

County*i*ssues

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Deadline Approaching for Counties to Accept Energy Efficiency Grant Funding



By Laura Garcia,
TAC Legislative Staff

Counties have only until Nov. 6 (postmark date) to let the State Energy Conservation Office (SECO) know whether they will accept funding for energy efficiency improvements in their communities. The Comptroller of Public Accounts recently notified the 244 non-entitlement counties (those that did not receive a direct allocation from the federal government) of their eligibility to receive funding through the Energy Efficiency and Conservation Block Grant Program (EECBG). The allocation awards range from \$20,000 to \$150,000 per county, depending on population.

"We want to help cities and counties explore options to get long-term benefits of conserving energy and reducing emissions while saving their taxpayers money by cutting energy costs," explained Comptroller Susan Combs.

Eligible uses of the funds include the following: building energy audits and



Key Deadlines

Nov. 6: Eligible counties must submit to SECO their Notification of Intent to accept EECBG funding.

Nov. 22: Eligible counties must pass and submit an official resolution accepting the EECBG funding.

Note: A Notification of Intent Form and a sample resolution are included in the information packet counties received from the Office of the Comptroller.

retrofits; installation of energy-efficient traffic signals and street lighting; and installation of renewable energy technologies on government buildings, among other activities. Funding, for example, may be used for projects such as upgrades to an air conditioning system or lighting to improve energy efficiency. There is no matching

requirement, and communities may use up to 7 percent of their allocated funding for administrative costs.

"Small cities and counties don't have to bid for these grants. The money is already allocated to them if they choose to use it," Combs said.

Energy Grant

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KEY COUNTY DATES

November 2009

Nov. 3: Uniform election date. TEX. ELEC. CODE, §41.002.

Nov. 3-12: HR Regional Workshops. Presented by the Texas Association of Counties. Correctional Management Institute of Texas, George J. Beto Criminal Justice Center, Sam Houston State University, various locations.

Nov. 5: CIRA Content Management System Training. Presented by County Information Resources Agency, Austin.

Nov. 15: First day to **mail voter registration certificates** to voters registered as of Nov. 14 and whose names are not on the suspense list. TEX. ELEC. CODE, §14.001.

Nov. 16: Fall Administrative Workshop. Sponsored by 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, Corpus Christi.

Nov. 17: Complete jury wheel due to Secretary of State. TEX. GOV'T CODE, §62.001(c).

Nov. 17-19: Fall Judicial Session. Sponsored by 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, Corpus Christi.

Nov. 19-20: Texas Public Funds Investment Conference. Educational Co-sponsor: Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, Houston.

December 2009

Dec. 1-10: Prison Rape Elimination Act Regional Workshops.

Various locations.

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

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

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

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

Energy Grant *continued from page 1*

Additionally, counties must pass and submit an official resolution accepting the funds by Nov. 22. The Comptroller of Public Accounts/SECO has sent all eligible counties informational packets regarding the program, including a sample resolution, a Notification of Intent Form to accept EECBG funding, a table of eligible activities that counties can undertake quickly and cost effectively, details regarding the

reporting requirements, and various other forms to help counties through the funding acceptance process.

"We want to make sure every eligible city and county gets to use these grants and we'll provide as much help as possible," Combs said.

The comptroller's office has staff available to assist counties with questions about the program. Counties can contact the Office of the

Comptroller at (800) 531-5441, ext. 3-7392 for additional information or technical assistance. Counties may also visit www.seco.cpa.state.tx.us/arra/eeecbg/index.php for program details, including information regarding their specific allocation awards.

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

DNA Sample Requirements Expanded



By Nanette Forbes,
TAC Legislative Staff

Since the passage of Senate Bill 727, DNA sampling is now mandatory for the placement of convicted felons on community supervision — including deferred adjudication and juveniles placed on probation for certain felony adjudications.

The purpose of the new law, which was authored by Sen. Dan Patrick and went

into effect Sept. 1, is to create DNA records of more felony defendants. The new law applies only to defendants who are granted community supervision or deferred adjudication on or after the effective date of the legislation. The only exception for collection is if the DNA sample has been submitted under other state law.

A new \$34 court cost fee is to be collected unless the defendant is indigent and unable to pay. In juvenile cases where a child has been placed on probation for an applicable felony

offense, the court is to assess a \$34 fee, or a \$50 fee, if the child is committed to a

Texas Youth Commission (TYC) facility, unless the court determines the defendant is indigent. The fees do not become effective until Jan. 1, 2010.

Many questions have arisen as to the implementation of the bill. The following questions are a sampling of the most commonly asked as collected from the County and District Clerks

Association Listserve and a report on DNA requirements published by the Department of Public Safety (DPS). Responses to the questions were provided by the Comptroller of Public Accounts and the Department of Public Safety.

Does the officer collecting the court cost fees send them directly to the comptroller, as stipulated in the legislation?

No, the court cost fees in adult and juvenile probation cases related to DNA testing are to be deposited with the county treasurer and submitted to the Office of the Comptroller on a quarterly basis. The county may retain 10 percent as a collection fee.

Who will take the DNA sample?

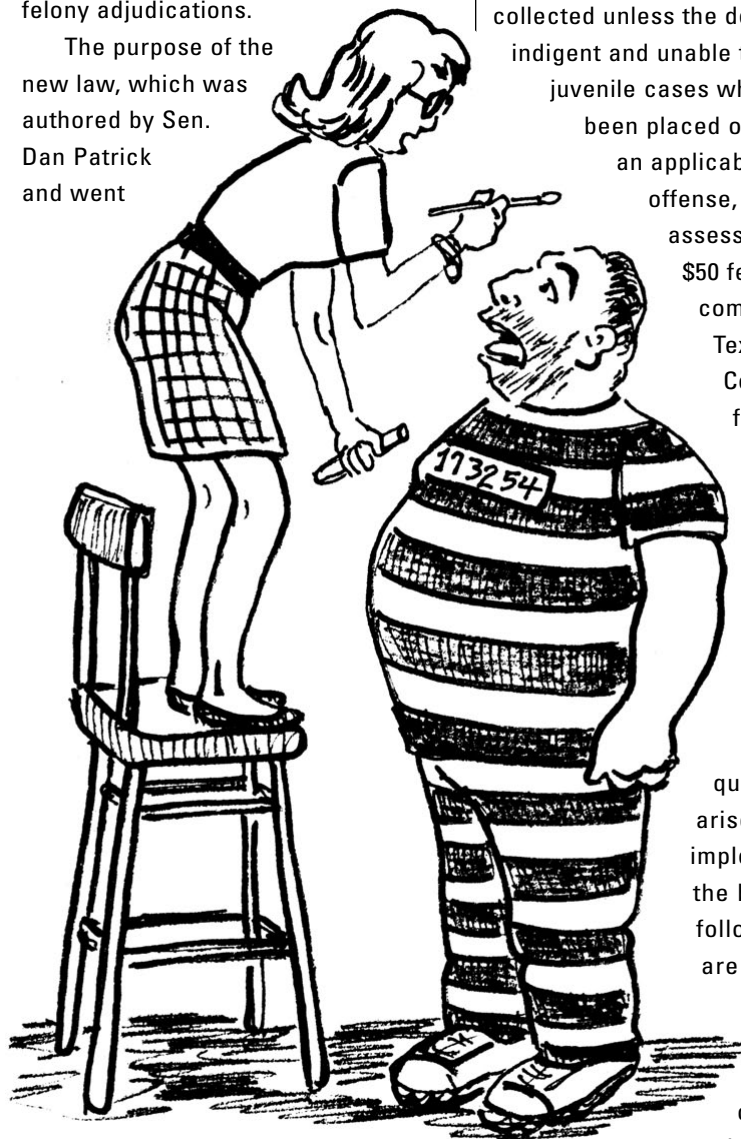
In juvenile cases, the Juvenile Probation Department will take the samples. If the juvenile is committed to TYC, the commission is responsible for collecting the sample.

In convicted adult felony probation cases, there are no stipulations as to who is to do the testing. The departments that normally administer the DNA swab tests are police departments, probation departments, and sheriff's offices. The department and/or person appointed to collect the saliva sample are required to watch an 8-minute instructional video prepared and distributed by the DPS.

The administering of the DNA saliva sample test will not require more than 3-5 minutes per defendant.

DNA Sampling

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Illustrator: Alvin Hale, District Court Bailiff, Tom Green County



Resources, Naturally

A sea of acronyms: More about TWDB's EDAP



By Paul J. Sugg,
TAC Legislative Staff

In recent years and recent issues we have discussed the Texas Water Development Board's (TWDB) state-wide Economically Disadvantaged Areas Program (EDAP). Since counties are often interested in making EDAP funding available to their citizens because cities or public water supply corporations within the county would benefit from access to the program, a somewhat regular review of the program may be in order. The Texas Water Code (Sec. 17.921) defines an economically distressed area as an area in which water supply or sewer services are inadequate to meet minimal needs of residential users as defined by TWDB rules; financial resources are inadequate to provide water supply or sewer services that will satisfy these needs; and where an established residential subdivision was located on June 1, 2005, as determined by TWDB. This economically distressed area must have a median income not greater than 75 percent of the median state household income for the most recent year for which statistics are available.

The program funds can be used to fund planning, land acquisition, design, construction for new service or improvements to water supply and wastewater collection and treatment facilities, including all necessary engineering work. Funds can be awarded as grants, loans, or a combination of grants and loans. The applicant, or its designee, must also be capable of maintaining and operating

the completed system and is responsible for securing any necessary water rights or permits, wastewater discharge permits, and any other required licenses.

Any political subdivision can apply for EDAP funding, including counties, cities, water districts, and nonprofit water supply corporations. However, in order to be eligible for consideration for EDAP funding, the county in which a city, water district or nonprofit water supply district seeking funding is located must adopt TWDB's Model Subdivision Rules (MSRs). (The model rules must also be adopted by any county adjacent to the Texas-Mexico border.) If the county is the applicant for EDAP funding, then the county must adopt the MSRs as well. If the applicant is a city or if any part of the project is located in the extra-territorial jurisdiction of a city, the city must adopt the MSRs. These model rules are enforced by the adopting county or city and by the Office of the Attorney General.

TWDB's rules (Sec. 363.504(a)(E), Texas Administrative Code) require a county or municipality required or authorized to adopt the MSRs to complete a training course of not more than two hours within one year of submitting an application for financial assistance from EDAP. The board also has a wealth of resources related to the MSRs, including an online training presentation, codes, model rules adopted by a county, sample documents, an EDAP manual, guidance documents

and forms and a list of frequently asked questions at www.twdb.state.tx.us/assistance/msr/index.htm.

The model rules were created by the 71st Legislature in 1989 to prevent the proliferation of developments with substandard or non-existent water and wastewater infrastructure. The MSRs are limited in their scope to the provision of water supply and wastewater treatment services

and the minimum setbacks required for these services. It is important to note the MSRs apply only to residential subdivisions with lots of five acres or fewer. Final plats must include these elements of the MSRs: a description of the methods of providing water and/or

wastewater services, and certification from a licensed professional engineer regarding the method for providing these services (for example, connecting to an existing public water or sewer system, creating a new public water or sewer utility, installing wells or septic systems). The certification must also state the facilities will accommodate ultimate development of the tract for a minimum of 30 years.

A final plat must include documentation that, if water and wastewater facilities are built at the time of final plat approval, the developer has executed an agreement with the county or the city to construct and install at the developer's expense all subdivision



EDAP

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Ethics Commission Advisory Opinion Raises Concerns for Officeholders



By Elna Christopher,
TAC Communications Staff

Most county officials have by now received a recent TAC Legal News alert or seen the messages Jim Allison, general counsel of the County Judges and Commissioners Association of Texas, sent out to certain listserves regarding an advisory opinion issued by the Texas Ethics Commission (Ethics Advisory Opinion **No. 484**).

The opinion raises questions regarding whether elected officeholders, including elected county officials, may have their transportation, meals and lodging expenses paid for or reimbursed by a corporation or labor organization in return for addressing an audience or participating in a seminar when the reason they are asked to participate is their public positions or duties.

The entire opinion may be viewed on the TAC Web site. The following language is a reprint of the summary as stated and contained in the four-page opinion:

Anytime an officeholder benefits from money spent by a corporation or labor organization, a fact question arises as to whether the corporation has given a thing of value to the officeholder for purposes of one of the laws under the Ethics Commission's jurisdiction. Pursuant to Title 15 of the Election Code, an elected officeholder may not accept transportation, meals, and lodging from a corporation or labor organization in return for addressing an audience or participating in a seminar if the officeholder's services are in connection with his or her duties or activities as an officeholder. This advisory opinion is intended to provide guidance for future activity and not intended to criminalize past activity.

As Allison noted in his listserve message, "This circular reasoning will surely lead to some absurd results. For example, if a (county elected official) is invited to address the annual chamber banquet and receive an award as Person of the Year, the (elected county official) may attend the event, address the audience and accept the award. However, both the chamber (a non-profit corporation) and the officeholder will commit a felony if the officeholder eats the meal."

Allison also wrote that the Ethics Commission "apparently recognized that this opinion is a drastic departure from prior interpretations of the law" by including in its opinion that it is intended for guidance for future activity and not intended to criminalize past activity. But as he wryly noted, "that will provide little comfort to someone who is indicted for speaking at a local civic event and consuming a plate of barbeque."

TAC, Allison, the Conference of Urban Counties, the Texas Municipal League and the Texas Association of School Boards are working together to address the absurdities of the opinion, and we will update county officials as matters develop. In the meantime:

Elected county officials should consult with their local district and/or county attorneys prior to accepting, or agreeing to accept, reimbursement payments for expenses such as transportation, meals and lodging. ➡

EDAP

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improvements required to comply with county regulations. This agreement must be secured by a bond, an irrevocable letter of credit, or an alternative financial guarantee such as a cash deposit. The agreement must include a detailed cost estimate for those unconstructed water and wastewater facilities necessary to serve each lot and a construction schedule for each significant element needed by these facilities. No land subdivided for residential purposes (for the purposes of the MSRs, this is considered to be tracts with lots of 5 or fewer acres) may not be sold or conveyed until the developer has received approval of a final plat of the tract and has filed and recorded that approved plat with the county clerk. The board also cautions that in the event a developer does not construct the required facilities, the county or the city must be prepared to take on the responsibility for completing the facilities using the developer's financial guarantee. This makes a careful review of the total project costs estimates especially important.

A county interested in exploring EDAP should do so carefully, with all necessary research and professional counsel. Take the time and employ the expertise needed to determine how best to weave all existing appropriate authority into the model rules to ensure development meets the standards necessary to ensure your county community continues to prosper. ➡

Emergency Management Training: Is Your County Current?

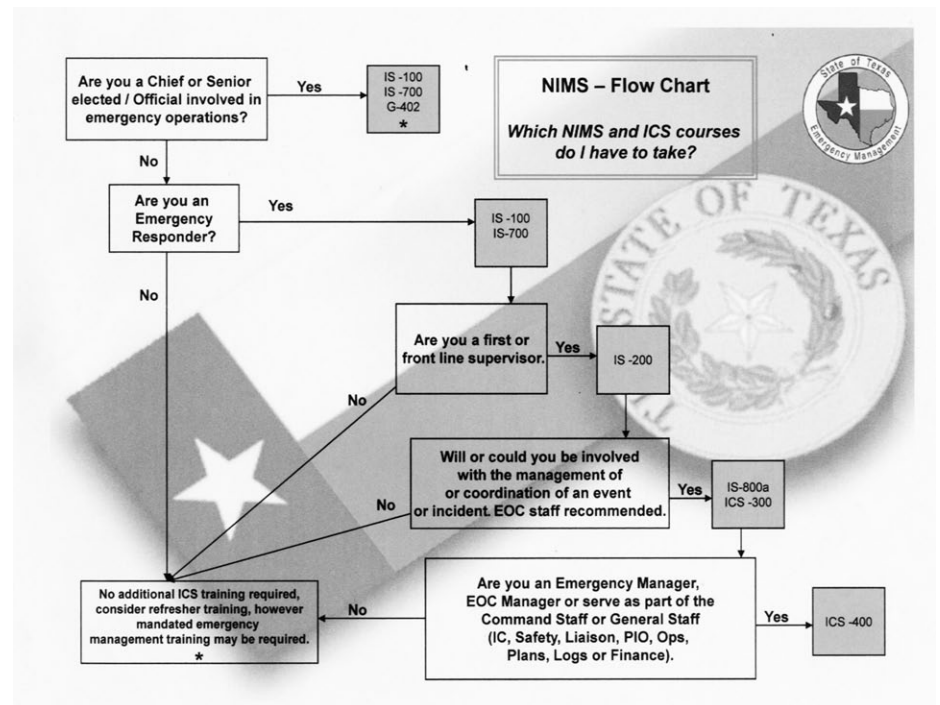
House Bill 1831 adds new emergency management training requirements



By Aurora Flores-Ortiz,
TAC Legislative Staff

In addition to existing National Incident Management System (NIMS) training, further requirements were added this past 81st legislative session for certain elected officials who have a role in emergency preparedness, response or recovery training. HB 1831, which became law in June, states that an elected law enforcement officer, county judge or certain appointed public officers with emergency preparedness duties shall complete a three hour training course no later than the 180th day after he or she assumes office.

The training will be provided by the Texas Division of Emergency Management (TDEM), a division of the Department of Public Safety. According to TDEM, this training is different and separate from any necessary NIMS training and will provide all the information needed for the officials to fulfill their roles in emergency management. The new course is not currently online, but TDEM and the Texas Association of Counties will provide a detailed public



announcement when it becomes available. Training is only required to be taken once.

Is your county NIMS compliant?

Beginning in 2003, President George Bush issued the Homeland Security Presidential Directive (HSPD)-5: Management of Domestic Incidents to develop and administer NIMS. Even though many counties have been implementing emergency preparedness plans for years, this overall system is designed to encompass all types of

hazards using coordinated resources. If a county responds to routine emergencies using its own resources, then NIMS participation is not required. But if the county's response requires mutual aid and federal reimbursement, the county must be in compliance with NIMS to receive federal preparedness assistance. For counties to be eligible for these federal funds, they must be able to certify NIMS compliance.

Compliance objectives can be found at www.fema.gov/emergency/nims. NIMS focus is to help counties work together with neighboring jurisdictions, state and federal resources to prepare for and protect against emergency incidents.

Which courses are required for elected officials?

NIMS Integration Center strongly recommends that, at minimum, elected officials who interact with multiple

Online Resources

Federal Government and Compliance:

www.fema.gov/emergency/nims/index.shtm

Nims Resource Center and Compliance:

www.fema.gov/emergency/nims/NIMSTrainingCourses.shtm

Texas Division of Emergency Management:

www.txdps.state.tx.us/dem/pages/index.htm

Emergency

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DNA Sampling

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If a defendant convicted of a felony is placed on community supervision or deferred adjudication in multiple cases, is the \$34 fee charged in all cases?

No, the fee should be charged only once.

How much do the kits cost?

The kits are furnished by DPS at no charge.

If there are no DNA swab test kits available, what should we do?

Presently, DPS is backlogged on orders for approximately 7,000 kits. Various departments are making notes in defendant's files to take DNA samples when the kits become available. DPS is anticipating filling the orders for the backlogged kits within the next six weeks.

If you have additional questions concerning the implementation of the new legislation, please contact Rebecca Vieh, Department of Public Safety, at (512) 424-2387 or rebecca.vieh@txdps.state.tx.us or the Commission's Legal Help Desk at (512) 424-6721 or legalinfo@tjpc.state.tx.us.

For more information on this article, contact Nanette Forbes, TAC Legislative Liaison, at (800) 456-5970 or nanettef@county.org. 📍

LBB Survey Results Offer Insight to Fiscal Process



By Tim Brown,
*Senior Analyst, County
Information Project*

In August of this year, the Legislative Budget Board (LBB) sent a survey to the

local officials who had assisted with the preparation of fiscal notes for bills of the 81st Legislative Session. In October, the LBB released the findings from its survey in a short report, "Summary of Feedback from Survey on Local Government Fiscal Note Process."

The most welcome part of the report is the open-ended question section, where the LBB lists the respondents' comments and questions. But the LBB doesn't just list the comments — the report includes the agency's response to each.

Although the report is only eight pages long, it offers fascinating insight into the thought processes of both the LBB analysts who work with local governments and the local officials who provide the information used by those analysts. Anyone interested in fiscal notes or the legislative process should find the time to review this report in its entirety. In the meantime, the following snippets from the report might pique your interest.

In the past, we've heard — and voiced — several complaints about the process. These common complaints were reiterated to the LBB through the survey. Here's a few of those comments, listed in bold, and the LBB's responses.

Read the Report

Want to read the full results of the LBB survey? Contact Tim Brown at (512) 478-8753 or timb@county.org and request a copy of the report.

There is not enough time to respond [to the fiscal note information request].

"Unfortunately, the short turn-around time is a result of the rules established by the legislature and is out of our hands."

"The LBB requests add to our workload; therefore, limited staff are having to do additional research."

While no commenter actually said, verbatim, "We're too busy to respond," a number of comments, such as the one above, addressed this issue. The LBB gave the following response:

"We are aware that our requests place an additional burden on local governments and try to be sensitive to that. We do not take lightly your generosity of time from you and your staff. We hope, too, that you understand that this process is mutually beneficial as it ensures the LBB has the data it needs to prepare fiscal notes and it ensures the legislature knows how proposed bills will affect your local government entity."

LBB Survey

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TAC Names Legislators Friends of County Government



By **Melissa Johnson**,
TAC Legislative Staff

The Texas Association of Counties (TAC) has named nine state legislators Friends of County Government for their dedication to working for the betterment of counties and their taxpayers.

Rep. Yvonne Gonzalez Toureilles, Rep. Tryon Lewis and Rep. Charlie Geren were recently honored with the award. TAC invited county officials from the representatives' home districts to attend each Friend of County Government award ceremony, which took place in commissioners courts throughout the state.

Additional recipients are House Speaker Joe Straus, Sen. John Carona, Sen. Leticia Van De Putte, Sen. Wendy Davis, Rep. Ruth Jones McClendon and Rep. Drew Darby.

TAC Executive Director Karen Ann Norris noted the valuable individual contributions of each legislator and remarked on one similarity among them — an unwavering support of local control.

"These legislators have proven themselves true friends of county



Rep. Tryon Lewis accepts the Friend of County Government award at the Ector County Commissioners Court meeting Sept. 28. Also pictured are Andrews County Judge Richard Dolgener and Ector County Judge Susan Redford.



Rep. Yvonne Gonzalez Toureilles displays the Friend of County Government award she received in the Jim Wells County Commissioners Court Sept. 14. Also pictured, from left, are Jim Wells County Commissioner Wally Alanis, Commissioner Javier Garcia, Jim Wells County Judge Arnoldo Saenz, Commissioner Zenaída Sanchez and Commissioner Ventura Garcia.

government through their consistent support of decision-making at the local level, especially when it comes to revenue and taxes," Norris said. "They understand that property taxpayers benefit from local control, instead of the state's imposing a one-size-fits all system on Texas' 254 diverse counties."

- TAC chose **Straus** as a recipient of the Friend award for his abilities as a leader, which brought the House back into an era of civility, reasoned discourse and trust between members.
- **Carona** was chosen as an award recipient for his steadfast efforts and forward-thinking views on transportation planning and the resources needed for improving

transportation in our fast-growing state.

- **Jim Wells County Judge L. Arnoldo Saenz** presented **Gonzalez Toureilles** with a plaque in the Jim Wells County Commissioners Court Sept. 14. Gonzalez Toureilles was recognized for her hard work on creating the much-needed technology fund, backing of counties on overweight permits and carrying bills to assist counties and their jails with the impact of parole violators.
- **Lewis** received his award from **Ector County Judge Susan Redford** Sept. 28 during the Ector County Commissioners Court meeting. Lewis was honored for his earnest attempt to correct the mineral valuation

Awards

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Upcoming Awards

Rep. Drew Darby will be honored at 8:30 a.m., Tuesday, Nov. 10, in the Tom Green County Commissioners Court.

Sen. Leticia Van de Putte and **Rep. Ruth Jones McClendon** will be recognized at 11 a.m., Tuesday, Nov. 17, in the Bexar County Commissioners Court.

Sen. Wendy Davis will receive her award at 10 a.m., Dec. 8, in the Tarrant County Commissioners Court.

Summary of the General Appropriations Act

Other Factors Affecting the \$182.3 Billion State Budget



By Paul Emerson,
TAC Legislative Staff

Editor's note: This article is the second in a series about Senate Bill 1, also known as the General Appropriations Act. The first article on SB 1 was published on page 16 of the June 2009 County Issues newsletter.

On Sept. 1, the new state budget began the 2010-2011 biennium for more than 200 state agencies. Over the next two years, this budget will provide funding for various grants and other specific programs that will have a definite fiscal impact on counties. When the first article of this series was published, Governor Rick Perry had not yet released his line-item veto that reduced the appropriations bill by \$288 million in All Funds.

Even though the budget grew by 8.6 percent and stayed within the projected growth rate range set by the Legislative Budget Board (LBB), the Economic Stabilization Fund, better known as the "Rainy Day Fund," went untouched during this last legislative session. The Rainy Day Fund is expected to increase to \$9.1 billion at the end of fiscal year 2011. However, it is anticipated that the Rainy Day Fund will not prevent a structural deficit from occurring in 2012-13. Remember three years ago, Governor Perry was successful in pushing a plan to cut school property taxes by \$15.7 billion over three years. Part of the plan included a new business tax and an increase on cigarette taxes, which by all accounts so far, may not be enough to adequately sustain the property tax cuts as originally anticipated.

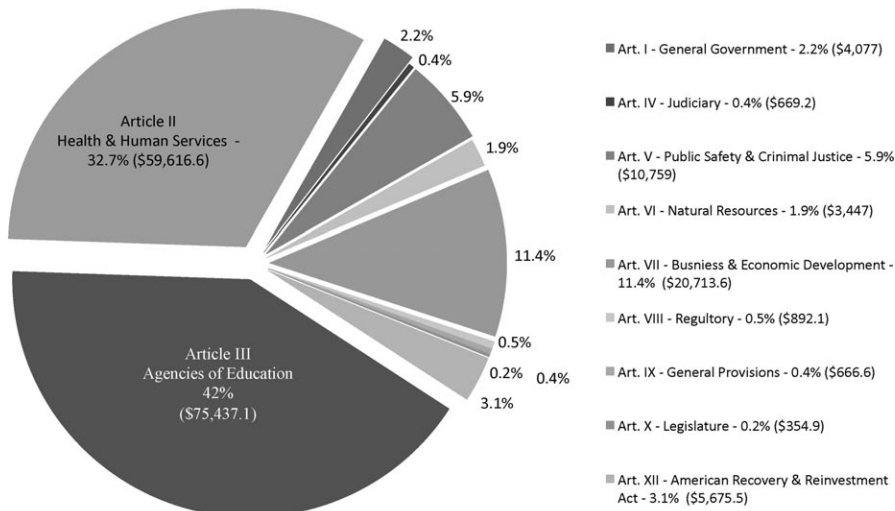
As shown in the pie chart, the General Appropriations Act (GAA) is divided

Appropriations

continued on page 12

State Spending by Government Functions
\$182,310.3 Millions - All Funds

(2010-2011 Biennium)



Source: Legislative Budget Board

Emergency

continued from page 6

jurisdictions and agencies during emergencies should complete **FEMA IS-700: NIMS, An Introduction** and **ICS-100: Introduction to Incident Command System**.

Which county staff are required to receive training and what courses should they take?

Please see the NIMS flow chart on page 6 for helpful course information. Please note that courses beginning with "IS" are basic courses offered free online; courses offered in a classroom setting begin with "ICS."

Sign Up

Free NIMS courses ICS 700 and ICS 100 are being offered for finance personnel Dec. 10 and 11 at the San Angelo EOC, 8485 Hangar Road, San Angelo, TX 76904. Instructor: Captain Steve Mild, Tom Green County Sheriff's Department. To register, please contact either Captain Mild at steve.mild@co.tom-green.tx.us or Dianna Spieker at dianna.spieker@co.tom-green.tx.us.

For further information on NIMS/ICS training, officials can also contact their local Council of Government or the Texas Association of Regional Councils (TARC) at www.txregionalcouncil.org or (512) 478-4715.

For more information on this article or on the December San Angelo training, please contact TAC Legislative Staffer Aurora Flores-Ortiz at aurorafo@county.org or (800) 456-5974. 🗺️

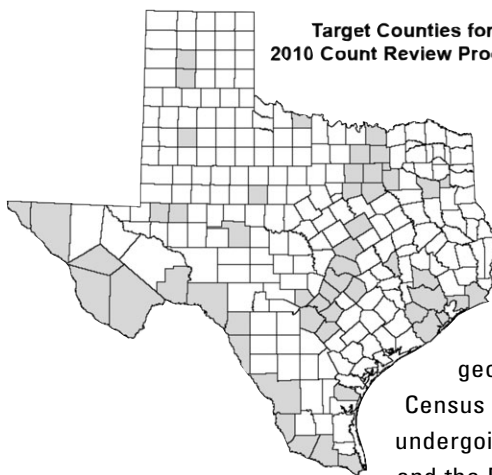
Census 2010 Count Review Program Aims to Improve Data Accuracy



By Bruce Barr

TAC Geographic Information Systems Analyst

In late 1975, President Gerald R. Ford signed Public Law (PL) 94-171 requiring the U.S. Census Bureau to provide to the states the data necessary to conform to the mandates of the Voting Rights Act of 1965. The basis of PL 94-171 is the belief that data collection is actually mandated by the U.S. Constitution to ensure equal representation in our state legislatures and Congress and the only way to ensure the "one person, one vote" provisions of the Voting Rights Act. Information mandated for Census Bureau collection and reporting to the states includes age and racial demographics, as well as human count and boundary geography. These boundaries and counts are the backbone of political redistricting and grant and funding distribution programs. Since 1980, the first decennial census



Target Counties for
2010 Count Review Process

conducted after PL 94-171, a number of steps have been enacted to allow states and local governments to review the data provided by the census before the final data is published. For the 2010 Census, the programs in place for local government review include the annual Boundary and Annexation Survey sent to all legally defined geographic areas; the Local Update of Census Addresses Program, which is undergoing its appeal process this fall/winter; and the Boundary Validation Program, which will

be starting up early summer 2010.

For Texas, the State Data Center (SDC), located at the University of Texas at San Antonio campus, is actively involved in the 2010 Count Review Program. The SDC is verifying the residential addresses that will receive a census form next March and April. Using 9-1-1 addressing and appraisal district parcel data, the SDC is comparing address locations for single and multifamily housing provided by the Census Bureau to locally supplied addresses.

While performing a review of all 254 counties would be optimal, the SDC is targeting 54 counties based on population growth, border contact and past history of reported count errors. By conducting a preliminary review of count statistics before their official release, the SDC hopes to correct previous undercounts and help keep resources in Texas. According to Karl Eschbach, Texas State Demographer, removing inaccuracies in this year's count is key to ensuring the state receives the funding it deserves.

2010 Census

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Awards *continued from page 8*

problem and his work on juvenile justice issues.

- Tarrant County Commissioner and TAC President **J.D. Johnson** presented **Geren** with the Friend award Oct. 20 in the Tarrant County Commissioners Court. Geren was recognized for his consistent support of local elected officials.
- **Darby** will be presented with an award in Tom Green County Commissioners Court Nov. 10. The court commends the representative for his work on House Bill 3398, which maintains local decision-making regarding county finances for county treasurers.
- **Van de Putte** will be recognized in the Bexar County Commissioners Court Nov. 17 for her leadership as the Senate Democratic Caucus chair and work with other senators on the issue of local control.
- **McClendon** will also be honored by the Bexar County Commissioners Court Nov. 17 in a joint ceremony with Van de Putte. The representative was chosen to receive the award based on her diligent endeavors to preserve the integrity of the juvenile justice system and support of counties on the Juvenile Justice Conference Committee.
- TAC named **Davis** a Friend of County Government for her unswerving allegiance to preserving local control, particularly as it relates to maintaining our representative democracy by having locally elected officials make the decisions on revenue and taxes. Davis will receive her award in Tarrant County Commissioners Court Dec. 8. Additional award ceremonies are currently being scheduled. 📍

LBB Survey *continued from page 7*

Remember, that any time you are too busy to respond, we fully understand. It does help us to know if you are not going to be able to provide data for a particular request, via a quick e-mail (e.g., "Can't help this time."), however, so we will know whether we need to make other arrangements to obtain data."

We didn't get asked to provide information on a bill that was important to our county.

"We may have obtained information from another source, or the bill may not have been assigned to the LBB local government analyst. Whenever you are aware of a bill that would have a significant fiscal impact on your local government entity, feel free to submit the information to the LBB local government analysts even if you have not received a request."

LBB didn't use the data we provided in the fiscal note. The following is only part of the lengthy response to this comment. See the full report for the complete response.

"Without knowing the specific bills for which an entity submitted data and for which the fiscal note reported contrary to that data, we can respond to the first issue using only general assumptions. It could be that your information was not received prior to our deadline for submitting the fiscal note or information received from another source indicated no fiscal impact (or no significant fiscal impact) and was explained in a manner that appeared sound to us. We do try to include all responses, even when there is conflicting data; however, there are times when a judgment call is made based on any number of reasons."

"We would prefer that the associations be asked the most often and let them take the lead on responses for local governments." While this comment has been made to TAC in the past, it has not been heard as often as the preceding comments. I've added some additional comments to the LBB's reply which are included below, noted by inset bullets.

"Relying solely on the associations would make our job easier, too; however, there are several reasons we include the individual entities as well," the LBB report said. Those reasons include the following:

1. "If we relied solely on the associations, we would overtax their resources."
2. "If we relied solely on the associations, although

they are highly regarded by the LBB and legislators, we would appear to be biased in their favor or to be their mouthpiece, whereas the LBB is completely neutral regarding possible fiscal impact."

★ **TAC:** *We try to be an honest broker when putting together costs estimates for bills, but appearances are important.*

3. "Not all entities represented by an association always agree with an association's position. Going directly to several local government bodies gives us broader data."

★ **TAC:** *Our statewide cost estimates are based on all responses received. That means if one county says high cost while another says low cost, our statewide estimate will be somewhere in the middle. Since the average may not represent a particular viewpoint about the bill, this has upset some county officials in the past.*

4. "The associations have at times responded only to those issues in which they have an interest rather than to all of our inquiries, so we need the locals themselves to augment or to act as a safety net to ensure we receive data."

★ **TAC:** *We try to respond to every LBB inquiry, although sometimes our response is that we have no data on which to base a cost estimate.*

"We do rely more on the associations for highly complex issues because we know they have been following those, studying them, and usually have gathered data already."

★ **TAC:** *We get data from anyone we can, often even before the session starts. That has included federal agencies, state agencies, businesses, and non-profit associations both in this state and in others. As a result, we sometimes are able to obtain information not readily available to most counties.*

"Rather than respond directly to the LBB, my entity's input will be provided through the association that represents us." To which the LBB responded,

"While that is good, please remember that we do not ask the associations about every bill. Therefore, we may send you a request that has not gone to the association, and if the individual entities do not respond, we will have no local input. If you want to, you could forward requests we send to you to your association just to make sure someone knows to send us something."

LBB Survey

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Appropriations *continued from page 9*

into 10 distinct category functions called articles (excluding Article XII, American Recovery and Reinvestment, which is a one-time funding source through the Federal Recovery Act).

Article III includes both public education and higher education, which makes up the largest expenditure in the budget — 42 percent, or \$75.4 billion. Article II, Health and Human Services (HHS) includes the second largest state expenditure — 32.7 percent, or \$59.6 billion. HHS is comprised of five agencies and according to the LBB, healthcare-related costs continue to be the state's single largest budget driver. Together, Articles II and III make up roughly 75 percent of the budget, totaling \$135 billion. The remaining 25 percent, or \$50 billion, is allocated to the other eight articles. With the exception of Article VII, Business and Economic Development, which makes up 11.4 percent of allocations, the remaining seven articles combined equal less than 10 percent of the budget.

Below is a brief explanation about the program and how those particular funds are facilitated at the local level.

Article I: Texas Historical Commission (Courthouse Preservation Program)

SB 1 appropriates \$4.1 billion (2.2 percent) for Article I that consist of nearly two dozen agencies, including several statewide elected offices. These agencies include the Office of the Attorney General, Comptroller of Public Accounts and the Office of the Governor. Included in Article I is the Texas Historical Commission, which administers the popular grant-based Texas Historic Courthouse Preservation Program. Since its inception in 1999,

with \$50 million to initiate the program, the courthouse preservation program has assisted with the restoration of 68 county courthouses.

During the current 2010-11 biennium, \$23.6 million (mostly from general obligation bonds) has been allocated to the program. This is \$36.8 million less than was allocated in 2008-09.

Article I: Trusteed Programs within the Office of the Governor (Drug Courts)

\$3.2 million has been set aside in grants to assist counties in establishing drug courts in hopes of reducing recidivism. Bexar, Collin, Dallas, El Paso, Harris, Hidalgo, Tarrant and Travis counties have implemented a drug court. As of September 2009, Texas had 64 drug courts and 16 in the planning stage. During the 79th Legislature, the passage of HB 2193 overhauled the probation system and required counties with a population of 200,000 to establish a drug court, but only if state or federal funding was available. Governor Perry vetoed HB 2193 for reasons unrelated to the provisions of drug courts.

Article I: Library and Archives Commission (Aid to Local Libraries/Loan Star Libraries Grants)

SB 1 appropriated \$14.8 million under the Loan Star Libraries Grant Program for the purpose of aiding local libraries. These funds are distributed annually to accredited libraries across Texas, including 121 county libraries. This is a \$3.5 million increase compared to 2008-09.

Article I: Secretary of State (Help America Vote Act)

\$44.1 million, mostly in federal

funds, has been allocated for equipment to meet voting systems standards and other election procedures. This is a \$12.3 million decrease compared to 2008-09.

Article II: Department of State Health Services (County Indigent Health Care)

\$14.4 million has been allocated to fund County Indigent Health Care Program reimbursement for participating counties, which is a decrease of \$352,000 compared to 2008-09. Usually, between 13-20 counties participate on an annual basis, even though 100 counties are eligible.


Article II: Department of State Health Services (Rider No. 82: HIV Testing)

\$8.8 million has been set aside to increase testing for HIV in high morbidity areas, with preference going to Dallas and Houston, or primary care clinics associated with large indigent care providers. Since this is a new rider, details are still in the preliminary stage.

Article III: Texas Engineering Extension Services (Rural Volunteer Fire Insurance Account)

\$2 million has been set aside to supplement annual premium insurance coverage for volunteer firefighters across Texas. These funds are available on a first-come, first-served basis. This amount is a slight increase — \$500,000 — from 2008-09.

In the next *County Issues*, Article V, Public Safety and Criminal Justice and Article VI, Natural Resources will finish out this series on the GAA.

For more information, contact Texas Association of Counties State Financial Analyst Paul Emerson at (800) 456-5974 or paule@county.org. 

Legislators to County Officials: Get Involved

Highlights from the CJCAT conference



By Elna Christopher,
TAC Communications Staff

Two state senators led off an informative array of legislative speakers at the 87th annual conference of the County Judges and Commissioners Association (CJCAT) in Corpus Christi Oct. 5-8.

Senators Royce West (D-Dallas) and Carlos Uresti (D-San Antonio) both urged county officials to be involved in the legislative process, including important issues taken up by committees during the interim, such as changing a 2007 law that resulted in tax shifts from oil and gas properties to local homeowners and business owners in many counties, as well as continuing the battles against caps and unfunded mandates.

Uresti sought to correct the valuation problem in the 81st session with his SB 2557, which passed the Senate but died in the House. "We're prepared to pre-file that bill in November," Uresti told the audience. "And don't assume because you've got a good senator or good representative that your interests will be looked after," he added. "Reach out to us — let us hear from you. Sometimes things come in under the radar."

West, chair of Senate Intergovernmental Relations, warned of the possibility of more unfunded mandates being introduced in the 82nd Legislature in 2011. "The state looks to counties to fill gaps and often without funding. And it's not getting any better," West said, noting indigent

defense, mental health and health care as areas in which counties often find the states forcing increased unfunded mandates on them.

West said the state's economy is in a downturn with lower appraisals in many places and less revenue for counties. "Therefore, it's very important that the state should not place any additional restrictions on you in the form of revenue and appraisal caps...I will continue to support your efforts regarding (caps) — you have my word."

West mentioned HB 2833, which gives counties limited authority to impose building codes in unincorporated areas. "This represents a dramatic change in the relationship between county government and state government," he said, adding that he's asked to conduct an interim study to monitor and get feedback on how counties are implementing the new law.

Regarding the health care debate in Washington, West said, "the fact of the matter is we're going to have to do something about health care," noting that one-third of the state budget is for health and human services and that too many people end up in emergency rooms because Texas ranks last in insured persons. "I'm asking you to take off your red jerseys and your blue jerseys (referring to the two political

"When you come to Austin, don't just go see the people who like you."

— Rep. Joe Heflin

parties) and put on your Texas jerseys." (And don't worry, you A&M and Texas Tech folks; he didn't mean burnt orange with that remark!)

West said the cost of health care "is going to end up being a noose around all our necks" if something is not done.

Rep. Garnet Coleman (D-Houston) continued the discussion of health care reform during the next panel of four House members, including him, Rep. René O. Oliveira (D-Brownsville), Rep. Todd Hunter (R-Corpus Christi) and Rep. Joe Heflin (D-Crosbyton).

"We're all joined at the hip" regarding health care, said Coleman, chair of House County Affairs. "This is very important: the people who you pay for now through indigent health care will have insurance paid by the state and federal government" if a meaningful health care reform bill passes Congress.

Coleman also pledged to vote against any future caps bill, citing Colorado as a state where revenue and spending caps did not work.

Oliveira, chair of House Ways and Means and Legislator of the Year for both the Texas Association of Counties (TAC) and CJCAT, likewise was blunt in his assessment of lower caps. "I've always opposed these. I've always

Get Involved

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AG Opinions

ISSUED

GA-0740: Honorable Anna Laura Cavazos Ramirez, Webb County Attorney, authority to limit the frequency of property appraisals by an appraisal district to once every three years. **Summary** An appraisal district and its participating taxing units are not authorized to submit an issue to the voters for an election to require a particular appraisal schedule, whether initiated by petition or otherwise. Sections 23.01, 23.23, and 25.18 of the Tax Code do not prohibit conducting appraisals every third year rather than annually.

GA-0741: Honorable John Whitmire, Chair, Committee on Criminal Justice, Texas State Senate, whether the section 143.105, Local Government Code, prohibition against certifying a person 45 years or older for a beginning position in a police department applies to the reappointment of a police officer under section 143.1251, Local Government Code. **Summary** We find no case law or statutory provision that says that a police officer who voluntarily resigns from a police department and is subsequently reappointed to the department pursuant to Local Government Code section 143.1251 is subject to the section 143.105 prohibition against certifying a person forty-five

years or older for a beginning position in the police department.

GA-0742: Mr. Jon Weizenbaum, Commissioner, Texas Department of Aging and Disability Services, whether the Texas Department of Aging and Disability Services may authorize assisted living facilities to provide nursing services to the terminally ill and other residents. **Summary** The Legislature authorizes assisted living facilities to provide specific services: food, shelter, personal care services and the administration of medication. In addition, the Legislature allows home and community support services agencies and independent health professionals to provide services within their scope of practice to a resident of an assisted living facility at the facility. However, the Legislature has not authorized the assisted living facilities themselves to provide nursing services beyond personal care services or the administration of medication. To the extent that the Department of Aging and Disability Services' Rule 92.41(e)(1)(B) authorizes the staff of an assisted living facility to provide residents with nursing services beyond those authorized by the statute, it is contrary to the express terms of the assisted living facility statute. ■

REQUESTED

RQ-0822-GA: Honorable Patrick M. Rose, Chair, Human Services, Texas House of Representatives, whether a Type A General Law Municipality may impose and enforce a nonpoint source pollution ordinance in its extraterritorial jurisdiction pursuant to section 26.177, Water Code.

RQ-0823-GA: Honorable Yvonne Davis, Chair, Urban Affairs, Texas House of Representatives, whether a sheriff may accept an administrative fee from a third party that contracts for the operation of the county jail.

RQ-0824-GA: Honorable Jane Nelson, Chair, Health and Human Services, Texas State Senate, whether a municipality is required to receive a petition signed by 20 percent of its qualified voters before calling an election to withdraw from a regional transportation authority.

RQ-0825-GA: Honorable James A. Farren Randal County Criminal District Attorney, whether a custodial parent may raise a defense to prosecution under section 43.24(c)(2), Penal Code,

governing sale, distribution, or display of harmful material to a minor.

RQ-0826-GA: Honorable Burt R. Solomons, Chair, State Affairs, Texas House of Representatives, whether the Governor is required to appoint a judge to the newly created 431st District Court in Denton County.

RQ-0827-GA: Honorable Byron Cook, Chair, Environmental Regulation, Texas House of Representatives, proper rendition of improvements to real property under section 25.08, Tax Code.

RQ-0828-GA: Honorable Isidro R. Alaniz, Webb and Zapata County District Attorney, whether a city manager of a general law municipality may simultaneously serve as a member of the board of trustees of an independent school district whose boundaries contain the municipality.

RQ-0829-GA: Honorable Frank J. Corte JR., Chair, Defense and Veteran's Affairs, Texas House of Representatives, whether a facility must have a license to perform medical abortions. ■

2010 Census *continued from page 10*

"A complete count of the Texas population during this census is vital to all Texans, to insure our state and its cities and counties receive a fair share of political representation and allocation of program dollars distributed through census-based allocation formulas," Eschbach said. "It has been estimated that more than \$400 billion of federal and state

program spending is allocated every year through funding formulas based in part on the count of population from the decennial census."

The November deadline for the SDC's 2010 Count Review Program is approaching. If you would like to find out how your county can provide data to the SDC, contact the Office of the State

Demographer at (512) 463-7659. To find out more about the U.S. Census Bureau's Boundary Validation Program for summer 2010, visit www.census.gov/geo/www/bas/bas_home.html.

For more information about this article, contact TAC Geographic Information Systems Analyst Bruce Barr at (512) 478-8753 or bruceb@county.org. 🗺️

LBB Survey *continued from page 11*

TAC will be happy to collect your fiscal impact responses to the LBB on any bill; address them to both timb@county.org and paule@county.org. However, since we

are not always contacted by the LBB, please be sure to let us know that your information needs to be forwarded! Otherwise, we may assume the information is being provided as a

courtesy copy.

For more information, contact Tim Brown, Senior Analyst, County Information Project, at (512) 478-8753 or timb@county.org. 🇹🇽

Get Involved *continued from page 13*

thought it was the ultimate act of arrogance to tell you how to spend your money. I don't see counties wasting money...I know there are some organized groups (for caps), but they don't understand what it costs to pave a road or carry out the constitutional duty for indigent health care."

Oliveira also urged county officials to inform the Legislature regarding county issues during the interim and when the next session begins. "Hold us accountable! I don't think I've seen enough of that from this group."

He emphasized how important the 2010 Census will be to Texas and local governments because much federal money is allocated based on population. "Texas and local governments will lose money if every body is not counted," Oliveira said. That will be particularly crucial because the state will have budget problems in 2011, facing a \$9 to \$11 billion deficit without having federal stimulus money to help. Oliveira said he believes dipping into the state's Rainy Day Fund "will have to be on the table" in 2011.

Hunter discussed his efforts on windstorm insurance for the Coast, his chairmanship of House Judiciary and Civil Jurisprudence and liability reform.

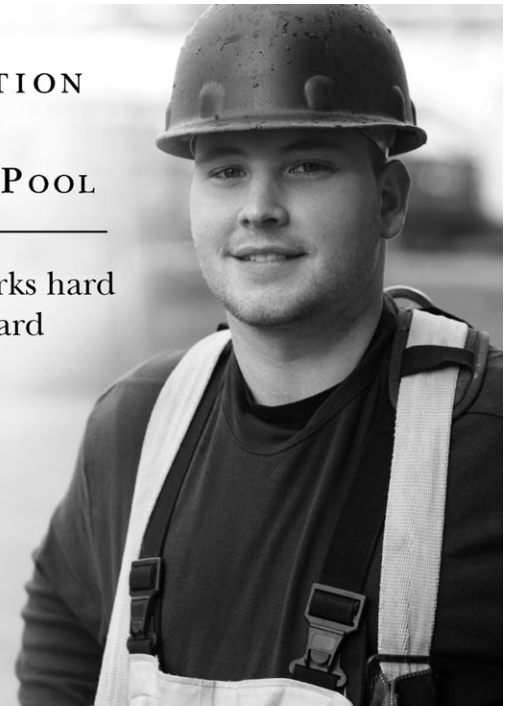
He also urged county officials to contact their legislators about issues.

Heflin, a former Crosby County judge, did the same. "When you come to Austin, don't just go see the people who like you," he said. "Go see the people who don't like you, and maybe you can educate them. And most of all, stick together."

Along with Oliveira's top award, the other legislators speaking to the conference received CJCAT Outstanding Service awards. And Hunter turned the table by presenting CJCAT President and San Patricio County Judge Terry Simpson with a framed copy of a House resolution honoring his work. 🇹🇽

TEXAS ASSOCIATION of COUNTIES RISK MANAGEMENT POOL

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From the Legislative Desk

By Carey "Buck" Boethel, Director of Governmental Relations

Policy Group Ponders Communities' Greatest Questions

It's not just something in the water! What makes a community a highly sought after, great place for people to live and work? What are the special and essential features of a region that are attributable to its prosperity? These and other critical questions and issues constitute a good part of the Policy Analysis Group study program for 2010. Read on, and see if these are the type of questions you're interested in discussing.

What are the impediments and negative features that impede prosperity and stifle growth? What positive characteristics exist among the fabric of a prosperous community that distinguishes it from another that is not so well off?

What are the essential elements of good local governance that make up and form a prosperous community? What do citizens want in a community they choose to live and

work in? Is a successful community one that's inhabited by a strong contingent of local leaders?

What are the dynamics of prosperity and can they be replicated, promoted and developed again and again? How can we best go about developing a process of taking inventory and identifying the essential elements of a community's prosperity? Are there statutory or structural provisions of county

government law which, if reformed, would help make communities in Texas more economically viable and, in general, more progressive?

In future editions we will list the Policy Analysis Group vacancies available for interested county officials.

*The best government is that
which teaches us to govern
ourselves.*

— Johann Wolfgang von Goethe

For information, please call Carey Boethel or Laura Nicholes at (800) 456-5974 or write careyb@county.org or lauran@county.org. 🇹🇽