



Legislative UPDATE

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NOTICE

This is the final *TML Legislative Update* of the Eighty-First Regular Session. A final legislative wrap-up will be published and sent to you as soon as possible following adjournment on June 1. In addition, future issues of the *TML Legislative Update* will include any necessary addenda. Updated information is always available from Texas Legislature Online at www.capitol.state.tx.us.

EMINENT DOMAIN REFORM: SENATE BILL 18 GETS LOADED UP WITH BAD AMENDMENTS

In the April 30, 2009, edition of the *TML Legislative Update*, the League reported on **S.B. 18**, relating to the use of eminent domain authority. As passed by the Senate, the bill attempted to strike a balance between property owners and entities (including cities) with eminent domain authority.

The bill then moved on to the House, where detrimental committee amendments were added without the benefit of a hearing or public testimony. How did that happen? The House voted to suspend its rules that require advance notice of committee meetings. Shortly thereafter, the House Land and Resource Management Committee met at the chairman's desk in the House chamber to vote on a House committee substitute for the bill.

The text of that substitute bill wasn't available to the public when the committee met, but it has since been released. It contains the following detrimental provisions, some of which came from other eminent domain House bills that are procedurally dead.

Urban Renewal and Relocation amendments provide that:

1. a governmental or private entity may not take private property through the use of eminent domain if the taking is for economic development purposes, unless the economic development results from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from blighted areas or is not for a "public use";
2. the term "blighted area" means an area that presents four or more of the following conditions for one year after a property owner receives notice of the condition: (a) the area contains uninhabitable, unsafe, or abandoned structures; (b) the area has inadequate provisions for sanitation; (c) there exists at the area an imminent harm to life or other property caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe declared to be a disaster; (d) the area has been identified by the federal Environmental Protection Agency as a Superfund site or as environmentally contaminated to an extent that the property requires remedial investigation or a feasibility study; (e) the area has been the location of substantiated and repeated illegal activity of which the property owner knew or should have known; (f) the maintenance of the property is below county or municipal standards; (g) the property is abandoned and contains a structure that is not fit for its intended use because the utilities, sewerage, plumbing, heating, or a similar service or facility of the structure has been disconnected, destroyed, removed, or rendered ineffective; or (h) the property presents an economic liability to the immediate area because of deteriorating structures or hazardous conditions;
3. the current statutory provisions relating to urban renewal eminent domain apply only to blighted areas (as opposed to "slum" areas);
4. a municipal governing body must determine that each unit of property (as opposed to an "area," as is current law) be designated as blighted, and make corresponding procedural changes to urban renewal laws;
5. notwithstanding any other law, an area may not be considered a blighted area on the basis of a condition described in number (1) above unless the city has given notice in writing to the property owner regarding the imminent harm to life or other property caused by the condition of the property, and the property owner fails to take reasonable measures to remedy the harm caused by the property;
6. an area may not be considered blighted solely for aesthetic reasons;
7. a city shall provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that is compatible with the Federal Uniform Relocation Assistance Advisory Program;

8. a city shall, as a cost of acquiring real property, pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition; and
9. the provisions of the bill shall supersede broad eminent domain powers relative to tax increment financing.

Compensation amendments would provide that the special commissioners in a condemnation proceeding shall admit evidence on the financial injury to the property owner including—if the condemnation makes relocation of a homestead or farm necessary—the financial damages associated with the cost of relocating from the condemned property to another property that allows the property owner, without the necessity of incurring additional debt, to: (1) have a standard of living comparable to the property owner's standard of living immediately before the condemnation; or (2) operate a comparable farm, if the condemned property is a farm.

Compared to other bills that have been filed, S.B. 18 as it passed the Senate was a reasonable compromise. The House committee version is not. The bill will now be heard by the full House, where lawmakers will probably try to add additional, detrimental provisions. The final version of the bill – if there is one – will be hammered out in a conference committee.

APPEALS FILED IN OPEN MEETINGS CHALLENGE

On April 24, 2009, the U.S. Court of Appeals for the Fifth Circuit released its long-awaited opinion in the City of Alpine Open Meetings Act lawsuit - *Avinash Rangra, Anna Monclova, and All Other Public Officials in Texas v. Frank D. Brown, 83rd Judicial District Attorney, and the State of Texas*. (See article in the April 30, 2009, issue of the *TML Legislative Update*.)

After the opinion was released, both the Texas attorney general and the city officials filed motions for rehearing *En Banc* (by all the members of the court). The Texas attorney general has received *amicus* support from the Reporters Committee for Freedom of the Press, the Freedom of Information Foundation of Texas, and the attorneys general of 18 states. The Texas Municipal League, the Texas City Attorneys Association, the South Dakota Municipal League, the Illinois Municipal League, the National League of Cities, and the International Municipal Lawyers Association joined together to file an *amicus* brief in support of the city officials. That brief argues that the threat of imprisonment is not the least restrictive means of promoting open government.

A May 17, 2009, article in the *Austin American Statesman* lamented the appellate court's decision. Specifically, the article stated that "[t]he strict scrutiny standard, recognizing

that free speech is a cornerstone of civil rights, is designed to negate most government attempts to limit speech. And that's what has open-government advocates worried." It would appear from that statement and those in *amicus* briefs that the media support the First Amendment when it benefits them but, in this case at least, oppose it when it would benefit city officials.

League staff will follow the case and report on future developments.

FEDERAL STIMULUS PACKAGE UPDATES

The League's American Recovery and Reinvestment Act (ARRA) Web page can be accessed at www.tml.org, by clicking on "Federal Stimulus Information." Since the publication of last week's *TML Legislative Update*, various information on the TML Web page has been changed as follows:

- The *Federal Register* notice outlining selection criteria for the U.S. Department of Transportation's \$1.5 billion competitive grant program (known as TIGER – Transportation Investment Generating Economic Recovery) was released for comments on May 15, 2009. Comments on the selection criteria are due on June 1, 2009. Once the criteria are approved, grant applications will be due by September 15, 2009.
- The Edward Byrne Memorial Justice Assistance Grant (JAG) Formula Program allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system. Initially, applications were due by May 18, 2009, but the Department of Justice has announced that the deadline has been extended until June 17, 2009.

League staff will continue to monitor the implementation of the ARRA.

SIGNIFICANT COMMITTEE ACTIONS

H.B. 77 (Flynn), permitting city depository banks to pool collateral for deposit amounts in excess of FDIC insurance, giving cities and banks the option to participate in the program, requiring 102-percent collateralization, requiring state comptroller oversight of pooled collateral, and requiring third-party safekeeping of collateral in most cases. Reported from the Senate Finance Committee.

S.B. 263 (Carona), relating to the issuance by TxDoT of general obligation bonds for highway improvement projects. Reported from the House Transportation Committee.

S.B. 475 (Wentworth), relating to property tax exemptions. Reported from the House Ways and Means Committee. As reported, this bill would make mandatory a property tax exemption (currently optional) for certain charitable organizations and would enact an exemption for some property owned by certain chambers of commerce. The bill's fiscal note estimates a cost to cities statewide of \$4.7 million in 2010, an amount that would increase to \$8.2 million by 2014.

S.B. 544 (Ellis), prohibiting smoking in most public places in Texas. Reported from the Senate Health and Human Services Committee. As reported, this bill would pre-empt local smoking ordinances except for ordinances that are more stringent than the bill's provisions.

S.B. 855 (Carona), providing for the imposition of a ten-cent-per-gallon, local-option motor fuels tax, upon approval of the voters, for mobility improvement projects in certain areas of the state. Reported from the House Transportation Committee.

S.B. 947 (Duncan), relating to the exemption from ad valorem taxation of certain tangible personal property stored temporarily at a location in this state. Reported from the House Ways and Means Committee.

S.B. 1202 (Deuell), relating to the collection and allocation of local sales taxes. Reported from the House Ways and Means Committee.

S.B. 1947 (West), allowing two or more cities to designate a joint tax increment financing reinvestment zone. Reported from the House Ways and Means Committee.

S.J.R. 9 (Carona), relating to transportation funding. Reported from the House Transportation Committee. As reported, this legislation proposes to amend the Texas Constitution by phasing out, by 2018, the funding of the Department of Public Safety by transportation-related fees and taxes.

S.J.R. 52 (Davis), proposing to amend the Texas Constitution to allow the legislature to authorize a county to levy a gasoline/diesel fuel tax, assess an additional vehicle registration fee, and use the revenue for mobility projects. Reported from the House Transportation Committee.

SIGNIFICANT FLOOR ACTIONS

H.B. 55 (Branch), prohibiting the use of a wireless communication device (WCD) while operating a vehicle within a school crossing zone unless the vehicle is stopped or the WCD is used with a hands-free device. Passed the House. **A House floor amendment provides that a city that enforces this new prohibition shall: (1) post signs informing drivers that WCDs are prohibited, and (2) impose a fine of not more than \$25 for the first offense and \$50 for a subsequent offense.**

H.B. 206 (Jackson), relating to alcoholic beverages. Passed the House. As passed, this bill would: (1) permit the holder of an on-premises alcohol consumption permit to allow an individual to bring alcoholic beverages onto the permitted premises for consumption by that individual; and (2) make it an offense for a commercial establishment to allow customers to bring alcoholic beverages onto the premises if the establishment does not have an on-premises consumption permit.

H.B. 360 (Kuempel), relating to the Texas Municipal Retirement System. Passed the Senate.

H.B. 451 (Allen), requiring health benefit plans to provide coverage for autism in a child up to age nine. Passed the House.

H.B. 1221 (C. Howard), relating to property tax. Passed the House. As passed, this bill would: (1) eliminate the requirement that appraisal value notices must include the estimated tax liability based on an application of last year's tax rate to this year's appraised value; (2) require tax assessors to submit the appraisal roll to a city not later than 21 days after the date the appraisal roll is certified to the assessor; (3) require a city to calculate its effective tax rate not later than 30 days after it receives the certified appraisal roll from the assessor; (4) require the person who calculated the effective tax rate to submit the rate to the city council within five days of making the calculation; (5) require the calculation of a "same services tax rate;" and (6) require a city council, before giving notice of tax increase hearings, to take a record vote on the proposal to increase taxes and that the motion for that vote must be as follows: "I move that a proposal to increase property taxes by the adoption of a tax rate of (specific tax rate) be placed on the agenda for the meeting to be held on (date on which the governing body anticipates adopting the tax rate);" and much more.

H.B. 1433 (Lucio), raising the cap on the annual water quality fee imposed on a city by TCEQ. Passed the Senate. As passed, this bill would, on September 1, 2009, raise the maximum fee from \$75,000 to \$100,000. The bill would also allow the TCEQ to thereafter raise the maximum fee annually by an amount that reflects growth in the CPI, up to a maximum amount of \$150,000 annually.

H.B. 1988 (McReynolds), relating to DWI. Passed the House. As passed, this bill would require a peace officer to make and attach a photocopy of a driver's license to a temporary driving permit issued to a person suspected of an intoxication offense.

H.B. 1998 (McCall), relating to housing and emergency shelters provided by a political subdivision for disaster victims. Passed the Senate.

H.B. 2000 (McCall), requiring health benefit plans to provide coverage for amino acid-based elemental baby formulas. Passed the House.

H.B. 2705 (Gattis), relating to annexation. Passed the House. As passed, this bill would clarify current law regarding provision of services after annexation to provide that, if the annexed area had a level of services for maintaining and landscaping rights-of-way superior to the level of services provided within the corporate boundaries of the city before annexation, a service plan must provide annexed public rights-of-way with a level of maintenance and landscaping that is comparable to the level of maintenance and landscaping available to other public rights-of-way in the city.

H.B. 2828 (Menendez), relating to a property tax exemption. Passed the House. As passed, this bill would: (1) permit property owned by certain limited partnerships to claim a community housing development organization (CHDO) property tax exemption; (2) expand the application of special appraisals for low-income or moderate-income housing to include apartments and land owned by persons other than certain nonprofit organizations; and (3) alter the application of the income method of appraisal to low-income or moderate-income appraisals. The bill's fiscal note states that the bill "could" impose costs on the state and on local governments.

H.B. 3222 (Hancock), allowing two or more cities to designate a joint tax increment financing reinvestment zone. Passed the House.

H.B. 3255 (Gattis), relating to vehicle financial responsibilities. Passed the House. **A second reading, House floor amendment provides that a peace officer may impound the vehicle of a person who operates a vehicle without proof of financial responsibility "if the person has been previously convicted" of the same violation.**

H.B. 3389 (Harper-Brown), relating to the continuation and functions of the Texas Commission on Law Enforcement Officer Standards and Education. Passed the House. As passed, this bill would require police departments to: 1) complete training, every two years, on how to handle persons with mental impairments; (2) provide additional reports in order to receive certain funds from the comptroller; (3) provide additional reporting to TCLEOSE on racial profiling; (3) report when a new police department is formed; (4) complete training requirements in the laws of the U.S. and Texas; and (5) complete training requirements in civil rights, racial sensitivity, and racial diversity for intermediate proficiency.

S.B. 39 (Zaffirini), requiring health benefit plans to cover certain expenses related to clinical trials. Passed the House.

S.B. 254 (Estes), exempting volunteer fire departments from the state motor fuels tax. Passed the House.

S.B. 1011 (Estes), relating to the Texas Commission on Fire Protections (TCFP). Passed the House. As passed, this bill would: (1) create an interim study of volunteer fire departments; and (2) allow the TCFP to enter a default order if a fire department fails to take action to correct a violation found by the TCFP during an inspection; and much

more. (Fire chiefs should review this bill thoroughly.) (Note: a House floor amendment eliminated the provision that would have authorized the TCFP to establish minimum education and training standards for volunteer firefighters.)

S.B. 1182 (Wentworth), relating to public information. Passed the House. As passed, this bill includes a House floor amendment that provides that a quorum of a city council may receive and a member of the council may make a report about items of community interest during a council meeting without posting notice of the subject of the report if no action is taken and no possible future action is discussed. (The addition of this amendment is just one example of the way in which lawmakers can use floor amendments to enhance the ability of city councils to govern effectively.)

S.B. 1410 (Jackson), relating to plumbing. Passed the House. On the House floor, legislators added an amendment that will prohibit a city (after January 1, 2009) from requiring a sprinkler system in a new or existing one- or two-family dwelling. (Before this amendment was added, TML had no position on this bill. The addition of this amendment is just one example of the way in which lawmakers can use harmless bills as vehicles to erode municipal efforts to protect the public health, safety, and welfare.)

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