



Legislative UPDATE

July 2, 2009
Number 22

SPECIAL SESSION BEGINS

A special legislative session began on July 1; it can last a maximum of 30 days. The governor called lawmakers back to Austin for the following reasons:

- To consider legislation that: (1) provides for extending the existence of several state agencies that were subject to sunset review by the 81st Legislature and that will be abolished without legislative action under the state's Sunset Act; and (2) changes the review schedule for certain state agencies (including, most notably, TxDOT) to balance the workload of the Sunset Advisory Commission.
- To consider legislation relating to the issuance by the Texas Transportation Commission of general obligation bonds for highway improvement projects, and to the creation, administration, financing and use of a Texas Transportation Revolving Fund to provide financial assistance for transportation projects.
- To consider legislation relating to the date on which the authority of the Texas Department of Transportation and a regional mobility authority to enter into a comprehensive development agreement expires.

It is possible that other items could be added to the “call” for consideration during the special session. TML staff will monitor the session closely for any city-related developments and will keep city officials informed.

GOVERNOR’S VETOES INCLUDE **CITY-RELATED BILLS**

Governor Rick Perry has vetoed 35 bills passed by the legislature during the regular session. Two of the 35 were city-related bills described in the League’s final legislative wrap-up of June 11. Those two vetoes are detailed below:

H.B. 2820 – Professional Services: would have added landscape architectural and geoscientific services to the Professional Services Procurement Act. According to the governor’s veto message, the bill “would prevent price-based competition for services by geoscientists and landscape architects, and therefore does not guarantee the best value for taxpayers when government entities contract for these services.”

S.B. 686 – Gas Pipelines: this bill would have applied to a natural gas pipeline located or proposed to be located in: (1) a county in which a part of the Barnett Shale natural gas field is known to be located; (2) a county that is located within the boundaries of a metropolitan planning organization; or (3) the corporate limits of a city. The bill would have provided, among other things, that a gas utility is entitled to lay, maintain, and operate a natural gas pipeline through, under, along, or across a controlled access state highway only if: (1) the pipeline is subject to the jurisdiction, control, and regulation of the Railroad Commission of Texas and subject to safety standard requirements pertaining to gas pipeline facilities and transmission lines for the transportation of gas; (2) the pipeline complies with all applicable state rules consistent with the bill and all applicable federal regulations on the accommodation of utility facilities on the highway or right-of-way, including rules and regulations relating to the horizontal and vertical location of the pipeline; and (3) the highway and associated facilities are promptly restored to their former condition of usefulness after the installation or maintenance of the pipeline, as applicable, is complete. The bill would have provided that TxDOT may require a gas utility to relocate a facility at the cost of the gas utility to accommodate construction or expansion of a highway or for any other public work unless the gas utility has a property interest in the land occupied by the facility to be relocated. The bill was not to be construed to limit the authority of a gas utility to use a public right-of-way under any other law, and the bill was not to be construed to affect the authority of a city to regulate the use of a public right-of-way by a gas utility under any other law or to require payment of any applicable franchise fee.

The governor’s veto message stated the following: “[w]hile I agree that this bill would provide a benefit to communities and reduce the impact on private property owners, the bill conflicts with House Bill No. 2572, which was signed on June 19, 2009, and which accomplishes the same objectives statewide while ensuring that pipelines are installed using the highest safety standards.”

TEXAS DEPARTMENT OF STATE HEALTH SERVICES **ADOPTS NEW ANIMAL EUTHANASIA RULES**

Over the past few months, the TML staff has been in contact with the staff of the Texas Department of State Health Services (DSHS), negotiating an addition to the agency's proposed animal euthanasia rule changes. The proposed rules provided that a shelter (including a city-owned shelter) should scan an animal for an identifying microchip before euthanizing the animal. While this is an admirable goal, many small cities do not have scanning machines capable of detecting or reading these chips. The League asked the DSHS staff to add language explicitly stating that a city would not be required to purchase a microchip scanning machine in order to comply with the proposed rule. The DSHS staff agreed, and the language was added. Unfortunately, the Texas Health and Human Services Commission, which has final review authority over DSHS rules, voted to remove the negotiated provision.

The DSHS staff has stated its belief that because the rule uses the word "should" rather than "must," it will have the same effect as it would have had with the TML language included: that a city that does not own a machine will not be required to purchase one in order to comply with the rules. The final rule will appear in the July 3 issue of the Texas Register.

U.S. SUPREME COURT ISSUES **VOTING RIGHTS OPINION**

The U.S. Supreme Court recently released its ruling in *Northwest Austin Municipal Util. Dist. No. One v. Holder*. The case deals with the "preclearance" requirement in Section 5 of the Voting Rights Act of 1965 (the "Act"). Section 5 prohibits "covered jurisdictions" from making any changes to voting procedures without first obtaining approval, known as preclearance, from the U.S. Department of Justice. "Covered jurisdictions" are states and political subdivisions that have a history of racial discrimination in voting. Texas and Texas cities are covered jurisdictions. The preclearance provisions require that any change in a voting procedure must avoid the effect of denying or abridging the right of an individual to vote because of race or color. The Northwest Austin Municipal Utility District (MUD) asked the Court to declare the Act unconstitutional, alleging that there is little evidence of continued discrimination in voting practices.

The Court concluded that the Act is constitutional and still necessary. However, it also authorized the MUD to seek an exemption from the Act, known as a "bailout," if it has no recent evidence of discrimination. States and counties have long been able to seek a "bailout" from the preclearance requirements of Section 5 (although only 17 have done so since 1965), but cities have not been permitted to do so.

The bailout process involves seeking a declaratory judgment from a three-judge district court in Washington, D.C. and a showing that the political subdivision meets four very specific criteria

with respect to voting rights violations and constructive efforts to eliminate intimidation and harassment of voters. Because the process can be both lengthy and costly, a city should seriously consider whether it is more beneficial – both financially and politically – to comply with the existing preclearance requirements. In any case, city officials should seek advice from local legal counsel on the requirements of the Act.

THE FTC RELEASES GUIDE ON IMPLEMENTATION OF IDENTITY THEFT RULES

Federal Trade Commission (FTC) rules requiring city utilities to adopt identity theft programs will be enforced beginning on August 1, 2009, pursuant to the Fair and Accurate Credit Transactions (FACT) Act of 2003. The FTC has recently released a guide for businesses, including utilities, on how to implement the red flag rules. The guide is available at http://www.ftc.gov/redflagrule?utm_source=delivra&utm_medium=email&utm_campaign=frupdate. City officials should contact their city attorney or the TML Legal Department with any questions regarding adoption and implementation of a program. Contact Laura Mueller at the TML Legal Department at 512-231-7400 or by email at laura@tml.org.

(For more information, please see “FTC Requires Businesses to Adopt Identity Theft Programs” in the August 21, 2008, edition of the *TML Legislative Update*; and “FTC Identity Theft Rules” in the October 9, 2008, edition of the *TML Legislative Update*.)

DEADLINE FOR ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANTS EXTENDED

The United States Department of Energy has made available a total of nearly \$163 million in Energy Efficiency and Conservation Block Grant (EECBG) funding to “entitlement” cities (cities with populations of more than 35,000). The EECBG program provides grants to local governments to fund projects that reduce energy use and fossil fuel emissions and that improve energy efficiency.

Each Texas entitlement city has been allocated a specific amount and must apply directly to the U.S. Department of Energy in order to receive that funding. While the application deadline for EECBG entitlement funds was originally Thursday, June 25, 2009, the U.S. Department of Energy has extended the deadline until **Monday, August 10, at 8 p.m. Eastern time**.

For more information on how your city can apply for these funds, please visit the U.S. Department of Energy’s EECBG Web site at <http://www.eecbg.energy.gov/>. More information can also be found at http://www.tml.org/legislative_stimulus_energy.html.

ADDENDA

The following city-related bills were passed during the regular session but were not summarized in the June 11 issue of the *TML Legislative Update*:

H.B. 1530 – Mosquito Control: moves licensure of health-related mosquito pest control from the Department of State Health Services (DSHS) to the Texas Department of Agriculture (TDA), potentially allowing mosquito applicators to be licensed for a reduced fee or no fee at all, since TDA is not required to recoup its costs through fees, while DSHS is required to do so by statute.

S.B. 636 – Sales Taxes: does the following in relation to sourcing of city sales taxes: (1) provides that when goods are shipped within Texas by a retailer with more than one legal “place of business” for sales tax purposes, sales taxes shall be generally sourced at the location where the retailer first received the order for the goods, provided the order was placed in person; and (2) provides an exception to number 1 above for cities with certain economic development agreements in place prior to January 1, 2009, provided such cities provide notice to the comptroller regarding those agreements.

The following bill summary appeared in the June 11 issue but omitted a population bracket. The correct summary reads as follows:

H.B. 3072 – 4A/4B Corporations: permits a 4A/4B economic development corporation, in a city with a population of 20,000 or less, to receive transfers of real property from a city, provided there is an agreement and transfer instrument that requires the corporation to use the property in a manner that promotes a public purpose of the city and provided there is a reverter clause should the property cease to be used for such a purpose.

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