

# County *issues*

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## State Cuts Likely to Shift Some Burdens to Counties

As the Texas Legislature struggles with the challenge of a budget shortfall of close to \$10 billion, it is becoming increasingly clear that counties can expect a portion of that burden to be placed on them and their citizens. That was the consensus of attendees at the March 4 Tuesday morning legislative breakfast at the Texas Association of Counties.

Discussion focused on two particular areas that, if and when spending is cut at the state level, could result in significant additional costs to counties and thus to local property taxpayers: misdemeanor probation and the Children's Health Insurance Program (CHIP). There is strong indication that the state is looking at cutting funding to misdemeanor probation programs and could reduce the state funds committed to CHIP by 50 percent.

Misdemeanor defendants can be sentenced to a maximum of two years under community supervision (although that length may be extended to five years under certain circumstances). The state, through the Community Justice Assistance Division, partially funds misdemeanor probation programs, generally, at the rate of 71 cents per day per probationer for a period of six months. A number of county officials in attendance warned that any cut in funding for such programs could result in fewer diversion options available to courts and a resulting increase in county jail population. Brazos County Auditor John Reynolds, noted that out of some 4,800 misdemeanor cases in Brazos County last year, some 80 percent were dealt with through probation.

The Children's Health Insurance Program (CHIP) is a national program designed for families who earn too much money to qualify for Medicaid, yet cannot afford commercial insurance. The program requires states to contribute matching dollars to receive federal funds. According to the Texas CHIP Coalition, Texas' CHIP matching rate equals approximately 26 percent of costs as compared to about 38 percent for Medicaid: for every state dollar, the federal government will contribute an additional \$3. With such a reduction in available funds, emergency rooms run by counties and county hospital districts can expect a significant increase in emergency room visits due to an increase in the uninsured population.

Texas Association of Counties staff and others who represent county government interests are currently in the process of identifying a range of representative counties and an estimate of what such cuts discussed above would have on those counties. These results, in turn, will be provided to all Texas counties, so that each county might develop an understanding of and appreciation for the effect these cuts will have on the county budget and the county taxpayer.

Additional budget-related articles appear on page 2 and 5. 🗺️

## State Looking At Cutting Probation Funding By Half

The state's top analyst of criminal justice data presented a grim picture of the consequences of proposed 12 percent cuts in the Texas Department of Criminal Justice at a meeting of the House Appropriations Committee March 5.

Executive Director Tony Fabelo of the Criminal Justice Policy Council said the Criminal Justice Subcommittee was proposing that the mandated 12 percent be taken from probation services and alternative treatment programs rather than from prison operations and parole services. All funding for misdemeanor probation would be zeroed out under the current funding proposal.

The result of the budget as it now stands, Fabelo said, would be a roughly 50 percent reduction in probation funding, requiring a reduction in force of some 2,000 probation officers statewide (one-third of the state's probation workforce). Similarly, major cuts would close numerous residential treatment and diversion programs. In fiscal year 2002, there were 50,641 Texans on probation, including 6,880 in local alternative programs.

Because judges would have fewer sentencing options, these two cuts would result in significant increases in the state prison population, Fabelo said. Noting his projections were "optimistic," Fabelo calculated that 10 percent of those now placed on probation would be sentenced to prison. Also, he noted that the 3-year recidivism rate will

increase from 35 percent to 40 percent due to the lack of alternatives.

Long-term, the cuts in probation are projected to result in a state prison backlog of as high as 26,469 by August 2005 and 48,181 by August 2008. At present, the state prison system is right at 100 percent capacity.

Fabelo told the committee that the effect of the cuts would destroy the development of probation and other prison alternatives that have developed over the past 15 years.

"Judges and prosecutors have made it clear that their major concern in sentencing has more to do with justice than with budget concerns, but if we give them enough sentencing tools to make effective justice-based decisions, then they will do a good job of using those tools," he said. "Otherwise, these defendants will be put in the pen."

Several judges from throughout the state echoed Fabelo's prediction.

Later that day, the full committee adopted the subcommittee's proposed cuts, although Committee Chairman Talmadge Heflin held out hope that funding could be restored if additional funding becomes available as a result of state government reorganization proposals that are being considered by other legislative committees.

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## Officials Who Sue County Could Get Free Attorney

Legal representation of county officials served as the topic of extensive discussion at this week's meeting of the House County Affairs Committee meeting. Rep. Terry Keel (chairman, House Criminal Jurisprudence) presented arguments in support of HB 620, ("relating to the legal representation of county officials by private attorneys in certain civil cases"). The bill would amend Section 157.901, Local Government Code.

As filed, the bill entitles a county official that is being sued by the county "for an action arising from the performance of a public duty" to have commissioners court employ and pay private counsel to represent the official. The official may also sue commissioners court to receive this representation and is entitled to attorney's fees. The bill

further would allow a private attorney employed under this section to sue the county, if necessary to collect payment under the section.

Representing the County Judges and Commissioners Association of Texas, general counsel Jim Allison testified in opposition to the bill, as did John Dahill, general counsel for the Texas Conference of Urban Counties. Testimony on both sides of the issue, as well as comments by committee members, touched on official indemnity, the role of commissioners court, if any, in determining the merits of a suit, the role of the county or district attorney in defending an official sued, and whether the bill would encourage or discourage lawsuits between and among county officials.

The bill was left pending. 🗳️

## Gambling Bill Introduced

Hailed by some to be a solution to economic development challenges or economic downturns, a casino gambling bill has been introduced this session. Senate Bill 507 by Rodney Ellis would Chapter 2004 to the Occupations Code, to be entitled the Texas Economic Development and Gaming Control Act.

Among the legislative findings in the bill is the following: "the development of regulated casino gaming in the state will benefit the welfare of the people of this state by enhancing investment, development, and tourism in this state, resulting in new jobs and additional revenue to the state..."

The bill would create the Texas Gaming Commission (comprised of seven members: six appointed by the governor and one by the chairman of Public Safety Commission). Commission would in turn appoint an executive director.

Under the bill's provisions, the commission would award owner's licenses to applicants in counties with the following population classifications:

- four licenses may be awarded to a county with a population of more than 2.5 million;
- no fewer than three owner's licenses may be awarded to a county with a population between 1.8 million and 2.5 million;
- no fewer than two but no more than three licenses may be awarded to a county with a population between 1 million and 1.8 million;
- no fewer than one may be awarded to all counties with populations between 380,000 and 1 million;
- no fewer than six licenses may be awarded to all counties with a population between 180,000 and 380,000;
- no fewer than two licenses may be awarded to all border counties with a population of 35,000 or more; and
- no fewer than 3 licenses may be awarded to a county "that contain[s] an island in the Gulf of Mexico on which there is an incorporated city with a population of at least 50,000.

The bill provides that no more than 24 licenses may be awarded statewide, with no more than four licenses awarded per county. No licenses may be issued in counties or municipalities that have gambling conducted under the federal Indian Gaming Regulatory Act.

Similarly, a license may not be issued in a county unless the voters of a county or of a municipality located in

the county have approved a proposition legalizing gambling in a local option election. A countywide election does not permit casino gambling in a municipality within the county unless there is also a successful election in the municipality to approve gambling

The commission is also directed to consider, among other criteria, the ability to develop jobs in political subdivisions with unemployment rates of more than six percent for three consecutive years in the preceding five-year period. The bill sets minimum project commitments ("to ensure a requisite level of economic development . . . the casino shall require an applicant . . . to commit to provide new investment in conjunction with the casino . . .") for casinos according to certain population criteria. For example, in a county with a population of more than one million, a casino must have a minimum project commitment of \$100 million. The bill does not describe the particulars of how such an investment requirement would be carried out or quantified.

The bill creates the Casino Gaming Fund (in which will be deposited all application fees, investigation fees, license fees). Funds in excess of what the commission needs for its operation may be transferred to the state's general revenue fund. ➡

## Air Quality Funding Bill Heard

The House Committee on Environmental Regulation heard testimony March 4 on a funding plan to address Texas' clean air problems. House Bill 1365 would provide full funding for the Texas Emissions Reduction Plan (TERP) that was adopted two years ago.

The federal Environmental Protection Agency is authorized to establish the maximum allowable concentrations of pollutants that have been shown to endanger human health, harm the environment, and cause property damage. The TERP, created in last session's SB 5, created a variety of incentive programs designed to reduce emissions and meet clean air standards by 2007. A court decision/agreement in the summer of 2002 cut TERP funding by some three-quarters. Full funding of TERP requires approximately \$188 million per year; this present effort must then raise some \$120 million per year to fill the funding gap.

*[Please see Air Quality Bill, continued on page 9]*

## Fee Bills Heard in County Affairs Committee

The House County Affairs Committee considered three bills at its Feb. 26 meeting that could increase revenue for counties.

Rep. Tony Goolsby sponsored HB 249 which would increase the returned check fee that county clerks may charge from \$25 to \$30. This is a permissive statute and if it passes, would allow a range from \$15 to \$30 to be collected on returned checks. The statute to be amended also includes the tax assessor-collector, thus allowing them to charge up to that same amount for a returned check that office might receive. Rep. Goolsby, in laying out the bill, remarked that raising fees, as appropriate, and not raising taxes, is in keeping with the governor's wishes.

Gail Turley, County and District Clerks Association, and Jim Allison, County Judges and Commissioners Association, testified in support of the bill. Allison noted that fines and fees account for less than 10 percent of county revenue and as that amount shrinks, the difference must be made up through increases in the property tax. He told the committee that to the extent fees can equitably be raised, counties ask the committee's support to do so.

House Bill 249 was left pending.

House Bill 494 by Rep. Jesse Jones would increase the courthouse security fund fee from \$5 to \$10. Money from this fund is administered by the commissioners court and can only be used for certain items related to courthouse security (i.e. x-ray machines, metal detectors, bailiffs etc.) Ryan Brown with the Dallas County Budget Office testified for the bill, noting that although the increase would help off-set additional security costs, it would by no means cover all the additional security costs Dallas and other counties continue to incur. This fee has not been increased since 1993. The committee took no action on the bill and moved on to the next bill presented by Dr. Jones.

House Bill 544 by Rep. Jones takes a permissive bill that applies only to Harris County (up to a \$7 court cost in Class C misdemeanors in justice courts), removes the population bracket to apply to all counties, and mandates that the court cost be assessed at a flat rate of \$7. Discussion among committee members and other witnesses centered around the mandating of such a fee. The mandating of such a fee comes out of concern regarding an older attorney general's opinion (JM-880) and the current Caldwell v. Rylander case: if a fine, fee, or court cost are not uniformly applied, it may result in such assessments being ruled unconstitutional.

Several committee members remarked that the LBB's fiscal note's estimate of revenue to be generated seemed to be low for a state-wide bill. Based on figures provided by the Office of Court Administration, the LBB stated this in the fiscal note attached to the bill: "Under the proposed legislation, all county commissioners courts would be required to set court costs at \$7 for each Class C misdemeanor conviction. Assuming there would be the same number of guilty verdicts in the justice courts in future fiscal years as there were in fiscal year 2002 (215,016), with all Texas justice courts collecting \$7 per conviction, implementing provisions of the bill would generate over \$1.5 million in revenue annually for Texas counties combined. The gain would vary by county, depending on size and caseload."

It was pointed out that JPs may use their discretion to reduce fines in order to reduce the overall burden on a defendant—that is, a mandatory \$7 court cost might result in a \$50 ticket being reduced to \$43. Thus, increases in court costs do not directly correlate to commensurate increases in revenue to the county general fund.

Rep. Chente Quintanilla (committee member from El Paso) indicated that the justice courts might like to keep some of this money in their courts. Allison and Craig Pardue (representing Dallas County) testified to the importance of the commissioners court controlling the budget. Allison expressed doubt that the Caldwell case would be resolved prior to the end of the session, but stated his hope that the court would uphold the ability of counties to continue to use their discretion in applying various fines, fees, and court costs.

Pat Ott, representing the Justice of the Peace and Constables Association, testified against the bill. She did so, she stated, not because of the question of keeping a portion of the money raised in the court, but because setting fees to pay for the court system will not work. She later commented that the function of justice courts was not to raise revenue for the commissioners court. She asked why should the legislature add another court cost to the current court cost burden on defendants of \$55-\$65.

In his closing remarks, Rep. Jones repeated some of his earlier comments regarding the population bracket: it could either be adjusted to add Dallas County to the current law's provisions or the bracket could be struck

*[Please see County Affairs, continued on page 5 ]*

# Coalition's Budget Cuts Would Hit Courthouse Restoration

The Texas Conservative Coalition Research Institute (TCCRI) has recommended a number of budget reduction suggestions to the Legislature, including several that would have an impact on county government and its operations.

Among the most visible proposals are those that would eliminate state funding for courthouse restoration, councils of government, local parks grants and adopt-a-beach programs. In general, the full package of Conservative Coalition proposals have been warmly received by state leaders. Its board of directors is comprised of 12 legislators.

Regarding the Courthouse Preservation Program that was established in 1999, the TCCRI report concludes that "county courthouse preservation and restoration is not a priority for state spending. The future of these buildings should be determined and controlled by the local community, not by the state and through general revenue."

Noting that the program received \$50 million in state funds in the 1999 biennial budget and the same amount in the 2001 appropriations process, full funding to restore all historic courthouses in Texas could exceed \$750 million, the report said.

"The state should not be expected to subsidize the repair and restoration of courthouses that are deemed historic just because of their age, and at such a high price the state would have to continue with the program indefinitely if it expected to grant money to all the 'historic' courthouses," it said.

As to councils of government, the report focused on \$5 million in regional assistance grants, which supplement local and federal funding to the regional planning organizations.

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*[County Affairs continued from page 4]*

completely (as it is in the as-filed version of the bill). He also discussed the possibility that funds generated by the bill be designated for court security costs.

House Bill 544 was left pending and the committee adjourned. 🗡️

"Certainly there are issues best addressed at the local and regional levels; however, COGS are an extra layer of government that is almost never necessary and should not be funded with state dollars," TCCRI said. "COGs handle local needs and should not rely on the state for grant support, but should pool resources just as they collaborate on ideas, in order to meet their individual needs."

Funding for local parks grants totals \$49.9 million in the 2002-03 budget, an amount that would be reduced or eliminated if lawmakers follow the TCCRI recommendation. The grant program, which requires local governments to provide a 50 percent match, comes partially from a sporting goods tax while the rest comes from a dedicated fund out of the state's general revenue. TCCRI proposed that the state could save "somewhere on the order of \$15 million if the appropriations are withheld, and could potentially find additional savings if the dedicated fund were released to the state through statute."

The report concluded that parks are a lower priority, considering the state's fiscal crisis. "Local government should balance their local priorities with funding local parks, and the state should only be responsible for funding the state parks," it said. "Local parks are a local issue, providing benefit primarily to local residents, and thus should be funded by local revenues according to the priority placed on parks."

Along the Gulf Coast, adopt-a-beach programs have engaged the support of almost 300,000 volunteers in cleaning the beaches since the program was established in 1986 under the auspices of the General Land Office. TCCRI proposes eliminating state funding for the effort.

"Local governments, businesses or organizations can coordinate these activities. The state may have given the program credibility or raised its profile in its infancy, but the state does not need to provide a volunteer coordinator of sorts for this activity," the report said. "Local entities can certainly run the program, and perhaps even further develop the program with better ability to organize at the local level."

The TCCRI report may be downloaded from the Internet at [www.txccri.org/publications/taskforce.pdf](http://www.txccri.org/publications/taskforce.pdf). 🗡️

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**E**thics 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" 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.

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## 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**.

\* 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**.

## 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](http://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 \_\_\_\_\_  
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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](http://www.county.org)

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# Resources, Naturally

By Paul J. Sugg  
Legislative Liaison



## BUY DEVELOPMENT RIGHTS FOR OPEN SPACE

A bill has been introduced to provide the beginnings of a mechanism to allow private entities and local and state governments to preserve open space. House Bill 895 by Rep. Charlie Geren would establish a program to provide grants to make voluntary purchases of development rights. We applaud Rep. Geren for carrying this bill and the hard work from a number of different camps that went into crafting the bill. Most especially, we hope state government, at some point soon, will see the wisdom of providing state funds to support the bill's intent.

The bill creates the Texas Legacy Council and provides a method for the purchase of conservation easements (purchase of development rights, known as PDRs). The council would consist of 11 members, two of them ex officio (the Commissioner of Agriculture or designee and the Parks and Wildlife Commissioner or designee). Of the four appointed by the governor, one would be a municipal or county official. Any land purchased under this program could be used only for conservation purposes, including agricultural, forest, recreational or open-space purposes.

Under a PDR program, a landowner voluntarily sells his or her rights to develop a parcel of land to a public agency or a charitable organization interested in natural resource conservation. The landowner retains all other ownership rights attached to the land, and a conservation easement is placed on the land and recorded on the title. The buyer essentially purchases the right to develop the land and retires that right permanently, thereby assuring that development will not occur on that particular property. Generally, PDR programs pay landowners the difference between the value of the land as restricted and its value on the open market (usually determined by a "before and after" real estate appraisal).

A recent brochure jointly published by Texas Parks and Wildlife, the Texas Department of Agriculture and the American Farmland Trust identified some of the public benefits of purchasing development rights and the preservation of open space:


- sources of drinking water are protected;
- wildlife habitat protected and some recreational opportunities are created;

- locally-grown food and fiber and the continuation of local agribusinesses;
- scenic and historic landscapes are preserved that maintain our sense of place; and
- the land remains privately owned and operated, thus remaining on the tax rolls and under private management.

The bill creates the purchase of development rights account in the general revenue fund. The fund consists of: money transferred to the account at the direction of the legislature; public or private grants, gifts, donations, etc.; money from other sources, including mitigation, remediation and bond proceeds.

Grants under the program may not be more than 50 percent of the project cost and a prospective purchaser must provide proof of matching funds.

There is still a lot of open space in much of Texas but as the state continues to grow, open space is now and will become increasingly important around the urbanizing and suburbanizing (to create a word of sorts) areas of the state. As we've discussed in this space before, open space can serve to filter air and water, ease traffic congestion and accomplish other things. But open space has value above and beyond its utility to Man. It has an inherent value, value above and beyond any price Man can put on it—it has the value Nature put on it. ➡



### Top Tips from County Magazine

A compilation of the most helpful articles of the past decade:

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- Media Relations
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This insightful, 101-page guide will help both new officials and veterans of public service with information that helps you do your job.

Cost is \$14.95 and \$5 for postage and handling. To obtain a copy, contact Rosalinda Mendez at 800-456-5974.





# Washington Watch

By Sue Glover

Governmental Relations Manager

## LOCAL ISSUES THE FOCUS OF NACO MEETING

The National Association of Counties held its Annual Legislative Conference, Feb. 28-March 3 in Washington, DC. Issues discussed of interest to Texas counties included air quality issues, homeland security and budget issues.

According to several presentations at the conference, the 108th Congress will consider several issues dealing with the Clean Air Act. One of the most prominent air quality issues has been the controversy over the Environmental Protection Agency's proposed changes to the New Source Review (NSR) requirements, which impose emission controls on modification of power plants and other major facilities. In addition to changing NSR, the administration has asked Congress to modify Clean Air Act requirements for power plants by enacting "Clear Skies" legislation.

The NACo Environment, Energy and Land Use Steering Committee discussed a resolution supporting the efforts of the "Clear Skies" initiative as well as other issues being discussed to control air pollution. The committee will make final recommendations during the NACo July conference in Wisconsin.

Homeland Security Secretary Tom Ridge addressed the delegation during a luncheon on Monday and reported that "this is the first day of work for the agencies that now comprise the Department of Homeland Security." Ridge explained that the consolidation of the different federal agencies was completed on March 1. He went on to explain the different priorities for the new agency, including the continued working relationship with NACo and local officials across the nation.

General discussions among conference attendees appeared to center on the budget shortfalls that they are experiencing back in their home states. The concerns over Medicaid and the Children's Health Insurance Program seemed to be present in the majority of the discussions. As one county official explained, the lack of continued funding for these programs could have a devastating impact on county governments.

For more information on this, please contact Sue Glover at SueG@county.org or 800-456-5974. 🗺️

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*[Air Quality Bill continued from page 3]*

The bill adds Henderson, Hood and Hunt counties to the list of affected counties. These counties were already part of the near-non-attainment area surrounding the Dallas/Fort Worth non-attainment area. The bill also gives the Texas Commission on Environmental Quality (TCEQ) authority to add to the list of affected counties "any other county designated as an affected county by commission rule because of deteriorating air quality."

The legislation increases the initial use tax from \$90 to \$250 (this is the tax on a motor vehicle brought into the state by a new Texas resident). Of this amount collected, 27 percent is to go to the general revenue fund and 73 percent would go to the Texas Mobility Fund, once the comptroller certifies that the state is no longer in violation of federal air quality standards (tentatively, by 2008).

The bill imposes a \$6 per year tax on each tractor, farm implement, piece of mobile equipment, and piece of off-road construction equipment that is used in the state for

more than 30 days and is powered by an internal combustion engine of at least 50 horsepower. The \$6 fee would also be collected for every vehicle required to be inspected under Chapter 548, Transportation Code. It exempts all such owned by the federal, state, or political subdivisions (but not anyone employed by or under contract with one of these governmental entities). It also exempts from the \$6 per year tax those vehicles required to register under Chapter 502, Transportation Code, and vehicles subject to inspection required to register under Chapter 548, Transportation Code. Motorboats required to obtain a certificate of number under Chapter 31, Parks and Wildlife Code, and outboard motors on motor boats would pay a \$12 biannual fee. The money collected would go to the TERP fund and would sunset Aug. 31, 2008.

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

## Attorney General Opinions



**GA-0021:** Jane Nelson, Chair, Sunset Advisory Commission, Honorable Warren D. Chisum, Vice Chair, Sunset Advisory Commission, Implementation of 1999 amendments to article XVI, section 30a, of the Texas Constitution, which governs the membership and terms of office of members of certain state boards (RQ-0587-JC). **Summary:** Members of advisory boards and advisory commissions are not “officers” for purposes of sections 30 and 30a of article XVI of the Texas Constitution. The determination as to whether a board or commission is advisory, whether denominated “advisory” or not, must be made by an examination of the constitutional and statutory provisions creating the board or commission and conferring duties on them, taken in their entirety, and on a case-by-case basis. Attorney General Opinion H-998 (1977) is hereby overruled to the extent that it holds that a member of an advisory board or advisory commission is an “officer” for purposes of sections 30 and 30a of article XVI.

Voting ex officio members of boards or commissions are included in determining the number of members of the board or commission for purposes of section 30a of article XVI of the Texas Constitution.

The Board of Pardons and Paroles, the State Medical Education Board, the Texas Employees Retirement System, the Texas Municipal Retirement System, and the Texas Water Development Board are all “required by this constitution” for purposes of section 30a of article XVI of the Texas Constitution, and the legislature need not increase or decrease the number of members of those boards to comply with section 30a. The Board of Pardons and Paroles Policy Board, the Texas Prepaid Higher Education Tuition Board, and the Texas Higher Education Coordinating Board are not “required by this constitution” for purposes of section 30a, and the legislature must either increase or decrease the number of members of those boards to comply with section 30a.

(The attorney general) believe(s) that it is likely that, if the Texas Supreme Court revisited the issue addressed in *Texas National Guard Armory Board v. McCraw*, 126 S.W.2d 627 (Tex. 1939), it would uphold its conclusion that sections 30 and 30a of article XVI do not apply to the lone military member appointed to the Texas Military Facilities Commission. However, based on the rationale of its holding in *McCraw*, it is likely that the court would conclude that, because of the changed qualifications and terms of office for civilian appointees to the commission, sections 30 and 30a do apply to them. The lone military appointee to the commission would be included in determining the

number of members of the commission.

**GA-0023:** Honorable Robert Duncan, Chair, Jurisprudence Committee, Texas State Senate,

whether the use of motor-vehicle-registration fees to fund trauma facilities contravenes article VIII, section 7-a of the Texas Constitution (RQ-0589-JC). **Summary:** Article VIII, section 7-a of the Texas Constitution does not, as a matter of law, authorize the use of motor-vehicle-registration fees to fund trauma facilities.

**GA-0024:** Honorable Susan D. Reed, Bexar County Criminal District Attorney, whether a county clerk may issue a marriage license to two absent applicants (RQ-0590-JC). **Summary:** Based upon the plain language of section 2.006 of the Family Code, a county clerk may issue a marriage license to two absent applicants who are unable to appear personally before the clerk when each applicant follows the procedures set forth in sections 2.006 and 2.007 of the Family Code. Under those procedures, an applicant for a marriage license is not required to apply in person for the license; “any adult person or the other applicant” may apply before the county clerk on behalf of the absent applicant. Tex. Fam. Code Ann. §§ 2.006, 2.007 (Vernon 1998).

**GA-0025:** Honorable Carlos Uresti, Chair, Human Services Committee, Texas House of Representatives, whether a home-rule municipality may adopt instant runoff voting (RQ-0591-JC). **Summary:** State law preempts a home-rule municipality’s adoption of instant runoff voting. A home-rule municipality that is subject to section 275.002 of the Election Code or article XI, section 11 of the Texas Constitution is not authorized to adopt instant runoff voting. Instant runoff voting is irreconcilably inconsistent with statutes requiring a municipality, in the event no candidate receives a majority of the votes cast, to conduct a runoff election at a later date.

**GA-0026:** Honorable Jerry Patterson, Commissioner, Texas General Land Office, whether foreclosed properties in the Veterans’ Housing Assistance Program are exempt from ad valorem property taxes (RQ-0591-JC). **Summary:** Foreclosed properties held by the Veterans’ Land Board under the Veterans’ Housing Assistance Program, which authorizes use of public funds to make home mortgage loans to qualified veterans for housing, are exempt from ad valorem property taxes while they are owned and held by the Board pending resale. ■



**RQ-0014-GA:** Honorable Scott Sherwood, Carson County Attorney, whether a member of the city council of the City of Skellytown may also serve as a member of the board of directors of the Skellytown Area Volunteer Firefighters - EMS Association; whether

the city may convey property to the association; and whether the city may include a mandatory fee in water bills to pay for volunteer fire fighting services.

**RQ-0015-GA:** Honorable Melanie Spratt-Anderson, Upton

County Attorney, whether a county with a population of less than 5,000 may, for a fee, perform work on private property or sell dirt to a private individual.

**RQ-0018-GA:** Hon. Ronald D. Hankins, Somervell County Attorney, authority of a county commissioners court to partially close or, alternatively, limit truck traffic on a county road.

**RQ-0019-GA:** The Honorable James L. Anderson Jr., County Attorney, Aransas County, whether a county commissioner may lease real property from his county. ■

*[From the Desk continued from page 12]*

on your arm that just won't heal – without health insurance, it probably ain't gonna get examined as soon as it needs to be, and...then...well...maybe...it's too late.

**Re-figure** – so it's fair to assume, in general, that those folks who have health insurance have a better shot at staying alive as well as out living those who don't. Now, it's clear everybody needs to re-think their outlook on health care – i.e. put “good health” way up there on the priority list and become relegated to the fact that the essentials of our well-being are going to cost more. That still leaves a large number of people who can't make the transition – if they allocated 75% of their disposable income to health insurance they couldn't pay for it.

**Hey, Doc! Guess What?** There are some other folks who need to be re-thinking their position about the high costs of medical treatment and prescription drugs. Who pays for the medical schools and professional training facilities that are scattered throughout this state? The opportunity to become a part of the medical profession is made possible by the good graces of taxpaying Texans. The Docs also have a good deal of leverage with the pharmaceutical industry – if the script isn't written, the pill stays in the bottle on the shelf. So, we need the joinder of the medical profession in meeting this crisis.

**Massive health care training program** – We have a critical shortage of health care personnel in this country. We need a variety of professional health care people – Registered Nurses, Licensed Vocational Nurses, Nurses Aides, Technicians, just to name a few. We need to recruit many of our fine young folks into the medical profession right now. It would appear that an appropriate state policy would be to have the Texas Workforce Commission route a good portion of the unemployed force to medical training. In other words, eligibility for unemployment compensation is directly dependent upon the extent of commitment and engagement in medical training regimens. There should be something for everyone whether it is the bed-pan duty at the nursing home or assisting a doctor to administer care – whatever, but lets get the shortage of critical care personnel reduced.

**The unfit?** There's no question that some among the unemployed would not be suitable for medical vocational training, but some would. Yes, it would direct people toward a vocation that they would not otherwise have chosen – some folks need more guidance than others but do well following a “jump start” in life. Ultimately, how good would it be for a recruited trainee to realize that her/his

achievement included saving the life of another let alone the discovery of a new calling in life? So, train the unemployed in health care areas – it makes them more aware of what is needed for good health, provides an incentive to develop a profession, opens the door to educate others with their sphere of influence about health issues and gets them off the rolls.

**ER** – it is time to consider expanding your emergency treatment facilities and staff. If [when] the state reduces its participation in the Medicaid programs, especially the CHIPS enrollment, uninsured children will be taken to the ER for treatment. Texas has more children under its care than any other state – one out of every twelve is a Texan. Texas also has more children in poverty than any other state in the union. So, if the children are not enrolled under CHIPS, they are going to come, or be brought to the ER. That trip is an opportunity to “capture” and develop a medical profile on a child, perform basic blood work-up etc., with a view toward post recovery prevention intervention – but the trick is getting them back again – it's probably a doable thing upon further thought.

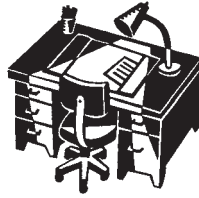
**Do no harm** – some people's life plans are wrapped around profiting from the misfortune of others. Take, for instance, the little boy who was bugging his grandfather to make a frog noise. “Please granddaddy, make a noise like a bull frog,” said the toddler. The grandfather tried to ignore the continuing pleas for him to imitate the sound of a frog. “Please, please, make a noise like a frog,” the grandson persisted. Finally, the old man asked his exuberant young companion, “why would I want to sound like a bull frog?” Replied the grandson, “because Mom said when you croak we can go to Disney World!”

**Obituaries** – we don't hurt or kill our fellow man, but as the old trial lawyer Clarence Darrow put it: “I've never killed a man, but I have read many obituaries with a lot of pleasure.” Until next time, remember to push good policy and promote county government because it's the pulse of the people. 🇺🇸

## From the Legislative Desk

By Carey "Buck" Boethel

Director of Governmental Relations



**Sideswiping** – if the State of Texas shifts its financial obligations downward to the local level – counties, schools and cities – the effect will be to increase a **BAD TAX** – the ad valorem property tax. Here's why – a county's principal source of revenue is through property tax collections. An increase in the value of real property does nothing to help the property owner's ability to pay taxes – it is an **unrealized gain**. The taxpayers' recourse to an increase in property taxes could include: equity loan, savings invasion, another job, liquidation, sale of assets or *ask the Legislature to choose another way of balancing the state budget*.

There will be a balanced budget – there is no such thing as a state deficit because the Texas Constitution of 1876 expressly forbids it. State inaction [unfunding of programs for indigent health care and criminal justice that are presently in place] is indeed a tax increase. Counties

understand the need to balance the state budget, but it cannot be done through boosting property taxes.

**Nation-wide:** Nearly 72 percent of America's counties are facing budget shortfalls because of funding cuts at the federal and state levels and the struggling economy, according to a survey released by the National Association of Counties (NACo). "America's counties are facing difficult decisions," said NACo President Ken Mayfield, a county commissioner of Dallas County, Texas. "With less money coming from federal and state governments, limitations on raising more revenue locally, and efficiencies and costs savings exhausted while the demand for essential services are increasing, there could be serious consequences for millions of Americans in communities across the country."

**Mite's Foot** – how high are the costs of health care, medical services and prescription drugs? The answer is one of those relative things – like how big is a mite's foot? To a mite, it's a good size foot. To someone who cannot afford health insurance the cost of medical services etc. is very high. If you don't have health insurance you're less likely to go to a doctor, at least until things get pretty bad (from your unprofessional perspective). That nagging sore

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



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