



Legislative UPDATE

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Number 26

Local Sales Tax Bill Gives Cities Increased Financial Flexibility

On June 20, Governor Abbott signed [H.B. 157](#) (Larson/Eltife) into law. The bill authorizes a city to hold an election to *reallocate sales tax revenue*. By doing so, it allows a city to determine whether dedicated sales taxes should be increased or decreased, or whether a general revenue sales tax better serves its needs. (The bill does not allow an increase above the two percent local cap. It authorizes reallocation by election within a percentage that is below that cap.)

More specifically, the bill provides that: (1) a city may hold an election to impose a dedicated sales and use tax for sports and venue districts, crime control and prevention districts, economic development corporations, property tax relief, or street maintenance at any rate that is an increment of at least one-eighth of one percent and that would not result in a combined rate that exceeds the maximum local sales and use tax rate of two percent; and (2) a city may hold an election to impose its general sales and use tax at any rate that is an increment of at least one-eighth of one percent and that would not result in a combined rate that exceeded the maximum local sales and use tax rate of two percent.

The state's sales tax rate is 6.25 percent. Cities, counties, and some special purpose districts may impose sales taxes up to an additional two percent. The total sales tax rate can't exceed 8.25 percent in any area. House Bill 157 leaves all of those limits in place, but it authorizes a city to hold an election to *reallocate sales tax revenue within the two percent local sales tax cap*. In a nutshell, the bill allows a city to assess its funding priorities and reallocate the distribution of its general and dedicated sales taxes, so long as the total local tax rate does not exceed two percent.

When the legislature authorized cities to adopt a general revenue sales tax in 1967, it provided that the rate of the general revenue sales tax must be set at one percent—no higher and no lower. House Bill 157 changes that. When the bill becomes effective on September 1, cities will be able to call an election to increase or decrease their general sales tax rate in any increment of one-eighth of one percent.

House Bill 157 also gives cities the ability to adjust the rates of some of their dedicated sales taxes. In contrast to the general revenue sales tax, the revenue from which can be used for almost any purpose, cities also are authorized to hold elections to adopt sales taxes that may only be used for specific, dedicated purposes. Under current law, these dedicated sales taxes are capped at certain amounts. For instance, an economic development corporation sales tax may not exceed one-half of one percent. Similarly, the street maintenance sales tax may not exceed one-fourth of one percent. House Bill 157 essentially removes the current caps on the dedicated sales taxes for venue districts, crime control and prevention districts, economic development corporations, property tax relief, and street maintenance, and authorizes a city to hold an election to increase or decrease these dedicated sales taxes in any increment of one-eighth of one percent.

How might the bill benefit your city? Let's say a city currently has a general revenue sales tax of one percent, a Type B economic development corporation sales tax of one-half of one percent, a street maintenance sales tax of one-fourth of one percent, and a sales tax for property tax relief of one-fourth of one percent. That's a combined sales tax rate of 8.25 percent (6.25 percent for the state, and 2 percent for the city). When the bill becomes effective, the city could call a special election to reallocate all of those city sales taxes in a way that might make more financial sense. The city may wish to hold an election, for instance, to have the entire two percent go towards general revenue and repeal all other dedicated sales taxes. Alternatively, the city could have an election to have one percent go towards general revenue, and the remaining one percent going to property tax relief. Or the city could have a ballot proposition to repeal the street maintenance sales tax and have the one-fourth of one percent be dedicated towards the economic development corporation.

(Note that H.B. 157 gives cities the ability to hold an election to reallocate or adopt *city* sales taxes. Local sales taxes that have been adopted by other local governments that have overlapping jurisdiction with a city cannot be repealed or reallocated by city action.)

House Bill 157 passed both houses of the Texas Legislature with very little fanfare and minimal opposition. Despite the relative lack of attention paid to it throughout the session, it will likely be considered as one of the most beneficial city bills in recent years.

City officials considering a change in their city sales taxes are encouraged to consult with their city attorneys. Please contact Bill Longley, Legislative Counsel, with questions at 512-231-7400 or bill@tml.org.

U.S. Supreme Court Highlights: **What You Need to Know and How Your City Will be Affected**

The Texas Municipal League works closely with an organization known as the [State and Local Legal Center](#) (SLLC) to ensure that city interests are protected at the U.S. Supreme Court.

The SLLC files *amicus curiae* briefs in support of states and local governments at the Supreme Court and provides other assistance in connection with Supreme Court litigation. Since 1983, the SLLC has filed over 300 *amicus* briefs in the Supreme Court.

Lisa Soronen, the SLLC's executive director, has prepared excellent summaries of the recently-released Supreme Court opinions that affect cities. Those summaries are available [here](#) on the National League of Cities website, and include recent cases related to same-sex marriage, regulation of signs, the Affordable Care Act, the Fair Housing Act, government speech, religious accommodation, and asset forfeiture.

The League will provide additional analysis, such as the same-sex marriage Q&A elsewhere in this edition, in the coming weeks.

U.S Supreme Court's Same-Sex Marriage Opinion: **What it means for Cities**

In a 5-4 decision written by Justice Kennedy, the U.S. Supreme Court held on June 26, 2015, that same-sex couples have a constitutional right to marry. As a result of the opinion in [Obergefell v. Hodges](#), state laws and court decisions banning same-sex marriage are now invalid.

Justice Kennedy stated in the majority opinion that “[n]o union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family.” More specifically, the majority opinion offers four principles that demonstrate why the fundamental right to marry applies to same-sex couples. First, the right to choose who you marry is “inherent in the concept of individual autonomy.” Second, because the right to marry is “unlike any other in its importance[,]” it should not be denied to any two-person union. Third, marriage between same-sex couples safeguards children and families the same as it does for opposite-sex couples. Finally, marriage is a keystone of American social order from which no one should be excluded.

Whether a city official supports or opposes the conclusion in the opinion, it leads to a number of possible legal issues. League staff has prepared a [Q&A](#) to provide a basic framework within

which city officials, in consultation with their local legal counsel, can decide how to locally implement the opinion.

Please contact Laura Mueller, assistant general counsel, at 512-231-7400 or laura@tml.org with questions.

Cities and Firearms

During the 2015 Legislative Session, the Texas Legislature passed House Bill 910 and Senate Bill 11. House Bill 910 allows a license holder to “open carry” a handgun in a belt or shoulder holster beginning on January 1, 2016, and S.B. 11 allows a license holder, with exceptions, to carry a concealed handgun on a college campus beginning on August 1, 2016.

Those bills, combined with more frequent rallies and gatherings dedicated to the open carry of rifles, has led to confusion about the law in Texas. The League’s legal department has prepared a [paper](#), which includes a chart, explaining state law and municipal authority over the regulation of “firearms” (e.g., rifles, shotguns, and handguns) in Texas.

Texas Attorney General Sues EPA

This week, Texas attorney general Ken Paxton sued the federal Environmental Protection Agency (EPA). His lawsuit seeks to overturn the EPA’s recently-released “Waters of the U.S.” rule. The rule defines which bodies of water are subject to regulation under the federal Clean Water Act.

According to the rule, “waters of the United States” means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide (this definition is commonly referred to as “traditional navigable waters”).
2. All interstate waters, including interstate wetlands.
3. The territorial seas.
4. All impoundments of waters otherwise identified as waters of the United States.
5. All “tributaries” of waters identified in 1-3, above.
6. All waters “adjacent” to a water identified in 1-5 above, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
7. Prairie potholes, Carolina bays and Delmarva bays, Pocosins, western vernal pools, and Texas coastal prairie wetlands if they are determined, on a case-specific basis, to have a “significant nexus” to a water identified in 1-3 above.
8. All waters located within the 100-year floodplain of water identified in 1-3 above and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a

water identified in 1-5, above, in which they are determined on a case-specific basis to have a significant nexus to a water in 1-3, above.

Paxton, who is joined by the attorneys general of the States of Louisiana and Mississippi, contends that the new rule is a “blatant overstep of federal authority” and that the EPA’s actions are inconsistent with U.S. Supreme Court precedent. He also claims that the rule is contrary to the congressional intent of the Clean Water Act and infringes on the states’ ability to regulate their own natural resources.

The rule and the lawsuit, like many water-related issues, divide city officials based on their location, natural resources, and basis for their economy. As such, the League will be limited to monitoring and reporting on further developments.

Resolutions for the 2015 TML Annual Conference

The legislative efforts of TML are guided by its members. That guidance comes in the form of resolutions that are submitted by member cities, TML regions, TML affiliates, and TML committees. If your city has a legislative issue that it would like TML to consider, please submit it in accordance with the following instructions.

The TML Constitution states that resolutions for consideration at the Annual Conference must be submitted to the TML headquarters 45 calendar days prior to the first day of the Annual Conference. For 2015, this provision means that resolutions from any member city, TML region, or TML affiliate must arrive at the TML headquarters no later than 5:00 p.m. on **August 10, 2015**.

The TML Board of Directors has adopted several procedures governing the resolutions process. Please review the following items carefully and thoroughly.

1. No resolution may be considered by the TML Resolutions Committee unless it has prior approval of: (a) the governing body of a TML member city; (b) the governing body or membership of a TML affiliate, or (c) the membership of a TML region at a regional meeting.
2. TML member cities, regions, and affiliates that wish to submit a resolution **must** complete a resolution cover sheet. The cover sheet is available [here](#). Please feel free to make as many copies of this cover sheet as you desire. The cover sheet must be attached to the resolution throughout each step of the resolutions process.
3. It is recommended that any resolution state one of four categories to better direct League staff. Those categories are:
 - **Seek Introduction and Passage** means that the League will attempt to find a sponsor, will provide testimony, and will otherwise actively pursue passage. Bills in this category are known as “TML bills.”

- **Support** means the League will attempt to obtain passage of the initiative if it is introduced by a city or some other entity.
- **Oppose.**
- **Take No Position.**

Please see the [2015-2016 TML Legislative Policy Development Process](#) for more information.

4. Resolutions submitted will be thoroughly discussed at the TML Annual Conference. The Resolutions Committee is appointed by the TML President and is made up of city officials from TML member cities across the state.
5. The city, region, or affiliate that submits a resolution is encouraged to send a representative to the Resolutions Committee meeting to explain the resolution. The Resolutions Committee will meet at **2:00 p.m.** on **Tuesday, September 22, 2015**, at the **Henry B. Gonzalez Center in San Antonio.**

If the procedures described above are not followed for any given resolution, that resolution is likely to be referred to some other TML committee for further study. In that case, the resolution would not be adopted during the 2015 conference.

Under the TML Constitution, resolutions received after the deadline of August 10, 2015, must not only have the attached cover sheet, but also must “state the reason precluding timely submission.” These late resolutions may be considered by the TML Resolutions Committee at the Annual Conference only if two-thirds of the Committee members present and voting agree to suspend the submission rule and consider the resolution.

Resolutions may be submitted by mail, fax, or email to Scott Houston, Deputy Executive Director and General Counsel, at:

1821 Rutherford Lane, Suite 400
Austin, Texas 78754
Fax: 512-231-7490
Email: shouston@tml.org

If you have any questions or would like any assistance, please call 512-231-7400 at any time.

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