

Significant Unfunded and Underfunded Mandates on Texas County Governments

Texas counties have long faced unfunded and underfunded mandates from both the state and federal governments. These costly mandates may be unintentional on the part of legislators when bills are originally passed but end up costing local taxpayers once they are implemented.

Fundamentally, unfunded – or underfunded – mandates are laws passed by the Texas Legislature (or Congress at the federal level) or regulations issued by state agencies that direct counties to undertake specified constitutionally valid or legitimate governmental actions without the funding to support such mandates.

The dynamics of state-to-county mandates are often complex and varied. Some mandates have been “on the books” prior to the adoption of the Texas Constitution of 1876 and are among the core responsibilities of county government, such as the duty of a county to provide a safe and suitable jail—a law that dates back to the year 1846. Moreover, there may be off-setting factors that shape the features of a legislative mandate such as criminal justice grants designed to help promote a new program, the funds for which may have become redirected or even depleted through the years.

Ultimately, the mandates, over time, have placed an increased strain on county budgets and in turn, on local property taxes and local taxpayers.

In response to these mandates, counties, over the past several legislative sessions, have sought the passage of a constitutional amendment prohibiting them. An amendment prohibiting state unfunded mandates would help prevent financially disruptive circumstances from adversely affecting county operations, minimize interference with sound financial planning and protect important bond ratings.

Below, please find a chronicle of some of the more substantial unfunded, or underfunded, state mandates which counties are obligated by statute to carry out. Please be aware that this list is not all-inclusive but contains several significant cost drivers that can negatively affect local property tax rates.

Criminal Indigent Defense

The Fair Defense Act, enacted as SB 7 during the 77th Legislature, sets forth specific standards relating to the entitlement and appointment of counsel for indigent defendants in certain criminal adversarial judicial proceedings. The Act provides for mandatory time periods for appointments; representation in appellate and post conviction proceedings; establishment of minimum periods for counsel preparation; and procedures for waiver, withdrawal and reappointment.

The state Task Force on Indigent Defense in the Office of Court Administration administers several types of reimbursement grants to counties for the cost of providing counsel to indigent defendants. However, historically, the grants have reimbursed on average only about 10 percent of county costs. In fiscal year 2010, expenditures for indigent defense totaled approximately \$195 million; counties contributed about \$165 million of that amount, while the state contributed about \$30 million. *Code of Criminal Procedure, Article 1.051 (among other statutory provisions).*

Health Care in County Jails and State Inmates

Even though state convicts are ready to leave the county jail, they can be held there for up to 45 days without reimbursement by the state. Although the average length of time these convicts are held in county jails varies, it tends to increase when state facilities become more crowded. While incarcerated in county jail, state-bound inmates are the expense of the county. The county is also legally obligated to provide medical services, which can include extraordinary medical costs such as emergency room visits and other high cost medical care.

Counties are mandated to provide both physical and mental health care services to indigent prisoners in their custody and control. With reduced state services due to budget cuts, oftentimes adults and juveniles cannot access needed mental health services unless they enter the criminal justice system. State reductions in mental health care may cause an increase in expenses for mental health care of persons incarcerated in a county jail, particularly the provision of psychotropic medications to treat major illnesses such as schizophrenia, major depressive disorders or bipolar disorder. *Government Code, Chapter 499, Subchapter F; Code of Criminal Procedure, Article 104.002.*

The Indigent Health Care and Treatment Act

Enacted in 1985, the Act establishes the duty of a county, as the payor of last resort, to provide health care for indigent residents of the county under prescribed circumstances—if there is no hospital district or public hospital or other available source that serves in the area where the indigent resides. The Act establishes the limit of financial responsibility of a county at 8 percent of the county’s general tax levy, including sales tax revenue. Once this annual threshold is reached, state assistance (reimbursement of 90 percent of eligible expenditures) is available if appropriated by the state. State reimbursement is not guaranteed and funding is subject to the appropriations process. Counties are not liable for indigent health care above the 8 percent amount—public hospitals and hospital districts must, however, continue to provide treatment. *Health and Safety Code, Chapter 61.*

Juvenile Probation Personnel

State law requires the county commissioners court to pay, out of the general fund of the county, the salaries of the juvenile probation personnel and other expenses certified as necessary by the juvenile board chairman. *Human Resources Code, Chapter 152.*

Jail Standards

County jails must comply with the regulations promulgated by the Texas Commission on Jail Standards. The state requirements of providing safe and suitable jails are administered and managed by the Commission, and to the extent that counties are required to comply with its rules that involve expenditures, the Commission regulations constitute unfunded mandates. *Government Code, Chapter 511; Local Government Code, Section 351.001.*

Blue Warrant Inmates

Counties are responsible for the detention of “blue warrant” inmates. These inmates are parolees from state prison who are charged with technical or administrative violations of the terms of their parole. State law requires disposition of the administrative charges against such an inmate before the 41st day after the date on which one or several conditions apply.

Although counties clearly have a duty to maintain a safe and suitable jail that dates back to the mid eighteenth hundreds, the inmates who are recalled on a blue warrant have already been processed and served time in a state institution. Even so, the state does not compensate counties for prisoner care during the inmate's confinement in the county jail. Even though state law provides that the sheriff may release an inmate, the sheriff cannot do so before the state has been notified 10 days in advance of the release. Moreover, it would be bad public policy for the sheriff to undertake such action as a routine practice. *Government Code, Section 508.282.*

Appointment of Counsel in Child Protective Services Cases

Counties are responsible for the costs of appointed counsel in Child Protective Services (CPS) cases. Upon establishment of indigency in a managing conservatorship proceeding brought by a governmental entity, the costs associated with the appointment of an attorney ad litem to represent a child or parent must be paid from the general funds of the county. *Family Code, Section 107.015.*

Elections

According to numerous statutes in the Election Code, the burden of elections falls onto counties as mandated by the state. Yet counties do not receive funding from the state to conduct them. Pursuant to state law, each county must pay the expenses incurred to conduct an election. Special elections cannot be predicted as they are subject to the call of the governor or other entities, and therefore, adequate funds to cover potential special elections may not be included in a county's fiscal year budget. *Election Code, Section 1.014.*