

By: Lindsay

S.B. No. 1049

Substitute the following for S.B. No. 1049:

By: Smith of Harris

C.S.S.B. No. 1049

A BILL TO BE ENTITLED

AN ACT

relating to the efficient administration and certain powers of county government.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 14.06(a), Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (b), in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, ~~[if necessary]~~ to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in any other [a] county of this state ~~[bordering the county in which the arrest was made]~~. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

SECTION 2. Article 15.16, Code of Criminal Procedure, is amended to read as follows:

Art. 15.16. HOW WARRANT IS EXECUTED. (a) The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him taken before the magistrate who

1 issued the warrant or before the magistrate named in the warrant, if
2 the magistrate is in the same county where the person is arrested.
3 If the issuing or named magistrate is in another county, the person
4 arrested shall without unnecessary delay be taken before some
5 magistrate in the county in which he was arrested.

6 (b) Notwithstanding Subsection (a), to provide more
7 expeditiously to the person arrested the warnings described by
8 Article 15.17, the officer or person executing the arrest warrant
9 may as permitted by that article take the person arrested before a
10 magistrate in a county other than the county of arrest.

11 SECTION 3. Article 15.17(a), Code of Criminal Procedure, is
12 amended to read as follows:

13 (a) In each case enumerated in this Code, the person making
14 the arrest or the person having custody of the person arrested shall
15 without unnecessary delay, but not later than 48 hours after the
16 person is arrested, take the person arrested or have him taken
17 before some magistrate of the county where the accused was arrested
18 or, ~~[if necessary]~~ to provide more expeditiously to the person
19 arrested the warnings described by this article, before a
20 magistrate in any other [a] county of this state ~~[bordering the~~
21 ~~county in which the arrest was made]~~. The arrested person may be
22 taken before the magistrate in person or the image of the arrested
23 person may be presented ~~[broadcast by closed circuit television]~~ to
24 the magistrate by means of an electronic broadcast system. The
25 magistrate shall inform in clear language the person arrested,
26 either in person or through the electronic broadcast system ~~[by~~
27 ~~closed circuit television]~~, of the accusation against him and of

1 any affidavit filed therewith, of his right to retain counsel, of
2 his right to remain silent, of his right to have an attorney present
3 during any interview with peace officers or attorneys representing
4 the state, of his right to terminate the interview at any time, and
5 of his right to have an examining trial. The magistrate shall also
6 inform the person arrested of the person's right to request the
7 appointment of counsel if the person cannot afford counsel. The
8 magistrate shall inform the person arrested of the procedures for
9 requesting appointment of counsel. If the person does not speak and
10 understand the English language or is deaf, the magistrate shall
11 inform the person in a manner consistent with Articles 38.30 and
12 38.31, as appropriate. The magistrate shall ensure that reasonable
13 assistance in completing the necessary forms for requesting
14 appointment of counsel is provided to the person at the same time.
15 If the person arrested is indigent and requests appointment of
16 counsel and if the magistrate is authorized under Article 26.04 to
17 appoint counsel for indigent defendants in the county, the
18 magistrate shall appoint counsel in accordance with Article 1.051.
19 If the magistrate is not authorized to appoint counsel, the
20 magistrate shall without unnecessary delay, but not later than 24
21 hours after the person arrested requests appointment of counsel,
22 transmit, or cause to be transmitted to the court or to the courts'
23 designee authorized under Article 26.04 to appoint counsel in the
24 county, the forms requesting the appointment of counsel. The
25 magistrate shall also inform the person arrested that he is not
26 required to make a statement and that any statement made by him may
27 be used against him. The magistrate shall allow the person arrested

1 reasonable time and opportunity to consult counsel and shall, after
2 determining whether the person is currently on bail for a separate
3 criminal offense, admit the person arrested to bail if allowed by
4 law. ~~[A closed circuit television system may not be used under this~~
5 ~~subsection unless the system provides for a two-way communication~~
6 ~~of image and sound between the arrested person and the magistrate.]~~

7 A recording of the communication between the arrested person and
8 the magistrate shall be made. The recording shall be preserved
9 until the earlier of the following dates: (1) the date on which the
10 pretrial hearing ends; or (2) the 91st day after the date on which
11 the recording is made if the person is charged with a misdemeanor or
12 the 120th day after the date on which the recording is made if the
13 person is charged with a felony. The counsel for the defendant may
14 obtain a copy of the recording on payment of a reasonable amount to
15 cover costs of reproduction. For purposes of this subsection,
16 "electronic broadcast system" means a two-way electronic
17 communication of image and sound between the arrested person and
18 the magistrate and includes secure Internet videoconferencing.

19 SECTION 4. Article 15.18, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 15.18. ARREST FOR OUT-OF-COUNTY OFFENSE. (a) A person
22 arrested under a warrant issued in a county other than the one in
23 which the person is arrested shall be taken before a magistrate of
24 the county where the arrest takes place or, to provide more
25 expeditiously to the arrested person the warnings described by
26 Article 15.17, before a magistrate in any other county of this
27 state, including the county where the warrant was issued. The

1 magistrate ~~[who]~~ shall:

2 (1) take bail, if allowed by law, and, if without
3 jurisdiction, immediately transmit the bond taken to the court
4 having jurisdiction of the offense; or

5 (2) in the case of a person arrested under warrant for
6 an offense punishable by fine only, accept a written plea of guilty
7 or nolo contendere, set a fine, determine costs, accept payment of
8 the fine and costs, give credit for time served, determine
9 indigency, or, on satisfaction of the judgment, discharge the
10 defendant, as the case may indicate.

11 (b) Before the 11th business day after the date a magistrate
12 accepts a written plea of guilty or nolo contendere in a case under
13 Subsection (a)(2), the magistrate shall, if without jurisdiction,
14 transmit to the court having jurisdiction of the offense:

15 (1) the written plea;

16 (2) any orders entered in the case; and

17 (3) any fine or costs collected in the case.

18 (c) The arrested person may be taken before a magistrate by
19 means of an electronic broadcast system as provided by and subject
20 to the requirements of Article 15.17.

21 SECTION 5. Article 15.19(b), Code of Criminal Procedure, is
22 amended to read as follows:

23 (b) If a person is arrested and taken before a magistrate in
24 a county other than ~~[bordering]~~ the county in which the arrest is
25 made ~~[under the provisions of Article 15.17(a) of this code]~~ and if
26 the person is remanded to custody, the person may be confined in a
27 jail in the county in which the magistrate serves for a period of

1 not more than 72 hours after the arrest before being transferred to
2 the county jail of the county in which the arrest occurred.

3 SECTION 6. Section 403.1042(b), Government Code, is amended
4 to read as follows:

5 (b) The advisory committee is composed of 11 members
6 appointed as follows:

7 (1) one member appointed by the comptroller to
8 represent a public hospital or hospital district located in a
9 county with a population of 50,000 or less or a public hospital
10 owned or maintained by a municipality;

11 (2) one member appointed by the political subdivision
12 that, in the year preceding the appointment, received the largest
13 annual distribution paid from the account;

14 (3) one member appointed by the political subdivision
15 that, in the year preceding the appointment, received the second
16 largest annual distribution paid from the account;

17 (4) four members appointed by the Texas Conference of
18 Urban Counties from nominations received from political
19 subdivisions that, ~~and~~

20 ~~[(A)]~~ in the year preceding the appointment,
21 received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th
22 largest annual distribution paid from the account ~~[, and~~

23 ~~[(B) do not have an appointee serving on the~~
24 ~~advisory committee at the time of appointment];~~

25 (5) one member appointed by the County Judges and
26 Commissioners Association of Texas;

27 (6) one member appointed by the North and East Texas

County Judges and Commissioners Association;

(7) one member appointed by the South Texas County Judges and Commissioners Association; and

(8) one member appointed by the West Texas County Judges and Commissioners Association.

SECTION 7. Section 511.009(c), Government Code, is amended to read as follows:

(c) At any time and on the application of the county commissioners court or sheriff, the commission may grant reasonable variances, including variances that are to last for the life of a facility, clearly justified by the facts, for operation of a facility not in strict compliance with state law. A variance may not permit unhealthy, unsanitary, or unsafe conditions.

SECTION 8. Sections 12.137(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The advisory committee is composed of 11 members appointed ~~[by the advisory committee]~~ as follows:

(1) one member appointed ~~[nominated]~~ by the board to represent a public hospital or hospital district located in a county with a population of 50,000 or less or a public hospital owned or maintained by a municipality;

(2) one member appointed ~~[nominated]~~ by the political subdivision that, in the year preceding the appointment, received the largest annual distribution paid from the account;

(3) one member appointed ~~[nominated]~~ by the political subdivision that, in the year preceding the appointment, received the second largest annual distribution paid from the account;

1 (4) four members appointed ~~[nominated]~~ by the Texas
2 Conference of Urban Counties from nominations received from
3 political subdivisions that~~+~~

4 ~~[(A)]~~ in the year preceding the appointment,
5 received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th
6 largest annual distribution paid from the account; ~~[and~~

7 ~~[(B) do not have a nominee serving on the~~
8 ~~advisory committee at the time of appointment;]~~

9 (5) one member appointed ~~[nominated]~~ by the County
10 Judges and Commissioners Association of Texas;

11 (6) one member appointed ~~[nominated]~~ by the North and
12 East Texas County Judges and Commissioners Association;

13 (7) one member appointed ~~[nominated]~~ by the South
14 Texas County Judges and Commissioners Association; and

15 (8) one member appointed ~~[nominated]~~ by the West Texas
16 County Judges and Commissioners Association.

17 (c) A commissioners court that sets the tax rate for a
18 hospital district must approve any person appointed ~~[nominated]~~ by
19 the hospital district to serve on the advisory committee.

20 SECTION 9. Section 81.028, Local Government Code, is
21 amended by adding Subsection (b-1) to read as follows:

22 (b-1) A county judge may file a standing order of emergency
23 delegation of authority that clearly indicates the types of orders
24 or official documents that the officer or employee may sign on
25 behalf of the county judge in the event of an emergency or disaster.

26 SECTION 10. Subchapter B, Chapter 81, Local Government
27 Code, is amended by adding Section 81.029 to read as follows:

1 Sec. 81.029. POWER OF CERTAIN COUNTIES RELATING TO DISASTER
2 OR EMERGENCY. The commissioners court of a county with a population
3 of more than one million may:

4 (1) make suitable provision for flood control and for
5 evacuation routes in the event of disaster or impending disaster;
6 and

7 (2) if requested by another county, authorize the use
8 of county equipment and services to aid the other county in the
9 event of an emergency.

10 SECTION 11. Section 83.002, Local Government Code, is
11 amended to read as follows:

12 Sec. 83.002. BOND. (a) The county treasurer, before
13 beginning to perform the duties of office, must execute a bond with
14 a surety company authorized to do business in this state as a
15 surety. The bond ~~[that]~~ must be:

16 (1) approved by the commissioners court;

17 (2) ~~[and]~~ made payable to the county judge in an amount
18 established by the commissioners court not to exceed one-half of
19 one percent of the largest amount budgeted for general county
20 maintenance and operations for any fiscal year of the county
21 beginning during the term of office preceding the term for which the
22 bond is to be given except that the amount may not be less than
23 \$5,000 or more than \$500,000; and

24 (3) ~~[. The bond must be]~~ conditioned that the
25 treasurer will~~[+]~~

26 ~~[(1)]~~ faithfully execute the duties of office~~[+]~~

27 ~~[(2) remit according to law all funds received as~~

1 ~~county treasurer, and~~

2 ~~[(3) render an account of all funds received to the~~
3 ~~commissioners court at each regular term of the court].~~

4 (b) The treasurer must take and subscribe the official oath,
5 which must be endorsed on the bond. The bond and the oath shall be
6 recorded in the county clerk's office. The commissioners court
7 may, at any time, require the treasurer to obtain a new or
8 additional bond if the court considers the existing bond
9 insufficient or doubtful. The bond may not exceed the maximum
10 amount provided by Subsection (a). The bond must be acquired within
11 20 days after the date notice of the requirement has been given by
12 the commissioners court. The failure of a treasurer to obtain a
13 bond required by this subsection subjects the treasurer to removal
14 under Section 83.004.

15 SECTION 12. Section 83.003(c), Local Government Code, is
16 amended to read as follows:

17 (c) The introductory course required by Subsection (a) and
18 ~~[at least 10 hours of]~~ the continuing education required by
19 Subsection (b) must be sponsored or cosponsored by ~~[taken at]~~ an
20 accredited public institution of higher education. ~~[The remaining~~
21 ~~required classroom hours, wherever taken, must be certified by an~~
22 ~~accredited public institution of higher education.]~~

23 SECTION 13. Sections 83.004(a) and (c), Local Government
24 Code, are amended to read as follows:

25 (a) If a person elected to the office of county treasurer
26 fails to provide an adequate bond as required by Section 83.002(a)
27 and to take the official oath on or before assuming the office

1 ~~[within 20 days after the date the certificate of election is~~
2 ~~received]~~, the county judge may ~~[shall]~~ declare the office vacant.

3 (c) A vacancy in the office of county treasurer shall be
4 filled as provided by Section 87.041. The person appointed to fill
5 the vacancy shall, on or before entering upon the discharge of the
6 duties of office ~~[and within 20 days after the date notice of the~~
7 ~~appointment is received]~~, take the official oath and obtain the
8 same surety bond as required by Section 83.002(a) for an elected
9 county treasurer.

10 SECTION 14. Section 85.001(a), Local Government Code, is
11 amended to read as follows:

12 (a) A person elected as sheriff, before beginning to perform
13 the duties of office, must execute a bond with:

- 14 (1) two or more good and sufficient sureties; or
15 (2) a solvent surety company authorized to do business
16 in this state.

17 SECTION 15. Section 86.002(a), Local Government Code, is
18 amended to read as follows:

19 (a) Before entering on the duties of office, a person who is
20 elected to the office of constable must execute a bond with two or
21 more good and sufficient sureties or with a solvent surety company
22 authorized to do business in this state. The bond must be payable
23 to the governor and the governor's successors in office and
24 conditioned that the constable will faithfully perform the duties
25 imposed by law. The bond must be approved by the commissioners
26 court of the county. The commissioners court shall set the bond in
27 an amount of not less than \$500 or more than \$1,500.

SECTION 16. The heading to Section 89.001, Local Government Code, is amended to read as follows:

Sec. 89.001. SPECIAL COUNSEL IN POPULOUS COUNTIES [~~WITH POPULATION OF MORE THAN ONE MILLION~~].

SECTION 17. Section 89.001(a), Local Government Code, is amended to read as follows:

(a) The commissioners court of a county with a population of more than 1.25 [~~one~~] million may employ an attorney as special counsel.

SECTION 18. Section 89.0041(b), Local Government Code, is amended to read as follows:

(b) The written notice must be delivered by certified or registered mail by the 30th business day after suit is filed and contain:

- (1) the style and cause number of the suit;
- (2) the court in which the suit was filed; [~~and~~]
- (3) the date on which the suit was filed; and
- (4) the name of the person filing suit.

SECTION 19. Subchapter B, Chapter 292, Local Government Code, is amended by adding Section 292.030 to read as follows:

Sec. 292.030. FACILITIES IN UNINCORPORATED AREA OF COUNTY.

(a) The commissioners court of a county may purchase, construct, reconstruct, improve, equip, or provide for by other means, including by lease or lease with an option to purchase, a branch office in the unincorporated area of the county.

(b) Any county officer may maintain an office and the county may provide any county service at the branch office authorized by

1 this section. The maintenance of an office or the provision of a
2 service at the branch office must be in addition to an office
3 maintained or service provided at any other location required by
4 law.

5 SECTION 20. Section 351.0415, Local Government Code, is
6 amended to read as follows:

7 Sec. 351.0415. COMMISSARY OPERATION BY SHERIFF OR PRIVATE
8 VENDOR. (a) The sheriff of a county or the sheriff's designee,
9 including a private vendor operating a detention facility under
10 contract with the county, may operate, or contract with another
11 person to operate, a commissary for the use of the inmates
12 [prisoners] committed to the county jail or to a detention facility
13 operated by the private vendor, as appropriate. The commissary
14 must be operated in accordance with rules adopted by the Commission
15 on Jail Standards.

16 (b) The sheriff or the sheriff's designee:

17 (1) has exclusive control of the commissary funds;

18 (2) shall maintain commissary accounts showing the
19 amount of proceeds from the commissary operation and the amount and
20 purpose of disbursements made from the proceeds; and

21 (3) shall accept new bids to renew contracts of
22 commissary suppliers every five years.

23 (c) The sheriff or the sheriff's designee may use commissary
24 proceeds only to:

25 (1) fund, staff, and equip a program addressing the
26 social needs of the inmates ~~[county prisoners]~~, including an
27 educational or recreational program and religious or

1 rehabilitative counseling;

2 (2) supply inmates [~~county prisoners~~] with clothing,
3 writing materials, and hygiene supplies;

4 (3) establish, staff, and equip the commissary
5 operation and fund the salaries of staff responsible for managing
6 the inmates' commissary accounts; [~~or~~]

7 (4) fund, staff, and equip both an educational and a
8 law library for the educational use of inmates; or

9 (5) fund physical plant improvements, technology,
10 equipment, programs, services, and activities that provide for the
11 well-being, health, safety, and security of the inmates and the
12 facility [~~county prisoners~~].

13 (d) For a jail under the supervision of the sheriff, at [~~At~~]
14 least once each county fiscal year, or more often if the
15 commissioners court desires, the auditor shall, without advance
16 notice, fully examine the jail commissary accounts. The auditor
17 shall verify the correctness of the accounts and report the
18 findings of the examination to the commissioners court of the
19 county at its next term beginning after the date the audit is
20 completed.

21 (e) A private vendor operating a detention facility under
22 contract with the county shall ensure that the facility commissary
23 accounts are annually examined by an independent auditor.

24 (f) When entering into a contract under Subsection (a), the
25 sheriff or the sheriff's designee shall consider the following:

26 (1) whether the contract should provide for a fixed
27 rate of return combined with a sales growth incentive;

1 (2) the menu items offered by the provider and the
2 price of those items;

3 (3) the value, as measured by a best value standard,
4 and benefits to inmates and the commissary, as offered by the
5 provider;

6 (4) safety and security procedures to be performed by
7 the provider; and

8 (5) the performance record of the provider, including
9 service availability, reliability, and efficiency.

10 (g) Commissary proceeds may be used only for the purposes
11 described in Subsection (c). A commissioners court may not use
12 commissary proceeds to fund the budgetary operating expenses of a
13 county jail.

14 SECTION 21. Section 351.04155, Local Government Code, is
15 amended by amending Subsection (a) and adding Subsection (c) to
16 read as follows:

17 (a) This section applies only to a county that:

18 (1) has a population of one million or more; ~~and~~

19 (2) has two municipalities with a population of
20 200,000 ~~[300,000]~~ or more; and

21 (3) is adjacent to a county with a population of one
22 million or more.

23 (c) A purchase made by the sheriff using commissary proceeds
24 is subject to the competitive purchasing procedures contained in
25 Subchapter C, Chapter 262. For the purpose of complying with that
26 subchapter, a reference in that subchapter to "commissioners court"
27 means the sheriff and a reference to "the county official who makes

1 purchases for the county" means the sheriff or the sheriff's
2 designee.

3 SECTION 22. Section 83.004(b), Local Government Code, is
4 repealed.

5 SECTION 23. The changes in law made by this Act to the Code
6 of Criminal Procedure apply only to an offense committed on or after
7 the effective date of this Act. An offense committed before the
8 effective date of this Act is covered by the law in effect when the
9 offense was committed, and the former law is continued in effect for
10 that purpose. For the purposes of this section, an offense is
11 committed before the effective date of this Act if any element of
12 the offense occurs before that date.

13 SECTION 24. The change in law made by this Act:

14 (1) to Sections 83.002 and 83.004(a), Local Government
15 Code, applies only to a county treasurer whose term begins on or
16 after the effective date of this Act; and

17 (2) to Section 83.004(c), Local Government Code,
18 applies only to a county treasurer who enters upon the discharge of
19 the duties of office on or after the effective date of this Act.

20 SECTION 25. This Act takes effect September 1, 2005.