



# Legislative UPDATE

May 28, 2021  
Number 20

## **87<sup>th</sup> Legislature Nears Finish Line: Final Update**

With the regular session of the 87<sup>th</sup> Texas Legislature set to draw to a close on May 31, the hard work of city officials across the state to promote good policies that benefit city residents is evident. No session produces 100 percent positive results, but city officials should be proud of the level of engagement they maintained with elected state leaders over the past 136 days, and encouraged by the results.

The focus of League staff will soon shift to summarizing the city-related legislation that has passed. Additional detail about that legislation will be included in future *Legislative Update* articles, including the “wrap-up” edition containing summaries of every city-related bill that passed.

There are a few updates on some major city-related bills in the waning days of session:

- **Community Advocacy:** [S.B. 10](#) (Bettencourt) passed the House State Affairs Committee, in a modified form from the version that passed the Senate, and was set on the calendar for consideration by the full House this week. The House committee substitute for S.B. 10 applied to most political subdivisions and required a vote of the governing body to authorize a contract with a person required to register as a lobbyist. The bill required a political subdivision to post a copy of the lobby contract on its website, including other information like the amount spent on contract lobbyists and membership fees or dues to nonprofit state associations or organizations. The bill also prohibited a city from reimbursing a lobbyist for expenditures on food, drink, and

entertainment and prohibited lobbyists who contract with political subdivisions from advocating on property tax rates.

Many in the Texas House viewed the House committee substitute as a more reasonable measure than earlier iterations of S.B. 10. However, when it became clear that a consensus in the House could not be reached on the committee substitute to S.B. 10, the House sponsor postponed the bill until September 18, 2021 – a procedural move that means the bill will not pass this session. .

- **Debt Restrictions:** [H.B. 1869](#) (Burrows) has passed the House and Senate. The bill now goes back to the House, where Representative Burrows can choose to concur with the Senate amendments or else request the appointment of a conference committee to iron out the differences between the two versions.

As filed, this bill would have modified the definition of “debt” for purposes of the debt service property tax rate calculation to only include debt approved at an election. The House improved the bill by giving cities the ability to debt finance certain infrastructure and equipment. The version of H.B. 1869 that passed the Senate is very similar to the version that passed the House, with the main difference that the Senate version omits an alternative definition of debt for taxing units in certain counties. Both versions largely leave intact the ability of cities to issue debt obligations like certificates of obligation and tax notes for capital projects and equipment for most projects.

- **Law Enforcement Funding:** [H.B. 1900](#) (Goldman) has passed the House and Senate. H.B. 1900 would impose numerous penalties on cities with populations of 250,000 and above that adopt budgets that, when compared to the city’s budget in the preceding fiscal year, reduces the appropriation to the city’s police department. Penalties include a property tax limitation, sales tax withholding, annexation restrictions, utility rate restrictions, and a requirement to pay for and hold disannexation elections in every area annexed by the city over the preceding 30 years.

As it passed the Senate, H.B. 1900 was amended to provide that sales and use tax revenue received by a city for the purpose of financing a crime control and prevention district does not count towards the amount appropriated to a police department for purposes of making a “defunding” determination. This exemption is in addition to other exemptions already in the bill relating to the receipt of grant funding, and exemptions for capital expenditures related to law enforcement, disaster spending, or any other reason approved by the governor’s Criminal Justice Division. The bill was also amended to add narrow limitations to the annexation and utility rate restriction penalties.

H.B. 1900 now returns to the House, where Representative Goldman can concur with Senate amendments or request the appointment of a conference committee on the bill.

- **ETJ Release:** Late last week, [H.B. 3476](#) (Schofield), a bill originally dealing with design standards for retail water and sewer utilities in certain large cities’ extraterritorial jurisdiction, was amended on the Senate floor to authorize landowners in all but two

cities to petition a city for release from the city's ETJ if the city does not provide water or sewer service to the landowner. Essentially, the amendment would mandate cities under 1.3 million in population to provide utilities in the ETJ or be prepared to release property from the ETJ.

At the time of this writing, H.B. 3746 is considered to be an item eligible for consideration in the House, where the Senate amendment may be subject to a point of order for not being germane to the bill.

- **Property Tax Rate Calculation During Disaster:** [S.B. 1438](#) (Bettencourt) passed both the House and the Senate, though in different forms. The bill, as filed and as it passed the Senate, would modify the tax rate calculation provision for taxing units during a disaster to restrict a city from opting into an 8 percent voter-approval rate calculation during a pandemic or other disaster in which property is not physically damaged. As we reported in our [May 7<sup>th</sup> Legislative Update](#), two floor amendments were added to the bill in the House that are potentially damaging to city recovery efforts following a disaster. S.B. 1438 is currently being considered in a conference committee that will reconcile the differences between the two chambers.

## **Bills on the Move**

### **Significant Floor Action**

[H.B. 3 \(Burrows/Birdwell\)](#), relating to the Texas Pandemic Response Act. Passed the Senate.

[H.B. 492 \(Wu/West\)](#), relating to no-knock entries. Passed the Senate.

[H.B. 738 \(Paul/Nichols\)](#), relating to building codes. Sent to Governor.

[H.B. 929 \(Sherman/West\)](#), relating to body worn cameras. Passed the Senate.

[H.B. 1869 \(Burrows/Bettencourt\)](#), relating to debt financing. Passed the Senate.

[H.B. 1900 \(Goldman/Huffman\)](#), relating to law enforcement funding. Passed the Senate.

[H.B. 1927 \(Schaefer/Schwertner\)](#), relating to permitless carry. Sent to Governor.

[H.B. 1929 \(Wilson/Buckingham\)](#), relating to ETJ development agreements. Passed the Senate.

[H.B. 1938 \(Jetton/Kolkhorst\)](#), relating to body worn camera grants. Passed the Senate.

[H.B. 2073 \(Burrows/Springer\)](#), relating to quarantine leave for fire fighters, peace officers, and emergency technicians. Passed the Senate.

[H.B. 2723 \(Meyer/Bettencourt\)](#), relating to tax rate notice. Sent to the Governor.

[S.B. 3 \(Schwertner/Paddie\)](#), relating to utility preparedness. Passed the House.

[S.B. 6 \(Hancock/Leach\)](#), relating to pandemic liability. Passed the House.

[S.B. 14 \(Creighton/P. King\)](#), relating to employment policies. Passed the House.

[S.B. 24 \(Huffman/Bonnen\)](#), relating to law enforcement hiring practices. Passed the House.

[S.B. 68 \(Miles/Reynolds\)](#), relating to duty to intervene. Passed the House.

[S.B. 69 \(Miles/White\)](#), relating to prohibition to chokeholds. Passed the House.

[S.B. 877 \(Hancock/Morrison\)](#), relating to building inspections. Passed the House.

[S.B. 2212 \(West/Thompson\)](#), relating to the duty to render aid. Passed the House.

## **COVID-19 Update (No. 188)**

All pandemic-related updates, including information about the American Rescue Plan's city-related provisions, will be in the [Legislative Update Newsletter](#) from now on.

### **Treasury Releases Information about Small City Recovery Funds**

The U.S. Treasury Department has released a [web page](#) with American Rescue Plan Act information expressly for small cities, technically referred to as non-entitlement units of local government (NEUs), which are those typically serving populations of less than 50,000.

While the city officials in smaller cities should review all the information on the page, it is technically more of a guide for states, through which these funds will be distributed. [Treasury's guidance on NEUs](#) provides a step-by-step guide for states to allocate and distribute funds to their NEUs.

State governments must affirmatively request the funds from Treasury and are then responsible for distributing them to their NEUs. Award amounts are based on the population of the NEU, and the Act prohibits the state from placing restrictions on spending. (Of course, Treasury guidance on the last round of funding did so as well, but TDEM limited the use of that money anyway.) Treasury will send the funds to the state in two tranches, with the second tranche payment to be made no earlier than 12 months after the date after the first. Once received, the state has 30 days to distribute the funds.

One important Treasury limitation is that the total amount to be distributed to an NEU may not exceed the amount equal to 75 percent of its most recent budget as of January 27, 2020.

Neither the governor's office nor TDEM has provided any information as to the timeline or process they will use to request and distribute funds. The League will provide updates as they are available.

### **Coronavirus State and Local Fiscal Recovery Funds**

Nothing new has been reported from Treasury or the Texas Division of Emergency Management regarding stimulus funds. You can look to archived editions of the [Legislative Update](#) for what has been reported so far.

**Reminder:** TML Coronavirus Updates are archived by subject [here](#).

## **Federal Appeals Court:** **Your Cable Franchise Fee May Be Reduced**

On May 26, the United States Court of Appeals for the Sixth Circuit issued an [opinion](#) in *City of Eugene, OR v. Federal Communications Commission*. The opinion comes on the heels of a nationwide city coalition's legal challenge to proposed 2018 Federal Communications Commission rules. The rules would allow cable companies to deduct the fair market value of a wide range of franchise obligations, including public, educational, and governmental (PEG) channel capacity and other PEG-related franchise requirements, from their existing franchise fee payments.

The Court of Appeals upheld some parts of the FCC rules and overturned others. Of most relevance to Texas cities, the court upheld the FCC's decision to redefine non-cash franchise obligations, like PEG channels and in-kind services, as franchise fees. That means those obligations can be deducted from the five-percent franchise fee. The opinion's silver lining is that cable providers don't get to unilaterally decide the value of the obligations. Rather, the value must be objectively-based on the provider's actual costs.

What is the bottom line? If the legal challenge ends here or is unsuccessful, cities that operate PEG channels will see reductions in franchise fee payments from cable operators.

League staff will continue to participate in these proceedings and report on future activity.

## **Texas Commission on Environmental Quality Survey for Water Systems**

A Texas Commission on Environmental Quality (TCEQ) team is currently working on recommendations to: (1) develop new or improve existing state rules and regulations; and (2) determine training and assistance needs to help Texas public water systems be better prepared for future severe weather-related events.

To do this, TCEQ developed a [survey](#) to gather data to assist the agency in drafting the recommendations to enhance critical infrastructure resilience for Texas' public water systems. TCEQ would like water systems, including those Winter Storm Uri did not impact, to complete the survey. The survey will assist TCEQ to learn about the challenges water systems faced that week and best practices that helped to mitigate the impact of the storm. The website address for the survey is [www.tceq.texas.gov/goto/survey-uri](http://www.tceq.texas.gov/goto/survey-uri).

If your city has questions about the survey, you can email [Winterstorm\\_PWS@tceq.texas.gov](mailto:Winterstorm_PWS@tceq.texas.gov).

Additionally, TCEQ will have stakeholder meetings this summer on the issue. If you would like to participate in TCEQ's stakeholder meetings, please visit the following TCEQ webpage at [www.tceq.texas.gov/goto/after-uri](http://www.tceq.texas.gov/goto/after-uri) to check for dates and registration information.

## **Don't Forget: Mandated Cybersecurity Training and Reporting Due in June**

Texas Government Code Section 2054.5191 requires city employees and officials who have access to a local government computer system or database to complete a Texas Department of Information Resources (DIR) certified training program. Training must be completed by **June 14, 2021** and cities must certify their training compliance by **June 15, 2021**, using the [Cybersecurity Training Certification for State and Local Governments](#) form.

The Texas Municipal League Intergovernmental Risk Pool (TML IRP) has three DIR-certified options available free of charge. TML IRP's free cybersecurity training program can be accessed on TML IRP's cybersecurity training [web page](#), through its [YouTube Channel](#), or the [online learning center](#).

Information about other DIR-certified training programs is available on the agency's [web page](#). Once your employees and officials complete the training, your city may choose any method to track the compliance of individual employees and officials. DIR has an optional tool, Texas by Texas (TxT), for cities to track the training compliance of their employees and officials. For cities using TxT, employees will self-report their training completion, and DIR will send a report from the TxT application to each city to verify training compliance. Cities that wish to use TxT should indicate their interest by submitting the [Texas by Texas Self-Reporting form](#).

**Note:** [H.B. 1118](#), as passed by the 87th Texas Legislature and signed by the governor, will amend cybersecurity training requirements for city employees and for elected and appointed officials. The bill has an immediate effective date.

This bill: (1) requires training for those employees and officials who have access to a local government computer system or database and use a computer to perform at *least 25 percent* of the employee's or official's required duties; (2) gives cities authority to deny access to a city's computer system or database to those individuals who have not completed the required training; (3) requires cities to report the percentage of employee and official completion; and (4) penalizes

cities that do not comply with the cybersecurity training requirements of Government Code Section 2054.5191 by impacting a city's ability to apply for or keep certain grants administered by the state (note: this penalty applies to grant applications submitted on or after September 1, 2021).

## **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 attend legislative committee meetings – whether virtually or by traveling 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. If we missed your testimony, let us know by an email to [ford@tml.org](mailto:ford@tml.org), and we will recognize you in next week's edition.

The following officials testified in committee hearings held May 17 through May 22:

- Thomas Gwosdz, City Attorney, City of Victoria
- Dayna Williams-Capone, Library Director, City of Victoria
- Sally Bakko, Director of Policy and Governmental Affairs, City of Galveston
- Jeff Coyle, Assistant City Manager, City of San Antonio
- Joe Freeland, San Antonio Water System
- George Purefoy, City Manager, City of Frisco
- Thomas Reeves, Director of Public Affairs, City of Baytown
- Brian Redburn, Assistant Chief, Irving Police Department
- Hope Wells, Senior Corporate Counsel, San Antonio Water System
- Ray Craig, Arena/Event Center Manager, City of Llano

*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.*