



# Legislative UPDATE

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Number 34

## **Don't Forget:**

### **Who Will Represent Your City at the TML Business Meeting at the 2019 TML Annual Conference and Exhibition?!**

The 2019 TML Annual Conference in San Antonio on October 9-11 will feature a new process to consider resolutions submitted by the membership. In lieu of a separate resolutions committee meeting, all resolutions will go directly to the membership at the TML business meeting on October 10 at 3:30 p.m. Each city is entitled to one voting delegate at the business meeting. The delegate isn't required to have any special expertise, and an elected official delegate is encouraged but not required. The delegate can sign up electronically at <https://www.tml.org/FormCenter/Member-Resources-5/2019-TML-Business-Meeting-66> prior to the meeting, or sign up in person at a table outside of the meeting room. Cities are encouraged to sign up their delegate early using the link above. All city officials are welcome to attend the meeting, whether or not they are a voting delegate.

## **State Leaders Respond to Mass Shootings**

Texas Governor Greg Abbott issued several executive orders yesterday relating to the recent mass shootings in Texas. According to his office, the orders are designed “to help prevent further mass shootings by enhancing reporting requirements and ensuring law enforcement and the public have the training, tools, and resources they need to provide and respond to Suspicious Activity Reports.” They are as follows:

1. Within thirty days of this order, the Texas Department of Public Safety shall develop standardized intake questions that can be used by all Texas law-enforcement agencies to better identify whether a person calling the agency has information that should be reported to the Texas Suspicious Activity Reporting Network.
2. Within thirty days of this order, the Department of Public Safety shall develop clear guidance, based on the appropriate legal standard, for when and how Texas law-enforcement agencies should submit Suspicious Activity Reports.
3. Within sixty days of this order, the Texas Commission on Law Enforcement shall make training available to educate all law-enforcement officers regarding the standards that will be developed pursuant to Order No. 1 and Order No. 2.
4. The Department of Public Safety shall create and conduct an initiative to raise public awareness and understanding of how Suspicious Activity Reports are used by law-enforcement agencies to identify potential mass shooters or terroristic threats, so that the general public and friends, family members, coworkers, neighbors, and classmates will be more likely to report information about potential gunmen.
5. The Department of Public Safety shall work with the Texas Education Agency and the Texas Higher Education Coordinating Board on ways to better inform schools, students, staff, and families about the importance of Suspicious Activity Reports and how to initiate that process.
6. The Department of Public Safety shall work with local law enforcement, mental-health professionals, school districts, and others to create multidisciplinary threat assessment teams for each of its regions, and when appropriate shall coordinate with federal partners.
7. The Department of Public Safety, as well as the Office of the Governor, shall use all available resources to increase staff at all fusion centers in Texas for the purpose of better collecting and responding to Suspicious Activity Reports, and better monitoring and analyzing social media and other online forums, for potential threats.
8. Beginning January 1, 2020, all future grant awards from the Office of the Governor to counties shall require a commitment that the county will report at least 90 percent of convictions within seven business days to the Criminal Justice Information System at the Department of Public Safety. By January 1, 2021, such reporting must take place within five business days.

In addition, the speaker of the house and the lieutenant governor appointed committees to study the issue. The House Select Committee on Mass Violence Prevention and Community Safety is tasked to “evaluate options for strengthening enforcement measures for current laws that prevent the transfer of firearms to felons and other persons prohibited by current law from possessing

firearms.” The Senate Select Committee on Mass Violence Prevention and Community Safety was given [several charges](#) to study.

## **Cities That Receive Bingo Prize Fees: Action Required to Continue Receiving the Fees**

[House Bill 914](#) by Representative Senfronia Thompson (D-Houston) reconfigures how cities receive bingo prize fee revenue. It requires a city that currently receives bingo prize fee revenue to take formal action by November 1, 2019, in order to continue receiving those funds.

An eligible city that approves the continuation of the bingo prize fee must notify the Texas Lottery commission of its decision by November 1, 2019. Further, the city must notify each licensed authorized organization within the city limits of the continued imposition of the fee.

The Texas Lottery Commission is required to notify every eligible city of the requirements for continued receipt of the prize fee by not later than October 1, 2019.

Where does the fee come from? Cities were once permitted to levy a gross receipts tax on charitable bingo operations within the city. That authority was long ago eliminated. But certain cities – those that had a bingo tax in place as of January 1, 1993 – were grandfathered and entitled to a 50 percent share of the five-percent prize fee that the licensed bingo organization must collect and remit to the state. (If both a city and county were entitled to a share of the prize fee, each received 25 percent of the fee.)

H.B. 914 creates a new fee structure and imposes a deadline on grandfathered cities that wish to continue receiving the fee. Under the bill, an authorized organization that holds a license to conduct bingo is required to collect from a person who wins a *cash* bingo prize of more than \$5 a five-percent fee on the amount of the prize. (Under the old law, the bingo prize fee applied to any bingo prize of more than \$5 – cash, merchandise, or otherwise.)

The new fee structure requires a licensed authorized organization to remit 50 percent of the fee revenue to the Texas Lottery Commission, and the other 50 percent to the city and/or county in which the bingo game is conducted. A city is entitled to receive bingo fee revenue if: (1) the city was entitled to receive a portion of a bingo prize fee as of January 1, 2019; (2) the governing body of the city by majority vote approves the new prize fee not later than November 1, 2019; (3) communicates that vote to the lottery commission by November 1; and (4) notifies each bingo organization in the city of the decision.

## **Post Session Update: Are You a Temporary Custodian of City Records?**

Misinformation about Senate Bill 944 by Senator Kirk Watson (D – Austin) has been running rampant across the state. What does the bill actually do? It adds additional procedures and

exceptions to the Public Information Act (PIA). Of primary importance, the bill defines a “temporary custodian” as “a current or former officer or employee of a governmental body who, in the transaction of official business, creates, or receives public information that the officer or employee has not provided to the officer for public information of the governmental body or the officer’s agent.”

In plain English, the bill relates to the PIA and how it applies to information held by a city official in a private electronic account or on a private device. That such information is subject to the PIA has been settled law for years. The key change made by the bill is that it provides civil and criminal mechanisms for a requestor to force a city official to turn over that type of information.

If you are using a personal device or account to conduct city business, you will want to read the League’s [detailed Q&A](#) on the subject. City officials should be very wary of vendors seeking to sell them archiving software. While some cities may decide that type of service is needed, many can comply with the law without the additional expense. The Q&A should dispel that and other common misunderstandings.

### **Small Cell Lawsuit Amended: Adds Video/Phone Franchise Bill**

In 2018, the League reported on the “small cell” lawsuit brought by the City of McAllen and a coalition of around 40 cities. That lawsuit was recently amended to add a claim based on S.B. 1152, the “franchise fee elimination” bill passed earlier this year.

The original lawsuit challenges the unconstitutionally low right-of-way rental fees in S.B. 1004. That bill, passed during the 2017 regular session, requires a city to allow access for cellular antennae and related equipment (“small cell nodes”) in city rights-of-way, and it also entitles cell companies and others to place equipment on city light poles, traffic poles, street signs, and other poles.

The bill gives cities limited authority over placement, and it caps a city’s right-of-way rental fee at around \$250 per small cell node. The artificially low price per node is a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. The bill does precisely what the Texas Constitution prohibits: It is an action by the legislature forcing cities to give away their valuable assets to a private company.

Passed in 2019, [S.B. 1152](#) by Kelly Hancock (R – North Richland Hills) authorizes a cable or phone company to stop paying the lesser of its state cable franchise or telephone access line fees, whichever is less for the company statewide. Because it also requires an unconstitutional gift of use of cities’ rights of way, the pleadings in the small cell lawsuit were amended to include that bill.

These bills, if left unchecked, could lead the way to the complete elimination of all franchise fees in future sessions. That is why the lawsuit to prove that they are unconstitutional is so important to Texas cities.

Interested city officials who want to discuss joining the lawsuit against both S.B. 1004 (2017) and S.B. 1152 (2019) can get further details and join the coalition by [emailing Kevin Pagan](#), city attorney for McAllen, or calling him at 956-681-1090.

## **Post Session Update:** **Personal Liability of City Councilmembers**

The 2019 legislature passed several bills that impact the personal liability of a city official. The League's paper on city official liability has been updated to reflect the changes and is available [here](#).

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