

County *issues*

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Counties And Property Taxpayers Would Face Dire Consequences From State Health Care Cuts

Proposed state budget cuts in health care funding would have a devastating \$9.34 billion impact on counties and their property taxpayers across the state, according to a new analysis.

If the proposed cuts go through, the Texas Health and Human Services Commission and the Texas Department of Human Services would remove an estimated 441,000 senior citizens, children and disabled individuals from growing Medicaid caseloads and reduce or cut prescription drug coverage for more than 500,000 persons – shifting the financial burden of providing care for the uninsured to counties and local communities, according to an analysis of budget cut proposals submitted by the two agencies. The analysis was released March 17 by the Center for Public Policy Priorities (CPPP).

And when local governments are forced to provide care for the uninsured, they pay 100 percent of the costs, versus the state's paying 25 percent for children in CHIP and 40 percent for Medicaid – a severe blow to local taxpayers.

"We are working with legislators to see that this scenario does not become reality," said Sue Glover of the Texas Association of Counties. "Property taxpayers cannot absorb this kind of economic impact without unacceptable results. Alternatives to these proposed cuts are crucial."

The proposed cuts would limit agency funding in the 2004-05 time period, despite increases in population and inflation, and would include more than 19,000 seniors and disabled persons who would lose nursing home coverage, at least 60,000 seniors and disabled who would lose community care benefits to help them avoid nursing homes, more than 334,000 children who would be excluded from children's Medicaid and an estimated 17,000 pregnant women who would lose prenatal and delivery services, the analysis said. Likewise, the study estimates that prescription drug benefits would disappear for over 450,000 elderly or disabled persons on low incomes and for 145,000 poor parents with dependent children.

"When these budget items disappear, our local hospital emergency rooms will be faced with even more indigent health care expenditures since the uninsured will show up on our doorsteps in need of costly critical care," Glover said.

The analysis says the impact of lost Medicaid dollars on Texas's largest counties would include:

- Harris County - \$1.127 billion;
- Cameron, Hidalgo and Starr counties - \$1.09 billion;
- Dallas County - \$736.8 million;
- Bexar County - \$688.6 million;

[Please see *Health Care Cuts*, continued on page 2]

Many Dedicated Fee Programs Would Be Swept Up by State

Bills that legislative leaders see as keys to solving the state's budget crisis include significant changes and reduced funding for several agencies that work closely with county government.

One such bill, HB 7 by Rep. Talmadge Heflin of Houston, is an effort to raise enough revenue to meet the shortfall in the state's current state budget that was approved two years ago.

General Counsel Jim Allison of the County Judges & Commissioners Association told March 18 Tuesday morning breakfast attendees that this measure would take fees that counties currently collect for specific state programs that benefit counties and place them in the state's general revenue fund.

Among those county-related programs affected are indigent defense grants, 9-1-1 emergency communication grants, county attorney salary supplements, county judge and justice of the peace education programs and education programs for the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE).

Allison noted that each of these programs are funded by locally collected fees that were levied with the understanding that they would pay for specific county-related programs.

While these transfers are currently limited to the state's current biennium, he noted that legislators are still faced with a revenue shortage in excess of \$10 billion for the next two years. If the transfers are approved for the short-term, lawmakers may decide to make them permanent, he said.

Mr. Allison also discussed HB 2 by Rep. David Swinford of Amarillo, Chairman of the House Government Reform Committee. HB 2, among other things, proposes to consolidate state agencies, including some that are closely associated with county government operations.

For instance, the Commission on Jail Standards would be abolished under HB 2 and its responsibilities placed under the jurisdiction of the Texas Department of Criminal Justice; TCLEOSE would be placed under the authority of the Department of Public Safety; the Commission on State Emergency Communications would be merged with the Public Utility Commission.

The multitude of state agencies dealing with human services, under HB 2, would be consolidated within the Commission on Health and Human Services. The foregoing information arose out of the TAC Tuesday Morning Breakfast, a weekly forum where county officials meet and discuss legislative issues. For more information contact: Carey Boethel at 800-456-5974 or e-mail: careyb@County.org. 🗺

CORRECTION: An article in the March 7 *County Issues* incorrectly stated that in fiscal year 2002, "there were 50,641 Texans on (adult) probation." The article should have stated that there were 50,641 *placed on felony probation* in fiscal year 2002.

[Health Care Cuts continued from page 1]

- El Paso County - \$457.6 million;
- Tarrant County - \$413.2 million;
- Nueces County - \$192 million;
- Travis County - \$216.3 million;
- Webb County - \$182.3 million;
- McLennan County - \$116.1 million;
- Midland and Ector counties - \$115 million;
- Lubbock County - \$111.6 million;
- Potter and Randall counties - \$82.8 million.

The scenario is no better for less populous counties,

where examples include:

- Bandera County - \$4.77 million;
- Crane County - \$2.19 million;
- Hopkins County - \$17.99 million;
- Moore County - \$6.59 million;
- Nolan County - \$12.49 million;
- San Augustine County - \$10.13 million;
- Terry County - \$8.24 million.

To view the entire analysis and a county-by-county breakdown of the impact, go to www.cppp.org. 🗺

Unfunded Mandates Measure Filed by Chairman

The chairman of the House County Affairs Committee has proposed a constitutional amendment to require any new state mandates on county governments to be accompanied by adequate funding before it takes affect.

If approved by two-thirds vote of both houses and then subsequently okayed by voters, House Joint Resolution 91 by Rep. Glenn Lewis of Tarrant County would a new Section 66 of the Texas constitution.

The proposal states that "(A) mandate adopted on or after Jan. 1, 2004 by the Legislature or by rule of a state agency that requires a county to establish, expend or modify an activity in any way that requires the expenditure of revenue by the county that would not have been required in the absence of the statute or rule is effective only if the Legislature appropriates or otherwise provides for the payment or reimbursement to the county of the costs incurred by the county in complying with the requirement."

Exceptions would be granted, however, for mandates "imposed by the Legislature or a state agency to comply with a requirement of this constitution, federal law or a court order; or approved by the voters of this state at a general election."

The filed version proposes to place the matter on the Nov. 4 constitutional amendment ballot.

The measure was submitted in response to an endorsement by the Texas Association of Counties board of directors of an initiative by the TAC Policy Analysis Group (PAG). PAG is made up of county officials from across the state, representing all elected and appointed county offices. Its mission is to study, recommend and implement solutions to the challenges, structure, quality and authority of local government.

"To properly manage county operations and develop reliable long-range plans, Texas counties need direct funding systems for new and enhanced programs prescribed by the Legislature," TAC Governmental Relations Director Carey Boethel explained in summarizing the PAG discussions. "Unfunded and under-funded obligations materially interfere with county government planning and seriously impair a county's ability to function in a fiscally responsible manner."

To promote the proposal, the PAG group appointed a committee to be chaired by Brazoria County Commissioner Jack Harris. Other members of the committee are Fort Bend County Assessor-Collector Marsha Gaines, Wichita County Auditor Deborah Stevens, Bell County District

Attorney Henry Garza and Bee County Assessor-Collector Andrea Gibbud.

Very limited safeguards exist in current practice. In the 1980s, lawmakers required that a bill could not advance in the legislative process unless it was accompanied not only by an analysis of its cost to the state budget but also an estimate of its fiscal impact on local governments. The state fiscal note is developed by direct feedback from state agencies, but determining the effects of measures on 254 counties and thousands of cities and school districts has proved much more difficult.

In 1997, the Legislature passed a statute to create an Unfunded Mandates Interagency Work Group with the responsibility to compile a list of unfunded mandates and present it to the Legislature and the Governor. That law provides no offer of funding and does not exempt local governments from being bound to carry out the mandates. 🗳️

County Officer To Protect The Elderly

Representative Warren Chisum (Pampa) recently filed House Joint Resolution (HJR) 75 to authorize a county to create the office of senior citizens advisor.

This constitutional amendment would enable five percent of the registered voters in a county to sign a petition requiring the commissioners court to hold an election creating the office. If the voters approve the creation of the office, then an election must be held to fill the office.

The senior citizen advisor, under the direction of the commissioners court, would serve as a liaison for the elderly in the community. The advisor would act on behalf of the elderly by filing complaints, negotiating with various entities and conducting training seminars promoting health. Unless authorized by the commissioners court, the office may not make policy, receive a salary or reimbursement for expenses of the office. The term of office for the position is four years.

Just as the voters could initiate the creation of the office, they could also initiate procedures by petition to abolish the office. HJR 75 was referred to committee on House County Affairs on March 17. For additional information please contact Lori Kinder or Rick Thompson at 800-456-5974 or e-mail: LoriK@County.org or RickT@County.org. 🗳️



Washington Watch

By Sue Glover

Governmental Relations Manager

PAYMENTS IN LIEU OF TAXES RECEIVES ADDITIONAL MONEY

When Congress completed the Omnibus Appropriations Bill in February, they included more funding for the Payments in Lieu of Taxes (PILT) program than in previous years. According to Paul Beddoe of the National Association of Counties, "the record \$220 million will likely be distributed to eligible counties according to the statutory formula during the month of June".

The 2003 appropriation for PILT includes a \$10 million or 4.5 percent increase over the 2002 appropriation.

Texas counties received \$2,706,453 in fiscal year 2002 for the program, which pays local communities for what they would have received from taxes on federal land. Until the Bureau of Land Management runs the numbers through the PILT formula, it is unclear what impact the increase will have on Texas counties. However, if the percentage increase is applied to the appropriated amount in 2002, Texas could see an increase of \$121,790.

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

Landowners and Cities Could Cut ETJ Deals

A bill heard March 18 in House Land and Resource Management would affect certain land in municipal extraterritorial jurisdictions. The bill was left pending.

House Bill 1197 by Mike Krusee adds Subchapter G to Chapter 212, Local Government Code to provide specific authority for the governing body of a municipality to enter into a written agreement with a landowner located in the municipality's ETJ.

Below are some of the provisions that such an agreement might contain:

- guarantee that the land remains in the ETJ for a period not to exceed 15 years;
- extend the municipality's planning authority over the land by providing for a development plan (prepared by the landowner and approved by the municipality) authorizing certain general uses and development of the land;
- authorize enforcement by the municipality of municipal land use and development regulations "in the same manner the regulations are enforced within the municipality's boundaries,"
- authorize the municipality to enforce land use and development regulations "other than those that apply within the municipality's boundaries", as agreed to by the municipality and the landowner;

- provide for infrastructure on the land, including streets and roads, street and road drainage, land drainage, water, wastewater and other utilities;
- authorize enforcement of environmental regulations;
- provide for annexation in whole or parts of the land and the terms of such annexation, if agreed upon by both parties; or
- specify the uses and development of the land allowed before and after annexation.

Any such agreement must be in writing and approved by the municipality's governing body and the landowner and filed with the county's real property records.

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

County Affairs Reviews Legislation to Include Constables as Weight Enforcement Officers

A bill that would add constables and deputy constables to the definition of weight enforcement officer was discussed March 12 in the House County Affairs Committee.

Freshman State Representative Glenn Hegar Jr. presented HB 1186 to the committee and explained it was designed to add constables and deputy constables to the definition of weight enforcement officer in the Transportation Code. Currently, Section 621.401 lists Department of Public Safety (DPS) officers, sheriffs, deputy sheriffs and certain municipal officers as eligible to enforce weight standards on highways. Hegar advised he hopes to include constables and deputy constables under that classification.

Under current law, constables and deputy constables may enforce weight and load laws on county roads, but no provision exists for such enforcement on highways.

Brazos County Sheriff Chris Kirk, Sheriffs' Association of Texas Legislative Committee Chair, testified in opposition

of the bill and advised SAT generally supported adding constables and deputy constables as weight enforcement officers, but had concerns over additional language in the bill that would authorize a commissioners court to designate a constable or deputy constable to the duty.

"We support adding constables and deputy constables, but we don't think that adding section 621.4015 is needed. In our opinion, including constables and their deputies in the definition covers the authorization for these officers to conduct weight enforcement on state highways and does not require specific designation by commissioners court," Kirk said.

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

County Government Day Activities Planned at Capitol

On April 9, county officials can get a first-hand look at the Legislature in action and the opportunity to voice their concerns or support to legislation that would impact county operations.

A full day is planned at the Capitol. It starts at 8 a.m. with the House County Affairs Committee Meeting in Capitol Extension in Room E 2-0216. At 9 a.m. county officials will have coffee with Lt. Gov. David Dewhurst in the Lt. Governor's Reception Room off the hallway behind the Senate Chamber of the Capitol. Afterwards, resolutions will be read in both the House and Senate chambers recognizing county government.

At lunch, the Texas Association of Counties is treating county officials and legislators to barbecue on the Capitol grounds. Afterwards, county officials can then disperse to visit legislative members in their offices. County officials are also encouraged to come early to attend a reception featuring a salute to freshman legislators during the evening of April 8. The event will welcome and honor all legislators from 5:00 to 7:00 P.M. at the Austin Club. For questions, contact Dwayne Holman at 800-456-5974. 📍

HIPPA Deadlines Approaching Fast

The federal Health Insurance Portability and Accountability Act of 1996 required the U.S. Health and Human Services (HHS) to pass a rule concerning the protection of individuals' health information.

HHS passed the Privacy Rule. The rule may be viewed at www.hhs.gov/ocr/combinedregtext.pdf.

Some key deadlines in the Privacy Rule are rapidly approaching. All health plans (except those under \$5 million in revenues) and healthcare providers who transmit electronically certain information such as billing, must comply with the Privacy Rule by April 14, 2003. Health plans under \$5 million have until April 14, 2004 to comply with the Privacy Rule.

These entities must also start testing their electronic healthcare information systems by April 16, 2003, and be in full compliance with the electronic standards by Oct. 16, 2003.

Health Care Providers and Large Health Plans have to comply with Electronic Security standards (for computer networks, etc.) by April 21, 2005.

Small Health Plans have until April 21, 2006 to comply with the Electronic Security standards. 📍

Bill Authorizes Partial Bail and Cash Bond

House Bill 1031 by Rep. Glenn Lewis would allow judges, in cases where it is deemed appropriate, to set bail at a certain amount, but instead of a surety bond, allow the defendant to post a percentage of the bail he deems necessary to secure the release of a defendant. The advantage of this bill, Lewis said, is that the money becomes "assignable." The money is assigned by the defendant after the case is disposed of, hopefully to cover attorney fees. Lewis said the advantage of this is that it could relieve some of the burden on county's paying for court appointed counsel. The bill is permissive and would allow judicial discretion in setting a bail amount that the judge believes would not place an unreasonable hardship on a defendant.

The county may impose a fee, up to 10 percent of the amount deposited, to cover administrative costs and the remaining amount must be refunded to the defendant or to another person assigned by the defendant, once he or she has complied with the conditions of the bond. This

money can be re-assigned by the defendant to court costs, fines, attorney fees etc.

Donald Lee, Conference on Urban Counties, testified in support of this bill saying he trusts the judiciary with this option to use it correctly and in the right circumstances.

Carol Oeller, Harris County Office of Court Services, testified in support of this bill saying it is a 10 percent judicial option that would result in a defendant paying a county instead of a bail bondsman. The 10 percent simply helps offset costs incurred, Oeller said.

A crowd of bail bondsmen attended the hearing and signed up in opposition to HB 1031 saying the counties do not have the financial incentive to hunt down individuals who do not show up for court, and the bail bondsmen do. They claim that if there is no bail bondsman involved, no one will make sure the person shows up for court or make the effort to collect the other 90 percent or locate the defendant and get them back to

[Please see Partial Bail, continued on page 15]

Carona Bill Would Do Away With Local and Regional Solid Waste Funds

A measure introduced in sessions past to reduce local and regional funding for solid waste and related projects has been re-introduced this session. SB 887 by Sen. John Carona amends portions of sections 361.03 and 361.014, Health and Safety Code.

The bill reduces the amount of the Texas Commission on Environmental Quality's (TCEQ) municipal solid waste (MSW) tipping fee from \$1.25/ton to \$0.65/ton. It directs the remaining funds to TCEQ's municipal solid waste permitting and enforcement programs, cutting out local governments' and COGs' share of half the current tipping fee. The tipping fee is assessed on a per ton basis on waste disposed of at private and municipal landfills. Payers of the fee are trash collectors, both local governments and private waste hauling companies.

Under current law, TCEQ is directed to dedicate one-half of the revenue generated by state fees on MSW disposed of at landfills to grants for regional and local MSW projects. Approximately \$11 million per year in grants

are awarded to regional and local governments for municipal solid waste management projects through the state's Regional Solid Waste Grants Program. The TCEQ allocates the funds to the state's 24 councils of governments (COGs) based on a formula that takes into account population, area, solid waste fee generation and public health needs. Based on the formula, yearly funding for the state's 24 COGs averages from \$170,000 in the more rural areas of the state, to more than \$2 million in the most heavily-populated metropolitan areas. The COGs, in turn, use the funds to develop an inventory of closed MSW landfills, conduct regional coordination and planning activities, maintain a regional solid waste management plan and administer pass-through grant programs to provide funding for regional and local MSW projects.

The bill has been referred to Senate Natural Resources; no hearing date has been set.

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

Options for Collecting Overdue Utility Bills and Solid Waste Fees

House Bill 2036 by David Swinford would provide some options to local governments in collecting past due amounts owed for utility or municipal solid waste service.

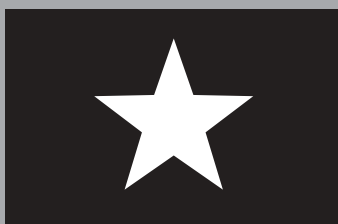
The bill allows a city that offers either utility service (as defined in Sec. 402.001, Local Government Code) or municipal solid waste service to enter into an agreement to collect unpaid utility or solid waste charges. The city may enter into this agreement with either another municipality that operates a utility system or with a county or public agency that offers municipal solid waste service. The agreement may provide that the municipality refuse to provide utility service to a person that is past due on either utility or solid waste service. The agreement may also allow the city to collect an amount equal to the past due utility or solid waste charges owed to another party to the agreement (a city, county or public agency) plus a service charge. Once these are collected, the city may then provide the utility service requested. The agreement must also provide for

the confidentiality of a person's utility or solid waste service account information and for how past due charges, fees, and service charges are divided between the collecting entity and the entity owed.

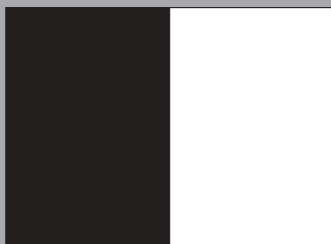
Conversely, the bill allows a county offering solid waste disposal service to enter into an agreement with another county or public agency that offers solid waste service or a municipality that operates a utility system. The agreement may allow a county or public agency to refuse to provide solid waste disposal service to a person if that person is past due on utility or waste disposal fees to another party to the agreement. Once the past due amounts and service charges are collected, the county or public agency may provide the solid waste service requested. This agreement must also provide for the same confidentiality and apportionment stated above.

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

TEXAS



COUNTY
GOVERNMENT



COUNTY GOVERNMENT DAY AT THE CAPITOL

The Texas Association of Counties invites you to join us
for lunch on the Capitol grounds in celebration of

COUNTY GOVERNMENT DAY

Wednesday, April 9, 2003 12 p.m. - 1:30 p.m.
southwest corner of the Capitol grounds Austin, Texas

To R.S.V.P. Call (800)-456-5974

Texas Association of Counties

TEXAS ASSOCIATION OF COUNTIES

2003

POST LEGISLATIVE CONFERENCE

August 13-15, 2003

Hyatt Regency on Town Lake – Austin

Every two years the Texas Legislature makes changes that directly affect Texas counties. TAC's Post Legislative Conference is designed to help county officials evaluate the impact of new laws and provide explanations by peers, legislators and other professionals. General sessions explore issues of common interest and smaller meetings review changes specific to each county office. Austin's Hyatt Regency on Town Lake is the host hotel. With each registration, you receive a free copy of TAC's 2003 Legislative Analysis Report.

Hit The Links

Plans are in the works for an organized golf outing on Tuesday afternoon, August 12th. To participate, golfers must register no later than July 18th. Fee is \$40.

Bring Your Spouse

Registration fee for spouses is \$30 and provides admission to all conference programs including the Wednesday evening party and a special Thursday morning event.

Continuing Education

Application will be made for continuing education credit for county commissioners, tax assessor-collectors, county and district clerks, sheriffs, treasurers and auditors.

Registration and Accommodations

TAC will process both conference registration and hotel reservations. Conference registration is required to obtain reservations in the hotel room block.

Texas Association of Counties
2003 POST LEGISLATIVE CONFERENCE
August 13-15, 2003 • Hyatt Regency on Town Lake, Austin

CONFERENCE REGISTRATION

Please complete and submit with applicable fees to Post Legislative Conference, Box 2131, Austin, Texas 78768 by July 18, 2003.

Cancellation Policy: Conference registrations are fully transferable to another individual but requests for refunds (less \$10 administrative fee) must be received in writing by Monday, August 4, 2003. Refunds after that date will be limited to one-half of the registration fee.

NO REFUND REQUESTS WILL BE HONORED AFTER SEPTEMBER 1, 2003.

Name	_____
County	_____ Title
Phone	_____ Email
Address	_____

Staff: For planning purposes please indicate the office/official that you work for: _____

Spouse Registration

Spouse Full Name _____

Spouse registration fee includes admission to all General Sessions, Wednesday Evening Event and Thursday Spouse Activity.

Registration Fees:

	Earlybird Postmarked By 7/18/03	Postmarked After 7/18/03 & At-door
Registration	<i>(Check space that applies)</i>	
Member county attendee	_____ \$225	_____ \$250
TAC Associate member	_____ \$225	_____ \$250
Non-member – government	_____ \$275	_____ \$300
Non-member - corporate	_____ \$425	_____ \$450
Spouse	_____ \$30	_____ \$30
Extra tickets for Wednesday evening event	_____ \$30 /ticket	_____ \$30 /ticket
Tuesday golf tournament fee	_____ \$40	not available
Total	_____	_____

HOTEL RESERVATIONS

DUE TO TAC NO LATER THAN JULY 18, 2003

To obtain hotel accommodations at special rates in the conference room blocks, your hotel reservation request and conference registration form must be received in the TAC offices no later than July 18th. Reservation requests after that date should be directed to the hotels. In most cases, non-conference rates will then apply if space is available. Registration and hotel reservations may be faxed to 512-477-1324. The Association reserves the right to reassign rooms if conference fees are not received within 30 days.

Please supply full information for hotel reservations:

Last Name	_____	First Name	_____
Phone Number	_____	Roommate Name	_____

Arrival Date ____/____/____ Departure Date: ____/____/____

Preferences: Double/king bed; smoking/non-smoking, etc. _____

Special Services: To ensure our conference is ADA accessible to all, please contact the Education Staff at 1-800-456-5974 if you require special assistance.

Please check your preferred hotels

Indicate first choice with 1. Then number other choices from 2-6 in the order of preference. If your first choice is unavailable, a reservation will be made at the next available hotel according to your ranking. Each reservation requires a one-night deposit and/or credit card guarantee in order to secure/guarantee the reservation. Please note, a one-night deposit may be charged to your credit card by the hotel at the time the reservation is made.

Hotels *(indicate preference by number with #1 indicating first choice.)*

	Single Rate	Double Rate	Office Use
Only			
_____ Hyatt Regency	\$133	\$133	
_____ on Town Lake(HQ hotel)			
_____ Embassy Suites	\$149	\$149	
_____ Radisson Hotel & Suites	\$ 85	\$105	

Hotel Deposit: TAC will confirm your conference registration and hotel assignment within 5 working days of receipt. Hotel rooms must be appropriately guaranteed for reservations to be held. The fast and easy way to accomplish this is to supply complete credit card authorization information below OR mail a one-night deposit directly to the hotel after you receive your hotel room assignment.

Credit Card Authorization:

_____ MasterCard _____ Visa _____ American Express

Expiration Date _____

Card Number _____

Cardholder's Name _____

The Texas Association of Counties is authorized to use the above card to guarantee my hotel reservation. I understand that one night's room charge will be billed through this card if I fail to arrive for my assigned housing on the confirmed date unless I have canceled my reservation directly with the hotel according to required cancellation procedures.

Cardholder's Signature _____

Please do not mail hotel deposit to TAC.

CI

Wohlgemuth Bill to Allow County Land Use Authority

House Bill 2035 by Rep. Arlene Wohlgemuth would give permissive authority to counties to regulate land use and other matters related to development.

The bill amends Chapter 232, Local Government Code, by adding Subchapter F: "County Development Regulations." It would allow a commissioners court to regulate:

- the percentage of a lot that may be occupied and developed;
- population density;
- the size, design and construction of buildings;
- the location, design, construction, extension and size of streets and roads;
- the location, design, construction, extension and installation of water and wastewater facilities and drainage facilities;
- the location, design, and construction of parks; and
- "the abatement of harm resulting from inadequate water or wastewater facilities."

Commissioners court may adopt development regulations only after public notice and a public hearing. The court may also divide the unincorporated area of the

county into any number and size of districts the court considers best for carrying out the subchapter's provisions. Regulations must also comply with a county growth and development plan and be coordinated with the comprehensive plans of the municipalities within the county.

The bill allows commissioners court to appoint a development commission to assist in the development and enforcement of the subchapter's provisions, although its powers are strictly advisory. The commission must include an ex-officio presiding officer who must be a public official in the county, as well four additional members.

The commissioners court may also set reasonable fees related to the implementation and enforcement of the subchapter. A commissioners court may also, by order, enter into an agreement with any municipality located in the county to assist in the implementation and enforcement of development regulations adopted under the subchapter.

The bill also provides for special exceptions from development regulations for certain persons as well as enforcement authority and criminal penalties.

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

Open House Set for New Home of County Government



County officials can look forward to an August 14 Open House to celebrate completion of TAC's new headquarters building at 1210 San Antonio in Austin. While weather and red tape have slowed project completion, the building is projected to come in well within its \$21.7 million budget and will offer TAC members an array of new benefits.

The new facility will include meeting rooms and a multi-purpose training center, county research and history libraries and

a business center with work space for county officials use while they are visiting in Austin.

"When finished, this building will be something for TAC members to be proud of," stated Randy Hagman, project manager with American Realty of Austin. While delays have been a frustration, Hagman stated that with 70 percent of the project completed, change order and adjustments amount to less than three percent of the construction contract and are well within the project budget's allowance.

When completed, the new TAC Headquarters will be owned jointly by the TAC Workers Compensation Self Insurance Fund and the TAC County Government Risk Management Pool. The 8-story, 83,843 sq. ft. project is overseen by the TAC Building Committee chaired by Yoakum County Judge Dallas Brewer. Committee members include Garza County Judge Giles Dalby, McLennan County Judge Jim Lewis, Burnet County Auditor Kevin Smith and Palo Pinto County Judge Mickey West with TAC President Bill Bailey serving as an ex-officio member. 🗺️

House Transportation Committee Reviews County Roads Bills

Two bills that could help clear up challenges counties face when acquiring public roads were discussed before the House Transportation Committee on March 18. House bills 1116 and 1117, both authored by Rep. James Keffer, seek to address current statutory language in Chapter 281 of the Transportation Code that lists how counties with populations of 50,000 or less may acquire roads.

Under HB 1116, Chapter 281 of the Transportation Code would be repealed which would allow effected counties to return to the method of prescriptive easement (proving road maintenance for a consecutive 10-year period). Jim Allison, General Counsel for the County Judges and Commissioners Association of Texas, advised repeal of Chapter 281 would equalize how all counties acquire public roads.

"Chapter 281 was placed into law in 1981...this bill would put all counties back on the same footing," Allison said.

Texas currently has 200 counties who are governed by requirements in Chapter 281. The statute allows road acquisition only by adverse possession, purchase, dedication or condemnation.


Representative Keffer advised the committee that he was also introducing HB 1117 to give the committee an

alternative to repealing Chapter 281. "Members, you should have before you a copy of the House Land and Resources Management interim study where they suggest consideration for the repeal of Chapter 281 of the Transportation Code... they recommended passage of a bill (HB 340) I filed that session and House Bill 1117 is a continuation of that bill," Keffer said.

HB 1117 would allow counties to acquire roads via a county road map process. Highlights of the bill requires counties to post notices in the local newspaper for four consecutive weeks advising of a public hearing regarding road acquisition intent, mailing notices in tax statements and posting a map showing roads proposed for acquisition. The bill would give landowners two years to respond in protest before a county could claim a road.

"HB 1117 does not repeal Chapter 281," Keffer said, "Rather, it offers a process that landowners and counties can follow to determine which roads are county roads."

Committee Chairman Mike Krusee said HB 1116 and HB 1117 would be left pending in committee.

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

Bills to Grant Tax Exemptions Heard in Committee

Several pieces of legislation that would provide for an over sixty-five (65) tax freeze exemption for county and municipal property taxes were heard March 13 in the House Committee on Local Government Ways and Means. School districts are currently required to provide such a tax freeze exemption for persons 65 years and older.

HJR 16 and HB 136 by Rep. Fred Brown provides that a county or city or town may provide that if a person 65 years of age or older receives a resident homestead, exemption then the total amount of ad valorem taxes may not be increased while it remains the residence homestead of that person or that person's spouse who is 65 years of age or older. However, if a petition is signed by 50 percent of the registered voters of the county, city, or town, the governing body shall call of an election to determine by majority voted to establish a tax limitation on the over 65 aged population.


HJR 60 and HB 86 by Rep. Ruth Jones McClendon would require all political subdivisions to give the tax freeze exemption for persons 65 years and older.

Numerous senior citizens attended the meeting in support of the legislation and offered testimony concerning the rising cost of property taxes. Don Lee, executive director of the Texas Conference of Urban Counties, testified in support of HB 136 and HJR 16, but opposed HJR 60 and HB 86. Lee explained that HB 136 and HJR 16 are permissive and would allow the county or city the local option to give the exemption, but HJR 60 and HB 86 would require a mandatory tax freeze for persons over 65.

Dick Lavine, with the Center for Public Policy Priorities, spoke in opposition to all four pieces of legislation dealing with the tax freeze exemption. Lavine pointed out that "even though several pieces of the legislation were permissive, the political pressure on cities and counties to enact such an exemption would be great".

"This is not a time for cities and counties to face additional burdens when they may be faced with the effects from the state budget cuts" Lavine said.

The bills were left pending in the committee.

For more information concerning these matters, please contact SueG@county.org or 800-456-5974. 

Resources, Naturally

By Paul J. Sugg
Legislative Liaison



WATER BILLS FLOWING

Several bills have been filed that deal with or will affect water marketing, groundwater and surface water condemnation, repealing the junior rights provision and groundwater exporting, to varying degrees. Below is a brief analysis of each.

HB 1532 by Robby Cook

This bill places additional requirements on a political subdivision filing a condemnation petition for the purpose of acquiring surface water or groundwater. The petition must state that the political subdivision has prepared a drought contingency plan and has developed and implemented a water conservation plan that will achieve the highest practicable levels of water conservation and efficiency possible for that political subdivision. Further, the entity must have pursued the availability of feasible and practicable alternative water supplies and made good-faith efforts to acquire the rights to the water it proposes to condemn. If the political subdivision has not included the above in its petition, a court shall deny the petition to condemn.

HB 1535 by Robby Cook

This bill would allow a groundwater district to spend permit fees, export fees or user fees for mitigation projects or other projects intended to benefit the residents of a district, including economic development or educational programs related to water use. Currently, groundwater conservation districts may only spend funds collected from permit fees for purposes related to the district's certified water management plan, and projects for which grants, loans, or payments can be made are limited to reductions in groundwater pumping or the development or distribution of alternate water supplies. Under this bill, groundwater districts could spend these funds for mitigation projects, economic development projects, or water-use education projects.

HB 803 by Charlie Geren

The bill would amend the Property Code by adding a new section providing for the assessment of damages, in a land condemnation proceeding, for the market value of groundwater rights associated with the property.

According to the Legislative Budget Board's fiscal note on the bill, there would be some fiscal implications for municipalities that choose to condemn property to develop or use the groundwater. Certainly, the market value of groundwater would vary across the state, depending on such factors as the amount of groundwater available and the proximity of the end user to the source of supply. Relying on the LBB's analysis further, we learn that if a municipality condemns land with any potential for groundwater rights development, there would likely be additional legal costs to demonstrate the intent of the condemnation; if a municipality condemns land specifically for the groundwater rights, there would be both additional legal costs and damages or costs assessed for the market value of the groundwater.

HB 1618 by Robby Cook

This bill adds an exception to the requirement that a groundwater district not impose more restrictive permit conditions on transporters of groundwater than it imposes on in-district users: "A district may restrict the export of groundwater if the district determines that studies of the area indicate that the district will be unable to meet its projected future water demand."

Currently, in reviewing a proposed groundwater transfer a district must consider such things as the availability of water in the district and in the receiving area as well as the effects the transfer will have on existing permit holders. To conform with the above restriction, this bill adds the requirement that in reviewing a proposed groundwater transfer, the district must consider studies of the area that provide information regarding the district's ability to meet its projected future water demand.

SB 1040 by Kip Averitt

This would repeal the junior rights provision, considered an unfair barrier by supporters of water marketing and a necessary protection of a natural resource by others. The junior rights provision dictates that any surface water right that is transferred out of its basin of origin is junior in right to all water rights that remain in the basin. This means, in effect, that in times of drought, all water rights for uses that remain in the basin of origin must be met before any water may be transferred out of the basin.

Although this session the state budget deficit dominates much of the debate, there is plenty of other game afoot. 🗡️

Competency Evaluation Legislation Introduced

Sen. Robert Duncan, chair of the SB 553 Task Force, held a press conference March 10 to introduce SB 1057, and Rep. Terry Keel's companion, HB 2014, relating to the competency evaluation process. Former Rep. Patricia Gray was the vice-chair of the task force.

This legislation is the end result of the SB 553 Task Force (77th Legislature) charged with reviewing the statute on Incompetency to Stand Trial (Code of Criminal Procedure Art. 46.02).

The intent of the bill is to clear up the current, often perplexing and inconsistent, language in statute on criminal competency, and institute a more efficient and fair process for criminal defendants.

Two of the key components proposed in this legislation are related to unnecessary jury trials and forced medications. After a competency evaluation has been completed, under current statute even if both parties and the court agree that an individual is incompetent to stand trial, a jury trial still must be conducted to determine the same. Senate Bill 1057 proposes after the competency evaluation is conducted, if all involved parties (both attorneys and the court) agree that the defendant is incompetent to stand trial, then a jury trial is not required; however, if one or more parties disagree then a jury trial can be requested.

The issue of forced medication evoked much discussion among the task force members. Many of the members wanted to see a solution to the "revolving door" problem. That is, when a defendant is ruled as incompetent to stand trial they are sent to a mental health facility for restoration treatment. If competency is restored, the defendant is transported back to the county jail to await their trial. If a

person released from competency restoration treatment is taking psychoactive medication, and they are not maintained on the same or similar regimen, it is possible that a person's mental capacity could deteriorate back to the point of incompetency. If this occurs prior to the defendant's trial, he would have to be transported back to the state hospital for additional competency restoration treatment which is costly to both the state and county.

Senate Bill 1057 proposes to alleviate this revolving door issue by allowing a court to order forced medication under certain circumstances. If a defendant has been restored to competency, but refuses to take their medication after they are released back to the jail, the head of the correctional facility must notify the court by the end of the next business day. The court in turn notifies the attorneys representing both sides and a hearing is held to determine if medication needs to be administered by force based on the testimony of two physicians, one of whom must be the physician at the correctional facility. This provision only affects that group of people returning from competency restoration treatment and who are in jail waiting for their trial.

Other provisions in the legislation include explicit qualifications for the experts who conduct the competency evaluation, and factors the expert must consider and include in their report back to the court. Another proposed change is that a defendant may be committed for up to 120 days for competency restoration treatment, with the possibility of one 60-day extension. The bill passed out of Senate Jurisprudence as amended.

For questions regarding this article or legislation, contact Teresa Aguirre at TAC. 🗺️

Judicial System Impact Notes Proposed

At a recent Senate Criminal Justice Committee hearing, a committee substitute was offered on SB 458 by Sen. Ken Armbrister that would amend the Government Code to require the Legislative Budget Board to prepare impact statements on each bill or resolution that proposes a new or increased court cost or fee. The impact statement will include a total amount of court costs and fees a person currently is required to pay and then adds on the proposed new or increased cost. Such a report would allow legislators to make informed decisions by seeing the total impact of costs to be collected from defendants if a new or increased cost was added.

Under SB 458, the impact statements will be completed on criminal offenses, "including a court cost or fee imposed on conviction or other disposition or postponed disposition of the criminal charge."

Those who registered for the bill, but did not testify include: Don Lee, Conference of Urban Counties; Dianna Spieker, County Treasurer, Tom Green County, and Shanna Igo, Texas Municipal League.

The committee substitute passed on the Senate Local Calendar. For questions regarding this article, contact Teresa Aguirre at: 800-456-5974 or TeresaA@County.org. 🗺️

Attorney General Opinions



GA-0028: Honorable Carole Keeton Strayhorn, Comptroller of Public Accounts, whether the Comptroller of Public Accounts may disclose certain information relating to state tax liens (RQ-0592-JC). **Summary:** The Comptroller may disclose the amount of current tax, penalty, and interest owed by a delinquent taxpayer when that amount is actually secured by a publicly available state tax lien notice to the extent this information is disclosed to supplement information available in the state tax lien notice.

GA-0029: Honorable Harold Dutton, Chair, Juvenile Justice and Family Issues Committee Texas House of Representatives, meaning of "civil liability" in section 791.006(a) of the Government Code, which permits interlocal cooperation contracts for fire department services (RQ-0593-JC). **Summary:** Under section 791.006(a) of the Government Code, if governmental units contract for fire department services, the governmental unit that would have been responsible for furnishing those services in the absence of the contract "is responsible for any civil liability that arises from the furnishing of those services." Tex. Gov't Code Ann. § 791.006(a) (Vernon Supp. 2003). "Civil liability" in section 791.006(a) is a broad term and encompasses any damages and injunctive relief available in a civil action against a city under Texas law, and does not necessarily exclude personnel or retirement benefits.

GA-0030: Honorable Randal Lee, Cass County Criminal District Attorney, allocation of appraisal district's expenses between its appraisal and collection functions (RQ-0598-JC). **Summary:** The budget of a tax appraisal district may allocate to the taxing units within the district only the costs of operating the appraisal district for its appraisal purposes. The costs of tax assessment or collection, which the appraisal district may opt to perform for taxing units under contract, are paid for by the taxing unit that has contracted with the district for these services and are not allocated to all taxing units within the district regardless of whether or not the unit contracted with the district for assessment or collection services.

GA-0034: Honorable Dib Waldrip, Comal County Criminal District Attorney, whether a county may require the owner of a "junked vehicle" to erect a fence or other screening objects in order to shield the vehicle from public view (RQ-0605-JC). **Summary:** A county may abate and remove as a "public nuisance" any "junked vehicle" that is visible from public or private property or a public right-of-way. A county may not require a particular kind of camouflage to render the vehicle non-visible. The fencing and screening standards applicable to licensed automotive salvage yards and junkyards under chapter 396 of the Transportation Code do not apply to junked vehicles parked on other private property.

GA-0037: Honorable Tom Maness, Jefferson County Criminal District Attorney, county commissioners court's authority over hiring and budgetary matters concerning an elected county officer (RQ-0603-JC).

Summary: A commissioners court may not impose the condition on a position of employment in an elected official's department such that, if the present employee vacates the position, funds for the position's salary either (1) will cease unless the officer obtains the commissioners court's special permission to hire someone who is not currently a county employee, or (2) will be reduced to increase a promoted existing employee's salary no more than three percent. Such a condition interferes with an elected officer's authority to appoint an employee of his or her choice to a position that the commissioners court has approved and for which the court has set compensation. For the same reason, a commissioners court may not "freeze" a vacant position and condition filling the position on promoting an existing county employee or obtaining the court's special permission.

A commissioners court may transfer funds from one line item in the county budget to another existing line item in the county budget without authorizing an emergency expenditure. See **TEX. LOC. GOV' T CODE ANN.** § 111.070(c) (Vernon 1999). Thus, to the extent that a budget amendment consists of transferring funds from one budgeted item to another, section 111.070(c) of the Local Government Code clearly authorizes the court to so amend the county budget, even in the absence of an emergency. See *id.* On the other hand, to the extent that a proposed amendment is not a mere transfer, the court may not accomplish the amendment in the absence of an emergency. See *id.* §111.070(b)-(c).

In general, a county commissioners court has discretionary authority to approve an expenditure proposed by a county officer after the annual budget is adopted, although the court may not, by refusing to approve a requested expenditure, interfere with an elected officer's ability to perform his or her legal duties.

GA-0039: Honorable Michael A. Stafford, Harris County Attorney, whether Harris County may participate in the design and construction of a toll bridge from Galveston Island to Point Bolivar (RQ-0608-JC).

Summary: Because no part of the proposed Bolivar bridge project is located within Harris County, nor connected to a facility that is controlled by the Harris County Toll Road Authority, the Authority may not participate in the design and construction of a toll bridge from Galveston Island to Point Bolivar.

GA-0042: Honorable Jeb McNew, Montague County Attorney, whether an inmate in a county jail has the right to choose a medical provider and whether an inmate who refuses to use the provider designated by the sheriff's office has refused medical treatment (RQ-0609-JC). **Summary:** A county jail inmate does not have the right to choose a medical provider. Whether an inmate's refusal to use the medical provider selected by the sheriff's office constitutes refusal of any and all medical treatment will depend upon the facts. ■



RQ-0022-GA: Honorable Tim Curry, Criminal District Attorney, Tarrant County, whether section 1704.304 of the Occupations Code, which prohibits certain persons from recommending the employment of a bail bond surety or of an attorney or law firm to a criminal defendant, precludes those persons from furnishing a list of multiple attorneys or bail bond sureties.

RQ-0023-GA: Honorable Michael A. Stafford, Harris County Attorney, construction of sections 11.26 and 23.23, Tax Code,

regarding the valuation of repairs made to a property owners homestead as a result of flood, wind, fire or other damage.

RQ-0025-GA: Honorable Senator Steve Ogden, Chairman, Senate Infrastructure Development and Security Committee, Texas Senate, whether, "in the case of emergency and imperative public necessity and with a four-fifths vote of the total membership of each House," the Legislature may, pursuant to article III, section 49a(b) of the Texas Constitution, authorize expenditures in excess of the amount of cash and anticipated revenue certified by the Comptroller. ■

AG Rules on Junked Vehicle Oversight Authority

Attorney General Greg Abbott recently offered an opinion that states a commissioners court may require removal of a junked vehicle from public view if the vehicle qualifies as a public nuisance; however, commissioners court may not require “a particular type of camouflage” to shield the nuisance from public view.

In rendering AG Opinion GA-0034, Attorney General Abbott addressed a request for opinion from Comal County Criminal District Attorney Dib Waldrip. Waldrip asked if a commissioners court may require a private owner to cover a junked vehicle in a manner similar to requirements levied on commercial businesses in Chapter 369 of the

Transportation Code.

“The fencing and screening standards applicable to junked vehicles in the possession of licensed automotive salvage yards and junkyards under Chapter 369 are not applicable to junked vehicles maintained by individuals or businesses that do not fall within that category,” Abbott advised.

To view AG Opinion GA-0034 please access the following website: <http://www.oag.state.tx.us/opinopen/opinions/op50abbott/ga-0034.htm>

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

[Partial Bail continued from page 6]

custody. They believe this bill would allow a defendant a ticket out of jail for only 10 percent of the amount of bail, and they would have no incentive to return to court if they know a bail bondsman will not be out looking for them. Bail bondsmen do not believe counties will attempt to collect the money (90 percent), therefore, there is little incentive for a defendant to show up in court.

Keith Hampton, Texas Criminal Defense Lawyers Association, who favors the bill, argued that the county does not need a financial incentive, but rather it is a sense of justice that motivates law enforcement officers to locate defendants who do not show up for court.

In his closing statement, Rep. Glenn Lewis introduced a committee substitute that would, in part, make the defendant liable for the whole amount of the bond if they

do not show up for court. Lewis stated that the intent of his bill was not to try and generate revenue for counties, but rather to help cover costs such as court costs, fines, attorney fees, lab services etc. He emphasized that the bill does not place mandates on anyone but gives discretion to the judges to use this option.

In order to allow the bill sponsor to meet with individual committee members before taking a vote, HB 1031 was left pending. 📧

[From the Desk continued from page 12]

is it still so commonplace to put trust in these internally unscientific methods? Some analysts contend the activity helps remove the feeling of helplessness of being situated in a world of knowing about things which cannot be comprehended.

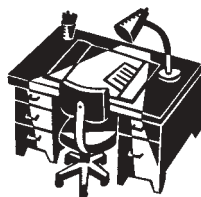
Divination (the art of prediction) — but even today some practitioners claim they can reveal, through the use of a divining rod, the presence of water or minerals by dipping it downward when held over a vein; or, Capitol political prophets contend they can make predictions based upon the chance remarks of passers-by. Predictions

this session include a very strong **shift** in the **tax shaft** to the local property owner — “we’re going to see some big financial bumps on the heads of county officials coming from a political process known as **devolution**, AKA ‘send the debt down,’” one anonymous foreteller explained. Lets hope we don’t hear any passers-by talking about moving the income tax due date from April to January. Remember, we must watch out for things that might creep up on us, including those tight shorts. County Government — it’s the real pulse of people. 📧

From the Legislative Desk

By Carey "Buck" Boethel

Director of Governmental Relations



Terminal Amputation — proposed funding caps directed to the Texas Health and Human Services Commission & Department of Human Services would limit agency funding for 2004 and 2005 to more than 12.5 percent below the dollars needed to support programs for the 2002-03 budget period. Reductions at the two state agencies would cut health funding to local communities by \$9.3 billion in 2004-05. For instance, Harris County would lose \$1.127 billion dollars and experience a 60,566-caseload reduction in 2005 with 61,434 elderly and disabled persons losing their prescription medications. (Source-Center for Public Policy Priorities news release dated March 17 — see www.cppp.org for impact by Texas Senate and House Districts).

Homeowners — words of mass destruction—those attending the March 13th meeting of the House Standing Committee on Local Government Ways and Means

witnessed an episode of property-owner verbal outrage sufficiently disruptive to warrant law enforcement escort action. The issue: proposed caps on appraisal values and the wearisome process of waiting to testify as a witness before the committee. Chairman Fred Hill did an exemplary job of keeping the process on track despite the undeserving actions of the frustrated property owners. Harris County Tax Assessor-Collector Paul Bettencourt testified that the average tax bill for Houston homeowners has gone up 73 percent in the last five years. The committee is to be commended for its patience, dedication and hard work on a very volatile subject — the property-owner's pocket book.

What's ahead? An ancient practice among members of the Roman civilization was that of interpreting various forms of evidence to predict the future. For example, it was popular to observe and interpret the flight direction of birds and the spontaneous remarks of passers-by. There were those who looked to the stars (astrology), the hands (palmistry), bumps on people's heads (phrenology) and to the relationship among numbers (numerology) for a glimpse of what was to come. **Superstition** — fallacies aside, why

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



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