

BILL ANALYSIS

Senate Research Center

S.B. 1233
By: West
Intergovernmental Relations
8/19/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1233 amends current law relating to the promotion of efficiencies in and the administration of certain district court and county services and functions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of Texas Department of Housing and Community Affairs in SECTION 28 (Section 51.0022, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 144.041, Agriculture Code, by adding Subsection (h), to authorize a county clerk to accept electronic filing or rerecording of an earmark, brand, tattoo, electronic device, or other type of mark for which a recording is required under this chapter or other law.

SECTION 2. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.31, as follows:

Art. 2.31. COUNTY JAILERS. Authorizes a jailer licensed under Chapter 1701 (Law Enforcement Officers), Occupations Code, to execute lawful process issued to the jailer by any magistrate or court on a person confined in the jail at which the jailer is employed to the same extent that a peace officer is authorized to execute process under Article 2.13(b)(2) (relating to executing all lawful process), including:

- (1) a warrant under Chapter 15 (Arrest Under Warrant), 17 (Bail), or 18 (Search Warrants);
- (2) a capias under Chapter 17 or 23 (The Capias);
- (3) a subpoena under Chapter 20 (Duties and Powers of the Grand Jury) or 24 (Subpoena and Attachment); or
- (4) an attachment under Chapter 20 or 24.

SECTION 3. Amends Article 20.011(a), Code of Criminal Procedure, to authorize only certain persons to be present in a grand jury room while the grand jury is conducting proceedings, including a person operating a video teleconferencing system for use under Article 20.151.

SECTION 4. Amends Article 20.02(b), Code of Criminal Procedure, to provide that a grand juror, bailiff, interpreter, stenographer or person operating an electronic recording device, person preparing a typewritten transcription of a stenographic or electronic recording, or person operating a video teleconferencing system for use under Article 20.151 who discloses anything transpiring before the grand jury, regardless of whether the thing transpiring is recorded, in the course of the official duties of the grand jury, is liable to a fine as for contempt of the court, not exceeding \$500, imprisonment not exceeding 30 days, or both the fine and imprisonment. Makes nonsubstantive changes.

SECTION 5. Amends Chapter 20, Code of Criminal Procedure, by adding Article 20.151, as follows:

Art. 20.151. CERTAIN TESTIMONY BY VIDEO TELECONFERENCING. (a) Authorizes a peace officer summoned to testify before the grand jury, with the consent of the foreman of the grand jury and the attorney representing the state, to testify through the use of a closed circuit video teleconferencing system that provides an encrypted, simultaneous, compressed full motion video and interactive communication of image and sound between the peace officer, the attorney representing the state, and the grand jury.

(b) Requires a peace officer testifying through the use of a closed circuit video teleconferencing system under this article, in addition to being administered the oath described by Article 20.16(a) (relating to the oath administered by the foreman), before being interrogated, to affirm that:

(1) no person other than a person in the grand jury room is capable of hearing the peace officer's testimony; and

(2) the peace officer's testimony is not being recorded or otherwise preserved by any person at the location from which the peace officer is testifying.

(c) Requires that testimony received from a peace officer under this article be recorded and preserved.

SECTION 6. Amends Article 27.18, Code of Criminal Procedure, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Provides that a court reporter or court recorder is not required to transcribe or make a separate recording of a plea taken under this article unless an appeal is taken in the case and a party requests a transcript.

(c-1) Creates this subsection from existing text. Authorizes the defendant to obtain a copy of a recording made under Subsection (c), rather than a copy of the recording, on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

(c-2) Provides that the loss or destruction of or failure to make a video recording of a plea entered under this article is not alone sufficient grounds for a defendant to withdraw the defendant's plea or to request the court to set aside a conviction or sentence based on the plea.

SECTION 7. Amends Article 38.073, Code of Criminal Procedure, to authorize any deposition or testimony of the inmate witness, in a proceeding in the prosecution of a criminal offense in which an inmate in the custody of the TDCJ is required to testify as a witness, to be conducted by a video teleconferencing system in the manner described by Article 27.18 (Plea or Waiver of Rights by Closed Circuit Video Teleconferencing), rather than by electronic means, in the same manner as permitted in civil cases under Section 30.012 (Use of Communication Equipment in Certain Proceedings), Civil Practice and Remedies Code.

SECTION 8. Amends Article 49.25, Code of Criminal Procedure, by adding Section 13A, as follows:

Sec. 13A. FEES. (a) Authorizes a medical examiner to charge reasonable fees for services provided by the office of medical examiner under this article, including cremation approvals, court testimonies, consultations, and depositions.

(b) Requires the commissioners court to approve the amount of the fee before the fee may be assessed. Prohibits the fee from exceeding the amount necessary to provide the services described by Subsection (a).

(c) Prohibits the fee from being assessed against the county's district attorney or a county office.

SECTION 9. Amends Section 31.037, Election Code, as follows:

Sec. 31.037. New heading: **SUSPENSION OR TERMINATION OF EMPLOYMENT.** Authorizes the employment of the county elections administrator to be suspended, with or without pay, or terminated at any time for good and sufficient cause on the four-fifths vote of the county election commission and approval of that action by a majority vote of the commissioners court.

SECTION 10. Amends Section 203.005(b), Family Code, to provide that the first payment of a fee under Subsection (a)(5) (relating to a monthly service fee not to exceed \$3 to be paid annually in advance by a managing conservator and possessory conservator for whom the domestic relations office provides child support services), rather than Subsection (a)(4) (relating to a reasonable attorney's fee and court costs incurred or ordered by the court), is due on the date that the person required to pay support is ordered to begin child support, alimony, or separate maintenance payments. Provides that subsequent payments of the fee are due annually and in advance.

SECTION 11. Amends Sections 51.318(b) and (e), Government Code, as follows:

(b) Sets forth certain fees, including that the fee for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page is not to exceed \$1.

(e) Prohibits the district clerk from charging United States Immigration and Customs Enforcement or United States Citizenship and Immigration Services, rather than the United States Immigration and Naturalization Service, a fee for a copy of any document on file or of record in the clerk's office relating to an individual's criminal history, regardless of whether the document is certified.

SECTION 12. Amends Section 57.002, Government Code, by adding Subsection (d-1), to authorize a court in a county to which Section 21.021 (Application), Civil Practice and Remedies Code, applies, subject to Subsection (e) (relating to qualifications of an interpreter), to appoint a spoken language interpreter who is not a licensed court interpreter.

SECTION 13. Amends Section 101.0611, Government Code, to require the clerk of a district court to collect certain fees and costs under the Government Code, including a fee for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page (Sec. 51.318 (Fees Due When Service Performed or Requested), Government Code) is not to exceed \$1.

SECTION 14. Amends Section 551.0415, Government Code, as follows:

Sec. 551.0415. New heading: **GOVERNING BODY OF MUNICIPALITY OR COUNTY: REPORTS ABOUT ITEMS OF COMMUNITY INTEREST REGARDING WHICH NO ACTION WILL BE TAKEN.** (a) Authorizes a quorum of the governing body of a municipality or county, notwithstanding Sections 551.041 and 551.042, to receive from municipal or county staff, and authorizes a member of the governing body to make, a report about items of community interest during a meeting of the governing body without having given notice of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in this report.

(b) Redefines, for purposes of Subsection (a), "items of community interest."

SECTION 15. Amends Section 551.0725(a), Government Code, as follows:

(a) Authorizes the commissioners court of a county, rather than the commissioners court of a county with a population of 400,000 or more, to conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the meeting:

(1) the commissioners court votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person; and

(2) the attorney advising the commissioners court issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person.

SECTION 16. Amends Section 61.002(5), Health and Safety Code, to redefine "general revenue levy."

SECTION 17. Amends Section 132.002(a), Local Government Code, as follows:

(a) Authorizes the commissioners court of a county to authorize a county or precinct officer who collects fees, fines, court costs, or other charges on behalf of the county or the state to accept payment by credit card or by the electronic processing of checks of a fee, fine, court costs, or other charge. Authorizes the commissioners court to also authorize a county or precinct officer to collect and retain a fee for processing the payment by credit card or by the electronic processing of checks.

SECTION 18. Amends Subchapter Z, Chapter 157, Local Government Code, by adding Section 157.9031, as follows:

Sec. 157.9031. **AUTHORITY TO REQUIRE REIMBURSEMENT FOR CERTAIN COVERAGE.** Authorizes a self-insuring county or the intergovernmental pool operating under Chapter 119 (County Government Liability Insurance Pool), under policies concerning the provision of coverages adopted by the county's commissioners court or the pool's governing body, to require reimbursement for the provision of punitive damage coverage from a person to whom the county or intergovernmental pool provides coverage.

SECTION 19. Amends Sections 270.007(b) and (f), Local Government Code, as follows:

(b) Authorizes a county, rather than authorizes a county notwithstanding the provisions of Subsections (f) and (g), to exclusively contract with a person to market the application or system. Requires that a contract under this subsection, if the original contract for development of the application or system under Subsection (a) does not include a provision for marketing the application or system, be awarded in compliance, rather than only in compliance, with Section 262.030 (Alternative Competitive Proposal Procedure for Certain Goods and Services), concerning the alternative competitive procedure for insurance or high technology items.

(f) Authorizes a county, except as provided by Subsection (b), to sell or license software under this section for a price negotiated between the county and the purchaser or licensee, including another governmental entity, rather than requires a county, except as provided by Subsection (b), upon request of any person, to sell or license software under this section for a price negotiated between the county and the person, not to exceed the developmental cost to the county. Deletes existing text requiring that developmental cost only include costs incurred under a contract to procure the software or direct employee costs incurred to develop the software. Deletes existing text providing that that this subsection does not apply to any county software that protects county computer systems from unauthorized use or access.

SECTION 20. Amends Section 352.081(e), Local Government Code, as follows:

(e) Provides that an order adopted under this section expires, as applicable, on the date:

(1) Makes no changes to this subdivision; or

(2) a determination is made by the commissioners court, or the county judge or fire marshal if designated for that purpose by the commissioners court, that the circumstances identified under Subsection (c)(2) (relating to regulation of outdoor burning) no longer exist.

SECTION 21. Amends Section 387.003, Local Government Code, by amending Subsections (a), (b), (b-1), (c), (e), (f), and (h) and adding Subsections (a-1), (i), and (j), as follows:

(a) Authorizes more than one county assistance district to be created in a county, but not more than one district to be created in a commissioners precinct.

(a-1) Creates this subsection from existing text. Authorizes a district to perform certain functions in the district.

(b) Requires that the order calling the election:

(1) define the boundaries of the district to include any portion of the county in which the combined tax rate of all local sales and use taxes imposed, including the rate to be imposed by the district if approved at the election, would not exceed the maximum combined rate of sales and use taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 (Tax Authorized) and 323.101 (Tax Authorized), Tax Code, rather than would not exceed two percent; and

(2) Makes no changes to this subdivision.

(b-1) Authorizes the territory of a municipality that is excluded under this subsection to subsequently be included in:

(1) the district in an election held under Subsection (f) with the consent of the municipality; or

(2) another district after complying with the requirements of this subsection and after an election under Subsection (f).

(c) Sets forth the required language to be printed on the ballot at the election to permit voting for or against the proposition.

(e) Provides that if a majority of the votes received at the election are against the creation of the district, the district is not created and the county at any time may call one or more elections on the question of creating one or more county assistance districts. Deletes existing text prohibiting another election on the question of creating a county assistance district from being held in the county before the first anniversary of the most recent election concerning the creation of a district if a majority of the votes received at the election are against the creation of the district.

(f) Prohibits an election from being held in an area in which the combined tax rate of all local sales and use taxes imposed, including the rate to be imposed by the district if approved at the election, would exceed the maximum combined rate of sales and use taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code, rather than would exceed two percent.

(h) Authorizes only a tax authorized at an election under this section to be imposed if more than one election to authorize a local sales and use tax is held on the same day in the area of a proposed district or an area proposed to be added to a district and if the resulting approval by the voters would cause the imposition of a local sales and use tax in any area to exceed the maximum combined rate of sales and use taxes of political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code, rather than to exceed two percent.

(i) Authorizes the governing body of a district by order, in addition to the authority to include an area in a district under Subsection (f), to include an area in the district on receipt of a petition or petitions signed by the owner or owners of the majority of the land in the area to be included in the district. Provides that if there are no registered voters in the area to be included in the district, no election is required.

(j) Authorizes the commissioners court by order to exclude an area from the district if the district has no outstanding bonds payable wholly or partly from sales and use taxes and the exclusion does not impair any outstanding district debt or contractual obligation.

SECTION 22. Amends Section 387.005, Local Government Code, as follows:

Sec. 387.005. GOVERNING BODY. (a) Requires the commissioners court of the county in which the district is created by order to provide that:

- (1) the commissioners court is the governing body of the district; or
- (2) the commissioners court shall appoint a governing body of the district.

(b) Provides that a member of the governing body of the district is not entitled to compensation for service but is entitled to reimbursement for actual and necessary expenses. Deletes existing text providing that a member of the commissioners court is not entitled to compensation for service on the governing body of the district but is entitled to reimbursement for actual and necessary expenses.

(c) Requires a board of directors appointed by the commissioners court under this section to consist of five directors who serve staggered terms of two years. Requires a person to be at least 18 years of age and a resident of the county in which the district is located to be eligible to serve as a director. Requires the initial directors to draw lots to achieve staggered terms, with three of the directors serving one-year terms and two of the directors serving two-year terms.

SECTION 23. Amends Section 387.006(a), Local Government Code, to authorize a district to perform certain functions, including entering into agreements with municipalities necessary or convenient to achieve the district's purposes, including agreements regarding the duration, rate, and allocation between the district and the municipality of sales and use taxes. Makes nonsubstantive changes.

SECTION 24. Amends Section 387.007(b), Local Government Code, to prohibit a district from adopting a sales and use tax under this chapter if the adoption of the tax would result in a combined tax rate of all local sales and use taxes that would exceed the maximum combined rate prescribed by Sections 321.101 and 323.101, Tax Code, rather than taxes of more than two percent, in any location in the district.

SECTION 25. Amends Section 387.009, Local Government Code, to require that the rate of a tax adopted under this chapter be in increments of one-eighth of one percent, rather than be one-eighth, one-fourth, three-eighths, or one-half of one percent.

SECTION 26. Amends Sections 387.010(a), (b), and (c), Local Government Code, as follows:

(a) Authorizes a district that has adopted a sales and use tax under this chapter to, by order and subject to Section 387.007(b):

(1) reduce the rate of the tax or repeal the tax without an election, except that the district may not repeal the sales and use tax or reduce the rate of the sales and use tax below the amount pledged to secure payment of an outstanding district debt or contractual obligation;

(2) increase the rate of the sales and use tax, if the increased rate of the sales and use tax will not exceed the rate approved at an election held under Section 387.003 (Creation and Functions of District); or

(3) increase the rate of the sales and use tax to a rate that exceeds the rate approved at an election held under Section 387.003 after the increase is approved by a majority of the votes received in the district at an election held for that purpose.

Deletes existing text authorizing a district that has adopted a sales and use tax under this chapter to, by order and subject to Section 387.007(b), change the rate of the tax or repeal the tax if the change or repeal is approved by a majority of the votes received in the district at an election held for that purpose. Makes nonsubstantive changes.

(b) Authorizes the tax to be changed under Subsection (a) in one or more increments of one-eighth of one percent, rather than in one or more increments of one-eighth of one percent to a maximum of one-half of one percent.

(c) Requires the ballot for an election to increase the tax, rather than change the tax, to be printed to permit voting for or against the proposition. Sets forth the language of the proposition.

SECTION 27. Amends Section 387.012, Local Government Code, as follows:

Sec. 387.012. EFFECTIVE DATE OF TAX. Provides that the adoption of the tax, the increase or reduction of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives a copy of the order of the district's governing body adopting, increasing, reducing, or repealing the tax. Deletes existing text providing that the adoption of the tax, the change of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives a notice of the results of the election adopting, changing, or repealing the tax.

SECTION 28. Amends Chapter 51, Property Code, by adding Section 51.0022, as follows:

Sec. 51.0022. FORECLOSURE DATA COLLECTION. (a) Defines, in this section, "department" as the Texas Department of Housing and Community Affairs (TDHCA).

(b) Requires a person filing a notice of sale of residential property under Section 51.002(b) (requiring that the notice of the sale, which must include a statement of the earliest time at which the sale will begin, be given at least 21 days before the date of the sale) to submit to the county clerk a completed form that provides the zip code for the property.

(c) Requires the trustee or sheriff, on completion of a sale of real property, to submit to the county clerk a completed form that contains information on whether the property is residential and the zip code of the property.

(d) Requires the county clerk, not later than the 30th day after the date of receipt of a form under this section, to transmit the form to TDHCA.

(e) Requires the board of TDHCA to prescribe the forms required under this section. Authorizes the forms to only request information on whether the property is residential and the zip code of the property.

(f) Requires TDHCA to report the information received under this section quarterly to the legislature in a format established by the board of TDHCA by rule.

SECTION 29. Repealers: Sections 86.022 (Power to Summon Resident Assistance), 112.008 (Maintenance of Finance Records by Commissioners Court) and 387.010(d) (relating to the required language for the ballot for the election to repeal a sales and use tax), Local Government Code.

SECTION 30. (a) Makes application of Articles 20.011(a) and 20.02(b), Code of Criminal Procedure, as amended by this Act, and Article 20.151, Code of Criminal Procedure, as added by this Act, prospective.

(b) Provides that Article 27.18, Code of Criminal Procedure, as amended by this Act, applies to a plea of guilty or nolo contendere entered on or after the effective date of this Act, regardless of whether the offense with reference to which the plea is entered is committed before, on, or after that date.

(c) Makes application of Article 38.073, Code of Criminal Procedure, as amended by this Act, prospective.

(d) Makes application of Section 13A, Article 49.25, Code of Criminal Procedure, as added by this Act, only to a service provided by a medical examiner's office on or after the effective date of this Act, prospective.

(e) Makes application of Sections 51.318(b), and 101.0611, Government Code, as amended by this Act, to a request for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, made on or after the effective date of this Act, prospective.

(f) Makes application of Section 57.002(d-1), Government Code, as added by this Act, prospective.

(g) Makes application of Section 551.0725(a), Government Code, as amended by this Act, to a meeting held on or after the effective date of this Act, prospective.

(h) Makes application of Sections 270.007(b) and (f), Local Government Code, as amended by this Act, to a contract entered into on or after the effective date of this Act, prospective.

(i) Requires the board of TDHCA to adopt the forms and rules required by Section 51.0022, Property Code, as added by this Act, not later than January 1, 2012.

(j) Makes application of the change in law made by Section 51.0022, Property Code, as added by this Act, to a notice of sale filed on or after January 1, 2012, prospective.

SECTION 31. Effective date: upon passage or September 1, 2011.