

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3485
By: Coleman (West)
Intergovernmental Relations
5/21/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 3485 amends current law relating to the administration of certain county services and duties, including the administration of county assistance districts.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of the Texas Department of Housing and Community Affairs in SECTION 30 (Section 51.0022, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 15.08, Code of Criminal Procedure, as follows:

Art. 15.08. New heading: WARRANT MAY BE FORWARDED. Authorizes a warrant of arrest to be forwarded by a method that ensures the transmission of a duplicate of the original warrant, including secure facsimile transmission or other secure electronic means, rather than authorizes a warrant of arrest to be forwarded by telegraph from any telegraph office to another in this State. Makes a nonsubstantive change.

SECTION 2. Amends Article 15.09, Code of Criminal Procedure, as follows:

Art. 15.09. New heading: COMPLAINT MAY BE FORWARDED. Authorizes a complaint in accordance with Article 15.05 (Requisites of Complaint), to be forwarded, as provided by Article 15.08 (Arrest for Out-of-County Offense), rather than to be telegraphed as provided in the preceding Article, to any magistrate in the State.

SECTION 3. Amends Article 15.19(a), Code of Criminal Procedure, as follows:

(a) Requires that the arrested person, if the arrested person fails or refuses to give bail, as provided in Article 15.18 (Arrest for Out-of-County Offense), be committed to the jail of the county where the person was arrested; and the magistrate committing the arrested person to immediately provide notice to the sheriff of the county in which the offense is alleged to have been committed regarding the arrest and commitment, which notice is authorized to be given by mail, rather than by telegraph, or other written means or by secure facsimile transmission or other secure electronic means and whether the person was also arrested under a warrant issued under Section 508.251 (Issuance of Warrant or Summons), Government Code.

SECTION 4. Amends Article 20.011(a), Code of Criminal Procedure, as follows:

(a) Authorizes only the following persons to be present in a grand jury room while the grand jury is conducting proceedings:

- (1) grand jurors;
- (2) bailiffs;
- (3) the attorney representing the state;

(4) witnesses while being examined or when necessary to assist the attorney representing the state in examining other witnesses or presenting evidence to the grand jury;

(5) interpreters, if necessary;

(6) a stenographer or person operating an electronic recording device, as provided by Article 20.012; and

(7) a person operating a video teleconferencing system for use under Article 20.151.

SECTION 5. Amends Article 20.02(b), Code of Criminal Procedure, as follows:

(b) Provides 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 6. 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 that in addition to being administered the oath described by Article 20.16(a), before being interrogated, a peace officer testifying through the use of a closed circuit video teleconferencing system under this article 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 7. Amends Article 27.18, Code of Criminal Procedure, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Requires that a recording of the communication be made and preserved until all appellate proceedings have been disposed of. Provides that a court reporter or court recorder is not required to take a transcription of a plea taken under this article.

(c-1) Authorizes the defendant to obtain a copy of a recording made under Subsection (c) on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, requires the court to provide a copy to the defendant without charging a cost for the copy. 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 8. Amends Article 38.073, Code of Criminal Procedure, as follows:

Art. 38.073. TESTIMONY OF INMATE WITNESSES. Authorizes 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 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 Article 27.18. Deletes existing text authorizing 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 Texas Department of Criminal Justice is required to testify as a witness, to be conducted by electronic means, in the same manner as permitted in civil cases under Section 30.012 (Use of Communication Equipment in Certain Proceedings), Civil Practices and Remedies Code.

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 61.001(f), Government Code, as follows:

(f) Provides that if a check, instrument, or other method of payment authorized under Section 113.048, Local Government Code, representing a reimbursement under this section is not presented for payment or redeemed before the 90th day after it is issued the instrument or other method of payment is considered forfeited and is void and the money represented by the instrument or other method of payment is authorized to be placed or retained in the county's jury fund, the county's general fund, or any other fund in which county funds can be legally placed, at the discretion of the commissioners court. Makes a nonsubstantive change.

SECTION 11. Amends Section 61.003, Government Code, by adding Subsection (e), as follows:

(e) Authorizes a county that has adopted a system or method of payment authorized by Section 113.048, Local Government Code, notwithstanding Subsection (a) (relating to the requirement of each prospective juror to be personally provided a certain form letter), to provide a person who reports for jury service in the county an opportunity to donate all, or a specific part designated by the juror, of the juror's daily reimbursement by completing a self-executing application on a form prescribed by the commissioners court.

SECTION 12. Amends Section 694.002, Health and Safety Code, as follows:

(c) Requires a county, if the county discovers cash in the possession of a deceased pauper, to place the money in a trust account. Requires a person having a claim to the money in the trust account to exercise the right to collect the money not later than the first anniversary of the date the money is placed in the trust account.

(d) Authorizes a county to create a fund to be used by the county to pay the costs incurred in disposing of the bodies of deceased paupers. Authorizes the county, if money placed in a trust account under Subsection (c) is not claimed by the first anniversary of the date the money is placed in the trust account, to transfer the money to the fund created under this subsection.

SECTION 13. Amends Section 716.101, Health and Safety Code, as follows:

Sec. 716.101. UNIDENTIFIED HUMAN REMAINS. (a) Creates this subsection from existing text. Prohibits a crematory establishment, except as provided by Subsection (b), from accepting for cremation unidentified human remains.

(b) Authorizes a crematory establishment, notwithstanding any other provision of this chapter, to accept for cremation unidentified human remains from a county on the order of the county commissioners court or a court located in the county.

SECTION 14. Amends Subchapter C, Chapter 113, Local Government Code, by adding Section 113.048, as follows:

Sec. 113.048. DISBURSEMENT OF MONEY FOR JURY SERVICE. (a) Authorizes a county treasurer, notwithstanding any other provision of this subchapter or other law to the contrary, to disburse to a person who reports for jury service and discharges the person's duty the daily amount of reimbursement for jury service expenses set by the commissioners court under Section 61.001 (Reimbursement of Expenses of Jurors and Prospective Jurors), Government Code, by using an electronic funds transfer system in accordance with Chapter 156 (Electronic Funds Transfer of Expenses of Jurors and Prospective Jurors), using a cash dispensing machine, issuing a debit card or a stored value card, or using any other method that the county treasurer and the commissioners court determine is secure, accurate, and cost-effective and that is convenient for persons who report for jury service.

(b) Authorizes a system or method of payment adopted by a county treasurer under Subsection (a) to be implemented only if it is approved by the commissioners court and administered in accordance with the procedures established by the county auditor or by the chief financial officer of a county that does not have a county auditor.

(c) Authorizes a system or method of payment authorized by this section to be used in lieu of or in addition to the issuance of warrants or checks authorized under this subchapter.

SECTION 15. Amends Sections 155.002(a) and (b), Local Government Code, as follows:

(a) Requires that a request for a payroll deduction:

(1) be in writing;

(2) be submitted to the county auditor unless the deduction is processed through an automated payroll system maintained by the county; and

(3) state the amount to be deducted and the entity to which the amount is to be transferred.

(b) Provides that a request remains in effect until:

(1) the county auditor receives a written notice of revocation signed by the employee; or the deduction is revoked by the employee through an automated payroll system maintained by the county.

SECTION 16. 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 commissioners court of a self-insuring county or an intergovernmental pool operating under Chapter 119 (County Government Liability Insurance Pool), pursuant to policies concerning the provision of coverage adopted by the commissioners court or the pool's governing body, to require reimbursement for the provision of punitive damage coverage from a person to whom the intergovernmental pool provides coverage.

SECTION 17. Amends Section 262.003(a), Local Government Code, to provide that any law that requires a county to follow a competitive bidding procedure in making a purchase requiring

the expenditure of \$50,000, rather than \$25,000, or less does not apply to the purchase of an item available for purchase from only one supplier.

SECTION 18. Amends Section 262.023(a), Local Government Code, to require a commissioners court to meet certain conditions before a county is authorized to purchase one or more items under a contract that will require an expenditure exceeding \$50,000, rather than \$25,000.

SECTION 19. Amends Section 270.007(f), Local Government Code, as follows:

(f) Authorizes a county, except as provided by Subsection (b) (relating to a county exclusively contracting with a person to market the application or system), to sell or license software under this section for a price negotiated between the county and the person, including another governmental entity. Deletes existing text requiring 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, including another governmental entity, not to exceed the developmental cost the county. Deletes existing text requiring that the 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 this subsection does not apply to any county software that protects county computer systems from unauthorized use or access.

SECTION 20. Amends Section 271.024, Local Government Code, as follows:

Sec. 271.024. COMPETITIVE BIDDING PROCEDURE APPLICABLE TO CONTRACT. Requires that the bidding of a contract awarded by a governmental entity for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property be accomplished in the manner provided by this subchapter if a statute requires the governmental entity to award the contract on the basis of competitive bids and the contract requires the expenditure of more than \$25,000 from the funds of a governmental entity other than a county, or \$50,000 from the funds of a county, rather than requires that the bidding on the contract, if a governmental entity is required by statute to award a certain contract on the basis of competitive bids, and if the contract requires the expenditure of more than \$25,000 from the funds of the entity, to be accomplished in the manner provided by this subchapter.

SECTION 21. Amends Section 363.156(b), Local Government Code, to prohibit the board, to the extent competitive bidding procedures in Title 8 (Acquisition, Sale, or Lease of Property) apply, from entering purchasing contracts that involve spending more than \$50,000, rather than \$25,000, unless the board complies with certain conditions.

SECTION 22. 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 (district) to be created in a county, but not more than one district is authorized to be created in a commissioner's precinct.

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

(b) Requires that the order calling the election 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.

(b-1) Requires the commissioners court, if the municipality has created a development corporation under Chapter 504 (Type A Corporations) or 505 (Type B Corporations),

Local Government Code, rather than Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to also send the notice to that board of directors of the corporation. Authorizes the territory of a municipality that is excluded under this subsection to subsequently be included in another district after complying with the requirements of this subsection and after an election under Subsection (f). Makes nonsubstantive changes.

(c) Requires that the ballot at the election be printed to permit voting for or against the proposition: "Authorizing the creation of the ____ County Assistance Districts No. ____ (insert name of district) and the imposition of a sales and use tax at the rate of ____ percent (insert appropriate rate) for the purpose of financing the operations of the district", rather than: Authorizing the creation of the ____ County Assistance District No. ____ (insert name of district) and the imposition of a sales and use tax at the rate of ____ of one percent (insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate rate) for the purpose of financing the operations of the district."

(e) Authorizes the county at any time, if a majority of the votes received at the election are against the creation of the district, the district is not created, to call one or more elections on the question of creating one or more county assistance districts, rather than prohibits another question of creating a county assistance district, if a majority of the votes received at the election are against the creation of the district, from being held in the county before the first anniversary of the most recent election concerning the creation of the district.

(f) Makes a conforming change.

(h) Makes a conforming change.

(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 qualified 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 23. 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 the commissioners court is the governing body of the district, or the commissioners court is required to 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, rather than a member of the commissioners court is not entitled to compensation for service on the governing body of the district.

(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 eligible to serve as a director, to be at least 18 years of age and a resident of the county in which the district is located. 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 24. Amends Section 387.006(a), Local Government Code, as follows:

(a) Authorizes a 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. Makes nonsubstantive changes.

SECTION 25. Amends Section 387.007, Local Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Prohibits 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 of more than two percent, in any location in the district.

(c) Authorizes a district to define areas in the district to pay for improvements, facilities, or services that primarily benefit that area and do not generally and directly benefit the district as a whole. Authorizes the district to impose different rates of sales and use tax in each defined area, provided that the sales and use tax rate does not exceed the rate approved at an election held under Section 387.003 (Creation and Functions of District).

SECTION 26. Amends Section 387.009, Local Government Code, as follows:

Sec. 387.009. TAX RATE. Requires that the rate of a tax adopted under this chapter be in increments of one-eighth of one percent, rather than one-eighth, one-fourth, three-eighths, or one-half of one percent.

SECTION 27. 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, by order and subject to Section 387.007(b) to reduce, rather than change, 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, 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, or 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, rather than if the change or repeal, is approved by a majority of the votes received in the district at an election held for that purpose.

(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 that the ballot for an election to increase the tax be printed to permit voting for or against the proposition: "The increase of a sales and use tax for the ___ County Assistance District No. ___ (insert name of district) from the rate of ___ percent (insert appropriate rate) to the rate of ___ percent (insert appropriate rate)", rather than requires the ballot for an election to change the tax be printed to permit voting for or against the proposition: "The change of a sales and use tax for the ___ County Assistance District (insert name of district) from the rate of ___ of one percent (insert one-fourth, three-eighths, or one-half, as appropriate) to the rate of ___ of one percent (insert one-fourth, three-eighths, or one-half, as appropriate)."

SECTION 28. 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, rather than 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 of public accounts (comptroller) receives a copy of the order of the district's governing body adopting, increasing, reducing, or repealing the tax, rather than the comptroller receives a notice of the results of the election adopting, changing, or repealing the tax.

SECTION 29. Amends Section 1702.104(b), Occupations Code, to redefine "obtaining or furnishing information."

SECTION 30. Amends Chapter 51, Property Code, by adding Section 51.0022, as follows:

Sec. 51.0022. FORECLOSURE DATA COLLECTION. (a) Defines "department."

(b) Requires a person filing a notice of sale of residential property under Section 51.002(b) (relating to a notice 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 the Texas Department of Housing and Community Affairs (TDHCA).

(e) Requires the board of TDHCA (board) 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 by rule.

SECTION 31. Makes the 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.

SECTION 32. Makes the application of Article 27.18, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 33. Makes application of Article 38.073, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 34. (a) Makes application of Section 61.001(f), Government Code, as amended by this Act, prospective.

(b) Makes application Sections 262.003, 262.023, 271.024, and 363.156, Local Government Code, as amended by this Act, prospective.

(c) Requires the board to adopt the forms and rules required by Section 51.0022, Property Code, as added by this Act, not later than January 1, 2010.

(d) Makes application of Section 51.0022, Property Code, as added by this Act, prospective to January 1, 2010.

SECTION 35. Repealer: Section 387.010(d) (relating to the requirement of the ballot for the election to repeal the tax be printed in a certain manner), Local Government Code.

SECTION 36. Effective date: September 1, 2009.