

County *i*ssues

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House Elections Committee Hearing



By Nanette Forbes

TAC Legislative Staff

The House Elections Committee met on Friday, January 25, to hear invited testimony on the following interim charge:

Examine the prevalence of fraud in Texas elections, considering prosecution rates and measures for prevention. Study new laws in other states regarding voter identification, and recommend statutory changes necessary to ensure that only eligible voters can vote in Texas elections. Specifically study the Texas mail-in ballot system, the provisional voting system, and the various processes for maintaining voter lists of ineligible voters.

Chairman Leo Berman stated that some of the issues the committee will be studying are: the provisional voting system; mail-in ballot system; voter impersonation; various processes for maintaining various lists of ineligible voters; prosecution rates and measures of prevention; study election laws in other states on required voter identification; and, recommend statutory changes necessary to ensure only eligible voters vote in Texas elections. The primary focus of the committee hearing was to examine voter impersonation in the State of Texas.

The committee heard testimony from various agencies, public election officials, and non-government witnesses on the pros and cons of requiring voters to have photo identification at the polling place. Additional testimony included discussion of the need for better poll worker training and the inadequacy of compensation for poll workers. The committee was very supportive of increasing compensation to poll workers.

A representative from the Office of the Attorney General (AG), Criminal Justice Division and Criminal Prosecution Division, offered testimony to the committee on factual historical data on voter fraud in Texas. Since mid-August of 2002, the AG has received 108 referrals for potential election code violations. Of those, 60% came from the Secretary of State's Office, 12% from local prosecutors, and the remainder from local election administrators. The investigations led to 22 prosecutions. Fifteen cases were fully adjudicated and seven are awaiting trial. Of the 22 prosecutions, 14 cases resulted from unlawful use of the mail-in ballot process, 1 case involved a campaign finance violation, 3 cases involved unlawful conduct at a polling place, and 4 cases involved other forms of non-compliance of the election code. One case involved two non-citizens voting in an election. Many of

[Elections Committee, continued on page 15]

Indigent Health Care Rules Clarified



By Rick Thompson

TAC Legislative Staff

The Department of State Health Services (DSHS) adopted new rules to clarify eligible

expenses for the indigent health care program (IHCP). Chapter 14.201 Texas Administrative Code was amended to include "(13) Other medically necessary services or supplies that the local governmental municipality/entity determines to be cost effective." This change will allow counties to determine at the local level what additional services and supplies they deem cost effective, which then will be eligible for state assistance if the county meets the spending threshold. For example, a county may determine that a CPAP machine (Continuous Positive Airway Pressure) is cost effective and claim it towards state assistance.

According to the section summary accompanying the published rules, this amendment is to "provide guidance and clarity to counties regarding optional health care services." Jan Maberry, IHCP Manager for DSHS, has determined that counties and hospital districts will benefit from having a clearer and more concise understanding of the rules for implementing the program. DSHS has also determined that there will be no fiscal implications to state or local government.

For more information, contact Rick Thompson at rickt@county.org or 800-456-5874. 📍

KEY COUNTY DATES

FEBRUARY

February 1. Unpaid property taxes become delinquent if not paid before February 1 of the year after the taxes are imposed. TEX. TAX CODE, §31.02(a).

February 1. *Calendar Fiscal Year Counties.* Fee basis officers required to file annual report with district court. TEX. LOC. GOV'T CODE, §114.046(a).

February 4. Last day a person may submit an application to register to vote in March 4, 2008 primary election. TEX. ELEC. CODE, §13.143. *Since the statutory deadline of the 30th day before primary election day falls on a Sunday, the deadline is extended to Monday, February 4, 2008.* TEX. ELEC. CODE, §§1.006, 13.143(e), and 15.025(d).

February 4, 5:00 p.m. Deadline for opposed candidates in general primary election to file pre-election report of political contributions and expenditures. TEX. ELEC. CODE, §254.064. *Actual receipt by deadline required. Deadline extended.* TEX. ELEC. CODE, §1.006.

February 8–April 1. Period for **early voting voter** to submit application for early voting mail ballot for runoff primary. Application may not be submitted earlier than February 8 (is considered submitted at time received by clerk). Application must be received by county clerk before close of regular business in clerk's office on April 1. TEX. ELEC. CODE, § 84.007.

February 11, 5:00 p.m. *Counties with population 100,000 or more.* Deadline for candidates for county judge, county commissioner, and county attorney to file personal financial statements. TEX. LOC. GOV'T CODE, §159.004.

Counties with population 125,000 or more. Deadline for candidates for justice of the peace to file personal financial statement. TEX. LOC. GOV'T CODE, §159.004.

February 13. Not later than this date, **voter registrar** delivers to Secretary of State a statement of the number of persons whose voter registrations in the county and in each election precinct will be effective on general primary election day. TEX. ELEC. CODE, § 18.042.

February 13. Last day for a person who is not a registered voter to submit a federal postcard application (FPCA) to receive a full ballot general primary. TEX. ELEC. CODE, §101.004.

February 19–29. Period for early voting by personal appearance for general primary election. TEX. ELEC. CODE, §85.001

February 25, 5:00 p.m. Deadline for opposed candidates in general primary election to file pre-election report of political contributions and expenditures. TEX. ELEC. CODE, §254.064. *Actual receipt by deadline required.*

February 29. Last day of early voting by personal appearance for general primary election. TEX. ELEC. CODE, §85.001.

MARCH

All Counties

First month Commissioners Court may make determination on whether the county election precincts comply with law and make boundary changes (some exceptions apply). TEX. ELEC. CODE, §42.031(a).

March 3. 2008 County Expenditure Survey is due.

March 4. General Primary Election Day; Presidential Primary Election Day. TEX. ELEC. CODE, §41.007.

March 10. Last day for eligible unregistered person to submit voter registration application in time to vote in runoff primary. TEX. ELEC. CODE, §13.143. Last day for voter

to submit change of voter registration information in time to be effective for runoff primary. TEX. ELEC. CODE, §15.025.

March 14. Last day for candidate in runoff primary to withdraw. Withdrawal request if filed with state chair for a statewide or district office and with county chair for a county or precinct office. TEX. ELEC. CODE, §172.059. Request must be received by 5:00 p.m. of this date. TEX. ELEC. CODE, §145.001.

March 30

Counties with 100,000 or greater population County Clerk required to mail financial disclosure forms to the County Judge. County Commissioners and County Attorney who are not candidates in the general primary election. TEX. LOC. GOV'T CODE, §159.005. Appointed officers and those filing vacancies are to be mailed the forms not later than the seventh day after the date of appointment. TEX. LOC. GOV'T CODE, §159.005(b).

Counties with 125,000 or more population County Clerk required to mail financial disclosure forms to the justices of the peace who are not candidates in the general primary election. TEX. LOC. GOV'T CODE, §159.005. Appointed officers and those filing vacancies are to be mailed the forms not later than the seventh day after the date of appointment. TEX. LOC. GOV'T CODE, §159.005(b).

All Counties

March 31–April 4. Period of early voting by personal appearance for the Runoff Primary Election. TEX. ELEC. CODE, §85.001.

March 31, 5:00 p.m. Deadline for opposed candidates in general primary election to file pre-election report of political contributions and expenditures. TEX. ELEC. CODE, §254.064. *Actual receipt by deadline required.*

At a Glance—2008 County Expenditure Survey



By Paul Emerson
TAC Legislative Staff

This year will mark the fourth rendition of the *County Expenditure Survey*. This year's survey includes four new questions and omits the effective tax rate questions. These changes help to streamline the survey and keep it consistent with the other questions. The effective tax rate questions have been compiled into a separate survey that the Tax Assessor-Collector's office will address.

The *County Expenditure Survey* is sent to all county auditors and to the county treasurer in those counties without an auditor.

In 2007, 80 counties responded out of 254 surveys that were sent out. This year it is the goal of CIP to boost the response rate from 31% to 50%. Last session, the 2007 *County Expenditure Survey* report provided pertinent information to various house and senate committees. It is anticipated that the final report from this year's survey will also provide useful information to assist legislators in developing a better understanding about legislation that directly impacts county government.

Your assistance in providing CIP with the necessary information is greatly appreciated. Hopefully in the very near future, this survey will be automated and easily accessi-

ble so counties may respond via the Internet. For those counties that have responded in previous years, a glitch may have caused an erroneous figure to appear in the answer column of your survey. Please check the information and if need be, replace it with the correct amount. Please return this

year's survey to CIP by Monday, March 3, 2008.

Thanks again to all county government officials and staff for your time and efforts in making the county expenditure survey project a success in 2008. 🗺️

County Expenditures – 2008 Texas Association of Counties

During 2007 discussions continued around the state concerning the growth in local government property taxes and the impact of unfunded mandates. This *County Expenditures Survey – 2008* is being conducted in order to have hard data on hand concerning spending requirements that are beyond the control of locally elected county officials for the 81st Legislative Session.

You will also see that the survey is not exhaustive, but is longer than earlier surveys. Our previous surveys each asked about cost drivers, including unfunded mandates, through the 2007 fiscal year budget. Now it is time to collect actual expenditures for FY2007 and budgeted amounts for FY2008.

Please report budgeted amounts for the 2008 fiscal year and actual expenditures for the previous fiscal years where available. Data from previous years will help us continue to develop trends that can be shown to policy makers. If actual amounts are not available, please provide best estimates and indicate "EST" next to the dollar amount. A complete set of instructions can be found at the end of this document.

Where available, we have included your county's responses to our previous County Expenditures surveys. If those responses are incorrect, please cross out the incorrect amount and provide the correct amount on the same line. The FY2007 numbers originally collected were from the budget and should be replaced with actual expenditures if possible.

Please complete and return the following short questionnaire by March 1, 2008 to:

Paul Emerson
Texas Association of Counties
P.O. Box 2131
Austin, TX 78768

If you prefer, you may return the notice and completed survey with contact information by fax to (512) 478-0519. You can contact Paul Emerson or Tim Brown at (800) 478-8753 with any questions or e-mail them at Paule@county.org and TimB@county.org respectively.

Contact Information:

County: «CO NAM» _____
Name: _____
Office/Position: _____
Phone Number: _____
E-mail: _____

As always, your assistance is greatly appreciated!

"The secret of winning football games is working more as a team, less as individuals. I play not my 11 best, but my best 11."

—Knut Rockne, led Notre Dame to six national championships

Get in the Game

Encourage the Partnership

2008 Annual Conference • August 27–29, 2008 • Renaissance Hotel, Austin

Working Together to Get Things Done

Issues that face counties, cities, state and federal governments all affect the citizens of Texas, and it's time to restore the partnership between all levels of government to provide services effectively for citizens. TAC's Annual Conference will explore ways for governments to cooperate and create common solutions as well as evaluate critical state legislative issues that may come up in the 2009 Texas Legislature.

The conference will provide a forum for county officials to discuss critical issues facing county government. The 2008 conference curriculum offers a diverse educational program with continuing-education credits for most county offices.

Continuing Education

Application will be made for continuing-education credit for county commissioners, tax assessor-collectors, county and district clerks, sheriffs, treasurers, attorneys, auditors and purchasing agents.

Conference Features

LEGISLATIVE TRACK The tough legislative session that Texas counties experienced in 2007 may be just a preview of 2009.

The Annual Conference will present pre-legislative issues in anticipation of the regular legislative session beginning January 2009. Some of the hot topics include:

- Jail overcrowding;
- Environmental and stormwater regulations;
- Tax and revenue caps for counties;
- Groundwater quality;
- Eminent domain; and
- Indigent health care.

PRE-CONFERENCE SESSION Cover the basics of how county officials can effectively work with the legislature on issues affecting their counties.

TRADE SHOW Vendors will feature products and technology designed with county government in mind.

BEST PRACTICES AWARDS The TAC Leadership Foundation will honor outstanding Texas counties for their best and brightest innovations.

Registration and Accommodations

TAC will process both conference registration and hotel reservations. Conference registration is required to obtain reservations at the discounted conference rate. For more information visit www.county.org, or contact the Education Department at 800-456-5974.

Spouse Activities

Registration for spouses is \$30 and provides admission to all conference programs including the Wednesday-evening party and a special Thursday-morning event.

TEXAS ASSOCIATION *of* COUNTIES

REGISTRATION FORM

2008 Texas Association of Counties Annual Conference & Trade Show
August 27–29, 2008 • Renaissance Hotel, Austin

CONFERENCE REGISTRATION

Please complete and submit with applicable fees to:

Texas Association of Counties Annual Conference | P.O. Box 2131 | Austin, Texas 78768

Forms may be faxed to: 512-477-1324

REGISTRATION FEES: Please check boxes that apply

Name: _____

Title/Office: _____

County/Company: _____

City/State/ZIP: _____

Address: _____

Email: _____

Spouse's Full Name: _____

	Before July 31 (postmarked)	After July 31 (postmarked)
County Member (employee)	<input type="checkbox"/> \$225	<input type="checkbox"/> \$250
TAC Associate Member	<input type="checkbox"/> \$225	<input type="checkbox"/> \$250
Non-Member (government)	<input type="checkbox"/> \$275	<input type="checkbox"/> \$300
Non-Member (corporate)	<input type="checkbox"/> \$425	<input type="checkbox"/> \$450
Spouse Fee (includes Wed. event)	<input type="checkbox"/> \$30	<input type="checkbox"/> \$30
Extra Ticket for Casino Night	<input type="checkbox"/> \$30/ticket	<input type="checkbox"/> \$30/ticket
TOTAL:	\$ _____	\$ _____

CONFERENCE CANCELLATION POLICY: Conference fees are fully transferable to other participants. All refund requests must be received in writing BEFORE Aug. 15 to receive a full refund minus a \$10 administrative fee. Refund requests received AFTER Aug. 15 will be subject to an administrative fee equal to half the registration fee. Unfortunately, we're unable to honor any refund requests after Sept. 1, 2008.

HOTEL RESERVATIONS

Please ensure that the boxes below are checked so we may process your registration for the 2008 Annual Conference.

☐ I understand that I must be registered for the conference in order to obtain a reservation at the host hotel at the Annual Conference rate; otherwise my hotel reservation is subject to cancellation.

☐ I agree to contact TAC **PRIOR TO** canceling my hotel reservation. By doing this, I will allow an attendee who is on the waiting list to take advantage of the conference hotel rooming block. I will email haleyh@county.org or call the TAC Education Department at 800-456-5974 if I need to cancel my hotel reservation.

****IMPORTANT** HOTEL RESERVATION INFORMATION**

If you register for the Annual Conference online at www.county.org, a link for reserving a room at the Renaissance Hotel will be provided with your online confirmation.

If you fax your conference registration and provide an email address on the registration form, hotel reservation information will be sent to you via email.

Confirmations for the conference with the Renaissance Hotel phone number and the rooming block code will be sent to all registrants by mail.

For questions, contact Haley Haygood in the Education Department of the Texas Association of Counties at haleyh@county.org or 800-456-5974.



Resources, Naturally

They ain't yours unless you say they're yours...

By Paul J. Sugg
TAC Legislative Staff



We don't spend a lot of time in this corner talking at any great length about AG opinions or requests for opinions (it tends to give the lawyers

around here fits) but there are a couple of opinions and opinion requests floating around out there that will be of interest to those who follow platting, development, and their occasionally attendant street and road issues. Take some time to read them and be reminded of some basics about these important county functions, their practical applications, and what the future may hold for some of them.

Back in July of last year, the Hood County Attorney's office asked the AG a series of questions about the scope of a county's responsibility to maintain roads in residential subdivisions. The request noted the commissioners court has approved subdivision plats without accepting the roads within the subdivision or the roads were accepted for their location, but not for maintenance. The request also asked for clarification regarding whether repair of a subdivision road with county equipment but without commissioners court approval confers maintenance obligations upon the county. (The request asked if a previous opinion [GA-0513—whether Ch. 253, Transportation Code is the exclusive means whereby a county may improve a subdivision road although the public has already acquired an

interest in the road and whether a public road, acquired by dedication, once accepted, must be regularly maintained, even if the commissioners court has expressly rejected the duty to maintain the road] establishes county responsibility for subdivision roads “despite important distinctions between the circumstances giving rise to GA-0513 and the present case”. That opinion is a good addition to your reading list as well.)

The AG's reply to the Hood County request (**GA-0594**) gives a brief review of the platting process, discusses how certain counties (population of 50,000 or fewer) may acquire a public interest in a private road and notes that adverse possession cannot be shown by maintenance of a road with public funds. But the main point is this: “[a] commissioners court's approval of a plat...does not convert private roads represented on the plat into county roads or impose on the county a duty to maintain them.”

A developer, then, may dedicate the roads to the public in the plat, but unless the commissioners court officially moves to accept the roads into the county road system, the roads are not county roads. This is needs to be clearly stated in a county's subdivision rules, regulations, and policies—it will prevent problems and confusion down the line—for developer, homeowners, and the next generation of commissioners faced with vexing questions about which roads to maintain.

ETJs, HB 1445, SB 873 and, maybe, what it all means...

Way on back in 2001, the Legislature

passed HB 1445, which created so-called “one-stop shopping” for plat applicants in a city's extra-territorial jurisdiction (ETJ). Some developers had complained about what they considered the onerous burden of getting both county and city approval of a plat application (notwithstanding the different responsibilities and authorities of counties and cities, but that's all passed now...). A big legislative push followed and resulted in the bill's passage. (The next session, the Legislature passed HB 1204, to further clarify HB 1445.) When the Legislature passed HB 1445, they also, in their wisdom, passed SB 873, giving additional platting authority to certain urban and surrounding counties. (This past session, the Legislature struck the population bracket on Chapter 232, Subchapter E, Local Government Code to allow any county to exercise the Subchapter E authority).

The scope and intersection of these authorities has not always been crystal clear but now perhaps the Attorney General can shed some light on them. The AG has just recently received a request for an advisory opinion from the Comal County Criminal District Attorney's office (**RQ-0664-GA**) for some guidance regarding city and county authority in the ETJ, specifically, whether a municipality may regulate density/zone through platting within its ETJ and whether a county may regulate density/zone through platting in the unincorporated areas of the county. We look forward to reading his opinion. 🗺️

TCEQ Adopts Final Rules Revising the Pollution Control Tax Exemption Program



By Laura Garcia
TAC Legislative Staff

In 1993, voters approved a constitutional amendment authorizing the

Legislature to exempt certain pollution control property from ad valorem taxation. Section 11.31 of the Tax Code sets forth the provisions allowing the property tax exemptions and tasks the Texas Commission on Environmental Quality (TCEQ) with determining whether an item qualifies as pollution control property and is eligible for an exemption.

During the 80th Session, the Legislature enacted House Bill 3732, which amended the provisions of the Tax Code relating to this exemption. The bill, authored by Rep. Hardcastle (R-Vernon), establishes an advanced clean energy project grant and loan program, among other financial, tax, and regulatory incentives, to promote and support the development of new advanced clean energy projects and technology. Among its provisions, it requires TCEQ to adopt, by rule, a list of certain pollution control equipment (including property used primarily in refineries and power plants) which may be eligible for a property tax exemption, at least with respect to the proportion of the property that is used for pollution control. Prior to this legislation, TCEQ maintained an equipment list which included property that the Executive Director had determined was either wholly or partially used for pollution control purposes; however, the

agency was not specifically directed by statute to maintain a list or to include certain property on the list, which HB 3732 now requires. The legislation also allows TCEQ to remove an item from the list if the Commission determines through compelling evidence that the item does not provide pollution control benefits.

TCEQ adopted the final rules revis-

"[TAC], in comments submitted to TCEQ, has encouraged the agency to employ a thorough and cautious review process before granting an exemption to prevent any undue detriment to the local property tax base."

ing the exemption program at a meeting on January 16. The rules call for a case-by-case exemption review process for property purporting to fall under a category of equipment now specified in statute. The review of this property on a case-by-case basis should help facilitate more thorough evaluations by requiring applicants to clearly justify any exemptions. Moreover, the rules still require compliance with the relevant constitutional and statutory standards authorizing the exemptions, as only the proportion of property installed or used to meet certain rules or regulations adopted to control pollution will be exemption eligible.

The Commission, despite the request by some industry representatives, declined to expand the rules to

include exemptions for property used for producing a cleaner product, such as equipment installed to produce low sulfur diesel and gasoline. Granting exemptions for this type of equipment would have gone beyond the scope of current law which prohibits exemptions for property that produces a product that controls pollution and requires an on-site benefit.

While the legal standards controlling the exemptions have not changed, the potential impact of the program revisions on the local tax base is difficult to determine at this time. The Texas Association of Counties (TAC), in comments submitted to TCEQ, has encouraged the agency to employ a thorough and cautious review process before granting an exemption to prevent any undue detriment to the local property tax base. The ultimate impact will depend on how the agency staff administers the review process and decides exemptions. TAC staff will continue to monitor the program and assess the agency's exemption determinations to gauge the local impact, as well as any unwarranted tax exemptions.

The final rules are expected to be published in the Texas Register on February 1 and will become effective on February 7. The Texas Register can be accessed at <http://www.sos.state.tx.us/texreg/index.shtml>.

For additional information, contact Laura Garcia at 800-456-5974 or laurag@county.org. 📍

You *are* a Piece of the HR Puzzle

Workshop Educates Counties on HR Hazards

Workplace problems and complaints are common issues for all supervisors and unless handled properly, they can quickly become serious risks and liabilities. Supervisors should act quickly when receiving an employee complaint. Delaying a decision or making the wrong one can land your county in big legal trouble and cost taxpayer money.

TAC's one-day HR workshop will give you practical processes to investigate and resolve complaints and problems. Discover how to control cost and liability for unemployment claims, and receive an update on the latest trends in workers' compensation.

Objectives

- Distinguish how to investigate an employee complaint;
- Understand why investigating a complaint is important from a liability viewpoint;
- Learn how to select the right investigator;
- Discover the steps needed to plan an internal investigation;

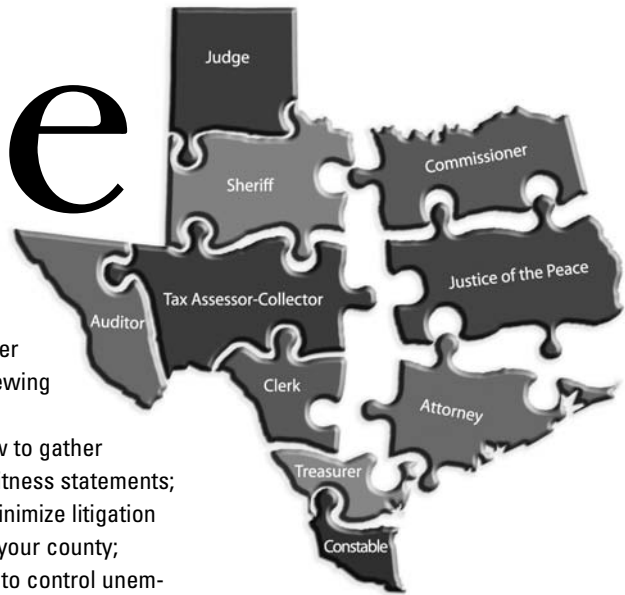
- Determine proper witness-interviewing techniques;
- Understand how to gather and evaluate witness statements;
- Learn how to minimize litigation and liability for your county;
- Determine how to control unemployment costs;
- Discover how to prepare for an unemployment hearing; and
- Review the latest trends in workers' compensation.

Who Should Attend

County officials, management staff and department heads.

Continuing Education

Applications for continuing-education credit have been sent for county commissioners, judges, tax assessor-collectors, attorneys, treasurers, auditors and human-resource professionals. Please visit our Web site, www.county.org, for continuing-education approval updates.



Registration

Each workshop is free and is limited to the first 90 registrants, so reserve your spot today. For additional information or to register for this essential one-day workshop visit www.county.org, or contact the Education Department at 800-456-5974.

Locations

March 17—Austin
April 1—Corpus Christi
April 1—Lubbock
April 3—Abilene
April 3—Conroe
April 8—Odessa
April 8—Tyler
April 10—Kerrville
April 10—Waco

TEXAS ASSOCIATION *of* COUNTIES

Congressional Update



By Laura Garcia

TAC Legislative Staff

Farm Bill Conferees to Decide Rural Development Funding Levels

On December 14, the U.S. Senate passed the \$286 billion farm bill reauthorization (H.R. 2419). The Senate version of the legislation provides \$400 million in budget authority for rural development, including \$135 million for the Rural Collaborative Investment Program which would allow rural communities to create investment strategies based on their local priorities. The funding provided in the Senate version of the Farm Bill would also provide resources to rural hospitals, a microenterprise assistance program, and one-time funding for pending water and wastewater infrastructure applications. The House version of the legislation, however, lacks this mandatory funding which would assist many rural counties throughout the country. The Farm Bill conferees are expected to reconcile the differences in the legislation within the next few weeks.

Recidivism-Reduction Legislation Passes House

On November 13, the U.S. House passed The Second Chance Act of 2007 (H.R. 1593), legislation which, with an annual authorization level of \$165 million, would provide comprehensive assistance to state and local governments in developing programs that will assist persons leaving jail or prison in safely and successfully reintegrating into their communities. The bill authorizes numerous grant programs, including demonstration grants for state and local governments which could be used for employment services, sub-

stance abuse treatment, housing, family programming, mentoring, and victim services. The Senate version of the legislation (S. 1060) was reported out of the Judiciary Committee in August of 2007 and is awaiting consideration by the full Senate.

Senate Removes Secure Rural Schools and PILT Funding from Energy Bill

The U.S. Senate recently removed provisions in H.R. 6, the Energy Independence and Security Act of 2007, which would have provided funding for the Secure Rural Schools (SRS) and Payment in Lieu of Taxes (PILT) programs. The House of Representatives had included the SRS/PILT funding language in its version of the bill.

The SRS program provides funding

assistance to rural counties affected by the decline in revenue from timber harvests in federal lands, while the PILT program provides financial support to counties to help offset losses in property taxes due to nontaxable federal lands within their boundaries.

The provisions removed from the legislation would have reauthorized SRS for four years and fully funded the Payment in Lieu of Taxes (PILT) program in fiscal year 2009. The National Association of Counties (NACo) has been working with county and school officials for many months in an effort to find a legislative vehicle which could continue the funding for the programs. 🗺️

(Compiled, in part, from Legislative Bulletins provided by the National Association of Counties.)

Responses Needed to Illegal Immigration Survey



By Laura Nicholes

TAC Legislative Staff

The Texas Association of Counties is conducting a survey of county jails for the House Committee on Corrections and the House Committee on County Affairs. The survey has been distributed to all Texas sheriffs. The responses will be analyzed and distributed to these two committees to assist their study of the impact of illegal immigration on state and local criminal justice systems.

The House County Affairs and House Corrections committees have been charged by the Speaker of the House to study this issue prior to the start of the 2009 legislative session. The joint charge instructs the committees to "Study policies and procedures related to illegal immigration and border security of the TDCJ, county probation departments, and local and county jail facilities, and make recommendations to improve coordination with international, federal, state, and local authorities."

A similar survey has been distributed by the Community Justice Assistance Division of TDCJ, the oversight agency for the 121 adult Community Supervision departments throughout the state.

An initial hearing on this interim charge took place February 1, 2008 at the University of Texas at Dallas, where the committees heard invited and public testimony.

For more information, contact Laura Nicholes at 800-456-5974 or LauraN@county.org. 🗺️

National Incident Management System (NIMS)

Training now for future emergency planning, preparing, & responding



By Aurora Flores-Ortiz
TAC Legislative Staff

Because of its geographic size and diversity, Texas is subject to all types of disasters from hurricanes, droughts and wild fires to hazards involving chemical spills and border/port security. Often, counties are able to respond without outside assistance, but when a county's needs require coordinated effort across several jurisdictions or federal reimbursement, the elected officials in that county must have been trained in the introductory NIMS courses. NIMS will only continue to evolve as our homeland security landscape changes.

Beginning in 2003, President Bush issued the Homeland Security Presidential Directive (HSPD)-5, Management of Domestic Incidents to develop and administer a *National Incident Management System* or what is known today as *NIMS*. Even though many counties have been using emergency preparedness for years, this overall system is designed to encompass all types of hazards using coordinated resources. The system is all about county agencies being educated, able to work together and including neighboring jurisdictions, state and federal resources.

NIMS Training

NIMS Integration Center strongly recommends that elected officials who will have any role interacting with multiple jurisdictions and agencies during emergencies, at the minimum, should complete *FEMA IS-700: NIMS, An Introduction* for basic NIMS compliance, and *ICS-100: Introduction to Incident Command System*. This training should be completed as soon as possible and will help everyone directly involved in emergency management understand the terminology, reporting structure and the roles and responsibilities when responding. Note

that the courses beginning with "IS" are basic courses offered free on line and courses offered in a classroom setting will begin with "ICS".

To find your county's emergency management coordinator and further information on NIMS/ICS training, officials can contact their local Council of Government or the Texas Association of Regional Councils (TARC) at <http://www.txregional-council.org/> or (512) 478-4715. The Governor's Division of Emergency Management (GDEM) provides free NIMS compliance training and information on location, scheduling and availability can be found at <http://www.txdps.state.tx.us/dem/pages/training.htm>. GDEM contact information can be found through the Texas Department of Public Safety at: <http://www.txdps.state.tx.us/contact.htm>.

What is NIMS Compliance?

First, it's important to understand that as of October 2006, all federal preparedness assistance is contingent on compliance with NIMS. **For counties to be eligible for federal funds, they must be able to certify NIMS compliance.** Compliance means the county has:

- Adopted NIMS through executive order (language assistance may be found at www.naco.org/techassistance).
- **Completed a NIMS introduction minimum training course for appropriate personnel now**
- Kept records on completed training by county personnel
- Established a self-assessment of where the county stands with NIMS implementation through NIMSCAST
- Established a strategy for implementing NIMS
- Institutionalized the use of the Incident Command System (ICS)
- Completed registration on NIMSCAST
- Reported completion of Tier I NIMS requirements in NIMSCAST

Compliance information can be found at http://www.fema.gov/emergency/nims/nims_compliance.shtm.

What are the course deadlines?

September 30, 2007 was the first federal government's completion deadline for *IS-700, ICS-100 and ICS-200*. It is strongly recommended that officials complete introductory training as soon as they are able as Texas is currently allocating monies. September 30, 2008 is the completion deadline for middle management and Command and General Staff courses *ICS-300 and ICS-400*. Much more information on training can be found at www.fema.gov/emergency/nims/nims_training.shtm.

Making your way through all the NIMS training and compliance information can be somewhat daunting but the online resources available are informative and provide many helpful links. **NIMS** training will continue to evolve with our nation's homeland security needs so it will be critical to remain current on all the latest information. For more information on **NIMS** and Homeland Security issues, please contact Aurora Flores-Ortiz at aurorafo@county.org or 800-456-5974. Michael Ada and Ginny Lewis of TARC contributed to this article. ➤

Online Resources

Training: http://www.fema.gov/emergency/nims/nims_training.shtm

Compliance: http://www.fema.gov/emergency/nims/nims_compliance.shtm

Federal Government & Compliance: www.fema.gov/emergency/nims/index.shtm

County Government: www.naco.org/techassistance, www.naco.org/Template.cfm?Section=homeland_security,

Councils of Government: www.txregional-council.org

NIMSCAST: <https://www.fema.gov/nimscast/Logoff.do>

Governor's Division of Emergency Management: <http://www.txdps.state.tx.us/dem/pages/index.htm>

NIMS Training Guidelines

<p>Federal/State/Local/Tribal/Private Sector & Non-governmental personnel to include:</p> <p><i>Entry level first responders & disaster workers</i></p> <ul style="list-style-type: none"> • Emergency Medical Service personnel • Firefighters • Hospital staff • Law Enforcement personnel • Public Health personnel • Public Works/Utility personnel • Skilled Support Personnel • Other emergency management response, support, volunteer personnel at all levels 	<ul style="list-style-type: none"> • FEMA IS-700: NIMS, An Introduction • ICS-100: Introduction to ICS or equivalent
<p>Federal/State/Local/Tribal/Private Sector & Non-governmental personnel to include:</p> <p><i>First line supervisors, single resource leaders, field supervisors, and other emergency management/response personnel that require a higher level of ICS/NIMS Training.</i></p>	<ul style="list-style-type: none"> • FEMA IS-700: NIMS, An Introduction • ICS-100: Introduction to ICS or equivalent • ICS-200: Basic ICS or equivalent
<p>Federal/State/Local/Tribal/Private Sector & Non-governmental personnel to include:</p> <p><i>Middle management including strike team leaders, task force leaders, unit leaders, division/group supervisors, branch directors, and multi-agency coordination system/emergency operations center staff.</i></p>	<ul style="list-style-type: none"> • FEMA IS-700: NIMS, An Introduction • FEMA IS-800: National Response Plan (NRP), An Introduction* • ICS-100: Introduction to ICS or equivalent • ICS-200: Basic ICS or equivalent • <i>In FY07, ICS-300: Intermediate ICS or equivalent</i>
<p>Federal/State/Local/Tribal/Private Sector & Non-governmental personnel to include:</p> <p><i>Command and general staff, select department heads with multi-agency coordination system responsibilities, area commanders, emergency managers, and multi-agency coordination system/emergency operations center managers.</i></p>	<ul style="list-style-type: none"> • FEMA IS-700: NIMS, An Introduction • FEMA IS-800: National Response Plan (NRP), An Introduction* • ICS-100: Introduction to ICS or equivalent • ICS-200: Basic ICS or equivalent • <i>And in FY07, ICS-300: Intermediate ICS or equivalent</i> • <i>In FY07, ICS-400: Advanced ICS or equivalent</i>



Moving forward on the road to success

2008 County Management Institute

May 14–16, 2008
Doubletree Hotel Austin
6505 IH-35 North
Austin, Texas

Education Co-Sponsor: Lyndon B. Johnson
School of Public Affairs, University of Texas at Austin

TEXAS ASSOCIATION *of* COUNTIES

Customized Sessions

Each County Management Institute session will offer relevant information for county officials and key staff. The County Management Institute offers county-customized management training focused on the specific needs of county officials and staff.

Featured Speakers



Donna Zajonc and husband David E. Womeldorff co-founders of the Bainbridge Leadership Center will present "Beyond Problem Solving: Change your Leadership Mindset and Boost Your Effectiveness."



Mac McGuire returns with "The Key to Customer Service." This presentation addresses customer service for government entities and how to keep customers informed. McGuire will also discuss the differences between internal and external customers, and the six major needs of customers in a governmental setting.

Customized Sessions

This year's Institute will feature a new focus for officials with facility, road and subdivision regulation responsibilities. Topics will include courthouse restoration, legal issues with county roads, newly expanded county subdivision regulation powers and an update on issues impacting state and local transportation planning.

Learning Outcomes

- Develop safeguards to secure sensitive data;
- Understand the Family and Medical Leave Act;
- Evaluate the consequences of wrongful termination of employees;
- Identify the importance of using retirement benefits for employee recruitment and retention;
- Discover the latest trends in workers' compensation; and
- Identify the major needs of customers in a governmental setting.

Who Should Attend

- County engineers;
- Commissioners-court members;
- Elected and appointed officials;
- Sheriffs, constables, chief deputies, jail administrators and supervisors;
- Department heads, supervisors and managers;
- Risk managers, loss-control coordinators and committee members; and
- Personnel directors, human-resource officers and employee-benefits administrators.

Continuing Education

Continuing-education hours are approved with the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Applications are filed with the Human Resource Certification Institute (PHR and SPHR) and the appropriate governing bodies to approve continuing-education hours for:

- Auditors and CPAs;
- Commissioners;
- County and district clerks;
- Justices of the peace;
- Purchasing agents;
- Tax assessor-collectors; and
- Treasurers.

Hotel Information

Enjoy the completely renovated Doubletree Hotel Austin, located close to shopping and restaurants at 6505 IH-35 North. Please call 800-347-0330 or 512-454-3737 and request the "Texas Association of Counties' County Management Institute" room block to receive special reduced rates: single \$85; double \$105. The reduced reservation rate is available until April 22. After this date, rooms are subject to availability and price increases. Hotel self-parking is \$4; valet parking is \$14.

Pre-Conference Event

TAC HR specialists will be on hand to answer audience questions at the Human Resource Roundtable at 10:30 a.m. on Wednesday, May 14. Gain valuable insight from specialists and from each other in this interactive session as you discuss the topics that interest you.

Concurrent Sessions

Choose the track that interests you most, or divide your time between the four tracks:

- General Management;
- Human Resources;
- County Engineering Management; and
- Risk Management.

Registration

Take advantage of the "early bird" registration price of \$225 until April 10. After April 10, registration is \$250. Register online at www.county.org or complete the registration form and return with payment to the Texas Association of Counties.

Cancellation Policy

Conference registration is transferable to another person within your organization to attend the conference without additional charge. Refund requests must be made in writing (fax or email acceptable) and received at TAC by April 22 to receive a registration refund minus a \$10 processing fee. Refund requests received between April 22 and May 23 will receive a 50% refund. Refunds are unavailable after May 23.

2008 County Management Institute Registration Form

Name _____

Title _____

County/Entity _____

Address _____

City _____ Zip _____

Phone _____ Fax _____

Email _____

☐ Payment enclosed ☐ Payment to follow

☐ Please invoice

Help us provide appropriate meeting space and handout information by checking the track(s) you plan to attend:

☐ General Management ☐ County Engineering Management
☐ Human Resources ☐ Risk Management

Complete the registration form and return it with payment to:
Texas Association of Counties, CMI 2008

P.O. Box 2131
Austin, TX 78768

You may also fax registration to 512-477-1324, or register online at www.county.org.

☎ If special accommodations are needed, please contact Alice Kanelos at 800-456-5974.

Attorney General Opinions Issued



GA-0587: Mr. Buddy Garcia, Chair, Texas Commission on Environmental Quality, what limitations, if any, the Legislature has imposed on the Texas Commission on Environmental Quality with regard to tax exemption and tax rollback relief for pollution control property. **Summary** Neither section 11.31(k) nor section 26.045(f) of the Tax Code restricts the rule-making authority of the Texas Commission on Environmental Quality to only those pollution control facilities, devices, or methods associated with advanced clean energy projects.

GA-0588: Honorable John R. Roach, Collin County Criminal District Attorney, a law enforcement agency's authority concerning money seized as contraband pending a court's rendition of final judgment. **Summary** Under article 59.03(c)(3) of the Code of Criminal Procedure, a peace officer may require a law enforcement agency to take custody of property, including money, that has been seized as contraband. The law enforcement agency's authority and responsibility to maintain custody under the article, subject to other law, continues until a court directs the property's disposition in a final judgment. The law enforcement agency has reasonable discretion to choose the means of maintaining custody of such property. However, a law enforcement agency does not have independent authority to deposit and maintain money seized as contraband in an interest-bearing account, and may do so only pursuant to court order.

GA-0589: Honorable Fred Hill, Chair, Committee on Local Government Ways and Means, Texas House of Representatives, authority of property tax consultant to act as agent for property owners under section 1.111, Tax Code. **Summary** Section 1.111(b) of the Texas Tax Code authorizes a designation of agent form to be signed by an "other person authorized to act on behalf of the owner." A property tax consultant that falls within the statutory language, as construed, is authorized by section 1.111(b) to execute and complete the designation form for the property owner. Questions regarding the validity and sufficiency of a given fee agreement are outside the purview of the opinion process.

The Comptroller of Public Accounts must comply with applicable state law. Whether behavior or conduct violates a statute is a fact question that cannot be answered in the opinion process.

GA-0590: Honorable Elton R. Mathis, Waller County Criminal District Attorney, consequences resulting from the downsizing of the Waller County Appraisal District. **Summary** Waller County Appraisal District is responsible, on or after January

1, 2008, for litigation filed against the district under Tax Code chapter 42 before January 1, 2008, and involving property outside the district's home county. The general savings clause in the Code Construction Act continues in effect relevant portions of section 6.02, Tax Code, such that the district has continuing authority to defend itself in the pending litigation, and a taxing unit has a continuing obligation to pay the related costs.

GA-0593: Honorable Jesusa Sanchez-Vera, Jim Wells County Attorney, court's authority to modify the conditions of probation to allow probationers to pay a fee in lieu of community service hours not performed. **Summary** A court does not have general authority to modify the conditions of probation to require the probationer to pay a fee to be used for community supervision and correction department purposes in lieu of performing community services. Under appropriate circumstances, a court may modify conditions of probation to eliminate a condition requiring the performance of community services. A court may modify conditions of probation to require a probationer to make a specified donation to a local food bank or food pantry in lieu of community service. And a court may modify the conditions of probation to require a payment only if the payment is expressly authorized by law or constitutes a fine, court costs, restitution to the victim, or a condition related personally to the rehabilitation of the defendant.

GA-0594: Honorable R. Kelton Conner, Hood County Attorney, whether Hood County is responsible for maintaining certain subdivision roads. **Summary** A commissioners court's approval of the subdivision plat for filing does not constitute county acceptance of a dedication of roads depicted on the plat. Under Transportation Code chapter 281 counties with a population of 50,000 or less may acquire a public interest in a private road only according to the specific methods set out in that chapter. A road may be dedicated to a county subject to chapter 281 only by an explicit, written communication to the commissioners court. Adverse possession cannot be shown by maintenance of the road with public funds.

GA-0595: Honorable Eddie Lucio, Jr., Chair, Committee on International Relations and Trade, Texas State Senate, applicability of the nepotism statutes, Government Code chapter 573, to an individual employed by the City of Pharr.

Summary The charter of the City of Pharr, a home-rule municipality, delegates to the city manager the power to appoint individuals to positions below the department-head level without consulting the municipal governing board. If the charter provides the city manager with full and final

appointing authority to appoint individuals to such positions and reserves no authority for the city's governing body in these appointments, the city manager may appoint an individual who is related to a city commissioner, but who is not related to the city manager, without contravening the nepotism statutes, Government Code chapter 573.

GA-0596: Honorable Homero Ramirez, Webb County Attorney, operation of Texas Education Code section 11.168 prohibiting certain school district agreements. **Summary** The general rule in Texas is that statutes apply prospectively unless the statutory language indicates that the Legislature intended the statute to apply retroactively. Texas Education Code section 11.168 prohibits a school district board of trustees from entering into an agreement authorizing the use of school district resources for improvement of real property not owned or leased by the school district. Because the statute does not indicate that the Legislature intended the statute to apply retroactively, it does not apply to such an agreement entered into before the effective date of the statute.

GA-0598: Mr. Thomas A. Davis, Jr., Director, Texas Department of Public Safety, Whether section 521.032, Transportation Code, which permits the Department of Public Safety to issue an enhanced driver's license or personal identification certificate for the purpose of crossing the border between Texas and Mexico conflicts with federal law. **Summary** Section 521.032 of the Texas Transportation Code requires an enhanced driver's license to be supported by an applicant's proof of citizenship, identity, and state residency, and to include a one-to-many biometric matching system as well as reasonable security and encryption measures. A section 521.032 enhanced driver's license is consistent with current federal law regarding passports if: (1) the license is "determined . . . by the Secretary of Homeland Security to be sufficient to denote identity and citizenship"; and (2) the license conforms to the technology, security, and operational requirements of the Western Hemisphere Travel Initiative implemented under section 7209(b) of Public Law 108-458, such as being machine readable and tamper proof.

GA-0599: Mr. Steve Peña, Presiding Officer, Brazos River Authority, whether the Brazos River Authority may discount and freeze current lease rates for lessees over 65 years of age. **Summary** We find no statutory provision in either the Brazos River Authority's enabling legislation or applicable general laws that specifically prohibits a discounted lease rate and freeze for certain lessees.

As to article III, section 52(a) of the Texas Constitution, it does not preclude offering dis-

[AG Opinions Issued, continued on page 15]

[Elections Committee, continued from page 1]

the referrals were not prosecuted because it was determined there were no election code violations.

The U.S. Supreme Court is now considering a case on the constitutionality of Indiana's voter photo identification law. Indiana passed legislation, to counter voter fraud, requiring voters to identify themselves with government issued photo identification, such as a drivers license or passport. The Indiana State Democratic Party and others filed suit declaring the law to be unconstitutional because it creates an undue burden on voters. The Court's decision is expected sometime this summer. Legislation filed in the next legislative session will more than likely be influenced by the outcome of the Indiana case.

At the close of the hearing, Chairman Berman did not set another hearing date. ➔

[AG Opinions Issued, continued from page 14]

counted lease rates and rate freezes to certain lessees if the lease terms do not constitute the gratuitous application of public funds for a private purpose and if the governing body reasonably determines, in the first instance, that: (1) the lease terms have as their predominant purpose the accomplishment of a public, rather than a private, purpose of the BRA; (2) the BRA retains sufficient control to ensure accomplishment of the public purpose and to protect the public's investment; and (3) the public receives a return benefit.

GA-0600: Honorable William J. Stroman, Jr., Sterling County Attorney, whether a county commissioners court is prohibited from executing a tax abatement agreement with a wind turbine company for its fixtures and improvements to be located on a commissioner's real property; whether a commissioner who will receive royalties from a wind turbine company must abstain from voting on a tax abatement agreement with the company. **Summary** A county may enter into a tax abatement agreement with the owner of taxable real property located in a reinvestment zone, and with the owner of a leasehold interest in or improvements on tax-exempt property located in a reinvestment zone. Assuming that the "fixtures and improvements" owned by a wind turbine company constitute "improvements on tax-exempt real property that is located in a reinvestment zone" under section 312.402 of the Tax Code, the mere fact that a member of a commissioners court owns the real property on which the fixtures and improvements will be located does not prohibit fixtures and improvements from being the subject of a tax abatement agreement.

A member of a commissioners court generally must abstain from a vote on a matter if it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property distinguishable from its effect on the public. Whether a vote on a particular tax abatement agreement will have such a special economic effect is generally a question of fact that cannot be resolved in an attorney general opinion. ■

[From the Desk, continued from page 16]

and city leaders will have the benefit of many opportunities to actively participate in the process that continues to help define, clarify and shape the meaning and critical importance of "local control"—the legislative committee hearings on interim studies. The TAC website will provide an ongoing list of the more important posted meetings of the interim study committees together with applicable dates and locations. If you would like specific information about a particular hearing or study, please contact any member of the staff of the Legislative Department by email (staff member's first name and last name initial connected to: @County.org. Example: CareyB@County.org, or by calling 800-456-5974). "County Government—a local governing body that is among those closest to the people." ➔

Attorney General Opinions Requested



RQ-0654-GA Honorable Kevin Bailey, Chair, Urban Affairs, Texas House of Representatives, eligibility of particular individuals to sign a zoning change protest under section 211.006(d)(2), Local Government Code.

RQ-0655-GA Honorable Fred Hill, Chairman, Local Government Ways and Means, Texas House of Representatives, implementation of changes to tax proceedings required by House Bill 1010, Act of May 17, 2007, 80th Leg., R.S., ch. 648, Tex. Gen. Laws 1223, which provides for the consolidation of appraisal districts.

RQ-0656-GA Honorable Jeri Yenne, Brazoria County Criminal District Attorney, Wet/Dry Status of Certain Precincts within Brazoria County.

RQ-0657-GA Honorable Jeb McNew, Montague County Attorney, whether county officials who handle fee funds may set up individual accounts in their own name.

RQ-0658-GA Mr. Robert Scott, Commissioner, Texas Education Agency, applicability of impact fees assessed against school district property under chapter 395, Local Government Code.

RQ-0659-GA Honorable Hector M. Lozano, Frio County Attorney, expenditures that a county clerk may make from the Records Management Fund collected under section 118.0216, Local Government Code and article 102.005, Code of Criminal Procedure.

RQ-0660-GA Honorable Hector M. Lozano, Frio County Attorney, authority of a county tax assessor-collector to award additional compensation to her deputies from funds collected from section 501.138, Transportation Code, the Certificate of Title Act.

RQ-0661-GA Sidney "Buck" LaQuey, Grimes County Auditor, whether a county commissioner may simultaneously serve as an assistant county jailer.

RQ-0664-GA Honorable Geoffrey I. Barr, Comal County Criminal District Attorney, authority of a county and/or a municipality to impose and enforce density regulations.

RQ-0665-GA Honorable Chris G. Taylor, Tom Green County Attorney, whether the conduct of a constable implicates the resign-to-run provisions of article XVI, section 65, of the Texas Constitution.

RQ-0666-GA Honorable Laurie K. English, District Attorney, 112th Judicial District, Crockett, Pecos, Regan, Sutton, Upton Counties, meaning of the term "previously captured" for purposes of section 42.092, Penal code, which prohibits cruelty to non-livestock animals. ■



From the Legislative Desk

By Carey "Buck" Boethel, Director of Governmental Relations

Local Control—what does it mean? The meaning of a term often may depend upon how, and sometimes even where, it is used—its context. For instance, if you were reviewing the minutes of the House Agriculture Committee of the **Missouri** state legislature, you would find that back in February of 2004, the term "local control" was referred to as "the hallmark of our democracy." The registry of the Missouri proceedings makes it clear that the attempts of corporate agribusiness, in seeking passage of legislation that would preempt the authority of counties to pass local health ordinances, were considered by the opposition (local diversified family

farms) to be efforts to undermine public accountability and stifle the democratic process. Another context—The **Texas** Lyceum meeting in Tyler (January 18, 2008), where local and county officials together with members and former members of the state legislature debated the prospects, expectations and outcomes of state imposed "solutions" on local government. The Sunday, January 20, 2008 edition of the *Tyler Morning Telegraph* (Roy Maynard, TylerPaper.Com) lays out an excellent exposition of a discussion on the subject of "local control" and how the issue is viewed by the various invited participants. In pointing to the ultimate consequences of shifting power to

Austin, such as prior legislative proposals designed to restrict and limit local governments' access to its tax proceeds ("Revenue Caps"), many of the speakers condemned laws that have the effect of diluting the power of the local election ballot box. The discussion brings into focus the critical importance of preserving the representative form of local governance and through it, retaining local control over what is best for the people in their part of the state. **Contexts in progress**—in the ensuing months that precede the next general session of the Texas Legislature in January of 2009, county

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