Texas Municipal League Legislative UPDATE

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2015 Legislation Impacts City Property Tax Rate Setting Process for 2016 and Beyond

In 2015, the legislature passed H.B. 1953 and S.B. 1760. The bills, which became effective on January 1, 2016, modify certain aspects of the property tax adoption process. Of particular interest to cities, the legislation makes the following changes:

- **H.B. 1953**: allows a city or county to provide the required property tax rate notice not later than the later of September 1 or the 30th day after the first date the taxing unit receives each applicable certified appraisal roll. This beneficial change gives a city more flexibility if it receives the certified appraisal roll later than normal.

- **S.B. 1760**: this bill, among other things: (1) requires at least 60 percent of the members of the governing body of a city to vote in favor of an ordinance setting a property tax rate that exceeds the effective tax rate; (2) requires a city that proposes a tax rate that exceeds the lower of the effective tax rate or the rollback rate to include a sentence describing the proposed use of the additional revenue attributable to the tax rate increase; and (3) allows for the same tax rate notice flexibility as provided by H.B. 1953 (and described above).

The League recently posted the *2016 Budget and Taxation Deadlines* memo on the TML website. The changes made by H.B. 1953 and S.B. 1760 are highlighted in the memo.

Austin Court of Appeals: City Officials' Personal Email Address May Be Public

Last week, the Austin Court of Appeals concluded in *Austin Bulldog v. Leffingwell* that public officials who use private email accounts to conduct official city business cannot conceal their personal email addresses when releasing public information.

The *Austin Bulldog* filed Public Information Act (PIA) requests with the City of Austin for information contained in emails between the mayor, council members, and the city manager. The requests encompassed all emails involving city business, including those transmitted using a personal device and/or email address.

The city produced some of the requested information and sought an attorney general letter ruling on other information. After the attorney general ruled that the documents should be produced, the city redacted the personal email addresses of the city officials and produced the documents. The city cited the attorney general's letter ruling, which instructed that the email addresses be withheld based on Section 552.137 of the Government Code. That section excepts from disclosure the "email address of a member of the public...unless the member of the public consents to its release."

The *Austin Bulldog* filed suit against the City of Austin arguing that the personal email addresses of the City Officials were not protected from disclosure by the exception. The district court disagreed, and the *Austin Bulldog* appealed.

The Austin Court of Appeals discussed the purposes, goals, and structure of the PIA, noting that it "generally obligates the government to make public information reasonably available to whomever properly requests it." The court noted that "member of the public" is not defined by the PIA, so the court looked at the common meaning of the phrase. The court provided several examples in federal case law and state statute showing that when "member of the public" is used in relation to another group, it means anyone who is *not* a part of the other group.

In the email-address exception, "member of the public" is used with "governmental body." Therefore, the court concluded that "member of the public" in Government Code Section 552.137 does not include a person who is part of the governmental body. (The opinion does not affect the prohibition against releasing a true member of the public's email address.) The court reversed the lower court's decision and rendered judgment in favor of the *Austin Bulldog*.

H.B. 1295 Contracts Disclosure: Ethics Commission Continues to Modify Implementing Rules

In 2015, the Texas Legislature adopted House Bill 1295, which added Section 2252.908 to the Government Code. The new law states that a city, among others, may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties. The law applies only to a city contract that either: (1) requires an action or vote by the city council before the contract may be signed; or (2) has a value of at least $1 million.

After lauding its policy goals, Texas Ethics Commission officials recently described H.B. 1295 as a clumsy, inarticulate, awkward statute in its "adolescent phase." One commissioner explained that "it is a very simple statute in what is a very vast and complicated governmental contracting regime." As a result of H.B. 1295's inadequacies, the commission continues to tinker with the bill's implementing rules, initially adopted in November 2015.

At its April 8 meeting, the commission adopted an amendment to 1 TAC § 46.3(d), clarifying that the term "interested party" is either a person with a controlling interest or a person who is an intermediary. This change will help business entities accurately report information to cities on Form 1295.

In addition, the commission proposed further amendments to the rules. Of particular interest to cities are: (1) the proposed definitions for the terms "contract" and "value" of a contract; (2) the clarification that Form 1295 applies not only to goods and services, but also to real property transactions; and (3) amendments regarding the timing of notification to the commission that a city has received a completed Form 1295. The League will report details about how cities may submit comments on these proposed changes when they become available.

Because the Texas Ethics Commission is limited in its ability to address the problems with H.B. 1295, the League continues to work with the author of the bill and city vendors on proposed statutory changes for next session.

Local Drone Regulation in Jeopardy

The U.S. Senate is moving forward with a long-term reauthorization of the Federal Aviation Administration (S. 2658). The bill includes a dangerous provision (Section 2142) that would allow the FAA to override state and municipal authority over when and where commercial drones operate.

The National League of Cities (NLC) is working hard to build momentum for a bipartisan amendment (Senate Amendment 3464) introduced by Senators Feinstein (D – California), Tillis (R – North Carolina), and Blumenthal (D – Connecticut) that will provide clear authority for states and municipalities to restrict drone certain aspects of drone use.

With the bipartisan amendment now filed, NLC is asking city officials to send a letter your senators urging them to cosponsor Senate Amendment 3558 to support local control of drones.

This article was reprinted with permission from the National League of Cities. For more information, contact Matthew Colvin, Principal Associate, Infrastructure and Development, at colvin@nlc.org *or 202-626-3176.*