



Legislative UPDATE

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TCEQ Proposes Increases to Two Water-Related Fees

The Texas Commission on Environmental Quality (TCEQ) has proposed fee increases to two fees that cities remit to TCEQ: the Consolidated Water Quality Fee and Public Health Service Fee. TCEQ uses a Water Resource Management Account to provide funding for all water program-related activities of the TCEQ. General revenue appropriations by the legislature have declined over the past few years while overall financial obligations of the account have increased. The Texas Legislature failed to provide additional general revenue funding to support the agency's water programs during the 84th Legislative Session, but instead provided the agency with the authority to raise rates by rule:

House Bill 1, Article IX, Section 18.01 (General Appropriations Act), 84th Texas Legislature (2015), Regular Session, Section 18.01 states:

“In the event that available funds out of the Water Resources Management Account Bo. 153 are insufficient to meet appropriates in the Act and related benefits costs, the TCEQ shall increase rates for fees deposited to the Water Resources Management Account No. 153 for which it has rulemaking authority, including the Water Quality Fee, established in Water Code, Chapter 26 and the Public Health Service Fee established in Health and Safety Code, Section 341.041, at a level to ensure that sufficient balances and revenues are available.”

Thus, TCEQ is increasing the fees cities pay to make up for the lack of funding appropriated by the state. TCEQ has already approved an increase in the Consolidated Water Quality Fee, a fee collected from entities that have an individual wastewater permit. The increase will be 5.1 percent to all individual wastewater-permitted entities.

The TCEQ has also proposed raising the Public Health Service Fee, a fee collected from operators of public drinking water systems. The fee assessed is based on the total number of connections served by the system. Currently, a system with 25 or fewer connections pays \$100, a system with 26 to 160 connections pays \$175, and a system with 161 or more connections pays \$2.15 per connection.

The proposed fee structure will mean a water system with fewer than 25 connections will pay \$125, a water system with 25 to 160 connections will pay \$200, and a system with 161 or more connections will pay \$2.45 per connection.

As reported in [previous editions](#) of the *Legislative Update*, TCEQ fees are just one example of the concept of “reverse intergovernmental aid,” where cities transfer revenue to the state to fund various state programs. Prior to the decision to increase these two fees, the annual income generated just from cities paying both fees was in excess of \$40 million per year in the aggregate. In fact, cities (through the payment of all relevant TCEQ fees) generate more revenue for TCEQ than does the state’s general fund.

The comment period on the proposed rule is from December 4, 2015, through January 11, 2016. Stakeholders interested in providing input on the increase to the Public Health Service Fee can comment on the rule in several ways:

Mail written comments to:

Sherry Davis, MC 205
Office of Legal Services
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Fax written comments to 512-239-2141, attn.: Sherry Davis.

Submit online comments using TCEQ’s [e-comments page](#).

Attend the public hearing in Austin on January 5, 2016, at 10:00am at the TCEQ, 12100 Park 35 Circle, Building E, Room 201S.

If you have any questions, please contact Heather Mahurin, TML Legal Counsel, at heather@tml.org.

League Files Comments on Texas Ethics Commission Vendor Disclosure Rules

As reported in previous editions of the *Legislative Update*, the Texas Ethics Commission is seeking comments on [proposed rules](#) to implement new requirements under [H.B. 1295](#). That bill imposes new vendor disclosure requirements on city contracts.

Since the passage of H.B. 1295, the League has been concerned about its effect on city contracts. All of the League’s correspondence related to the bill, including the comments on the proposed rules, is available [here](#).

Concerned member cities are urged to file comments with the commission by **November 26, 2015**, by email to public_comment@ethics.state.tx.us, or mail to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas, 78711-2070.

Please contact Christy Drake-Adams, TML Legal Counsel, at christy@tml.org with questions.

Discussing City Business on Private Devices and Accounts

Local government officials and employees increasingly use technological means, such as electronic mail and text messaging, to carry out their duties. One survey by the Pew Research Center reports that 88% of local elected officials use e-mail in their public activities. And a large percentage of those relied on a mix of both government and personal accounts. Why can this casual approach to communicating about city business be a problem?

Communications about city business are public records.

As [previously reported](#), officials have contested the idea that communications on their private devices and accounts are subject to the Texas Public Information Act (PIA). With the 2013 adoption of [S.B. 1368](#), such arguments have been put to rest. The PIA now expressly makes electronic communications about city business public, regardless of whether they are on personal or governmental accounts or devices.

Preserving and obtaining communications on private devices is difficult.

City records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are city property and should be preserved and managed in accordance with state law. So what does a city do if an official refuses to provide or is unable to find a communication made on a private device or account? One court grappled with this issue in [City of El Paso v. Abbott](#). That court essentially concluded that beyond having reasonable policies in place that require officials to turn over such communications to the city, there's not much a city must do.

Not surprisingly, this did not sit well with legislators, who responded in 2015 by filing legislation such as H.B. 1764 and S.B. 1087. Those bills proposed various things, including authorizing the attorney general to sue city officials and employees to obtain public information created or maintained on private devices. Although no bills passed in 2015, we are sure to see similar legislation filed in 2017.

You can view a recent post by the Texas State Library and Archives Commission discussing some of these issues here: <https://www.tsl.texas.gov/slrmblog/2015/11/using-personal-email-for-government-business-is-a-bad-idea-heres-why/>.

How Much are City Property Taxes Increasing, Anyway?

For years, proponents of revenue caps have claimed that city property taxes are increasing so dramatically that homeowners are being forced out of their homes. In an *Austin American-Statesman* article published last week, Lt. Governor Patrick echoed this concern that Texans are losing their homes due to exorbitant property taxes: “This is a train wreck coming. If you keep increasing people’s taxes at 7, 8, 9, 10 percent a year, you are going to force them out of their homes.”

Is it true that city property taxes are increasing drastically enough to force people to move? First let’s look at city tax levies. The most recent [data](#) provided in the comptroller’s property tax reports is through 2013. For the five year period preceding 2013, the average increase in total city property tax levy was 2.6 percent per year. These figures suggest that, on average, city property taxes haven’t increased at nearly the rate that Lt. Governor Patrick suggests. Nevertheless, the amount that city property taxes are increasing each year says nothing about an individual homeowner’s ability to pay those taxes. For that, let’s take a look at personal income growth in Texas.

The U.S Bureau of Economic Analysis provides a variety of economic statistics, including the amount of personal income by state. Looking at the most recent five years of [data](#), Texans’ personal income has increased on average by 6.27 percent per year since 2010. Comparing this figure against the amount that city property taxes have increased over a similar timeframe, it is apparent that, on average, city property taxes are not outpacing personal income growth in Texas. One could generally infer that, on the whole, city property taxes are not increasing at a rate that would force a homeowner out of his or her house.

(As a side note: It should be pointed out that in the majority of cities, the adopted city tax rates themselves are not increasing. A recent TML [survey](#) shows that in 2015, 73 percent of cities either lowered their tax rate from 2014 or adopted the same rate. The relatively small yearly increases in total city property tax levy reflected in the comptroller data is attributable primarily to increases in appraisals.)

So some might ask, why are total city property tax levies increasing at all? Shouldn’t they be trending in the other direction? That question can be answered by taking a look at population growth in the state of Texas. Since 2010, the U.S. Census [data](#) shows that the population in Texas has increased by 7.2 percent from 25.1 million people in 2010 to 27 million people in 2014. Not only do the vast majority of Texans live in cities, but Texas cities are among the fastest growing in the entire country (many Texas cities have seen their populations grow by more than 10 percent since 2010, some experiencing upwards of 30 percent growth.)

What is most concerning about the recent push to limit city property tax revenue through revenue caps is the timing of it. The state demographer recently [estimated](#) that the state’s population will double by 2050. In other words, more than 25 million *more* people will be living in Texas in 35 years, and cities will experience the lion’s share of that population growth.

Given this reality, now is the exact wrong time for the state to further limit cities' flexibility when it comes to providing essential transportation infrastructure and public safety protections (among other things) to a rapidly growing population. Especially when the data shows that city leaders are already responsibly balancing the property tax burden with the needs of their communities.

Religious Displays at City Hall

Although the topic of decorating public spaces can arise any time of year, the issue always seems to come to the forefront during the winter holiday season. The only way for a city to ensure its holiday display does not face a constitutional challenge is to make the display strictly secular in nature. Of course, many cities will decide to include certain religious imagery in decorating their public spaces. In these cases, it is important for city officials and employees to have a general understanding of this area of the law and to work with their city attorney. For that reason, the League has prepared a more detailed memo on this topic, available [here](#).

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