

Legislative Brief

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#254
STRONG

UNFUNDED MANDATES

WHAT COUNTIES ARE SAYING

Unfunded mandates are the federal and state governments' way of shifting costs to local property taxpayers to fund the laws or mandates they enact. It's as simple as that. When the state or federal government requires counties to implement a new law, program or service and then fails to send the money to fund that directive, local taxpayers pay either through higher property taxes or cuts to county services.

As governing partners, counties and the state are deeply connected by the services they provide to Texans and the challenges those services aim to overcome. Most of the services provided and paid for by counties are actually state services. The state has a say in how these services are provided and, by extension, how much they will cost.

The state sets standards for indigent defense and jails, affecting the amount of money that must be spent on those. It determines which crimes fall into what categories, affecting the courts and county jail systems. It provides some funding for Medicaid and mental health, which are connected to counties' mandated indigent health programs, the 1115 waiver programs and the judicial system. The list goes on.

Most unfunded mandates are the unintended consequences of otherwise good legislation, but they still shift costs to local property taxpayers.

Bottom line: The buck stops with property taxpayers, and the financial burden put on them in recent decades has resulted in property tax hikes and reductions in services in many counties.

Counties and their partners in the Legislature have historically pushed for a constitutional amendment to prevent future unfunded mandates. Such an amendment would protect a county's bottom line while also protecting the property taxpayer's wallet. The Legislature should vote to put such a proposition in front of the voters and let the people decide whether

this kind of taxpayer protection should be added to the Texas Constitution.

In fact, a proposed amendment, House Joint Resolution 73 by Rep. DeWayne Burns, passed the House on a vote of 127-18 during the 85th Legislative Session. In 2017, despite overwhelming bipartisan support, it stalled in the Senate, never getting a hearing. Similar measures already protect taxpayers in many other states.

CRIMINAL INDIGENT DEFENSE

The Fair Defense Act, enacted as Senate Bill 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 Texas Indigent Defense Commission administers several types of reimbursement grants to counties for the cost of providing counsel to indigent defendants. However, historically, the grants have reimbursed only a small percentage of county costs. In fiscal year 2019, expenditures for indigent defense totaled approximately \$303 million; counties contributed about \$275 million of the amount, while the state contributed about \$28.5 million.

INCARCERATION OF STATE INMATES AND HEALTH CARE IN COUNTY JAILS

When state convicts are ready to leave county jails, they can be held there for up to 45 days without reimbursement by the state. Counties are required to hold parole violators awaiting hearings. While incarcerated in county jail, state-bound inmates are expenses to counties. Counties are also legally obligated to provide health services to indigent prisoners in their custody and control, which can include extraordinary medical costs such as emergency room visits, as well as mental health services. During the COVID-19 pandemic, the Texas Department of Criminal Justice suspended

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all transfers of state inmates from county jails for three months. The suspension created a backlog and complicated counties' ability to manage their inmate populations. It also shifted the cost burden to the local property taxpayer.

THE INDIGENT HEALTH CARE AND TREATMENT ACT

This act establishes counties as the “payor of last resort.” Counties are responsible for providing health care for indigent residents if there is no hospital district, public hospital or other area health service. The act limits counties' financial responsibility at 8% of a county's general tax levy, including sales tax revenue. Once this annual threshold is reached, state assistance (reimbursement of 90% of eligible expenditures) is available, but only if it is appropriated by the state. State reimbursement is not guaranteed, and funding is subject to the appropriations process.

JUVENILE PROBATION PERSONNEL

State law requires county commissioners courts to pay the salaries of the juvenile probation personnel and other expenses certified as necessary by the juvenile board chairman.

JAIL STANDARDS

County jails must comply with the regulations developed by the Texas Commission on Jail Standards (TCJS). The state requirements of providing safe and suitable jails are administered and managed by the TCJS, and to the extent that counties are required to comply with its rules that involve expenditures, its regulations constitute unfunded mandates.

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. The state does not compensate counties for prisoner care during the inmate's confinement in the county jail. The 84th Legislature passed a bill that would allow some technical parole violators to bond out of jail to await their parole hearing. However, recent data shows very little impact on the jail population. Even though state law provides that sheriffs

may release an inmate, the sheriff cannot do so unless the state has been notified 10 days in advance of the release.

APPOINTMENT OF COUNSEL IN CHILD PROTECTIVE SERVICES CASES

Counties are responsible for the costs of appointed counsel in Child Protective Services 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 county general funds.

ELECTIONS

Counties are financially responsible for conducting federal, state and local elections, including special elections called by the governor. Counties only receive reimbursement for conducting primary elections. However, the reimbursement does not include the costs for early voting.

A special election called by the governor to fill a vacancy in the Legislature is a tremendous drain on counties because it is another unanticipated election cost. The special election costs incurred by counties vary depending upon the population located within the election district where the vacancy occurs and how many polling places are needed to accommodate voters. Special elections are already costly, and their costs double if runoff elections occur.

It is apparent that the pandemic has increased the costs associated with conducting elections. Numerous counties received grant funding for elections under the federal Coronavirus Aid, Recovery and Economic Recovery Act (CARES Act). The grant funding specifically allocated for elections from the CARES Act required a 20% match from counties. Counties had the authority to use Chapter 19 funds, Tex. Elec. Code, Chapter 19, Financing Voter Registration, received from the state for the required match or to use county funds. The amount of funding counties receive is based upon the amount of Chapter 19 funds received.

The grant funding received by counties has helped immensely, but it is still not enough to cover the additional costs related to personal protection equipment, election equipment and poll workers. It also does not cover the costs of early voting extensions. County election officials work to resourcefully secure the integrity of all elections and promote the health and safety of poll workers and Texas voters. ★