

# County*i*ssues

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## State May Merge Juvenile Agencies



**By Laura Nicholes**  
*TAC Legislative Staff*

The Sunset Advisory Commission has released its Staff Report containing recommendations for abolishing the Texas

Juvenile Probation Commission and the Texas Youth Commission and transferring their functions to a proposed Texas Juvenile Justice Department. The new department would oversee all juvenile services at the pre-and- post incarceration levels and could have significant impact on county budgets, local juvenile departments, service delivery and detention facilities.

Some key recommendations found throughout the report which could have a significant impact on counties include:

- Modify state funding for probation services by consolidating funding streams, considering past performance in awarding grants, and establishing a pilot program to encourage counties to keep lower-risk offenders in their communities.
- Designate appropriate funding to establish the community corrections pilot program. (Pilot program would utilize funds remaining after TYC downsizing to be used in selected counties for either assisting with provision of community-based services OR to pay the State for housing juvenile offenders removed from the communities.)
- Require the proposed Texas Juvenile Justice Department to regulate all public and private nonsecure correctional facilities that accept only youth on probation.

- Require the new department to establish certification standards for employees who work in nonsecure correctional facilities that accept only youth on probation.
- Require a local juvenile board to annually inspect any non-secure correctional facility in its jurisdiction used only for youth on probation, and certify the facility's suitability with the proposed Texas Juvenile Justice Department.
- Consolidate existing community corrections funding for probation departments through the State's appropriations process.
- Require the proposed department to

in the near future of the at-risk-youth population; whether expected cost-savings are actually not unfunded mandates for counties already facing financial constraints due to declining tax revenues; and whether the policy resolves the negative issues presented by isolated, under-staffed, and under programmed incarceration facilities in a way that provides adequate detention space for violent juvenile offenders without shifting this population to ill-prepared counties." Fabelo, knowing well the complexities of a merger based on prior experience with TDCJ, said that "these three issues have to be explicitly addressed and evaluated" before deciding if the proposed

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*[Policy makers need to consider] "whether expected cost-savings are actually not unfunded mandates for counties already facing financial constraints due to declining tax revenues" – Dr. Tony Fabelo*

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establish basic probation and community corrections funding formulas in rule.

In reaction to the Sunset recommendations, Dr. Tony Fabelo, former Director of the Texas Criminal Justice Policy Council and now Director of Research for the Austin-based office of the Justice Center of the Council of State Governments, stated that "policy makers need to be careful in essentially merging a dysfunctional TYC agency with what is widely perceived as a well-run TJPC and expect by default that the result will be positive." According to Fabelo, policy makers need to consider "whether the merger will make the mainly county based and funded probation system stronger to deal with an expected increase

merger is good or bad for Texas.

A minimum annual cost savings to the State of almost \$595,000 is anticipated, primarily due to consolidation of agency functions, reduction in staff and the closing of three TYC facilities; the savings could run "up to \$27.6 million". The report says funding recommendations for local probation departments "would not have a direct fiscal impact to the State. Both the pilot program and the consolidation of community corrections funding would use existing state resources. The pilot program would redirect funding previously appropriated to support youth commitment to

**Merge Agencies** *continued on page 3*

## KEY COUNTY DATES

### December 2008

**December 4.** Deadline for county clerk to deliver an electronic report of precinct results to Secretary of State. TEX. ELEC. CODE, § 67.017.

**No later than December 14.** If drought conditions exist (determined by the Texas Forest Service). Commissioners Court may adopt order regulating the use of certain aerial fireworks. TEX. LOC. GOV'T CODE, § 352.051(d).

**Before December 15.** Resolution of determining vote for appraisal district directors due from Commissioners Court to Chief Appraiser. TEX. TAX CODE, § 6.03(k).

**December 8-18. 2008 Newly Elected Officials Training Workshops.** A prep school for newly elected officials and presented by the Texas Association of Counties at various locations. Please check the TAC website at [www.county.org](http://www.county.org) for dates and locations.

**Before December 31.** Results of appraisal district election due to Commissioners Court from Chief Appraiser. TEX. TAX CODE, § 6.03(k).

**Calendar Fiscal Year Counties.** Order designating day of week on which court will convene in a regular term. TEX. LOC. GOV'T CODE, § 81.005(a).

### January 2009

**January.** Term in which commissioners court may designate a new site at which terms are to be held during that calendar year. Seven days notice is required. TEX. LOC. GOV'T CODE, § 81.005(d).

**January.** District and County Attorneys must notify attorney general of their post office addresses as soon as practicable

after their election. TEX. LOC. GOV'T CODE, § 41.002.

**January.** Commissioners court may appoint seven residents to the county historical commission during January of odd-numbered years. TEX. LOC. GOV'T CODE, §§ 318.002 and 318.003.

**January 1.** Effective date of valuation of property on tax rolls. TEX. TAX CODE, § 23.01.

**January 2.** Deadline for Voter Registrar to file annual registration report with Secretary of State of number of persons whose registrations in the county and the county election precincts will be effective on January 1. TEX. ELEC. CODE, § 18.041(d).

**January 1-15.** Reconstitution of jury wheel. TEX. GOV'T CODE, § 62.001.

**January 7 – 12. 2009 Law Enforcement Regional Workshops.** Educational Co-Sponsor: Correctional Management Institute of Texas, George J. Beto Criminal Justice Center, Sam Houston State University, various locations.

**January 15. 5:00 p.m.** Deadline for semi-annual report of political contributions and expenditures by candidates and certain officeholders. TEX. ELEC. CODE, §§ 254.063(c), 254.093(c), and 254.095. If delivered by mail or carrier, cancellation or receipt mark before the deadline is proof of timeliness of filing.

**January 27 – 29. 2009 Courts & Local Government Technology Conference.** Educational Co-Sponsor: Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, Austin.

**January 30.** Deadline for Road and Bridge expenditure report due to State Comptroller. TEX. TRANS. CODE, § 256.009.

## Data Needed For Expenditure Survey

*A Call to All County Auditors and Treasurers*



**By Paul Emerson**

*TAC Legislative Staff*

As the 81st Legislative Session quickly approaches, the *County Information Project*

(CIP) is requesting all 254 counties to participate in this year's *County Expenditure Survey for 2009*. During the month of October 2008, surveys were mailed to each county auditor's office and also to counties with only a treasurer's office. Collecting this information will be extremely valuable in identifying major cost drivers that have a significant fiscal impact on counties especially now that the nation is facing economic uncertainties.

The 2009 survey is only seven pages long (including the three pages of instructions) which makes it shorter than previous surveys. The number of questions has been reduced from 38 to 22, which will hopefully increase our response rate. In the past, TAC has made the results of the surveys available to various legislative committees, and to individual members upon their request. The survey results are also used to respond to the Legislative Budget Board (LLB) and the Texas Comptroller of Public Accounts (CPA) when estimating the fiscal impact on proposed legislation affecting county government. Data collected from previous surveys are included in the County Expenditure Survey for 2009.

A blank copy of the survey is available on TAC's website at: <http://www.county.org/resources/countydata>.

In order to have the survey data available for this coming session, all surveys must be completed and returned to TAC by Monday, December 8, 2008. For further information about this survey, please contact Paul Emerson at [Paule@county.org](mailto:Paule@county.org) or at 800-456-5974. 🗺️

# Health Care Bills Pre-Filed



By Rick Thompson  
TAC Legislative Staff

As the first day of the 81st Legislative Session nears and with pre-filing opening November 11, 2008, counties are gearing up for another tough session with many important issues to monitor and debate. Many health care bills are sure to be filed this session which will alter how health care is provided and paid for in Texas. This session TAC will continue to closely monitor and report on proposed legislation affecting the many areas of health care that counties are interested in.

Below are listed a few pre-filed health care bills of county interest:

- **SB 30 (Zaffirini)** – this bill seeks to bring back the Medically Needy program to the same level of services that were provided to recipients during the 2003 state fiscal year. While attempting to overcome a \$10 billion deficit, the 78th Texas Legislature passed HB 2292 allowing the state to fund the Medically Needy program based on available state funds. Since then, no funds have been made available for the program.
- **SB 23 (Zaffirini)** - this bill would extend the continuous eligibility period from 6 to 12 months for a child who is determined to be eligible for the Medical Assistance program (this includes the Medical Needy program - see SB 30).
- **SB 76 (Nelson)** –This bill creates a children's health benefit plan for certain small employers. Under this program, only dependent children under the age of 25 whose family income is below 400% of the Federal Poverty Level (FPL) will qualify for minimum benefits adopted by the commission.
- **SB 202 (Shapleigh)** – This bill allows an out of state physician a provisional license to practice medicine until the Texas licensing board rules on the physicians license application. Physicians with provisional licenses will only be able to practice medicine in a location designated as a health professional shortage area (HPSA) or a medically underserved area (MUA). According to the U.S Department of Health and Services Administration, there are 64 million people living in HPSA requiring 16,336 practitioners to meet their need for primary care. In Texas, 117 counties qualify as HPSA representing 1,804,488 Texans. 🗺️



## **Merge Agencies** *continued from page one*

local probation departments for community-based programming. In the long term, local programs that reduce recidivism could result in less crime and fewer youth commitments, which could generate cost savings for the State. However, staff could not identify potential savings from this reduced recidivism."

Throughout the recommendations and in its Fiscal Implication section, the Sunset Commission touches on "initial appropriations" and "start up" costs for counties participating in the community corrections pilot program, and addresses financial savings to the State. The analysis, however, appears to leave open-ended the fiscal impact at the county level for issues such as increased county funding for the establishment and long term operations of community programs, increased probation caseloads with accelerated needs, as well as a permanent, dedicated allocation of State support after the pilot program expires.

It is important to remember that counties are already mandated in legislation to provide funding to local departments at a level not less than the amount provided in 1994. In 2007, the report says State funding "accounted for, on average, 31 percent of local probation departments' operating budgets". The remaining 69 percent comes primarily from local governments. In addition, county juvenile probation departments have depended on receiving approximately \$42.7 million a year from federal Title IV-E foster care assistance grants; a reduction "by about 75 percent beginning in fiscal year 2008" is expected, leaving counties to decide how to make up the difference. To read the full report, go to [www.sunset.state.tx.us/81streports/tyc/tyc\\_sr.pdf](http://www.sunset.state.tx.us/81streports/tyc/tyc_sr.pdf). Sunset hearings related to the Texas Juvenile Probation Commission and Texas Youth Commission are set for December 15-16th in Austin. Public testimony will be taken; county officials, local juvenile boards and juvenile probation departments are encouraged to provide input. Written comments should be forwarded to the Sunset Commission by November 26, 2008. For more information, contact Laura Nicholes at 800-456-5974 or via email to [LauraN@county.org](mailto:LauraN@county.org). 🗺️

## Lawsuit Filed on Forfeiture Cases



By Nanette Forbes  
*TAC Legislative Staff*

On August 8, 2008, a class action lawsuit was filed against the Wichita County Clerk and Wichita County challenging the collection of certain fees and costs in bail bond forfeiture cases.

The petitioners are basing their lawsuit on an Attorney General Opinion, GA-0486, issued in 2006 that determined that neither the fees associated with civil suits nor the conviction fees charged in criminal cases were authorized in bond forfeiture cases. The lawsuits asked that the county be enjoined from collecting these fees and costs.

The lawsuits assert that bondsmen have overpaid the court costs collected by clerks and are requesting the court to return any and all overpayments with interest.

At this time, there is an undetermined amount of counties that have been sued. Some counties have stopped assessing and collecting civil fees on bond forfeiture matters. Harris County District Clerk's Office anticipated a reduction of \$500,000 in fees and court costs. The Tom Green County District Clerk estimated a loss of \$60,000 per year, if her office discontinues collecting the civil case fees.

The financial implications of the class action suits would not only affect counties. The state would be adversely affected since much of the money being collected is transmitted to the state for deposit by the comptroller in the state's judicial fund. These dollars are then used to pay judge's salaries and other court-related costs.

**Forfeiture Cases** *continued on page 5*



## Taxes a Hot Topic at Coffee with TAC



By Aurora Flores-Ortiz  
*TAC Legislative Staff*

On November 13th, Texas Association of Counties hosted 58 local officials from 19 Panhandle counties to take part in Coffee with TAC in Amarillo. Roberts County Judge and TAC President-elect Vernon Cook opened the meeting and welcomed the large group to this pre-legislative discussion.

TAC staff began by answering questions about what the upcoming 81st Legislature might be drafting. Revenue and appraisal caps and reform of the appraisal process are what two special interim committees have been reviewing this past summer. The House Select Committee on Property Tax Relief and Appraisal Reform is looking at all matters relating to property tax relief and reforming the property appraisal system, including revisions to the Appraisal Review Board.

The Senate Finance Subcommittee on Property Appraisals and Revenue Caps is planning a simplified notice of proposed tax rates and to remove limitations on appraisal board appeals. In addition, they are proposing a Constitutional amendment to give the state regulatory authority over county appraisal districts and revamping the



process on the Comptroller property value study. The Senate subcommittee may also recommend changing the rollback rate to allow voters of a county or city to adopt a 1/4 percent local sales tax that

would be dedicated to property tax relief. A city or county adopting the tax would be subject to a 5 percent rollback rate (rather than the current 8 per-

**Coffee with TAC** *continued on page 7*



# Resources, Naturally

## Saving Capitalism (and Communities)



**By Paul J. Sugg**  
*TAC Legislative Staff*

At one of the two places I toiled as a graduate student, I had the privilege of serving as a teaching assistant

to a fine man and a fine historian, James Olson. He was then the chairman of the history department at Sam Houston State University and taught the biggest and certainly the most popular freshman history classes on campus. It was my chore to assist him in this and to also teach smaller classes on topics that supplemented the larger lecture class. A nationally recognized scholar, he has written a shelf full of history books on topics from the New Deal to cancer to John Wayne. One of his earliest books, *Saving Capitalism*, was about the Reconstruction Finance Corporation, originally a halting response to the Great Crash by the Hoover administration. Franklin Roosevelt took the idea along as part of his New Deal and commissioned Houston's own Jesse Jones to revitalize and run it. Among its essential functions was to fund local government projects as a way of stimulating the national economy by stimulating local and regional economies.

Now, we are not in another Great Depression (we earnestly trust) but nonetheless the nation's economy is suffering. Simultaneously, local infrastructure needs renewing and rebuilding. What better use of federal public funds than to generate local and regional economic activity (public and private sector jobs, sales, and construction) while rebuilding the infrastructure of the nation's communities, infrastructure built and maintained by local governments? After all, local governments play an integral role in building, developing, and sustaining communities—it is what we, as a self-governing people, do.

Groups including the National Association of Counties, the National League of Cities, and the National Association of Development Organizations are calling on Congress and the President to partner with counties, cities, and towns for some home-grown stimulus on infrastructure and economic development, funding things like transportation needs, water infrastructure, temporary increases in Medicaid funding, financial measures to address bond issuance and finance, social services, job training, and justice assistance. We hope the new Congress and President will listen. 🇺🇸



*Texas Infrastructure*

### **Forfeiture Cases** *continued from page 4*

On November 7, the Court of Appeals of the First District of Texas rendered a supplemental opinion on an appeal, *Safety National Casualty Corporation (agent Michael W. Cox) v. The State of Texas*, from the 180th District Court,

Harris County, Texas. "A bail-bond forfeiture proceeding is a criminal action governed by the rules of civil procedure after the entry of the judgment nisi." The court concluded "civil appellate filing fees should be assessed in criminal bail-

bond forfeiture cases."

If you have any questions this article, contact your county or district attorney or Nanette Forbes, TAC Legislative Liaison, at 800-456-5974 or email at [nanettef@county.org](mailto:nanettef@county.org). 🇺🇸

# New Dam Safety Rules to go into Effect January 1, 2009



By Bruce Barr

TAC Legislative Staff

With the well publicized failure of the New Orleans dam and levee system during hurricane Katrina and the Mississippi flood control infrastructure failure caused by the Midwest Floods of 2007, federal and state legislatures have demanded a more stringent review process of all flood management structures. In Texas, the responsibility for the dam safety review process falls on the Texas Commission on Environmental Quality (TCEQ) Dam Safety Program headed by Warren Samuelson. Over the last year the DAM Safety Program has been seeking input from dam owners, operators and the public on revisions to the existing dam safety rules. The proposed revisions establish the physical characteristics for a structure to be recognized as a dam, a method for identifying dam ownership, standards for determining a dam's hazard level, and dam hydraulic adequacy requirements. The proposed revisions also outline the dam owner's responsibilities.

Under the proposed rules, to be considered a dam a structure must be twenty-five feet, or higher, and have a maximum storage capacity of at least fifteen acre feet, or, the structure must be higher than 6 feet with a maximum storage capacity greater than, or equal to, 50 acre feet. A water retention structure is a dam if, in the event of failure, it poses a threat to human life or property regardless of its height or

maximum storage capacity.

The proposed rule revisions also formalize the procedures for dam owner identification. Under the rules a dam owner is determined by who holds the legal possession or ownership of the dam, or is the fee simple owner. If an entity is the sponsoring local organization of a National Resources Conservation Service assisted project they may be identified as the dam's owner. The new rules also name the person, or entity, that has a lease or easement on a dam as potential owners. Unknowingly, a county may find itself the owner, and responsible

party for flood structures in the county.

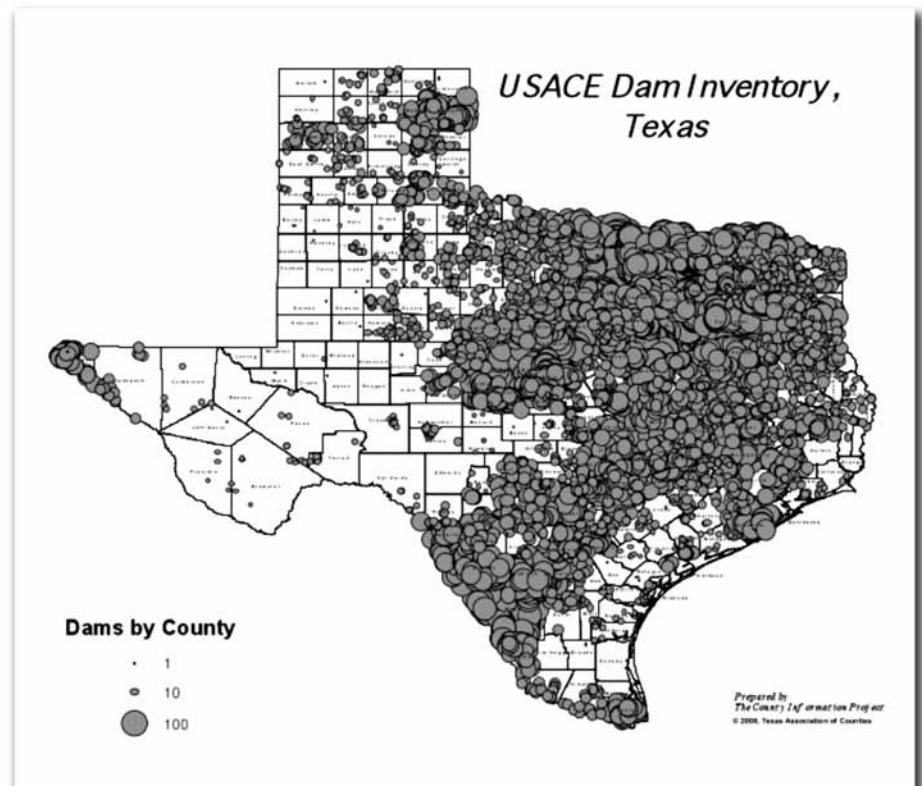
The rules establish dam hazard level ratings as high hazard, significant hazard, and low hazard. A dam is rated as High Hazard if, in the event of failure, there is a loss of life expected to exceed seven or more, and or, the economic loss is expected to be excessive. A Significant Hazard dam has a loss of life possibility of one to six people with an appreciable economic loss. A dam rated as Low Hazard has no loss of life and minimal economic failure in the event of failure.

**Texas Dams** continued on page 9

## TEXAS DAM FACTS:

- There are more than 7,000 dams in Texas.
- All but 11 Texas counties have at least one dam.
- The mean age of Texas dams is 45 years old.

Source: U.S. Army Corps of Engineers (USACE Dam inventory)



## National Local Government Associations Call for New Stimulus Package



By Laura Garcia

TAC Legislative Staff

On the heels of the recent \$700 billion bailout legislation for financial institutions, national local government associations are seeking another stimulus package that would include assistance for our nation's localities as a means of addressing the current economic crisis. In a letter to Congressional leaders, the National Association of Counties (NACo) recently called on Congress to enact an economic stimulus package with a focus on funding for key local government priorities. The National League of Cities has also voiced its support for such an effort.

Citing the dire state of the national economy and the impact it is having on local communities, NACo urged Congress to pass economic recovery legislation which would, among several proposals, include significant funding



for transportation infrastructure designated specifically for local governments. In its letter, NACo stressed the major role counties play in the country's transportation infrastructure, owning 1.8 million miles of roads and representing 44 percent of the nation's road mileage, and emphasized the economic benefits of infrastructure investment, including job creation, long-term stability, and competitiveness.

NACo also encouraged additional funding for the Community Development Block Grant (CDBG) program to help create jobs, and expressed its support for measures that would help localities secure access to the capital markets (including assistance with short-term and long-term borrowing).

Stressing the unique position of counties and cities to invest stimulus funds rather quickly and jumpstart their local economies, both NACo and the National League of Cities urged Congress to act promptly on such a package.

For additional information, please contact Laura Garcia at (800) 456-5974 or [laurag@county.org](mailto:laurag@county.org). 📍



## REALITIES OF LAW ENFORCEMENT

*What you need to know*

2009 Law Enforcement Regional Workshops

To register, go to [www.county.org](http://www.county.org)

TEXAS ASSOCIATION of COUNTIES

## Coffee with TAC

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cent). An election to authorize the tax could be called by the governing body or a percentage of the voters by petition could require the governing body to have public hearings and a record vote on whether to call an authorization election.

Audience discussion involved how revenue caps would affect counties' unexpected expenses such as murder trials. TAC staff mentioned how this session, the legislature will also face unforeseen statewide expenses such as Hurricane Ike and rebuilding the Governor's Mansion. Local concerns include the inability to reschedule unanticipated service demands like murder trials because the county's budget has been restricted by caps. No matter how the legislature might plan to implement revenue restrictions, county officials concurred that any type of additional cap is bad

**Coffee with TAC** *continued on page 9*

# Employee Health Care Costs Up



**By Tim Brown**  
*TAC Legislative Staff*

From January to March of 2008 the Texas Association of Counties conducted its third County Expenditures Survey. The survey asked counties to let us know how much they were spending on items such as employee health care. This article is part of our on-going series based on the findings from the survey report.

This is one question where a large majority of the counties were able to provide complete data for most, if not for all, of the eight years. As noted in the first chart shown on the next page, the average cost of health care continues to increase steadily over time.

This is quite evident in both Harris and Bexar County where the health care expenditures more than tripled from 2001 to 2008. Of the three largest counties responding, Harris County reported the highest cost increase of \$62.2 million between 2007 and 2008. For Harris County that is a 65.7 percent increase.

Counties in other categories also added large sums to their 2008 budgets for employee health care. For example, Somervell County (population size under 10,000) reported a 46.7 percent increase in expenditures for health care cost between 2007 and 2008. Over the eight year period, Somervell's health care expenditures doubled.

As noted in the following table, the counties with populations from 10,001 to 25,000 saw by far the least change. Their average expenditures only increased 55.6 percent. Of course, not all counties provide health care coverage for their employees.

Category	Population Bracket	Employee Health Care (2001 – 2008)
Smallest	1 – 10,000	97.20%
Small	10,001 – 25,000	55.60%
Mid-Sized	25,001- 100,000	95.60%
Large	100,001 - 1,000,000	86.60%
Largest	> 1,000,0000	165.70%

When limited to just those 80 counties that were able to provide data for both 2001 and 2008, the percentage changes actually increase as seen in the next table. The last row shows that the increase in employee health care cost for all of these counties as a group was 156.17 percent from 2001 to 2008.

to Adopt Budget," *Dallas Morning News*, 8 September 2008.

- Wichita County added \$1.1 million in employee health insurance reserves (Staff, "Commissioners Ensuring County Stays in the Black," *Wichita Falls Times Record*, 6 June 2008).

Category	Population Bracket	Employee Health Care (2001 – 2008)
Smallest	1 – 10,000	111.70%
Small	10,001 – 25,000	63.52%
Mid-Sized	25,001- 100,000	98.78%
Large	100,001 - 1,000,000	113.80%
Largest	> 1,000,0000	238.78%
All 80	N/A	156.17%

Today employee health care/insurance costs continue to increase as noted by a variety of newspapers statewide.

- Anderson County reportedly increased their FY 2009 budget by \$300,000 to cover rising medical insurance premium costs (Betty Waters, "Anderson County to Have \$20.4M FY '09 Budget," *Tyler Morning Telegraph*, 1 October 2008).
- Increases in health insurance and other benefits caused a \$1,000,000 increase in Denton County's 2009 budget (BJ Lewis, "Commissioners

Of course, increased health care costs do not just occur in counties. Towers Perrin, an international professional services firm based in the U.S., conducts an annual survey to determine the change in medical and dental plan costs across the entire spectrum of organizations. Survey participants include local governments as well as both small and large businesses. Their results show that while annual increases have slowed in recent years, they still are above 5% per year as

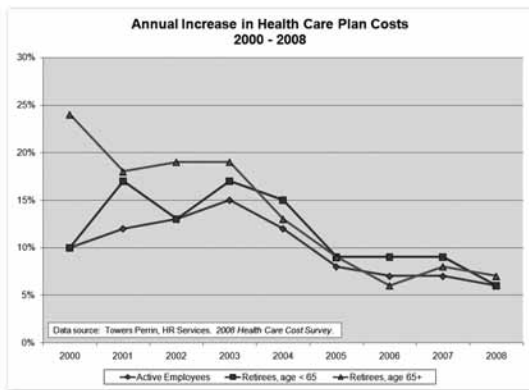
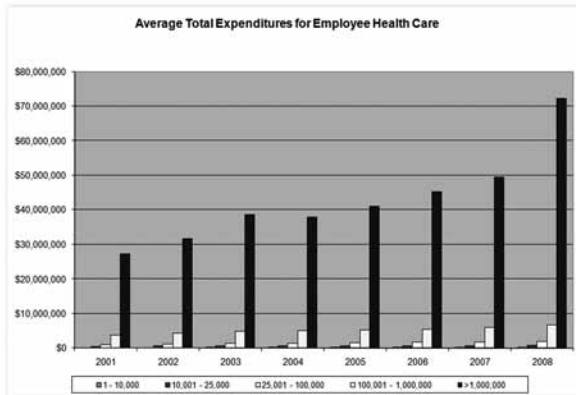
## **Employee Health Care**

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## Employee Health Care

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shown in the second chart.<sup>1</sup>

This article was adapted from the County Expenditures Survey report. Future articles in this newsletter will discuss other county cost drivers from the survey. In the meantime, a copy of the report can be downloaded in PDF format from the TAC web site ([www.county.org/resources/countydata/products.asp#reports](http://www.county.org/resources/countydata/products.asp#reports)).

<sup>1</sup> Towers Perrin. 2008 Health Care Cost Survey. [http://www.towersperrin.com/tp/getwebcachedoc?webc=HRS/USA/2008/200801/hccs\\_2008.pdf](http://www.towersperrin.com/tp/getwebcachedoc?webc=HRS/USA/2008/200801/hccs_2008.pdf)

## Coffee with TAC

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policy since counties have different tax bases and it would undermine local control.

Officials also voiced concerns over the likelihood of legislation that would increase the financial obligation for counties in the indigent health care program. One specific proposal discussed was "regionalization" and how it would penalize rural counties if they had to send 8% of their general revenue and tax levy to a regional authority.

More talk on tax rates came up as the discussion moved to public school funding. Judge Cook mentioned the fact that the school's portion of the total property tax levy is the largest and counties are only at the 14-16% share of the levy. School districts account for around 59% of the average property tax bill in Texas as of 2006. Most increases in county tax rates can be traced to rising costs of fuel and road materials and unfunded mandates such as the cost of indigent health care and indigent defense. Officials also conveyed their concerns how increased DWI fees initially aren't being collected locally. Some individuals cannot pay the fines so they spend the time in jail.

In closing, Judge Cook thanked the group for attending and reminded everyone of the importance of being involved at all levels so they can best represent the concerns of local government. The morning's conversation was productive and successful. These early and open dialogues among local elected and appointed officials will continue next in Abilene in December. For more information please contact Aurora Flores-Ortiz at [aurorafo@county.org](mailto:aurorafo@county.org) or 800-456.5874. 📍

## Texas Dams

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A dam will be considered to have adequate hydraulic capability if it passes 75% of a probable maximum flood event and the owner's duties have been met. The proposed rules establish the owner's duties as: development of an Emergency Action Plan, establish an operation and maintenance program (O & M), implement an inspection program and submit an annual report documenting the programs' activities.

The proposed rule revisions are in the public review phase of adoption until December 10th. The rule approval is scheduled for vote by the TCEQ Board on December 10th. If there are questions concerning any of the dam safety rule revisions, or if your county may be responsible for a dam and its hazard rating, contact Warren Samuelson, P.E. at [wsamuels@tceq.state.tx.us](mailto:wsamuels@tceq.state.tx.us), or 512/239-5195. For a draft copy of the Proposed Dam Safety rules, or the location of dams in your county, contact Bruce Barr, CFM at [bruceb@county.org](mailto:bruceb@county.org) or 512/478-8753 or 800-456-5974. 📍

## Attorney General Opinions Issued



**GA-0677:** Dr. Michael D. McKinney, Chancellor, The Texas A&M University System, whether an individual who is both a retired

state employee and an active state employee with a different state agency may receive two separate state contributions under the group benefits plans offered by the state. **Summary** An individual who receives a state contribution as an annuitant under the group benefits plan created by chapter 1601 of the Insurance Code may not receive a state contribution as a current employee under chapter 1551 of the Insurance Code. On the other hand, that person may elect to receive his or her contribution either as an active employee or as an annuitant.

**GA-0678:** Mr. Robert Scott, Commissioner of Education, Texas Education Agency, whether Spring Branch Independent School District's pre-kindergarten programs run in collaboration with a Head Start agency are exempt from licensing requirements for child-care facilities. **Summary** Whether the Spring Branch Independent School District or a Head Start agency, or both, "operates" a particular program for the purposes of section 745.119(1), title 40 of the Texas Administrative Code is a question of fact for the Department of Family and Protective Services to determine in the first instance.

**GA-0680:** Mr. Mike Geeslin, Commissioner of Insurance, Texas Department of Insurance, Whether the Texas Department of Insurance may access criminal history record information that is subject to a nondisclosure order under Government Code section 411.081(d). **Summary** Presuming that the

Texas Department of Insurance is not a criminal justice agency for purposes of Government Code section 411.081(d), the Department may not access criminal history record information that is subject to a nondisclosure court order under that section because the Department is not listed in subsection (i) among the entities to which such information may be disclosed.

**GA-0681:** Honorable Elton R. Mathis, Waller County Criminal District Attorney, whether the Waller County Appraisal District Office must be physically located within the boundaries of Waller County. **Summary** Under Tax Code section 6.05, an appraisal district's office must be located within the county for which the district is established, unless (1) the office is a branch office or (2) the appraisal district has entered an interlocal contract with an appraisal office in another district to perform appraisal duties for the district. In the absence of either of these two exceptions, the Waller County Appraisal District's primary office must be located in Waller County. Until the primary office is located in Waller County, the Appraisal District will not comply with section 6.05.

**GA-0682:** Honorable Beverly Woolley, Chair, Committee on Calendars, Texas House of Representatives, meaning of "administrative costs" for purposes of section 352.1015(c), Tax Code, relating to the expenditures of revenue from the hotel occupancy tax. **Summary** Tax Code section 352.1015(c) allows hotel occupancy tax revenue to be expended for administrative costs only if they are incurred directly for the promotion and servicing

expenditures authorized by the provision applicable to the particular county, and the expenditure is otherwise consistent with chapter 352 of the Code. Whether expenditures for "key person insurance" premiums constitute an authorized administrative cost is for the commissioners court to determine in the first instance, subject to judicial review.

**GA-0683:** Honorable John W. Segrest, McLennan County Criminal District Attorney, Whether a county commissioners court may establish an electronic monitoring program under Code of Criminal Procedure article 42.035(b). **Summary** Texas Code of Criminal Procedure article 42.035 does not authorize a county commissioners court to establish an electronic monitoring program separate from that established by a community supervision and corrections department.

**GA-0684:** David L. Lakey, M.D., Commissioner, Texas Department of State Health Services, whether the federal Airline Deregulation Act preempts the state statute and regulation authorizing an EMS subscription program as applied to air ambulances. **Summary** Pursuant to section 157.11(l) of Title 25, Texas Administrative Code, emergency medical service providers may establish a subscription program allowing members a reduced rate for air ambulance services. Because section 157.11(l) relates to charges for air ambulance services, the federal Airline Deregulation Act of 1978 (ADA) preempts it as to air carriers providing interstate air ambulance services. The ADA preempts the state regulation as applied to a ground ambulance operated as an integral part of an air ambulance service. ■

## Attorney General Opinions Requested



**RQ-0752-GA** Honorable Jeff Wentworth, Chairman, Jurisprudence, Texas State Senate, authority of a political subdivision to contract with a private entity for

the collection of delinquent fines, fees, and court costs.

**RQ-0753-GA** Honorable H. Michael Bartley, Delta County Attorney, whether a sheriff may refuse to provide particular documents to a county treasurer.

**RQ-0754-GA** Honorable Armando R. Villalobos, Cameron County District Attorney, whether an assistant county and district attorney may practice in a neighboring county or in federal court.

**RQ-0755-GA** Honorable Homero Ramirez,

Webb County Attorney, whether an appraisal district may conduct its appraisals on other than an annual basis.

**RQ-0756-GA** Honorable Bill Moore, Johnson County Attorney, authority of a commissioners court to lease county property to a non-profit organization for less than fair market value.

**RQ-0757-GA** Honorable E. Bruce Curry, Bandera, Gillespie, Kendal, & Kerr County District Attorney, whether carpet and tile may be purchased by a municipal police department using asset forfeiture funds under chapter 59 of the Code of Criminal Procedure.

**RQ-0759-GA** Honorable Rex Emerson, Kerr County Attorney, definition of "audit" for purposes of section 775.082, Health and Safety Code.

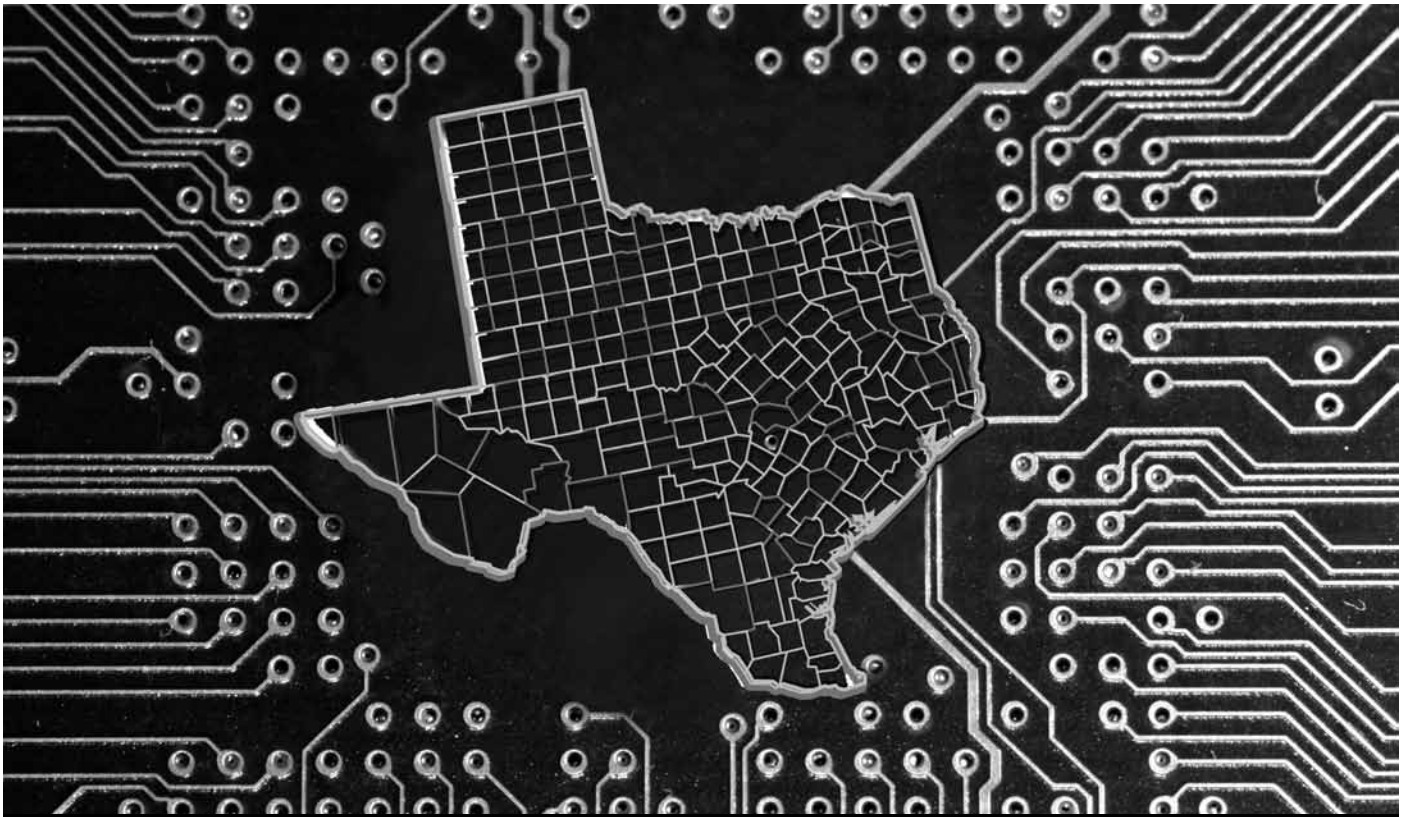
**RQ-0760-GA** Honorable Tim Curry, Tarrant

County Criminal District Attorney, authority of the Texas Youth Commission to require a juvenile to register as a sex offender.

**RQ-0761-GA** Honorable Rex Emerson, Kerr County Attorney, whether a non-profit organization may sponsor a poker tournament in a privately leased community building.

**RQ-0762-GA** Honorable Rodney W. Anderson, Brazos County Attorney, authority of a justice of the peace in a proceeding under section 25.094, Education Code, which creates the offense of failure to attend school.

**RQ-0763-GA** Honorable Craig Stoddart, Acting Rockwall County Criminal District Attorney, validity of a city charter provision that permits a majority of council members to call a public meeting. ■



## 2009 Courts & Local Government Technology Conference

Jan. 27-29 • Crowne Plaza Hotel in Austin • Educational co-sponsor: Lyndon B. Johnson School of Public Affairs, University of Texas at Austin

# Technological Changes for the New Economic Reality

### CONFERENCE ENCOURAGES OFFICIALS TO KEEP CURRENT IN TECHNOLOGY

The 2009 Courts and Local Government Technology Conference provides quality programs focused on technology specific to Texas courts and county & city governments. If you are in charge of the strategic direction of your county, city or just your office or if you are simply passionate about technology, this is the one Conference you can't afford to miss. Choose from 6 different break-out education sessions on the first day and fantastic general sessions for the remainder of the conference. We will talk about what works, what doesn't work, and what is in the works in new technologies for local governments.

Each year, our exhibitors showcase their latest technology products and services specific to local governments and courts.

### CONTINUING EDUCATION

TAC has applied for continuing-education credits for judges, auditors, county and district clerks, commissioners, justices of the peace, purchasing agents, tax assessor-collectors and treasurers. PHP, SPHR and TCLEOSE hours will also be requested.

### REGISTRATION

Registration for the entire conference, including the pre-conference sessions, is \$150 before Jan. 1 and \$175 after Jan. 1. Registration is transferable. Requests for refunds (minus a \$10 administration fee) should be submitted in writing by Jan. 1. After Jan. 1, refunds will be subject to an administrative fee equal to half the registration fee. Online registration is available at [www.county.org](http://www.county.org).

### HOTEL INFORMATION

The Conference will be held at the Crowne Plaza Hotel in Austin, 6121 North IH35.

**Request the Courts & Local Government Technology Conference (TC9) room block** when reserving your hotel room to receive conference room rates: single \$85, double \$125. Rooms are limited, so please make your reservations as soon as possible. The reservation deadline is Jan. 12.

### CO-SPONSORS

The 2009 conference is co-sponsored by the Texas Municipal Courts Education Center, the Texas Center for the Judiciary, the Texas Justice Court Training Center, the Judicial Committee on Information Technology, the Texas Judicial Academy, and the Texas Association of Governmental Information Technology Managers.

# TEXAS ASSOCIATION *of* COUNTIES



# From the Legislative Desk

By Carey "Buck" Boethel, Director of Governmental Relations

**Bundle of sticks.** Landowners' somewhat diminishing "bundle of rights" will invariably arise as a subject of bill debate in several legislative forums next session. Ownership rights are often analogized to a "bundle of sticks," with each stick representing a separate, identifiable right in a tract or parcel of land. If you own all the sticks, you are said to hold title in "fee simple." Real property subject to limitations, restrictions or reservations is considered a partial estate—one or more sticks are missing from the bundle. Depending upon the region, some counties and common interests groups make compelling arguments in favor of qualified subdivision regulation. Areas of interest such as building codes and

population density are among the particularly complex subjects. The *Kelo* decision (US Supreme Court 2005), which affirmed a city's proposed disposition in taking a property to be a public use notwithstanding its primary economic purpose, served as a wake-up call for many property owners. However, *Kelo* expressly underscored a State's prerogative to further restrict its exercise of the takings power. Texas acknowledged that power and responded by passing a law that, among other things, prohibits the kind of takings that occurred in *Kelo*. **Government sticks.** All land is subject to certain governmental powers such as taxation, police power and eminent domain, aka condemnation.

Forthcoming legislative debates will involve balancing issues of private ownership with those concerning public policy, such as health and safety. The range of positions among counties on the issue of expanding local authority is likely very broad and divergent, depending upon the particular region of the state. **Diplomacy pays dividends.** How you go about saying something makes a difference. Take the case of the two priests unable to give up smoking cigarettes. One asked for permission from his superior to smoke while he was praying—permission denied! The other, more astute and diplomatic priest, asked for permission to pray while he was smoking—permission granted! 🇹🇽

Leg. Ad. Texas Association of Counties, Karen Ann Norris, Executive Director, 1210 San Antonio, Austin, TX 78701



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