



Legislative UPDATE

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City of McAllen Coalition Files Small Cell Lawsuit

The City of McAllen is leading a coalition of around twenty cities that has [filed a lawsuit](#) to challenge the unconstitutionally low right-of-way rental fees in S.B. 1004. That bill, passed during the 2017 regular session and effective September 1, 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 give cities limited authority over placement, and it caps a city’s right-of-way rental fee at around \$250 per small cell node. The price per node in the current bill is a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. The lawsuit also claims that S.B. 1004 unconstitutionally delegates a city’s legislative authority to control its rights-of-way to private businesses. The City of Austin has also filed a lawsuit challenging S.B. 1004.

Interested city officials can still join the coalition by contacting Kevin Pagan, city attorney for McAllen, at kpagan@mcallen.net or 956-681-1090.

“Sanctuary City” Law Temporarily Blocked

Last week, a federal district judge issued a [preliminary injunction](#) that temporarily prevents portions of [S.B. 4](#) (the so-called “sanctuary city” bill) from going into effect.

Judge Orlando Garcia’s ruling blocks the provision of S.B. 4 that requires local officials to honor all federal immigration detainers. Additionally, the ruling prevents the application of legal penalties and removal from office for officials who adopt or endorse policies that materially limit the enforcement of immigration laws.

The preliminary injunction was issued two days before the legislation was to go into effect, and it essentially preserves the position of both parties to the suit until a formal trial on the merits can be held.

The State of Texas has indicated that it will appeal the court’s ruling.

New Voter ID Law in Effect for November Elections

This week, a three-judge panel of the federal Fifth Circuit Court of Appeals [ordered](#) that the revised voter identification legislation passed during the 2017 legislative session, [S.B. 5](#), will go into effect as planned on January 1, 2018.

Last month, a federal district judge ruled that S.B. 5 failed to address the discriminatory features of the initial voter ID legislation that passed in 2011 and invalidated the new law. The Fifth Circuit’s panel decision essentially reverses that ruling.

What does this mean for upcoming city elections? For the November 2017 election, the agreed-upon [interim order](#) of the district court will remain in place. This agreement between the parties provides that voters without government-issued identification may still vote in an election if they sign a declaration stating that they have a reasonable impediment to the photo identification requirement and present proof of residence using a document such as a utility bill, bank statement, paycheck, etc.

S.B. 5, which contains some of the same provisions as the interim order, will presumably go into effect beginning January 1, 2018, and it will apply to subsequent elections.

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