

County*i*ssues

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Revenue caps bills moving in Senate



By Elna Christopher
TAC Communications Staff

SB 700 by Patrick, a revenue cap bill with automatic rollback

elections, is on the Senate intent calendar as of April 27. It was voted out of Senate Finance April 20 on a 12-1 vote. Sen. Judith Zaffirini (D-Laredo) was the lone no vote.

Instead of current law – which allows voters to petition for rollback elections if a county or city adopts a tax rate that is 8 percent higher – Patrick's bill would force expensive automatic rollback elections if an entity adopts a tax rate above the rollback rate – whether the voters wanted the election or not.

Proponents of SB 700 are telling senators that the bill only requires a mandatory election – which is costly enough – but senators may not understand that the bill also repeals the current rollback provision that sets the tax rate at an 8 percent increase if the higher increase is not approved at the election. The effect of this repeal provision and the timing of the election will require that the county use the tax

rate from the previous year, not an 8 percent increase, if the higher increase is not approved. This would devastate county budgets and services, to the point of endangering mandated services and landing counties before

The current rollback election system works; changing it to mandate automatic elections would be costly and dangerous. The bill could actually hurt property taxpayers by compelling local governments to raise tax rates



federal courts in some instances. As Jim Allison says, this is "a poison pill."

Concerned county officials should contact their senators now in order to educate them about this bill. Ask your senators to vote against suspending the rules to allow a floor vote on this bad bill.

just below the rollback rate every year in order to have reserves to deal with expensive criminal trials (as Concho County Judge Allen Amos described during testimony), natural disasters, unfunded mandates and economic downturns during which mineral

Revenue Caps *continued on page 2*

KEY COUNTY DATES

May 2009

May 1. *By this date or as soon thereafter as possible.*

Chief appraiser to mail written notice of appraised values to property owners of property for which a notice was not required to be provided in April. TEX. TAX CODE, §25.19(a).

May 3-9. County Government Week

May 9. Uniform Election Date. TEX. ELEC. CODE, §41.001.

Before May 15. Voter Registrar to submit to comptroller of public account

a statement of registration information for previous voting year. TEX. ELEC. CODE, §19.001.

May 31-June 3, 2009. 2009 North & East Texas County Judges and Commissioners Conference.

Educational Co-Sponsor: V.G. Young Institute of County Government, Texas AgriLife Extension Service, Texas A&M University, Lewisville.

June 2009

June. No later than June 7, chief appraiser provides an estimate of taxable

value in the county to the tax assessor collector, unless county elects not to receive the estimate. TEX. TAX CODE, §26.01(e) and (f).

No later than June 14. If drought conditions exist (determined by the Texas Forest Service), Commissioners Court may adopt an order regulating the use of fireworks for the July 4 fireworks season. TEX. LOC. GOV'T CODE, §352.051.

Before June 15. Proposed budget for appraisal district due to Commissioners Court from Chief Appraiser. TEX. TAX CODE, §6.06(a).

Revenue Caps *continued from page 1*

appraisals plummet and growth is stymied.

Patrick talked in committee on April 20 about changing his bill, saying he will "narrow (the automatic rollback election) to make it (apply only to) the larger counties" on the Senate floor.

When this divide-and-conquer trap has been tried in past battles over revenue caps, it was pointed out that once the lowered revenue caps are in place, rural legislators will be under severe pressure to reduce the population bracket to "protect" their citizens also. The bill is a restrictive revenue cap bill, and if passed, would continue the threats to local control, including adding all counties (if indeed Patrick does limit it to larger counties for the moment).

SB 2301 by Williams would reduce the current 8 percent rollback rate on counties and cities to 5 percent, except under a very limited set of circumstances in which the local

governing body would have to go through a series of procedures to raise the rollback rate back to 8 percent. The limited circumstances that would allow an 8 percent rollback rate include if: (a) any part of the city or county is located in an area declared a disaster by the governor or president; or (b) the city council or commissioners court finds that the higher rate is necessary to protect the health, safety, or property of persons in the city or county, provided such finding is in the form of a resolution, includes a description of the expected harm, and is approved by a record vote of the governing body. This bill has not yet been heard in Senate Finance.

SB 2301 – just like other revenue cap bills – would diminish local control by having the state set strict standards on the decision-making process of locally elected commissioners courts and city councils regarding tax rates.

SB 402 by Eltife was voted out of Senate Finance on April 14. It is another bill that would impose a lower revenue cap (5 percent) if counties or cities decided to call elections to go over the sales tax cap and add ? -cent sales tax upon voters' approval. However, the sales tax would not be additional revenue but only in exchange for lowering the property tax rate accordingly and lowering the rollback rate from 8 to 5 percent. Also, counties would have to pay two percent of the sales taxes collected to the Comptroller. At present, the bill has no provision for voter petitions to force an election to adopt the sales tax and five percent rollback rate, as was in the bill last session, leaving the calling of an election to the discretion of the commissioners court.

Out of respect for the sponsor, Sen. Kevin Eltife (R-Tyler) -- who has been a friend to local government -- county and city organizations did not oppose

Revenue Caps *continued on page 9*

Unfunded Mandate Amendment Gains Support



By Rick Thompson
TAC Legislative Staff

An amendment to the Texas Constitution that would add stability to planning county

budgets and ease the burden of the property taxpayer was heard before the House Committee on County Affairs April 20.

In presenting his proposed unfunded mandates amendment, Committee Chair Garnet Coleman of Houston explained that if his amendment were approved by voters, any program the State of Texas directs counties to operate would become effective only upon actual disbursement of implementation funds by the state, with only a few exceptions.

In his opening remarks, Coleman explained to the committee, "I am very proud to carry this constitutional amendment for counties. I don't believe there should be unfunded mandates—counties can best determine the money they need to spend."

Paul Sugg, Senior Legislative Liaison with the Texas Association of Counties, and Jim Allison, General Counsel for the County Judges & Commissioners Association of Texas, were among the several association representatives appearing in support of HJR 84.

Members of the committee were

advised on the particulars of county finance and sources of revenue as well as the adverse effects unfunded mandates have on property tax rates.

Milam County Judge Frank Summers gave testimony explaining the unintended consequences that a veiled unfunded mandate, such as the Drivers' Responsibility Act, can have in significantly increasing the county jail population, additional medical treatment and inmate care responsibilities on the county.

In addition to Coleman as the primary author of the bill, also signed up as joint authors are Reps Farabee, Kuempel, Homer and Anderson. Others who have added their names include Reps. Allen, Berman, (Betty) Brown, Burnam, Chisum, Christian, Dunnam, Flynn, Harless, Heflin, Herrero, Hodge, (Donna) Howard, Kleinschmidt,

Mendendez, (Doug) Miller, Morrison, (Wayne) Smith and Thibaut.

"In his first year of service as the Chairman of the House Standing Committee on County Affairs, Representative Coleman has already earned a place among the most distinguished chairpersons in the history of the committee," Sugg said. "If you are among the county support staff or a county official, please take the time to thank him for carrying this important legislation—he is truly a great friend and supporter of county government."

He urged county officials to take the time to thank those legislators who have signed their names on HJR 84 for their support of county government. In addition, legislators whose names are not on the bill should be asked to sign on as sponsors. ★





Resources, Naturally

County Development Authority, Fire Codes, and Transportation Bills

Below please find an update on some of the bills affecting county development, county fire codes, and (one) transportation funding. Included is a brief description of what they do and where they are in the process. Emphasis has been given to bills that have had a hearing and are moving through the process, albeit at different speeds.

A number of bills amend Chapter 231 of the Local Government Code, giving particular authority to particular counties, in the chapter reserved for these purposes. Although these bills immediately below are local or regional bills, they are noted because this shows there is a real need for additional authority at the county level: legislators are working closely with their county officials to craft local, regional, as well as statewide bills to give counties the tools they need to address urbanized growth in the unincorporated area of the state.



By Paul J. Sugg
TAC Legislative Staff

HB 143 by McClendon

- Relating to granting certain counties regulatory authority

around military facilities in certain circumstances. This gives additional authority to commissioners courts in Bexar county and counties adjacent to Bexar to regulate development near military installations. *03-25-09 Committee Action Pending House Defense and Veteran's Affairs.*

HB 2436 by Phillips - There are currently proposals to build two new bodies of water in Fannin County: Lake Ralph Hall and Lower Bois D'Arc Creek Reservoir. Should these reservoirs be built, the county supports having the authority to zone around them in order to promote the orderly development of the area. Fannin County already has the authority to zone around the proposed Lake Ralph Hall, but under current law this authority expires in 2013. *4-28-09 Passed to third reading.*

HB 2606 by Hunter - Relating to granting county zoning authority to Aransas County. As the caption notes, this would give Aransas County permissive zoning authority. *4-15-09*

Recommended for Local and Consent Calendar.

HB 2874 by Hunter - Relating to granting certain counties authority to regulate the cutting of certain trees; providing a penalty. This applies only to Aransas County as well and allows commissioners court to prohibit the clear cutting of live oak trees in the unincorporated area of the county. As the home county of the "Big Tree" (also known as the Goose Island Oak), with this authority Aransas County should be well-prepared, we hope, to preserve the descendents of this natural wonder and its like. *4-28-09 Withdrawn from Local Calendar.*

HB 2833 by Marquez - Relating to authorizing certain counties and municipalities to regulate land development; providing a penalty. Bracketed for El Paso County, it allows commissioners court to adopt building codes for new residential construction in the unincorporated area of the county. *4-20-09 Recommended for Local and Consent Calendar. Companion: SB 1370 by Lucio 4-22-09 Recommended for Local and Uncontested Calendar.*

HB 3265 by Rose - Relating to granting Hill Country counties regulatory authority and the authority to impose certain development fees. This gives

certain Hill Country counties additional authority over development, subject to an election called by commissioners courts. *4-6-09 Reported from committee as substituted County Affairs.*

HB 3464 by Keffer - Relating to the enforcement of certain development regulations in a justice court. This affects that part of Hood County around Lake Granbury and the Brazos River. *4-22-09 Passed on Local and Consent Calendar.*

HB 4607 by Guillen - This addresses regulating development around Lake Falcon in Zapata County. *4-22-09 Passed on Local and Consent Calendar.*

Next are selected bills amending Chapter 232, Local Government Code, to include the various subchapters.

HB 1680 by Gallego - Relating to an application filed with a county commissioners court to revise a subdivision plat. This amends Subchapter B to allow a commissioners court to impose a fee for a plat revision. The amount of the fee must be based on the cost of processing the application, including the notices required (newspaper and certified mail to all owners in the subdivided tract). *4-28-09 Passed to third reading Local and Consent Calendar.*

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TAC has updated and upgraded its federal stimulus Web page

In an effort to help county officials find the latest information regarding the federal stimulus package, the Texas Association of Counties has updated and upgraded its Web site page regarding the federal stimulus package, officially dubbed the American Recovery and Reinvestment Act of 2009.

The page may be accessed at www.county.org/recovery.

You will notice a box to sign up for notifications whenever the stimulus page is updated with new information. Please sign up if you want to receive the latest updates.

On the left side of the page, you will see "Pre-Application Procedures," which will give you information on what you need to know **before** applying for federal grants.

Below that section are links to grant opportunities, a grant opportunities chart, an overview of the stimulus package, links to other helpful resources and the latest news stories and news releases.

Down the middle of the page are lists and links to Direct Applications to the

Federal Government and the relevant subjects and the same for Sub-Grants from the State Government. Likewise, the deadlines that are known are listed on the right.

TAC has also assigned a legislative staff member to help counties address the stimulus funding maze.

Elizabeth Vela, who has worked with local governments and non-profit organizations in the grant

application process and in the policy analysis arena for several years, is available to offer insight into what grants may be available to a county and provide help in contacting appropriate sources of information at the state and federal levels.

Her direct phone line is (512) 615-8917. ➔

Resources, Naturally

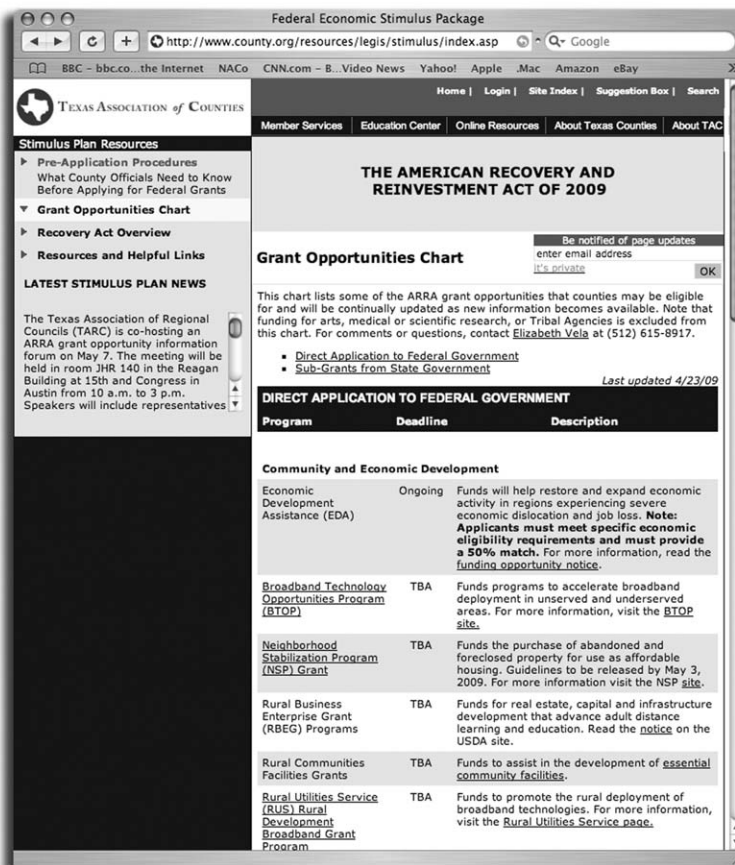
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HB 2275 by Raymond - Relating to creating a task force to develop uniform standards for subdivisions in the unincorporated areas of counties near the international border and in economically distressed counties. This creates a Task Force on Uniform County Subdivision Regulations to resolve conflicts and unnecessary complexities in the laws governing the regulation of development near the international border and in economically distressed counties in order to develop uniform subdivision standards in those counties. Task force membership would include Subchapter B and Subchapter C county officials appointed by the Texas Water Development Board (TWDB), private land developers appointed by the governor, a representative appointed by the attorney general, a member of TWDB, and representative appointed by the secretary of state (SOS is also to provide administrative support to the task force). The task force is directed to identify conflicts and deficiencies in current law, develop recommendations and draft proposed legislation to create uniform standards for the regulation of subdivisions in counties near the international border and in economically distressed counties. The deadline for submission to House and Senate standing committees with jurisdiction over border regions or county affairs is Dec. 1, 2010. *4-27-09 Referred to Senate International Relations and Trade.*

FIRE CODE BILLS

HB 2046 by Naishtat - Relating to the authority of a county to adopt and enforce a fire code for certain buildings

Resources, Naturally *continued on page 8*



81ST LEGISLATIVE SESSION

Significant Bills



HEALTH CARE

By Rick Thompson
TAC Legislative Staff

HB 1876 by Chisum - relating to creating the health care access fund to recruit health care providers in health professional shortage areas and to support federally-qualified health centers and to using for those purposes revenue from a tax imposed on certain tobacco products. *4-17-09 H Reported favorably from committee on House Public Health; SB 2527 by Hiojosa 4-16-09 S Rereferred to Committee on Senate Finance*

HB 2205 by Gonzales - Relating to a county's eligibility to receive state assistance for health care expenditures that exceed eight percent of the county's general revenue levy for the year. This bill would allow counties who make payments to Medicaid for health care services eligible for the state assistance program. *4-20-09 H Reported favorably from committee on House Public Health*

HB 3408 by Gonzales - Relating to a county's liability for the costs of basic health care services. The Public Health Committee adopted Rep. Gonzales's committee substitute that allows a county to provide health care services to a person in the county regardless of their income as the county determines necessary to protect the public health, safety and welfare. *4-28-09 Withdrawn from Local Calendar.*

SB 188 by Deuell – Relating to disease control programs to reduce the risk of certain communicable diseases. The Committee Substitute to SB 188 bill would authorize a local health authority to operate or contract with an organization to operate a disease control program that authorizes one-for-one syringe exchanges; offers education on the transmission and prevention of communicable diseases; and assists participants in obtaining health-related services, including substance abuse treatment services and blood borne disease testing. The bill authorizes such programs to charge a fee for the

new syringes and sets forth provisions relating to the distribution and handling of such syringes and reporting. *4-16-09 H Considered by Public Health Subcommittee in work session HB 142 by McClendon 4-16-09 Considered by Public Health Subcommittee in work session*

SB 526 by Nelson - Relating to grants for federally qualified health centers. This bill removes the expiration date on the Department of State Health Services grant program for establishing new federally qualified health centers. This bill also allows for grants to expand services at existing facilities. *4-20-09 H Referred to House Committee on House Public Health : HB 1169 by Martinez – 04/17/2009 H Committee report sent to Calendars*

SB 957 by Watson - Relating to the ability of a county, public hospital, or hospital district to purchase or arrange for the purchase of certain health coverage or benefits for eligible residents. This bill will allow a county to arrange for the purchase of health coverage for eligible residents. *4-16-09 Referred to House Committee on House County Affairs: HB 1628 by Naishtat -4-16-09 H Recommended for Local and Consent Calendar* 🗳️



COUNTY GOVERNMENT STRUCTURE

By Aurora Flores-Ortiz
TAC Legislative Staff

HB 1223 by Laubenberg- Relating to persons authorized to make payroll deduction for county employees. This bill, as substituted, states the county treasurer or a county employee or office assigned by the commissioners court to prepare payroll, or if another officer is specified by law, that other officer shall make the deductions from, or take other similar actions with regard to the compensation of county employees as required. Treasurers testified the bill

Significant Bills *continued on page 7*

Significant Bills *continued from page 6*

as filed adds language that delegates authority of the county treasurer to someone not elected. The substitute language does not strengthen the statutory responsibility of the county treasurer. *4-21-09 Reported from committee as substituted House County Affairs.*

HB 3398 by Darby – Relating to the office of county treasurer. This bill solidifies the statutory duties of the county treasurer. *4-23-09 Voted favorably from committee as substituted House County Affairs.* 🗳️



ELECTIONS

By Nanette Forbes
TAC Legislative Staff

HB 135 by Straus – Relating to elimination of straight-party voting. *02-12-09 Referred to House Committee on Elections.* An identical bill has been filed, **SB 317 by Wentworth**, to eliminate straight-party voting. *3-09-09 Action pending in Senate Committee on State Affairs.* A duplicate bill has been filed, **HB 1768 by Branch**, to eliminate straight-party voting. *3-03-09 Referred to House Committee on Elections.*

HB 157 by Chavez - Relating to the registration of voters at a polling place and related procedures. Permits voter registration at the polls on election day and requires "separate processing" of these voters. *04-15-09 Action pending in House Committee on Elections.* A duplicate bill has been filed, **HB 245 by Alonzo**, relating to the registration of voters at a polling place and related procedures. *2-17-09 Referred to House Committee on Elections.*

HB 452 by Allen – Relating to early voting by mail by any qualified voter. The legislation expands early voting by mail to persons to include all voters not just those absent from their county of residence, ill or disabled, 65 years of age or older, or confined in jail. *04-27-09 Committee action pending House Committee on Elections.* An identical bill has been filed, **SB 137 by Ellis**, relating to early voting by mail by any qualified voter. *2-10-09 Referred to Senate Committee on State Affairs.*

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UPDATE: Federal Title IV-E Replacement Funds and Community Corrections Programs



By Laura Nicholes
TAC Legislative Staff

The Criminal Justice Legislative Oversight Committee met on April 22, 2009 to hear testimony on what are now being referred to as "the next step in juvenile reform efforts."

House and Senate members voiced differences in opinions, sometimes passionately, regarding the proposed community corrections programs and the impact they would have on the Texas Youth Commission budget, local juvenile probation programs and county funding.

In the hearing, Senator John Whitmire stated that replacing the Federal Title IV-E funds is back on the table. "I'm going to go ahead and put it on the table right now...we ought to fund it and I commit to you publicly that we will. It's an important element of the entire package that we are trying to accomplish. We will satisfy the budget with juvenile probation, TYC and the reform programs", he said.

Last month the Senate chose not to adopt the \$34 million request to replace a loss in Federal Title IV-E foster care aid, but did approve the transition of \$35 million from the budget of the Texas Youth Commission to two county juvenile probation departments, Travis and Dallas, for the implementation of community corrections pilot programs. County officials, juvenile probation departments, advocate groups and others have expressed concern about funding a few community programs while not assisting all juvenile departments that have experienced a loss in federal foster care services grant money, as well as, funding the new programs with money taken from TYC's budget instead of reinvesting that money back into the support of TYC treatment programs that have been criticized for falling short of the intended goal.

An additional \$18 million (also from TYC) was placed in the Senate "wish list" for a regional pilot in southeast Texas. In the weeks to follow, several other juvenile probation departments submitted concepts for consideration hoping to demonstrate that, given the financial resources, they may be able to serve juvenile offenders closer to home at a cost less than TYC commitment. The House budget did not fund any pilot programs but was able to appropriate about two thirds of the Title IV-E request. The diversion concepts are aimed at providing services for eligible youth offenders in the community rather than by committing them to TYC. Budget resources, state-to-local funding, accountability measures and TYC impact are still being discussed.

For more information, contact Laura Nicholes at (800) 456-5974 or via email to LauraN@county.org. 🗳️

Significant Bills

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SB 362 by Fraser – Relating to requiring a voter to present proof of identification. *04-6-7-09 Action pending in House Committee on Elections.* Similar legislation has been filed, **HB 373 by Anderson**, on requiring a voter to present proof of identification. *02-17-09 Referred to House Committee on Elections.* Additional similar legislation has been filed, **HB 3556 by Bonnen**, requiring a voter to present proof of identification. *04-07-09 Action pending in House Committee on Elections.*

HB 4653 by Donna Howard – Relating to certain election practices and procedures relating to conduct of elections. *04-27-09 House Committee on Elections.*

SB 1134 by Duncan – Relating to the authority for certain high school students to serve as election clerks. *04-16-09 Referred to House Committee on Elections.*

SB 1152 by Hinojosa – Relating to the making or acceptance of political contributions in a courthouse; providing penalties. The legislation prohibits the acceptance of political contributions in any courthouse. Courthouse is defined as any building where state, county, or municipal judicial proceedings are conducted. Currently

the restriction only applies to the State Capitol. *04-20-09 Referred to House Committee on Elections.* An identical bill filed, **HB 1359 by Anchia**, relating to the making or acceptance of political contributions in a courthouse; providing penalties. *04-17-09 Voted favorably from House Committee on Elections.*

SB 1310 by Duncan – Relating to a program allowing for countywide voting locations in certain election. The legislation gives the county authority to participate in a plan to establish countywide voting places and eliminate county election precincts. Plan must be approved by the Secretary of State. *4-20-09 Referred to House Committee on Elections.* 🗳️



TRANSPARENCY

By Aurora Flores-Ortiz
TAC Legislative Staff

HB 2743 by Paxton - Relating to the availability of certain county financial information on certain counties' Internet websites. The committee substitute states the

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in the unincorporated area of the county. Current law restricts the counties that may enforce adopt and enforce fire codes for commercial and certain multifamily residential buildings to those counties with populations of 250,000 or more and those counties adjacent to them. This strikes the population bracket, a very good idea. *4-16-09 Recommended for Local and Consent Calendar.*

HB 4474 by Calligeri -Relating to the applicability of a fire code in an unincorporated area of a county. The committee substitute defines “commercial building” and “public building” for the purposes of fire code applicability. It also expands the applicability of a fire code to a

multifamily dwelling consisting of three or more units (current law applies to four-plexes). *4-23-09 Recommended for Local and Consent Calendar.*

TRANSPORTATION

SB 1383 by Carona - Relating to the creation and administration of the Texas Local Participation Transportation Program. This program’s intent will be to encourage local transportation project sponsors (including counties) to participate in the delivery of eligible projects (using tools such as pass-through financing and transportation reinvestment zones) by providing the sponsors financial assistance from the Texas Local Participation Transportation Fund (to be administered by the

Comptroller). *4-17-09 Recommended for Local and Uncontested Calendar.*
Companion: HB 3917 by Wayne Smith *4-23-09 Committee action pending House Transportation.*

SB 855 by Carona - Relating to local options regarding transportation and mobility improvement projects in certain counties. Bracketed for D-FW area counties, Bexar, Travis, and El Paso counties, it would give local officials and local voters a range of funding options to help meet transportation infrastructure demands. *4-20-09 Referred to House Transportation.* **Companion: HB 9 by Truitt** *4-21-09 Committee action pending House Transportation.* 🗳️

Significant Bills *continued from page 8*

treasurer shall maintain an electronic checking account transaction register in a searchable format for counties with a population of 250,000 plus. Costs for this unfunded mandate continue to include purchasing software for counties that do not currently have it and or hiring personnel to maintain the input of information and to troubleshoot the software. Redaction of privacy and juvenile concerns is another cost to counties. *4-23-09 Voted favorably as substituted County Affairs.* 🗳️



JUVENILE JUSTICE

By Laura Nicholes
TAC Legislative Staff

HB 3689 by McClendon – Relating to the functions and continuation of the Texas Youth Commission and the Texas Juvenile Probation Commission and to the functions of the Office of Independent Ombudsman for the Texas Youth Commission.

This Committee Substitute maintains two separate agencies and two separate Boards; CSHB 3689 also creates a multi-disciplined Juvenile Justice Policy Coordinating Council and requires TYC and TJPC to develop a comprehensive five-year Juvenile Justice Improvement Plan. *4-20-09 Reported from committee as substituted.*

Note: the House version of this bill retains two appointments for county judges or commissioners on the independent Juvenile Probation Commission board. See SB 1020.

SB 1020 by Hinojosa, as Substituted – Relating to juvenile justice, including the functions and continuation of the Texas Youth Commission and the Texas Juvenile Probation Commission and to the functions of the Office of Independent Ombudsman for the Texas Youth Commission. This substitute to the Sunset bill differs from CSHB 3689 that was reported from the House committee. CSSB 1020 creates one consolidated Juvenile Justice Board to oversee the functions and operations of the two separate juvenile justice agencies; the Board is composed of nine

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Revenue Caps *continued from page 2*

the bill in committee; But when it goes to the floor of the Senate, there's one potential change that could make the bill better – removing the 5 percent rollback rate and leaving it at the current 8 percent – and there is at least one potential change that could make it worse – amending the bill to permit petitions that would force the calling of a sales tax election.



Counties should also consider the unreliability of the sales tax as a source of revenue as opposed to the property tax. The Comptroller recently released the March sales tax collection numbers – showing a continuing downward turn, 3.8 percent compared to March 2008. According to the *Quorum Report* political newsletter, Austin, Plano, McAllen and Tyler are now into double digit declines, and even Houston and Galveston sales tax collections are declining now that the spurt of Hurricane Ike repairs and reconstruction is slowing down. If the economy continues downward, trading the 1/4-cent sales tax for property taxes and a lower revenue cap could actually penalize counties.

Concerned county officials should contact their senators and ask them to commit to two important actions on SB 402:

- 1. Remove the 5 percent revenue cap and take it back to the current 8 percent cap.** The 5 percent revenue cap could actually diminish county revenues if the sales tax (which is a fluctuating source of revenue depending on the economy) does not raise enough revenue for county services;
- 2. Do not amend the bill to allow petitions to call the sales tax elections instead of the commissioners courts.** Voters elected their county judges and commissioners to study the pros and cons of initiating a sales tax election, based on financial data and what would be best for the future of the county. 🗳️

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members appointed by the governor with the advice and consent of the senate. Juvenile Justice Board appointments include two chief juvenile probation officers and two juvenile court judges. *This senate substitute provides NO specific board appointments for Constitutional County Judges or County Commissioners. 4-9-09 Meeting for 4-25-09 cancelled Senate Government Organization.*

SB 1237 by Estes – Relating to the authority of certain juvenile probation officers to carry firearms. This bill authorizes juvenile probation officers to carry firearms in the course of an officer's official duties if the officer possesses a certificate of firearms proficiency and is authorized to carry a firearm by the chief juvenile probation officer. *4-27-09 Received in the House.*

SB 1374 by West – Relating to community based programs for juveniles in certain counties. This bill authorizes juvenile boards in counties with a population of at least 335,000 to apply for grants to establish and implement community corrections pilot programs for certain juvenile offenders. *4-27-09 Received in the House.* 🗳️



HOMELAND SECURITY

By Aurora Flores-Ortiz
TAC Legislative Staff

SB 11 by Carona- Relating to the investigation, prosecution, and punishment for certain gang-related and other offenses and to the civil consequences of engaging in certain activities of a criminal street gang. CSSB 11 provides for criminal and civil penalties and enforcement options for individuals committing offenses related to gang activity; addresses post-conviction and post-adjudication provisions; graffiti; penal provisions relating to firearms; matters relating to license suspension; creates a law enforcement integrity unit to investigate organized criminal activity and creates gang-free zones and provides for electronic monitoring of certain criminal street gang members. *4-27-09 Recieved in*

the House.

SB 12 by Carona - Relating to emergency management. CSSB 12 amends current law relating to authorization of county judges and mayors to have enforcement authority under a mandatory evacuation order. It requires agencies involved with emergency management to disseminate information about emergency preparedness and report annually to the legislature on emergency management activities. CSSB 12 requires convalescent homes and assisted living facilities to register with the Texas Information and Referral Network and to inform residents and their families and guardians about evacuation assistance services. In addition, it requires appointed public officials with emergency management duties to obtain three hours of pertinent training and further defines the Governor's Division of Emergency Management's responsibilities and authorities. *4-27-09 Received in the House.* 🗳️



PURCHASING

By Aurora Flores-Ortiz
TAC Legislative Staff

HB 2573 by Gonzales Toureilles - Relating to the amount of a county expenditure for which competitive bidding is required. This bill increases the amount from \$25,000 to \$50,000. *4-23-09 Postponed on Second Reading until 5-1-09.* 🗳️



COUNTY JAILS

By Laura Nicholes
TAC Legislative Staff

SB 840 by Hinojosa – Relating to procedures for certain persons charged with certain new offenses or an administrative violation of a condition of release from the Department of Criminal Justice on parole or to mandatory supervision. *4-27-09 Placed on the Senate Intent Calendar*

HB 1711 by Turner – Relating to requiring the Texas Department of Criminal Justice to establish a

Significant Bills *continued on page 11*

Significant Bills

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comprehensive reentry and reintegration plan for offenders released or discharged from a correctional facility. 4-27-09
Referred to Senate Criminal Justice.

HB 2100 by Martinez-Fischer – Relating to procedures for certain persons charged with certain new offenses or an administrative violation of a condition of release from the Texas Department of Criminal Justice on parole or to mandatory supervision. This bill addresses “blue warrant” inmates who have violated a condition of parole and are currently prohibited from posting bond prior to a court hearing. HB 2100 would authorized a parole officer to note on the face of a warrant if an offender was eligible to post bond and be released from jail prior to a court hearing. Eligibility standards would prohibit certain offenders from qualifying for release. 4-24-09 *Passed the House*

HB 2170 by Chavez – Relating to the minimum number of county jailers necessary to staff a county jail. This bill would mandate a county to employ at least one county jailer for every 48 inmates housed in the county jail. In addition, the commissioners court of a county would be mandated to provide sufficient funding for the employment of county jailers in the numbers required. The bill is attempting to place the current guard to inmate ratio of 1 to 48 in statute rather than maintaining it in Rules prescribed by the Texas Commission on Jail Standards. 4-9-09 *Committee action pending, County Affairs*

HB 2246 by Turner – Relating to the ratio of correctional officers to prisoners in a county jail. This bill would place the guard to inmate ratio in statute rather than maintaining it in Rules prescribed by the Texas Commission on Jail Standards. The bill mandates 1 correctional officer on each floor of a jail housing 10 or more inmates and 1 correctional officer per 48 inmates housed on a floor. In addition, commissioners courts would be mandated to provide the sheriff with resources necessary to ensure that staffing requirements are met. 4-16-09 *Committee action pending, County Affairs* ➡



RENEWABLE ENERGY

By Julie Shussler and Paul Emerson
TAC Legislative Staff

In both the house and senate approximately 100 bills, including several resolutions, were filed that center around renewable energy technology. This unofficial count is dominated by a majority of house bills. With the session winding down, though, only a limited number of these bills will reach the Governor’s desk for his signature. Highlighted below is a short explanation on a few of these bills that have steadily shown momentum as they have proceeded through both chambers. The first three bills listed have successfully passed their prospective chamber (as engrossed) and have been assigned to the appropriate committee in the other chamber.

In addition to these bills that relate to wind energy, the supplemental appropriations bill (HB 4586) introduced this session (81st Legislative Regular Session) has allocated \$4.2 million for the purpose of developing and constructing the National Large Wind Turbine Research and Testing Facility on the campus of University of Houston.

SB 1311 by Duncan –Relating to the authority of the commissioners court of a county to enter into an ad valorem tax abatement agreement with certain property owners. As proposed, this bill would allow a county to enter into a tax abatement agreement with a lessee of taxable real property located in a reinvestment zone. This bill would clarify existing law that allows a county to execute a tax abatement agreement with the owner of the taxable property, but not necessarily with the lessee holder of the property. There has been some confusion over this particular statute (312.402, Tax Code), especially since the Attorney General’s office issued opinion GA-0600. 4-20-09
Referred to House Ways and Means.

SB 1458 by Seliger – Relating to the authority of the commissioners court of a county to enter into an ad valorem tax abatement agreement.

As proposed, this bill would allow county commissioners court the authority to grant tax abatements for tangible personal property that is located in a

Significant Bills *continued on page 12*

Significant Bills *continued from page 11*

designated reinvestment zone. Other particular leasehold interests (owners of a leasehold interest and a lessee of taxable real property) are also covered under this bill. In addition, SB 1458 limits the duration of a tax abatement agreement to 10 years. This bill is also applicable to municipalities. SB 1458 clarifies issues raised in the AG's opinion (GA-0600) regarding the eligibility of property owned by a lessee for abatement. This bill is similar to SB 1311, but covers a wider area of leasehold interests. *4-21-09 Referred to House Ways and Means.*

HB 394 by Rose – Relating to the use of money from the Texas Enterprise Fund to benefit small businesses. As amended, this bill would require the Governor's office when awarding grants from the Texas Enterprise Fund to consider small business that would create or bring additional jobs opportunities into Texas. This bill defines small business as a for-profit legal entity (corporation, partnership, or sole proprietorship) that is independently owned and operated with less than 100 employees. While the Texas Enterprise Fund has been successful over the years at expanding businesses and increasing capital investments, it has often favored larger businesses. Wind turbine companies with less than 100 employees may also be eligible for these particular grants, even though they are not directly mentioned in the bill. *4-7-09 Referred to Senate Economic Development.*

HB 977 by Burnam – Relating to use of the money from the Texas Enterprise Fund to promote renewable energy technology.

As amended, this bill would require that at least 10 percent of the grants made through the Texas Enterprise Fund be allocated to renewable energy projects, unless the Governor determines that compliance would be inconsistent with the purpose and intent of the fund. In addition, CSHB 977 would require the Governor's office to submit an annual report to the legislature on the number of grants awarded during the reporting period.

Less than three percent of the Texas Enterprise Fund has been used to attract renewable energy firms in Texas. *4-15-09 Reported to House Calendars.*

For more information concerning this article, please contact Julie Shussler or Paul Emerson at (800) 456-5974 or via email at JulieMS@county.org or PaulE@county.org. 🗝



DISASTER RELIEF

By Aurora Flores-Ortiz
TAC Legislative Staff

SB 181 by Gallegos - Relating to uniform reentry procedures for essential personnel entering an area evacuated during a disaster or other emergency. CSSB 181 requires the governor, in cooperation with the Department of Public Safety, to create a task force to study and develop uniform reentry procedures for essential personnel entering a disaster area, including who can be admitted, the priority order of reentry for those personnel, and establish methods to authenticate the identity of those personnel. *4-23-09 Received in the House.* 🗝



FIREWORKS

By Laura Garcia
TAC Legislative Staff

HB 599 by Hughes - Relating to the sale of fireworks on and before Texas Independence Day. The legislation authorizes a new fireworks selling season for Texas Independence Day. *04-20-2009 Committee action pending in House County Affairs.*

HB 1752 by Leibowitz - Relating to county regulation of fireworks during severe drought conditions. The bill expands a county's authority to regulate fireworks during severe drought conditions; it authorizes a commissioners court to prohibit or restrict a larger array of fireworks if "severe drought conditions" (a Keetch-Byram Drought Index of 600 or greater on average in the county) are determined to exist. *04-20-2009 Committee action pending in House County Affairs.*

HB 3052 by Gallego - Relating to the regulation of fireworks by counties during drought conditions; providing a criminal penalty. The bill expands a county's authority to regulate fireworks during drought conditions; it authorizes a commissioners court to prohibit or restrict a larger array of

Significant Bills *continued on page 14*

Attorney General Opinions Issued



GA-0702: Honorable Elizabeth Murray-Kolb, Guadalupe County Attorney, indexing certain real-property instruments under chapter 193 of the Local Government Code.

Summary In the absence of legislative direction, a county clerk has discretion to index an instrument accepted for filing and recording under Property Code section 12.0011(b)(2) in a manner consistent with the purposes of the indexing statutes and within the constraints of the statutory framework set out in Local Government Code chapter 193.

GA-0703: Honorable G.A. Maffett, III, Wharton County Attorney, authority of a commissioners court to remove fencing located within a county right-of-way. **Summary** A county commissioners court has authority, subject to judicial review, to remove from a county road right-of-way objects that create a safety hazard to the public.

GA-0704: Honorable H. Michael Bartley, Delta County Attorney, whether a sheriff must provide information about funds in his custody to the county treasurer. **Summary** Pursuant to Local Government Code section 115.901, the county treasurer of Delta County is required to examine the accounts held by the county sheriff, including accounts containing forfeiture and commissary funds, and the sheriff must provide the treasurer with access to bank statements for such accounts.

GA-0705: Mr. Robert Scott, Commissioner of Education, Texas Education Agency, authority of a school district to use a reverse auction conducted by a third party to purchase personal property valued at \$10,000 or more. **Summary** A school district's use of a third party reverse auction company as described is not an improper delegation of authority. Whether any contractual requirement by the third party auctioneer impermissibly limits the number of potential bidders is a fact question not appropriately answered by the opinion process.

GA-0706: 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. **Summary** A commissioners

court's lease of county property for an amount less than fair market value does not violate the express terms of section 263.007, Local Government Code.

GA-0707: Honorable Don McLeroy, Chair, State Board of Education, Calculation of the "total return on all investment assets of the permanent school fund" for purposes of article VII, subsection 5(a)(2), Texas Constitution. **Summary** As the agency charged with determining the amount to be distributed from the permanent school fund ("PSF") to the available school fund ("ASF"), the State Board of Education must establish the appropriate methodology for calculating the total return on all investment assets of the PSF in the first instance. The limitation in article VII, subsection 5(a)(2) of the Texas Constitution must be applied on an annual basis to determine whether the annual distribution for a given fiscal year complies with the requirements therein established.

Distributions made from the PSF to the ASF must comply with both subsection 5(a)(1) and subsection 5(a)(2). The constitutional provisions and related statutes are silent as to any remedies required for an overpayment under either provision.

The calculations in subsections 5(a)(1) and 5(a)(2) are independent. The plain language of subsection 5(a)(2) does not prevent the SBOE from adopting a rate under subsection 5(a)(1). A distribution authorized under subsection 5(a)(1) must also satisfy subsection 5(a)(2).

The SBOE, as the entity charged with ensuring the perpetual existence of the PSF, is authorized to apply the limits of subsection 5(a)(2) to the amount it distributes from the PSF to the ASF. Nothing in article VII, section 5 prohibits the SBOE from adopting a contingency plan for distributing the funds under article VII, section 5 provided the amounts distributed during each fiscal year do not exceed six percent of the average market value of the PSF as provided in subsection 5(a)(1) and the subsection 5(a)(2) limitations.

GA-0708: Honorable Jim Pitts, Chair, Committee on Appropriations, Texas House of Representatives, whether the Edwards Aquifer Authority may promulgate rules prohibiting certain

permits or contracts with recharge facilities constructed prior to September 1, 1993. **Summary** A court would likely conclude that the Edwards Aquifer Authority may promulgate rules prohibiting recharge and withdrawal permits for or contracts with recharge facilities that were constructed prior to September 1, 1993, that will not increase the amount of the facility's recharge. A court would also likely conclude that the Edwards Aquifer Authority has authority to promulgate a rule providing that the denial of an interlocal contract under certain circumstances is unreasonable.

GA-0709: Honorable Pete Gallego Chair, Committee on Criminal Jurisprudence Texas House of Representatives, authority of a county attorney to issue commissions for reserve or nonpaid peace officers. **Summary** A county attorney is not authorized to appoint reserve peace officers.

GA-0710: Honorable Patrick M. Rose, Chair, Committee on Human Services Texas House of Representatives, authority of a water company to paint fire hydrants black under certain circumstances.

Summary Under Health & Safety Code section 341.0357, an owner is not required to first determine that the flow of a device having the appearance of a fire hydrant is less than 250 gallons per minute in order to paint the device black, if the owner determines that the device is otherwise unavailable for use by an entity providing fire suppression services in a fire emergency. Additionally, if the owner determines that all devices within a system are otherwise unavailable for use for fire suppression services other than on a temporary basis, an owner is required to paint all the devices black under section 341.0357 even when the flow from certain of those devices exceeds 250 gallons per minute.

GA-0711: Honorable Rex Emerson, Kerr County Attorney, definition of "audit" for purposes of section 775.082, Health and Safety Code. **Summary** In light of, and in deference to, the Texas State Board of Public Accountancy's view of section 901.004, Occupations Code, a county auditor who is a certified public accountant may ethically perform an audit under section 775.082, Health and Safety Code. ■

Attorney General Opinions Requested



RQ-0788-GA Honorable Edmund Kuempel, Chair, Licensing and Administrative Procedures, Texas House of Representatives, whether an

individual may simultaneously serve as a member of a school district board of trustees and as a principal of a disciplinary alternative program that serves several school districts.

RQ-0790-GA Honorable Frank J. Corte Jr.,

Chair, Defense and Veterans' Affairs, Texas House of Representatives, authority of the Kinney County Groundwater Conservation District to impose certain conditions on permit holders and applicants.

RQ-0792-GA Honorable Anna Laura Cavazos Ramirez, Webb County Attorney, whether an appraisal district may conduct its appraisals on other than an annual basis.

RQ-0793-GA Honorable Rene Guerra, Hidalgo County Criminal District Attorney,

whether the jurisdiction of a justice court in truancy matters is limited to the particular precinct in which a justice presides: Reconsideration of Attorney General Opinion No. GA-0701 (2009)

RQ-0795-GA Honorable John Mark Cobern, Titus County Attorney, whether the behavioral health unit of the Titus Regional Medical Center is a "private facility" for the purpose of the filing fee required by section 118.055, Local Government Code. ■

From the Desk

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worse outcome) for 2009 is just around the corner now that the present decline in price will work to substantially reduce the total appraised value of oil and gas. On April 16, 2009 the Houston Chronicle published an article that reported Susan Combs' offices had determined the statewide oil valuation average (2009) to be \$35.00 per barrel compared with roughly \$95.00 a barrel for 2008. The article went on to report that natural gas for 2009 was \$4.85 per mcf (thousand cubic feet), down from almost twice that value (\$8.03 per mcf) for 2008. **Where to, from here**—the following excerpt from a recent publication of the CJ&CA of Texas suggests specific action counties should take to insure fairness in the evaluation process—*while it is doubtful that the legislature will repeal the addition of a "forward-looking" estimate to the formula, it must correct the use of the severance tax revenue estimate. While the use of an extremely conservative methodology may be appropriate when estimating state severance tax revenues, it is not an appropriate method of calculating ad valorem appraised values. The continued use of this estimate will result in approximately 10% reduction in the value of oil and gas property compounded for the life of the property. Please contact your legislators, Rep. Hardcastle, and Sen. Seliger and urge that they replace the use of this severance tax revenue estimate with a market-based estimate.* The close of the 81st session is drawing near with a little over a month remaining. If you have any questions or need more information, you may call: Carey Boethel, (800) 456-5974 or email: careyb@county.org ➡

Significant Bills *continued from page 12*

fireworks during drought conditions. *04-20-2009 Committee action pending in House County Affairs.*

HB 4625 by Lucio III - Relating to county regulation of fireworks during drought conditions. The bill, as filed, revises a county's current authority to regulate fireworks under Section 352.051 of the Local Government Code, among other changes. It requires a commissioners court to hold a hearing to determine whether extreme drought conditions that pose an exceptional fire danger exist before issuing a proclamation declaring a disaster and prohibiting the sale or use of certain fireworks; such a proclamation must be issued at least 30 days before April 25 for the Cinco de Mayo selling season, June 15 for the Fourth of July selling season, and December 15 for the December selling season. *04-20-2009 Committee action pending in House County Affairs.*

SB 1390 by Wentworth - Relating to the regulation of fireworks during a declared local state of disaster. The legislation repeals the 60-hour limitation on county disaster declarations that restrict fireworks. *04-01-2009 Committee action pending in Senate Intergovernmental Relations. (Identical bill: HB 2857 by Miller, Doug. 04-20-2009 Committee action pending in House County Affairs.)* ➡



CRIMINAL JUSTICE

By Laura Garcia

TAC Legislative Staff

HB 1260 by Hopson – Relating to a registration program for persons who commit certain intoxication offenses; providing criminal penalties. The bill establishes a registration program for persons who commit certain intoxication offenses and creates criminal penalties for non-compliance. *03-16-2009 Committee action pending in House Public Safety.*

HB 1506 by Herrero - Relating to the imposition of conditions on certain defendants charged with an offense involving family violence. The bill authorizes a magistrate to require a defendant charged with a family violence offense to carry or wear a global positioning monitoring system device as a bond condition or as a condition of an emergency protective order. Defendants would pay the costs for the system, unless they are indigent. *04-28-2009 Passed House.*

HB 4485 by Howard, Charlie - Relating to the identification of certain defendants as foreign nationals who were not lawfully admitted to the United

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Significant Bills

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States or whose lawful status has expired and to their release on bail. The bill requires sheriffs to ascertain the citizenship status of certain defendants and creates a rebuttable presumption in bail proceedings that defendants with an unlawful status pose a flight risk. *04-08-2009 Committee action pending in House Criminal Jurisprudence.*

SB 1529 by Whitmire - Relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition; providing civil penalties. The legislation revises auditing and enforcement measures with respect to asset seizures and forfeitures and clarifies proper uses of the funds. *04-23-2009 Passed on Senate Local Calendar.* 🗳️

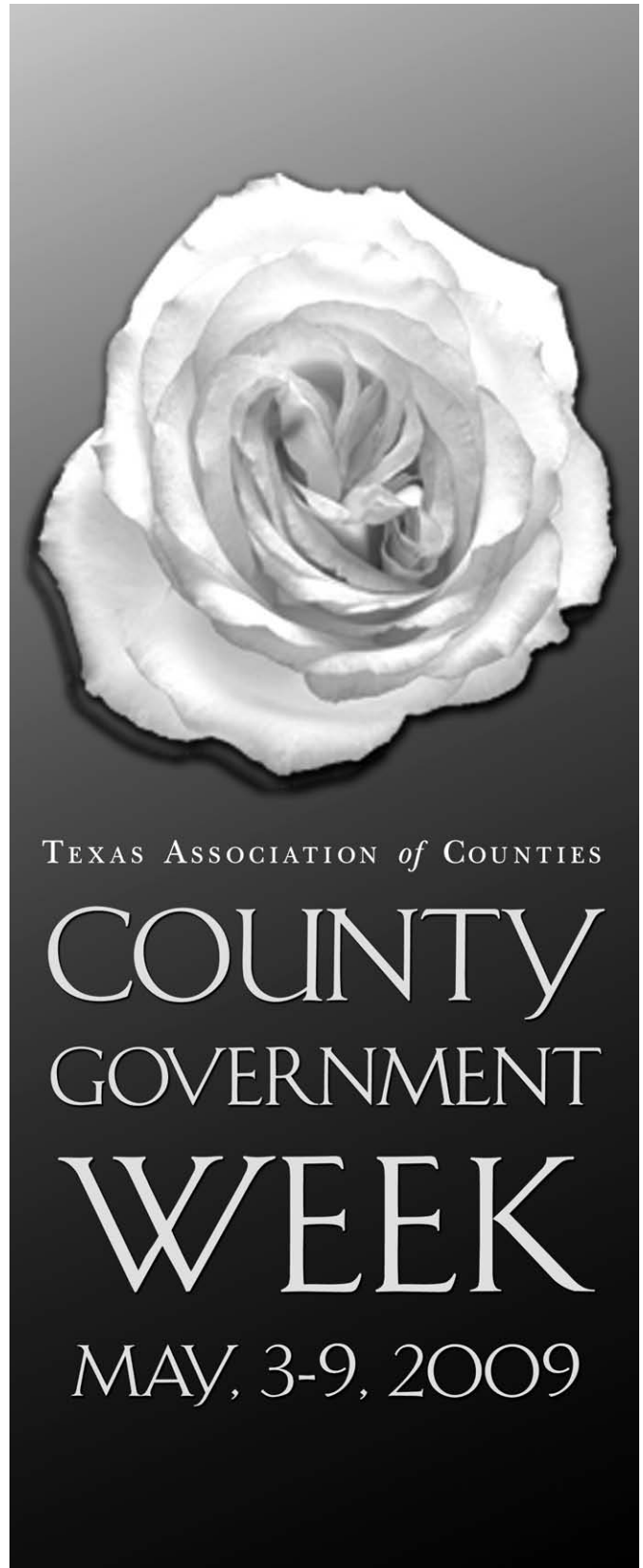


COURTS/INDIGENT DEFENSE

By Laura Garcia
TAC Legislative Staff

HB 692 by Solomons - Relating to the jurisdiction of statutory county courts. The bill gives statutory county courts concurrent jurisdiction with district courts in state jail felony cases. *04-14-2009 Committee report sent to Calendars.*

HB 2616 by Heflin - Relating to attorney fees in parent-child proceedings. The bill requires the Comptroller, upon application by a county, to reimburse the county, from appropriated funds, for the costs of attorney ad litem appointments for indigent parents and children in Child Protective Services cases. *04-27-2009 Committee Action Pending House Judiciary & Civil Jurisprudence.* 🗳️



TEXAS ASSOCIATION *of* COUNTIES

**COUNTY
GOVERNMENT
WEEK**
MAY, 3-9, 2009



From the Legislative Desk

By Carey "Buck" Boethel, Director of Governmental Relations

PNR (price not right)—before its passage in 2007, H.B. 2982 was explained as a formula change to the Tax Code (for appraisal purposes) which would level out sharp and radical fluctuations in the market price of oil and gas. As things turned out, county concerns over the manipulative effect the use of the comptroller's estimate of future prices could have on appraised values were well founded. Financial impact papers, provided by the Legislative Budget Board (LBB) and others promoting the bill, pointed out there would be no significant impact on local governments—a conclusion which has recently been found to be

incorrect. **SUM (substantially undervalued minerals)**—the estimated price of oil and gas (for appraisal purposes) for the year 2009 is so significantly underpriced by virtue of those changes to the Tax Code, it could cause a sizeable shift in property taxpayer burdens in counties heavily dependent on tax revenue derived from oil and gas resources. H.B. 2982 by Rep. Hardcastle/Sen. Seliger added the following language to Section 23.175 of the Tax Code: "[T]he comptroller's current calendar year statewide average price for oil or gas, as applicable, forecasted for revenue estimating purposes" to the formula.

According to Comptroller Susan Combs, the **MCF (market condition factor)**, which was among the 2007 legislative changes to the Tax Code, is determined by dividing the current calendar year statewide average price for oil and gas, forecast for revenue estimating purposes, by the preceding calendar year actual statewide average price. January 1, 2008, was the date on which H.B. 2982 became effective—a year characterized by significant increases in oil and gas prices. If the legislature had not changed the law, counties would have realized the benefit of the increased values in 2008. A **FWO (far**

From the Desk *continued on page 14*

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



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