

BILL ANALYSIS

C.S.S.B. 1233
By: West
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A number of statutes direct the function and authority of local government, and clarification of those statutes is often necessary to make local government more efficient and effective and to avoid the duplication of services and responsibilities. C.S.S.B. 1233 addresses provisions relating to the promotion of efficiencies in and the administration of certain district court and county services and functions in order to clarify certain roles and responsibilities, avoid delays in justice, and update and amend certain statutes.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTIONS 29 and 31 of this bill.

ANALYSIS

C.S.S.B. 1233 amends the Agriculture Code 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 by law.

C.S.S.B. 1233 amends the Code of Criminal Procedure to authorize a licensed jailer 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, under certain provisions, to execute process, including a warrant, capias, subpoena, or attachment.

C.S.S.B. 1233 authorizes a peace officer summoned to testify before a 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 meets certain specifications. The bill requires a peace officer testifying through the use of a closed circuit video teleconferencing system, in addition to being administered the oath for a witness and before being interrogated, to affirm that no person other than a person in the grand jury room is capable of hearing the peace officer's testimony and that 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. The bill requires such testimony received from a peace officer to be recorded and preserved.

C.S.S.B. 1233 adds to the list of persons authorized to be present in a grand jury room while the grand jury is conducting proceedings to include a person operating such a video teleconferencing system and makes such a person, in addition to other specified individuals, liable to a fine as for contempt of the court, not exceeding \$500, imprisonment not exceeding 30 days, or both the fine and imprisonment, for disclosing 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.

C.S.S.B. 1233 establishes that a court reporter or court recorder is not required to transcribe or

make a separate recording of a plea taken by closed circuit video teleconferencing unless an appeal is taken in the case and a party requests a transcript. The bill establishes that the loss or destruction of or failure to make a video recording of a plea entered by closed circuit video teleconferencing is not alone sufficient grounds for a defendant to withdraw the defendant's plea or to request the court to set aside a conviction, sentence, or plea.

C.S.S.B. 1233 authorizes any deposition or testimony of an inmate witness in a proceeding in the prosecution of a criminal offense in which an inmate in the custody of the Texas Department of Criminal Justice is required to testify as a witness to be conducted by a video teleconferencing system in the manner described by provisions of law relating to a plea or waiver of rights by closed circuit video teleconferencing, as amended by the bill, rather than by electronic means in the same manner as permitted in civil cases under miscellaneous trial matters provisions relating to the use of communication equipment in certain proceedings.

C.S.S.B. 1233 authorizes a medical examiner to charge reasonable fees for services provided by the office of medical examiner under applicable provisions, including cremation approvals, court testimonies, consultations, and depositions. The bill requires the commissioners court to approve the amount of the fee before the fee may be assessed and prohibits the fee from exceeding the amount necessary to provide such services. The bill prohibits the fee from being assessed against the county's district attorney or a county office.

C.S.S.B. 1233 amends the Election Code to authorize the employment of a county elections administrator to be suspended, with or without pay, as an alternative to being terminated under certain conditions.

C.S.S.B. 1233 increases from three to six the number of counties with a population of 100,000 or more, and from two to four the number of counties with a population of less than 100,000, that the secretary of state is authorized to select to participate in a program to eliminate county election precinct polling places and establish countywide polling places for certain elections.

C.S.S.B. 1233 amends the Family Code, in provisions relating to fees and charges assessed and collected by a domestic relations office, to establish that the first payment of 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 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.

C.S.S.B. 1233 amends the Government Code to change the amount of the fee a district clerk is required to collect 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, from an amount of \$1 to an amount not to exceed \$1 and makes a conforming change in provisions relating to Government Code district court fees and costs.

C.S.S.B. 1233 authorizes a court in a county to which a Civil Practice and Remedies Code provision relating to Spanish language interpreters in certain border counties applies to appoint a spoken language interpreter who is not a licensed court interpreter.

C.S.S.B. 1233 includes a county commissioners court under provisions applicable to a municipality authorizing the governing body of a municipality to receive from staff, and authorizing 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 subject of the report as required by the open meetings law if no action is taken and, with certain exceptions, possible action is not discussed regarding the information provided in the report. The bill makes conforming changes, including a change in the applicable definition of "items of community interest."

C.S.S.B. 1233, in a provision authorizing the county commissioners court to conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated, removes language limiting the authorization to a commissioners court of a county with a population of 400,000 or more.

C.S.S.B. 1233 amends the Health and Safety Code to redefine "general revenue levy," for purposes of the Indigent Health Care and Treatment Act, to include property taxes imposed by a county that are not dedicated to the payment of principal or interest on county debt.

C.S.S.B. 1233 amends the Local Government Code to authorize 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 the electronic processing of checks. The bill authorizes the commissioners court to also authorize a county or precinct officer to collect and retain a fee for processing the payment by the electronic processing of checks.

C.S.S.B. 1233 authorizes a self-insuring county or the intergovernmental pool operating under provisions relating to a 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.

C.S.S.B. 1233 makes the requirement that an exclusive county contract with a person to market a computer software application or software system be awarded in compliance with certain alternative competitive procedures for insurance or high technology items contingent on the original contract for development of the application or system not including a provision for marketing the application or system. The bill removes language requiring a county, upon request of any person and except as otherwise provided, to sell or license software, except county software that protects county computer systems from unauthorized use or access, for a price negotiated between the county and the person, not to exceed the developmental cost to the county. The bill instead authorizes a county, except as otherwise provided, to sell or license software for a price negotiated between the county and the purchaser or licensee, including another governmental entity.

C.S.S.B. 1233, in a provision establishing that an order by the commissioners court of a county prohibiting or restricting outdoor burning in all or part of the unincorporated area of the county expires on the date a determination is made by the commissioners court that circumstances no longer exist that would create a public safety hazard that would be exacerbated by outdoor burning, to include as an alternative such a determination made by the county judge or fire marshal if designated for that purpose by the commissioners court.

C.S.S.B. 1233 authorizes more than one county assistance district to be created in a county, but prohibits more than one district from being created in a commissioners precinct. The bill changes the maximum combined rate of all local sales and use taxes authorized to be imposed under certain conditions in a district from two percent to the maximum combined rate that is prescribed by Tax Code provisions relating to municipal and county sales and use taxes.

C.S.S.B. 1233 authorizes territory of a municipality that was included in a proposed county assistance district but is excluded from the district by the governing body of the municipality to subsequently be included in another district after complying with applicable statutory requirements and after an election is held regarding inclusion in a district and imposition of the district's sales and use tax. The bill removes a provision prohibiting another election on the question of creating a county assistance district from being held in a 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. The bill instead provides

that if a majority of the votes received at such an election are against the creation of a district, the district is not created and authorizes the county at any time to call one or more elections on the question of creating one or more county assistance districts.

C.S.S.B. 1233 authorizes the governing body of a district by order, in addition to the authority to include an area in a county assistance district by election, 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 and provides that no election is required if there are no registered voters in the area to be included in the district. The bill authorizes a county 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.

C.S.S.B. 1233 replaces a provision establishing that the commissioners court of the county in which a county assistance district is created is the governing body of the district with a provision requiring the commissioners court of the county in which such a district is created by order to provide that the commissioners court is the governing body of the district or that the commissioners court shall appoint a governing body of the district. The bill requires a board of directors appointed by the commissioners court to consist of five directors and sets out provisions relating to terms and eligibility.

C.S.S.B. 1233 authorizes a county assistance district to enter 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. The bill requires the rate of an adopted tax to be in increments of one-eighth of one percent, rather than requiring the rate of such a tax to be one-eighth, one-fourth, three-eighths, or one-half of one percent.

C.S.S.B. 1233 makes the authorization of a county assistance district that has adopted a sales and use tax by order to 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, applicable only to an increase in the rate of the sales and use tax to a rate that exceeds the rate approved at an election on the creation or expansion of the district. The bill authorizes a district that has adopted a sales and use tax, by order and subject to the maximum combined rate, to 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 its rate below the amount pledged to secure payment of an outstanding district debt or contractual obligation. The bill authorizes such a district to 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 on the creation or expansion of the district. The bill removes the specified cap of one-half of one percent to which the sales and use tax may be changed.

C.S.S.B. 1233 amends the Property Code to require a person filing certain notice of sale of residential property under a contract lien to submit to the county clerk a completed form that provides the zip code for the property. The bill 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. The bill requires the county clerk, not later than the 30th day after the date of receipt of an applicable form, to transmit the form to the Texas Department of Housing and Community Affairs (TDHCA). The bill requires the board of the TDHCA to prescribe the required forms and authorizes the forms to only request information on whether the property is residential and the zip code of the property. The bill requires the TDHCA to report the information received under these provisions relating to foreclosure data collection quarterly to the legislature in a format established by the board by rule and requires the board, not later than January 1, 2012, to adopt the required forms and rules. The bill makes the change in law made by such provisions applicable only to a notice of sale filed on or after January 1, 2012. The bill defines "department."

C.S.S.B. 1233 makes conforming and nonsubstantive changes.

C.S.S.B. 1233 repeals the following provisions of the Local Government Code:

- Section 86.022, authorizing a constable to call for assistance any resident of the county who is convenient if the constable encounters resistance in the execution of any lawful process or in the arrest of an offender
- Section 112.008, requiring the commissioners court of a county to maintain a county finance ledger with an index
- Section 387.010(d), relating to ballot language to repeal a county assistance district tax

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1233 contains a provision not included in the original authorizing 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 by law.

C.S.S.B. 1233 contains provisions not included in the original requiring the commissioners court to approve the amount of a fee charged by a medical examiner for services provided by the office of medical examiner before the fee may be assessed, prohibiting the fee from exceeding the amount necessary to provide the services, and prohibiting the fee from being assessed against the county's district attorney or a county office.

C.S.S.B. 1233 contains a provision not included in the original increasing from three to six the number of counties with a population of 100,000 or more, and from two to four the number of counties with a population of less than 100,000, that the secretary of state is authorized to select to participate in a program to eliminate county election precinct polling places and establish countywide polling places for certain elections.

C.S.S.B. 1233 omits provisions included in the original requiring the clerk of a district court to collect for an electronic 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, a fee not to exceed \$1 for each page or part of a page and making a conforming change. The substitute differs from the original by setting the fee a district clerk is required to collect 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 at an amount not to exceed \$1 and making a conforming change, whereas the original retains current statute setting the fee at \$1.

C.S.S.B. 1233 contains a provision not included in the original authorizing a court in a county to which Civil Practice and Remedies Code provisions relating to Spanish language interpreters in certain border counties apply to appoint a spoken language interpreter who is not a licensed court interpreter.

C.S.S.B. 1233 contains a provision not included in the original redefining "general revenue levy" for purposes of the Indigent Health Care and Treatment Act.

C.S.S.B. 1233 contains a provision not included in the original authorizing 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 the electronic processing of checks and to also authorize a county or precinct officer to collect and retain a fee for processing the payment by the electronic processing of checks.

C.S.S.B. 1233 contains language not included in the original, in a provision establishing that an order by the commissioners court of a county prohibiting or restricting outdoor burning in all or part of the unincorporated area of the county expires on the date a determination is made by the commissioners court that circumstances no longer exist that would create a public safety hazard that would be exacerbated by outdoor burning, including as an alternative such a determination made by the county judge or fire marshal if designated for that purpose by the commissioners court.

C.S.S.B. 1233 contains provisions not included in the original authorizing more than one county assistance district to be created in a county but prohibiting more than one district from being created in a commissioners precinct; changing the maximum combined rate of all local sales and use taxes imposed in a district; authorizing certain territory of a municipality that was included in a proposed county assistance district but is excluded from the district to subsequently be included in another district; addressing provisions relating to an election on the question of creating a county assistance district in regard to a previous election in which such a district was not created; authorizing the governing body of a district by order to include an area in the district on receipt of a petition from certain landowners and providing that no election is required if there are no registered voters in the area to be included in the district; and authorizing a county commissioners court by order to exclude an area from the district under certain conditions.

C.S.S.B. 1233 contains provisions not included in the original requiring the commissioners court of the county in which a county assistance district is created by order to provide that the commissioners court is the governing body of the district or that the commissioners court shall appoint a governing body of the district and providing for a board of directors appointed by the commissioners court and setting forth eligibility criteria and terms.

C.S.S.B. 1233 contains provisions not included in the original authorizing a county assistance district to enter into agreements with municipalities necessary or convenient to achieve the district's purposes and removing language relating to the rate of an adopted tax at one-fourth, three-eighths, or one-half of one percent.

C.S.S.B. 1233 contains provisions not included in the original making the authorization of a county assistance district that has adopted a sales and use tax by order to change the rate of the tax or repeal the tax after voter approval applicable only to an increase in the rate of the sales and use tax to a rate that exceeds the approved rate; authorizing a district that has adopted a sales and use tax to reduce the rate of the tax or repeal the tax without an election with certain exception; authorizing a district to increase the rate of the sales and use tax if the increased rate of the tax will not exceed the approved rate; removing the specified cap; and making a conforming repeal.

C.S.S.B. 1233 differs from the original in the saving provisions and conforming change to account for differences between the substitute and the original.

C.S.S.B. 1233 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions.