



Legislative UPDATE

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Number 17

Attorney General Opinion: Public Comment at Open Meetings

On April 22, the attorney general issued [Opinion No. KP-300](#). The opinion answered two questions about 2019 legislation mandating that the public be allowed to address a governmental body on agenda items at an open meeting.* It concludes that: (1) “a governmental body may satisfy [the bill]’s requirements by holding a single public comment period at the beginning of an open meeting to address all items on the agenda;” and (2) “a governmental body may adopt a rule capping the total amount of time a member of the public has to address all items on the agenda if the rule is reasonable.”

House Bill 2840 by Representative Terry Canales (D – Edinburg) became effective on September 1, 2019. The bill, codified at [Texas Government Code Section 551.007](#), amends the Texas Open Meetings Act to address public input at open meetings. Before the passage of the bill, the public had a legal right only to observe, rather than provide input at, an open meeting of a governmental body. House Bill 2840 gives the public the right to provide input on an item on the agenda at an open meeting of the certain municipal governmental bodies. The attorney general’s opinion clarifies that, while they must allow public comment on agenda items, cities retain control of their meetings.

TML coordinated with numerous entities (The Texas City Attorneys Association, Texas Conference of Urban Counties, Texas Association of Counties, Texas Association of School Boards Legal Assistance Fund, Texas Water Conservation Association, and Texas Alliance of Groundwater Districts) to file a brief to the attorney general advocating that position. In fact, Representative Canales signed on to the brief as well.

***Please note: Section 551.007, the subject of the opinion, is currently [suspended by the governor](#) in response to the COVID-19 emergency. It will remain so as long as the state is under a disaster declaration related to the virus.**

The League has prepared an [updated Q&A](#) explaining the issue. Again, it won't be needed until the governor's COVID-19 disaster declaration is lifted or expires.

Coronavirus (COVID-19) Updates

The Texas Municipal League is open for business. The building is closed to all but essential personnel and most staff is working remotely, but the League remains open for business and is fully ready to serve. Cities are encouraged to call or email for legal assistance, help with ordinances, or for general advice or assistance. Let us know how we can assist you and your city.

Call TML staff at 512-231-7400, or email Scott Houston for legal assistance at SHouston@tml.org; Rachael Pitts for membership support at RPitts@tml.org; and the training team for questions about conferences and workshops at training@tml.org.

The League has prepared a coronavirus clearinghouse [web page](#) to keep cities updated. In addition, everyone who receives the *Legislative Update* should receive a daily email update each afternoon with information on new developments. The daily email updates will be our primary means of communication during the pandemic. Those emails are being archived [chronologically](#) as well as by [subject matter](#).

EPA Publishes Final Navigable Waters Protection Rule

The Environmental Protection Agency [published](#) the final [Navigable Waters Protection Rule](#) to define “Waters of the United States” in the *Federal Register* on April 21, 2020.

Under the final rule, federal regulations cover four categories of waters:

1. The territorial seas and traditional navigable waters;
2. Perennial and intermittent tributaries to those waters;
3. Certain lakes, ponds, and impoundments; and
4. Wetlands adjacent to jurisdictional waters.

The final rule also defines “adjacent wetlands” as wetlands that are meaningfully connected to other jurisdictional waters, for example, by directly abutting or having regular surface water communication with jurisdictional waters.

The final rule includes 12 categories of exclusions that are not classified as “waters of the United States.” These include, among others, features that only contain water in direct response to

rainfall (e.g., ephemeral features), groundwater, many types of ditches, prior converted cropland, and waste treatment systems.

The EPA previously [published](#) the proposed rule on February 14, 2019. The public comment period was open for 60 days and closed on April 15, 2019. Comments can be found [here](#).

More information is available on the [EPA's website](#).

Working from Home? **Knock out Your Mandated Cybersecurity Training** **Update: DIR Online Compliance Form Now Available**

As promised, the Texas Municipal League Intergovernmental Risk Pool (TML IRP) has released a [free cybersecurity training program](#), including an online video. TML IRP did so in response to a new [state law](#) mandating that most city officials and employees complete cybersecurity training by June 14, 2020, and annually thereafter.

The Texas Department of Information Resources (DIR) has also certified other programs, with more information available on the agency's cybersecurity awareness training certification [web page](#).

DIR has launched an online tool called Texas by Texas (TxT) to help local governments track compliance. By using TxT, city employees can self-report their training compliance, and DIR will later send a detailed report from the TxT application to each city verifying their compliance. Cities that wish to use TxT for employee self-reporting must fill out the [TxT Self Reporting Form](#).

If the city chooses not to use TxT, DIR has created an [acknowledgement form](#) to document compliance. Cities are not required to use either application and can track their compliance in any method they chose. Cities will not submit training records or employee certificates of completion to DIR. Cities also do not have to report their audits to DIR. Cities should retain documentation with their training and auditing records.

City officials and employees who have completed the training requirement can also individually certify their training compliance [here](#). The compliance form can be submitted by whomever the local government authorizes. The authorized individual submitting the form will need access to their email account as they will be required to enter a confirmation code to finalize submission. The form is due by June 15, 2020.

City officials with questions should contact DIR at TxTrainingCert@dir.texas.gov.

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