

County *issues*

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Significant County Bills

Governor Rick Perry met his June 22 deadline to take action on legislation passed during the Session by choosing to sign, veto or allow enactment without his signature on a slate of bills that included a number of topics important to county government.

A total of **1,382 bills were passed** by the legislature. Of those, **1,320 were signed into law; 48 were vetoed** and **14 bills became law without signature**. To view a comprehensive statistical list of bills passed during the 78th Legislative Session, go to the following Web site: www.capitol.state.tx.us and click the "Legislative Reports" hyperlink.

The following bills of interest to county government were either signed, vetoed or enacted without the governor's signature. A comprehensive summary of all approved bills will be available in August at TAC's Post Legislative Conference.

HB 4 by Nixon

Relating to reform of certain procedures and remedies in civil actions.

Combines the general tort reform bill with the medical malpractice bill to create this broad body of law affecting a range of matters related to civil liability. *Effective date: 6-11-03*

HB 13 by Keel

Relating to making arrest warrants and certain affidavits made in support of the issuance or arrest warrants available for public inspection.

Amends Art. 15.26, Code of Criminal Procedure, by mandating that the magistrate show the defendant the arrest warrant and supporting affidavit filed on behalf of the person. Clarifies that the magistrate's clerk shall be the custodian of such records and that such arrest warrants and related affidavits shall be available for public access by any interested person once the warrant has been executed and the requestor has paid the copying costs. *Effective date: 9-1-03*

HB 54 by Wolens

Relating to certain early voting by mail procedures and to the prevention of voting fraud generally.

Amends or adds sections to the Election Code with the intent of reducing voter fraud and clarifying procedures for early voting by mail. It adds or enhances offenses for numerous violations such as:

- Illegally assisting a voter (defines "assistance")
- Failure to complete the Oath of Assistance on the carrier envelope
- Failure of a witness to print and sign their name and provide an address

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- Providing false information on an application
- Unlawfully possessing a ballot or envelope
- Buying/selling of official ballots, envelopes or other election record
- Collecting/storing carrier envelopes (with exceptions)

A common or contract carrier must be bona fide and a paper trail must be created using a receipt containing the name and address of the person delivering the envelope to the carrier, including a space for the date, time, and address at which parcels are received by the carrier. The official application form for an early voting ballot is slightly modified to include spaces for the signature, printed name and address of any person who assisted the applicant. The bill requires the clerk to mail the voter a ballot no later than seven calendar days after accepting the voter's application for a ballot by mail. The secretary of state's office is to prescribe procedures for providing accountability for the delivery of carrier envelopes. Ballots and carrier envelopes that are unlawfully stored may not be counted. The existing toll-free number for people to report potential abuse of voting rights, is also to be printed by the secretary of state on the official carrier envelope or on an insert to be enclosed with the balloting materials for voting by mail that is sent to the voter. To eliminate potential voter assistance fraud, Sec. 87.121(f) is amended to prohibit the release of early voting information on individual voters until the first business day after election day. Sec. 31.03(e) of the Penal Code is amended, stating that it is a state jail felony if the property stolen is an official ballot or official carrier envelope for an election. Sec. 37.01(2) of the Penal Code is amended to add that the definition of "Government record" means an official ballot or other election record. *Effective date: 9-1-03*

HB 146 by Solomons

Relating to jury duty on general election day.

Adds Sec. 62.0125 to the Government Code with the intent of relieving prospective jurors from jury service on general election day for state and county officers. If jurors are already in the process of a trial, their jury service will continue as usual. Potential jurors cannot be summoned on general election day and therefore, cannot be fined for not showing up. *Effective Date: 9-1-03*

HB 178 by Ellis

Relating to immunity for certain governmental employees for an act or omission committed while supervising an inmate or offender program or activity.

Current law (Sec. 42.20©, Code of Criminal Procedure) provides indemnity to certain public officials for their activities as members of a community supervision council, including a sheriff, a sheriff's department employee, county judge, county commissioner or a county employee. This bill adds county attorneys, district judges, district attorneys and criminal district attorneys to this list of public officials. *Effective Date: 9-1-03*

HB 249 by Goolsby

Relating to the returned check fee collected by a county clerk.

Amends Local Government Code Sec. 118.011 to allow a county clerk or county tax assessor the option to assess a fee similar to what the treasurers collect for returned checks. Currently, the treasurer can charge a fee ranging from \$15 to \$30 on insufficient checks, and the county clerk and tax assessor can assess a fee ranging from \$15 to \$25 for the same. This bill would allow county clerks and tax assessors the same option as county treasurers. This would result in a slight increase in county revenue. The bill also amends Business and Commerce Code Sec. 3.506(a) allowing any holder of a dishonored check the authorization to charge a processing fee up to \$30. *Effective Date: 9-1-03*

HB 329 by Naishtat

Relating to the regulation of mold assessors and remediators.

Requires mold assessors and remediators to be licensed and authorizes the Texas Department of Health to register such, conduct inspections and conduct a statewide education and outreach program on improving indoor air quality and mold. It also creates penalties, enforcement provisions, and exemptions from civil liability for certain persons and governmental entities. *Effective date: 9-1-03*

HB 335 by Hamric

Relating to the eligibility of persons to participate in the public sale of certain real property.

Amends Chapters 34 of both the Civil Practices and Remedies Code and Tax Code to govern the sale of real property through writ-of-execution sales and tax foreclosure sales. Would prohibit a purchaser who was delinquent in paying ad valorem taxes from receiving property procured at a judicial execution or foreclosure sale. The purchaser will be required to produce an unexpired written statement from the tax assessor-collector of the county in which the sale is conducted

[Please see Significant Bills, continued on page 4]

Gov. Perry Announces Local Grants for Homeland Security

Funding Will Help Communities Purchase Equipment, Support Training Efforts

AUSTIN - Gov. Rick Perry announced June 24 that more than 700 local governments will be receiving \$84.2 million for anti-terrorism equipment and homeland security planning.

The Texas Engineering Extension Service (TEEX), based in College Station at Texas A&M University, has sent notices to 733 cities and counties announcing their share of the federal homeland security funding allocated to Texas.

"Local leaders and state officials in Texas have developed a regional approach to homeland security that allows us to maximize coordination and resources," Perry said. "These grants will help our communities purchase decontamination equipment, hazmat suits and other equipment to support their regional response plans."

The governor noted that the state's comprehensive and regional approach to homeland security planning resulted in this federal funding being more widely distributed than previous funding for emergency and first responder services.

"The local governments receiving these grants represent more than 90 percent of the population of Texas," Perry said. "Our communities have done an excellent job working together to develop comprehensive plans to protect both rural and metropolitan areas."

In order to qualify for the funding, local jurisdictions had to complete an assessment of risks and needs. The assessments also were used by TEEX and the regional councils of government to help determine the distribution of grant funds.

Local governments also will be receiving instructions on allowable purchases under the grant program. The U.S. Department of Homeland Security's Office of Domestic Preparedness sets guidelines for the program and must approve all equipment purchases made with the grants.

To view the list of grant recipients and amounts go to www.governor.state.tx.us/divisions/press/initiatives/hsgrants. ➤



HOME OF
TEXAS
COUNTY
GOVERNMENT

YOU ARE INVITED TO A SPECIAL OPEN HOUSE CELEBRATION FOR THE TEXAS ASSOCIATION OF COUNTIES

THURSDAY, AUGUST 14TH
1210 SAN ANTONIO • AUSTIN, TEXAS
4:30 - 6:30 P.M.

Parking is available but we encourage those attending TAC's Post Legislative conference to take advantage of shuttle services provided from the Hyatt Regency (conference host hotel) and the Radisson from 4:30 - 6:30 p.m.

[Significant Bills, continued from page 2]

that there are no delinquent ad valorem taxes owed to the county, school district or municipality. The tax assessor will send the request to the municipalities and school districts if he/she does not collect for those entities. The tax assessor may charge the person requesting a statement a fee not to exceed \$10 for each statement requested. *Effective Date: 9-1-03*

HB 403 by Madden

Relating to the penalty for premature disclosure of voting results.

Amends Sec. 61.007(b) of the Election Code. The offense for an election officer, watcher or other polling place worker increases from a Class C misdemeanor to a Class A for a person who prematurely discloses voting results before the polls close. *Effective date: 9-1-03*

HB 425 by Christian

Relating to requiring a state agency to consider legislative intent during the process of adopting an agency rule.

Requires a state agency, in writing new rules to implement legislation, to research the legislative intent of the law, write a legislative history of the law to accompany notice of the proposed rules and establish an internal review process to ensure that the proposed rule be consistent with this legislative history. The agency must also give notice to the bill's author(s) and sponsor(s) of the agency's intent to develop such rules and must also address differences in interpretation of legislative intent. *Effective date: 9-1-03*

HB 543 by Jesse Jones

Relating to certain restrictions on the delivery or installation of a new or used manufactured home in a flood-prone area.

Prohibits the seller of a new or used manufactured home from delivering or installing it in a flood plain (the law applies to those purchased with cash; currently, manufactured housing purchased through loans already has these protections). The law exempts inhabited manufactured homes currently in flood plains or moved to flood plains. *Effective date: 6-20-03*

HB 545 by Wohlgemuth

Relating to military discharge records that are recorded with or otherwise in the possession of a governmental body.

Includes provisions for military discharge records filed both before and after Sept. 1. If a military discharge record is filed on or after Sept. 1 it will remain confidential

for 75 years from the date of filing. Inspecting or copying of the military discharge record during this time period is restricted except by persons listed in the bill (e.g. the veteran, legal guardian etc.). For discharge records filed with the county clerk before Sept. 1, the veteran or legal guardian "may direct, in writing, that the county clerk destroy all copies of the record" available to the public. The clerk will then have 15 business days to comply with the direction. "The county clerk's compliance does not violate any law of this state relating to the preservation, destruction, or alienation of public records."

If someone other than a veteran or legal guardian makes an inspection or duplication request of a record filed before Sept. 1, the county clerk will only be required to search those records that are readily available to the public. *Effective date: 9-1-03*

HB 547 by Wohlgemuth

Relating to the distance between certain pits that are part of quarrying operations and adjacent property.

Amends current law providing for a certain distance between quarries and adjacent property lines by striking the population bracket and making it applicable to most counties (except those with 3.3 million people or more). Also exempts from regulation an excavation constructed by a political subdivision for drainage or storm water retention. *Effective date: 9-1-03*

HB 554 by Chisum

Relating to grievance procedures regarding compensation and expenses for county and precinct officers.

Adds section 152.0165 to the LGC to address when elected officials may file a lawsuit regarding salary and personal expenses. As of Sept. 1, elected county/precinct officers will first be required to complete a salary grievance hearing before filing a lawsuit against the county. *Effective date: 9-1-03*

HB 608 by Denny

Relating to the selection of alternative public members to serve on the committee to review salaries and expenses of elected county or precinct officers.

Allows county judges to select and create a list of alternate public members to serve on grievance committees. *Effective date: 9-1-03*

[Please see Significant Bills, continued on page 5]

[Significant Bills, continued from page 4]

HB 649 by Jim Keffer

Relating to creating an interagency work group on rural issues.

Adds additional state agencies to those that are directed to meet annually in Austin and discuss agency impact on rural communities and assist in developing a rural policy for the state. Also creates an interagency workgroup to develop a process whereby state agencies can work together to provide assistance to rural communities, increase the effectiveness of these efforts and prevent duplication of services, and develop regulatory and legislative recommendations to accomplish these ends. *Effective date: 9-1-03*

HB 803 by Geren

Relating to the assessment of damages in a condemnation proceeding based on the market value of groundwater rights as property apart from the land.

Allows fair market value of groundwater to be paid to landowner of property condemned through eminent domain if the land is being condemned by a political subdivision for the groundwater underneath the property (currently, the landowner may only be compensated for the fair market value of the land). Further requires that in filing a condemnation petition, a political subdivision must state that the facts to be proven in the proceedings are that the political subdivision has prepared a drought contingency plan, developed and implemented an effective water conservation plan, made a good faith effort to obtain water supplies other than those to be condemned, and has made a good faith effort to purchase or lease the water supplies that are the subject of the condemnation proceedings, and make a showing that the political subdivision needs the water supply to meet its domestic needs within the next 10 years. *Effective date: 9-1-03*

HB 884 by Dutton

Relating to alternative dispute resolution statements required in a suit for dissolution of a marriage and a suit affecting the parent-child relationship.

Repeals sections 6.404 and 102.0085 of the Family Code, both of which required the party to sign a Statement on Alternative Dispute Resolution (ADR) when filing a suit for dissolution of a marriage and a suit affecting the parent-child relationship. The intent of repealing these sections is to simplify the filing process, especially since most courts are now making ADR par for the course to settle disputes outside the courtroom. *Effective Date: 9-1-03*

[Please see Significant Bills, continued on page 8]



Washington Watch

By Sue Glover

Governmental Relations Manager

HOMELAND SECURITY APPROPRIATION BILL CLEARS HOUSE

On July 24 the United States House of Representatives passed HR 2555, the FY04 Homeland Security Appropriations Bill, which includes \$29.4 billion that will finance border and transportation security, immigration control, the Coast Guard, Secret Service, first responders and dozens of related programs. The \$29.4 billion is \$1 billion more than the president requested and \$666.8 million more than was appropriated in fiscal 2003.

The bill would provide \$4.4 billion for first responders, including \$3.5 billion for the Office of Domestic Preparedness (ODP), which is part of the Border and Transportation Security Directorate. That \$3.5 billion would include:

- \$1.9 billion for "formula" grants to state and local governments -- authorized in the 2001 anti-terrorism law known as the USA Patriot Act (PL 107-56).
- \$500 million for state and local law enforcement terrorism prevention grants;
- \$500 million for grants to "high-threat, high-density" urban areas; and
- \$200 million for critical infrastructure grants.

According to Dalen Harris with the National Association of Counties, "the spending bill is nearly identical with NACo's legislative priorities on funding for first responders and other public safety initiatives. The spending bill would provide additional funding and legislative enhancements to various other proposals important to counties nationwide, ranging from funding state and local counter terrorism activities to modernization of the nation's antiquated flood maps."

The bill is now headed to the United States Senate for consideration.

For more information, please contact Sue Glover at 800-456-5974 or via e-mail at SueG@county.org. 🇹🇽

Proposals Directly Impacting Counties

During the 78th Legislature a decision was made to move the election date for constitutional amendments from Nov. 4 to Sept. 13, 2003. The following is a partial list of proposals that will be on the September ballot that will have a direct impact on counties. For a list of all 22 constitutional amendments, go the Secretary of State's Web site at www.sos.state.tx.us and click on "Proposed Constitutional Amendments Election - September 13, 2003."

Prop. 3/HJR 55

The proposition will appear on the ballot as follows: *"The constitutional amendment to authorize the legislature to exempt from ad valorem taxation property owned by a religious organization that is leased for use as a school or that is owned with the intent of expanding or constructing a religious facility."*

House Joint Resolution 55 (HJR 55) by Zedler seeks to amend Section 2(a) of the Texas Constitution by expanding the ad valorem exemption given to religious entities who purchase property for non-financial religious purposes.

Under current law, eligible religious entities receive a taxing exemption for up to one acre of land for property that is used strictly for the non-profit advancement of the entity. It has been common practice for religious entities to purchase property beyond one acre and receive an ad valorem tax bill for land not under active construction (current law allows a three-year tax exemption for property under construction).

If passed, HJR 55 would expand the tax exemption to property that is contiguous to the tract of land on which the religious organization's place of regular worship is located. Qualifying property would be eligible for exemption for up to six years. Land that is not contiguous to the tract of land used for the organization's regular worship would be eligible for exemption for up to three years.

The enabling legislation for HJR 55 is HB 1278 by Zedler. HB 1278 establishes that a tract of land is considered to be contiguous with another tract of land if the tracts are divided only by a road, railroad track, river or stream.

Prop. 5/SJR 25

The proposed amendment will appear on the ballot as follows: *"The constitutional amendment to authorize the legislature to exempt from ad valorem taxation travel trailers not held or used for the production of income."*

Amends Subsection (d), Section 1, Article VIII of the Texas Constitution authorizing the legislature to exempt from ad valorem taxation certain travel trailers not held for the production of income. During the 77th Legislative Session, the legislature created an exemption for travel trailers from ad valorem taxes except at the school district level. After the approval of the constitutional amendment in November 2001 it became apparent that what was thought to be an exemption was actually adding individuals to the tax roll. This amendment clarifies the intent of HB 2076 passed in the 77th Legislative Session.

Prop. 4/SJR 30

The proposition will appear on the ballot as follows: *"The constitutional amendment relating to the provision of parks and recreational facilities by certain conservation and reclamation districts."*

This would amend the Texas Constitution, Article 16, Section 59(a) to include the development of parks and recreational facilities among the public rights and duties for which the Legislature must pass appropriate laws related to conserving and developing natural resources. This would provide the explicit constitutional authority to certain conservation and reclamation districts (including municipal utility districts) to use tax dollars to develop parks and recreational facilities. It would allow certain MUDs (in addition to using excess funds derived from water and sewer revenues) to issue revenue bonds, with voter approval, to pay for the construction and maintenance of parks and recreational facilities. This would be limited to MUDs located in all or part of the following: Bexar County, Bastrop County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Fort Bend County and the Tarrant County Regional Water District located in whole or part of Tarrant County.

Prop. 7/HJR 44

The proposed amendment will appear on the ballot as follows: *"The constitutional amendment to permit a six-person jury in a district court misdemeanor trial."*

If the voters approve HJR 44, it could provide financial savings to the counties with district courts that hear

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[Proposals, continued from page 6]

misdemeanor cases. The amendment would change Art. V, Sec. 13 of the Texas Constitution by authorizing the need for only six petit jurors to hear criminal misdemeanor cases in a district court, instead of 12. The amendment also deletes language requiring nine members of a 12-person jury to render a verdict. This amendment would bring uniformity to the court system by having a six-member jury hearing misdemeanor cases whether it is in a district or county court. The enabling legislation for this constitutional amendment, HB 830, was signed by the Governor with an effective date of Jan. 1, 2004.

Prop. 8/HJR 62

The proposed amendment will appear on the ballot as follows: *"The constitutional amendment authorizing the legislature to permit a person to take office without an election if the person is the only candidate to qualify in an election for that office."*

If approved, HJR 62 will open up a provision affecting elections for statewide, district, or county offices which could save counties time and money in elections administration. Currently, Chapter 2 of the Election Code, affecting political subdivisions, not including counties, declares an unopposed candidate the winner if there are no declared write-in candidates, no opposed candidates and no propositions on the ballot. HJR 62 extends this policy to state, district, and county offices by adding Section 13 to the Texas Constitution under Article 16. The candidate's name would still be printed on the ballot, but no votes would be cast for that candidate. The enabling legislation, HB 1476, states that this provision becomes effective upon passage of the constitutional amendment on Sept. 13.

Prop. 13/HJR 16

The proposition will appear on the ballot as follows: *"The constitutional amendment to permit counties, cities and towns, and junior college districts to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses."*

Amends Section 1-b, Article VIII, Texas Constitution by adding Subsection (h) which will allow the governing body of a county, city, town or a junior college district to freeze the amount of county, city, town or junior college district residential property taxes imposed on the

homestead of a person who is disabled or is 65 or older, from the time the person reached age 65 until the person or his/her spouse who is disabled or 65 years of age older ceased to use the property for a homestead. However, the governing body would have to call an election to grant the foregoing freeze if the governing body received a petition signed by 5 percent of the registered voters in the county or municipality, and the property tax freeze would be established if approved by a majority of the voters. Currently, school districts are required to institute a tax freeze once a person turns 65.

Prop. 17/HJR 21

The proposition will appear on the ballot as follows: *"The constitutional amendment to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person."*

Amends Section 1-b(d) Article VIII of the Texas Constitution to add disabled individuals as persons qualifying for the school district ad valorem tax freeze. Currently persons over 65 are entitled to an ad valorem tax freeze from the school district on their residence homestead. This amendment will require the same type of freeze for persons who are disabled.

Prop. 18/HJR 59

The proposed amendment will appear on the ballot as follows: *"The constitutional amendment authorizing the legislature to permit a person to assume an office of a political subdivision without an election if the person is the only candidate to qualify in an election for that office."*

HJR 59 is similar to HJR 62, except that it states if there is an unopposed candidate, the name would not be listed on the ballot, therefore declaring the candidate an instant winner without an election. The enabling legislation, HB 1344, was vetoed by the Governor, who stated this would prevent "voters from seeing the candidates and offices for which the election has been decided without a vote." The governor goes on to say in the veto proclamation that the better practice is prescribed in HB 1476, which is similar except that it allows the candidates name to be printed on the ballot, thereby allowing voters to see who was elected without a vote. Although HB 1344 was vetoed, HJR 59 will still be placed on the September ballot.

[Please see Proposals, continued on page 19]

[Significant Bills, continued from page 5]

HB 917 by Eiland

Relating to the authority of counties and municipalities to incur debt to participate in erosion response projects undertaken by the General Land Office.

Allows counties and municipalities to incur debt in order to participate in erosion response projects undertaken by the General Land Office. These local governments are identified in statute as “qualified project partners,” meaning that they must pay 15 percent of the cost of a project and may now incur debt to pay that share. *Effective date: 6-20-03*

HB 919 by Eiland

Relating to the review and approval of a subdivision of land by certain special districts.

Allows drainage districts and other special districts with authority and jurisdiction over drainage to require that a property developer planning to subdivide land in a district that is subject to review and approval by commissioners court, to also submit a drainage report to the district for approval. The district must also provide notice to the developer and the commissioners court of approval or disapproval. Previously, such districts were directed to develop master drainage plans relating to the review and approval of proposed drainage plans submitted by property owners, but lacked the explicit authority to review and give approval to plats. *Effective date: 6-20-03*

HB 970 by Truitt

Relating to the donation by a county of salvage and surplus property to a civil or charitable organization.

Current law allows a county to donate surplus or salvage property to a civic or charitable organization, but only after the county attempts to sell the property but receives no bids. This law allows commissioners courts to donate such property without offering it for sale if the court determines that it would receive no bids for the property or would receive bids too low to cover the cost of offering the property for sale, the donation would serve a public purpose, and the organization receiving the donation would provide adequate consideration, such as transporting or otherwise disposing of the donated property. *Effective date: 5-15-03*

HB 1065 by Robby Cook

Relating to the eligibility requirements to serve as a director of a groundwater conservation district.

Current law prohibits a director of a groundwater district from also serving on the governing board of another political subdivision. This change specifies that the common law doctrine of incompatibility does not apply to groundwater districts with a population of less than 50,000, thus allowing the member of a governing board of a political subdivision to serve as the director of a groundwater district or vice versa. *Effective date: 5-19-03*

HB 1117 by Keffer

Relating to the clarification by a county of the existence of a public interest in certain roads.

Allows counties to add a road acquisition method for establishing public ownership of private roads. The bill adds new chapter 258 to the Transportation Code and gives counties the right to acquire roads via a county road map process. As of Sept. 1, counties who choose to use chapter 258 will be required to post and mail notices advising of road acquisition intent, as well as hold public hearings and post a map showing roads proposed for acquisition. The bill gives landowners two years to respond in protest before counties can claim a road. Provisions in HB 1117 should give counties currently governed by Chapter 281 of the Transportation Code a more flexible and comprehensive method for acquiring private roads. *Effective date: 9-1-03*

HB 1174 by Betty Brown

Relating to the election officers that serve a branch polling place during the early voting period.

Amends section 85.069 of the Election Code by adding subsection (c). To the extent practicable, the early voting clerk must ensure the election officers serving a branch polling place who are not employees of the county, equally represent the political parties conducting the primary election in the county. *Effective date: 9-1-03*

HB 1197 by Krusee

Relating to authorization for a development agreement between a municipality and an owner of land in the municipality's extraterritorial jurisdiction.

Allows the governing body of a municipality to enter into a written contract with the owner of land in the municipality's ETJ (extra-territorial jurisdiction) that would, among other things, guarantee the continuation of the land's ETJ status for a period not to exceed 15 years, provide for a development plan prepared by the

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landowner and approved by the municipality authorizing certain land uses and development, authorize municipal enforcement of certain municipal land use and development regulations as if they were within the municipalities boundaries, provide for infrastructure, authorize enforcement of environmental regulations, and provide for the terms of annexation of the land in whole or part. *Effective date: 6-20-03*

HB 1204 by Baxter

Relating to the authority of municipalities and counties to regulate subdivisions in a municipality's extraterritorial jurisdiction.

Provides a process (which includes binding arbitration) for those cities and counties that have not yet reached an agreement regarding plat review and approval in the ETJ as required by last session's HB 1445. The law also slightly expands the population bracket on Subchapter E, Chapter 232, Local Government Code ("Infrastructure Planning in Certain Urban Counties"). The subchapter will also apply to a county that is next to a county of 700,000 or more and that, although not in the same metropolitan statistical area (MSA), has experienced a population increase of more than 40 percent in the period between the last two decennial censuses. *Effective date: 6-20-03*

HB 1365 by Bonnen

Relating to the Texas Emissions Reduction Plan.

This fully funds the Texas Emissions Reduction Plan created by the 77th Legislature's SB 5. Some of the more important revenue-generating provisions include increasing the cost of an application for a certificate of title for an automobile from \$13 to \$33 for residents in affected counties and to \$28 in all other counties, a 2 percent surcharge on the sale, lease or rental of certain types of construction equipment, and a 1 percent surcharge on the retail sale, lease or use of an on-road diesel motor vehicle weighing more than 14,000 pounds and built in 1997 or later. It also allows state agencies and local governments to require or give preference to vendors that meet or exceed state or federal air quality standards, but restricts such preferences to costs that will not exceed 105 percent of the cost of goods or services obtained from another provider. *Effective date: 9-1-03*

HB 1476 by Truitt

Relating to the election of certain unopposed candidates.

This is the enabling legislation for HJR 62 to allow unopposed candidates for state or county offices in the general election to be declared elected, but still have the names placed on the ballot. A certifying authority – secretary of state for statewide or district office; county clerk for county or precinct office – may declare a candidate elected if there are no opponents or write-in candidates for that office. If this declaration is made there is no election held for that office, however, the candidate's name will still appear on the ballot as elected. The names and offices of those declared elected are grouped by political party or independents under the heading "Unopposed Candidates Declared Elected." They are listed on the ballot after the contested races in the election and no votes are cast for those declared elected. The secretary of state may write necessary procedures to accommodate a particular voting system or ballot style and to ensure the cost-effective implementation of this new section. The certifying authority then issues a certificate of election to candidates declared elected in the same manner as for a candidate who is elected. *Effective date: 9-13-03 if HJR 62 is approved by the voters.*

HB 1567 by Buddy West

Relating to the disposal of low-level radioactive waste.

Authorizes the Texas Department of Health to license and regulate disposal of low-level radioactive waste and allow a private entity to hold a license to operate a facility to dispose of waste from the Texas-Vermont compact (this compact formerly included Maine, which has announced its intention to withdraw from the compact). *Effective date: 9-1-03*

HB 1660 by Flores

Relating to the placement of video camera surveillance systems in county jails.

Directs the Texas Commission on Jail Standards (TCJS) to conduct a statewide county study regarding the installation and operation of video camera surveillance systems in county jails. The bill requires TCJS to prepare a report for the legislature no later than Dec. 1, 2004. The report must include information on the feasibility of installing video cameras in county jails as well as county

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revenue sources available to support installation.

Senate amendments to HB 1660 direct TCJS to include information on the number of inmate suicides, assaults and inmate assaults against county jail employees that take place in county jails. Information on the number of lawsuits filed and judgments against the county as a result of suicides and assaults, as well as the costs incurred by the county in defending those lawsuits, must also be included. *Effective date: 9-1-03*

HB 1681 by Stick

Relating to the amount of compensation and allowances for certain county auditors.

Allows the district judges in certain counties (800,000 and above and with some additional technical requirements) to set the auditor's salary above the current cap (no more than the highest paid elected official in the county), with the approval of commissioners court. *Effective date: 6-20-03*

HB 1767 by Ellis

Relating to the approval of certain expenditures of certain incumbent county or precinct officers.

Amends Section 130.908 of the Local Government Code to require county and precinct officers in every county who are not reelected or renominated to their office to seek approval from the commissioners court for expenditures over an amount set by the commissioners court. Currently, the "lame duck" law only applies to commissioners in a county under 50,000. Also under current law the commissioner must get approval for any expenditure, regardless of amount. This change in the code will apply to all county and precinct officers and will allow the commissioners court to set an amount by which approval would be required. *Effective Date: 9-1-03*

HB 2032 by Hochberg

Relating to the confidentiality of e-mail addresses under the public information law.

Amends Government Code Sec. 552 by adding in language clarifying when an e-mail address is to remain confidential and when it can be released. A governmental body that receives an e-mail communication from a public citizen is confidential, unless the citizen consents to its release. This section does not apply to an e-mail address provided to a governmental body:

- by a person who contracts with the governmental body;
- by a vendor who seeks to contract with the governmental body;
- contained in a response to a request for bids or proposals or in the process of negotiating contracts; or
- that is on a letterhead, coversheet, printed document or other document made available to the public.

A governmental body can share an e-mail address with another governmental body or federal agency. An officer or employee of a governmental body who has access to confidential information under Sec. 552.008 (Information for Legislative Purposes) should not use this information for any other purposes other than for which the information was received. *Effective date: 9-1-03*

HB 2064 by Bohac

Relating to the procedure for returning an application for an early voting ballot.

Clarifies that if an early voting clerk in one precinct receives an application for an early voting ballot in error, that clerk shall, by the next day, forward the application to the early voting clerk in the correct election precinct. *Effective date: 9-1-03*

HB 2081 by McReynolds

Relating to an exemption from the Engineering Practices Act for certain public works.

Current law establishes three exemptions from the Texas Engineering Practice Act: a public work that involves structural, electrical, or mechanical engineering with a cost of \$8,000 or less; a public work that does not include structural, electrical, or mechanical engineering with a cost of \$20,000 or less; and road maintenance or improvement undertaken by commissioners court. This law removes those public works within the above-mentioned cost parameters that involve structural engineering from the types of public works that are exempt from the Texas Engineering Practice Act. *Effective date: 6-18-03*

HB 2085 by Campbell

Relating to the availability of bilingual clerks for an election.

Current law states that the election judge should make a sufficient effort to appoint enough bilingual election clerks in the precinct to meet the needs of Spanish-speaking voters. This bill amends the Election Code, Sec. 272.009 by stating that if the election judge

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[Significant Bills, continued from page 10]

does not appoint enough bilingual election clerks, then the authority holding the election shall appoint at least one bilingual clerk to serve in a central polling location. If it is a primary election, the county chairs of each party shall appoint one bilingual clerk each. *Effective date: 9-1-03*

HB 2093 by Harper-Brown

Relating to electioneering regulations during early voting.

Amends the Election Code to make the distance marker uniform during early voting. Sec. 85.036 changes to say that a person may not electioneer for or against any candidate or measure in or within 100 feet of an outside door through which a voter may enter a building where early voting is held. Sections 85.036(b) and (f) are repealed. *Effective date: 9-1-03*

HB 2130 by Kuempel

Relating to certain exemptions from requirements applicable to local permits.

Amends the vested rights statute (Ch. 245, Local Government Code) to restrict the certain aspects of the ability of local governments to amend regulations designed to prevent harm to life and property from flooding. *Effective date: 9-1-03*

HB 2397 by Corte

Relating to a vendor's or subcontractors remedy for nonpayment of certain contracts.

Allows a vendor or subcontractor to suspend performance of a contract with a governmental entity if the entity did not pay an undisputed amount under certain time limits. *Effective date: 9-1-03*

HB 2554 by Wayne Smith

Relating to the application of new requirements for non-hazardous industrial solid waste disposal to be adopted by the Commission on Environmental Quality.

Directs the Texas Commission on Environmental Quality to adopt specific rules governing the management and operation of a non-hazardous industrial solid waste landfill as soon as practical. *Effective date: 6-20-03*

HB 2609 by Coleman

Relating to the establishment of mental health court programs.

The intent of this bill is to divert people with mental illness from the criminal justice system into treatment by integrating treatment services during the judicial process.

The bill gives the commissioners court the authority to establish a mental health court program for misdemeanor defendants or defendants who are suspected of having a mental illness or mental retardation.

If a mental health court is established, it could handle issues arising under Articles 16.22, 17.032 and 46.02 of the Code of Criminal Procedure. A participant in the mental health court program may be required to pay, if able, the cost of all treatment and services received. Legislative committees may be assigned by the Speaker of the House or Lt. Governor to oversee any mental health court programs established under this new law. *Effective date: 9-1-03*

HB 2678 by Hartnett

Relating to authorization for a payroll deduction to be made from a county employee's wages or salary.

Amends Section 155.001(a) of the Local Government Code to allow a commissioners court to authorize a deduction requested by a county employee, if the commissioners court determines that the payment serves a public purpose. Currently the deductions are set out in the statute and can only be made for payments to a credit union; membership in a labor union or employees' association; parking fees; or payments to a charitable organization. *Effective Date: 6-20-03*

HB 2930 by Lewis (same as SB 1559)

Relating to the confidentiality of certain personal information in real property records filed with the county clerk.

This bill would allow the public an opportunity to remove any social security or driver's license numbers from an instrument before filing it with the county clerk's real property or official public records. An instrument is defined as a deed, mortgage, or deed of trust. If such an instrument is executed on or after Jan. 1, 2004, the clerk must include a notice (prescribed in the bill) on the first page of the instrument notifying the person of the new statute. The same notice must also be posted in the county clerk's office, including that the public can access the public records filed in that office. Whether the document contains the social security or driver's license number or not, the county clerk cannot reject it for recording. If the clerk accepts the instrument for recording, it is presumed that the requirements have been met. *Effective date: 9-1-03*

[Please see Significant Bills, continued on page 12]

[Significant Bills, continued from page 11]

HB 2931 by Lewis

Relating to the administration and finances of counties and certain other entities.

Provides for certain electronic recordkeeping by county and district attorneys and county clerks. Clarifies the ability of a county to establish a reserve or contingency item in the budget and sets requirements regarding appointments to governing bodies of local governments. Allows a county to develop a computer application or software as long as the sole purpose of doing so is not to sell, license or market it and it addresses the ability of counties to obtain patents, copyrights and trademarks. Applies the Interlocal Cooperation Act (Chapter 791, Government Code) to a local government nonprofit transportation corporation and also authorize the parties to an interlocal contract to contract with a nonprofit tax-exempt organization to supervise the performance of the interlocal contract. This organization, serving as the administrative agency for the contract may acquire, apply for, register, secure, hold, protect and renew patents, copyrights and trademarks. Also amends Subchapter A, Chapter 232, Local Government Code to clarify the authority of a commissioners court to charge a plat application fee and to provide that such a fee may vary based on the number of proposed lots, the size of the plat, the type or extent of proposed streets and drainage improvements, or any other reasonable criteria as determined by commissioners court. *Effective date: 9-1-03*

HB 3024 by Casteel

Relating to increasing governmental efficiency through the reduction of duplicative reporting and auditing requirements.

Requires each state agency in the second year of each biennium to conduct a zero-based review of the reporting requirements placed on local governments and simplify reporting requirements by making recommendations to the legislature regarding statutory changes to eliminate unnecessary, duplicative or overly burdensome reporting requirements. Prohibits a state agency from requiring local governments to submit reports on items not required by law, rule or performance measures. Requires a state agency to accept and not duplicate an independent audit of a local government if the audit complies with audit standards. Also directs state agencies to specify in advance any special auditing requirements and to pay for these if allowed by law or rule. Still allows a state agency to perform its own

separate monitoring or auditing of a local government's expenditure of state or federal funds received via grant or contract; allows the state auditor to audit for compliance with the provisions of this law. *Effective Date: 6-20-03*

HB 3089 by Dukes

Relating to competitive purchasing procedures for certain counties.

Authorizes all counties to require prospective bidders for county contracts to attend a pre-bid conference. *Effective Date: 9-1-03*

HB 3221 by Bohac

Relating to subdivision platting requirements in certain counties near an international border.

Exempts lots of 10 or more acres from the platting requirements of Subchapter B, Chapter 232, Local Government Code ("Subdivision Platting Requirements in County Near International Border"). *Effective Date: 9-1-03*

HB 3325 by Keffer

Relating to the creation and administration of the community telecommunications alliance program.

In the wake of the Telecommunications Infrastructure Fund losing most of its funding, this establishes a community telecommunications alliance program in the Office of Rural Community Affairs (ORCA). Grants will be made with remaining TIF funds. Such a program in a community would consist of public and private entities (including county government) sharing resources, promoting innovative school health technologies, promoting economic development and improving the quality of life in communities through improved information technology. *Effective Date: 9-1-03*

SB 84 by Wentworth

Relating to the prompt production of public information under the public information law.

The intent of SB 84 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 Feb. 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. *Effective date: 6-20-03*

[Please see Significant Bills, continued on page 13]

[Significant Bills, continued from page 12]

SB 155 by Zaffarini

Relating to the protection of public freshwater areas.

Allows a county, municipality or a river authority to implement a local river access plan in order to protect certain river courses and streams. *Effective Date: 9-1-03*

SB 174 by Nelson

Relating to the confidentiality of information in an application for a marriage license.

This bill makes social security numbers confidential on a marriage license application, or any document submitted with the application. If a request for a copy of a marriage license application is made, SB 174 gives the county clerk authority to redact the portion of the application revealing the social security number, and to release the rest of the information. *Effective date: 9-1-03*

SB 189 by Carona

Relating to the selection of public members to the committee to review salaries and expenses of elected county or precinct officers.

Removes the January appointment requirement listed in section 152.014 of the LGC. The bill allows commissioners courts to appoint public members to a salary grievance committee any time during the year and also sets timelines for hearing dates. *Effective date: 1-1-04*

SB 236 by Fraser

Relating to exempting landowners from the requirements of obtaining a hunting license to hunt feral hogs on the landowner's property.

Exempts a landowner from obtaining a hunting license in order to kill depredating feral hogs on the landowner's property. *Effective date: 6-20-03*

SB 234 by Lucio

Relating to the continuation of the Department of Housing and Community Affairs.

This is the TDHCA sunset bill. Among other things, it accomplishes the following: continues the agency through 2011; addresses community input into the agency's decision-making process; establishes a biennial action plan for colonias; creates an alternative dispute resolution procedure; specifies that department funds, plans, and programs apply to urban, exurban and rural areas; requires the department notify public officials, including county officials, of applications for tax credits made in that jurisdiction; limits the granting of tax credits based on proximity and number of projects in a particular area or

jurisdiction; requires tax credit applicants to give notice to the county judge of the intended project; makes available on the TDHCA Web site information about the low-income tax credit program and provides that information to local and state officials. *Effective Date: 9-1-03*

SB 325 by Armbrister

Relating to the implementation of a change in law imposing or changing the amount of certain costs and fees.

Amends Chapter 51 of the Government Code by adding Section 51.607, which would require the comptroller to publish a list of new fees not later than the Aug. 1 after the end of the regular session of the legislature at which the law imposing or changing the amount of the cost or fee was enacted. The bill also sets the implementation date of new or amended court costs and fees at Jan. 1 after each regular legislative session, (unless effective date prior to Aug.1 or after Jan. 1 of the next year) to give cities, counties and the comptroller of public accounts four additional months to make the necessary changes and adaptations. *Effective Date: 6-20-03*

SB 392 by Williams

Relating to tax assessment procedures in certain water districts.

Requires certain water districts (operating under Chapter 49, Water Code) to comply with Tax Code requirements (Truth in Taxation) of calculating and publishing tax rates, holding public hearings for tax increases, and holding rollback elections. *Effective Date: 9-1-03*

SB 521 by Staples

Relating to the regulation and acquisition of manufactured housing.

Retreats from some of the requirements placed on the sale of manufactured housing by the 77th Legislature's HB 1869. Makes it simpler to obtain manufactured housing through personal or chattel loan, but does require the escrow of ad valorem taxes, defines "attached," amends portions of the information required to be provided to purchasers and prospective purchasers by the retailer, provides for the issuance of a statement of ownership and location by TDHCA in lieu of title. Provides that a tax lien attaches to the land on which a home is affixed if the home is listed together with the land, but a lien does not attach to the land if the home is listed separately from the land and defines unpaid taxes due a taxing unit. *Effective Date: 6-18-03*

[Please see Significant Bills, continued on page 14]

[Significant Bills, continued from page 13]

SB 585 by Duncan

Relating to providing money to pay for the remediation, cleanup, and closure of unpermitted solid waste facilities.

Expands what the TCEQ portion of the municipal solid waste tipping fee may be spent on to include the remediation, clean-up, and closure of unpermitted solid waste facilities. *Effective Date: 9-1-03*

SB 604 by Ellis

Relating to the recovery of attorney's fees and certain costs in proceedings to recover delinquent debts owed to a county.

Allows the county attorney, in a proceeding to collect a debt owed the county, to collect from a debtor reasonable attorney fees, investigative costs and court costs incurred to recover the debt, the same manner as provided by law for a private litigant. This section does not apply to the collection of ad valorem taxes owed the county. *Effective date: 9-1-03*

SB 749 by Madla

Relating to continuing education requirements for certain court clerks.

County and district clerks must complete 20 continuing education hours each year. Senate Bill 749 amends Sec. 51.605 of the Government Code by reducing the number of continuing education hours required for registry funds from 3 hours to 1 hour annually, still having the option of taking 3 continuing education hours of registry funds if a clerk chooses. *Effective date: 1-1-04*

SB 757 by Brimer

Relating to the application for a candidate to be placed on the general primary election ballot.

Clarifies language in Election Code Section 172.021(b) and (e) relating to certain judicial candidates on the primary ballot. Judicial candidates who do not wish to pay a filing fee are authorized to file a separate petition in lieu thereof. The secretary of state provides two separate forms for two petitions – one petition to be placed on the primary ballot, and one in lieu of the filing fee. The intent of the bill is to clarify which petition should be used in each instance. *Effective date: 6-20-03*

SB 775 by Averitt

Relating to the use of TexasOnline by state agencies.

Directs state agencies that provide TexasOnline services to assist in the marketing of TexasOnline, requires each state agency that maintains a generally

accessible Web site and that uses TexasOnline to include a link to TexasOnline on the front page of its Web site. Provides that for the purposes of Chapter 2054, Government Code, the renewal of a motor vehicle registration is a state service. *Effective Date: 5-16-03*

SB 782 by Armbrister

Relating to the authority of a county or municipality to contract for collection services in criminal cases and certain cases involving the parking or stopping of motor vehicles.

Amends Article 103.0031 of the Code of Criminal Procedure relating to the commissioners courts' authority to contract with a private attorney or vendor for collection services of debts (fines, fees, court costs, etc.) and amounts ordered in cases in which the defendant fails to appear as promised. The county may authorize a collection fee of 30 percent on each amount owed that is more than 60 days past due and referred to a contractor. The fee would not apply to a case that has been dismissed by a court of competent jurisdiction or to any amount that has been satisfied through community service or time-served credit. If it is not stated in the contract, the court will calculate a collection fee due to the county or contractor and shall receive all fees, including the collection fee. If a county contracted for collection of debts and the defendant paid less than what is required, the allocation to the different entities would be reduced proportionately. A debt is considered overdue on the 61st day after the court ordered it to be paid, or the date the defendant promised or was ordered to appear in court. A county that authorizes the 30 percent collection fee cannot use this money for any purpose other than to compensate the contractor. A forfeited bond would not be subject to collection services under this bill. If the accused person is contacted regarding the delinquent payment, a notice must include the person's right to enter a plea or go to trial on any offense charged. *Effective date: 6-18-03*

SB 850 by Lindsay

Relating to allowing local governments and school districts to prohibit contracts with delinquent taxpayers.

Amends Chapter 252 of the Local Government Code by adding Section 252.0436, which allows cities, counties and school districts to consider whether a bidder has paid their ad valorem taxes to the entity seeking the bid proposal and to refuse to contract with a person or firm so indebted. Currently, Texas cities, counties, and school districts are

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prohibited from taking into consideration anything other than general qualifications and price in awarding bid contracts. Supporters of the legislation contend that bidders who have been awarded contracts owe the city, county or school district back taxes. *Effective Date: 9-1-03*

SB 861 by Janek

Relating to access to birth records under the public information law.

Intended to reduce people from falsely applying for state benefits, SB 861 increases the period of time from 50 to 75 years that a birth certificate must be kept confidential. There is an exception for the Genealogical Society of Utah. *Effective date: 9-1-03*

SB 905 by Madla

Relating to reimbursement for land removed from emergency service districts and dispute resolution relating to the amount of reimbursement.

Strikes completely the current bracket (125,000 or more) that requires a municipality to reimburse an emergency services district if the municipality annexes territory away from the district. Includes loans and lease purchase agreements to the indebtedness total, lays out and directs a district to a formula for determining indebtedness, and includes binding arbitration to resolve differences. *Effective Date: 9-1-03*

SB 1084 by Madla

Relating to interest-free loans from the Water Development Board for water districts in economically distressed areas.

Requires that certain loans to certain water districts in EDAP counties (Economically Distressed Areas Program, administered by the Texas Water Development Board) be interest free. *Effective Date: 9-1-03*

SB 1152 by Shapleigh

Relating to the use of TexasOnline.

Among other things, specifies that a state agency or local government using TexasOnline may charge a fee, if necessary, to recover actual costs for the use of electronic payment methods or for interfacing with other information technology systems. Such a fee could not recover employee costs, a local government's governing body must approve the fee using their usual methods of approving fee increases, and the chief financial officer of a local government must certify that the fee amount is necessary to recover actual program costs. Allows governments using TexasOnline to accept electronic payment, including credit and debit cards. *Effective Date: 6-20-03*

SB 1161 by Barrientos

Relating to authorizing counties and municipalities to provide services through the Internet.

Allows the county to provide other services through the internet besides access to information and collection of payments. Gives the county the authority to charge a reasonable fee to recover costs for providing access to information, collection of payments or other services. The county may contract with a vendor to provide the on-line services and to collect a fee approved by the county. *Effective date: 9-1-03*

SB 1265 by Armbrister

Relating to initiating the prosecution of environmental crimes.

Limits the ability of county and district attorneys to initiate prosecution of certain environmental crimes. Requires notification of violation be provided to TCEQ by the appropriate law enforcement officer; the agency then determines, within a 45-day period whether civil or administrative penalties should be meted out. If the agency fails to act within that period, the appropriate prosecuting attorney may bring an action for criminal prosecution, with the local government retaining any appropriate fines, fees, penalties. In the event the agency notifies the law enforcement officer that criminal prosecution is necessary, the appropriate prosecuting attorney may pursue this action; resulting fines, fees, penalties are divided with 70 percent to the state and 30 percent to any local government significantly involved in prosecuting the case. *Effective Date: 9-1-03*

SB 1336 by Hinojosa

Relating to the liability of a criminal defendant and the defendant's sureties on a personal bond or bail bond and to certain procedures in connection with bond forfeiture.

Amends several articles in the Code of Criminal Procedure. If a bond was forfeited due to the defendant's confinement in jail, the bill allows a defendant and the surety to be exonerated from liability for up to 180 days in misdemeanor cases and 270 days in felony cases from the date the principal failed to appear in court. The surety would still be liable for court costs and any reasonable costs incurred by the county for securing the return of the defendant including interest accrued on the bond amount. The surety may receive all or part of the bond amount minus court costs and other costs for showing of good cause and before entering a final judgment against the bond. A capias must be issued for forfeiture of bail within 10 business days of the court's order. The sheriff of each county would be

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Resources, Naturally

By Paul J. Sugg
Legislative Liaison



OF CEDARS AND SPRINGS

The idea of water flowing out the ground, that is to say, spring water, has long held a fascination for me. I remember as a young child regularly visiting some very dear family friends at their place out near Cat Spring in Austin County. In the warm glow of a humid July evening, to go down a piece from the house to a little arbor created by Nature itself, to fill an old tin cup with the water bubbling out of that little spring and to drink water so cold it made your teeth hurt... to me then and even now the moment and its memory was – is – something approaching magical—living waters, as the Word says, and the marvel of it all.

This past June, we went on our annual trip to the Frio, this time with our little son in tow. Jackson Davis took to water like the proverbial duck, under the watchful eye of Mama (especially Mama), Daddy, and an aunt and uncle or three. Like his daddy before him, the spring waters cast their gentle spell -- his pudgy little hand reaching out to touch the cold water flowing out of the springs one finds along parts of that river's bank, framed by ferns and cypress roots and rocks, spotted with moss.


Enough of that – now on to more practical matters. Due to a number of intersecting factors – migration and growth patterns, the end of the open range, over-grazing, droughts, and aggressive plant species, native and introduced—the widespread growth of brush across the state has contributed significantly to the drying-up of springs and creeks and the lowering of water tables. The United States Department of Agriculture's Natural Resource Conservation Service estimates that brush in Texas uses approximately 10 million acre-feet a year (an acre-foot is about 326,000 gallons – studies have determined that a typical family of four uses from 64,000 to 76,000 gallons of water per year), while through all uses—agriculture, livestock, municipal, industrial, etc. – we go through around 17 million acre-feet a year (and growing).

Although there are many different species of brush, often depending on geography and land use, three species receive the most attention, and rightly so: mesquite, salt cedar, and ashe juniper (mountain cedar) have spread over far reaches of the state. It's not their fault; they're simply taking full advantage of opportunities to obey their evolutionary directive. Our Aggies tell us that a 10-12 foot mesquite tree can consume up to 20 gallons of water, while a large juniper (cedar) can consume up to 32 gallons per day. Not only do these and other species suck up water from below ground,

but also in dense concentrations their thick canopies prevent rainfall from reaching the ground and replenishing the underlying aquifer. Although the juniper and mesquite are Texas natives and, when properly managed, play an important role in providing wildlife habitat, the salt cedar is a foreign species and is a good example of ecological unintended consequences. Introduced into the American West and Texas in the early part of the 20th century to assist in stabilizing the banks of streams, it has, with the effortless malice characteristic of many invasive species, taken over stream banks, squeezing out native species and consuming goodly amounts of water. Remarkably pernicious, salt cedars cause salts in the soil to rise close to the surface, preventing many native plants from persisting in their own environment.

In order to help meet the water needs of a growing state through managing these and other species, the 69th Legislature (1985) created the Texas Brush Control Program. The Texas State Soil and Water Conservation Board (TSSWCB) is designated as the state agency responsible for administering this program and has the authority to delegate responsibility for administering portions of the program to local soil and water conservation districts. In cooperation with Texas A&M and USDA's Natural Resources Conservation Service as well as some river authorities, there are ongoing brush control projects in the North Concho, the Upper Colorado, the Pedernales, and other watersheds, with more under study.

State funding is always an issue (as is private funding and local government funding), especially in these difficult times, but studies are showing that properly executed brush control projects can provide cheap water, especially in some of the more arid parts of the state. This past session's SB 1828 maintained the Soil and Water Conservation Board's administration of the program, added board members through governor's appointment, added some oversight and auditing elements, addressed project prioritization, and directed the board to consult with the Water Development Board and the Agriculture Department regarding the program's impact on water quality and agriculture, respectively. It reduced the state's share of the brush-control project from 80 to 70 percent and made political subdivisions eligible for cost-sharing, although the state's share cannot exceed 50 percent of the cost of a single project. Sadly, the Legislature significantly reduced the cost-sharing funding of the brush control program. This is certainly not unusual given the current state fiscal environment, but we hope that future legislatures will continue to actively support this water development initiative. There's something to be said for making dried-up springs and creeks start flowing again – living waters, indeed.

For more information, please contact Paul Sugg at 800-456-5974, or via e-mail at PaulS@county.org. 

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required to enter a capias issued for the same reason into the local warrant system not later than 10 business days after the court clerk issues the capias. *Effective date: 6-20-03*

SB 1388 by Armbrister

Relating to disclosure under the public information law of certain documents filed with a county clerk.

The intent is to protect the personnel information of former Texas Department of Criminal Justice (TDCJ) employees from public disclosure (e.g. address, phone number, social security number). The bill affects Government Code Sec. 552.117. The records held by county and district clerks are exempt from the SB 1388 requirements. *Effective date: 6-20-03*

SB 1477 by West, Royce

Relating to the expunction of criminal records and to the duty of law enforcement agencies regarding records associated with certain defendants receiving deferred adjudication.

Amends various sections of the Code of Criminal Procedure and Government Code to help certain people that have been placed on deferred adjudication to petition the court for expunction of the criminal records related to an offense. If the court finds this to be in the best interest of justice, an order would have to be issued prohibiting criminal justice agencies from disclosing criminal history record information on the particular offense. The bill describes a person considered to have been placed on deferred adjudication community supervision. Prescribes when a person would be eligible to request expunction and after paying a fee for the order of nondisclosure. If a person committed a list of certain offenses, the person would not be eligible to petition the court for expunction of records. The clerk collecting the fee is required to notify DPS Crime Records Service by certified mail, return receipt requested and DPS would in turn notify law enforcement agencies and other involved entities. DPS is to report to the legislature the results of this legislation. Regardless of the effective date of this bill, a person could apply for expunction whether the arrest occurred before, on or after that date. *Effective date: 9-1-03*

SB 1527 by Brimer

Relating to a purchaser's right to cure default under an executory contract for conveyance.

Prior to 2001, a seller under contract for deed could recover his property when default occurred within 15 days if the equity was 10 percent or less, or longer if the

equity were more. In 2001, this changed to 60 days regardless of the amount of equity; this changes the period to 30 days. *Effective Date: 9-1-03*

SB 1581 by Wentworth

Relating to excepting an audit working paper of a county auditor or a municipal auditor from required disclosure under the public information law.

Extends the same protection to the audit papers of a county auditor or municipal auditor that is available to the state auditor, auditors of state agencies and auditors of institutions of higher education as found in Section 552.116, Government Code. *Effective date: 6-18-03*

SB 1701 by Wentworth

Relating to the Department of Information Resources' management of certain electronic and telecommunications projects.

Restructures DIR's administrative duties in regard to guiding the development of state agency technology-related services. Directs DIR, the state auditor and the Legislative Budget Board to form a quality assurance team in part, to assist DIR and agency information systems managers in developing the state's information technology strategic plan and in establishing common information resources infrastructure for multiple state agencies. *Effective date: 9-1-03*

SB 1771 by Brimer

Relating to the creation of the Texas Enterprise Fund.

Using a significant portion of the so-called "rainy day" fund, creates the Texas Enterprise Fund, to be administered by the governor for economic development, infrastructure development, job training programs, and business incentives. *Effective date: 9-1-03*

SB 1828 by Averitt

Relating to the composition and duties of the State Soil and Water Conservation Board.

Increases the number of board member from five to seven, to include two appointed by the governor. Directs the board to consult with the Water Development Board in regard to the effects of brush control program on water quality and with the Department of Agriculture to the effects of the program on agriculture. The board is directed to rank areas in need of the program, rather than simply designate critical areas. Added to the ranking criteria is the amount of water produced by the project. Political subdivisions are now able to apply to participate in a cost-sharing brush control project with the state. *Effective date: 9-1-03* 🗺️

Attorney General Opinions



GA-0081: Honorable Bruce Isaacks, Denton County Criminal District Attorney, budget amendment process in Denton County (RQ-0013-GA). **Summary:** A commissioners court that amends its budget in midyear to authorize a new position in the sheriff's office by

transferring surplus funds from one budget item to another need not authorize an emergency expenditure, but may proceed under the terms of section 111.070(c) of the Local Government Code. Having authorized such an appointment pursuant to sections 151.001 and 151.002 of the Local Government Code, a commissioners court has ceded authority over that position to the appointing officer for the remainder of the budget year in question.

GA-0084: Honorable Scott Sherwood, Carson County Attorney, city of Skellytown's authority to enter certain agreements with the Skellytown Area Volunteer Firefighters-EMS Association (RQ-0014-GA). **Summary:** Because the City of Skellytown executed various agreements (the "Agreements") with the Skellytown Area Volunteer Firefighters-EMS Association (the "Association") over three years ago and no lawsuits to invalidate them have been filed, the Agreements are "conclusively presumed" to be valid unless, among other things, the Agreements were void *ab initio*. See Tex. Loc. Gov't Code Ann. § 51.003 (Vernon Supp. 2003). The fact that a city council member was, at the time the City approved the Agreements, also a director of the Association does not affect the Agreements' validity.

The City had statutory authority to convey to the Association personal property, such as equipment and furniture, and to lease City buildings and facilities to the Association. A conveyance or lease complies with article III, section 52 of the Texas Constitution if (1) it primarily accomplishes a public purpose; (2) the City retains sufficient control to ensure that the public purpose would be accomplished; and (3) the City receives a sufficient return benefit.

A Type A general-law municipality has no statutory authority to attach a \$1.50 charge to water bills to fund the costs of volunteer firefighting services.

GA-0085: Honorable Melanie Spratt-Anderson, Upton County Attorney, whether the Upton County Commissioners Court may maintain or work on private non-road property or sell county-owned dirt to private individuals for a reasonable fee (RQ-0015-GA). **Summary:** Article III, section 52f of the Texas Constitution expressly permits counties with a population of 5,000 or less to construct and maintain private roads if they impose a reasonable charge for the work. In the absence of a statute authorizing a county to maintain or work on private non-road property or a constitutional provision analogous to Article III, section 52f, such activities are beyond a commissioners court's authority. Provided that county-owned dirt falls under the definition of either salvage or surplus property, subchapter D of chapter 263 of the Local Government Code would authorize the county to sell it. ■



RQ-0055-GA: Austin County Auditor, Betty Jez, whether "records management and preservation" funds may be used to pay the salaries of employees of a county clerk.

RQ-0056-GA: Honorable Richard J. Miller, County Attorney, Bell County, whether a refusal to permit a constable to enter the restricted area of a business in order to serve civil process constitutes an offense under section 38.16, Penal Code; and whether that statute is void for vagueness.

RQ-0057-GA: Honorable Florence Shapiro, Chair, Education, Texas State Senate, whether a minor may be classified as a "missing child" under article 63.001, Code of Criminal Procedure, if the minor's legal guardian knows the minor's whereabouts.

RQ-0058-GA: Guadalupe County Auditor, Kristen Klein, collection of certain fees.

RQ-0059-GA: Hidalgo County Auditor, Antonio R. Sandoval, obligations of a district attorney with respect to forfeited real property.

RQ-0062-GA: Honorable José R. Rodríguez, El Paso County

Attorney, whether a school district that does not participate in the state uniform group coverage program is required to provide health coverage to persons who have retired under the Teacher Retirement System but have returned to work.

RQ-0064-GA: Honorable Rodney Ellis, Chair, Government Organization, Texas State Senate, request for opinion regarding (a) whether the use of Texas Medical Center parking facilities for events held outside of Texas Medical Center would violate applicable deed restrictions; and (b) whether the use of such parking facilities for events held outside Texas Medical Center would forfeit the property tax exemption currently received under Section 11.23(), Tax Code.

RQ-0068-GA: Honorable Ken Armbrister, Chairman, Natural Resources, Texas State Senate, responsibility for maintenance of a public road.

RQ-0069-GA: Honorable Norman Arnett, Stonewall County Attorney, whether the nepotism statute, chapter 573, Government Code, precludes the continued employment of an employee of the sheriff's office after her marriage to the sheriff. ■

[Proposals, continued from page 7]

Prop. 22/HJR 84

The proposition will appear on the ballot as follows:
"The constitutional amendment authorizing the appointment of a temporary replacement officer to fill a vacancy created when a public officer enters active duty in the United States armed forces."

Currently, Article 3, Section 12 of the Texas Constitution stipulates that all vacancies in state or district office (except the Legislature) are to be filled by appointment of the governor. This would add Section 72 to Article 16 to stipulate that elected or appointed officers of the state or any political subdivision who are called, drafted or activated into active duty in the United States military would not have to vacate their offices. For an officer that is not a member of the Legislature, the entity or person with the authority to appoint a person to fill a vacancy in that office may appoint a temporary acting officer. The officer entering into active duty may recommend to the appropriate authority an appropriate

replacement. The temporary officer would have all the privileges, rights, and duties of the office, is entitled to the same compensation as the officer being replaced, and serves the shorter of either the term of office or the term of active military service of the officer being temporarily replaced. 🗳️

[From the Desk, continued from page 20]

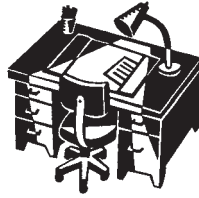
included within the scope of "real property" arose. Many Texas counties are heavily dependent upon the revenue derived from the value of minerals. The process of evaluating minerals is quite distinguishable from that of business, homes and commercial properties and carries a high potential for resulting inequities if increases in appraised values are strictly limited – an issue that the proponents of HJR 4 have heretofore agreed to resolve. **A quiet, but contentious and touchy subject** – a core value issue (no pun intended) that was softly, but seriously, debated among the various interests groups focused on whether to include commercial and industrial properties within the purview of HJR 4. Seeking "parity," the business community obviously wanted its properties to be included within the appraised value limitations of HJR 4 – a phenomenon that some contend would unduly shift the tax burden to the homeowners of Texas. The rejoinder to the foregoing position maintains that to do otherwise would only cause an increase (pass through) in the costs of goods and services that would subsequently be imposed by the industrial and commercial businesses. Opinions vary as to why the 21-vote requirement under the Senate rules was unobtainable late in the session. **Public scrutiny** – news media involvement in

governmental affairs sometimes results in misinformation at the expense or gain of local officeholders; however, there is usually an opportunity for officeholders to clarify or correct the record – an essential component of fairness and in helping the public make accurate political judgments. Officeholders should not shy away from making sure their actions are truthfully reflected in news media reports and should never leave misinformation out there to perpetuate itself without attempting to correct it. Developing good working relationships with reporters and editors is imperative in this regard. **September ballot** – the election date for all 22 proposed constitutional amendments has been set for Sept.13. For a discussion of proposed amendments affecting counties, see within this publication of County Issues. **The good news** – consuming a glass of wine a day has been reported by some sources as an effective practice in deterring a heart attack. **The bad news** – while resolving to implement the consumption safeguard you come upon the realization that you have already sheltered yourself for the next five years. Promote County Government, it reflects the real pulse of the people of Texas. 🗳️

From the Legislative Desk

By Carey “Buck” Boethel

Director of Governmental Relations



Property taxes – constitutional limitation on increases in appraised value – Both HB 3223 and HJR 4 [by Rep. Bohac] died on the Senate doorsteps at the eleventh hour during the 78th regular session. Even so, it’s worth discussing the merits of constitutionally limiting the appraised value of real property each year, which is the core concept of these revenue initiatives (HB 3223 and HJR 4 did not apply to real property taxed by school districts). If the congressional redistricting issue is legislatively resolved in time, there is a chance that HB 3223 and HJR 4 may appear among the subjects to be opened by the Governor – he can add more at his will during the 30-day process and can call as many special sessions as he wants. The formal declaration of a special session authorizes members of the legislature to pre-file bills that are unrelated to the called subject as long as

they are filed within the term of the current special session. The entire process begins over again with another “call” by the Governor. **Fed up homeowners** frustrated with significant annual increases in the appraised value of their homes, were among the strongest proponents of the legislation and they came to Austin to speak about it. **The effect** of substantially limiting annual increases in appraised values of real property would be to subject sizeable revenue expenditures proposed by governmental entities to an increase in the tax rate and the rollback provisions of the tax code as well as narrow the gap between the tax rate and its constitutional cap. **But, what about the real culprits?** – one can only speculate as to why the efforts to limit appraised values did not include real properties taxed by school districts – maybe the state leadership declared that area “off limits” because tinkering with the Texas Constitution on property values during the “school finance study period” might not jibe with certain plans on the drawing board dealing with the allocation of that sizable source of revenue. **Mineral interests** – during the regular session, the issue of “mineral interests” being

[Please see From the Desk, continued on page 19]



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