



Legislative UPDATE

April 12, 2019
Number 15

Revenue Cap Bills Stumble

The House version of the 2.5 percent revenue cap bill, H.B. 2, was set to be debated on the floor Thursday. Instead, it was postponed until Monday, April 15. House officials say they first want to see what the Senate does on the issue.

The Senate version of the bill, S.B. 2, was also planned for debate that day. However, it was postponed as well. Senate leaders claim they aren't sure which direction the House intends to go, and so delayed action. Negotiations continue.

Mutual delay is good for cities on this issue, but there's still plenty of time left in the session for both chambers to pass this harmful proposal into law. City officials must continue to make the case to their delegations that city revenue caps provide minimal property tax relief, yet jeopardize critical city services such as public safety and infrastructure.

Meaningful property tax relief only comes from significant property tax reform, which is already occurring [through H.B. 3](#).

Super-Preemption Bills on the Move

The term "super-preemption" describes legislation that would broadly preempt municipal authority. Instead of a bill directed at a specific activity, like fracking bans, transportation network companies, or plastic bag bans, these bills would completely wipe away home rule authority and mean that a city would have to cite to a specific state law authorizing its regulations. That's completely contrary to the [Home Rule Amendment](#) to the Texas Constitution, which was approved by the Texas voters over a century ago. At least two bills that are moving this session fall into that category: S.B. 1209 by Senator Kelly Hancock (R – North Richland Hills) and H.B. 3899 by Representative Drew Springer (R – Muenster). Those bills are further explained in the "Significant Committee Actions" section elsewhere in this edition.

Preemption legislation or any other limit on municipal authority comes down to one, universal truth: Local officials know best how to govern their cities. Put another way, how could a legislator from the Panhandle possibly know what's best for a city on the Gulf Coast? How could a person who grew up in the deserts of far West Texas know what's best for the Piney Woods of deep East Texas? They can't, and city officials who do know best for their own cities are beginning to speak up, and speak up loudly.

Some lawmakers disagree. For example, a House member from Plano was quoted in the *Dallas Morning News* as saying, "Local control generally sounds good until you realize that some cities are out of control." City officials strongly push back at state legislators who question their ability to govern. Legislators need to hear from city officials early and often that city officials are elected from the same group of engaged and informed citizens that elected those state officials. Some legislators frame their assault on local control as "protection of liberty." Government's responsibility is to protect liberty, and that responsibility is best kept local. The efforts of some legislators to control city councils sound more like centralizing power in Austin.

Significant Floor Actions

Statewide Annexation Restrictions: [H.B. 347](#), relating to eliminating distinctions in the application of consent annexation requirements. Passed the House. As passed, the bill would essentially eliminate non-consent annexations for all cities. An amendment was added on the House floor to make the bill effective immediately upon passage. A subsequent amendment slightly ameliorated the effect of the first by grandfathering annexations that are in progress as shown by a resolution adopted by the city council and directing the city manager to prepare a service plan for the annexation.

Charter Schools Drainage Fee Equal Treatment: [S.B. 674](#), relating to authorizing an exemption for open-enrollment charter schools from certain municipal drainage requirements. Passed the Senate. As passed, the bill would provide that, if a city grants a drainage fee exemption to school districts, it must grant the same exemption to charter schools.

Elections: [H.B. 1048](#), relating to the use of a county early voting polling place by a political subdivision. Passed the House. As passed, the bill would require cities holding May or November elections to use county polling places for early voting by personal appearance.

Open Meetings Act – “Walking Quorum:” [S.B. 1640](#), relating to changing the criminal offense of conspiracy to circumvent the open meetings law. Passed the Senate. As passed, 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.)

**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

Lobbying Prohibition and No More TML: [H.B. 281](#), relating to the use by a political subdivision of public money for lobbying activities. Reported from the House Committee on State Affairs. As reported, the bill would prohibit a city or the Texas Municipal League from advocating at the Capitol.

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. Voted from the House Committee on Agriculture and Livestock. As voted out, 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 purposes of the preemptive provision, so presumably a landowner decides what is considered such.

Six or Fewer Chickens: [H.B. 2596](#), relating to the regulation of raising or keeping six or fewer chickens by a political subdivision. Reported from the House Committee on Agriculture and Livestock. As reported, the bill would provide that a city may not impose a governmental requirement that prohibits an individual from raising or keeping six or fewer chickens in the boundaries of the political subdivision.

Ordinances in the ETJ: [H.B. 3417](#), relating to the applicability of certain municipal ordinances in the municipality's extraterritorial jurisdiction. Reported from the House Committee on Land and Resource Management. As reported, the bill would apply to a city wholly or partly located in a county with a population of more than 500,000 and provide that a municipal ordinance based on subdivision authority may be extended into the city's extraterritorial jurisdiction only if state law explicitly authorizes the specific municipal ordinance to be extended.

SUPER-PREEMPTION: [H.B. 3899](#), relating to the encouragement of intra-state commerce. Voted from the House Committee on State Affairs. As voted out, 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.

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.
13. Transportation network company rules at city airports designed to facilitate traveler access to those services.

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

Ballot Language: [S.B. 323](#), relating to the review of ballot proposition language for certain political subdivision elections. Reported from Senate State Affairs Committee. As reported, the bill would establish a process by which a three-judge panel representing the administrative judicial region must approve or disapprove ballot language used by cities in certain local elections.

Bond Elections: [S.B. 462](#), relating to ballot propositions authorizing certain political subdivisions to issue debt obligations. Reported from Senate Property Tax Committee. As reported, 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.

Public Information Act – Contracting Information: [S.B. 943](#), relating to the disclosure of certain contracting information under the public information law. Reported from the Senate Business and Commerce Committee. 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 – Personal Devices and Accounts: [S.B. 944](#), relating to the public information law. Reported from the Senate Business and Commerce Committee. As reported, 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.

FRANCHISE FEE ELIMINATION: [S.B. 1152](#), relating to the payment of certain fees to municipalities by entities that provide telecommunications and cable or video services. Voted from the House State Affairs Committee. As voted out, the bill would allow a company that pays cable and telephone right-of-way fees to elect to pay the lesser of the two, according to their total statewide payments.

Workers' Compensation for Police Officers: [S.B. 1582](#), relating to benefits for peace officers relating to certain diseases or illnesses. Reported from the Senate Intergovernmental Relations Committee. As reported, the bill would apply the firefighters' disease presumption law, other than the cancer presumption, to city police officers.

SUPER-PREEMPTION: [S.B. 1209](#), relating to the authority of a political subdivision to regulate certain activities. Reported from the Senate State Affairs Committee. As reported, the bill would provide that: (1) if an individual is required to possess an occupational license, including a registration certificate or permit of any type, issued by a state licensing authority to engage in an occupation, the governing body of a political subdivision may not adopt or enforce any ordinance, order, rule, regulation, law, or policy that requires the individual to: (a) possess an occupational license issued by the political subdivision to engage in that occupation; or (b) meet any other requirement or precondition to engage in that occupation; and (2) an ordinance, order, rule, regulation, law, or policy that violates the bill is void and unenforceable.

Even if the bill's purpose is to eliminate so-called "dual licensing requirements," it goes much further than that. Cities regulate businesses in a number of ways to protect the health and safety and quality of life of their residents. For example, the bill would preempt:

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.

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. For example, this could preempt a city's health codes designed to protect restaurant patrons. And the remaining preemptive possibilities are endless.

Regulation of Working Conditions: S.B. 2485, 2486, 2487, and 2488, relating to the regulation by a political subdivision of certain employment benefits, terms of employment relating to scheduling practices, employment leave policies, and regulations regarding whether a private employer may obtain or consider an employment applicant's or employee's criminal history record information. Reported from the Senate State Affairs Committee. As reported, these bills would preempt most city regulations related to the employment practices of private employers.

**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:

- Darrek Ferrell, City Manager, City of Commerce
- Angela Rush, Human Relations Administrator, City of Fort Worth
- Karen Hunt, Mayor, City of Coppell
- Lori Houston, Assistant City Manager, City of San Antonio
- Roland Barrera, Councilmember, City of Corpus Christi
- Joe McComb, Mayor, City of Corpus Christi
- Miles Risley, City Attorney, City of Corpus Christi
- Keith Selman, Assistant City Manager, City of Corpus Christi
- Christopher Monestier, Assistant Fire Chief – Urban Services, City of San Antonio
- Scott Swearingen, Homeland Security and Emergency Management, City of Austin
- Donovan Burton, Vice President, Water Res. & Gov't Rel., San Antonio Water System
- Jessica Anderson, Police Department, City of Houston
- Shannon Harvill, Senior Animal Control Officer, City of Harlingen
- Shannon Sims, Assistant Director – Animal Care Services, City of San Antonio
- Robert Eads, Co-City Manager, City of Laredo
- Mercurio Martinez, Councilmember, City of Laredo

- Pete Saenz, Mayor, City of Laredo
- Kelly Laltood, Detective, City of Austin
- Steve Adler, Mayor, City of Austin
- Loren Raun, Chief Environmental Science Officer, City of Houston
- Doug Jeffrey, Mayor, City of Vernon
- Joe Crawford, Assistant City Attorney, City of Houston
- Ian Benevidez, Housing Policy Manager, City of San Antonio
- Kevin Deaver, Police Chief, City of Lewisville
- Bob Troyer, Councilmember, City of Lewisville
- Maureen Mulligan, Chief of Community Prosecution & Courts Section, City of Dallas
- Susana Carbajal, Assistant City Attorney, City of Austin
- Daniel Armstrong, Code Supervisor, City of Austin
- Charles Bujon, Mayor, City of Port Arthur
- Dana Burghdoff, Deputy Director of Planning and Development, City of Fort Worth
- Laura Hill, Mayor, City of Southlake
- Patricia Link, Assistant City Attorney, City of Austin
- Kent Myers, City Manager, City of Fredericksburg
- Jerry Mouton, Mayor, City of Deer Park
- Paul Mendes, City Administrator, City of Magnolia
- Reuben Trevino, Parks Board, City of Galveston
- Josefina Carrizales, Assistant City Manager, City of Pearsall
- Charles Jackson, City Manager, City of Pearsall
- Brian England, Deputy City Attorney, City of Garland
- Danny Presley, Assistant City Manager, City of Webster
- Miriam Cepeda, Governmental Relations, City of Edinburg
- Kirk Roccaforte, Councilmember, City of Bridge City
- Jerry Bark, Director Public Relations, City of Harker Heights
- David Mitchell, City Manager, City of Harker Heights
- Spencer Smith, Mayor, City of Harker Heights
- Hilary Shine, Executive Director of Communications, City of Killeen
- Jimmy Kendrick, Mayor, Town of Fulton
- Evan Daine Reed, Assistant City Attorney, City of El Paso
- David Noguera, Housing Director, City of Dallas
- Manny De La Rosa, City Manager, City of San Benito
- Monte Akers, City Attorney, City of Marble Falls
- R.G. Carver, Mayor Pro Tem, City of Double Horn
- Mike Hodge, City Manager, City of Marble Falls
- John Packer, Mayor, City of Marble Falls
- Jennifer Gates, Councilmember, City of Dallas
- Dennis Domagas, City of Houston Police Department
- Paul Farr, City of Dallas Police Department
- LaNiece Blue, Special Waste Supervisor, City of Houston
- Joann Schulte, DO, Health Department, City of Houston

City-Related Bills Filed

Property Tax

S.B. 2531 (Creighton) – Property Tax Protests: would: (1) authorize the chief appraiser and a property owner to file a joint motion with the appraisal review board notifying the board that the chief appraiser and the property owner have agreed to a disposition of the protest and request the board to issue an agreed order; and (2) require the chairman of the appraisal review board to issue the agreed order not later than the fifth day after the date on which the joint motion is filed with the board.

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate,

or distribute any part of this document without the written authorization of the Texas Municipal League.