewing plats. It provided certain counties with the authority to adopt any rule necessary to protect the health, safety, welfare, and morals of the county and to promote the safe and healthy development of the county.

SB 873 amended Chapter 232, Local Government Code, by adding Subchapter E. Subchapter E applies to: counties with a population of 150,000 or more and adjacent to an international border; counties with a population of 700,000 or more; and counties adjacent to a county with a population of 700,000 or more and in the same metropolitan statistical area (MSA), as designated by the Office of Management and Budget. This bracket covers the metropolitan areas around Houston, Dallas-Ft. Worth, San Antonio, Austin, El Paso, Laredo, and the Rio Grande Valley - areas experiencing significant urbanization.

Response to SB 873 has been very positive. Many counties already regulate lot frontages and utility connections and are in the process of developing a countywide major thoroughfare plan. While language in Subchapter E, Chapter 232, Local Government Code, currently applies only to specific counties, as population growth continues around the state, the provisions of the new statute may be useful to other rapidly growing areas and "exurban" counties consisting of urban, suburban, and rural counties.

[39] Needle and Sugg 81.

Committee Findings

The Committee conducted hearings in Austin, Houston, and Dallas and heard testimony from various stakeholders. Correspondence received in response to the letter sent to County Judges and Mayors also provided the Committee with information regarding the charge. The Committee formulated findings and recommendations based on testimony, correspondence received, and research.

While the efforts of the 77th Legislature went a long way in providing the tools counties need to address rapid growth, the Committee found that there is consensus for the expansion of county authority for urban and surrounding counties. Rural counties are not experiencing the same growth as larger counties and, therefore, are not facing serious sprawl issues. Moreover, land use in non-urban Texas is different than in urban areas. As county authority to regulate growth is expanded to include non-urban areas, it is important to consider and avoid any potential infringements on the operations of Texas farmers.

During the interim, most cities and counties kept themselves busy implementing the provisions in HB 1445. As of the publication of this report, no requests for amendments to that legislation have been requested. Although only a few counties were able to take the steps necessary to implement SB 873, the initial results were positive and may warrant legislation to allow for the inclusion of other counties impacted by the rapid growth of neighboring counties. It is too early to make a determination about the effects of SB 3172 .

Finally, the Committee received testimony regarding substandard residential development. While this issue was discussed under the parameters of the Committee's charge relating to special districts, the Committee found that the issue was most appropriately addressed under this charge. The 77th Legislature adopted the International Residential Code as the residential building code for municipalities in the state. Counties, however, were not authorized to adopt the code. While most builders build the same house, regardless of location, the Committee found

that the authority for counties to adopt and enforce the International Residential Code would ensure houses are built to commonly acceptable standards.

Recommendations

Recommendation 3.1 - ***Recommend the 78th Legislature continue to monitor the use of the authority granted under Subchapter E, Chapter 232, Local Government Code, by SB 873 and to consider inclusion of additional counties experiencing substantial growth.***

The 77th Legislature granted urban counties the authority to: adopt subdivision regulations, including lot size and setback limitations; enforce a major thoroughfare plan and establish right of way; require possession of a plat compliance certificate before utility hookups; and enact other regulations relevant to responsible development. While the authorities granted have proven to be helpful to the affected counties, the 78th Legislature should monitor the benefits of the legislation, review the current bracket, and consider adding additional counties if appropriate.

Recommendation 3.2 - ***Amend the Local Government Code to authorize counties to adopt provisions similar to those of Subchapter G, Chapter 214, Local Government Code, relating to the International Residential Code.***

Subchapter G, Chapter 214, Local Government Code, adopts the International Residential Code as the residential building code for municipalities in the state. While there continues to be growth outside of municipalities, counties do not have the authority to enforce any type of building code. Although many builders build houses to the same standards, regardless of location, the authority for counties to adopt and enforce the International Residential Code (without local amendments) within platted subdivisions would ensure houses are built to code.

Charge Four

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

Introduction

According to the Bureau of Emergency Management, almost 30 Texans die every day from injuries, almost 10,000 each year.[40] To prevent death or disability, trauma victims must reach definitive care within a short period of time, often called the "golden hour." To insure this care, appropriate resources must be in place and immediately accessible. These resources include: informed citizens, communication systems, pre-hospital care providers, proper equipment, and multi-disciplinary trauma teams in emergency departments. Studies have shown that coordination of emergency medical resources available in an area, also known as emergency medical services (EMS)/trauma care systems, can result in a significant decrease in trauma related deaths.[41] Pre-hospital care, more commonly known as EMS, is often the first crucial link in the process of providing medical treatment to victims of trauma.

Because trauma care is critically important to the health of Texans, the Lieutenant Governor charged the Senate Committee on Intergovernmental Relations (the Committee) with studying the availability and delivery of emergency medical services across the state. The Committee conducted public hearings throughout the interim to discuss issues surrounding the provision of EMS. Additionally, stakeholder meetings were held to further explore recommendations relating to these services.

Background

Beginning in the mid 1930s, funeral home vehicles were used as the first ambulances to transport patients.[42] In 1947, the Texas Legislature required "emergency ambulances to be permitted and to carry a minimum amount of first aid equipment, a traction splint and oxygen." The law also

[40] Texas Department of Health. "EMS/Trauma System Development in Texas, A Brief History, FY2000." <http://www.tdh.state.tx.us/hcqs/ems/traumahistory.pdf> (Retrieved 20 June 2002).

[41] Texas Department of Health. "Bureau of Emergency Management EMS/Trauma Systems Development Program (Excerpts from a FY2000 Internal Review Summary)." <http://www.tdh.state.tx.us/hcqs/ems/BEMSystemsInfo.PDF> (Retrieved 20 June 2002).

[42] Texas Department of Health. "EMS Regulation in Texas, A Brief History, Fiscal Year 2000." <http://www.tdh.state.tx.us/hcqs/ems/emshistory.pdf> (Retrieved 20 June 2002).

required ambulance personnel to have "theoretical or practical knowledge of first aid as certified by the American Red Cross."[43]

Until the National Highway Safety Act of 1966, ambulance service was strictly used to move patients from one location to another. The Act expanded the scope of patient transportation requiring ambulances to perform life saving medical services for critically injured or ill transport patients. This was the first time persons who were not licensed physicians could perform life saving activities. Also during the late 60's, the American Academy of Orthopedic Surgeons and the American College of Surgeons created a pre-hospital care training program for Emergency Medical Technicians (EMT).[44] Today, there are five emergency medical service certification levels (See Appendix D-1).

During the 1970s, the federal government passed laws regulating the pay of ambulance attendants which made it unprofitable for funeral homes to continue to offer pre-hospital care. Ambulance services became the responsibility of private and volunteer ambulance operators, hospitals, fire departments, city governments, and county governments. By 1972, EMS was viewed as a pre-hospital care transport service.

In 1973, the Texas Legislature created the EMS division at the Texas Department of Health (TDH), to coordinate emergency medical services. The EMS division was given the responsibility of recommending statewide guidelines for staffing, training, equipment, and vehicles to the Department. TDH also established EMS service areas, with each containing at least one hospital designated as a trauma center.

In 1983, state regulations provided for minimum staffing of two people per vehicle. Continuing education and training as well as subsequent certification requirements were also required. The two training requirements implemented were the advanced cardiac life support (ACLS) course

[43] Ibid.

[44] Ibid.

created by the American Heart Association and the cardiopulmonary resuscitation (CPR) course which helped improved patient outcomes. In 1987, the Legislature created the Emergency Medical Services Advisory Council, an 18 member council appointed by the Board of Health, to develop minimum standards for equipment, vehicle design, and ambulance operator licenses.[45] The following session (1989), the Omnibus Rural Health Care Rescue Act was enacted by the Legislature to provide for necessary stabilization, the prompt and efficient transportation of critically injured and ill patients, and greater public access to transportation in each area of the state. The Trauma Technical Advisory Council was established to advise the Board of Health regarding emergency medical services and trauma care system development, trauma facility designation, and establishment of a state EMS/trauma registry.

The Trauma Technical Advisory Council and two other advisory committees established in 1989 were later consolidated in 1995 by the Board of Health into the Emergency Healthcare Advisory Council.[46] The Emergency Healthcare Advisory Council was sunsetted in 1999 when the Governor's EMS and Trauma Advisory Council (GETAC) was created. Its members, appointed by the Governor, consider all areas of EMS/trauma system regulation and development. The Legislature charged the Council with "assessing the need for emergency medical services in the rural areas of the state, developing a strategic plan for refining the educational requirements for certification, maintaining certification as emergency medical services personnel, and developing emergency medical services and trauma care systems."[47]

Funding

TDH has two permanent sources of funding for EMS regulation, general revenue funds and dedicated fees. TDH uses these funds to regulate EMS personnel, services, and education programs through the Bureau of Emergency Management (BEM).

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[45] Texas Department of Health. "Texas EMS/Trauma System Advisory Councils History, August 2001." <http://www.tdh.state.tx.us/hcqs/ems/EMSACsTIMELINE.PDF> (Retrieved 20 June 2002).

[46] The three boards that were consolidated were: Trauma Technical Advisory Committee, Pediatric Emergency Medical Services Advisory Committee, and Emergency Health Care Advisory Committee.

[47] Texas Department of Health. "A Strategic Plan for the Texas EMS/Trauma System Draft, 8/12/02." <http://www.tdh.state.tx.us/hcqs/ems/0802StratPlanDraft.PDF> (Retrieved 26 September 2002).

The 77th Legislature appropriated approximately $25,000 in general revenue and $86,000 in dedicated fees for fiscal year 2002 to support the various programs within the strategy including System Development, Trauma Facility Designation, and the Funding/Grant programs.[48]

BEM's grant programs are funded by additional sources. The program receives $2,000,000 annually from 911 fees accessed through telephone service billing to implement the EMS/Trauma System. These funds are distributed to EMS providers ($1,225,000), Regional Advisory Councils (RACs) ($437,500), Designated Trauma Facilities or Uncompensated Care Allotment ($35,000), and the Extraordinary Emergency Fund ($250,000). These funds are distributed to eligible entities by statutory formula, except the emergency funds which are provided upon request by EMS organizations as available and needed.

The Tobacco Fund Endowment provides the BEM approximately $3,800,000 annually, depending on interest earned. These funds are allocated to BEM program costs ($360,000), Emergency Care Attendant Training (ECAT) Program Grants ($261,000), EMS Local Project Grants Program ($1,150,000), Hospital Development Grants Program ($300,000), and Regional EMS/Trauma Systems Development Grants Program ($1,600,000).

Other Funding

State funds are not the only financial sources for EMS operators. Other sources may include: taxes generated by local governments; second and third party payments; special district taxes; subscription fees; private donations; and money raised through fund raisers such as raffles, barbeques, fish fries, and bake sales.

Committee Findings

Emergency Medical Services

While many Texans are able to call 911 to summon EMS, contrary to popular belief, state law does not require municipalities or counties to provide or otherwise ensure the delivery of these

[48] Perkins, Kathy. "General Revenue Funding." E-mail to Tara Snowden. (Retrieved 26 Aug. 2002).

services. Over the last decade, there has been a growing interest across the state in mandating EMS. Although this would move forward the quality and availability of emergency health care, there are obstacles to requiring the delivery of these services.

One problem is a lack of sufficient data to determine the number and location of existing and needed providers. Second, the cost of mandating EMS as a statewide service is unknown, although it is reasonable to assume that the cost would be substantial. EMS as an essential service is an idea that requires further review and research by a variety of stakeholders to determine what specific resources are needed. Some of the recommendations included in this report are intended to facilitate a determination regarding the feasibility of instituting EMS as an essential service.

Although EMS is not a required service, an estimated 724 entities provide EMS services across the state of Texas.[49] The largest providers of EMS are municipalities which operate almost half of the emergency medical services in Texas. Approximately 20 percent of EMS providers are private ambulance services.[50] In addition to emergency transportation, these entities provide scheduled transportation of patients to and from hospitals and nursing homes, and back up services to other entities. In cases where cities and counties can not afford to provide service, private companies contract with the cities and counties to provide service. About 12 percent of EMS firms are run by hospitals.[51] Emergency Service Districts (ESDs), Rural Fire Prevention Districts (RFPDs), counties and volunteer entities provide the remainder of services. ESDs and RFPDs are taxing entities that use their revenues to pay for EMS and/or fire prevention services. Many communities must rely on volunteer EMS personnel to provide services. These volunteers train on their own time to become certified EMTs or paramedics. About 30 percent of Texas

[49] Texas Department of Health. "EMS Regulation in Texas, A Brief History, Fiscal Year 2000." <http://www.tdh.state.tx.us/hcqs/ems/emshistory.pdf> (Retrieved 20 June 2002).

[50] Ibid.

[51] Ibid.

EMS firms licensed by TDH are volunteer. Of these more than 70 percent are in the rural and frontier areas of the state.[52]

There are five levels of certification granted by TDH to individuals who perform emergency medical services in the field: emergency care attendants (ECAs), emergency medical technicians (EMTs), emergency medical technician-intermediate (EMT-I), emergency medical technician-paramedic (EMT-P), and licensed paramedics (LP) (See Appendix D-1). ECAs and EMTs may perform basic life support skills (BLS). BLS emergency pre-hospital care or inter-facility care uses noninvasive medical acts. The provision of BLS may be under the medical supervision and control of a licensed physician.[53] EMT-Is, EMT-Ps, and LPs may perform advanced life support (ALS). ALS is emergency pre-hospital or inter-facility care that uses invasive medical acts. The provision of ALS must be under the medical supervision and control of a licensed physician (See Appendix D-2).[54] Since 1984, the number of ECA certified EMS personnel employed in the state of Texas has declined proportionally as the number of more highly trained personnel has risen.[55] The majority of EMS personnel are EMTs and are licensed to perform BLS. It would be ideal to have more EMS personnel licensed with the ability to perform ALS. Testimony revealed, however, that it is difficult to train for the additional requirements while working a full time job.

Communities and other entities should consider providing benefits to EMS volunteers in rural and frontier counties to incentivize the enlistment of much needed EMS volunteers. Section 615.003, Government Code, authorizes the provision of death benefits to individuals who perform EMS or operate an ambulance. These benefits may be provided by an existing insurance plan through a municipality or hospital associated with EMS. Similarly, death benefits may be

[52] Perkins, Kathy. "Rural EMS in Texas." Testimony to the Senate Intergovernmental Relations Committee. (Presented 1 Nov. 2001).

[53] Perkins, Kathy. "Texas Emergency Care Attendants." Written Testimony to the Senate Intergovernmental Relations Committee. (Oct. 2001).

[54] Ibid.

[55] Ibid.

offered to EMS personnel who are employed by a political subdivision of the state. The Fire Fighters Pension Commission offers EMS departments pension and on-duty disability packages to EMS departments. Death and disability benefits are available to on and off duty responders who: work less than 1,000 hours per year; do not earn more than $2 over minimum wage for that work; or are volunteers. EMS providers should take advantage of these options when possible.

Rural Emergency Medical Services

Rural EMS issues affect not only rural residents, but also the people who travel through or vacation in rural areas. Rural counties have less than 50,000 people, but average more than six people per square mile. Rural areas have several challenges making the provision of EMS difficult. Funding is often inadequate or unavailable to these communities. There is a lower tax base because fewer citizens reside in the area. Fewer citizens result in fewer runs; fewer runs result in less money being generated through the performance of EMS. Additionally, a typical EMS run in a rural area takes longer, due to the distances the vehicle must travel to respond to a patient. Long runs are problematic when additional emergencies occur simultaneously. Because volunteers must travel from their place of employment to the station before departing to provide service, citizens in rural areas encounter longer wait times. Rural areas also have trouble recruiting and retaining qualified personnel due to a low population base and the inability to provide competitive compensation.

Further, rural EMS personnel have a difficult time acquiring their continuing education requirements because they often lack funds to pay for courses or they do not have the time or financial resources to travel to the site where the course work is offered. Currently, the Office of Rural and Community Affairs administers the Rural EMS Scholarship Program as a means to increase the number of trained personnel in rural areas by providing matching funds to communities. However, one problem rural areas encounter is that while recipients complete training courses, they do not fulfill post-training employment requirements due to non-competitive compensation.

In rural areas, volunteer EMS personnel are exempt from state license fees. Providers fit into this exemption if 75 percent of their staff is volunteer and they have less than five full-time employees. As an incentive to promote volunteerism, some EMS firms considered allowing their paid, full-time EMS personnel to receive a fee discount if they volunteer while on duty. However, this incentive was found to be problematic to implement because federal labor laws limit one's ability to volunteer for the same agency that employs the personnel.

The provision of EMS to rural areas along Texas borders is another challenge because of the vastness of our state. Texas is bordered by Arkansas, Louisiana, New Mexico, Oklahoma, and Mexico. Ambulances that transport patients in the state must have a license from TDH allowing them to operate in Texas. Problems occur when a Texas ambulance is not available to respond to an emergency, and the only available alternative is to use a service from a bordering state. If the provider or ambulance is not licensed by TDH they cannot transport the patient. Conversely, a concern for Texas ambulance providers is whether insurance carriers will reimburse them for an out of state transport. TDH is currently in the process of sending an "Out-of-State Mutual Aid Policy" to all contiguous states, including a request that they consider implementing such a policy in their states (See Appendix D-3).[56] This would allow licensed providers in contiguous states to operate in Texas without a license from TDH as long as they did not operate within the state borders on a regular basis.

Emergency Service Districts

The Texas Legislature authorized the formation of ESDs in 1989, to allow communities to collect revenue to support the delivery of adequate health and safety services. These revenues are used for the provision of EMS and/or fire prevention services. The stated purpose of Emergency Service Districts (ESDs) is to protect the life and health of the citizens living in its boundaries and to provide health and safety related services to persons and property within ESD boundaries.[57]

[56] Perkins, Kathy. "Mutual Aid Agreements with other States." Email to Tara Snowden. (Retrieved 26 Aug. 2002).

[57] Emergency Service Districts (ESDs) are provided for in Article III, § 48-e of the Texas Constitution and in Chapter 775 of the Health and Safety Code.

Currently, ESDs are allowed to have an ad valorem tax rate of up to ten cents per $100 property valuation and a sales tax rate in the increments of half a percent, up to two percent.[58] If a community already has a Rural Fire Prevention District and creates a separate ESD, then the maximum ad valorem tax the ESD can impose is three cents per $100 property valuation.

Each ESD is created by a vote of the citizens who reside within the boundaries of the proposed District. Petitions calling for a vote to create an ESD must be signed by at least 100 voters residing in the proposed District. In areas where there are not 100 voters, a majority of the registered voters must sign the petition. The petition must also have an agreement signed by at least two registered petitioners stating they will pay no more than $150 of the cost to create the District. If the proposed ESD's boundaries lie within more than one county, then each county must have at least 100 registered voters sign the petition. After a petition is filed with the commissioners court of the county to be impacted, a public hearing must be held.[59] If, after the public hearing, the commissioners court approves the creation of the District, an election date is set. If the proposed District will encompass territory located in more than one county, each county must hold a hearing and an election. If either commissioners court does not approve the creation, then a district is not formed. A majority of voters within the proposed District must vote in favor of its creation. If the District includes territory currently within the limits or extraterritorial jurisdiction of a municipality, then the governing body of the municipality must approve the included area. If the municipality does not approve the inclusion, then the municipality must provide service within a set time, otherwise the ESD may include that area within its boundaries from the municipality.

ESDs have found it nearly impossible to provide both fire protection services and emergency medical response services under the ten cent cap. Many ESDs already tax at the highest limit and do not have local economies that allow for improvement of services without additional

[58] Two counties, Kimball and Delta, utilize a sales and use tax to help finance their ESD.

[59] The hearing specifications are outlined in §775.016 of the Health and Safety Code.

revenues. Maintaining the status quo is often a challenge because continued growth and development continuously erode the district's budget.

Rural Fire Prevention Districts

Rural Fire Prevention Districts (RFPDs) were first created by the Texas Legislature in 1949 to create dedicated funding for volunteer fire departments. The intent of RFPDs is to protect life and property from fire and to conserve natural and human resources.[60] Each RFPD is created by a vote following the same procedures for establishing an ESD.[61] RFPDs are political subdivisions of the state and are similar to ESDs in that these districts may also impose an ad valorem property tax; however, the maximum allowable tax rate of an RFPD is three cents per $100 property valuation with the exception of Harris County RFPDs which may charge up to five cents per $100 property valuation.

RFPDs were given the ability to convert into an ESD in 1993 if the RFPD board receives a petition for conversion from the qualified voters in the district and the conversion is approved by a majority of the qualified voters who vote at an election called and held for that purpose. If a district is converted to an ESD, the ESD assumes all obligations and outstanding indebtedness of the district. More than one ESD can exist within the same boundaries as long as they perform different duties.[62]

Since the tragedy of September 11, 2001, Texans' expectations of their EMS and fire service rose to a new level, but a District without basic EMS equipment or firefighting gear stands a greater chance of receiving grants than one that wants to train and equip special operations personnel. Districts have been asked to become experts on Anthrax and other hazardous

[60] RFPDs are Constitutionally organized by Article III, §48-d, Texas Constitution and under the Chapter 794, Health and Safety Code. Revised by the State Legislature in 1989 when Emergency Service Districts were created.

[61] The hearing specifications are outlined in the Health and Safety Code, §794.015.

[62] An ESD located wholly within a county with a population of more than 2.4 million may not provide fire prevention or fire-fighting services unless the district was originally a rural fire prevention district and was converted under §794.100 of the Health and Safety Code.

materials in local communities and respond to an increasing number of alarms generated by concerned citizens. All new response protocols and equipment have had to be put into place in very short periods of time, which has caused a great strain on already limited budgets. Regional response plans and military involvement are necessary to handle potential threats; however, locals may be on their own for 12 hours or more. The federal government is trying to support emergency services with federal funding; however, requests far outnumber the money available.

Regional Advisory Councils

The state is divided into 22 Trauma Service Areas (TSAs), serviced by area RACs, which were created as a result of the Omnibus Rural Health Care Rescue Act of 1989 (See Appendices D-4 and D-5). This Act provided for the development and installation of an individualized regional plan for each TSA, however RACs do not have rulemaking authority. Additionally, the Act gave BEM the responsibility of creating a statewide EMS and trauma care system, designating trauma facilities, and developing and implementing a trauma registry in order to track the occurrence and outcomes of trauma. Ultimately, the statewide system will be the network of the 22 regional systems implemented by the RACs. Hospitals and EMS firms, many through RAC regional EMS/trauma registries, are required to provide epidemiological statistics and statewide costs to the Bureau of Epidemiology at TDH so that the BEM can fulfill its duties of developing and monitoring a statewide EMS and trauma care system. The overall goal of both the regional and state EMS/Trauma Systems is to: decrease deaths and disability due to preventable causes, lower the numbers of individuals on state assistance programs due to sustained traumas, decrease the incidence of trauma, and decrease the severity of injuries to Texans.

To address the uniqueness of each area, RAC boards are comprised of local stakeholders. All RACs are implementing approved regional system plans. Additionally, over 175 hospitals throughout the state are designated trauma facilities due to the progress RACs have made.[63] Requirements for trauma facility designation are as follows:

[63] Texas Department of Health. "EMS/Trauma System Development in Texas, A Brief History, FY2000." <http://www.tdh.state.tx.us/hcqs/ems/traumahistory.pdf> (Retrieved 20 June 2002).

- Level I: Meet or exceed the current American College of Surgeons (ACS) essential criteria for a verified Level I trauma center, actively participate on the appropriate RAC, and submit data to the state trauma registry;
- Level II: Meet or exceed the current ACS essential criteria for a verified Level II trauma center, actively participate on the appropriate RAC, and submit data to the state trauma registry;
- Level III: Meet or exceed the Texas General Trauma Facility Criteria; and
- Level IV: Meet or exceed the Texas Basic Trauma Facility Criteria.[64]

RACs are 501(c)(3) organizations and can distribute both the EMS and RAC allotments of the 911 funds. The EMS allotment (70 percent) is distributed based on population and geographic area and number of trauma runs. Sixty percent of the EMS allotment fund supplements rural and frontier areas; and the remaining 40 percent is designated for urban areas. The RAC allotment (25 percent) is distributed based on population and geographic area. Two percent of the fund is distributed to designated trauma facilities for uncompensated trauma care. The BEM retains three percent of appropriated funds for administrative costs. The 75th Legislature appropriated $4 million per biennium in general revenue funds to the EMS/Trauma System Fund.[65] In order to receive these funds, EMS and hospitals have to participate in the activities of the RAC. The 76th Legislature increased total funds available up to $10.5 million per year from four sources: 911 funds - $2 million; EMS and Trauma Care tobacco endowment interest proceeds - up to $5 million (depending on interest rates); federal blood alcohol content incentive funds - $2.5 million; and $1 million per year from unclaimed lottery proceeds to help with the costs of uncompensated tertiary care.[66] The 77th Legislature appropriated up to $7.5 million per year for emergency care: 911 funds - $2 million; EMS and Trauma Care tobacco endowment interest proceeds - up to $4.5 million (depending on interest); and at least $1 million for tertiary care.[67]

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[64] Texas Administrative Code §157.125.

[65] Perkins, Kathy. "Interim Report." Email to Stacy Gaston. (Retrieved 24 Sept. 2002).

[66] Ibid.

[67] Interest proceeds from the tobacco endowment have ranged from approximately $3.57 to $4.6 million.

The RAC must maintain a plan for recruiting and retaining qualified personnel in the emergency medical field. They must also submit annually to BEM: a detailed budget for their RAC; annual financial plans; a plan for assessing the trauma system, and goals for performance improvement, including improving data collection. These plans may include specific local projects that each RAC develops such as: trauma care provider education, projects to address identified local problems, improving communications systems, and any local grant program information. Quarterly reports to TDH on the progress of these special local projects including itemized expenditures are required.

While RACs generally do an excellent job, there are some disparities in the effectiveness of programming among the RACs. During the Senate IGR hearings and stakeholder meetings many issues regarding RACs were discussed.

Injury prevention is the first issue. RACs provide car safety seat programs, bike helmet programs, and other targeted injury prevention programs. The regional registries maintained by 50 percent of RACs provide data related to regional patterns of injury and allow for the prioritization of prevention programs. While RACs provide these important injury prevention programs, they are not affiliated with either of the two injury prevention centers in Texas: located in San Antonio and Dallas. Most injury prevention centers, such as the South Texas Injury Prevention and Research Center in San Antonio, are a consortium of injury prevention specialists from Family Practice, Surgery, and Medicine. The Center's mission is to reduce injury-related death and disability and their impact through a combination of education, research, intervention programs, public policy modification, and economic improvement of our communities.[68] Forming additional local Injury Prevention Centers throughout the state could lead to decreases in the occurrence of injury because the incidence of injury decreases where active Injury Prevention Centers provide services.

[68] South Texas Injury Prevention and Research Center. "Facts about the South Texas Injury Prevention and Research Center". Apr. 2002.

Second, many small or rural municipalities do not know how to establish or grow EMS systems. Even though the Office of Rural and Community Affairs provides some limited assistance, many EMS providers rely primarily on their RAC to provide technical assistance regarding EMS systems development. Because many RACs do not have full-time staff, they are limited in their ability to respond.

Next, rural providers face difficulty proving hands on training. One solution to address this problem is to develop a pilot project creating an inter-area/regional training exchange program. Personnel exchange programs providing cross training of rural EMS personnel would allow them to acquire additional hands on training. RACs can assist providers by locating entities willing to participate in the exchange program, such as Regional Academic Health Centers.

Another issue providers have expressed concern with is the need for the development of a statewide educational packet that includes: new and existing educational documents; brochures; pamphlets; and videos regarding EMS/Trauma goals, objective, services, and training opportunities. These materials may help RACs encourage participation.

Lastly, some RACs have demonstrated the benefit of pooling provider monies to levy provider purchasing power. In instances where RACs participated in purchasing equipment together, rather than making single purchases, they were able to achieve a greater cost savings. This helps providers obtain equipment at better prices. TDH may be able to provide specific grant monies to establish cooperative purchasing programs.

Governor's Emergency and Trauma Advisory Council

During the interim, stakeholders expressed interest in improving communication among entities investigating EMS. Therefore, at the May 28, 2002 Senate IGR Committee hearing, it was requested that copies of GETAC's year-end (2002) report be sent to members of the Committee.

Funding

The actual total cost of an EMS providers operation is determined by patient volume and the revenue generated. Statewide, there is an average of one emergency response per day for every 10,000 persons in a defined response area. Based on the unit production cost for a paid mobile intensive care unit (MICU) operation, an urban area with a population of 100,000, generating ten responses per day, will reduce the actual production costs to $70.12. At the same time, a rural area with a population of 5,000 will generate a response rate of only one-half a response per day, increasing the production costs for paid staff to $1,400 (See Appendix D-6).

Provider Reimbursement

While EMS providers receive some funding through grants, they must also rely on reimbursements from public and private insurance. However, many volunteer or small EMS operators are finding that public insurance such as Medicaid, has such a low reimbursement rate and has become so cumbersome to collect, that it is often too difficult or impractical to bill. The Texas Health and Human Services Commission (HHSC) does have a Medicaid Ombudsman to help with these issues, but RACs need to ensure that their members know how to utilize this service. Increasing Medicaid reimbursement for EMS would allow for a much needed increase in payments to providers (See Recommendation 4.8).

In rural communities, the Medicaid population comprises a significant portion of the payer mix for all providers. This, combined with a longer travel distance required in rural areas increases the costs of providing services. In Texas, Medicaid will only reimburse for EMS transport to the closest hospital in terms of distance rather than the closest hospital that can provide the most appropriate care. Emergency crisis situations can be of a life or death nature and not all hospitals offer services for every trauma; therefore, reimbursement rates should be tied to the type of medical care necessary, not to geographical distance (See Recommendation 4.8).

Finally, providers sometimes provide services later determined not to be medical emergencies. Adopting language for reimbursement of EMS which uses guidelines similar to those used to reimburse for emergency room utilization may remedy this problem. If an EMS provider

responds to an individual exercising reasonable caution who perceived the need for immediate medical care, then the provider should be reimbursed for the service. The cost of adopting this type of language is unknown.

Other strategies for maximizing reimbursements include, reimbursing and including ALS services as a payable benefit in the state's Medicaid program and adopting a Medicaid reimbursement methodology which mirrors the reimbursement methodology used by the Medicare program. HHSC estimates that ALS reimbursement for EMS providers would have increased Medicaid expenditures by 8.4 million dollars in general revenue had the coverage been in place for the 02-03 fiscal year. Adoption of the Medicare methodology may not actually increase rates because Medicare rates are falling.

Recommendations

Based on the Committee hearings, workgroups, and general correspondence, the Committee has formulated the following recommendations to further enhance the operations and general accountability of special districts.

Recommendation 4.1 - ***Amend Subchapter C, Chapter 773, Health and Safety Code, to require EMS firms to submit EMS run data to the Texas Department of Health as a requirement of licensure***.

There is no statewide data available on the number of runs EMS providers go on or how many of those runs require services. Basic information is needed to determine if current cost reimbursements and service allocation is appropriate. Because the information sought will be minimal, collection should not be a burden to EMS providers.

Recommendation 4.2 - ***Amend the Health and Safety Code, to allow the Texas Department of Health to grant, on a case by case basis, administrative exceptions for rural EMS personnel.***

Currently, TDH standards for training EMS personnel through a local entity, such as a hospital, are often cost prohibitive. Thus, in rural areas personnel are required to travel to urban centers

to access educational opportunities for EMS response and equipment. In many cases, personnel are qualified to perform certain services, but are not certified to perform those services because of the lack of the available education. TDH should have the ability to review, using appropriate guidelines, each individual's qualifications to perform services or use equipment and grant exemptions for those personnel that demonstrate the ability to perform those services appropriately. TDH should develop the guidelines used in determining the competency of those applicants for time certain exemptions.

Recommendation 4.3 - ***Amend the Health and Safety Code, to require the Texas Department of Health and the Texas Higher Education Coordinating Board (THECB), in conjunction with the Texas Telecommunications Infrastructure Fund (TIF), to study ways to increase the accessibility of education to EMS shift workers in rural areas.***

For a variety of reasons, it has been difficult for rural EMS firms to maintain qualified personnel to perform emergency medical services. There appears to be a correlation between a firm's inability to provide continuing education and retaining personnel. Training in rural areas has been difficult to obtain due to the long distances personnel must travel to receive training for higher levels of certification. Many of the personnel in these rural areas are typically volunteers, therefore, cost is also a factor in obtaining adequate training. This study should attempt to find solutions that address these issues.

Recommendation 4.4 - ***Repeal Chapter 794, Health and Safety Code, and convert all existing Rural Fire Prevention Districts (RFPDs) to Emergency Service Districts (ESDs).***

RFPDs and ESDs provide similar services; both can provide emergency medical services and/or fire services, depending on the services required by the community. The Committee has found that many RFPDs are already converting to ESDs, primarily to take advantage of their ability to increase the tax rate.

Recommendation 4.5 - ***Amend the Texas Constitution to allow the tax cap for Rural Fire Prevention Districts (RFPDs) and Emergency Services Districts (ESDs) to be raised to 20 cents.***

Currently, the cap for RFPDs is three cents and for ESDs is ten cents. Depending on community needs, RFPDs and ESDs provide various types of service ranging from EMS to fire prevention. It is difficult to continue to provide an adequate level of service without an increase in funding to offset the rising costs of providing these services. Over the years, many districts have maintained the same tax rate without an increase. Recent events have increased public awareness of various risks to public safety. This has lead to a significant increase in the demands on RFPDs and ESDs.

Recommendation 4.6 - ***Amend Chapter 775, Health and Safety Code, to require Rural Fire Prevention Districts (RFPDs) and Emergency Service Districts (ESDs) to register with the Office of the Comptroller of Public Accounts.***

Currently, RFPDs and ESDs are required to file an annual report with the Secretary of State's Office. However, the Secretary's Office does not provide a comprehensive database of RFPDs or ESDs from which information can be extracted. In an effort to assess the needs and collect basic information on the existence of these districts, the Committee recommends that RFPDs and ESDs be required to register basic information with the Comptroller of Public Accounts for use by agencies seeking data pertaining to the information collected.

Recommendation 4.7 - ***Amend Subchapter E, Chapter 773, Health and Safety Code, to allow the Texas Department of Health (TDH) to have formal control over the organization of the Regional Advisory Councils (RACs). TDH shall develop performance measure for RACs to ensure a minimum level of service to local areas.***

RACs are formal organizations charted by TDH's Bureau of Emergency Management to develop and implement trauma services in a given region. TDH should exert formal control over the organization of the RACs and the policies to be put into place by the RAC, and there should be statewide rules governing the structure and organization of the RACs. RACs are currently in the process of adopting performance measures which TDH may adopt.

Recommendation 4.8 - ***Amend §773.122(c) and (d), Health and Safety Code, to allow Regional Advisory Councils (RACs) the ability to carry over funds from the previous fiscal year.***

Currently, TDH often receives allocated tobacco funding late in the budget cycle. This causes TDH to either pay grants late to the RACs or wait until the money is actually transferred, which results in RACs not being able to spend it within the fiscal year. When TDH is late paying RACs, then the provider is late paying for purchases. If TDH cannot allocate the money within the fiscal year, they lose those funds.

Recommendation 4.9 - ***Amend the Health and Safety Code, to require the Health and Human Services Commission and Texas Department of Health to study the current Medicaid reimbursement rates to determine the accuracy of costs of services, and whether reimbursements are sufficient to support EMS infrastructure. A report should be made to the 79th Legislature.***

With increased public awareness of available services, demands on EMS have increased significantly, therefore, it is important to know whether Texas' reimbursement system is keeping pace with these demands and whether providers are being reimbursed at appropriate levels.

Appendices

Appendix A-1

Appendix A-2

Appendix A-3

Appendix A-4

Appendix A-5

Appendix A-6

Appendix A-7

Appendix A-8

Appendix B-1

Appendix B-2

Appendix B-3

Appendix C-1

Appendix D-1

Appendix D-2

Appendix D-3

Appendix D-4

Appendix D-5

Appendix D-6

Appendix E-1