

Economic stimulus legislation moving rapidly through Congress

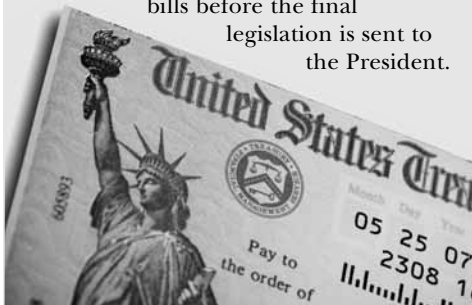


By Laura Garcia

TAC Legislative Staff

Congress is presently considering a comprehensive economic stimulus package, the American Recovery and Reinvestment Act (H.R. 1), with a variety of proposals which affect the fiscal operations of both state and county governments. The legislation includes funding provisions for infrastructure, wastewater treatment, clean water development and flood control management, as well as aid for community development, healthcare and local law enforcement, among several other county priorities. Generally, much of the authorized funding simply augments existing programs.

Given the dire state of the economy, the legislation is on an accelerated timeline, and recent reports have indicated that Congress is aiming to pass a final package by mid-February, prior to the Presidents Day recess. The House version of the legislation passed on January 28, and the Senate passed its stimulus bill on February 10. A House-Senate conference committee will need to sort out any differences between the bills before the final legislation is sent to the President.



Economic Stimulus Highlights

Some highlights of the current House proposal based on information available at this time (\$819 billion package of emergency spending and tax cuts):

ROADS, BRIDGES, TRANSIT AND WATERWAYS:

- **Highways and Bridges:** \$30 billion. According to the National Association of Counties, the funding will be distributed among the states based on states' 2008 share of highway and bridge dollars. There are \$800 million in set asides. Of the remaining \$29.2 billion, 55 percent or \$16.1 billion would go to the states and 45 percent or \$13.1 billion would be distributed within the states using the Surface Transportation Program (STP) formula. In general, this means that \$20.5 billion will be at the discretion of the states, \$7.4 billion will be divided by local areas determined by population, and \$1.3 billion will go for enhancement projects. Fifty percent of the funds for transportation projects must be obligated within 90 days.
- **Texas** – The state could expect \$2.4 billion of the \$30 billion although, according to TxDOT, the state is already scheduled to have \$800 million taken back from its allotment from the federal highway trust fund. According to TxDOT, of the federal stimulus funds, 45% will likely go to the 8 major metropolitan planning organizations (MPOs). The rest will likely be divided among either the twenty-five other MPOs in the state and/or TxDOT projects. (The general federal funding formula directs federal transportation along these lines: two-thirds to the 8 major MPOs, using as an additional criteria within this the funding of certain systems/projects aimed at things like congestion and air quality; 10% to the 25 smaller MPOs; and the remainder going to the state's trunk system, the state and federal highways connecting all these metropolitan areas).
- **Mass Transit:** \$12 billion.
- **Aviation:** \$3 billion for airport improvement projects.
- **Clean Water, Flood Control and Environmental Restoration Projects:** \$19 billion.
- **Clean Water State Revolving Fund:** \$6 billion for loans to help communities upgrade wastewater treatment systems.

Economic Stimulus continued on page 2

KEY COUNTY DATES

February 2009

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 5-6. 2009 Healthy County Wellness Coordinator Training. Presented by Texas Association of Counties' Health and Employees Benefits Pool. Education Co-Sponsor: Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, San Antonio.

February 18-20. 2009 County Court Assistants Training Conference. Educational Co-Sponsor: **Correctional Management Institute of Texas**, a partnership between the County Judges Education Committee of the Texas Association of Counties and Texas Tech University School of Law, Austin.

February 24 - 27. 2009 County Information Resources Agency (CIRA) Content Management System (CMS) Training. Presented by: County Information Resources Agency. Texas Association of Counties' Events Center, 1210 San Antonio, 4th Floor, Austin.

March 2009

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 24. 2009 Spring Administrative Workshop. Sponsor: The Texas Judicial Academy, a Partnership between the County Judges Education Committee of the Texas Association of Counties and Texas Tech University School of Law, Lubbock.

March 25 – 27. 2009 Spring Judicial Session. Sponsor: The Texas Judicial Academy, a partnership between the County

Judges Education Committee of the Texas Association of Counties and Texas Tech University School of Law, Lubbock.

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. TEX. LOC. GOV'T CODE, §159.005. Appointed officers and those filling 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. TEX. LOC. GOV'T CODE, §159.005. Appointed officers and those filling 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).

Economic Stimulus *continued from page 1*

- **Drinking Water State Revolving Fund:** \$2 billion for loans for drinking water infrastructure.
- **Rural Water and Waste Disposal:** \$1.5 billion to support \$3.8 billion in grants and loans to help communities fund drinking water and wastewater treatment systems.
- **Corps of Engineers:** \$4.5 billion for environmental restoration, flood protection, hydropower, and navigation infrastructure.

HEALTHCARE:

- **Medicaid Aid to the States (Federal Medical Assistance Percentage):** Approximately \$87 billion to the states, increasing through the end

of FY 2010 the share of Medicaid costs the federal government reimburses states, with additional relief tied to rates of unemployment. The increase in federal Medicaid dollars for Texas will help provide more comprehensive primary and preventive care for the indigent. The cost of treating the indigent eventually filters down to the local level through uncompensated care cost at safety net hospitals and other local facilities.

- **Community Health Centers (also known as Federally Qualified Health Centers):** \$1.5 billion, including \$500 million to increase the number of uninsured who

receive healthcare and \$1 billion to renovate clinics. The increase in federal funds will help these centers serve a variety of designated health care programs funded under the Health Center Consolidation Act such as Medically Underserved Area/Populations (MAU or MUP), Migrant Health Centers, and Health Care for the Homeless Programs.

HOUSING/COMMUNITY DEVELOPMENT:

- **Community Development Block Grants:** \$1 billion for community and economic development projects.

Economic Stimulus *continued on page 9*

Otto Outlines HB2 on Appraisal Reforms



By Elna Christopher
TAC Communications Staff

Rep. John Otto (R-Dayton) discussed his intentions for appraisal reform during a Jan. 27 legislative breakfast at the Texas Association of Counties, saying the shell bill will be filled in to address the practice of “highest and best use,” the comptroller’s property value study, and a pilot program to address arbitration concerns for properties over \$1 million – plus several other ideas he is considering.

“You didn’t hear the word ‘cap’ in there,” Otto said to the applause of more than 35 county officials, guests and staff.

Otto chaired the House Interim Select Committee on Property Tax Relief and Appraisal Reform during the interim, which held nine hearings around the state.

While reiterating more than once that his HB 2 will not contain lower revenue caps, Otto noted that the Senate could very well seek to pass a bill that tinkers with the effective tax rate calculation – which could lower the current eight percent cap by knocking out exemptions for new construction and other items – or a bill that swaps property tax revenue for sales tax revenue and lowers the revenue cap to five percent – as proposed in SB 402 by Sen. Kevin Eltife (R-Tyler). Likewise, other House members have filed bills to lower appraisal or revenue caps this session.

In outlining what items he plans to include in HB 2, Otto said:

- His committee heard testimony from homeowners whose land values had “gone through the roof” because of nearby commercial development. He likened such situations to “condemnation by valuation.” To correct that problem, he said his bill will contain a constitutional amendment to restructure “highest and best use” to allow homesteads near such developments not to be appraised at the high commercial values;
- HB 2 will include a second constitutional amendment to allow – but not mandate – counties with shared boundaries to form joint appraisal review boards, which Otto believes will improve the qualifications of ARB members by having larger pools of persons to appoint;
- He has been meeting with Comptroller of Public Accounts (CPA) Susan Combs to work out a compromise that would change the comptroller’s property value study to every other year instead of annually. In the year that the study is not conducted, the CPA would conduct an audit of appraisal district methods and procedures. If the audit concludes that a district is professionally conducting appraisals, the district would remain on the schedule of value studies every other year; if not, the studies would be every year;
- Otto’s committee heard “lots of complaints” about properties valued at more than \$1 million regarding the fact that current law does not allow owners to take their disagreements to binding arbitration, as allowed on

Appraisal Reforms *continued on page 4*

Senate Committee Assignments

The Lieutenant Governor, David Dewhurst, has announced Senate committee assignments. The Texas Senate Committees may be viewed on the TAC website under Legislative & County Related News and can be accessed at <http://www.county.org/resources/news/dynContView.asp?cid=118>. ➤





Resources, Naturally



By Paul J. Sugg

TAC Legislative Staff

Here we go again—the 81st Legislative Session is upon us and included below are some recommendations from interim committees and some bills filed that touch on topics we tend to address here.

Eminent Domain

The House Land and Resource Management Committee had a charge to “observe and study ongoing litigation and actions in light of the *Kelo* decision” and make recommendations, especially regarding compensation paid to property owners. The committee report stated the “taking of public property should be allowed only when absolutely required in furtherance of a truly necessary ‘public use’”, cautioned against a definition of public use in statute unless a consensus definition could be found, but recommended things like diminished access should be included in determining compensation. The whole of the report may be read here: www.county.org/resources/legis/session/index.asp.

Although a number of bills related to eminent domain have been filed, **HB 4** and **SB 533** have thus far gained the most attention, especially that of the governor. Among other things, the bills would require governmental entities, before a petition for condemnation is initiated, to hold an open public meeting and a separate record vote on each unit of property to be condemned, and include a description of the public use for which the land will be condemned. Also, all entities authorized to exercise the power of eminent domain must submit to the comptroller of public accounts a letter stating that the entity is authorized to exercise that power and identify the law granting that power. (The authority to exercise that power would expire on September 1, 2011, if the entity failed to send that required information to the comptroller). The comptroller would share this (information in the form of a report) with the governor, lieutenant governor, speaker, and the appropriate standing committees in the legislature.



Billboards

The Senate Transportation and Homeland Security Committee was charged with studying local and state regulation of billboards and broadly recommended making the permitting of billboards throughout the state more difficult in unincorporated areas (while sympathizing with “those who are trying

Resources, Naturally *continued on page 12*

Appraisal Reforms

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properties valued under \$1 million. Appraisal disputes on the higher priced properties must be taken to district court under current law, costing much more for both the property owners and the appraisal districts. Otto said his bill will create a three-year pilot project in Bexar, Dallas, El Paso, Harris, Tarrant and Travis counties for disputes on “real estate and personal property” over \$1 million to go before administrative judges from the State Office of Administrative Hearings at a cost of perhaps \$2,000, with the loser paying. He would require the administrative law judges to be trained regarding the appraisal system. If the pilot project works, he said the program could be expanded by regions.

- He wants to lower the population threshold to counties with 50,000 (from the current 125,000) for the mandate that appraisal districts have taxpayer liaisons. Under the 2000 Census, there are 28 counties that would be under this new mandate, but as many as 34 could be under it by time of the 2010 Census. Paying for the liaison would cost all taxing entities in the affected counties. Otto’s staff later said that the counties affected might avoid having to expend additional funds on a taxpayer liaison by appointing someone on staff to handle the duties, as they primarily occur during dispute resolution time.

“There’s a perception out there by the taxpayers that they can’t get a fair hearing (on appraisals),” Otto concluded. The representative then graciously took questions from the audience. 🗺



Interim Committee Recommendations & Related Bills

Election Poll Workers

By Nanette Forbes

TAC Legislative Staff

The House Committee on Elections, Interim Charge No. 4, directed the committee to, "[s]tudy poll worker recruitment and training in Texas, and suggest possible statutory improvements."

Election officials advised the committee that recruitment and retention of poll workers has become increasingly difficult. The reasons cited included: low pay, long hours, some officials reported lack of sufficient time

to train poll workers due, in part, to the complexities of the statutory scheme by which election day workers are selected, inconsistencies in the laws governing primary elections and general elections, and reports of bad experiences at the polls. The committee learned that the polling place workforce is ageing, and has not been replaced with sufficient numbers of younger workers. According to the U.S. Election Assistance Commission, the average age for poll workers is 72.

The level of compensation for poll workers plays a major factor in the recruitment and retention dilemma. Under current law, counties, cities, and other political subdivisions may set the rate of pay for their poll workers. The statute does not impose a maximum rate of pay, deferring to each political subdivision to set the rate. However, the rate must not be lower than the

federal minimum wage.¹

Another section of the Election Code establishes the maximum hourly rate of pay workers serving in the political party general primary and runoff primary elections. These elections are funded in large part with state dollars appropriated by the legislature. By law, the secretary of state adopts rules for the financing and conduct of the primaries. For the primaries conducted in 2008, the maximum rate of pay for poll workers was \$7 per hour for performing the

become election day workers.

The survey showed the following rate of pay for election clerks:

- 3% of counties paid less than \$7.00 per hour;
- 45% of counties paid \$7.00 per hour;
- 33% of counties paid between \$7.50 and \$9.00 per hour; and
- 19% of counties paid \$10.00 per hour.

The committee's recommendations to the 81st Legislature for Interim Charge No. 4 are:²

- The committee believes the state will avoid out-of-pocket expenses if the legislature passed legislation



clarifying any county or state employee is eligible, based on permission from a supervisor, to work at the polls with salary. If the state clarified that county and state employees were eligible to work at the polls with salary, those employees willing to participate could. Allowing these employees to keep their salary on top of what they make at the polls

same tasks required of them during all other types of elections.

The Texas Association of Counties conducted a survey during the summer of 2008 asking counties what they pay their judges and election clerks. There were 64 counties who responded to the survey. The rate of pay for election judges and alternate judges averaged \$1 to \$2 an hour higher than the rate of pay for election clerks. Several counties commented they were going to request a pay increase for judges and election clerks to motivate more people to

would add extra incentive for them to come back for future elections. The more "veteran" poll workers coming back means less money spent on training new poll workers.

- In regard to military personnel, the committee believes it is worth looking into attaching to the Federal Post Card Application, information on how military personnel returning home can become involved with the electoral process and will work with the Secretary of State's Office to see

Poll Workers *continued on page 12*

81st Legislative Session

In this issue we include some of the county-related interim committee recommendations and the bills that thus far have been filed relating to those recommendations. All interim reports can be found at www.county.org/resources/legis/session/index.asp.



Interim Committee
Recommendations & Related Bills

HEALTH CARE

By Rick Thompson
TAC Legislative Staff

The **House Committee on Public Health** was directed to research issues relating to the Indigent Health Care and Treatment Act (Chapter 61, Health and Safety Code) and related local health care initiatives (Chapter 534, Government Code), and make recommendations to address any imbalance between counties for the provision of health care.

The committee's recommendations included directing the Department of State Health Services (DSHS) to use its County Indigent Health Care Program (CIHP) as a resource for county best practices. They also recommend the 81st Texas Legislature require state matching funds for indigent health care be tied to best practice requirements, in addition to the 8% General Revenue Tax Levy trigger.

The committee was also directed to review the effectiveness of the Driver Responsibility Program (DPR), provide recommendations for increasing the collection rate of assessed penalties, provide recommendations for amnesty and incentive programs established by the passage of SB 1723, 80th Legislature, Regular Session, examine the status of Texas' current statewide trauma system infrastructure and how the system may be optimized to meet future trauma care needs in a rapidly growing state with overburdened emergency rooms. (Joint Interim Charge with the House Committee on Transportation)

The committee recommended that all funding collected in Account 5111 (Designated Trauma Facilities and Emergency Medical Services) be appropriated as intended. Furthermore they recommend the legislature enable and encourage the DPR program to allow community service, such as volunteering at local hospitals, as an option to reduce surcharge fees. The committee also recommended the fines for the program be re-evaluated, noting that the expensive surcharges are placing undue burdens on the

county and county court system.

The **Senate Committee on Transportation & Homeland Security** was directed to: examine the roles and best practices among individuals, state and local governments, hospitals and other health care providers, and the insurance industry for disaster planning and first response efforts; explore what changes are needed to better prepare for natural disasters to mitigate claims and losses and include an assessment of the state's implementation of recent recommendations for evacuations, including movement of medically fragile populations; study the level of preparedness among critical infrastructure entities in both the public and private sector, the effectiveness of state disaster relief policies relating to this infrastructure and the sufficiency of personnel needed to restore this infrastructure; assess the state's preparedness to handle a public health emergency; examine the challenges of interoperability of communications technologies to improve coordination of different plans across jurisdictions.

The committee recommended that the Legislature should adequately fund regional trauma care facilities so that they are able to accommodate surge during a disaster. They directed DSHS to develop regional planning for surge capacity, including support for health care workers and volunteers. They also made the recommendation to authorize hospitals to be eligible for reimbursement through mutual aid or other sources and to continue efforts to address health professional shortage.

HB 490 by Jim Jackson Relating to indigent health care. This bill requires counties and hospitals to report annually to the Dept of State Health Services. No later than the 30th day of the new year, a county must report to the DSHS eligibility standards, application procedures and total county IHC expenditures of the previous year. This bill also increases the minimum eligibility standard to 25% Federal Poverty Level and increases county liability per client from \$30K to \$35K per year.

HB 263 by Berman Relating to the imposition of a fee for money transmissions sent to certain destinations outside the United States.

This bill adds an 8% money transmission fee on all transactions that originate in the United States and is

Recommendations & Related Bills

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Interim Committee
Recommendations & Related Bills

HEALTH CARE

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transmitted to a destination in Mexico or in Central or South America. The money collected by the business shall be deposited in an indigent health care support account under the comptroller's office. The money may be appropriated only to the Health and Human Services Commission to provide funding for indigent health care and other health care services to needy residents of Texas.

HB 515 and HJR 35 by Vaught Relating to the expansion of the boundaries of the Dallas County and Tarrant County Hospital Districts.

This bill proposes letting citizens of surrounding counties petition to join the Dallas or Tarrant County Hospital Districts.

For additional information, please contact Rick Thompson at (800) 456-5974 or rickt@county.org. 🗺️



Interim Committee
Recommendations & Related Bills

FIREWORKS

By Laura Garcia
TAC Legislative Staff

During the interim, the **House Committee on County Affairs**, chaired by Rep. Wayne Smith (R-Baytown) studied the issues surrounding the sale, use, and regulation of fireworks in urbanized, unincorporated parts of the county. After summarizing the issues, the committee noted that the fireworks industry, like any other licensed and regulated business in the state, has a fundamental right to continue selling its products. However, the committee further acknowledged that the demographics in unincorporated areas continue to change and evolve, and steps need to be taken to preserve public safety and the quality of life, as well as a healthy business environment. The committee specifically recommended that the Legislature continue to examine the issue of urban zones to find a suitable manner to regulate fireworks in high density regions of a county regardless of municipal boundaries.

For additional information, please contact Laura Garcia at (800) 456-5974 or laurag@county.org. 🗺️



Interim Committee
Recommendations & Related Bills

CRIMINAL JUSTICE

By Laura Garcia & Laura Nicholes
TAC Legislative Staff

During the interim, the **Senate Committee on Criminal Justice**, chaired by Sen. John Whitmire, reviewed criminal asset seizures and the use of forfeiture funds by district attorneys and law enforcement agencies. As part of its interim report, the committee issued several recommendations addressing the matter, noting the importance of the funding in law enforcement, but suggesting that the legislature could bring more transparency and accountability into civil asset forfeiture laws, presently outlined in Chapter 59 of the Code of Criminal Procedure. Specifically, the committee recommended imposing a filing deadline and financial penalty for failure to comply with reporting requirements; establishing centralized oversight for the monitoring and maintenance of Chapter 59 reports; granting the centralized depository investigatory power and the ability to perform random outside audits, as well as the ability to penalize agencies that violate the chapter; requiring the county treasurer to expend forfeiture funds at the direction of the prosecutor and removing the ability of the prosecutor to directly sign checks; and, listing specific examples of impermissible expenditures and clarifying penalties or punishment for those who violate the chapter, among other recommendations.

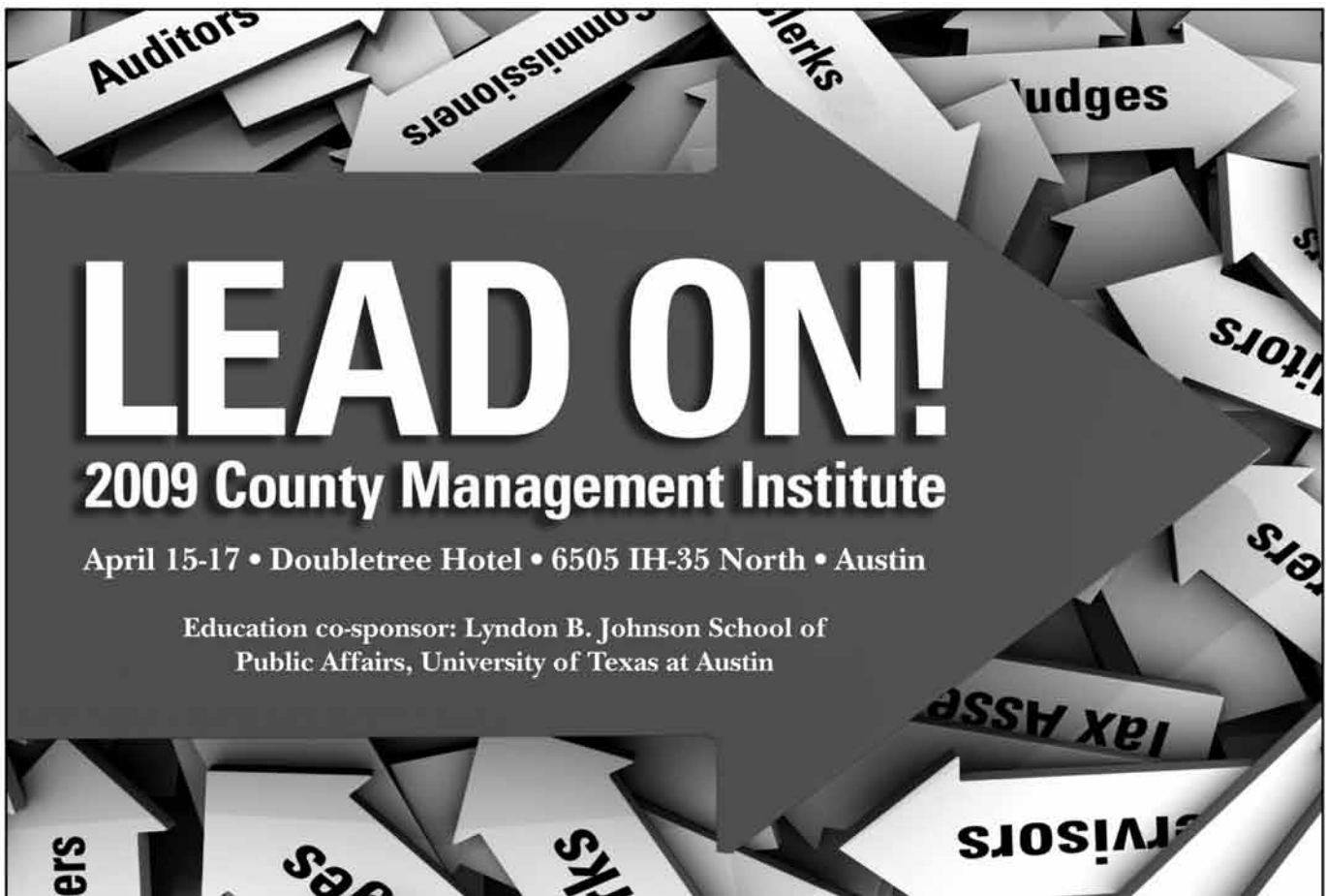
For additional information, please contact Laura Garcia at (800) 456-5974 or laurag@county.org. 🗺️

Other recommendations from the Senate Criminal Justice Committee included these:

- Relating to the implementation of SB 103 and the Texas Youth Commission, the committee recommended pursuing a juvenile justice system that will provide rehabilitative and specialized treatment services, ensure public safety and divert youth from entering the adult corrections system.
- Relating to deferred adjudication, the committee recommended that upon successful completion of deferred adjudication, the court should be mandated to impose an immediate expunction of the criminal record in the case of a

Recommendations & Related Bills

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LEAD ON!

2009 County Management Institute

April 15-17 • Doubletree Hotel • 6505 IH-35 North • Austin

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

LEADERSHIP is one of those “buzzwords” people throw around all the time, but what does it really mean to be a leader? We wanted to find out, so we searched for experts in the field of leadership to come tell us what leadership means to them.

We invited Geoffrey R. Tumlin and Eric Greitens to speak at our 2009 County Management Institute.

Tumlin is the assistant director of the Center for Ethical Leadership in the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin. Prior to joining the university’s staff, he worked as a leadership and communications consultant. Tumlin will discuss the role ethics plays in today’s leadership environment.

Greitens is a senior fellow at the Truman School of Public Affairs at the University of Missouri. He also founded the Center for Citizen Leadership, which helps wounded and disabled veterans serve their communities upon returning home. Greitens will speak on leadership and social responsibility.

TAC’s County Management Institute specializes in presenting speakers and topics that will engage county officials and employees, including:

- Commissioners court members;

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

Whether you work in the courthouse or out in the county, TAC’s County Management Institute offers leadership training to improve your work environment.

CONFERENCE REGISTRATION

By March 24	\$225
After March 24	\$250

HOTEL REGISTRATION

Single	\$85 (plus tax)
Double	\$105 (plus tax)

Visit the Education Center on
www.county.org for conference
and hotel registration.



Economic Stimulus

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- **Community Services Block Grants:** \$1 billion for grants to local communities to support employment, food, housing, and healthcare efforts.
- **Neighborhood Stabilization:** \$4.2 billion to help communities purchase and rehabilitate foreclosed, vacant properties.
- **Rural Community Facilities:** \$200 million to support \$1.2 billion in grants and loans to rural areas for critical community facilities, such as those for healthcare, education, fire and rescue, community centers, and libraries.

ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM:

\$3.5 billion to assist states and local governments in implementing energy efficiency and conservation strategies.

REDUCING WILDFIRE THREATS:

\$550 million for state and local volunteer programs and hazardous fuels reduction efforts which states and communities have determined are of the highest priority.

STATE AND LOCAL LAW ENFORCEMENT:

\$4 billion to support state and local law enforcement including \$3 billion for the Byrne Justice Assistance formula grants to support local law enforcement efforts with equipment and operating costs, and \$1 billion for the COPS hiring grant program, to hire about 13,000 new police officers for three years.

WIRELESS AND BROADBAND GRANTS:

\$6 billion for broadband and wireless services in underserved areas.

THREE PERCENT WITHHOLDING REQUIREMENT:

Repeals the 3% withholding requirement, currently set to take effect in 2011, on payments to vendors for goods and services sold to federal, state, and local entities.

Differences in the Senate legislation based on information available at press time (\$838 billion package of emergency spending and tax cuts):

The Senate's economic stimulus proposal is similar to the House bill, though there are some differences in details and funding levels. In particular, while the transportation funding provisions are similar, the Senate legislation also presently includes \$5.5 billion for competitive grants to state and local governments for certain transportation projects. The Senate bill also authorizes \$27 billion for highway investments, with the majority of this funding distributed as grants via a formula set in current highway authorization law. Funding could be used on projects eligible under the federal Surface Transportation Program. Under the Senate bill, about 60 percent of the highway formula funding will be directed to states, while 40 percent will be sub-allocated to local governments. In other differences, the Senate legislation does not include any funding for the Community Development Block Grant (CDBG) program, only defers the implementation of the three percent withholding requirement by one year, and includes about \$1.2 billion for Byrne Justice Assistance grants for law enforcement, compared to the authorized \$3 billion in the House version.

TAC will post updates regarding the progress and final contents of the stimulus package on our website (www.county.org). For additional information, please contact Laura Garcia at (800) 456-5974 or laurag@county.org. 🇹🇽

Interim Committee Recommendations
& Related Bills

CRIMINAL JUSTICE

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- non-violent offender.
 - Relating to re-entry of criminal offenders into communities, the committee recommended setting a goal for increasing the number of offenders leaving from TDCJ facilities with state identification.
 - Relating to relationship between the mental health, criminal justice and civil courts systems, the committee suggested jails should be required to notify the courts by forwarding mental health/suicide screens to the courts within the current 72 hours. The committee also recommended the Jail Commission monitor the notification compliance by incorporating it into their standard inspection process.
- For additional information, please contact Laura Nicholes at (800) 456-5974 or lauran@county.org. 🇹🇽



Interim Committee Recommendations & Related Bills

Transportation and Homeland Security Committee releases recommendations to Secure Texas' Border

By Aurora Flores-Ortiz
TAC Legislative Staff

The Texas Senate completed its interim reports and has submitted recommendations to the 81st Legislature. After studies and hearings were held during the legislative interim, the Transportation and Homeland Security Committee offers the following findings and recommendations on Homeland Security issues involving law enforcement to help secure the Texas border.

Charge #1: Evaluate the state's homeland security efforts and the state's recent \$140 million investment in law enforcement to help secure the border and study and make recommendations to deter transnational and drug-related gang violence and crime, including the use of injunctions and any possible improvements to Chapter 125 of the Civil Practices and Remedies Code, relating to membership in street gangs.

The committee found that well funded gangs in Texas pose a significant threat to public safety and threaten to undermine law enforcement. These criminal organizations demonstrate high levels of organizational development, broad geographic control, and strong technological abilities. The triple threat of drug smuggling, illegal and unknown crossers and rising violence have been identified by Governor Perry as the most immediate homeland security threat to the state. The increase in border region gang activity has also placed additional burdens on state resources and agencies.

The Senate Transportation and Homeland Security Committee has recommended:

- Amending Chapter 125, Section 125.064, Civil Practices and Remedies Code to better define the term "habitually associates." If this definition and section are strengthened, the right people can be properly targeted.
- Amending Texas Penal Code to define as assault any threatening of minors intended

to coerce them to join a criminal street gang. Those convicted can be charged with third-degree felony.

- Amending state law to require the Department of Public Safety to track information on gang members and to provide information to the National Crime Information Center database.
- Amending state law to allow the establishment of a statewide database on all gang members. The committee recommends funding the approximate \$15 million that it would cost to get such an interoperable system running.
- The state leverage technology and enable license plate readers which can help identify criminals and stolen vehicles and address drug trafficking.
- The state should be proactive in targeting youth in gangs and gang recruitment.
- Internet gang utilization and recruitment should be criminalized.
- Making recruitment of minors a civil offense and a felony to encourage or threaten people to join gangs on or adjacent to school property and criminalization of the act of recruiting gang membership on or adjacent to school property or in public parks.
- Requiring violent career offenders to register when they

Texas' Border *continued on page 11*



A border fence along the US-Mexico border.



Wind Energy

Emerging as the New Source of Renewable Energy



By Paul Emerson

TAC Legislative Staff

This section on government subsidies and tax incentives concludes the series of articles on Wind Energy and how this new source of renewable energy has emerged so rapidly. The success of the wind energy market has been greatly due to various state and federal tax incentives as noted below.¹

As the 81st Legislative Session begins, it is anticipated that several bills relating to wind energy will emerge from the various interim committee reports. Over the summer months, both the house and the senate heard extensive testimony on wind energy and whether it would be feasible for the state to construct costly transmission lines for this new source of energy. Throughout this legislative session periodical updates on the various wind energy bills will be made available via *County Issues*.

State and Federal Oversight Authority

According to a 2007 survey by the U.S. Fish and Wildlife Service and Association of Fish and Wildlife Agencies, only a

hand-full of states (California, Minnesota, North Dakota, Oregon, South Dakota, and Vermont) have established wind farm facilities siting guidelines.² This particular guideline usually includes which state agency has jurisdiction over wind farmers, and how to regulate and decommission aging wind turbines. As noted above in the 2007 survey, Texas is not listed as one of the hand-full of states that have implemented siting regulations. However, Rep. Robert Puente (D – San Antonio) introduced HB 2794 during the 80th Legislative Session which would have required the Texas Commission on Environmental Quality (TCEQ) to implement a permitting process for wind energy projects. Although HB 2794 never made it out of committee,³ similar bills may be introduced this session since HB 2794 addressed many of the issues that were discussed in the Senate Committee of Business and Commerce in its interim charges.

With regards to federal oversight of wind farm facilities, it is for the most part, extremely limited, other than the Federal Aviation Administration imposing restrictions on wind turbines from affecting air traffic.

Wind Energy continued on page 13

Texas' Border *continued from page 10*

move to a new community, structured on the current sex offender and child murderer laws and apply to all violent offenders who are not required to register under existing State law.

- Increasing penalties for aggravated assault when the act is committed with a firearm from a motor vehicle.
- Isolating street gang members from each other by prohibiting street gang members from contacting each other while on parole of probation.
- Increasing prison time for repeat gang-related felony offenses, making it similar to the three strike rule.
- Toughening criminal penalties for manufacturing and selling false identifications.
- Making gang related non-firearm felonies against police, firefighters, and first responders a penalty enhancement.
- Keeping gang members who are arrested for committing

a crime in jail without bail until their initial appearance.

- Facing increased penalties such as first degree felony charges punishable by up to life in prison for gang "kingpins" who organize and lead criminal gang activity.

Legislation filed thus far related to some of these recommendations include:

SB 367 by Carona: Relating to the prosecution of and punishment for certain criminal offenses involving the use of a false or fictitious identity or identifying documents.

SB 369 by Carona: Relating to information contained in an intelligence database used to investigate and prosecute offenses committed by criminal street gangs.

SB 379 by Carona: Relating to an annual report by the Border Security Council regarding criminal street gangs and gang-related crime.

SB 418 by Carona: Relating to requiring law enforcement

Texas' Border continued on page 12

Poll Workers *continued from page 5*

- what it would take to do this.
- In order to stimulate interest in the electoral process amongst Texas' youth and to meet the need for a new generation of highly trained poll workers, the committee recommends that the 81st Legislature allow high school students with good standing the opportunity to work at the polls. The committee further recommends any absence due to being a poll worker is an excused absence and all high school students be compensated as any normal poll worker would.
 - The committee recommends the 81st Legislature work with county election officials to look at the possibility of setting aside one person working the polls [to assist] voters with general questions regarding the election, precincts, etc. that most poll workers get caught up with. The idea being if voters could go to this person for questions, the questions would not hold up the other poll workers processing voters, keeping the lines moving.
 - With the assistance of the county elections officials, the committee recommends it work with the Secretary of State's Office in creating a more efficient color coding system for closing out elections.
 - Most importantly, the committee recommends the 81st Legislature establish a priority in making the election code more consistent between the general and primary elections in regard to training programs and pay scales. It further recommends giving the county election officials more access to poll worker resources, more authority in training the poll workers, and more authority in

choosing poll workers with approval from the political parties. The committee believes consistency in elections will greatly assist the state's county elections officials in running smoother and more efficient elections.

Thus far this session there have been at least two bills filed that would address compensation and recruitment issues. **HB 252 by Berman** would authorize the appointment of high school students to serve as elections clerks. To be eligible, the students must be enrolled and in good standing with an educational institution or home-school, 16 years of age or older, a United States citizen, and have completed the necessary training by the entity holding the election.

HB 306 by Dutton amends the Election Code to increase the rate of pay for judges or election clerks to 1.5 times the federal minimum hourly wage. For a primary or runoff primary election, if the judge or election clerk attended a training program, the rate of pay would increase from \$7 to \$11. The bill also includes a "prompt payment" provision which requires the political subdivision conducting an election to pay its judges and election clerks within 72 hours after the political subdivision receives the proper documentation.

If you have any questions or require additional information concerning this article, contact Nanette Forbes at 800-456-5974 or email to nanettef@county.org. 🇹🇽

¹ TexasLawCenter, Federal Minimum Wage Rate: \$5.85 – July 24, 2007; \$6.55 – July 24, 2008; and, \$7.25 – July 24, 2009.

² House Committee on Elections, Texas House of Representatives, Interim Report 2008, Page 78.

Resources, Naturally

continued from page 4

to preserve the beautiful and rural areas of Texas" and "respecting the economics of the business environment created by outdoor advertising"). To view the report, go to www.county.org/resources/legis/senateInterim.asp.

Subdivision Regulation

A constant friend of expanding county authority to address the challenges of growth, Senator Jeff Wentworth has filed **SB 578**. Similar to a bill he has filed previously, it would give commissioners court, following an election ordered by the commissioners court, the authority to require buffer zones between unlike land uses and require a developer to help pay for the off-site roadway improvements necessary to serve a development. 🇹🇽

Texas' Border *continued from page 11*

agencies to compile and maintain certain information in a criminal street gang intelligence database.

SB 551 by Carona: Relating to civil liability for criminal street gang activity.

The TAC Legislative Department will continue to study recommendations for this charge, for the creation of a tamper-proof driver's license or Photo ID that complies with the federal Real ID Act, and to stem the tide of illegal immigrants, drug trafficking, and human smuggling to reduce the criminal activities within the Border region. In addition, staff will monitor this legislation and other subsequent bills that may be filed in relation to the committee's findings on Homeland Security and security Texas' border. For more information on this article, contact Aurora Flores-Ortiz at 800-456-5974 or aurorafo@county.org 🇹🇽

Wind Energy *continued from page 11*

Tax Subsidies and Incentives

Government incentives at both levels – federal and state, have played a critical role in the development and success of wind power in the U.S. These same sentiments were echoed by the Texas Comptroller's Office in its recent report which stated: "the federal production tax credit has been the main driver behind wind energy expansion."⁴

Federal Level:

The *Energy Policy Act of 1992* created the federal production tax credit (PTC) which provided, at that particular time, a 1.5 cents/kilowatt-hour (kWh)⁵ corporate income tax credit for the first 10 years of a wind facility's operation. Currently, the PTC value is at 2 cents/kWh – this only applies to utility-scale wind projects, not the smaller turbines for individual usage. The PTC was set to expire on December 31, 2008, but Congress renewed the PTC for another year as part of the tax package attached to the *\$700 billion Emergency Economic Stabilization Act of 2008*.⁶

Other federal incentive includes the *Modified Accelerated Cost-Recovery System (MACRS)*. This method enables a company to recoup its investments quicker by accelerating the depreciable life value on wind-generating devices. In addition to MACRS, Congress also enacted the *Economic Stimulus Act of 2008*. Part of the stimulus package included a 50 percent depreciation allowance (which is also known as the Bonus Depreciation) for property that was placed in services after December 31, 2007, but before January 1, 2009. In addition to other types of federal incentives each year, the Department of Energy (DOE) disburses large sums of money for wind energy research.⁷ In 2006, DOE allocated well-over \$38 million in subsidies for research and development.

State Level:

Similar to Congress, Texas also provides various state and local incentives:⁸

- A franchise tax exemption to qualified manufactures, sellers, or installers of solar energy devices.⁹ This tax is very similar to a corporate tax with no ceiling limits imposed;
- A corporation deduction from the state's franchise tax for renewable energy sources;¹⁰
- A 100 percent property tax exemption on the appraised value of solar, wind power or biomass power generating

devices;¹¹

- Under the *Texas Economic Development Act*,¹² school boards are allowed to reduce the property values of large renewable electric energy projects in their districts. In addition, school districts are permitted to offer a tax credit. Local school districts across the Lone Star State have approved more than 70 wind energy projects.¹³

For more information concerning this article, please contact Paul Emerson at (800) 456-5974 or paul@county.org. 📍

¹ Analyzing the Interaction Between State Tax Incentives and the Federal Production Tax Credit for Wind Power, Ryan Wiser, Mark Bolinger, and Troy Gagliano, Ernest Orlando Lawrence Berkeley National Laboratory (Sept. 2002).

² U.S. Fish & Wildlife Service and Association of Fish & Wildlife Agencies, Wind Power Siting Regulations and Wildlife Guidelines in the United States (Denver, Colorado, April 2007).

³ <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=HB2794>.

⁴ The Energy Report, Texas Comptroller of Public Accounts (May 2008), <http://www.window.state.tx.us/specialrpt/energy/pdf/11-WindEnergy.pdf> (Chapter 11, Page 177).

⁵ Note: This 1.5 cents value is adjusted annually for inflation.

⁶ Economic Stabilization Act of 2008, H.R. 1424. The bill also provided for the creation of an eight-year investment tax credit (ITC) for small wind turbines.

⁷ http://www1.eere.energy.gov/ba/pba/pdfs/FY09_budget_brief.pdf.

⁸ Texas Wind Energy : Past, Present, and Future; by Drew Thornley, Texas Public Policy Foundation (October 2008), Page 29, www.TexasPolicy.com.

⁹ Texas Tax Code, Section 171.056, <http://www.statutes.legis.state.tx.us/SOTWDocs/TX/htm/TX.171.htm#171.056>.

¹⁰ Texas Tax Code, Section 171.107, <http://www.statutes.legis.state.tx.us/SOTWDocs/TX/htm/TX.171.htm#171.107>.

¹¹ Texas Tax Code, Section 11.27, <http://www.statutes.legis.state.tx.us/SOTWDocs/TX/htm/TX.11.htm#11.27>.

¹² Texas Tax Code, Chapter 313, <http://www.statutes.legis.state.tx.us/SOTWDocs/TX/pdf/TX.313.pdf>.

¹³ The Energy Report, Texas Comptroller of Public Accounts (May 2008), <http://www.window.state.tx.us/specialrpt/energy/renewable/wind.php> (Chapter 11, Page 175).

Attorney General Opinions Issued



GA-0688: Honorable Jeff Wentworth, Chair, Committee on Jurisprudence, Texas State Senate, whether the police chief of an independent school district may simultaneously serve as a member of a city council of a city that is located within the geographical boundaries of the school district. **Summary** The common-law doctrine of incompatibility does not bar an individual from simultaneously serving as the chief of police of an independent school district and as a city council member of a city located within the geographical limits of the school district.

GA-0689: Mr. Robert Scott, Commissioner of Education, Texas Education Agency, whether section 11.051(a-1), Education Code, alters the common-law standard for determining the number of votes necessary for a school district board of trustees to act in its official capacity. **Summary** Section 11.051(a-1), Texas Education Code, does not alter the common-law standard for determining the number of votes necessary for a school district board of trustees to act in its official capacity.

GA-0690: Honorable Bobby Lockhart, Bowie County Criminal District Attorney, authority of City of Texarkana municipal officers under various circumstances. **Summary** Article 2.124, subsection (b) of the Texas Code of Criminal Procedure grants limited powers to officers from an adjoining state while in Texas in circumstances where the municipal limits of a municipality are within one mile of the boundary between this state and the adjoining state. Under that provision, the jurisdiction of peace officers of the Texarkana, Arkansas Police Department extends to the municipal limits of

Texarkana, Texas and not beyond.

Article 2.124(b) also grants those officers from the adjoining state the same powers, duties and immunities as an officer of this state who is acting in the discharge of an official duty. Thus, officers of the Texarkana, Arkansas Police Department, while in Texarkana, Texas, have the same authority to use deadly force as an officer of this state.

Under the Interlocal Cooperation Act, when peace officers of Texarkana, Arkansas are serving as law enforcement officers in Texarkana, Texas pursuant to the Interlocal Agreement, they are considered law enforcement officers of Texarkana, Texas. Thus, when serving pursuant to that agreement, they have the same jurisdictional limits and authority to use deadly force as officers of the Texarkana, Texas Police Department, except as limited by the Interlocal Cooperation Agreement.

GA-0691: Honorable D. Matt Bingham, Smith County Criminal District Attorney, whether a state judge is authorized to permit felony and misdemeanor probationers to travel temporarily outside the state or to reside outside the state. **Summary** Through Code of Criminal Procedure article 42.12, the Legislature has authorized judges to determine the conditions of community supervision, including conditions about where the probationer may live and travel. This provision gives judges broad discretion to issue orders permitting probationers to travel or relocate outside the state.

Established common law provides that judges are not liable to civil actions for their judicial acts, and thus, it is likely that courts of other states would recognize the full scope of judicial immunity granted to Texas judges. However, this is a question for those

courts to decide in the first instance.

GA-0692: Mr. Adan Muñoz, Jr., Executive Director, Texas Commission on Jail Standards, observation of county jail inmates while they are confined in courthouse holding cells. **Summary** As the agency charged with adopting reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners, the Texas Commission on Jail Standards must determine, in the first instance, whether bailiffs have the authority to supervise inmates being held in courthouse holding cells.

GA-0693: Honorable Robert F. Vititow, Rains County Attorney, authority of a commissioners court to remove from county right-of-way structures it deems to be a safety hazard. **Summary** Pursuant to its general control over all roads, highways, and bridges in the county, as provided for in section 251.016 of the Transportation Code, a commissioners court may remove or order the removal of objects in the county road right-of-way that create a safety hazard to the public. Whether the mailboxes at issue are hazardous to the public, and can therefore be removed by the commissioners court, is a fact question not appropriate for the opinion process.

Generally, when a road is established by prescription or dedication, the right is not limited to the area traveled, but includes sufficient land, where reasonably available, for drainage ditches, repairs, and the convenience of the traveling public. However, whether and to what extent a public right-of-way has been acquired by dedication or prescription is a question of fact that cannot be decided through the opinion process. ■

Attorney General Opinions Requested



RQ-0772-GA Honorable Warren Chisum, Chair, Appropriations, Texas House of Representatives, applicability of impact fees assessed against school district property under chapter 395, Local Government Code.

RQ-0773-GA Honorable D. Matt Bingham, Smith County Criminal District Attorney, whether the Open Meetings Act is applicable to a gathering in which a minority of a commissioners court meet informally with community leaders under particular circumstances.

RQ-0774-GA Honorable Jeff Wentworth, Chair, Jurisprudence, Texas State Senate, authority of local taxing units or central appraisal districts to collect assessments for public improvement districts.

RQ-0775-GA David L. Lakey, M.D., Commissioner, Texas Department of State Health Services, authority of the Department of State Health Services to enforce state asbestos regulations against municipalities.

RQ-0776-GA Honorable Warren Chisum, Chair, Appropriations, Texas House of Representatives, whether the phrase "cut of a county road" as used in

section 240.907 of the Local Government Code applies to an activity that bores under the road.

RQ-0777-GA Honorable David P. Weeks, Walker County Criminal District Attorney, whether certain reservations and assignments in deeds transferred by a member of a city council exclude particular property from tax increment financing under section 312.204(d) of the Tax Code.

RQ-0779-GA Hope Andrade, Texas Secretary of State, whether a private employer may limit the notarial acts performed by its employees during working hours. ■

From the Desk

continued from page 16

features such as deductibles, copayments, coinsurance and out-of-pocket expenses and to all treatment limitations including frequency of treatment, number of visits and days of coverage. According to plan analysts, the effective date will begin for most plans on January 1, 2010. The new law amended the Mental Health Parity Act of 1996 which already has parity requirements applicable to benefits relating to annual and lifetime dollar limits. It should be underscored that mental health or substance abuse coverage is not mandated by the new parity law, however if a health plan offers such coverage, it must be provided at parity. There is an exemption for plans with 50 or fewer employees and a one-year plan exemption available which is based upon a percentage increase in actual costs depending upon the year in question. Proponents who have worked on mental health equity issues for years, argue that the new law provides a limited form of parity and is a mere incremental step in a process that must close serious loopholes such as diagnostic silos and the right of a company to opt out completely. Plans may limit mental illnesses and types of substance abuse disorders they cover—a company may elect to cover alcohol abuse but not drug addiction. *The truest greatness lies in being kind, the truest wisdom in a happy mind.* [Ella Wilcox] County Government—the pulse of the people. 📍

Accessing Information on Filed Bills



By Tim Brown

TAC Legislative Staff

During the legislative session, the Texas Association of Counties provides several reports on bills that are related to counties. All of the reports are available by going to the TAC website (www.county.org/resources/legis/session/index.asp). On that page, scroll down to the section “Weekly Reports of Legislation by Office.” There you will see links to twelve different reports.

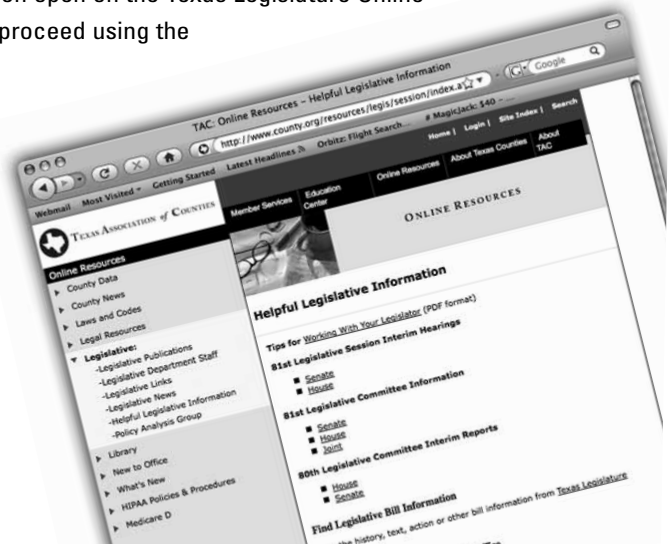
The first report includes all bills that have been filed that are related to counties. Because this category can include a large number of bills, there were 686 bills in the report as of February 10, you will also find links to reports on county bills that are related to specific county offices. There are reports for ten elected offices (judges and commissioners are combined as are county and district clerks) and one for county auditors.

Some county officials have stated that they would like to be able to click on a bill in one of these reports and have the bill text open. This feature is currently available in all twelve reports. From the report, just click on the bill number. Depending on your browser, a new tab or window should open from the Texas Legislature Online web site (www.capitol.state.tx.us). This page will show the History of the bill.

To see the bill text, just click on the “Text” tab and then select the format you prefer: PDF, html, or MS Word. Please note that this tab will include links to the fiscal note if one has been completed.

You can get the links to transfer over to a MS Word document. Just copy and paste the portion of the report you want into the document. Once it is in the document, just hold the “Ctrl” key down when clicking on the bill number. Your browser should then open on the Texas Legislature Online web site and you can proceed using the previous instructions.

If you have any questions about this article or would like to suggest an improvement to the reports, contact Tim Brown at timb@county.org or (512) 478-8753. 📍





From the Legislative Desk

By Carey "Buck" Boethel, Director of Governmental Relations

U S Congress & Economics—It is very challenging to write an article that is not so dated by the time it is read, that it is virtually useless. This is particularly true when the subject is a fast moving target like the American Recovery & Reinvestment Act—the controversial "economic stimulus package." At press time the legislation was just reported out of Conference Committee—a legislative step in the federal process where a panel of Senators and House members convene for the purpose of reconciling bicameral differences. Ultimately the "Conferees" issue and return, to both

houses, a conference committee report containing the proposed settlement. Differences in ideology, primarily concerning the effectiveness of economic "stimulus" provisions, allegations of limited tax credits and inclusion of "pork" have persisted from the outset of the controversial initiative. Since the process is moving so quickly now, rather than chase the changes, TAC will post to its web site an analysis of the legislation signed by the President. *If youth but knew, and age were able, then poverty would be a fable—twelfth century proverb.*

U S Congress & Parity—As an

amendment to the \$700 billion dollar federal law designed to help the nation's ailing financial institutions, the Wellstone-Domenici Parity Act was signed into law on October 3, 2008. The new law provides that financial requirements and treatment limitations applicable to mental health and substance abuse disorder benefits cannot be more restrictive than those requirements and limitations placed on medical and surgical benefits in group health plans with more than 50 employees. For example, parity requirements extend to benefit plan

From the Desk *continued on page 15*

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



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