

BILL ANALYSIS

Senate Research Center
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H.B. 2120
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Jurisprudence
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Local governments, such as counties, are controlled by myriad statutes that direct the functions and authority of the local government, and clarification of those statutes is often necessary. This bill amends various statutes to clarify the roles and responsibilities of the local governments, including a standing order of emergency delegation, suitable provisions in the event of disasters, and allowing for more counties to employ special counsel and clarifying notice provisions in suits against the state.

Current statutes require a sheriff or a constable to execute a bond with "two or more good and sufficient sureties." Although a more general statute allows for official bonds to also be made with "a solvent surety company," sheriffs and constables are bound by the more specific provision. Most bond companies do not currently provide bonds with more than one surety, making it difficult if not impossible to comply with the statute. H.B. 2120 provides the option to execute a bond with a solvent surety company authorized to do business in Texas.

In 2003, the previous policy for making appointments to the County Tobacco Settlement Permanent Trust Account Investment Advisory Committee (the committee as a whole appointed new members based on nominations from eligible local governments) was replaced with a requirement that the local governments make direct appointments to the committee. This resulted in a situation where four positions on the committee are being filled through appointment by ten local governments with no process or voting protocol for doing so. HB. 2120 creates a process for the eligible local governments to make nominations for appointment, which would then be made by the Texas Conference of Urban Counties. This process is consistent with the appointment procedures for other members of the committee and has been agreed to by all of the local governments involved.

In 2003, a change in the Government Code inadvertently allowed individual members of commissioners courts, as opposed to the entire court, to request jail variances. H.B. 2120 clarifies the language to allow commissioners courts to make the request to the Jail Standards Commission.

In 2003, HB. 1365 amended the Transportation Code to impose a \$20 increase in the vehicle title transfer fee in certain nonattainment counties and a \$15 increase in the rest of the state. The legislation included a mechanism for sending that additional fee to the comptroller for deposit in the Texas emissions reduction fund. The legislation also included a sunset provision to automatically lower the \$20 fee to \$15 after September 1, 2008; equalizing the fee statewide. Due to an oversight, the language reducing the fee was not duplicated in the language detailing the remittance of the fee to the comptroller for the emissions reduction fund. H.B. 2120 clarifies that when the vehicle title transfer fee is automatically reduced from \$20 to \$15 after September 1, 2008, the affected counties are to likewise reduce the amount sent in to the comptroller from \$20 to \$15.

Current law requires arrested persons to be taken before a magistrate "without unnecessary delay, but no later than 48 hours after the person is arrested." Many counties do not have a magistrate available late at night or through parts of the weekend, requiring some arrestees to wait almost the full 48 hours to see a magistrate. A person may be presented to a magistrate via "closed circuit television," but few counties employ closed circuit television because of the costs of the physical system components. Technology now makes low-cost electronic broadcast systems possible. HB. 2120 allows counties, including nonadjacent counties to use electronic broadcast systems for magistration.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

SECTION 2. Amends Subchapter B, Chapter 81, Local Government Code, by adding Section 81.029, as follows:

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

SECTION 3. Amends Section 85.001(a), Local Government Code, to require a person elected as sheriff, before beginning to perform the duties of office, to execute a bond with a solvent surety company authorized to do business in this state.

SECTION 4. Amends Section 86.002, Local Government Code, to make a conforming change.

SECTION 5. Amends the heading to Section 89.001, Local Government Code, to read as follows:

Sec. 89.001. SPECIAL COUNSEL IN POPULOUS COUNTIES.

SECTION 6. Amends Section 89.001(a), Local Government Code, to authorize the commissioners court of a county with a population of more than 1.25 million, rather than one million, to employ an attorney as special counsel.

SECTION 7. Amends Section 89.0041(b), Local Government Code, to require the written notice to be delivered by certified or registered mail by the 30th business day after suit is filed and contain the name of the person filing suit.

SECTION 8. Amends Section 403.1042(b), Government Code, to provide that the tobacco settlement permanent trust account investment advisory committee (advisory committee) is composed of 11 members, including four members appointed by the Texas Conference of Urban Counties from nominations received from political subdivisions that meet specific qualifications, rather than four members appointed by political subdivisions that do not have an appointee serving on the advisory committee at the time of appointment.

SECTION 9. Amends Section 511.009(c), Government Code, to make a nonsubstantive change.

SECTION 10. Amends Section 501.138, Transportation Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires the county assessor-collector to send to the comptroller of public accounts (comptroller), at the time and in the manner prescribed by the comptroller and on or after September 1, 2008, \$15 of the fee required of an applicant for certificate of title, regardless of the county in which the applicant resides.

(b-1) Created from existing text of Subsection (b). Makes conforming changes.

SECTION 11. Amends Article 14.06(a), Code of Criminal Procedure, to require the person making the arrest or the person having custody of the person arrested, except as provided by Subsection (b) and in each case enumerated in this code, to take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before a magistrate in any other county of this state, to provide more expeditiously to the person arrested the warnings described by Article 15.17 (Duties of Arresting Officer and Magistrate) of this code, rather than before a magistrate in a county bordering the county in which the arrest was made, if necessary.

SECTION 12. Amends Article 15.16, Code of Criminal Procedure, to authorize the officer or person executing the arrest warrant, notwithstanding Subsection (a), to provide more expeditiously to the person arrested the warnings described by Article 15.17, to as permitted by that article take the person arrested before a magistrate in a county other than the county of arrest.

SECTION 13. Amends Article 15.17(a), Code of Criminal Procedure, to authorize the arrested person to be taken before the magistrate in person or the image of the arrested person to be presented to the magistrate by means of an electronic broadcast system, rather than to be broadcast by closed circuit television to the magistrate. Deletes existing text prohibiting a closed circuit television from being used under this subsection in certain circumstances. Defines "electronic broadcast system." Makes conforming changes.

SECTION 14. Amends Article 15.18, Code of Criminal Procedure, to make conforming changes.

SECTION 15. Amends Article 15.19(b), Code of Criminal Procedure, to authorize a person, if the person is arrested and taken before a magistrate in a county other than the county in which the arrest is made, rather than a county bordering the county in which the arrest was made and subject to the provisions of Article 15.17(a) of this code, to be confined in a jail in the county in which the magistrate serves for a period of not more than 72 hours after the arrest before being transferred to the county jail of the county in which the arrest occurred.

SECTION 16. Makes application of the changes in law made by this Act to the Code of Criminal Procedure prospective.

SECTION 17. Effective date: September 1, 2005.