

County *issues*

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Senate Committees Named

Lieutenant Gov.-elect David Dewhurst announced the following Senate Committee appointments.

Administration Committee has jurisdiction over all operational and administrative matters of the Texas Senate and sets the Senate local and uncontested calendar.

Chair: Sen. Chris Harris

Vice Chair: Sen. Juan Hinojosa

Members: Senators Mike Jackson, Kyle Janek, Leticia Van de Putte, Jeff Wentworth, John Whitmire

Business and Commerce Committee oversees all matters relating to the general business climate of Texas, including economic development.

Chair: Sen. Troy Fraser

Vice Chair: Sen. Kip Averitt

Members: Senators Kenneth Armbrister, Kim Brimer, Craig Estes, Mike Jackson, Eddie Lucio, Leticia Van de Putte and Tommy Williams

Criminal Justice Committee controls all matters relating to the penal code and the Texas prison system.

Chair: Sen. John Whitmire

Vice Chair: Sen. Tommy Williams

Members: Senators John Carona, Rodney Ellis, Juan Hinojosa, Steve Ogden and Bill Ratliff

Education Committee oversees all matters concerning public education and institutions of higher education.

Chair: Sen. Florence Shapiro

Vice Chair: Sen. Royce West

Members: Senators Kip Averitt, Kyle Janek, Steve Ogden, Todd Staples, Leticia Van de Putte, Tommy Williams and Judith Zaffirini

Note: Education will have a Higher Education Subcommittee chaired by Sen. West and including Senators Averitt, Janek, Staples and Van de Putte

Finance Committee will oversee all state budget and revenue matters.

Chair: Sen. Teel Bivins

Vice Chair: Sen. Judith Zaffirini

Members: Senators Kip Averitt, Gonzalo Barrientos, Kim Brimer, Robert Duncan, Kyle Janek, Jane Nelson, Steve Ogden, Florence Shapiro, Eliot Shapleigh, Todd Staples, Royce West, John Whitmire and Tommy Williams

[Please see Senate Committees, continued on page 2]

[Senate Committees continued from page 1]

Government Organization Committee will examine the organization of State government in an effort to improve efficiency.

Chair: Sen. Rodney Ellis

Vice Chair: Sen. Jeff Wentworth

Members: Senators Kenneth Armbrister, Teel Bivins, Kim Brimer, Bill Ratliff and John Whitmire

Health and Human Services Committee will provide oversight on all matters concerning public health and welfare.

Chair: Sen. Jane Nelson

Vice Chair: Sen. Kyle Janek

Members: Senators John Carona, Bob Deuell, Mario Gallegos, Jon Lindsay, Bill Ratliff, Royce West, and Judith Zaffirini

Infrastructure Development and Security Committee will oversee state transportation issues as well as homeland security.

Chair: Sen. Steve Ogden

Vice Chair: Sen. Gonzalo Barrientos

Members: Senators Bob Deuell, Rodney Ellis, Jon Lindsay, Frank Madla, Florence Shapiro, Eliot Shapleigh, and Jeff Wentworth

Intergovernmental Relations Committee will oversee all affairs between state and local governments.

Chair: Sen. Frank Madla

Vice Chair: Sen. Kim Brimer

Members: Senators Bob Deuell, Mario Gallegos and Jeff Wentworth

International Relations and Trade Committee will oversee all matters concerning trade relations with foreign countries

Chair: Sen. Eddie Lucio

Vice Chair: Sen. Eliot Shapleigh

Members: Senators Teel Bivins, John Carona, Craig Estes, Jane Nelson and Judith Zaffirini

Jurisprudence Committee will oversee matters pertaining to the court system and all areas of law except penal law.

Chair: Sen. Robert Duncan

Vice Chair: Sen. Mario Gallegos

Members: Senators Bob Kip Averitt, Teel Bivins, Chris Harris, Eddie Lucio and Royce West

Natural Resources Committee has jurisdiction on all matters concerning the conservation of natural resources and the control of land and water development.

Chair: Sen. Kenneth Armbrister

Vice Chair: Sen. Mike Jackson

Members: Senators Gonzalo Barrientos, Robert Duncan, Craig Estes, Troy Fraser, Juan Hinojosa, Eddie Lucio, Jon Lindsay, Florence Shapiro and Todd Staples

Note: Natural Resources will have an Agriculture Subcommittee chaired by Sen. Duncan and including Senators Lucio and Estes

Nominations Committee considers all gubernatorial appointments to facilitate the constitutional duty of the Senate to advise and consent.

Chair: Sen. Jon Lindsey

Vice Chair: Sen. Bob Deuell

Members: Senators Gonzalo Barrientos, John Carona, Chris Harris, Juan Hinojosa and Mike Jackson

State Affairs Committee will oversee all matters concerning state policy and the general administration of state government.

Chair: Sen. Bill Ratliff

Vice Chair: Sen. Todd Staples

Members: Senators Kenneth Armbrister, Robert Duncan, Rodney Ellis, Troy Fraser, Chris Harris, Frank Madla and Jane Nelson

Veterans Affairs and Military Installations Committee will oversee issues facing veterans and matters concerning military base closures.

Chair: Sen. Leticia Van de Putte

Vice Chair: Sen. Craig Estes

Members: Senators Troy Fraser, Frank Madla and Eliot Shapleigh

Note: Veterans Affairs will have a Base Realignment and Closure Subcommittee chaired by Sen. Shapleigh and including Senators Fraser and Madla 🗌

Senator Carona Files Bill to Increase License Reinstatement Fee

A bill providing for an increase in a license reinstatement fee would also require the Texas Department of Public Safety to remit \$15 of the fee to counties that maintain a certified breath alcohol testing program and employ a certified technical supervisor.

Senator John Carona's SB 191 proposes to amend Section 524.051 of the Transportation Code by increasing the license reinstatement fee from \$125 to \$140 for drivers who have their license suspended for failing to pass a breath alcohol test. Prior to Sept. 1, 2001, the fee was \$100.

Under provisions in the bill, drivers are still required to pay the fee to the Texas Department of Public Safety, but the bill directs DPS to remit \$15 of the fee to a county if the

officer making the arrest is a county peace officer in a county that maintains a certified breath alcohol testing program and does not use a DPS certified technical supervisor.

The bill states counties receiving the \$15 remittance may only use it to "defray the costs incurred by the county for the use of the services of a certified technical supervisor employed by the county in connection with the enforcement of this chapter."

The bill proposes an effective date of Sept. 1.

For more information regarding this article, contact Jozette Maxwell at 800-456-5974 or via email at Jozettem@county.org. 🗗

Indigent Task Force Extends Grant Use Period for Some Counties

The Task Force on Indigent Defense approved a recommendation Jan 16 that will give counties that received a reimbursement request letter in December 2002 an extended timeframe to use funds granted under fiscal year 2002 (FY02).

Under emergency rules approved for posting, the Task Force extended the deadline to Sept. 30, 2003. The emergency rules announcing the extension will be posted in the *Texas Register* and will only apply to those counties that received a reimbursement request letter last December.

Citing delays that hindered timely delivery of grant

checks and the limited timeframe offered to counties to expend Senate Bill 7 funds, the Task Force decided extending the timeframe for counties to show indigent defense costs would be better than having counties forward reimbursements.

The Task Force advised they will offer the extended period for reporting and will require counties to return any FY02 funds still unexpended at the end of the extension.

For more information regarding this article, contact Jozette Maxwell at 800-456-5974 or via email at Jozettem@county.org. 🗗

Comptroller Reports Revenue Estimate

Texas Comptroller Carole Keeton Strayhorn gave her revenue estimate Jan. 13 for the remainder of fiscal year 2003 and the upcoming 2004-05 biennium. Strayhorn reported that the state "will have \$7.4 billion less in 2004-2005 than appropriated for the 2002-03 biennium. This will amount to a total of \$9.9 billion shortfall through the end of the year if the Legislature passes a budget for 2003-04 that includes current program funding and obligations, Strayhorn said.

This report comes each year prior to a legislative

session and gives guidance to the Legislature on how much they have available to spend. Strayhorn explained that the "economy has suffered a triple play: the aftereffects of September 11th and the continued threat of war and terrorism; bursting of the dot com bubble and the drag on investment ignited by Enron and Worldcom financial scandals." She went on to point out that there has been a decline in sales tax revenue, which as she stated is the state's most important source of income. 🗗

Interim Committee Reports Published

Newly published interim committee reports from Senate Jurisprudence, House Judicial Affairs, and House Public Health committees recommend the creation of new drug courts, establishment of jail treatment programs for mentally ill individuals, legislation related to court costs, fees and fines, delay of judicial reapportionment and changes in trial court structure.

Starting with Senate Jurisprudence, the committee did extensive research on the collection, dispersal and accounting of court costs, fees and fines in civil and criminal cases. In an effort to streamline the current disarray of statutes and legislation referring to court costs, fees and fines, the report concluded that all referring statutes should be in one code (i.e. Texas Government Code). Furthermore, any legislation on this topic should be considered by only one legislative committee in each house of the legislature.

Although both the Office of the State Comptroller and the Office of Court Administration (OCA) collect data, there is no all-inclusive centralized database of what counties or cities are collecting in court costs, fees, and fines. Because of this, the state has no means of determining if statutes are being obeyed, and there are no procedures in place for the state to check if counties and cities are sending the appropriate amount of money to the state. The Comptroller relies on the accuracy of the clerks in reporting data.

Besides recommending that there needs to be consistent definitions of court costs, fees and fines, the committee recommended that the Comptroller "submit a cost estimate and proposal for the routine monitoring and reporting of data on costs and fees collected by municipalities and counties, to ensure that the State has complete information on the source of funds being collected by all courts, that each municipality and county is reporting in compliance with statute and that money is correctly being allocated to the appropriate funds."

In relation to fees, the committee also recommended the consolidation of the collection and remittance of the remaining criminal court costs and fees not covered in 1997, as well as any new costs and fees adopted by the Legislature after 1997. The committee recommended that all funds that receive deposits from court costs and fees be subjected to the Sunset Review process for further scrutiny.

A further recommendation by the Senate Jurisprudence Committee was that the Legislature not adopt a judicial reapportionment plan until more accurate

information is collected on the exact nature of each court's judicial burden (e.g. types of cases, personnel required, equipment and technology, administrative duties). The House Judicial Affairs Committee had a similar charge to plan for judicial redistricting and reports that "there is little interest in change." The committee, however, still proposed that any judicial redistricting plan should eliminate:

- noncontiguous districts;
- overlapping geographic judicial districts;
- courts in which less than 25 percent of the statewide average caseload are filed; and
- single judge districts.

On the topic of courts, the Senate Jurisprudence Committee made three recommendations relating to the structure of the trial court system:

- the OCA shall report to the Legislature the need for and explanation for an assignment of visiting judges (e.g. illness, backlog etc.);
- the Senate should adopt rules related to legislation that creates new courts, including criteria to create new courts, a single legislative committee for all bills creating courts and justification for new courts; and
- OCA should be required to submit an analysis of jurisdictional responsibilities of each Texas court, any overlap in jurisdictions and solutions for jurisdictional conflicts.

The House Judicial Affairs committee recommended that the Governor's Criminal Justice Division assist counties in establishing drug courts with the assistance of federal funds and further, to divert state prison funds for existing drug courts. Five counties currently operate drug courts: Dallas, Jefferson, Montgomery, Tarrant and Travis. On a similar note, the House Public Health committee has recommended the creation of specialized courts, such as mental health and/or drug courts, and also to establish in-jail treatment programs for inmates with mental illness and substance abuse problems.

Members of the current Legislature will choose whether to introduce legislation regarding any of the aforementioned recommendations.

Officials who wish to receive a complete copy of any interim report should contact Teresa Aguirre at 800-456-5974 or via email at TeresaA@county.org. 📧



Washington Watch

By Sue Glover

Governmental Relations Manager

108TH CONGRESS HAS RETURNED

The 108th United States Congress convened on Jan. 7 and immediately began working on the eleven appropriations bills, which were not enacted during the 107th Congress. An omnibus measure (H J Res 2) combines the unfinished appropriation bills into one. Another joint resolution was enacted (HJ Res 1) by the House and Senate which will continue the operations of the government until Jan. 31, 2003.

In preparing for the congressional session, the National Association of Counties Board of Directors met in Dallas December 13-14 to discuss key legislative priorities. Although there are roughly 39 legislative priorities identified by steering committees, the six key issues are as follows.

- **Remote Sales Taxes:** Support the collection and distribution to states and counties of current sales taxes due on purchases made by mail order and over the Internet. Support the Streamlined Sales Tax System and urge states to pass such model sales tax legislation.
- **TEA-21 Reauthorization:** Undertake a comprehensive legislative effort to reauthorize the highway, transit and safety programs in TEA-21, with a particular emphasis on funding that meets the growing transportation needs of county government, on implementing a workable environmental streamlining process, on improving local government input in the planning and programming of federal funds and the development of highway and transit programs that provide for safety, security and reliability.
- **Funding Election Reform:** Support multi-year funding to implement election reform as authorized by the Help America Vote Act of 2002.
- **Funding Homeland Security:** To seek enactment of NACo's basic policies on Homeland Security – the "First Responders Initiative" – including a strong emphasis on prevention, regional planning, specialized training, interoperability and an "all-hazards approach" to emergency management;

- **Oppose unfunded mandates and preemption:** Oppose unfunded mandates from Congress, and the Administration, and oppose legislation or regulations that preempt county authority, such as land-use regulatory authorities, and other locally based functions.
- **Health Care: Medicaid, Uncompensated Care and Public Health:** NACo has chosen Health Care as a top priority because of its impact on county budgets and its ripeness in the legislative process. Health care must be assumed to include mental as well as physical health.

It was pointed out by several board members that these are not the sole issues the NACo staff will be working on and that all the issues brought by the steering committees are just as important. ➡

Qualifications Bill Filed

A recently filed bill would require that a candidate for the office of sheriff or constable hold a permanent peace officer license prior to running for the office. Rep. Dan Ellis (Livingston) filed HB 287 amending Sections 85.0011 and 86.0021 Local Government Code to accomplish this.

Currently, a newly elected sheriff or constable has 270 days after the date they take office to provide evidence to the commissioner court of the county in which they serve that they have been issued a permanent peace officers license from the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE).

Ellis carried similar legislation (HB 385) last session. The bill passed the House but was left pending in the Senate Committee on Intergovernmental Relations.

For more information regarding this article, contact Rick Thompson at 800-456-5974 or via email at rickt@county.org ➡

Do THE RIGHT THING

April 2-4, 2003

Doubletree Hotel
6505 Interstate
Hwy. 35 North
Austin, Texas

"The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or (even) appear to falter." -John F. Kennedy

COUNTY MANAGEMENT INSTITUTE 2003
Texas Association of Counties
ETHICS AND ACCOUNTABILITY



ethics and accountability in government is of utmost concern to Texans and is the theme of the 2003 County Management Institute.

The news of corporate America "cooking the books" brings the importance of ethics in all aspects of government and business to the forefront. This year's Institute will shed some light on the often-gray areas of ethics in public service with notable speakers in general sessions and four concurrent tracks that include general management, finance for small and mid sized counties, human resources and risk management. Keynote speakers include veteran lawmaker and former dean of the LBJ School Max Sherman, and Mac McGuire, former Lt. Colonel in the Texas National Guard who is regarded as a highly

motivational speaker with an uncanny sense of humor.

Concurrent Tracks

- **General Management.** Managers and their staff will acquire valuable information to help them perform more effectively. Sessions include the "Company You Keep," "System Thinking" and "Management in Government."
- **Human Resource Management.** Texas attorneys will clarify and update the Fair Labor Standards Act, Health Insurance Portability and Accountability Act, Fair Credit Reporting Act and Equal Employment Opportunity Commission.
- **Finance Management.** Let's get to the *nuts and bolts* of budgets for small and midsize counties. Sessions will examine the budget process, hear from an authority on the new county fiscal reporting model and obtain information about financial reporting that must be complied with in each county.
 - **Risk Management.** This track explores accident investigations as a way to prevent severe injuries or fatalities; the costly issue of mold in the workplace; ways to provide affordable health care for employees; the escalating costs of Workers Compensation and what can be done about it.

Continuing Education

Applications are filed with the appropriate governing bodies to approve continuing education hours for auditors/CPAs, clerks, commissioners, tax assessor-collectors, treasurers and certified law enforcement officers claiming Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) hours.

Host Hotel

Enjoy the convenience and comfort of the Doubletree Hotel, located close to shopping and restaurants at 6505 Interstate Hwy.35 North in Austin. Call (800) 222-Tree or (512) 454-3737 for reservations. Refer to the Texas Association of Counties' County Management Institute room block to receive special rates.

Single - \$80.00 * **Double - \$99.00 ***

* Exclusive of applicable state and local taxes. Complimentary self-parking is available. After **March 11, 2003** all rooms are subject to availability and **price increase**.

REGISTER BY MARCH 11 AND SAVE!

The cost for early registration is \$175.

Take advantage of these low rates by making your reservations early. Those reservations made **after March 11 will be \$200.**

Cancellation Policy

The conference registration fee is transferable to another person within your organization to attend this conference without additional charge. Request for refunds must be submitted in writing (fax acceptable) by March 31. An administration fee of \$10.00 is charged for all requests received in the Association office by **March 31**. After **March 31**, the administration fee is one half the registration fee.

Look for more information on TAC's website,
www.county.org **and watch for a mailer.**

SCHEDULE OF EVENTS

WEDNESDAY, APRIL 2, 2003

9:00 a.m. – 5:00 p.m.	Registration
9:00 a.m. – 1:00 p.m.	Pre-conference meetings
1:00 p.m. – 5:00 p.m.	General Sessions
5:00 p.m. – 6:30 p.m.	Reception

THURSDAY, APRIL 3, 2003

8:30 a.m. – 5:00 p.m.	Concurrent Education Sessions
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FRIDAY, APRIL 4, 2003

8:30 – noon	General Sessions
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2003 County Management Institute Registration Form

Name _____
County _____ Title _____
Address _____
City/Zip _____ Phone _____
Fax _____ Email _____

☐ Payment Enclosed

☐ Payment to Follow

☐ Please Invoice

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

☐ Finance Management ☐ General Management ☐ Human Resource Management ☐ Risk Management

Complete registration form and return with payment to Texas Association of Counties, CMI 2003,
P. O. Box 2131, Austin, TX 78768, FAX to (512) 477-1324 or register online at www.county.org



Bill to Regulate Certain Inter-County Groundwater Transfers Filed

An East Texas House member has filed a bill designed to regulate the transfer of groundwater out of rural counties that lack groundwater districts that might otherwise regulate such transfers. Similar to legislation he filed last session, Rep. Wayne Christian's HB 423 requires that increased or new pumping of exported groundwater in certain rural counties must be permitted through the Texas Commission on Environmental Quality. (The bill's provisions do not apply to any groundwater transfer from a groundwater conservation district or a county with a population of more than 50,000.)


Before deciding to issue a permit, TCEQ must inform the following of the permit application: each water supply system that uses groundwater from the aquifer from which the groundwater is to be pumped, the commissioners court of the county from which the groundwater water is to be transferred, mayors of cities of more than 1,000 in that county, each groundwater conservation district whose jurisdiction includes the aquifer from which the proposed transfer is to take place and legislators from the county from which the groundwater is to be transferred as well as the county to which the water is to be transferred.

The bill requires that the applicant must publish

public notice of the proposed transfer and that an evidentiary hearing be held by TCEQ, if an application is contested under the agency's rules. In considering a permit, the agency would have to look at water availability in the transferring and receiving counties and the uses to which the proposed transferred water is to be put, as well as the effect the proposed transfer would have on aquifer conditions, groundwater depletion, subsidence, users within the county, and the area's regional water plan.

If TCEQ decides to issue the permit, it must provide notice to the water supply systems that use the aquifer in question, or the commissioners court, if there is no water supply system. The state agency may issue the permit only if it receives notice that the governing body of the water supply corporation or commissioners court approves the petition or if TCEQ does not receive notice within 30 days after it sent notice of the decision to issue a permit to water supply system or commissioners court.

Last session's version of the bill was referred to the House Committee on Natural Resources but never received a hearing.

For more information, contact Paul Sugg at 800-456-5974 or pauls@county.org. 

AG Answers Some Questions Regarding Multi-County Groundwater Districts

In a proposed multi-county groundwater district, successful confirmation elections in at least one of the counties confirms the district, at least in some form. However, the extent and taxing authority of the district remain indeterminate until the mandated elections are held in each county included in the district's enabling legislation, according to a recently released attorney general's opinion (Opinion NO. GA-0001).

The opinion comes as the result of a request (RQ-0557-JC) this past summer from Rep. Gary Walker, chair of the House Committee on Land and Resource Management. Last session, the Legislature passed HB 3665, the enabling legislation for the creation of the Middle Trinity Groundwater Conservation District. The district in its ultimate form could include Somervell, Erath, Bosque, Coryell, Hamilton, Commanche, Callahan and Eastland counties. Under current law (Section 36.017(b)-(h) of the Water Code, as amended by last session's SB 2) temporary directors are to call an election to approve creation of a district and elect permanent directors. If the enabling legislation allows the district to levy a maintenance tax for payment of its expenses, this must be a separate

proposition on the same ballot.

Temporary directors called for elections in three of the eight counties included in the district. County voters confirmed the creation and approved taxing authority, but Bosque County residents defeated the measure.

Commanche County confirmed the creation of the district, but did not grant taxing authority. Only Erath County voters confirmed the creation of the district and approved taxing authority (up to \$.017 per \$100 of assessed evaluation).

In his request for an opinion, Chairman Walker expressed his belief that two scenarios may be possible in this situation. He said that if a county affirms the creation of a groundwater district – but does not grant it taxing authority – the county may be a member of the district, but no taxes may be levied in that county for the district's operations. Walker said a second situation may give the district taxing authority over every member county, if more counties favor taxing authority than oppose it. Walker asked whether the district may assess

[Please see Groundwater, continued on page 9]

Resources, Naturally

By Paul J. Sugg
Legislative Liaison



AIR QUALITY: A STATE, REGIONAL OR LOCAL PROBLEM?

The Legislature has now convened and the members face one of the more challenging sessions in anybody's memory. The state faces a deficit somewhere in the neighborhood of 10 (or even 15 billion) Yankee dollars. There's been a significant turnover in membership and staff, with the commensurate loss of institutional memory. Even with all the daunting challenges of fixing the insurance crisis, addressing school funding, and all the other *betes noires* stalking state government, there are any number of other issues that deserve, even demand, attention from the Legislature (*bete noir*: literally, a black beast; Webster's defines it as "a person or thing strongly detested or avoided"). How these issues get attention (that is to say, get funded, in most cases) is the basic function of the Legislature. A basic function of counties and other local governments in times such as these is to guard against the improper local funding of state responsibilities, that is, unfunded mandates.

One matter that certainly deserves the Legislature's close attention is the Texas Emissions Reduction Plan (TERP). Created by last session's Senate Bill 5, the purpose of TERP is to enable those areas of the state with air quality problems to meet federal air quality standards, through a comprehensive set of incentive programs aimed at improving air quality. Its funding, though, was cut by three-quarters as the result of a settlement last summer, following a legal challenge to a fee in the bill (a \$225 vehicle ID number verification for out-of state used vehicles, to be collected at inspection stations for the Texas Department of Public Safety and to be administered by the Comptroller of Public Accounts). Unless the areas of the state with the worst air quality meet the pollution reduction targets (through their state implementation plans or SIPS) they face a variety of consequences, including the possible loss of federal transportation funds and federally imposed, rather than state imposed, programs for meeting air quality standards.

Now, many of the questions regarding air pollution are not as clear-cut as those that hope to believe in the pure objectivity of science would like. There's plenty of finger-pointing and blaming and arguments over the arcanum that is air pollution and its spawn (such as transport modeling) -- enough to entertain those that enjoy such things for years to come [arcanum: mysterious knowledge, language, or

information accessible only by the initiate].

Neither is the air quality challenge strictly an urban issue — suburban and rural counties surrounding the urban counties are included in the non-attainment areas and will share in any rewards or consequences regarding meeting air quality standards. Urban cores and their surrounding areas serve as economic engines for much of the state. No one's quite sure how the loss of funds the imposition of federal control of air-quality measures will play out, but the impact will certainly be felt beyond just some urban and a few surrounding counties. What will happen to the state's economic engine if a couple of its important pistons stop firing? Who wants to find out? And what will it end up costing the entire state? In the mean time, the problem will not go away and requires money, whether it's local fees and taxes or state-appropriated funds to solve what many see as a statewide problem. 🇹🇽

[Groundwater continued from page 8]

property taxes to pay for its operations until all counties hold confirmation elections. His request also asked the attorney general to determine the point at which temporary directors are removed from the district board, if the board does not call an election in a county.

Regarding the question of removal of those temporary directors that refused to call an election to confirm the district and elect initial directors to represent the county, the opinion points out that the enabling legislation requires the temporary directors to call a confirmation election. Further, the calling of a confirmation election is not within the power of a commissioners court. Thus, "[b]ecause the counties cannot refuse to hold the election, the question of the removal of temporary directors does not rise."

Regarding the vote on maintenance tax (a ballot separate from the confirmation election), the opinion states that under current law, if a majority of the votes cast are against the tax, "... the district *shall* [emphasis added] set production fees to pay for the district's regulation of groundwater" (Texas Water Code, Section 36.017(1)). The opinion notes that because confirmation elections and elections to determine whether or not to approve a maintenance tax had not yet been held in all counties named in the enabling statute, the extent of the district and its taxing authority remain unclear. However, "... the mere fact that a majority of the voters in one county have voted against the maintenance tax does not mean that the tax may not be imposed upon them if a majority of the district's voters ultimately grant the taxing power to the district."

For more information, contact Paul Sugg at 800-456-5974 or pauls@county.org. 🇹🇽

Attorney General Opinions



JC-0582: Honorable Russell W. Malm, Midland County Attorney, whether a lease agreement between Midland County and a museum violates limitations on the use of public funds in article III, section 52 and

restrictions on public debt in article XI, section 7 of the Texas Constitution, and related questions (RQ-0543-JC). **Summary:** Midland County had statutory authority to acquire property for the purposes of operating a museum and was authorized to enter into a lease agreement with the Museum of the Southwest. The commissioners court that entered into the lease agreement could have reasonably determined that the County and Museum's respective obligations under the lease agreement comported with article III, section 52 of the Texas Constitution. To the extent terms of the lease agreement obligate the County to pay for the Museum's utilities and other expenses and to insure and maintain the building and grounds over a multi-year period and do not give the County a right to terminate at the end of each year or to elect on a yearly basis whether or not to appropriate funds to satisfy its obligations under the lease, those terms violate the restrictions on public debt in article XI, section 7 of the Texas Constitution. Because those terms are severable from the lease agreement's other terms, however, the remainder of the agreement is not void. The Museum is still entitled to lease the Turner estate and to operate the estate as a museum.

JC-0584: Honorable Florence Shapiro, Chair, Senate Committee on State Affairs, Texas State Senate, whether chapter 57 of the Government Code requires the appointment of licensed court interpreters in certain circumstances, and related questions (RQ-0558-JC). **Summary:** Chapter 57 of the Government Code applies to a plea in a misdemeanor case in justice court. A court clerk who merely converses with a defendant in a language other than English does not "act as a licensed court interpreter" within the meaning of chapter 57. In either a civil or criminal proceeding, whether a party has filed a motion for or a witness has requested the appointment of an interpreter will depend upon the facts and is a question for the trial court in the first instance. The court may grant or deny such a motion or request. In a criminal proceeding, a court must also take into account the defendant's constitutional right to an interpreter and article 38.30 of the Code of Criminal Procedure. Chapter 57 establishes qualifications for spoken-language interpreters appointed in criminal cases under the authority of article 38.30.

If the only person who is licensed to interpret in a particular language resides in a distant location, a court in a populous county would be required to appoint that person. On the other hand, if there is no interpreter licensed to interpret in a particular language, the appointment of an unlicensed person may be within a court's inherent power.

Chapter 57 does not alter preexisting law on the payment of appointed court interpreters. It does not require counties to pay for spoken-language interpreters in civil cases. Courts retain their authority under the Rules of Civil Procedure and the Civil Practice and Remedies Code to fix an interpreter's compensation and to direct how an interpreter will be paid in civil cases. A county may not require a court to select an interpreter from an interpreter service under contract with the county, although a court may choose to do so.

GA-0001: Honorable Gary L. Walker, Chair, Committee on Land and Resource Management, Texas House of Representatives, legal effects

of groundwater conservation district election held in Bosque, Comanche, and Erath counties (RQ-0557-JC). **Summary:** The existence of the Middle Trinity Groundwater Conservation District in some form has been confirmed. Bosque County does not form part of the district, while Erath and Comanche counties do. The extent and taxing authority of the district remain indeterminate until the election mandated by the statute creating the district is held in Callahan, Coryell, Eastland, Hamilton, and Somervell counties.

GA-0002: Honorable Roy DeFriend, District and County Attorney, Limestone County, determination of a bail bondsman's bonding capacity with regard to persons held in his county jail on charges from another county (RQ-0560-JC). **Summary:** Bail bonds written by a licensed surety in a county where the person is licensed to secure an appearance by a defendant in another county are executed in the licensing county for the purpose of determining the bondsman's financial capacity under section 1704.203 of the Occupations Code.

GA-0003: Honorable Robert Duncan, Interim Chair, Natural Resources Committee, Texas State Senate, authority of the Texas Department of Transportation over construction and maintenance of utility lines along a controlled-access highway (RQ-0563-JC). **Summary:** The Texas Department of Transportation's Utility Accommodation Policy, see 43 Tex. Admin. Code §§ 21.31-.56 (2002), does not impermissibly burden statutory rights-of-way granted to utilities for gas and electric lines pursuant to sections 181.022 and 181.042 of the Utilities Code. To the extent that it is inconsistent with this opinion, Attorney General Opinion C-139 (1963) is overruled.

GA-0004: Honorable Jane Nelson, Chair, Nominations Committee, Texas State Senate, whether the Euless Economic Development Corporation is "a governmental entity that has the power of eminent domain" under section 272.001(b)(5) of the Local Government Code (RQ-0568-JC). **Summary:** Section 272.001(b)(5) of the Local Government Code exempts "a real property interest conveyed to a governmental entity that has the power of eminent domain" from the public notice and bidding requirements generally applicable to the sale or exchange of land owned by a political subdivision. The Euless Economic Development Corporation, a nonprofit industrial development corporation created under the Development Corporation Act of 1979, article 5190.6 of the Revised Civil Statutes, is not a "governmental entity" for the purposes of section 272.001(b)(5) of the Local Government Code. Furthermore, section 272.001(b)(5) does not authorize a political subdivision to transfer land to a private party by using a "governmental entity" as a pass-through.

GA-0005: Honorable Sky Sudderth, District Attorney, 35th Judicial District, Brown County, authority of a district attorney pro tem to modify a standing local agreement between a district attorney's office and a law enforcement agency regarding the distribution of forfeited funds (RQ-0569-JC). **Summary:** A district attorney pro tem appointed under the terms of article 2.07 of the Code of Criminal Procedure for a specific case does not have the authority to alter the terms of disposition of a local agreement on forfeited property under chapter 59 of the Code of Criminal Procedure. ■

Elections Committee Publishes Interim Report

The House Elections Committee's interim report reflected testimony and recommendations related to election day workers, ballot recounts and voting by mail.

The committee offered no recommendations on the issue of increasing wages for election workers because of the current economy and deficit of the state. The report noted that "in addition, local governments also face large budget deficits." The committee did, however, recommend that election worker wages be exempt from federal income tax (with a resolution to Congress), and exempt a worker's wages from formulas calculating benefits for unemployed persons, or persons receiving temporary assistance. The committee also encouraged the Secretary of State (SOS) to work with the Texas Workforce Commission and election officials to post notices of temporary jobs for election workers.

Along the lines of voting by mail, it was recommended that campaign workers who assist voters with voting by mail applications and ballots must reveal their signature, printed name and address with a penalty for failure to do so. Also, it was recommended that it should be a crime to conduct commercial transactions

with regard to carrier envelopes and/or ballots, unless it is a legitimate contract with a courier.

Other recommendations by the elections committee included legislation to increase the number of allowable registered voters in an election precinct to 3,000 in counties with a population less than 400,000 and 6,000 in counties with a population more than 400,000. It was proposed that this bill would be permissive and at the county's discretion.

On ballot recounts, the committee was charged with establishing a way for election officials to re-tabulate votes when an error is made by an election official or voting equipment. The SOS suggested enacting legislation allowing election officials to recount ballots if they discovered that an incorrect counting program was used on election night, or if they discovered uncounted ballots. Per the recommendation, the error would have to be formally certified by the governing body and the recount must be ordered before the seventh day after the election.

For questions on this article, contact Teresa Aguirre at 800-456-5974 or via email at TeresaA@county.org 🇺🇸



RQ-0630-JC: Honorable Michael J. Guarino, Galveston County Criminal District Attorney, regarding whether a thermal energy plant is a "facility" under chapter 271, Texas Local Government Code, which permits a county to use the design-build method of construction, and related questions.

RQ-0631-JC: Honorable Frank Madla Chair, Intergovernmental Relations Committee, Texas State Senate, regarding level of well installation completion required of a public water supply well under section 16 of House Bill 2005, 77th Legislature, chapter 1312, Regular Session (2001) and related questions.

RQ-0632-JC: Honorable Robert Duncan, Chair, Natural Resources Committee, Texas State Senate, regarding whether the Texas Water Advisory Council is subject to the requirements of the Public Information Act, chapter 552, Government Code.

RQ-0005-GA: Mr. Edward A. Dion, El Paso County Auditor, authority of a bail bond board to hire legal counsel, and related questions.

RQ-0006-GA: Honorable C.E. "Mike" Thomas, III, Howard County Attorney, whether a commissioners court may provide free online legal research to the public with fees collected under section 323.023 of the Local Government Code. ■

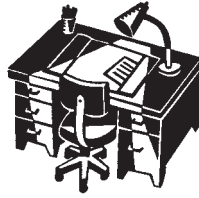
[From the Desk continued from page 12]

the public is essential to the effective stewardship of their trust. As an extension of the State, county government must operate as a real model of fiscal stability and financial soundness — a standard that cannot be achieved without a good measure of steadiness built into the planning process. **Where is the draft** — by the time you read this article, a draft of the proposed constitutional amendment will be posted on the Texas Association of Counties Web site, www.county.org. Your comments are welcome and may be directed to Carey Boethel CareyB@County.org. or Jack Harris, County Commissioner of Brazoria County, Texas Harrisjack@hotmail.com. 🇺🇸

From the Legislative Desk

By Carey "Buck" Boethel

Director of Governmental Relations



Readers show interest — since the December edition, the readers of *County Issues* have expressed an interest and general support for the passage of a law that would make county financial planning more dependable and stable. Please see: Vol.12, December 6, 2002 Issue 11, *From the Legislative Desk, Surprises*, an article that discusses the merits of a constitutional amendment that would prohibit, under some circumstances, the implementation of state laws that impose unfunded and underfunded duties upon counties. **UF/UDF Mandates** — there are a variety of these "critters," but they all disrupt financial planning. Their essence is characterized by an inadequacy, or absence, of funds necessary to implement and sustain their purpose. The **Express** mandate is usually fairly easy to identify and occurs by virtue of a new law or agency rule that imposes an outright obligation upon a county. The **Added** mandate hatches out of an existing county responsibility that is being expanded. By far the

most menacing of all is the **Mysterious** mandate. It can surface through a myriad of official actions including legislative, executive or even judicial. Counties can acquire these obligations when an existing state funded program is suspended or repealed. **Durability** — constitutional amendments, unlike statutes, require a two-thirds favorable vote by both the House and Senate followed by a majority vote of approval by voters in a statewide election. They are not subject to gubernatorial veto, cannot be repealed by the Legislature, remain in force until supplanted by the voters and are readily enforceable. **Power** — Texas county officials have great respect for members of the Texas Legislature and, indeed, revere the lawmaking process. Generally, those vested with authority do not welcome its diminution or elimination. That's not a bad thing, but it is a matter that could arise in connection with a constitutional amendment which, if passed, would lessen legislative control over counties. **Why counties need the amendment** — county officials are the "front line diplomats" who help implement legislation while working with the taxpayers, the voters and the citizens on a daily basis. A credible working relationship between these Ambassadors of the state and

[Please see From the Desk, continued on page 11]



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