



# Legislative UPDATE

May 3, 2019  
Number 18

## **Revenue Cap Bill Passes House at 3.5 Percent: Negotiations to Come...**

The property tax revenue cap bill, S.B. 2 (summarized in the “Significant Floor Actions” section elsewhere in this edition), passed the House Tuesday at a 3.5 percent rollback rate, which is the same cap passed by the Senate. To see how your representative voted, click [here](#), click on “Record Vote 839” near the top of the page, and look at “SB 2 ON THIRD READING” towards the bottom of the page. The House made a few key changes in committee and on the floor:

- The House version of the bill gives cities and counties the ability to bank up to five years of unused increases under the 3.5 percent cap for future use. (The Senate version has no similar “banking” provision.)
- The House version grants some relief to small taxing entities by allowing at least a \$500,000 tax increase in any year without triggering a rollback election. (The Senate version exempts taxing entities under \$15 million in combined property and sales tax revenue from the lowered rollback rate, subject to an opt-in election for those small entities.)
- The House version ties enactment of the bill to passage of school finance reform, currently embodied in H.B. 3.
- The House version gives an adjustment for certain homestead exemptions granted by a city.

The bills will now go to a “conference committee” composed of members of each chamber to negotiate which elements of the different versions will end up in the final bill. Significant is that

both versions put the rollback rate at 3.5 percent. Absent procedural gimmicks, this means the final version will most likely stay at 3.5.

The key sticking point between the two chambers will probably be the relationship of the bill to school finance. Both chambers appear willing to budget about an additional \$9 billion toward schools, with approximately \$2.7 billion of that used to buy down school property taxes. Beyond that, the chambers are split on how exactly to accomplish the additional spending and buy down, with key differences over teacher pay, willingness to increase sales taxes to offset property taxes, and other issues.

Despite the proposed school property tax relief of \$2.7 billion per year, the draft state budget bill still anticipates school district property tax increases of 10.26 percent over two years. School district taxes are, of course, essentially state taxes inasmuch as the state is constitutionally responsible for all school funding (school taxes are simply the mechanism the state has adopted to discharge its responsibility). Accordingly, city officials would be right to question why the state is willing to permit over five-percent annual property tax increases for its own purposes, while capping city and county tax increases at 3.5 percent.

The answer is simple: the state legislature doesn't have the political will to carry its full share of school funding, but they don't like to admit to that. To divert attention from this failure, it biennially points the finger at cities and counties who – combined – still make up far less than the state's school tax levy. Cities and counties have long been the scapegoat on property taxes, and this session is poised to deliver more of the same.

The chief danger from a good government perspective will be that school tax reform melts down and the only thing that passes at the end of the day is a cap on city and county rates. The House's version of the revenue cap bill tries to prevent that result by tying the passage of S.B. 2 to H.B. 3. Hopefully that link will hold: as we've long said, the only meaningful property tax relief comes from significant school property tax reform.

## **Federal Court Preliminarily Enjoins Texas Law Prohibiting Boycott of Israel**

Last week, a federal district court granted a preliminary injunction enjoining the enforcement of a Texas law that prohibits boycotting the State of Israel. The issue in [\*Amawi v. Pflugerville Independent District, et al.\*](#) is whether H.B. 89 (codified as [Chapter 2270 of the Government Code](#)) may prohibit boycotting Israel as a condition of public employment or contracting.

In 2017, the Texas legislature enacted H.B. 89, which provides that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel, and will not boycott Israel during the term of the contract. The term "company" includes "a for-profit sole proprietorship."

The plaintiffs in this case are five sole proprietors who refused to sign contracts with certain governmental entities on the grounds that requiring the plaintiffs to certify that they do not

boycott Israel violated their First Amendment rights. As a result, the plaintiffs were either denied employment with or their contractual relationships were terminated by the governmental entities.

Granting the preliminary injunction, the court concluded that the plaintiffs were likely to succeed on the merits of their First Amendment claims, were likely to suffer irreparable harm in the absence of preliminary relief, and that an injunction is in the public interest. An appeal to the United States Court of Appeals for the Fifth Circuit has been filed. League staff will continue to monitor the case, and provide updated information as the case unfolds.

## **Significant Floor Actions**

**Attorney's Fees in Civil Cases:** [H.B. 790](#), relating to recovery of attorney's fees in certain civil cases. Passed the House.

**Engineers/Architects Duty to Defend:** [H.B. 1211](#), relating to certain agreements by architects and engineers in or in connection with certain construction contracts. Passed the House. As passed, the bill would prohibit a city from requiring an engineer or architect to defend the city under a construction contract.

**Construction Liability:** [H.B. 1999](#), relating to certain construction liability claims concerning public buildings and public works. Passed the House. As passed, the bill would presumably apply to a construction project owned by a city, and it would mandate that – prior to bringing a lawsuit on a construction defect – an owner must obtain an inspection and report from an engineer and offer the contractor a chance to correct the defect.

**Electric Bicycles:** [H.B. 2188](#), relating to the operation of electric and nonelectric bicycles. Passed the House. As passed, the bill would require a city to treat electric bicycles the same as regular bicycles, with some exceptions.

**No More Brick Exteriors:** [H.B. 2439](#), relating to certain regulations adopted by governmental entities for the building products, materials, or methods used in the construction of residential or commercial structures. Passed the House. As passed, the bill would – with certain exceptions – prohibit a city from mandating any building materials that are more stringent than those in a building code.

**Historic Landmark Designation:** [H.B. 2496](#), relating to the designation of a property as a historic landmark by a municipality. Passed the House. As passed, the bill would provide that a city that has established a process for designating places or areas of historical, cultural, or architectural importance and significance through the adoption of zoning regulations or zoning district boundaries may not designate a property as a local historic landmark unless: (1) the owner of the property consents to the designation; or (2) the designation is approved by a three-fourths vote of: (a) the governing body of the city; and (b) the zoning, planning, or historical commission of the city, if any.

**Contingent Fee Legal Contracts:** [H.B. 2826](#), relating to procurement of a contingent fee contract for legal services by certain governmental entities. Passed the House.

**Firearms:** [H.B. 3231](#), relating to the regulation of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories by a county or municipality. Passed the House. As passed, the bill would clarify firearms preemption statutes to ensure more uniform treatment of firearms and ammunition, expand the scope of those limitations, and provide for a civil remedy for an aggrieved person.

**Cybersecurity Training:** [H.B. 3834](#), relating to the requirement that certain state and local government employees and state contractors complete a cybersecurity training program certified by the state cybersecurity coordinator. Passed the House. As passed, the bill would provide that a local government employee who uses a computer to complete 25 percent of the employee's required duties shall complete a cybersecurity training program.

**REVENUE CAP:** [S.B. 2](#), relating to ad valorem taxation. Passed the House. As passed, this bill (known as the "Texas Taxpayer Transparency Act of 2019) would make numerous changes to the process for adopting property tax rates. Of primary importance to cities, the bill would:

1. rename the "rollback" tax rate the "voter-approved" tax rate;
2. adjust the voter-approved tax rate in the following ways:
  - a. define "special taxing unit" as: (i) a taxing unit other than a school district for which the maintenance and operations tax rate proposed for the current tax year is 2.5 cents or less per \$100 of taxable value; (ii) a junior college district; or (iii) a hospital district;
  - b. maintain an eight percent voter-approved rate for all special taxing units;
  - c. for a taxing unit other than a special taxing unit, provide for a voter-approved rate of 3.5 percent;
  - d. for a taxing unit other than a special taxing unit, authorize the taxing unit to carry forward any unused increment between the adopted maintenance and operations tax rate and the voter-approved tax rate for up to five years;
  - e. adjust the voter-approved rate upwards for new revenue lost to local option homestead exemptions in the current year as compared to the previous year;
  - f. authorize a taxing unit other than a special taxing unit to temporarily use a voter-approved rate of eight percent if any part of the taxing unit is located in an area declared a disaster area by the governor or president of the United States; and
  - g. impose a two percent rollback rate for school districts.
3. require taxing units to calculate a "de minimis rate," which is a rate that, when applied to a taxing unit's current total value, will impose an amount of taxes equal to the de minimis amount. (Note: the de minimis amount is established at \$500,000 in 2020, and is adjusted by the comptroller to reflect the inflation rate in subsequent years);
4. require a mandatory election on the November uniform election date for all cities that exceed the voter-approved rate, whether that rate is 3.5 percent or eight percent (with exceptions for increased expenditures of money by a taxing unit necessary to respond to a disaster);

5. make numerous calendar changes to the property tax appraisal, collection, and rate-setting process in order to have property tax ratification elections on the November uniform election date; and
6. make the passage of S.B. 2 contingent upon the passage of H.B. 3, the public school finance reform bill.

For a detailed summary of the entire bill, click [here](#).

**County Assistance Districts:** [S.B. 288](#), relating to the authority of a county assistance district to impose a sales and use tax. Passed the Senate.

**Dangerous Wild Animals:** [S.B. 641](#), relating to the regulation of dangerous wild animals. Passed the Senate. As passed, the bill would: (1) allow a court to order an animal control authority, including a municipal animal control office, to seize a dangerous animal and provide for the impoundment of the animal; (2) provide that certain persons may not own, possess, sell, transfer, breed or have custody or control of specific dangerous wild animals unless such persons were lawfully in possession of the dangerous wild animal before September 1, 2019, register the animal, and comply with state rules; (3) make such owner liable for all costs incurred in apprehending and confining a dangerous wild animal that escapes the owner's custody; and (4) provide that a law enforcement agency or its employees is not liable for damages arising from the escape of an owner's dangerous wild animal, including property damage, injury or death caused by the animal or for injury to or the death of the animal.

**Certificates of Obligation:** [S.B. 652](#), relating to procedures and requirements for the issuance of certificates of obligation. Passed the Senate. As passed, the bill would require cities issuing certificates of obligation to post notice on the city's website and prohibit a city from authorizing a certificate of obligation if a bond proposition for the same purpose was submitted to the voters during the preceding six years and failed to pass.

**Ballot Language:** [S.B. 1225](#), relating to requirements for certain petitions requesting an election and ballot propositions. Passed the Senate. As passed, the bill would, among other things, establish a process for the secretary of state to review city ballot language and waive governmental immunity for cities that are sued for improper ballot language.

**Ballot Propositions:** [S.B. 2219](#), relating to ballot propositions authorizing political subdivisions to issue bonds or other debt or to impose or change a tax. Passed the Senate.

**Water Rates for Religious Institutions:** [S.B. 2322](#), relating to rates established by municipalities for water and sewer services. Passed the Senate. As passed, the bill would provide that a city or a municipally owned utility may not establish a rate applicable only to entities that qualify for a sales tax or ad valorem tax exemption that is higher than a rate established for entities that receive comparable utility services.

*\*Editor's Note: The links above lead to the bill's landing page on the Texas Legislature Online website. To read the latest version, click on the "text" tab and click on the lowest version on the screen.*

## **Significant Committee Actions**

**No More Annexation:** [H.B. 347](#), relating to eliminating distinctions in the application of consent annexation requirements. Reported from the Senate State Affairs Committee. As reported, the bill would essentially eliminate unilateral annexation for every city.

**Fee Reporting:** [H.B. 984](#), relating to notice requirements for certain municipal fees and the process to adopt a municipal budget that includes the use of revenue from those fees. Reported from the House Committee on Urban Affairs. As reported, the bill would require detailed reporting of new or increased municipal fees.

**First Responder:** [H.B. 1090](#), relating to the definition of first responder. Reported from the House Committee on Public Safety. As reported, the bill would expand workers' compensation liability for certain first responders.

**Speed Limit:** [H.B. 1287](#), relating to the prima facie speed limit on certain streets and highways. Reported from the House Committee on Transportation as substituted. As reported, the bill would lower the prima facie speed limit on neighborhood city streets from 30 to 25 miles-per-hour.

**Electric Rates:** [H.B. 1397](#), relating to the establishment of rates for certain non-ERCOT utilities. Reported from the Senate Business and Commerce Committee. As reported, the bill would negatively affect a city's oversight of electric utility rates.

**Sales Taxes:** [H.B. 1525](#), relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers. Reported from the Senate Finance Committee. As reported, the bill would, among other things, require marketplace sellers to collect and remit sales and use taxes based upon the location to which an item is delivered to the purchaser.

**Professional Services:** [H.B. 1737](#), relating to statutes of limitation and repose for certain claims involving the construction or repair of an improvement to real property or equipment attached to real property. Reported from the House Committee on Judiciary and Civil Jurisprudence.

**First Responder PTSD:** [H.B. 2143](#), relating to the eligibility of a first responder for workers' compensation benefits for post-traumatic stress disorder. Reported from the House Committee on Business and Industry.

**NEVs:** [H.B. 2163](#), relating to the types of vehicles regulated as neighborhood electric vehicles under the Rules of the Road. Reported favorably from the House Committee on Transportation. As reported, the bill would define a "neighborhood electric vehicle" to be an electric vehicle that can attain a maximum speed of 35 miles per hour, and otherwise complies with either the Federal Motor Vehicle Safety Standards applicable to motorcycle vehicles that have at least three wheels in contact with the ground or Federal Motor Vehicle Safety Standards for low-speed vehicles.

**Board of Adjustment:** [H.B. 2497](#), relating to rules of and appeals to a municipal board of adjustment. Reported from the House Committee on Land and Resource Management.

**Elections:** [H.B. 2898](#), relating to voting outside of the polling place. Reported from the House Committee on Elections. As reported, the bill would authorize an election authority to permit a voter who is a parent or legal guardian of a child who is five years old or younger and is accompanied by that child to the polling place to vote using a ballot delivered to the voter at the entrance to the polling place or curb.

**Construction Defects:** [H.B. 2901](#), relating to civil liability and responsibility for the consequences of defects in the plans, specifications, or related documents for the construction or repair of an improvement to real property. Reported from the House Committee on Judiciary and Civil Jurisprudence as substituted.

**Charter Schools:** [H.B. 3155](#), relating to the applicability of certain laws to open-enrollment charter schools. Reported from the House Committee on Public Education. As reported, the bill would require that charter schools be treated as school districts for purposes of most municipal regulations.

**Open Government/Disasters:** [H.B. 3752](#), relating to certain procedures applicable to meetings under the open meetings law and the disclosure of public information under the public information law in the event of an emergency, urgent public necessity, or catastrophic event. Reported from the House Committee on State Affairs. As reported, the bill would make various changes to the operation of open government laws during a disaster.

**Speed Limits Near Schools:** [H.B. 3871](#), relating to the process for establishing speed limits on roads near certain schools. Reported favorably from the House Committee on Transportation.. As reported, the bill would mandate that a city take certain actions related to the speed limit near a school at the request of the school.

**Solar Panels:** [S.B. 2066](#), relating to distributed renewable generation resources. Reported from the House Committee on Business and Commerce as substituted. As reported, the bill would limit the authority of a city to regulate the placemen of solar panels.

**Electronic Information:** [H.B. 4132](#), relating to maintenance and production of electronic public information under the public information law. Reported from the House Committee on State Affairs.

**Disable First Responder Tax Exemption:** [H.J.R. 139](#), proposing a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homesteads of certain disabled first responders and their surviving spouses. Reported from the House Committee on Ways and Means.

**Bond Issuance:** [H.B. 440](#), relating to general obligation bonds issued by political subdivision. Passed the House. Reported from the Senate State Affairs Committee. As reported, the bill would: (1) require a political subdivision to include any sample ballot prepared for a general

obligation bond election to be prominently posted on the political subdivision's website during the 21 days before the election along with the election order, notice of the election, and contents of the proposition, if the political subdivision maintains a website; and (2) provide that a political subdivision may not issue a general obligation bond to purchase, improve, or construct improvements or to purchase personal property if the weighted average maturity of the issue of bonds to finance the improvements or personal property exceeds 120 percent of the reasonably expected weighted average economic life of the improvements or personal property financed with the issue of bonds.

**Cottage Foods:** [S.B. 932](#), relating to the regulation of certain direct sales of food to consumers and a limitation on the fee amount for certain permits. Reported from the House Committee on Public Health.

**Public Information Act – Personal Devices and Accounts:** [S.B. 944](#), relating to the public information law. Reported from the House Committee on State Affairs. As reported, the bill would require a city employee or elected official to turn city-related information on a private device or account over to the city.

**Annexation:** [S.B. 1024](#), relating to access to services area annexed by certain tier 1 municipalities under a service plan. Reported from the Senate Committee on Intergovernmental Relations. As reported, the bill would provide additional remedies for a person annexed by a city of 350,000 or less who claims that the city isn't providing services.

**Open Meetings Act – “Walking Quorum”:** [S.B. 1640](#), relating to changing the criminal offense of conspiracy to circumvent the open meetings law. Reported from the House Committee on State Affairs. As reported, the bill would provide that a member of a governmental body commits an offense if the member: (1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by the Open Meetings Act and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members; and (2) knew at the time the member engaged in the communication that the series of communications: (a) involved or would involve a quorum; and (b) would constitute a deliberation once a quorum of members engaged in the series of communications. (Note: this bill attempts to overturn a recent Court of Criminal Appeals opinion in *Doyal v. State*, which found the existing statute unconstitutional.)

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## **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 travel 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. This list generally covers testimony

through Monday of each week. Witnesses who testified later than that date will be included in the next week's edition. If we missed your testimony let us know by an email to [ford@tml.org](mailto:ford@tml.org), and we'll recognize you in next week's edition.

The following officials testified in committee hearings:

- Virginia Collier, Senior Planner, City of Austin
- James Darling, Mayor, City of McAllen
- Clifford Sparks, Legislative Director, City of Dallas
- Brian Funderburk, City Manager, City of Rowlett
- Michael Shannon, Director - Development Services Department, City of San Antonio
- Greg Meszaros, Director – Austin Water, City of Austin
- Jerry Hendrix, Chief of Staff, City of Kyle
- Bill Kelly, Director Government Relations, City of Houston
- Jerry Bark, Director Public Relations, City of Harker Heights
- Hilary Shine, Executive Director of Communications, City of Killeen
- Dr. Marte Martinez, Councilmember, City of Laredo
- Charles Fenner, Director of Municipal Development, City of Terrell
- Nick Woolery, Director of Strategy & Innovation, City of Baytown
- Edward Broussard, City Manager, City of Tyler
- Les Stephens, Fire Chief, City of San Marcos
- Catherine Gorman, Assistant Director/Historic Preservation Officer, City of Galveston
- Mike Rawlings, Mayor, City of Dallas
- Hope Wells, Water Resources Counsel, San Antonio Water System
- Loren Raun, Chief Environmental Science Officer, City of Houston
- Michael Gerke, Chief of Police, City of Odessa

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