



Legislative UPDATE

October 7, 2010
Number 7

PRE-FILING OF BILLS BEGINS IN NOVEMBER

Bill filing for the 2011 legislative session begins on Monday, November 8.

The 2009 session was characterized, first and foremost, by the volume of work. Lawmakers filed 7,609 bills and proposed Constitutional amendments. That's an increase of 19 percent over the 2007 figure and 29 percent more than 10 years ago. According to the trend, it is likely that even more bills will be filed in the upcoming session.

As always, the *Legislative Update* will feature summaries of city-related bills. During the upcoming legislative session, the legislature will have several major issues to address. Voter identification legislation, which caused a significant "bottleneck" of bills at the end of last session, will be back. In addition, legislators will review several important state agencies, including the Department of Transportation, the Commission on Environmental Quality, the Railroad Commission, and many others.

Throw in redistricting and a huge state budget deficit, and some argue that those in Austin will be too busy with state-level issues to file and pursue legislation that would erode municipal authority. Unfortunately, the League's experience is that such an assertion hasn't proved true in the past.

READ THE FINE PRINT: BOND RATING COMPANIES SEEKING INDEMNIFICATION FROM CITIES

Texas cities should be cautious when considering agreements with bond rating companies. According to the International Municipal Lawyers Association, at least one bond rating company has inserted language into a standard contract that would force a city that issues bonds to indemnify the company against any losses. That type of language would be problematic for Texas cities, because there is some doubt as to whether a city may legally agree to a blanket indemnity clause that is not supported by an appropriation.

This development only reinforces the notion that cities should work closely with local counsel prior to entering into any agreement with a bond rating company.

LEGAL NOTICES: IS YOUR CITY BEING OVERCHARGED?

Numerous Texas statutes require cities to publish notice of various city actions. Chapter 2051 of the Texas Government Code generally governs the type of newspaper that should be used, as well as other notice-related issues.

One issue that city officials should consider is the amount a newspaper is allowed to charge a city for legal notices. Some city officials may be surprised to learn that Section 2051.045 of the Government Code provides that “[t]he legal rate for publication of a notice in a newspaper is the newspaper’s *lowest published rate for classified advertising.*” (Emphasis added).

Further, Section 2051.048 provides that a city shall publish notices in a newspaper that is: (1) published in the city; and (2) willing to publish the notice at or below the legal rate. If no newspaper published in the city will publish the notice at or below the legal rate, the city shall publish the notice in a different newspaper that: (1) is published in the county in which the city is located; and (2) will charge the legal rate or a lower rate.

Finally, if no newspaper published in the county in which the city is located will publish the notice at or below the legal rate, the city shall post the notice at the door of the county courthouse.

While some cities may choose to publish notices in a local paper that charges more than the legal rate, others may wish to post the notice at the county courthouse door and solicit public input in more economical ways. City officials should consult with local legal counsel before choosing a course of action.

TEXAS DEPARTMENT OF LICENSING AND REGULATION SETS MAXIMUM PRIVATE PROPERTY TOWING FEES

Last legislative session, the legislature adopted H.B. 2571. That bill provides that a city may regulate the fees that are charged for private property tows. However, the fee cannot exceed the maximum amount allowable by rule promulgated by the Texas Department of Licensing and Regulation (TDLR). In August 2010, TDLR adopted a rule that sets the maximum fee a towing company can charge for a private property tow. Under the new rule, the fee charged by a towing company cannot exceed \$250 for a “light duty tow,” \$350 for a “medium duty tow,” or \$450 per unit or a maximum of \$900 for a “heavy duty tow.”

The new rules relating to private property towing fees can be found in the August 27, 2010, edition of the [*Texas Register*](#).

<http://www.sos.state.tx.us/texreg/archive/August272010/adopted/16.ECONOMIC%20REGULATION.html#175>.

RAILROAD COMMISSION PROPOSES GAS PIPELINE REPLACEMENT RULES

The Texas Railroad Commission has proposed rules that would require all gas system operators, including municipal operators, to develop and implement a risk-based program for the removal or replacement of certain distribution facilities. (Replacement of steel service lines is the primary goal of the rule.)

Each operator will be required to develop a risk-based program in conjunction with the recently adopted U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration's regulations regarding integrity management.

Each operator will use the risk-based program to manage any risks identified through the risk-based analysis by developing a replacement program to remove those integrity-related risks from its system.

This proposed rule could be extremely costly for cities that operate a gas utility. Detailed information about the proposed rule is available [here](#).

<http://www.sos.state.tx.us/texreg/archive/September102010/PROPOSED/16.ECONOMIC%20REGULATION.html#30>.

The Railroad Commission is accepting comments on the proposed rules until noon on Tuesday, October 12, 2010.

EPA BEGINS WATER QUALITY STANDARDS REVISIONS

The U.S. Environmental Protection Agency (EPA) is revising its water quality standards (WQS) in a rulemaking set to begin next summer. The EPA is currently seeking informal comments from regulated entities, including cities. The WQS regulation amendments will include changes in: (1) antidegradation policies protecting current water quality, and their implementation at the state level; (2) how the EPA administrator determines that a revised or new standard is necessary to meet the requirements of the Clean Water Act, and what action that requires from the EPA; (3) the definition of “uses” for water quality protection purposes and how use attainability is defined by the agency; (4) the regulatory expectations of states from the EPA regarding states repeatedly granting variances from the WQS; (5) the scope and inclusiveness of triennial standards reviews at the state level; and (6) how the rules reflect recent court decisions.

The EPA has already accepted informal comments on these proposed changes. The agency will review those comments and create proposed rules for publication in the *Federal Register* next summer. At that time, there will be an opportunity for formal comment. More detailed information about the WQS review and proposed changes is available on the [EPA Web site](#).

http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm.

Written comments may be submitted either via e-mail to SHPDcomments@epa.gov, or by mail to:

Thomas J. Gardner
Office of Science and Technology (Mail Code 4305T)
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

If you have basic questions about this proposed rulemaking, please contact Lauren Crawford in the TML Legal Department at (512) 231-7400 or lauren@tml.org.

NEW ADA RULES MAY AFFECT CITY WEB SITES

The U.S. Department of Justice (DOJ) has released an advanced notice of proposed rulemaking formally announcing its intent to regulate government Web sites, 9-1-1 technology, and other equipment. The DOJ requested comments on this rulemaking on July 26, 2010, and is accepting comments until the end of December.

The DOJ believes that the ADA currently requires Web sites to comply with the ADA, and may propose rules for clarification. The rules would regulate cities and other governmental entities that provide goods, services, programs, or activities to the public online. The DOJ is considering one of two possible sets of guidelines for Web accessibility: (1) the Web Content Accessibility Guidelines, which are international standards developed by an independent agency; or (2) the federal government's own Web guidelines.

The DOJ is also considering regulating 9-1-1 accessibility in order to ensure that individuals with disabilities will have direct access to 9-1-1 during an interim period until, and after, "Next Generation" 9-1-1 is implemented.

Any rules adopted regarding either Web sites or 9-1-1 accessibility could affect the way cities provides services. For more information on these possible rulemakings, [click here](#).

<http://www.ada.gov/anprm2010.htm>

SENATE COMMITTEE DEBATES CITY JAIL STANDARDS AND TRAINING

On September 7, the Senate Committee on Criminal Justice held a hearing on the following charge:

Study and make recommendations related to municipal jails and other detention facilities that operate without state agency oversight. Identify the number of such facilities and the population detained, as well as best practices for municipal jails. Make recommendations to improve services and consider options for oversight of facilities by the Texas Commission on Jail Standards.

Brandon Wood, assistant director of the Texas Commission on Jail Standards (a state agency) testified that the commission has oversight of county jails, but not of city jails. The chair of the Senate committee was surprised by this dichotomy and assumed that TML was behind it. [Please [click here](http://www.webinars.com/CriminalJustice/CJ120200207.swf) to hear Mr. Wood describe the city exemption and the chair's reaction.] Mr. Wood's agency recommended that city facilities limit their detentions to 72 hours, require staff certification, adopt minimum jail standards, and allow outside audits.

Donna Klaeger, county judge of Burnet County, testified that she supports mandatory city jail standards. [Please [click here](http://www.webinars.com/CriminalJustice/CJ2_20700207x331.swf) to hear her recommendation.] Ms. Klaeger did not explain to the committee why a county official is concerned about city jail operations.

Tim Braaten, executive director of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE), testified that his agency licenses county jail personnel, but not city personnel. Mr. Braaten testified that TCLEOSE receives “little or no” complaints relating to city jails.

David Barber, police chief in the City of Hedwig Village, testified on behalf of the Texas Police Chiefs Association and on behalf of TML. He explained the necessity of city jails and argued against state standards for city jails because of the different nature of city jails versus county jails. Namely, city jails detain persons temporarily while county jails hold people for the long term. Meeting county jail standards would involve “staggering” expense in construction and maintenance. A jail official from Houston, Patrick Dougherty, made similar distinctions between city and county jails.

The Municipal Jail Association of Texas is a non-profit membership organization that includes as members many city jail employees. A board member of that association, who is also a city employee of a North Texas city, testified in favor of standardized and certified training of city jail employees. [Please [click here](http://www.webinars.com/CriminalJustice/CJ32335023806.swf) <http://www.webinars.com/CriminalJustice/CJ32335023806.swf>] to listen to her testimony.]

The TML Legislative Policy Committee on General Government recently recommended that TML oppose legislation that would “mandate jail standards for city jails or mandate any form of certification for city detention officers.” Even if the League ultimately adopts that position, arguing against such standards is made difficult when some city employees argue in favor of statewide training standards.

PUC ADOPTS RULES GOVERNING ELECTRIC AND TELECOMMUNICATIONS BILLS

In response to billing disputes between cities and electric and/or telecommunications companies, the Public Utility Commission has adopted rules governing utility payment overdue dates. The rules, found in 16 Texas Administrative Code Sections 25.33, 25.482, and 26.33, attempt to clarify that a bill submitted to a governmental entity by an electric utility, an electric aggregator, a retail electric provider, or a certified telecommunications utility is subject to the Texas Prompt Payment Act.

The Texas Prompt Payment Act, found in Chapter 2251 of the Texas Government Code, provides a framework under which governmental entities – including cities – must make payments to vendors. The law generally requires that a payment made by a governmental entity is overdue on the 31st day after the later of: (1) the date the governmental entity receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the governmental entity receives an invoice for the goods or service. (If a governmental body meets only once a month or less frequently, a payment becomes overdue

after the 46th day.) A governmental entity may be subject to interest and other penalties and/or remedies if a payment to a vendor becomes overdue.

If there is a bona fide dispute between the governmental entity and a vendor about the goods delivered or the service performed that causes the payment to be late, the payment is not considered overdue. However, to avail itself of the protections provided pursuant to a dispute, a governmental entity must notify a vendor of an error in an invoice not later than the 21st day after the date the entity receives the invoice. That short dispute period may limit the ability of cities to audit their utility bills. Apparently, a city may not be able to dispute a billing error discovered after the deadline.

The new rules require the affected vendors to provide written notice of the applicability of the Prompt Payment Act to all of their non-residential customers within six months. City officials may want to review their payment policies to ensure compliance with the new rules and the Prompt Payment Act.

HOLIDAY ORNAMENTS SUPPORT CAPITOL PRESERVATION

The speaker of the Texas House of Representatives has asked the League to inform its members about the availability of Texas Capitol Ornaments. In celebration of fifteen years of Capitol preservation and education projects, the State Preservation Board is pleased to introduce the 2010 Capitol Ornament, which is the fifteenth in a series of annual collectible ornaments. More than \$5 million has been generated through the sale of the ornaments to support ongoing Capitol conservation and maintenance programs, including public education about the building, its contents, and the historic Capitol grounds. For example, the current Capitol Dome Project, scheduled to be completed in time for the holidays, will ensure that the building is durable enough to withstand the harsh Texas weather.

The cost for each 3 inch x 3 inch ornament is \$18.00. That cost includes an elegant velour-lined gift box, along with a brochure about the ornament program. Mail orders can be sent to:

The Capitol Giftshop
P.O. Box 13286
Austin, Texas 78711

To order by phone, call 888-678-5556 or 512-305-8406. You may also order online [here](#).

www.TexasCapitolGiftshop.com.

MUNICIPAL COST INFLATION STILL RISING

The Municipal Cost Index (MCI), developed exclusively by *American City and County* magazine, shows the effect of inflation on the cost of providing municipal services. The MCI is used to study price trends, make informed government contract decisions, and facilitate sound budget planning.

According to *American City and County* magazine, the MCI for September was 212.4. That's 0.1 percent higher than last month's MCI and an increase of 3.4 percent over the previous twelve months. The September 2009 MCI was 205.4.

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