

BILL ANALYSIS

C.S.S.B. 1049
By: Lindsay
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Local governments, such as counties, are controlled by myriad statutes that direct the functions and authority of the local government, and clarification of those statutes is often necessary. This bill amends various statutes to clarify the roles and responsibilities of the local governments, including a standing order of emergency delegation, suitable provisions in the event of disasters, and allow for more counties to employ special counsel and clarifying notice provisions in suits against the state. This bill also clarifies that a county may establish branch offices in the unincorporated areas to improve access to services.

Current statutes do not contain specific guidelines for setting the surety bond for a county treasurer and there are duplicate and potentially conflicting requirements for removal of a county treasurer relating to securing a bond and taking the oath of office. C.S.S.B 1049 specifies a formula for setting the bond for the county treasurer and provides an acceptable range of values for the bond. C.S.S.B 1049 removes duplicative language to conform the requirements for removal of a county treasurer to the removal for any county officer for failure to take the oath of office or obtain sufficient bond.

Current statutes require a sheriff or a constable to execute a bond with “two or more good and sufficient sureties”. Although a more general statute allows for official bonds to also be made with “a solvent surety company”, sheriffs and constables are bound by the more specific provision. Most bond companies do not currently provide bonds with more than one surety, making it difficult if not impossible to comply with the statute. C.S.S.B. 1049 provides the option to execute a bond with a solvent surety company authorized to do business in Texas.

Current statutes allow inmates to purchase a limited number of items like food, hygiene, clothes and miscellaneous items at commissaries in county jails. The funds in the commissary accounts are used to benefit the quality of life of inmates, but due to statutory restrictions are not always fully utilized. C.S.S.B. 1049 expands the uses of the commissary fund and makes changes to the contracting process to ensure that commissary contracts provide the best rate of return for the jail and the best benefit to the inmates and staff.

In 1999, the Legislature established the Tobacco Settlement Permanent Trust Account Administration Advisory Committee and required advisory committee members to be appointed by the committee based on appointments by stakeholder groups. A problem developed in 2002, when several member’s terms expired. This left the committee unable to form a quorum, which made it impossible to conduct business or act on new nominations. C.S.S.B 1049 fixes the problem by allowing the eligible local governments and associations to make direct appointments and providing for four appointments to be made by the Texas Conference of Urban Counties. This process is consistent with the appointment procedures for other members of the committee and has been agreed to by all of the local governments involved.

In 2003, the previous policy for making appointments to the County Tobacco Settlement Permanent Trust Account Investment Advisory Committee (the committee as a whole appointed new members based on nominations from eligible local governments) was replaced with a requirement that the local governments make direct appointments to the committee. This resulted in a situation where four positions on the committee are being filled through appointment by ten local governments with no process or voting protocol for doing so. C.S.S.B. 1049 creates a process for the eligible local governments to make nominations for appointment, which would then be made by the Texas Conference of Urban Counties. This process is consistent with the appointment procedures for other members of the committee and has been agreed to by all of the local governments involved.

In 2003 a change in the Government Code inadvertently allowed individual members of commissioners court, as opposed to the entire court, to request jail variances. C.S.S.B. 1049 clarifies the language to allow commissioners court to make the request to the Jail Standards Commission.

Current law requires arrested persons to be taken before a magistrate “without unnecessary delay, but no later than 48 hours after the person is arrested.” Many counties do not have a magistrate available late at night or through parts of the weekend, requiring some arrestees to wait almost the full 48 hours to see a magistrate. A person may be presented to a magistrate via “closed circuit television”, but few counties employ closed-circuit television because of the costs of the physical system components. Technology now makes low-cost electronic broadcast systems possible. C.S.S.B. 1049 allows counties, including nonadjacent counties, to use electronic broadcast systems for magistration.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Article 14.06(a), Code of Criminal Procedure, to provide that an arrested person can be taken before a magistrate in any county of the state.

SECTION 2. Amends Article 15.16, Code of Criminal Procedure, by authorizing the officer or person executing the warrant to take the arrested person before a magistrate in a county other than the county of arrest, to provide more expeditiously to the person arrested the warnings described by Article 15.17(Duties of arresting officer and magistrate).

SECTION 3. Amends Article 15.17 (a), Code of Criminal Procedure, to provide that an arrested person can be taken before a magistrate in any county of the state and that the arrested person may be presented before a magistrate by means of an electronic broadcast system. Makes conforming changes regarding standards for closed circuit television systems and defines an "electronic broadcast system" as a two-way electronic communication of image and sound between the arrested person and the magistrate, and includes provision for secure Internet videoconferencing.

SECTION 4. Amends Article 15.18, Code of Criminal Procedure, to provide that an arrested person can be taken before a magistrate in any county of the state, including the county where the warrant was issued, and that the arrested person may be presented before a magistrate by means of an electronic broadcast system. Requires the magistrate to take bail, if allowed by law, and, if without jurisdiction, immediately transmit the bond taken to the court having jurisdiction of the offense.

SECTION 5. Amends Article 15.19(b), Code of Criminal Procedure, to provide that an arrested person can be taken before a magistrate in any county of the state.

SECTION 6. Amends Section 403.1042(b), Government Code, to provide that four members will be appointed by the Texas Conference of Urban Counties from nominations received from certain political subdivisions to the Tobacco Settlement Permanent Trust Account Investment Advisory Committee.

SECTION 7. Amends Section 511.009(c), Government Code, to clarify that commissioners court, rather than individual court members, may request a jail variance from the Jail Standards Commission.

SECTION 8. Amends Section 12.137(b) and (c), Health and Safety Code to provide for appointments to the Tobacco Settlement Administrative Advisory Committee by the Texas Conference of Urban Counties. Provides that a commissioners court that sets the tax rate for a hospital district must approve any person appointed by the hospital district to serve on the advisory committee.

SECTION 9. Amends Section 81.028, Local Government Code, by adding Subsection (b-1) to authorize a county judge to file a standing order of emergency delegation that clearly indicates the types of orders of official documents that an officer or employee is authorized to sign on behalf of the county judge in the event of an emergency or disaster.

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SECTION 10. Amends Subchapter B, Chapter 81, Local Government Code, by adding Section 81.029, as follows:

Sec. 81.029. POWER OF CERTAIN COUNTIES RELATING TO DISASTER OR EMERGENCY. Authorizes a commissioners court of a county with a population of more than one million to make suitable provisions for flood control and for evacuation routes in the event of a disaster or impending disaster, and if requested by another county, to authorize the use of county equipment and services to aid the other county in the event of an emergency.

SECTION 11. Amends Section 83.002, Local Government Code, to require a county treasurer to execute a bond with a surety company authorized to do business in this state as a surety. The bond must be made payable to the county judge in an amount established by the commissioners court not to exceed one-half of one percent of the largest amount budgeted for general county maintenance and operations for any fiscal year of the county beginning during the term of office preceding the term for which the bond is to be given except that the amount may not be less than \$5,000 or more than \$500,000. Requires the bond to be conditioned that the treasurer will faithfully execute the duties of office and subjects the treasurer to removal for failure to obtain a bond.

SECTION 12. Amends Section 83.003(c), Local Government Code, to allow continuing education courses for county treasurers to be sponsored by a public institution of higher education.

SECTION 13. Amends Section 83.004(a) and (c), Local Government Code, to allow a county judge to declare the office of county treasurer vacant if the person elected to office fails to obtain an adequate bond. Requires the person to take the oath of office and obtain a surety bond before taking office.

SECTION 14. Amends Section 85.001(a), Local Government Code, to allow a sheriff to execute a bond with a solvent surety company authorized to do business in Texas.

SECTION 15. Amends Section 86.002(a), Local Government Code, to allow a constable to execute a bond from a solvent surety company authorized to do business in Texas.

SECTION 16. Amends the heading of Section 89.001, Local Government Code, to read: "SPECIAL COUNSEL IN POPULOUS COUNTIES."

SECTION 17. Amends Section 89.001(a), Local Government Code, to increase the population requirement from one million to 1.25 million for a commissioners court to be authorized to employ an attorney as special counsel.

SECTION 18. Amends Section 89.0041(b), Local Government Code, to require written notice in a suit against the county to include the name of the person filing suit.

SECTION 19. Amends Subchapter B, Chapter 292, Local Government Code, by adding section 292.030, as follows:

Sec. 292.030. Authorizes the commissioners court of a county to provide a branch office in the unincorporated area of a county.

SECTION 20. Amends Section 351.0415, Local Government Code, as follows:

Sec. 351.0415. COMMISSARY OPERATION BY SHERIFF OR PRIVATE VENDOR.. (a) Permits a sheriff to appoint a designee to operate a jail or detention facility commissary.

(b) Makes conforming changes.

(c) Authorizes the sheriff or the sheriff's designee to use commissary proceeds only to fund, staff, and equip a program addressing the social needs of the inmates; supply inmates with clothing, writing materials, and hygiene supplies; establish, staff, and equip the commissary operation and fund the salaries of staff responsible for managing the inmates' commissary accounts; fund, staff, and equip both an educational and a law library for the educational use of inmates; or fund physical plant improvements, technology, equipment, programs, services, and activities that provide for the well-being, health, safety, and security of the inmates and the facility.

(d) Requires the auditor to, without advance notice, fully examine the jail commissary accounts, for a jail under the supervision of the sheriff, at least once each county fiscal year, or more often if the commissioners court desires

(e) Requires a private vendor to ensure that commissary accounts are annually examined by an independent auditor.

(f) Requires the sheriff or the sheriff's designee, when entering into a contract, to consider specific issues in selecting the best overall proposal for commissary services, including whether it provides for a fixed rate of return; the menu of items and prices; the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider; the safety and security procedures of the provider; and the performance record of the provider.

(g) Restricts the use of commissary proceeds to purposes listed in statute and prohibit a commissioners court from using commissary proceeds to fund budgetary operating expenses of a county jail.

SECTION 21. Amends Section 351.04155, Local Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that the section applies only to a county that has a population of one million or more; and has two municipalities with a population of 200,000 or more; and is adjacent to a county with a population of one million or more.

(c) Requires a purchase made with commissary proceeds by the sheriff to be subject to competitive purchasing procedures of those counties.

SECTION 22. Repeals Subsection 83.004(b), Local Government Code, allowing the removal of a county treasurer for failing to obtain an additional bond if the requirement is changed by commissioners court.

SECTION 23. The changes in law made by this Act to the Code of Criminal Procedure apply only to an offense committed on or after the effective date of this Act.

SECTION 24. The change in law to Sections 83.002 and 83.004(a), Local Government Code apply only to a county treasurer whose term begins on or after the effective date of the Act. The change in law made to Section 83.004(c), Local Government Code, applies only to a county treasurer who enters upon the discharge of the duties of office on or after the effective date of the Act.

SECTION 25. Effective Date

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The Substitute adds to the original the authority of a county judge to file a standing order of emergency delegation that clearly indicates the types of orders or official documents that an officer or employee may sign on behalf of the county judge in the event of an emergency or disaster if the judge is unavailable.

It also gives authorization to a commissioners court of a county with a population of more than one million to make suitable provisions for flood control and for evacuation routes in the event of a disaster or impending disaster, and if requested by another county, to authorize the use of county equipment and services to aid the other county in the event of an emergency.

The substitute clarifies bond requirements to require a county treasurer to execute a bond in an amount of not less than \$5,000 or more than \$500,000 as approved by commissioners court. Requires the bond to be conditioned that the treasurer will faithfully execute the duties of office and subjects the treasurer to removal for failure to obtain a bond. Requires the treasurer to take the oath of office and execute the bond prior to taking office.

The substitute allows continuing education courses for county treasurers to be sponsored by a public institution of higher education, rather than require them to be held at an institution of higher education.

The substitute authorizes a commissioners court of a county with a population of more than 1.25 million to employ an attorney as special counsel.

The substitute makes it mandatory that written notice in a suit against the county include the name of the person filing suit.

The substitute allows a county to provide services at a branch office located in the unincorporated area to better provide services to residents.

The substitute expands the uses of proceeds from a commissary contract for the benefit of inmates and the jail or detention facility. Also adds specific criteria in contracting for commissary operations in county jails or detention facilities to ensure the best value and benefit from the contract. Expands a provision requiring commissioners court approval of commissary related expenditures and contracts in certain large urban counties to include Dallas County.

The substitute removes Section 5 of the original bill, which corrected a drafting error by amending Sec. 501.138, Transportation Code, to clarify that when a specific TERP fee is reduced, the amount remitted to the comptroller is likewise reduced. Due to the expected passage of another bill that will eliminate the reduction; this provision no longer necessary.

The substitute includes language to provide for direct appointments to the Tobacco Settlement Administrative Advisory Committee to resolve a problem in establishing a quorum which is preventing the committee from holding meetings.