



Legislative UPDATE

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Revenue Cap Bill Passes Senate at 3.5 Percent, House Committee Follows Suit

The Senate version of the property tax revenue cap bill, S.B. 2 by Paul Bettencourt, passed the Senate on April 15 with a 3.5 percent rollback rate. That rate is up from the 2.5 percent number in the as-filed bill. The bill's author claimed during debate that the 3.5 percent threshold closely matches current government inflation and is therefore more appropriate than the current-law eight percent, which was adopted decades ago when inflation was significantly higher.

Late last night, the House Committee on Ways and Means voted out S.B. 2, with the 3.5 percent cap. The House version of S.B. 2 generally applies to all cities, but it also includes a new calculation for a "de minimus tax rate" that could provide small cities some additional tax rate flexibility above 3.5 percent. One new feature not yet seen in any version of S.B. 2 or H.B. 2 is a tax rate adjustment for local option residence homestead exemptions. This homestead exemption adjustment would increase a city's rollback rate for any new revenue lost to a homestead exemption.

The bill also provides for an "unused increment rate" adjustment to the rollback rate calculation. Essentially, that means if a city adopts a tax rate under the 3.5 percent rollback rate, the city can carry over the increment between the city's adopted tax rate and the 3.5 percent rollback rate for up to five years.

Absent from the House version of S.B. 2 is a harmful provision that would have required cities to finance certificates of obligation out of their maintenance and operations tax rate. The House treats certificates of obligation as debt, just like current law.

Beyond these provisions relating to tax rate calculation, the House version of the bill contains similar transparency measures related to tax rate notices and the "truth-in-taxation" process. This

includes a compressed tax rate adoption timeline in order to facilitate automatic rollback elections on the November uniform election date if a city exceeds the rollback rate.

The House is currently scheduled to hear S.B. 2 on the House floor on Tuesday, April 30. There will likely be dozens of amendments filed, good and bad. Thus, it is quite possible that the bill will look very different if and when it is approved by the Texas House.

Giant Phone and Cable Companies **Don't Need Taxpayer Subsidies**

When private companies use property owned by taxpayers, the Texas Constitution requires they pay a fair value for that use. It is a principle that has protected the interests of Texas taxpayers for over a hundred years.

However, when some of the world's largest and most profitable telecommunications and cable television companies unleash an army of more than a hundred lobbyists on the Texas Legislature, the interests of taxpayers stand little chance of prevailing.

Two bills are making their way through the legislature virtually unnoticed by the public and the news media that would grant a sweetheart deal worth tens of millions of dollars to those companies at taxpayers' expense.

Current laws passed by the Legislature in 1999 and 2005 require phone companies to pay fees to run their lines on publicly-owned property based on the number of users and cable television companies to pay fees for the use of public right-of-way based on the percentage of the company's revenue earned from the use of the right-of-way.

Thus, giant companies such as AT&T, Charter Communications and Comcast pay one user fee for telephone lines and another user fee for cable television lines when they use taxpayer-owned property. These fees are fair to the companies because they only pay for as much use as they are able to sell to their customers and they are fair to taxpayers because the rental fees from the use of public property help pay for maintenance of the right-of-way and for local services such as police and fire protection, streets, parks and all other services.

House Bill 3535 by Rep. Dade Phelan (R-Beaumont) and Senate Bill 1152 by Sen. Kelly Hancock (R-North Richland Hills) would let these companies pay only one of the user fees instead of both. It is essentially a "buy one, get one free" deal that has no rational public policy justification.

This windfall gift to some of the largest and most profitable companies in the world would blow a hole in the budgets of cities all across Texas – a revenue loss that would have to be made up by cuts in local services or tax increases.

For Houston, the user fee giveaway would amount to an estimated \$17 million to \$27 million per year. In Dallas, taxpayers would get hit for about \$9.3 million; San Antonio taxpayers about \$8

million per year. Other annual estimates are Austin (\$6.3 million); Arlington (\$2.8 million); Sugar Land (\$1.2 million); Plano (\$734,017); Denton (\$669,548); Waco (\$373,194); and City of the Colony (\$235,000).

In some smaller cities, the impact would be devastating. In my small city of Staples in Guadalupe County, we have no city property tax and rental fees paid by phone and cable and other companies fund 60 percent of the city's budget. In the city of Tulia in Swisher County, replacing the loss of \$33,000 in user fees would require an 8% increase in property tax collections.

It makes no sense for the legislature to force cities to raise property taxes on our citizens just to grant this gift to large companies.

The two bills under consideration have no requirement that the companies pass the fee reductions on to their customers. Some of the companies have announced increases in subscriber charges in recent months so it's fantasy to believe they will pass their windfall along to customers.

We should expect our legislators to put the interests of Texas citizens ahead of increasing the profits of huge multinational corporations. The tax burden on Texans is already high enough without having to subsidize these companies.

Editor's Note: The op-ed above is by TML President-Elect Eddie Daffern, mayor of the City of Staples, and appeared in several newspapers recently.

Significant Floor Actions

Mail Ballots: [H.B. 273](#), relating to the time for providing a ballot to be voted by mail to a voter. Passed the House. As passed, the bill would provide that if the legal mailing date for sending mail-in ballots is earlier than the 37th day before Election Day, the balloting materials must be mailed not later than the 30th day before election day.

No More Annexation: [H.B. 347](#), relating to eliminating distinctions in the application of consent annexation requirements. Passed the House. As passed, the bill would essentially eliminate unilateral annexation for every city.

Bond Issuance: [H.B. 440](#), relating to general obligation bonds issued by political subdivision. Passed the House. As passed, the bill would: (1) require a political subdivision to include any sample ballot prepared for a general obligation bond election to be prominently posted on the political subdivision's website during the 21 days before the election along with the election order, notice of the election, and contents of the proposition, if the political subdivision maintains a website; and (2) provide that a political subdivision may not issue a general obligation bond to purchase, improve, or construct improvements or to purchase personal property if the weighted average maturity of the issue of bonds to finance the improvements or personal property exceeds 120 percent of the reasonably expected weighted average economic life of the improvements or personal property financed with the issue of bonds.

Cell Phone Signs: [H.B. 771](#), relating to the placement of warning signs in areas where the use of a wireless communication device is prohibited. Passed the House.

Building Permit Fees: [H.B. 852](#), relating to information a municipality may consider in determining the amount of certain building permit and inspection fees. Passed the House. As passed, the bill would prohibit a city from using the value of a dwelling, or the cost of constructing or improving it, as a basis for calculating building permit fees.

Annexation: [H.B. 1038](#), relating to a petition by residents of certain counties for an election regarding voter approval of municipal annexation. Passed the House.

Electric Rates: [H.B. 1397](#), relating to the establishment of rates for certain non-ERCOT utilities. Passed the House. As passed, the bill would negatively affect a city's oversight of electric utility rates.

Gas Rates: [H.B. 1767](#), relating to the consideration of employee compensation and benefits in establishing the rates of gas utilities. Passed the House.

Construction Projects: [H.B. 2585](#), relating to civil works projects and other construction projects of governmental entities. Passed the House. As passed, the bill would establish mandatory criteria for cities that wish to prequalify construction contractors and mandate that price be counted as at least 50 percent of the selection criteria in competitive sealed proposal procurements.

SUPER-PREEMPTION: [H.B. 2847](#), relating to the licensing and regulation of certain occupations and activities. Passed the House. As passed, the bill was amended to no longer preempt municipal regulations.

First Responders with Mental Illness: [H.B. 2969](#), relating to prohibited adverse employment action against a first responder based on mental illness. Passed the House. As passed, the bill would prohibit an employer of a first responder, including a police officer, firefighter, or EMS personnel, from suspending, terminating, or taking any other adverse employment action, including a loss of rank, pay, or benefits, against a first responder solely because the employer knows or believes that the first responder has a mental illness.

Animal Shelters: [H.B. 3092](#), relating to notice of an epizootic infectious disease occurring in an animal shelter. Passed the House. As passed, the bill would provide that an animal shelter shall provide written, electronic, or telephonic notice to each person who adopts an animal from the shelter of any epizootic infectious disease that occurs among the animals in the shelter within the 15-day period: (1) before the date the person adopts the animal; or (2) after the date the person adopts the animal.

Revenue Cap: [S.B. 2](#), relating to ad valorem taxation. Passed the Senate. As passed, this bill, known as the "Texas Property Tax Reform and Relief Act of 2019," would make numerous

changes to the process for adopting property tax rates. Of primary importance to cities, the bill would:

1. rename the “rollback” tax rate the “voter-approved” tax rate;
2. adjust the property tax voter-approved rate in the following ways:
 - a. for a taxing unit other than a small taxing unit, provide for a voter-approved rate of 3.5 percent;
 - b. define “small taxing unit” as a taxing unit other than a school district for which the sum of the following amounts is \$15 million or less:
 - i. the total amount of property taxes that would be imposed by the taxing unit for the current tax year if the tax rate proposed for that tax year were applied to the current total value for the taxing unit; and
 - ii. the total amount of sales and use tax revenue received by the taxing unit, if any, for the last preceding four quarters for which that information is available;
 - c. maintain an eight percent voter-approved rate for all small taxing units;
 - d. for a taxing unit other than a small taxing unit, provide for a voter-approved rate of 3.5 percent;
3. require a mandatory election on the November uniform election date for all cities that exceed the voter-approved rate, whether that rate is 3.5 percent or eight percent (instead of a citizen-initiated election as provided in current law);
4. require all small taxing units to order an election to be held in May 2020 for the purpose of allowing the voters in the taxing unit to determine whether the 3.5 percent voter-approved rate shall apply to the taxing unit;
5. prohibit the governing body of a taxing unit from adopting a budget for a fiscal year or take any other action that has the effect of decreasing the total compensation to which a first responder employed by the taxing unit was entitled in the preceding fiscal year of the taxing unit; and
6. make numerous calendar changes to the property tax appraisal, collection, and rate-setting process in order to have property tax ratification elections on the November uniform election date.

For a detailed summary of the entire bill, click [here](#).

Lobbying Prohibition and No More TML: [S.B. 29](#), relating to expenditures for lobbying activities made by certain entities. Passed the Senate. As passed, the bill would prohibit a city or the Texas Municipal League from advocating at the Capitol.

Local Debt: [S.B. 30](#), relating to ballot language requirements for a proposition seeking voter approval for the issuance of bonds. Passed the Senate. As passed, the bill would require each single specific purpose for which bonds are to be issued to be printed on the ballot as a separate proposition.

Chickens, Seriously: [S.B. 86](#), relating to the regulation of raising or keeping six or fewer chickens by a political subdivision. Passed the Senate. As passed, the bill would allow an individual to raise or keep six or fewer chickens in a city.

ETJ Regulations: [S.B. 422](#), relating to the authority of a municipality to impose a fine or fee in certain areas in the municipality's extraterritorial jurisdiction. Passed the Senate. As passed, the bill would apply to an area located in a Tier 2 city's extraterritorial jurisdiction that has been disannexed or for which the city has attempted and failed to obtain consent for annexation by petition or election and would provide that the city may not impose under a municipal ordinance a fine or fee on a person in such an area.

Bond Elections: [S.B. 462](#), relating to ballot propositions authorizing certain political subdivisions to issue debt obligations. Passed the Senate. As passed, the bill would add information related to the aggregate amount of outstanding debt and the debt service tax rate to the ballot language required for any debt obligation election.

TCEQ Fines: [S.B. 530](#), relating to civil and administrative penalties assessed or imposed for violations of laws protecting drinking water, public water supplies, and bodies of water. Passed the Senate. As passed, the bill would increase from \$1,000 to \$5,000 the civil and administrative penalties assessed or imposed for violations of laws protecting drinking water, public water supplies, and bodies of water.

Eminent Domain: [S.B. 552](#), relating to notice of a property owner's rights relating to the examination or survey of property by an entity with eminent domain authority. Passed the Senate.

Eminent Domain: [S.B. 553](#), relating to the acquisition of certain real property in conjunction with the acquisition of real property for a public use through eminent domain. Reported from House Committee on Land and Resource Management. Passed the Senate.

Cottage Foods: [S.B. 572](#), relating to foods produced by a cottage food production operation and a cottage food industry study. Passed the Senate.

Certificates of Obligation: [S.B. 652](#), relating to procedures and requirements for the issuance of certificates of obligation. Passed the Senate. As passed, the bill would require cities issuing certificates of obligation to post notice on the city's website and prohibit a city from authorizing a certificate of obligation if a bond proposition for the same purpose was submitted to the voters during the preceding six years and failed to pass.

Annexation: [S.B. 746](#), relating to certain procedures associated with voter approval of municipal annexation. Passed the Senate. As passed, the bill would modify the provisions of S.B. 6 (2017) that authorize a countywide election to adopt Tier 2 status to: (1) lower the petition threshold from 10 percent to seven percent of the registered voters in the county; and (2) provide that, in relation to Tier 2 cities; (a) if a city does not obtain the number of signatures on a petition required to annex an area, it may not annex any part of the area and may not adopt another resolution to annex any part of the area until the fifth anniversary of the date the petition period ended; and (b) if a majority of qualified voters do not approve a proposed annexation at an election called for that purpose, it may not annex any part of the area and may not adopt another

resolution to annex any part of the area until the fifth anniversary of the date of the adoption of the resolution.

Farmer’s Markets: [S.B. 932](#), relating to the regulation of certain direct sales of food to consumers and a limitation on the fee amount for certain permits. Passed the Senate. As passed, the bill would impose various limitations on permits for food at farmer’s markets.

Public Information Act – Contracting Information: [S.B. 943](#), relating to the disclosure of certain contracting information under the public information law. Passed the Senate. As passed, the bill would make various changes relating to which private contractors are subject to the Public Information Act and what information they must release.

Public Information Act – Personal Devices and Accounts: [S.B. 944](#), relating to the public information law. Passed the Senate. As passed, the bill would require a city employee or elected official to turn city-related information on a private device or account over to the city.

Package Delivery Robots: [S.B. 969](#), relating to the operation of personal delivery and mobile carrying devices. Passed the Senate. As passed, the bill would authorize package delivery robots and preempt city regulations related to them.

SUPER-PREEMPTION: [S.B. 1209](#), relating to the authority of a political subdivision to regulate certain activities. Passed the Senate. As passed, the bill is being sold as eliminating “dual licensing requirements,” but that is nonsense. Some cities license professions that are also licensed by the state. They have very good reasons for doing so, but that part of the bill is a red herring.

The bill actually preempts the enforcement of most city regulations against a business that holds any type of license registration, certificate, or permit of any type issued by a state agency to engage in an occupation. The language is as follows:

If an individual is required to possess an occupational license issued by a state licensing authority to engage in an occupation, a political subdivision may not adopt or enforce any...ordinance...that requires the individual to...meet any other requirement or precondition to engage in that occupation.

Cities regulate businesses in a number of ways to protect the health and safety and quality of life of their residents. These are just a fraction of the possible examples:

1. Sexually oriented business regulations, such as “no touch” ordinances. Many of these businesses are required to obtain a license from the Texas Alcoholic Beverage Commission.
2. Burglar alarm registration ordinances designed to properly allocate law enforcement resources. These businesses are required to register with the Texas Department of Public Safety.
3. Pawnshop regulations designed to stop stolen property transactions. These businesses are required to register with the Texas Office of Consumer Credit Commissioner.

4. Eight liner and similar game room regulations designed to protect patrons of those establishments and properly allocate law enforcement resources. These businesses are required to register with the Texas Comptroller's Office.
5. Billboard and on-premise sign regulations designed to protect against visual blight. Many of these businesses are required to register with the Texas Department of Transportation.
6. Oil and gas well drilling ordinances designed to protect residents from the deleterious effects of urban drilling. These businesses are required to obtain a permit from the Texas Railroad Commission.
7. Ordinances regulating alcohol sales near churches and schools designed to protect youth. These businesses are required to obtain a license from the Texas Alcoholic Beverage Commission.

Moreover, the language is so broad that any city regulation (e.g., a requirement to “meet any other requirement or precondition to engage in that occupation”) over almost any business could be preempted because every business must obtain a sales tax permit from the Texas Comptroller's Office to do business in this state.

Ballot Language: [S.B. 1225](#), relating to requirements for certain petitions requesting an election and ballot propositions. Passed the Senate. As passed, the bill would, among other things, establish a process for the secretary of state to review city ballot language and waive governmental immunity for cities that are sued for improper ballot language.

Comptroller Database: [S.B. 1253](#), relating to a public database maintained by the comptroller of information about certain political subdivisions. Passed the Senate. As passed, the bill would require a city to provide voluminous information to the comptroller for posting on the comptroller's website.

ETJ Mapping and Notice: [S.B. 1303](#), relating to maps of the actual or proposed boundaries and extraterritorial jurisdiction of a municipality and certain notices related to expanding the boundaries. Passed the Senate. As passed, the bill would require a city to prepare a digital map of the city and its extraterritorial jurisdiction and, for certain home rule cities, require detailed information related to regulations imposed in the ETJ.

Zoning Notice: [S.B. 1304](#), relating to notice of proposed changes to municipal zoning classifications. Passed the Senate. As passed, the bill would require notice of a zoning change to certain property owners who live outside the city limits.

**Editor's Note: The links above lead to the bill's landing page on the Texas Legislature Online website. To read the latest version, click on the "text" tab and click on the lowest version on the screen.*

Significant Committee Actions

Municipal Court Fines, Fees, and Costs: [H.B. 465](#), relating to the administrative, civil, and criminal consequences, including fines, fees, and costs, imposed on persons arrested for, charged with, or convicted of certain criminal offenses. Reported from the House Committee on House Criminal Jurisprudence. As reported, the bill makes numerous changes related to a defendant's ability to pay in municipal court.

Attorney's Fees in Civil Cases: [H.B. 790](#), relating to recovery of attorney's fees in certain civil cases. Reported from the House Committee on Judiciary and Civil Jurisprudence.

Red Light Cameras: [H.B. 901](#), relating to registration of a motor vehicle alleged to have been involved in a violation detected by a photographic traffic signal enforcement system. Reported from the House Committee on Transportation. As reported, the bill would provide that neither the county assessor-collector nor the Texas Department of Motor Vehicles may refuse to register a motor vehicle solely because the owner is delinquent in the payment of a civil penalty for a red light camera violation.

Cutting Down Trees: [H.B. 969](#), relating to the authority of a political subdivision to regulate the removal by a landowner of noxious or invasive plant species or brush species detrimental to water conservation from the landowner's property. Reported from the House Committee on Agriculture and Livestock. As reported, the bill would provide that a city may not prohibit or limit the removal by a landowner of a noxious or invasive plant species located on the landowner's property if the property is a homestead, ag exempt, or single-family residential property. The bill doesn't define "noxious or invasive" for the purposes of the preemptive provision, so presumably a landowner decides what is considered such.

Whistleblower: [H.B. 1001](#), relating to whom certain violations of the law by a state or local governmental entity may be reported. Reported from the House Committee on State Affairs. As reported, the bill would mandate whistleblower protections for an employee who reports a violation of law to: (1) the reporting employee's immediate supervisor, or an individual who holds a position above the reporting employee's immediate supervisor, at the employing governmental entity; (2) an individual or office designated by the employing governmental entity as the individual or office for reporting such grievances; (3) a member of the human resources staff of the employing governmental entity; or (4) as current law provides, an appropriate law enforcement authority.

Engineers/Architects Duty to Defend: [H.B. 1211](#), relating to certain agreements by architects and engineers in or in connection with certain construction contracts. Reported from the House Committee on Judiciary and Civil Jurisprudence. As reported, the bill would prohibit a city from requiring an engineer or architect to defend the city under a construction contract.

Emergency Management Training: [H.B. 1294](#), relating to requiring certain persons to receive emergency management training. Reported from the House Committee on County Affairs. As reported, the bill would modify current law to require an officer, employee or volunteer of the state or of a political subdivision who has management or supervisory responsibilities and whose duties include emergency management responsibilities or has a role in emergency preparedness, response or recovery, to complete emergency management training.

Prohibition on Juvenile Curfews: [H.B. 1332](#), relating to the repeal of the authority of political subdivisions to adopt or enforce juvenile curfews. Reported from the House Committee on Family and Juvenile Justice Issues. As reported, the bill would provide that a political subdivision may not adopt or enforce an order, ordinance, or other measure that imposes a curfew to regulate the movements or actions of persons younger than 18 years of age.

Golf Carts and Way More: [H.B. 1548](#), relating to the operation of neighborhood electric vehicles, golf carts, and off-highway vehicles. Reported from the House Committee on Transportation. As reported, the bill would make changes to the equipment, license plate, registration, inspection, and insurance requirements to operate these vehicles. In addition, the bill would change where these vehicles may be operated and the authority of a city, county, or the Texas Department of Transportation to prohibit the operation of these vehicles.

School Zone Speed Limits: [S.B. 1553](#), relating to the process for establishing speed limits on roads near certain schools. Reported from the Senate Transportation Committee. As reported, the bill would significantly change the process for a school district or charter school to request a school zone speed limit.

Farmers' Markets and Cottage Foods: [H.B. 1694](#), relating to limitations on food regulations at farms, farmers' markets, and cottage food production operations. Reported from the House Committee on Public Health.

Public Information in Private Account or on Private Device: [H.B. 1700](#), relating to public information in the possession, custody, or control of a current or former officer or employee of a governmental body. Reported from the House Committee on State Affairs. As reported, the bill would require a city employee or elected official to provide information held in a private account or on a private device.

Construction Liability: [H.B. 1999](#), relating to certain construction liability claims concerning public buildings and public works. Reported from the House Committee on State Affairs. As reported, the bill would presumably apply to a construction project owned by a city, and it would mandate that – prior to bringing a lawsuit on a construction defect – an owner must obtain an inspection and report from an engineer and offer the contractor a chance to correct the defect.

Contingency Fee Attorney Contracts: [H.B. 2003](#), relating to the review and approval of contingent fee contracts for certain public agencies. Reported from the House Committee on Judiciary and Civil Jurisprudence. As reported, the bill would require attorney general approval of a city's contingency fee contract with an attorney.

Construction Contract Retainage: [H.B. 2135](#), relating to retainage requirements for certain public works construction projects. Reported from the House Committee on State Affairs. As reported, the bill would – among other things – cap retainage at five percent of the contract price for projects of \$1 million or more.

Electric Bicycles: [H.B. 2188](#), relating to the operation of electric and nonelectric bicycles. Passed the House. Reported from the House Committee on Transportation. As reported, the bill would require a city to treat electric bicycles the same as regular bicycles, with some exceptions.

Public Information Act – Contracting Information: [H.B. 2189](#), relating to the disclosure of certain contracting information under the public information law. Reported from the House Committee on State Affairs. As reported, the bill would make various changes relating to which private contractors are subject to the Public Information Act and what information they must release.

Public Information Act: [H.B. 2191](#), relating to the public information law. Reported from the House Committee on State Affairs. As reported, the bill makes various changes to the Public Information Act.

No More Brick Exteriors: [H.B. 2439](#), relating to certain regulations adopted by governmental entities for the building products, materials, or methods used in the construction of residential or commercial structures. Reported from the House Committee on State Affairs. As reported, the bill would – with certain exceptions – prohibit a city from mandating any building materials that are more stringent than those in a building code.

Historic Landmark Designation: [H.B. 2496](#), relating to the designation of a property as a historic landmark by a municipality. Reported from the House Committee on Culture, Recreation, and Tourism. As reported, the bill would provide that a city that has established a process for designating places or areas of historical, cultural, or architectural importance and significance through the adoption of zoning regulations or zoning district boundaries may not designate a property as a local historic landmark unless: (1) the owner of the property consents to the designation; or (2) the designation is approved by a three-fourths vote of: (a) the governing body of the city; and (b) the zoning, planning, or historical commission of the city, if any.

Solid Waste Landfills: [H.B. 2723](#), relating to the authority of local governments or other political subdivisions. Reported from the House Committee on Environmental Regulation. As reported, the bill would provide that an applicant for a solid waste landfill permit is not required to obtain a permit for the siting, construction, or operation of a municipal solid waste facility from a local government or other political subdivision of the state as a prerequisite to a permit being issued.

Elections: [H.B. 2909](#), relating to election practices and procedures. Reported from the House Committee on Elections. As reported, the bill would make numerous miscellaneous changes to the Texas Election Code.

Payday Lending: [H.B. 3292](#), relating to sale-leaseback transactions. Reported from the House Committee on Pensions, Investments and Financial Services.

Open Meetings Act – “Walking Quorum”: [H.B. 3402](#), relating to changing the criminal offense of conspiracy to circumvent the open meetings law. Reported from the House Committee on State Affairs. As reported, the bill would provide that a member of a governmental body

commits an offense if the member: (1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by the Open Meetings Act and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members; and (2) knew at the time the member engaged in the communication that the series of communications: (a) involved or would involve a quorum; and (b) would constitute a deliberation once a quorum of members engaged in the series of communications. (Note: this bill attempts to overturn a recent Court of Criminal Appeals opinion in *Doyal v. State*, which found the existing statute unconstitutional.)

Video/Telephone Franchise Fee Elimination: [H.B. 3535](#), relating to the payment of certain fees to municipalities by entities that provide telecommunications and cable or video service. Reported from the House Committee on State Affairs. As reported, the bill would allow a telecommunications company to elect to stop paying state cable franchise fees or access line fees, whichever it pays less of statewide.

Building Inspections: [H.B. 3477](#), relating to the authority of a municipality to enforce certain municipal building regulations. Reported from the House Committee on Land and Resource Management. As reported, the bill would provide that, except as required for participation in the National Flood Insurance Program, a city that issues a permit to improve a part of a residential structure may not require the owner of the structure to comply with a municipal requirement that is: (1) applicable to another part of the structure that is not being improved; and (2) not necessary for the permitted improvement.

Cybersecurity Training: [H.B. 3834](#), relating to the requirement that certain state and local government employees and state contractors complete a cybersecurity training program certified by the state cybersecurity coordinator. Reported from the House Committee on State Affairs. As reported, the bill would provide that a local government employee who uses a computer to complete 25 percent of the employee's required duties shall complete a cybersecurity training program.

SUPER-PREEMPTION: [H.B. 3899](#), relating to the authority of a municipality to regulate statewide commerce. Reported from the House Committee on State Affairs. As reported, the bill would:

1. prohibit a city from adopting or enforcing an ordinance, rule, or police regulation that imposes a restriction, condition, or regulation on the purchase or sale of goods or services of any kind or quantity, conducted by a person who engages in such activity in more than one city in this state;
2. except from the prohibition in (1) an ordinance, rule, or regulation: (a) essential to regulating a uniquely local concern (i.e., a particularized concern unique to the physical conditions in the city) that the governing body determines cannot be of similar concern in another city; (b) essential to the necessary regulation of local land use (defined as taking action consistent with Chapters 211-214 and including adoption and enforcement of building construction standards and permitting, barring, or limiting the use of designated property for one or more designated types or categories of commercial activity); (c)

essential to protect citizens' physical safety; or (d) that is expressly authorized by state law;

3. *prohibit a city from enforcing a regulation that includes any restriction, condition, or regulation of the goods, services, transactions, operations, purchaser-seller interactions, employment practices, finances, advertising, marketing, or any other conduct or practices by a person engaging in a commercial activity;*
4. provide that a commercial activity that is subject to regulation by Texas or the United States cannot present any uniquely local concern; and
5. provide that a state statute that provides that it does not preempt city regulatory authority may not be construed to expressly authorize an ordinance, rule, or regulation.

The bill would apply to any business that does business in more than one city in the state, and it would prohibit a city from including any restriction, condition, or regulation of the goods, services, transactions, operations, purchaser-seller interactions, employment practices, finances, advertising, marketing, or any other conduct or practices by a person engaging in a commercial activity.

As-written, the bill would preempt any number of city regulations that have been enacted at the request of citizens. For example, the following would likely be wiped out by the bill:

1. Payday lender regulations that prohibit predatory lending practices.
2. Sexually oriented business regulations, such as "no touch" ordinances.
3. Burglar alarm registration ordinances designed to properly allocate law enforcement resources.
4. Pawnshop regulations designed to stop stolen property transactions.
5. Eight liner and similar game room regulations designed to protect patrons of those establishments and properly allocate law enforcement resources.
6. Short-term rental regulations designed to protect both patrons and neighbors.
7. Noise ordinances designed to protect quality of life.
8. Billboard and on-premise sign regulations designed to protect against visual blight.
9. Peddler and door-to-door solicitor regulations designed to protect residents from unscrupulous salespersons.
10. Oil and gas well drilling ordinances designed to protect residents from the deleterious effects of urban drilling.
11. Ordinances regulating alcohol sales near churches and schools designed to protect youth.
12. Health codes designed to protect restaurant patrons.

The above are just a few examples of ordinances that are common in Texas cities. They may not be "essential to protect citizens' physical safety," but they are reasonable and certainly improve the quality of life of city residents and others.

Environmental Pollution Lawsuits: [H.B. 3981](#), relating to civil suits brought by local governments for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality. Reported from the House Committee on Judiciary and Civil Jurisprudence. As reported, the bill would essentially

eliminate a city's authority to bring an environmental pollution lawsuit under the authority granted by the Texas Water Code.

Cybersecurity Training: [H.B. 4214](#), relating to matters concerning governmental entities, including cybersecurity, governmental efficiencies, information resources, and emergency planning. Reported from the House Committee on State Affairs. As reported, the bill would provide that a municipality shall report a cybersecurity breach to a regional information sharing and analysis center and municipalities over 100,000 shall adopt and implement a multihazard emergency operations plan.

Dogs on Restaurant Patios: [S.B. 476](#), relating to requirements for and municipal regulation of dogs in an outdoor dining area of a food service establishment. Reported from the House Committee on Public Health.

Scooters: [S.B. 549](#), relating to the operation of motor-assisted scooters. Reported from the Senate Transportation Committee.

Dangerous Wild Animals: [S.B. 641](#), relating to the regulation of dangerous wild animals. Reported from the Senate Committee on Water and Rural Affairs. As reported, the bill would: (1) allow a court to order an animal control authority, including a municipal animal control office, to seize a dangerous animal and provide for the impoundment of the animal; (2) provide that certain persons may not own, possess, sell, transfer, breed or have custody or control of specific dangerous wild animals unless such persons were lawfully in possession of the dangerous wild animal before September 1, 2019, register the animal, and comply with state rules; (3) make such owner liable for all costs incurred in apprehending and confining a dangerous wild animal that escapes the owner's custody; and (4) provide that a law enforcement agency or its employees is not liable for damages arising from the escape of an owner's dangerous wild animal, including property damage, injury or death caused by the animal or for injury to or the death of the animal.

Red Light Cameras: [S.B. 653](#), relating to prohibiting the use of photographic traffic signal enforcement systems. Reported from the Senate Transportation Committee.

Charter Schools and Drainage Fees: [S.B. 674](#), relating to authorizing an exemption for open-enrollment charter schools from certain municipal drainage requirements. Reported from the House Committee on Urban Affairs. As reported, the bill would require a city that grants school districts an exemption from drainage fees to grant the exemption to charter schools as well.

Contingency Fee Attorney Contracts: [S.B. 970](#), relating to the review and approval of contingent fee contracts for certain public agencies. Reported from the Senate Water and Rural Affairs Committee. As reported, the bill would require attorney general approval of a city's contingent fee contract with an attorney.

Emergency Services Districts: [S.B. 1083](#), relating to compensation to be paid to an emergency services district for a municipality's annexation of the district's territory. Reported from the Senate Committee on Intergovernmental Relations. As reported, the bill would require a city that

annexes and removes territory from an emergency services district to compensate the district based upon the annexed territory's share of indebtedness based on sales tax or property tax revenue, whichever is higher.

Video/Telephone Franchise Fee Elimination: [S.B. 1152](#), relating to the payment of certain fees to municipalities by entities that provide telecommunications and cable or video service. Reported from the House Committee on State Affairs. As reported, the bill would allow a telecommunications company to elect to stop paying state cable franchise fees or access line fees, whichever it pays less of statewide.

Bond Elections: [S.B. 1225](#), relating to ballot propositions authorizing political subdivisions to issue bonds or other debt or to impose or change a tax. Reported from the Senate Committee on Property Tax. As reported, the bill would require all bond elections to be held on the November uniform election date and require additional language to be added to any ballot proposition related to a bond or tax.

Open Meetings Act – “Walking Quorum”: [S.B. 1640](#), relating to changing the criminal offense of conspiracy to circumvent the open meetings law. Reported from the House Committee on State Affairs. As reported, the bill would provide that a member of a governmental body commits an offense if the member: (1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by the Open Meetings Act and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members; and (2) knew at the time the member engaged in the communication that the series of communications: (a) involved or would involve a quorum; and (b) would constitute a deliberation once a quorum of members engaged in the series of communications. (Note: this bill attempts to overturn a recent Court of Criminal Appeals opinion in *Doyal v. State*, which found the existing statute unconstitutional.)

Engineers/Architects: [S.B. 1928](#), relating to a certificate of merit in certain actions against certain licensed or registered professionals. Reported from the Senate State Affairs Committee. As reported, the bill would provide that, in any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional, a claimant shall be required to file with the complaint an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor who: (1) is competent to testify; (2) holds the same professional license or registration as the defendant; and (3) practices in the area of practice of the defendant and offers testimony based on the person's knowledge, skill, experience, education, training, and practice.

Water CCNs: [S.B. 2272](#), relating to the procedure for amending or revoking certificates of public convenience and necessity issued to certain water utilities. Reported from the Senate Water and Rural Affairs Committee.

Water Rates for Religious Institutions: [S.B. 2322](#), relating to rates established by municipalities for water and sewer services. Reported from the Senate Water and Rural Affairs

Committee. As reported, the bill would provide that a city or a municipally owned utility may not establish a rate applicable only to entities that qualify for a sales tax or ad valorem tax exemption that is higher than a rate established for entities that receive comparable utility services.

**Editor's Note: The links above lead to the bill's landing page on the Texas Legislature Online website. To read the latest version, click on the "text" tab and click on the lowest version on the screen.*

City Officials Testify

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take the time to travel to Austin to speak out on important city issues should be applauded by us all. The League extends its thanks to all those who have vigilantly represented cities during this session. This list generally covers testimony through Monday of each week. Witnesses who testified later than that date will be included in the next week's edition. If we missed your testimony let us know by an email to ford@tml.org, and we'll recognize you in next week's edition.

The following officials testified in committee hearings:

- Johnny Taylor, City of Houston Police Department
- Les Moore, Police Legal Advisor, City of Irving
- Chad Schroeder, City of Irving Police Department
- Dominique Artis, Chief, City of Dallas Fire Rescue
- Justin Wells, Assistant Fire Chief, City of Houston
- Tammy Embrey, Director – Intergovernmental Relations, City of Corpus Christi
- Jimmy Kendrick, Mayor, Town of Fulton
- Jeff Hunt, Mayor, City of Santa Clara
- Christopher Herrington, Environmental Officer, City of Austin
- Maria Irshad, Assistant Director, Administration & Regulatory Affairs, City of Houston
- Richard Anderson, Division Manager – Comm. Bldg. Inspections Admin., City of Austin
- Stephen Cumbie, Assistant City Attorney I, City of Fort Worth
- Chris Lam, City of Fort Worth
- Jeff Freeman, School Resource Officer, City of Rowlett Police Department
- Andy Segovia, City Attorney, City of San Antonio
- Paul Mendes, City Administrator, City of Magnolia
- Jeff Coyle, Director of Government and Public Affairs, City of San Antonio
- Lee Kleinman, Councilmember, City of Dallas
- Maureen Milligan, Assistant Director, City of Dallas
- Jimmy Spivey, Chief of Police, City of Richardson
- Stephen Williams, Policy Health Director, City of Houston
- Leticia Brysch, City Clerk, City of Baytown
- Karen Hunt, Mayor, City of Coppell

- Jason Dyess, City of Paris EMS
- Joe Tinsley, City of Palestine Police Department
- Mary Proctor, Detective, City of Lakeway
- Cameron Goodman, Economic Development Director, City of Richmond
- Josie Carrizales, Assistant City Manager Finance, City of Pearsall
- Charles Jackson, City Manager, City of Pearsall
- Brian England, Deputy City Attorney, City of Garland
- Gayle Cook, City Manager, City of Seabrook
- Thom Kolupski, Mayor, City of Seabrook
- Henrietta Turner, City Manager, City of Floresville
- Nora Flores, City Manager, City of Carrizo Springs
- Ron Bottoms, Deputy City Manager, City of Baytown
- Jeff Williams, Mayor, City of Arlington
- Corbin Van Arsdale, Mayor, City of Cedar Park
- Curry Vogelsang, Mayor Pro Tem, Town of Prosper
- E.A. Hoppe, Deputy City Manager, City of Kerrville
- Manny De La Rosa, City Manager, City of San Benito
- Corbett Howard, EDC Executive Director, City of Celina
- Kevin Cleveland, Councilmember, City of Weatherford
- Jessica Herrera, Economic Development Director, City of El Paso
- Ron Jensen, Mayor, City of Grand Prairie
- Jon Weist, Intergovernmental/Legislative Officer, City of Irving
- Wendy Ellis, City Administrator/EDC Director, City of Kemah
- Jessica Anderson, City of Houston Police Department
- Bill Kelly, Director Government Relations, City of Houston
- Jeff Headley, City of Houston Police Department
- Adam Colby, City of Tyler Police Department
- James D. Yarbrough, Mayor, City of Galveston
- Donald S. Glywasky, City Attorney, City of Galveston
- David Gott, Chief of Police, City of Hedwig Village
- Brian Muecke, Mayor, City of Hedwig Village
- Jeffrey Kennedy, City of Austin Fire Department
- Rex Redden, Executive Director of Public Safety, City of Carrollton
- Christopher Monestier, Assistant Chief, City of San Antonio Fire Department
- Ramsey English-Cantu, Mayor, City of Eagle Pass
- Scott Oliver, Corporate Counsel, San Antonio Water System
- James Smith, San Antonio Police Department
- Michael Kovacs, City Manager, City of Fate
- Nathan Watkins, City Manager, City of Mont Belvieu
- Matt Williamson, Lieutenant, City of Dallas
- Jeffrey Boney, Councilmember, City of Missouri City
- James Santangelo, Assistant City Attorney, City of Missouri City
- Jazton Heard, Lieutenant, City of Missouri City
- Jimmy Flannigan, Councilmember, City of Austin

- Virginia Collier, Principal Planner, City of Austin
- Alexa Aragonz, Sr. Management Analyst, City of Arlington
- Tom Busker, City of Fort Worth Police Department
- Brian Johnson, City of Arlington Police Department
- Christopher Mosley, Assistant City Attorney, City of Fort Worth
- Molly Carroll, Project Manager, City of Dallas
- Terry McGrath, Assistant Chief, City of Lewisville Fire Department
- Donald McLaughlin, Mayor, City of Uvalde
- Michael Flores, Director of Marketing Research & Analytics, City of South Padre Island
- Kyle Zulkowski, Detective, City of College Station
- Jamaal Smith, Deputy Director – Government Relations, City of Houston
- David McCary, Solid Waste Management Director, City of San Antonio
- Michael Rice, Assistant City Manager, City of Abilene
- Rosalinda Salazar, Administrative and Regulatory Affairs Dept., City of Houston
- Patty Akers, City Attorney, City of Marble Falls
- Robert Hoskins, Councilmember, City of Baytown
- Larry Bowman, Pension Board, City of Lucas
- Wayne Milsap, Councilmember, City of Lucas
- Terry Henley, Alderman, City of Meadows Place

City-Related Bills Filed

Personnel

S.B. 2551 (Hinojosa) – Disease Presumption/Workers’ Compensation: would: (1) add 11 listed cancers to the firefighter workers’ compensation disease presumption statute; (2) provide that a political subdivision that self-insures either individually or collectively shall be liable for authorized sanctions, administrative penalties, and remedies and for attorney’s fees; (3) provide that a pool or a political subdivision that self-insures may establish an account for the payment of death benefits for a compensable injury to certain firefighters or EMTs and may accumulate assets in the account in an amount that it determines is necessary to pay death benefits; and (4) provide that the Public Funds Investment Act does not apply to the investment of such assets.

Public Safety

H.B. 4751 (Nevarez) – Texas Crime Information Center: would provide that:

1. as soon as possible but not later than the next business day after the date a magistrate issues an order imposing a condition of bond or modifying or removing a condition, the magistrate shall send a copy of the order to the chief of police in the city where the victim of the offense resides, if the victim resides in a city, or to the sheriff of the county where the victim resides, if the victim does not reside in a city. The clerk of the court shall send a copy of the order to the victim at the victim’s last known address as soon as possible but not later than the next business day after the date the order is issued.

2. a magistrate or clerk of the court may delay sending a copy of the order under (1), above, only if the magistrate or clerk lacks information necessary to ensure service and enforcement.
3. if an order described by (1), above, prohibits a defendant from going to or near a child care facility or school, the magistrate shall send a copy of the order to the applicable child care facility or school.
4. if the victim of the offense is not present when an order described by (1), above, is issued, the magistrate shall order a peace officer to make a good faith effort to provide notice of the order to the victim within 24 hours by calling the victim's last known phone number.
5. not later than the third business day after the date of receipt of the copy of an order described by (1), above, by the applicable law enforcement agency, the law enforcement agency shall enter certain related information into the statewide law enforcement information system maintained by the Department of Public Safety or shall modify or remove that information, as appropriate.
6. the Department of Public Safety shall modify the department's statewide law enforcement information system to: (1) enable the system to accept and maintain detailed information regarding the requirements and status of a condition of bond imposed under the bill so that a peace officer may: (a) easily and quickly search the system by one or more criteria, including the name of the defendant on whom the condition is imposed; and (b) retrieve the information necessary to enforce the condition of bond or prevent a violation of the condition; and (2) ensure that a person who accesses the system for the purpose of entering, modifying, or removing information that relates to a condition of bond imposed under this article may add or remove notes regarding the condition, the defendant on whom the condition is imposed, or the person protected by the condition.

Utilities

H.B. 4344 (Stephenson) – Solid Waste Franchises: would provide that: (1) a city may not charge a person granted a franchise to provide solid waste management services in the city franchise fees of more than two percent of the gross receipts of the franchisee for the sale of services in the city; and (2) a city may not restrict the right of an entity to contract with a person other than the city or an exclusive franchisee of the city for solid waste management services for commercial or industrial waste.

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