

County *issues*

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MESSAGE: Don't Balance Budget on Counties' Backs

County officials from across Texas gathered at the State Capitol April 9 to urge the Legislature to seek alternative solutions to the state's budget crisis, without further damaging local property taxpayers. Representing counties at a press conference on County Government Day were the Texas Association of Counties, the County Judges and Commissioners Association of Texas and the Texas Conference of Urban Counties.

Leading off was Harris County Constable Bill Bailey, president of the Texas Association of Counties. He told the 20 reporters present that county officials "wish to get the word out about the potential impact of state fiscal decisions on local counties. "In a word, don't balance the state's budget on the backs of county taxpayers," Bailey said.

Also speaking at the news conference were Williamson County Commissioner Mike Heiligenstein, McLennan County Judge Jim Lewis, Harris County Commissioner El Franco Lee and Tarrant County Commissioner Glen Whitley.

Heiligenstein spoke about property taxes, the primary source of funding for county operations. "As local taxpayers will no doubt verify, the property tax is strained to the breaking point."

Lewis discussed the state's criminal justice system and how it relates to the counties, noting possible state budget cuts of \$29 million to treatment programs for offenders with substance abuse problems and \$22 million in cuts to a diversion program for inmates with mental illnesses. "These community corrections programs are what make our criminal justice system work," Lewis said, warning that without those programs, "there is a much greater likelihood that our streets will be more crime-ridden and, eventually, our jails will be full."

Harris County's Lee talked about health care. Although the House Appropriations restored some funding from initially proposed 12.5 percent health care cuts, Lee said counties are concerned that cuts could be put back into the budget as the legislative process moves forward. "Our message to our legislators is simple," he said. "If you dramatically cut state health care funding, which also reduces the federal funding, and you do not create real savings, local governments and taxpayers will be left in the lurch... Our local emergency rooms and hospitals cannot handle more patients without insurance coverage."

Whitley encouraged lawmakers to consider alternative sources of revenue instead of shifting the budget problem to the county taxpayers. "First, we support the state balancing the budget without a tax increase, if they can do so without placing burdens on local governments that result in increased property taxes," he said. "If not, then we support increases in state revenue – hopefully through ideas for new non-tax revenue that have been put forth by several state officials – over increases in property taxes.

"If they cannot balance the budget without a tax increase, then we would support a state tax increase instead of more increases in property taxes," Whitley said.

Bailey concluded the news conference by discussing HJR 91, a constitutional amendment regarding unfunded mandates, introduced by Rep. Glenn Lewis (D-Fort Worth), that the county organizations are seeking. The pending amendment would require the state to set aside, to the credit of counties, adequate funds to pay all or a high percentage of the "ongoing, usual and reasonable costs of performing a new program or an increased level of service of an existing program." 🗺️

Video Cameras in Jails Considered in County Affairs

A bill that would require all county jails to have video surveillance cameras installed by June 1, 2008 was discussed during the April 2 meeting of the House County Affairs Committee.

House Bill 1660, authored by Rep. Ismael "Kino" Flores, seeks to add new sections 351.016 and 351.017 to the Local Government Code. Section 351.016 would require county jails to install video cameras.

Section 351.017 directs the Texas Commission on Jail Standards (TCJS) to submit a report to the Lieutenant Governor and House Speaker no later than Feb. 1, 2005 advising each chamber's presiding officer of: "...changes in technology affecting the installation of video camera surveillance systems described by Section 351.016, sources of revenue available to counties to pay for the surveillance systems, and areas in county jails not described by Section 351.016 that nonetheless should be monitored by surveillance systems." Language in the bill states that Section 351.017 would expire on Feb. 2, 2005.

Rep. Flores said he filed the bill because he believes it will help prevent a situation that took place in his legislative district.

"A constituent of mine was in jail awaiting trial and he committed suicide...I believe it could have been prevented if there had been a surveillance camera in place," Flores said.

Flores said his bill directs TCJS to review county jail funding and help jails identify ways to cover costs of implementation: "Whether it be from fees, a new program, grants or the commissary, we just want them to help find a way to fund it," Flores said.

Committee Chairman Glenn Lewis and Vice Chairman Wayne Smith advised Flores that they were concerned that the bill would impose an unfunded mandate on counties.

"I am concerned about imposing the requirement until we have completely worked out the financing for it," Lewis said.

Flores responded that he understood the concern and that he believes the 2008 deadline would give counties enough time to identify funds. Flores added that he believes mandating installation of video cameras would help protect the jail employees as well as the inmates.

Chairman Lewis asked if it would be possible to review the issue during the legislative interim period to work out ways to identify funding.

Flores said he wouldn't have a problem reviewing possibilities during the interim period: "We'll be supportive of an idea that would take that into account," Flores said.

Chairman Lewis announced the bill would be left pending before the committee to give time for further review.

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

Bulletproof Vests Grant Funds Available; May 2 Deadline

The Office of Justice Programs and Bureau of Justice Assistance, under the United States Department of Justice, recently announced matching grant funds are available through the Bulletproof Vest Partnership Grant Program (BVP). BVP, which was first enacted in 1998, was reauthorized by federal legislation (S. 2413) in November 2000 and will continue through 2004.

The BVP program was implemented to offer law enforcement agencies assistance with purchasing ballistic and stab vests used to protect officers in the line of duty. The program offers matching grant funds and gives priority consideration to law enforcement agencies that serve jurisdictions with populations under 100,000.

Applicants will be asked to identify the total number, type and projected costs of vests for their "eligible and

participating law enforcement officers." BVP will pay up to 50 percent of the cost of bulletproof vests meeting National Institute of Justice (NIJ) standards. NIJ-approved vests purchased on or after March 1, 1999 are eligible for funding.

The current application submission period ends Friday, May 2. County law enforcement agencies wishing to apply are encouraged to do so before the deadline. DOJ advises all grant applications must be submitted via an online process. Funds awarded will be sent electronically to recipient's bank accounts listed on the application.

To access the application and view additional information go to the following website: <http://vests.ojp.gov>.

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

Development Bills Referred to Subcommittee

A number of county land development regulation bills had a hearing in the House Land and Resource Management committee on April 2, but were referred to a subcommittee and not passed out to the full House. The following bills were laid out at the same time and have since been sent to the County Regulation Subcommittee, chaired by Reps. Charlie Howard, with Joe Pickett and Jesse Jones also serving.

House Bill 2486 by Carter Casteel (freshman member of County Affairs and a former Comal County judge) would add Subchapter F to Chapter 232 of the Local Government Code to allow a commissioners court, by order and following an election on the question, to do the following: require a subdivision to use a central water or wastewater system under standards adopted by the county; require that a subdivision have a minimum fire suppression system, including fire hydrants, storage tanks, or ponds; require improvements to roadways serving a subdivision; require a minimum amount of open space or impose impervious cover limits for run-off and recharge purposes; impose impact fees as found in Chapter 395, Local Government Code; and adopt any other regulations necessary to regulate or manage land development.

HB 2506, also by Casteel (companion is SB 1014 by Wentworth) would amend Subchapter B, Chapter 232 of the Local Government Code to allow a county (other than colonias counties—the only ones currently authorized to operate under the subchapter) to operate under the subchapter, upon an order adopted by commissioners court. This would, among other things, allow a county to regulate lots that are subdivided and 5 acres or more. Counties doing so would not be eligible for colonias funding administered by the Water Development Board.

The bill would also add language to the subchapter to include authority over stormwater drainage and requiring lot and block monumentation to mark property lines. It would add the road standard language ("A county may not impose...a higher standard..." Sec. 232.0031) as well as the groundwater availability requirements from Subchapter A.

House Bill 2035 by Arlene Wohlgemuth would add Subchapter F to Chapter 232: "County Development Regulations."

The bill allows 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 courts 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 courts 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.

Two other local bills relating to county regulatory authority but local in scope, HB 2283 by Betty Brown and HB 1276 by Wohlgemuth, were also referred to the subcommittee.

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

Lame Duck Officials will need Post-Election Purchases Authorized

Representative Dan Ellis has filed a bill that will require a county or precinct official who is not reelected or re-appointed to his or her position to obtain approval for purchases which are over an amount set by the commissioners court. The committee substitute of HB 1767 amends Section 130.908 of the Local Government Code which currently only applies to county commissioners who are not reelected in counties with a population of less than 50,000.

The proposed legislation removes the population bracket and, if passed, will apply to all counties. The

[Please see Lame Ducks, continued on page 4]



Washington Watch

By Sue Glover

Governmental Relations Manager

EPA WITHDRAWS TMDL RULE

United States Environmental Protection Agency issued the following press release March 18 concerning the withdrawal of the Total Maximum Daily Load rule.

"In an action strongly supported by agriculture, forestry, states, industry and the U.S. Congress, EPA Administrator Christie Whitman withdrew a controversial rule that would have revised EPA's program for cleaning up impaired waters – the July 2000 final Total Maximum Daily Load (TMDL) rule. The 2000 rule was determined to be unworkable based on reasons described by more than 34,000 thousand comments and was challenged in court by some two dozen parties. Congress stopped the rule's implementation, and the National Academy of Sciences' National Research Council (NRC) found numerous drawbacks with the July 2000 rule.

'In order to ensure that this nation's bodies of water are cleaned up, we need an effective national program that involves the active participation and support of all levels of government and local communities,' EPA Administrator Christie Whitman said. 'Unfortunately, the 2000 rule, designed to implement the TMDL program, fell short of that goal and others. We have an existing TMDL program, and this action will not stop ongoing implementation of that program, development of water quality standards, issuance of permits to control discharges, or enforcement against violators. EPA and states will continue to cooperate to identify impaired waters and set protective standards for those waters. EPA will continue to work diligently on ways to improve this program to ensure that we meet our goal of purer water.'

An overwhelming majority of comments (more than 90 percent) supported EPA's proposed action to withdraw the July 2000 rule. These comments came from a broad cross-section of stakeholders, including agricultural and forestry groups, business and industry entities and trade associations, state agencies, professional associations, academic groups and private citizens.

The Clean Water Act requires states to identify waters not meeting water quality standards and to develop plans for cleaning them up. The Total Maximum Daily Load (TMDL) program provides a process for determining pollution budgets for the nation's waters that, once

implemented, will assure that Clean Water Act goals will be met.

EPA is continuing efforts to improve the TMDL program in order to further enhance the quality of the nation's waters. In 2001 and 2002 combined, more than 5,000 TMDLs were approved or established under the current TMDL rule. The number of TMDLs approved or established annually has steadily increased in the last four years jumping from 500 in 1999 to nearly 3,000 in 2002. EPA has been working steadily to identify options to improve the TMDL program, including addressing problems reported by the National Academy of Sciences. The agency has conducted several public meetings and is reviewing its ongoing implementation of the existing program with a view toward continuous improvement and regulatory changes in light of stakeholder input and the NRC recommendations."

For more information, please contact Sue Glover at 800 456-5974 or via email at sueg@county.org . 📍

[Lame Ducks, continued from page 3]

legislation further provides that during the time following the date the results of the official canvass of the primary or election returns are announced, the commissioners court must approve any expenditure by the incumbent county or precinct officer who was not re-nominated or re-elected.

The bill also gives the commissioners court the authority to set a threshold amount before a precinct or county official would be required to obtain expenditure approval. Under current law, the commissioners court is required to approve any expenditure by the lame duck commissioner without regard to amount. Also under current law it is unclear if the lame duck law applies to primary elections, this legislation specifies primary or election results.

The committee substitute was voted favorably out of the County Affairs Committee on March 26. For more information on the proposed legislation, please contact Sue Glover at 800-456-5974 or via email at sueg@county.org . 📍

Registered Voters ‘Only’ Proposed for Jury Wheel—

Representative Warren Chisum has introduced HB 1433 to give a commissioners court the authority to approve the reconstitution of a jury wheel to include, as the only source, the names of all persons on the current voter registration lists from all precincts in the county. The bill also authorizes the court to require the county auditor to prepare an analysis of the estimated county expenses associated with jury selection and service.

If the commissioners court approves, a jury wheel may be reconstituted by using only the names of persons listed on the current voter registration lists. The present law requires the names, on a current list furnished by the DPS, of citizens that hold a valid Texas driver's license or a valid personal ID card or certificate issued by DPS and the names of all persons on the current voter registration lists from all the precincts in the county.

The analysis is to be conducted on the costs associated with each of the jury sources, voter registration lists and a list of current driver's license holders from the Department of Public Safety. The fiscal note on HB 1433

states that if only voter registration information is used to select jurors, there would be a cost savings in postage, paper and printing from sending out fewer summonses. In addition, the fiscal note states that "driver license information has a higher rate of inaccuracy than voter registration." With less returned mail to deal with, there would be a savings in administrative costs.

The county auditor has 60 days to complete the analysis from the date the resolution is adopted by the commissioners court. Once the jury source report is completed, the county auditor must file it with the county clerk where it will be available for public inspection.

The County Judges and Commissioners Association of Texas testified in favor of the bill. Other groups expressed concern over limiting the jury source, the need for diversity on juries, and the possibility that the proposed change would result in a diminishment of voter registrants. The bill was left pending.

For further information related to this article, contact Teresa Aguirre at 800-456-5974 or via email at teresaa@county.org 🇹🇽

Legislation on Acquiring Roads Passes House

One of two bills that could help clear up challenges counties face when acquiring public roads received House approval on April 3, and is now being prepared for introduction in the Senate.

House Bill 1117 by Rep. James Keffer passed third reading in the House without opposition. The bill seeks to add a new chapter (258) to the Transportation Code and creates a county road map process that may be used by counties to establish public interests in private roads.

HB 1117 does not repeal Chapter 281 of the Transportation Code. It adds new language to the code that would give counties the ability to create and post a map showing which roads the county plans to acquire. Counties would have the option of acquisition under Chapter 281 or Chapter 258 if HB 1117 is signed into law.

The bill also requires counties to post notices in local newspapers for four consecutive weeks (announcing

a public hearing to discuss road acquisition) as well as notify landowners via mail by sending notices in tax statements.

Landowners would have two years to respond in protest before a county could claim a road under HB 1117.

The other county road acquisition bill, HB 1116, would repeal Chapter 281, which lists how counties with populations of 50,000 or less may acquire roads. HB 1116 received a hearing on March 18 and is still pending in the House Transportation Committee.

Currently there are 200 Texas counties that are governed by requirements in Chapter 281, a statute that allows road acquisition only by adverse possession, purchase, dedication or condemnation.

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

Two Key Law Enforcement Agencies Could Be Folded into Others

House Bill 2 by Rep. David A. Swinford is a bill to abolish a number of smaller state government agencies and consolidate them into larger agencies. Two agencies included in HB 2 directly impact county officials in the critical area of law enforcement – specifically the Texas Commission on Law Enforcement Officer Standards-Education (TCLEOSE) and the Texas Commission on Jail Standards.

TCLEOSE would be abolished and consolidated into the Texas Department of Public Safety (DPS), while TCJS would be abolished and consolidated into the Texas Department of Criminal Justice (TDCJ). Both TCLEOSE and TCJS would be minor components of the two huge agencies.

Although recognizing that a number of individual counties have had past concerns regarding activities of the

two agencies, especially the TCJS, there are points of view for maintaining their independence and their not being consolidated into the two larger agencies. These include:

- County officials, such as judges, commissioners, sheriffs and other local law enforcement officers, currently serve on both the appointed 9-member commissions of TCLEOSE and TCJS, providing important local input into the agencies' rules and regulations. (In fact, Gov. Rick Perry just appointed three new members to TCJS, including Lubbock County Sheriff David Gutierrez and Moore County Sheriff Horace Theodore Montgomery.) If swallowed up into the mammoth DPS and TDCJ, local input would be lost. Local governments and law enforcement should continue to have strong input into the actions and decisions of TCLEOSE and TCJS.
- DPS and TDCJ are huge, and the activities of TCLEOSE and TCJS would not be priority areas of the larger agencies, whose main objectives are to maintain public safety and keep hardened criminals behind bars. There is concern that enough attention would not be paid to the decisions and activities of TCLEOSE and TCJS within the larger state agencies, possibly leaving counties open to costly lawsuits on jail reforms or liability lawsuits regarding actions of law enforcement officers if consistent standards are not maintained. Counties should continue to have TCLEOSE and TCJS as buffers between them and expensive litigation.
- TCLEOSE and TCJS are independent *regulatory* agencies while DPS and TDCJ are *operational* agencies that, in some regard, are regulated by the smaller agencies. In order for counties, and the State, to gain full benefits of independent regulation as described in the two points made above, it is imperative that the regulating agency be truly independent. If tested in court, would it be deemed appropriate for operational agencies to, in effect, regulate themselves or other similar agencies? That could be a risky test case. Further, the workings and outlooks of regulatory and operational agencies are very different. To help avoid protracted and expensive litigation, counties must be able to count on the independence of the agencies that regulate them. 🇹🇽

Indigent Health Care Legislation Would Cost Counties

Representative Robert Puente has filed legislation that would change the minimum eligibility standards for a person to qualify for the County Indigent Health Care Program. HB 1981 would change the net income eligibility level from 21 percent of the federal poverty level to 100 percent of the federal poverty level.

The proposed law would also require that emergency medical services and durable medical equipment become mandatory services under the County Indigent Health Care Program. Currently, both of these services are optional. The bill also repeals the limitation of county liability, which is currently \$30,000 or 30 days in a hospital or skilled nursing facilities per eligible resident, whichever comes first.

According to Bell County Indigent Health Care Coordinator Rita Kelley, "Bell County could see an increase in eligible recipients jump from 413 to 4,992." Kelly explained in a letter to legislators that her "understanding of the \$30,000 limit per participant per fiscal year, is that it was included in the creating legislation as an assurance to counties that they would not carry the entire burden of the target uninsured population on their shoulders; rather, the State would be at the table as necessary and appropriate to match county funds when and if the mandatory General Revenue Tax Levy (GRTL) was expended in a county."

The bill has been referred to the House Public Health Committee. For more information, please contact Sue Glover at 800 456-5974 or via email sueg@county.org 🇹🇽

Drainage Ditch Maintenance Considered in Both Houses

Two bills that would require commissioners courts to perform drainage ditch maintenance at the request of a private property owner under certain circumstances were discussed before the House County Affairs and Senate Natural Resources committees.

House Bill 1687 by Rep. Warren Chisum and SB 860 by Sen. Jeff Wentworth are companion bills that seek to require commissioners courts, in counties with populations of 100,000 or less, to remove or clear blockages from drainage ditches when eligible property owners request maintenance.

Under Section 258.008, Transportation Code, eligible counties currently have permissive authority to remove blockage from drainage ditches on non-county-owned real property if the ditch connects with a county-maintained or constructed drainage ditch. If HB 1687 or SB 860 becomes law, commissioners courts will be required to remove or clear blockage at the request of the property owner if the owner's property:

- 1) Is in a platted residential subdivision;
- 2) Has a ditch connecting with a drainage ditch maintained or constructed by the county; and
- 3) If the primary source of water carried by the ditch comes from roads and ditches maintained by the county.

Both bills state a commissioners court must complete the maintenance before the 45th day from receipt of the property owner's request. Each bill also states that counties that do not meet the 45th day deadline will be liable to the property owner and adjoining property owners for the cost of "removal of the blockage and for property damage, personal injury, or death proximately caused by the blockage." Both bills also add silt to the definition of what may be considered as blockage.

As of the date of this publication, both bills were left pending in committee.

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

Unfunded Mandate Bills Introduced

If passed, the following measures would be unfunded mandates on county government:

HB 1981 by Puente amends Chapter 61 of the Health and Safety Code to change the minimum eligibility standards for a person to qualify for the County Indigent Health Care Program. The proposed legislation would change the net income eligibility level for the program from 21 percent of the federal poverty level to 100 percent of the federal poverty level and also require that emergency medical service and durable medical equipment be mandatory services under the program. Currently both of these services are optional services the county may provide. The bill also repeals the limitation of county liability, which is currently \$30,000 or 30 days in a hospital or skilled nursing facilities per eligible resident, whichever comes first. The bill has been referred to the House Public Health Committee.

HB 86 by McClendon amends Sec. 11.26 of the Tax Code and would extend the tax ceiling for qualified homeowners age 65 or older to all taxing units. The tax ceiling currently applies only to independent school districts. The corresponding constitutional amendment for this bill, HJR 60, is self-enabling. A taxing entity

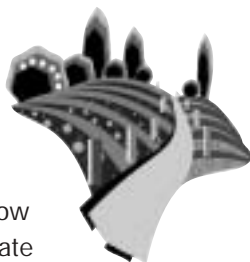
would be prohibited from increasing the total annual amount of ad valorem taxes on homesteads of persons once they reach 65 years of age. Committee action has been pending in Local Government Ways and Means since March 13.

HJR 32 by Wong would propose a constitutional amendment to Article VIII of the Texas Constitution to authorize the Legislature to reduce the permissible cap for the maximum annual increase in the appraised value of residence homesteads for ad valorem tax purposes to five percent. The current constitutional limit is 10 percent. The enacting legislation is HB 474. Committee action has been pending in Local Government Ways and Means since March 13.

HJR 45 by Howard would propose a constitutional amendment to Article VIII of the Texas Constitution to authorize the Legislature to reduce the permissible cap for the maximum annual increase in the appraised value of residence homesteads for ad valorem tax purposes to two percent. The current constitutional limit is 10 percent. The enacting legislation is HB 846. Committee action has been pending in Local Government Ways and Means since March 13. 🇹🇽

Resources, Naturally

By Paul J. Sugg
Legislative Liaison



AIR PLAN DESERVES SUPPORT

We've talked about the matter below before, but it bears repeating: the debate whether or not to fund the Texas Emissions Reduction Plan or TERP, as it's called among the cognoscenti.

Last session, the Legislature passed SB 5 and created the TERP. The purpose of the plan was and is to address air quality challenges in areas across the state and to ensure that the State Implementation Plans (SIPs) crafted by state and local leaders to meet these federal requirements were properly funded. The Environmental Protection Agency has given Texas notice that the state must fully fund the TERP and thus fulfill the plans to clean up the air in the non-attainment and near non-attainment areas of the state (These areas comprise some 30 odd urban, suburban, and semi-rural counties). A failure to fund the various incentive programs in the TERP could well result in a moratorium on new construction and the loss of federal highways funds and more draconian federally-directed clean-up plans in the affected areas.

However, due to a flaw in a primary funding scheme (a significant increase in a fee paid for used out-of-state vehicles), a subsequent suit and a settlement, the funding for the plan was cut by some three-quarters. Failure to fund this plan could well result in the above federally-mandated scenario. Through the efforts of the Conference of Urban Counties and the Texas Clean Working Group (a working group of leaders from federal, state, city and county government, as well as business organizations, from the nonattainment and near-nonattainment areas), there is a clearer picture of what the cost might be to the entire state if measures are not taken to ensure full funding of the TERP. The Perryman Group, an economic consulting, research and publishing firm out of Waco, recently prepared a white paper entitled "The importance of Maintaining a Proper State Implementation Plan (SIP) to Address Air Quality Issues in Texas: An Economic and Fiscal Impact Assessment." The economists tell us that if the TERP isn't funded, bad things will happen to the overall state economy, not just a few urban and suburban areas. The study estimated that the loss of highway funds and other

penalties could cost the state, as a whole, some 63 to 95 times what it costs to fully fund TERP (about \$180 million per year).

This session, HB 1365, if it is passed, (and as of now it has passed the House) should contain funding adequate to make up the shortfall created by SB 5's flawed funding scheme — \$150 million per year. Funding will come from a temporary fee on the delivery of diesel fuel and an increase and expansion of the current surcharge on the sale, lease or rental of new or used construction equipment.

It's an important bill and the TERP is an important vehicle for addressing air quality. But if we're going to look at the impact of poor air quality on the entire state, we also need to look at the whole of the problem. It's not just dirty air — it's land being developed at an amazing pace in many parts of the state, water supplies meeting their limits, and the crush of population growth affecting the quality of the water itself. Are we thinking enough about how all these issues are inter-related, that is to say, are we looking at the issue of population growth holistically? Otherwise, aren't we simply addressing problems rather than symptoms, and can we afford to do that with a population that promises to double in the next decades? 🗺️

Traffic Around Emergency Vehicles Discussed Committee

Senate Bill 193 by Sen. Gonzalo Barrientos was recently discussed before the House Transportation Committee. The bill seeks to direct highway drivers to vacate the lane closest to a responding stationary emergency vehicle (or to slow down when vacating a lane isn't possible) when possible.

Sen. Barrientos said he believes the bill is important to help give law enforcement officers and other emergency professionals protection when responding to the public on the highway.

Under the bill, drivers who violate the law and cause an accident will be charged with a Class A misdemeanor.

The bill was left pending before the House Transportation Committee.

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

Update on Fees and Records Bills

In the introduced version of HB 494 by Rep. Jesse Jones, the security fee collected on civil case filings and on felony cases in a district court would have been increased from \$5 to \$10. The committee substitute adds a section to allow an increase from \$3 to \$10 for misdemeanor offenses in a justice court, county court, county court at law or district court. According to the fiscal note, depending on the number of applicable civil and criminal cases and the collection rate, the positive fiscal impact per court would vary. HB 494 has passed favorably out of the House County Affairs committee as substituted, and the companion, SB 190 (Carona) was scheduled to be considered in a committee hearing on April 9 in Senate Jurisprudence.

Senate Bill 164 by Sen. Jon Lindsay has been engrossed (passed out of the Senate) and sent to the House Committee on Judicial Affairs. The bill would prohibit the recording (audio, visual, photograph, etc.) of jury deliberations in civil and criminal proceedings, whereas HB 1213 by Ron Wilson would expressly allow the recording of jury deliberations. Wilson's bill received a hearing in the House Committee on Judicial Affairs, but was left pending.

Sen. Jeff Wentworth's SB 84 has passed the Senate

and moved to the House Committee on State Affairs. The intent of this legislation is to cause public information officers to produce requested information that is readily available "as soon as possible under the circumstances, that is, within a reasonable time, without delay." This language was taken directly from a February 2000 Open Records Decision (ORD-664) issued by the Office of the Attorney General. Senate Bill 84 would codify the language into Section 522.221(a) of the Government Code.

Senate Bill 458 by Sen. Ken Armbrister was amended to require the Legislative Budget Board to prepare a fiscal impact statement on each resolution, constitutional amendment or bill that proposes to create a new or increase an existing court cost or fee on a person charge with a criminal offense. The purpose to fully inform legislators voting on new or increased fees. Currently, when such legislation is considered, legislators only consider the fee by itself and are not always aware of the overall impact. Senate Bill 458 has been engrossed and referred to the House Criminal Jurisprudence committee.

For further information related to this article, contact Teresa Aguirre at 800-456-5974 or via email at teresaa@county.org. ➡

Bill Would Require Review of State Reporting Requirements

In the spirit of streamlining government and preventing the waste of taxpayers' money, Rep. Carter Casteel has filed HB 3024: "Relating to increasing governmental efficiency through the reduction of duplicative reporting and auditing requirements."

The bill would require those state agencies that require reports from local governments to conduct a zero-based review (during the second year of each state biennium) of the reporting requirements placed on local governments. (The term zero-based is current short-hand in government circles for starting from scratch and justifying either reporting requirements such as this, or requiring justification for every dollar requested, as the governor's zero-based budget did this session.) The agencies are directed to determine and eliminate unnecessary, duplicative, or overly burdensome reporting requirements.

Agencies are directed to report the results of such reviews and recommend the necessary statutory changes to minimize cost, duplication, and paperwork and "...to maximize the efficient and effective use of public funds."

It would prohibit state agencies from requiring local governments to submit reports on items not required by law, rules, or performance measures.

It would direct state agencies to accept and not duplicate with state resources, the independent audit of a local government if that audit was performed in accordance with GAAP (generally accepted accounting standards) and GASB standards (Governmental Accounting Standards Board).

State would also have to specify, at the time of the approval of a contract with or a grant to a local government, any special or unique auditing requirements that the government must perform. If such special or unique requirements must be met, the payment of such must be provided for in the contract or grant. The state auditor would be directed to report to the Legislature each biennium the extent of state agency compliance with the bill's provisions.

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

Attorney General Opinions



GA-0043: Honorable Robert E. "Bobby" Bell, District Attorney, Jackson County, Interpretation of section 160.633 of the Texas Family Code RQ-0612-JC.

Summary: The word "proceeding" for the purposes of a suit to adjudicate the paternity of a child includes all possible steps in the action. The final order in such a suit is open for inspection and copying, whatever the nature of the judgment. Save with the consent of the parties or by court order, any and all other records of the proceeding are permanently closed.

GA-0048: Honorable Ken Armbrister Chair, Senate Committee on Natural Resources, Texas State Senate, authority of a judge or magistrate to attach a financial condition to a personal bond or to permit a cash deposit of less than the full bail amount (RQ-0618-JC). **Summary:** A judge or magistrate may not attach a financial condition to a personal bond, or authorize the deposit of less than the full cash amount of bail..

GA-0051: Honorable Dib Waldrup, Comal County Criminal District Attorney, whether Attorney General Opinion JC-0471 (2002) correctly construes section 152.013(c) of the Local Government Code (RQ-0615-JC). **Summary:** Under section 152.013(c) of the Local Government Code, a commissioners court must notify elected county and precinct officers of proposed salaries and expenses after the court has received a proposed budget from the county judge, but sufficiently before the court's approval of the budget to permit an aggrieved officer to request a hearing before the salary grievance committee and to permit the salary grievance committee to determine the grievance consistently with section 152.016. See Tex. Loc. Gov't Code Ann. §§ 152.013(c), 152.016 (Vernon 1999). To the extent Attorney General Opinion JC-0471 suggests that a commissioners court may notify officers under section 152.013 only after having adopted the budget, the opinion is modified. See Tex. Att'y Gen. Op. No. JC-0471 (2002) at 2. To the same extent, Attorney General Opinion DM-405 is modified. See Tex. Att'y Gen. Op. No. DM-405 (1996) at 4.

GA-0052: Honorable Michael A. Stafford, Harris County Attorney, whether section 550.065(d) of the Transportation Code requires a governmental body to use the guidelines established by the Texas Building

and Procurement Commission when calculating the "actual cost" of making a noncertified copy of an accident report (RQ-0611-JC).

Summary: Section 550.065(d) of the Transportation Code provides that the fee for copies of accident reports and accident information is \$6 or the actual cost of preparing the copy, whichever is less. Because section 550.065 does not define "actual cost," governmental agencies must use the Texas Building and Procurement Commission's guidelines under the Public Information Act to calculate the "actual cost" of making a noncertified copy of an accident report subject to the limit of \$6 established by the Transportation Code.

GA-0053: Honorable Mark E. Price, San Jacinto County Criminal District Attorney, auditing of certain accounts held by a criminal district attorney (RQ-0624-JC). **Summary:** State funds distributed to a prosecutor under the Professional Prosecutors Act or article 104.004 of the Code of Criminal Procedure are not subject to the special audit provision of section 115.032 of the Local Government Code. "Hot check" funds established under article 102.007 of the Code of Criminal Procedure are subject to such audit. A district attorney's authority over the disposition of "hot check" proceeds does not empower him to make multi-year contracts binding them in violation of article XI, section 7 of the Texas Constitution. Funds distributed to a district attorney under the Professional Prosecutors Act are to be deposited in the county treasury.

GA-0054: Honorable Stephen E. Ogden, Chair, Senate Infrastructure Development and Security Committee, Texas State 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 of the Texas Constitution, authorize expenditures in excess of the amount of cash and anticipated revenues certified by the Comptroller of Public Accounts (RQ-0025-GA).

Summary: In order to appropriate funds that exceed the amount of cash and anticipated revenue certified by the Comptroller of Public Accounts, an appropriation bill must state the legislature's finding that an "emergency or imperative public necessity" exists, and the bill must then be enacted by a four-fifths vote of the full membership of each house of the legislature. ■



RQ-0027-GA: Honorable Robert B. Scheske, Gonzales County Attorney, whether a single county election may be held to determine whether, on the one hand, cattle may be permitted to run at large, and, on the other, whether other domesticated animals may be permitted to run at large.

RQ-0028-GA: Honorable Mike Stafford, Harris County Attorney, authority of the presiding judge of the statutory probate courts to adopt statewide local rules of administration for the statutory probate courts.

RQ-0031-GA: Honorable Mark Burtner, Lamar County Attorney, whether a sheriff may contract to provide security to a private entity.

RQ-0032-GA: Honorable Phil King, Chairman, Regulated Industry Committee, Texas House of Representatives, reporting of child sexual abuse and required responses thereto.

RQ-0033-GA: Honorable Tempie T. Francis, Motley County Attorney, whether a county attorney who is not subject to the Professional Prosecutors Act may maintain a civil practice office in a neighboring county. ■

County Government Day: April 9, 2003



Clockwise from the top left: County officials gather on the steps of the Capitol in celebration of County Government Day; TAC staffer Lori Kinder gives a yellow rose to Rep. Jerry Madden as an invitation to the day's activities; County officials donned aprons and served legislators a hearty barbecue lunch on the Capitol grounds; Lt. Governor David Dewhurst visited with county officials at a mid-morning reception.

[From the Desk, continued from page 12]

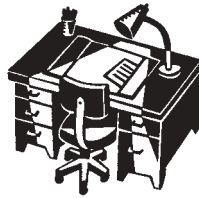
gaps of greater than five percent. Texas is 49th in per-capita, all-fund spending (\$2,455). The U.S. average is \$3,618 per capita. [CPPP 2-27-2003]. Views among legislators about how to heal the state's budgetary wounds are fundamentally different. Don't be surprised if you see some folks get disturbed as a cut snake over those differences. **He who treats himself, poisons a fool** – a number of legislative members argue that it is better to pay the butcher now than the doctor later. They fear that mere short-term remedies, such as severe cuts in criminal justice rehabilitative programs, will only postpone, and ultimately cause, a far worse calamity in a few short years. **Special Interests** – the use of this term can be misleading. Generally, it is descriptive of individuals and groups who present their views and supporting information to lawmakers. The legislative process is designed to function and operate in a manner that is receptive to the interests of constituents within a region or district – everybody has

special interests. Used pejoratively, "special interests" are descriptive of the greedy opportunists who lean on public officials and expect "extraordinary benefits." You know the kind I mean – they want to pull the ladder up behind them like a portly rat with sparrow kneecaps sporting a pair of gold incisor teeth. These nasty scoundrels have a foot in both camps – they carry fire in one hand and water in the other. **Matrimonial bliss** – Adam and Eve had an ideal marriage. He didn't have to hear about all the men she could have married, and she didn't have to hear about the way his mother cooked. **And ye shall know the truth, and the truth shall make you free** – two boys were walking home from Sunday school after hearing a strong preaching on the devil. One said to the other, "What do you think about all this Satan stuff?" The other little boy replied, "Well, you know how Santa Claus turned out. It's probably just your dad." COUNTY GOVERNMENT – the pulse of the people. 🤠

From the Legislative Desk

By Carey "Buck" Boethel

Director of Governmental Relations



A broken leg is not healed by a silk stocking: HB 1 (the appropriations bill) will be taken up in the House chamber on or about April 14. How extensive the floor debate will be on the controversial financial package is not known – some folks estimate a week, others say maybe only a day and a half. For counties, whatever the time frame happens to be, the process is going to be a challenge. Counties are going to have to scramble to furnish members with timely information on how state funding cuts will have the effect of raising property taxes. For a good discussion about sources of revenue in Texas, see *The Texas REVENUE Primer* (Revised Edition March 2003, Center for Public Policy Priorities). TAC mailed each county judge a copy last week. The 43 page booklet is also available on the Internet: www.cppp.org. **Are there any real leaders** – an article, by Alan Ehrenhalt appearing in the April 2003 edition of *Governing Magazine*, entitled "Devolution's Double

Standard," is a 1000-word, precision-guided bombshell that needs to be dropped right in the reading parlor of every public official. Ehrenhalt begins by saying, "Somewhere in America ...[he supposes] there is a public official who believes unreservedly...that power, autonomy and flexibility should reside as far down in the governmental system as practically possible – and is willing to act on the basis of those beliefs, even at the expense of his own political authority." **Statement of the year**—I won't spoil the article for you, but here's a sample of what you'll find in Ehrenhalt's discussion on devolution: "An honest devolutionist would be a president who refused to impose billion-dollar burdens on the states without offering any money to pay for them. Or a governor who didn't find it clever policy to avoid a tax increase at the state level by forcing one on localities." **Like pulling teeth through the armpit—the hard way – Texas** and 20 other states operate on a two-year budget. The founding fathers designed it that way because they didn't want folks to have a more frequent "opportunity" to enter into revenue deals. Some 15 states, other than Texas, are attempting to narrow revenue

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



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